

National Congress of  
American Indians

# Policy Update



*July 2016*

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## POLICY OVERVIEW

With July fast approaching, we are in the final months of the Obama Presidency and there are only six months left in this Congress. The elections this November will mark the end of a long political cycle and will usher in a new Congress and Administration in 2017. That means our efforts on Indian Country priorities must be focused on what can still be accomplished this year and how to build on the gains in the next Administration and next Congress.

This Congress has passed key pieces of legislation, including: the Indian Trust Asset Management Reform Act; the Every Student Succeeds Act; and the Native American Children's Safety Act. But we have more work to do. With a shortened timeframe due to the elections, much of Congress's time will be devoted to passing spending bills. However, there are important tribal priorities that are poised for passage in the remaining days of this Congress, including the Tribal Labor Sovereignty Act and direct tribal funding from the Victims of Crime Act fund.

We are also encouraged by actions in Congress around the Tribal Law and Order Act reauthorization, expanded jurisdiction over crimes committed against Native youth, fixing the *Carcieri* decision to reaffirm the Secretary's authority to take land into trust and reaffirm lands already in trust, education reform, and housing reauthorization.

In the Administration we have seen significant movement from the Department of the Interior on Indian Child Welfare Act regulations, implementation of the *Cobell* settlement, rights-of-way regulations, and the Revised Model Indian Juvenile Code. The Indian Health Service (IHS) has issued a policy to increase the number of Community Health aid workers in tribal communities for behavioral health and dental health, and IHS continues its efforts to implement the Affordable Care Act.

There are remaining priorities in the Administration that tribes would like completed by the end of the year, including: naming all the members to the Tribal Advisory Committee that will advise the Secretary of Treasury on matters of tax impacting tribal governments; implementing self-governance across all of the departments within the Department of Transportation; consideration of the recommendations from the Task Force on Climate Preparedness and Resilience across the government; and exempting tribes from the employer mandate in the Affordable Care Act.

While there is much work remaining in the Administration, now is also the time to focus on the next Administration and what Indian Country's priorities will be for the next President. NCAI has begun the work of compiling priorities for the Indian Country transition document. This document will be the roadmap for the next Administration and set out our priorities for the first one hundred days as well as the first and potential second term of the next President. This transition document will ensure that the next administration has the tools it needs to continue forward movement in the nation-to-nation relationship.

We have made great gains in our ability to influence policies impacting tribal nations within both Congress and Administration. NCAI is honored to be a strong and consistent voice in Washington, D.C. for tribal nations and we work to ensure that tribes' voices are heard and considered at every stage of the advocacy process.

### **RESTORE TRIBAL HOMELANDS – ADDRESSING THE CARCIERI DECISION**

Since 1934, the Department of the Interior (DOI) has construed the Indian Reorganization Act (IRA) to authorize the Secretary of the Interior to place land into trust for all federally recognized tribes. Over the following 75 years, DOI restored lands to enable tribal governments to build schools, health clinics, hospitals, housing, and community centers to serve their people. The Secretary has approved trust acquisitions for less than 5 percent of the more than 100 million acres of lands lost through the federal policies of removal, allotment, and assimilation.

In February 2009, the U.S. Supreme Court decided *Carciere v. Salazar*, overturning the long-standing interpretation by construing the IRA to limit the Secretary's authority to place land into trust to only those tribes that were "under federal jurisdiction" as of 1934. From this interpretation, two classes of tribes have been created—tribes "under federal jurisdiction" in 1934 and tribes that were not. This unequal treatment of federally recognized tribes runs counter to congressional intent and modern federal Indian policy. Legislation is needed to prevent irrevocable damage to tribal sovereignty, tribal culture, and the federal trust responsibility.

The *Carciere* decision undermines tribal economic development and self-sufficiency, public safety, tribal sovereignty, and self-determination. The IRA is a comprehensive federal law that provides not only the authority of the Secretary of the Interior to take lands into trust for tribes, but also for the establishment of tribal constitutions and tribal business structures. The *Carciere* decision has created jurisdictional uncertainty that is hindering economic development opportunities, business financing, contracts, and loans. The decision has further complicated the uncertainties of criminal jurisdiction in Indian Country such that it has worsened the public safety crisis prevailing on many Indian reservations across the country as well as drawing into question the validity of past federal and tribal court convictions. The decision also threatens to block or delay important land acquisitions for schools, housing, health clinics, essential tribal government infrastructure projects, and the protection of sacred sites.

With over 15 federal lawsuits currently pending, the *Carciere* decision has already resulted in costly, protracted litigation on a broad range of issues and will likely spawn further litigation across the country. These cases are affecting all tribes, even those that were clearly recognized by the United States prior to 1934. The United States, at taxpayer expense, is a defendant in more than a half dozen of these lawsuits. A legislative fix to *Carciere* comes at no cost to taxpayers all while boosting economic development and self-determination in Indian Country.

#### **Legislative Update**

In July 2015 Senator Barrasso introduced S. 1879, the *Interior Improvement Act*. This bill reaffirms the Secretary's authority to take lands into trust and affirms lands already in trust. In addition, for off-reservation parcels the bill creates incentivizes for cooperative agreements between tribes and counties. The legislation makes the land in trust process more transparent and clarifies when the timeframe for notification to counties begins. This legislation incorporates the comments heard at prior hearings and a February roundtable about improving the land in trust process for tribes and local governments. S. 1879 was voted out of the Committee in December and is ready for consideration by the full Senate.

S. 1879 complements other legislation that has been introduced to address concerns raised by tribes since the 2009 Supreme Court decision. Senator Tester, Congressman Cole, and Congresswoman McCollum have all introduced legislation that would reaffirm Secretarial authority and reaffirm lands already in trust (S. 732, H.R. 249 & H.R. 3137). In addition, two pieces of legislation have been introduced that would reaffirm the status of lands taken into trust, provided the tribe was federally-recognized on the date the lands were taken into trust. In the House, Congressman Cole introduced H.R. 3137, and in the Senate companion legislation, S. 1931, was introduced by Senator Moran in August.

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## **NATURAL RESOURCES**

American Indians and Alaska Natives, as first stewards of this land, have nurtured, lived, and thrived off their homelands since time immemorial. Native peoples continue to rely on their natural resources to sustain themselves as key elements of their culture. Through the Constitution, federal laws, and various agreements with tribal nations, the federal government has treaty and trust responsibilities to Indian tribes to protect, manage, and allow access to tribes' natural resources.

Tribes' cultures, traditions, lifestyles, communities, foods, and economies are all dependent upon many natural resources and they are disappearing faster than they can be restored. These impacts are intensified by effects of climate change on tribal lands. American Indians and Alaska Natives are disproportionately impacted by climate change due to the geographical areas in which they reside and their direct connection to their surrounding environments. Native peoples who rely heavily on the cultural and subsistence practices of their ancestors to survive are particularly hard hit. Specifically, the well-established plight of those in Alaska Native villages is probably the most profound manifestation of the climate crisis and requires focused and high priority attention from the federal government.

Climate change poses threats not only to the health and food supply of Native peoples, but also to their traditional ways of life. Climate change is reducing the natural ecosystems and biodiversity on which Native peoples have come to rely. The traditional time to gather plants is changing, and the migration patterns of animals are being altered. Wildland fires on federal lands are significantly increasing in size, intensity, and cost. In California and the Southwest, many tribes are experiencing prolonged drought which is having an effect on their water resources and rights while some villages in Alaska that are located near rivers or streams now find the water at their front door.

The United States' responsibility toward tribes goes beyond simply supporting prior agreements, it must allow for full tribal participation during discussions on the management of Native resources at the federal-level and the tribal management of natural resources in traditional and culturally appropriate methods. Tribes, as proven effective managers of their own resources, must be included in federal programs as well as funding opportunities available to state and local governments.

### **Legislative Update**

*S. 3014 - Tribal Forestry Participation and Protection Act of 2016.* Senator Steve Daines (R-SD) introduced S. 3014 – the Tribal Forestry Participation and Protection Act of 2016 on May 26, 2016. The legislation requires federal land management agencies to respond within 90 days to tribal requests to manage federal forest lands and to complete analysis within two years, and permits tribes to conduct forest management activities on federal lands where they have a tribal interest. This helps create cohesive management

practices throughout our forestry systems, promoting healthy forests, ecosystems, and economies.

Further, S. 3014 creates the Tribal Forest Management Demonstration Project, allowing Indian tribes and tribal organizations to contract with the Department of the Interior and U.S. Forest Service to perform administrative, management, and additional program functions pursuant to the Tribal Forest Protection Act of 2004. These contracts allow for tribally-driven management of our tribal forests, supporting the exercise of tribal self-determination and self-governance.

On June 8, 2016, the Senate Committee on Indian Affairs held a hearing on S. 3014 and reported the bill favorably out of Committee with an amendment in the nature of a substitute on June 22, 2016.

Wildfire Disaster Funding Act of 2015 (S. 235 & H.R. 167). Senator Wyden (D-OR) and Representative Simpson (R-ID) introduced companion bills to address many issues with funding wildfire suppression. Specifically they address the problematic way in which appropriated sums are often insufficient to cover the large and unpredictable costs of wildfires so as a result fire suppression funds must often be “borrowed” from regular federal forest management programs. Repayment is always late and often partial, disrupting and diminishing those programs’ effectiveness. Many times, this comes at the expense of tribal forestry programs and tribal forests.

NCAI supports the legislative initiative proposed both in Congress and by the Administration to have federal wildland fire costs that exceed 70 percent of the ten-year average paid from federal disaster assistance accounts. Such authority would allow the large, unpredictable, and often unbudgeted costs of fighting wildland fires to be treated the same as other natural disasters, and would provide more budgetary stability to regular on-going federal forest management programs. Since these bills have been introduced, they have received broad bipartisan support. To date, S. 235 has 21 co-sponsors (17 Democrats and 4 Republicans) and H.R. 167 has 145 co-sponsors (81 Democrats and 66 Republicans).

Neither the House nor Senate Committees of jurisdiction have held direct legislative hearings on this legislation, but both the Senate Committee Energy and Natural Resources and House Committee on Natural Resources (which do not have direct jurisdiction because it is a funding measure) have held hearings discussing the issues of wildland fire funding and the need for reform. NCAI continues to support enactment of this legislation in the 114<sup>th</sup> Congress. As part of the Continuing Resolution passed on September 30, 2015, Congress included \$700 million in emergency funding for wildland fire suppression.

Draft Bill – Wildfire Budgeting, Response, and Forest Management Act. On June 3, 2016, Senators Lisa Murkowski (R-AK), Maria Cantwell (D-WA), Ron Wyden (D-OR), Mike Crapo (R-ID), and Jim Risch (R-ID) released a draft bill entitled Wildfire Budgeting, Response, and Forest Management Act. The draft bill includes a similar cap adjustment to end borrowing fire suppression funds from other programs to H.R. 167 and S. 235 but includes additional measures developed through hearings help by the Senate Committee on Environment and Natural Resources in the 114th Congress.

The draft bill will: end fire borrowing by enabling a transfer of limited funds to the Forest Service and the Department of the Interior through a budget cap adjustment when all appropriated suppression funding (100% of the 10-year average) has been exhausted; allow the agencies to invest any excess appropriated suppression funding in low-fire years to fuel reduction work to reduce the threat of wildfires in and around at-risk communities, protect high-value watersheds, and reduce wildfire suppression costs over time; build

on existing Healthy Forests Restoration Act authorities to focus and expedite environmental reviews by limiting the number of alternatives that need to be analyzed in certain environmental assessments and environmental impact statements for a subset of critical management actions to include: reducing hazardous fuels, installing fuel and fire breaks to keep fires small and increase firefighter effectiveness and safety, restoring forest health and resilience, and protecting key municipal water supplies and wildlife habitat; incentivize collaboration by streamlining process requirements to accelerate implementation of collaboratively developed projects; accelerate needed hazardous fuel reduction work in forest types most susceptible to megafires by providing alternative arrangements for project approvals; require the Forest Service to carry out a comprehensive inventory of young growth in the Tongass National Forest before it finalizes any forest plan amendment to change forest management; require federal agencies to work with states to certify firefighting aircraft, personnel, and support equipment in advance of the fire season so that needed resources are available when and where they are most needed; deploy available and emerging technologies, including drones and GPS, on wildfires to increase firefighting safety and operations effectiveness while reducing costs; and authorize \$500 million over seven years to provide assistance to at-risk communities to invest in proven programs that reduce wildfire risk, property loss, and suppression costs.

NCAI is reviewing this legislation, and is looking to work with the Senate Committee on Environment and Natural Resources so that any version of the bill that passes the will include tribes as eligible for programs, funding, and management practices to further protect tribal forest lands.

*S. 438 - A bill to provide for the repair, replacement, and maintenance of certain Indian irrigation projects (IRRIGATE Act).* This bipartisan legislation, introduced by Senator Barrasso (R-WY) on February 10, 2015, will provide the funding necessary to address deferred maintenance and back logged programs for 16 Indian irrigation programs in the west. The legislation creates a fund at the Bureau of Reclamation called the “Indian Irrigation Fund,” which would be funded in the amount of \$35 million annually until through Fiscal Year 2036. The Senate Committee on Indian Affairs held a legislative hearing on March 4, 2015, and promptly marked-up the bill two weeks later, reporting it out of the Committee favorably with an amendment in the nature of a substitute.

*Magnuson-Stevens Fishery Conservation and Management Act Reauthorization.* In the last session of Congress, there were multiple hearings and proposals on reauthorization of the Magnuson-Stevens Fisheries Conservation Act (MSA), however Congress was unable to pass legislation. With reauthorization on the table again for this session of Congress, it is time for some much needed changes and amendments to incorporate American Indians and Alaska Natives in the decision making processes, as well as a need for improved practices to protect the health of our fish resources.

Despite being charged with upholding fishing treaty rights of Northwest tribes and the right to fish of Alaska tribes, the management of the North Pacific Fishery Management Council fails to consider the needs of American Indian and Alaska Native people. The structure of the Council prevents tribes from participating as part of the decision making process and engages in a flawed single-species based management system which does not consider the food web dynamics, fishing gear impacts, and non-target species taken as bycatch which has resulted in the overfishing of one-third of the nation’s fish stocks.

Without appropriate reform of the MSA, natural fish populations and the Alaska Native inhabitants’ well-being along with the treaty-protected rights of Pacific Northwest Indian nations will continue to be at risk.



NCAI is requesting that as Congress considers reauthorization of the MSA, that the purpose of the Act be amended to include promotion of Alaska Native subsistence rights and tribal fisheries based on treaty rights, including a mandate to be responsive to the needs of federally recognized tribes, and require that tribes and Native subsistence users be represented on the North Pacific Fishery Management Council. Further, it must utilize ecosystem-based management rather than species specific management and additional methods to better protect fish stocks and health. The management council's, as well as all fishery, plans must not only include input from tribes, but must also reflect treaty rights and subsistence rights of American Indians and Alaska Natives while limiting states' ability to interfere with treaty and subsistence rights. Finally, the MSA must provide resources for mitigation efforts when needed to protect tribal treaty rights including: increased hatchery production, habitat protection and restoration, development of alternative fisheries when primary fisheries have been reduced, and the development of value added programs to increase the value of treaty fisheries.

The House Committee on Natural Resources leadership acted swiftly and unilaterally in the middle of May 2015, by taking a smaller piece of legislation, which was focused on one component of the MSFCA reauthorization, and marked-up it into a large scale reauthorization of the entire Act. Now, Rep. Don Young's *H.R. 1335 - Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act* is a \$1.5 billion, 5 year reauthorization, and includes many changes to MSA, such as: loosening the 10 year time frame for rebuilding overfished/depleted fisheries and the standards used to determine the time frame; changes to the Annual Catch Limits allowing more flexibility in raising the limits; allowing the North Pacific Council to change the harvest limitation under the American Fisheries Act; and requiring the Governor of each applicable state to consult with subsistence fishing representatives before submitting a list of potential Fisheries Councils nominees to the Secretary of Commerce.

During the mark-up, the Committee did not consider any amendments offered by its Democratic members who objected to not being included in the process. However, H.R. 1335 was voted favorably out of the Committee by a strict party line vote. In the Committee Report, the Democrats noted some of their concerns with the legislation, including that it caters to large fishing companies which will harm jobs, and would allow Fisheries Councils to circumvent the National Environmental Policy Act, the Endangered Species Act, the Antiquities Act, and the National Marine Sanctuaries Act by making them subservient to the Councils under the MSA.

On June 1, 2015, H.R. 1335 narrowly passed the House by a 225-152 vote, split primarily along party lines. The Bill has now been sent to the Senate where it will be considered by the Committee on Commerce, Science, and Transportation.

NCAI is continuing to advocate for the changes in MSA that reflect the treaty and trust rights of Natives who practice traditional and customary lifeways and protect the health of our fish and water resources.

### **Administrative Update**

Climate Change. On November 1, 2013, President Obama announced the creation of the White House Task Force on Climate Preparedness and Resilience and appointed two Native representatives to the group: Karen Diver, Chairwoman of the Fond du Lac Band of Lake Superior Chippewa, and Reggie Joule, Mayor of Alaska's Northwest Arctic Borough. The Task Force released its Report and Recommendations to the President in November 2014 with five overarching principles: (1) require consideration of climate-related risks and vulnerabilities as part of all federal policies, practices,

investments, and regulatory and other programs; (2) maximize opportunities to take actions that have dual-benefits of increasing community resilience and reducing greenhouse gas emissions; (3) strengthen coordination and partnerships among federal agencies, and across federal, state, local, and tribal jurisdictions and economic sectors; (4) provide actionable data and information on climate change impacts and related tools and assistance to support decision-making; and (5) consult and cooperate with tribes and indigenous communities on all aspects of Federal climate preparedness and resilience efforts, and encourage States and local communities to do the same.

The final Task Force report was supplemented by tribal-specific recommendations offered by Chairwoman Diver and Mayor Joule from the input they received from tribes during their tenure on the Task Force. The goals highlighted the need for tribes to be included as active participants, but explicitly recommended: (1) tribes have more access to federal agencies' data and information related to climate change; (2) removal of barriers that prohibit tribal access to federal programs; (3) direct access to federal funding; and (4) the establishment of a permanent federal government Climate Adaption Task Force.

NCAI is continuing to work with the Administration and federal agencies on the taskforce recommendations to ensure they are implemented and that tribal governments are involved as full partners in all programs, planning, and engagement on climate adaption efforts. NCAI also continues to support climate change initiatives through resolutions dealing specifically with the effects that climate change has on tribes.

*Tribal Water Rights Working Group.* The NCAI Water Rights Working Group consists of technical experts, such as tribal water resource managers, policy experts, and attorneys with experience in water settlement matters. The group continues to maintain a close working relationship with an ad hoc Indian water rights settlement group, which consists of individuals representing the Native American Rights Fund, the Western Governors Association, and the Western States Water Council.

During the past session of Congress, NCAI joined the ad hoc Indian water rights settlement group for meetings on Capitol Hill to discuss the need for the federal government to ensure funding is available for Indian tribes to quantify their water rights through the Congressional settlement process. Even during the current budget climate, it is important for tribes to tell Congress that the right to water is a fundamental need for Indian tribes, and that as first stewards of this land, tribal rights to water relate back to—at a minimum—the establishment of the reservation, often superseding the water rights of neighboring non-Indian communities. This makes the settlement process even more crucial because water rights left unsettled create uncertainty for all, and often lead to costly and time-consuming litigation.

NCAI continues to reach out and engage its members in discussions on best practices for managing water resources. For instance, NCAI has hosted several webinars and outreach meetings on the importance of quantifying water and the importance of developing sound water management tools within the regulatory jurisdiction of the Indian tribe. NCAI held a webinar on October 21, 2014 on federal perspectives for approving tribal water codes. That webinar can be found on NCAI's website at [www.ncai.org](http://www.ncai.org).

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## **TRUST MODERNIZATION**

In return for Indian tribes ceding millions of acres of land making the United States what it is today, the United States has recognized the Native right to self-government, to exist as distinct peoples on their own lands, as well as the federal responsibility to protect Indian trust assets. However, the trust relationship has not kept up with the current realities facing tribal governments and tribes have been urging the federal government for over a century to modernize outdated regulations and statues to provide them with more flexibility, the option of greater control over decision making and self-governance, the ability to be more responsive to the needs of their citizens, and bolster economic development in Indian Country. The trust relationship and responsibility must be modernized to stay consistent with self-determination as well as be rooted in inherent sovereign authority to create a 21st Century trust for 21st Century tribes.

While the trust responsibility includes all facets of the relationship, such as funding, health care, housing, and public safety, some of the most glaring examples of outdated statutes involve the management of tribal lands and development of trust resources. Indian lands and natural resources are a primary source of economic activity for tribal communities, but the antiquated and inefficient federal trust resource management system contributes to the anemic condition of many reservation economies. NCAI urges Congress to support legislative reforms that will eliminate the burdensome federal red tape stifling economic development in Indian Country, provide tribes with more flexibility and greater control over decision making, and prevent the reoccurrence of the trust mismanagement problems of the past. There is a need for greater efficiency in the trust resource management system, better economic returns on trust resources, and, above all, an increased tribal voice in how the trust is administered. For example, nearly every trust transaction requires an appraisal from the Office of the Special Trustee, and this is the most significant bottleneck in the trust system. Congress must eliminate unnecessary appraisals and permit tribes to rely on independent certified appraisals.

Tribes have been making progress on trust reform and, to keep that momentum going, NCAI is working with our tribal organization partners on improving trust land management systems and to modernizing the trust to better serve today's Indian Country.

### **Legislative Update**

*S. 383 & H.R. 812 – To provide for Indian trust asset management reform, and for other purposes.*

Senator Crapo (R-ID) and Representative Simpson (R-ID) both introduced their mirror bi-partisan bills that will take an essential step in the effort to modernize the trust management system into a process that recognizes that tribes are in the best position to make long lasting decisions for their communities. Through the trust asset demonstration project created in the legislation, tribes will have the ability to manage and develop their lands and natural resources without the encumbrances of the federal approval process, which typically delay these endeavors by years or even decades. This provision of the bill also authorizes tribes to engage in surface leasing or forest management activities, under certain conditions, without the approval of the Bureau of Indian Affairs—mirroring the framework of the highly successful HEARTH Act of 2012, which puts tribes in the position to make decisions about their lands and resources.

Further, S.383 and H.R. 812 address one of the most significant bottlenecks in the trust system: the Office of the Special Trustee (OST). OST, which was intended to be a temporary office oversight office when it was created by Congress over twenty years ago, is required to review appraisals for nearly every trust transaction, adding an additional layer of bureaucracy outside the purview of the BIA. This legislation requires the Secretary of the Department of the Interior to submit a report that will include a transition

plan and time table for the termination of OST within two years of the report, or why a transition cannot be completed in that timeframe and an alternate date. Additionally, the Secretary, through tribal consultation, will consolidate the appraisals and valuations processes under a single administrative entity under DOI as well as establish minimum qualifications to prepare appraisals and valuations of Indian trust property.

On April 30, 2015, the House Committee on Natural Resources Subcommittee on Indian, Insular, and Alaska Native Affairs held a hearing on H.R. 812 and received in-person testimony from two tribal witnesses: Ernest Stensgar, Vice Chairman of Affiliated Tribes of Northwest Indians from the Coeur d'Alene Tribe; and William Nicholson II, Secretary of the Colville Business Council for the Confederated Tribes of the Colville Reservation. Both tribal witnesses spoke in favor of H.R. 812, and cited how it would help economic development and update antiquated trust asset management laws. Subcommittee Chairman Don Young (R-AK), spoke in support of the legislation and affirmed the Committee's support for taking quick action on the bill.

In the Senate, the Senate Committee on Indian Affairs marked-up S. 383, passing it favorably out of Committee with an amendment in the nature of a substitute and filed a written report on February 8, 2016.

On February 3, 2016, the full House Committee on Natural Resources favorably reported H.R. 812 out of committee with an amendment in the nature of a substitute by unanimous consent. The House of Representative passed H.R. 812 by a unanimous voice vote and sent the legislation to the Senate for consideration on February 24, 2016.

NCAI submitted a letters to the Senate Committee and House Subcommittee voicing support for passage of S. 383 & H.R. 812 and will continue to work with our partner organizations on implementing this important legislation.

The Senate took up H.R. 812 on June 10, 2016 and passed it by unanimous consent. H.R. 812 was signed into law by the President on June 22, 2016. The next step for this legislation is implementation at the Department of the Interior.

### **Administrative Update**

*Cobell Settlement Payments.* The *Cobell v. Salazar* settlement was approved by Congress in the Claims Resolution Act of 2010 and became final in November 2012. The settlement included \$1.5 billion to pay individual Indian trust beneficiaries for past accounting issues and resolve historical asset mismanagement claims and \$1.9 billion to be made available to the Secretary of the Interior to buy interests in trust lands that are "fractionated," pursuant to the Land Buy-Back program of the Indian Land Consolidation Act.

The payment of the \$1.5 billion--minus attorneys' fees and expenses incurred in carrying out the settlement--to individuals is being carried out in two stages: first to the Historic Accounting Class (HAC) and then to the Trust Administration Class (TAC). Beginning in December of 2012, checks for the HAC in the amount of \$1,000 were distributed by the Garden City Group, the Claims Administrator for the *Cobell* Settlement, to claimants across the country. Eligible claimants were persons who were determined, according to the records of the Department of Interior, to either be alive or have an estate in probate on September 30, 2009, and to have had an open and active Individual Indian Money (IIM) account during any period between October 25, 1994, and September 30, 2009.

As of the end of September 2013, payments had been made to more than 90 percent of those eligible, totaling more than \$236,940,000.00, with 33,400 remaining estate cases and an estimated 11,000 remaining on the Whereabouts Unknown list for the HAC. Special efforts are being conducted to continue to settle the estates and locate individuals whose whereabouts are unknown.

Eligibility for the Trust Administration Class (TAC) was finalized as determination letters were sent on May 1, 2013, to more than 375,000 individuals. On September 11, 2014, the U.S. District Court for the District of Columbia approved the distribution of payments to the TAC. The checks were mailed out to the TAC on September 15, 2014. As of October 24, 2014 a Special Master has reviewed and made determinations in all claimant appeals and the deadline for submission of all documents and requests to the Special Master was on March 9, 2015. For more information and updates on the progress of the settlement, go to [www.indiantrust.com](http://www.indiantrust.com).

*Land Buy-Back Program.* The *Cobell* Settlement provides for a \$1.9 billion Trust Land Consolidation Fund and charges the Department of the Interior with the responsibility to expend the Fund within a 10-year period to acquire fractional interests in trust or restricted fee land that individuals are willing to sell. Those interests will be transferred in trust to the tribal government with jurisdiction over the land. The Land Buy-Back Program has been established by the Department of Interior to implement this aspect of the Settlement. The overall goal of the Land Buy-Back Program is to reduce the number of those fractional interests through voluntary land purchases, which will produce more consolidated tribal trust land bases.

The Department has prepared an Initial Implementation Plan (updated in November 2013) for the Land Buy-Back Program based on preliminary planning and tribal consultation. The Department has stated that it intends to continually update its plans to reflect tribal feedback, lessons learned, and best practices. Tribal consultation sessions on the Plan and Land Buy-Back Program were held in early 2013 in Minneapolis, Rapid City, and Seattle. Key issues at the consultations included the urgency to get the program started, cooperative agreements with tribal governments for participation in the program, the status of permanent improvements, concerns about the ability to conduct appraisals in a timely way, and land title processing. NCAI has hosted three webinars on the program in the past two years.

The plan's initial focus was on 40 highly fractionated reservations and active outreach to tribes from those areas to enter into the Buy-Back Program's cooperative agreement application process. This open solicitation period began on November 15, 2013 and ended on March 14, 2014. While a small number of tribes have entered into cooperative agreements to carry out certain functions of the program, several tribes have expressed concerns with the limited roles that tribes are being offered under the program, the slow rate of program implementation, and the fact that the \$1.9 billion fund is not earning interest--a potential loss of millions of dollars that would otherwise be available to purchase fractionated interests. So far, the Buy-Back Program has purchased land for these tribes: Oglala Sioux Tribe, Rosebud Sioux Tribe, Makah Tribe, Fort Belknap Indian Community, Gila River Indian Community, Northern Cheyenne Tribe, Confederated Salish and Kootenai Tribes of the Flathead Nation, Confederated Tribes of the Umatilla Indian Reservation, Quapaw Tribe, Crow Nation, Sisseton Wahpeton Oyate, Squaxin Island Tribe, Coeur d'Alene Tribe, Cheyenne River Sioux Tribe, Standing Rock Sioux Tribe, and Prairie Band Potawatomi Nation.

It is anticipated that oversight hearings will be held in this Congress to ensure the *Cobell* settlement and land buy-back program are being implemented in accordance with the approved settlement and in a way that can be accomplished within the timeframes set out in the settlement.

*HEARTH Act Implementation.* The Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act became law on July 31, 2012. The Act authorizes surface leasing of tribal lands without approval from the Secretary of the Interior. Instead, tribal leases can be approved by the tribe under tribal leasing regulations. The new law will enable tribes to move more quickly on leasing and economic development, while maintaining the Secretary's trust responsibility to oversee trust lands.

Tribal leasing codes must be consistent with the BIA's recently updated leasing regulations, 25 C.F.R. 162. The BIA also published a [National Policy Memorandum](#) containing a list of criteria that should be considered with further information on BIA's HEARTH Act [website](#). Key requirements include leasing code development and an environmental review process. As of June 20, 2016, the BIA has approved the leasing codes of 24 tribes with more codes under review.

*For additional information please contact Colby Duren, Staff Attorney & Legislative Counsel, at 202.466.7767 or [cduren@ncai.org](mailto:cduren@ncai.org)*

## **ENERGY**

Tribal energy resources are vast, largely untapped, and critical to America's efforts to achieve energy security and independence, reduce greenhouse gases, and promote economic development. Energy development is integral to tribal efforts to generate jobs and to improve tribal members' standard of living. The Department of the Interior estimates that undeveloped traditional energy reserves on Indian lands could generate up to \$1 trillion for tribes and surrounding communities. Further, the Department of Energy estimates that tribal wind resources could provide 32 percent, and solar energy 2 times, the total amount of electricity the United States currently generates per year. However, developing energy resources on tribal lands, not unlike other trust resources, continues to be a challenge as tribes face barriers to energy development which do not exist outside of tribal lands.

Cumbersome bureaucratic processes, disincentives to tribal financing, Applications for Permit to Drill fees, inequitable exclusion from federal programs, and the requirement that tribes and tribal businesses obtain approval from the Department of the Interior for almost every step of energy development on tribal lands, including the approval of business agreements, leases, rights of way, and appraisals, continue to delay energy development in Indian Country. Since the last major update to Indian energy policy was 10 years ago, NCAI urges Congress and the Administration to work with tribes to remove the unnecessary barriers that persist in energy development, bolster tribal self-determination, and help create careers and capital in Indian Country.

### **Legislative Update**

*S. 209 – Indian Tribal Energy Development and Self-Determination Act of 2015.* On January 21, 2015, Senator Barrasso (R-WY) reintroduced his longstanding legislation to provide tribes with greater control and flexibility to develop their traditional and renewable energy resources and streamline many of the burdensome processes tribes persistently face. The current bill is identical to the version passed out of the Senate Committee on Indian Affairs in the 113th Congress, with one notable exception explained below. The bill includes additional consultation requirements for the Department of the Interior; improves the Tribal Energy Resource Agreements process in the Energy Policy Act of 2005



by recognizing tribal self-determination over energy resources; creates a process for approving Tribal Energy Development Organizations; expands direct access to the Department of Energy's Weatherization Program; supports American Indian and Alaska Native biomass demonstration projects; and amends the appraisal and right-of-way approval processes.

This Congress, the Committee marked-up and favorably passed this legislation out of Committee on February 4, 2015. In January of this year, all of the provisions of S. 209 were adopted in S. 2012 – the Energy Policy Modernization Act, a bi-partisan, large-scale Senate energy legislation introduced by Senator Lisa Murkowski (R-AK).

H.R. 538 – The Native American Energy Act of 2015. In the House of Representatives, Congressman Young (R-AK) introduced H.R. 538, the Native American Energy Act of 2015. This legislation maintains the major focus of removing regulatory hurdles to tribal energy development. This legislation will: reform and streamline the federal appraisal process and including the option for tribes to waive the appraisal requirement; create uniform systems of reference and tracking numbers for all Department of the Interior oil and gas wells on Indian lands; restructure the environmental review process; support tribal biomass demonstration projects; and consider all tribal resource management plans as sustainable management practices.

On October 8, 2015, H.R. 538 passed the House of Representatives on a vote of 254-173, with two amendments: (1) not limiting comments under the National Environmental Policy Act to for lands pursuant to the Indian Gaming Regulatory Act; and (2) an amendment creating a Tribal Forest Management Demonstration Project under the Tribal Forest Protection Act at the U.S. Forest Service.

On April 20, 2016, the Senate passed S. 2012 by a vote of 85-12 as the first major, bipartisan energy reform legislation in over 10 years. Upon being sent to the House of Representatives, the House Committee on Rules added 37 additional bills which have already passed the House to S. 2012, including H.R. 538. However, several of the bills added to the House version of S. 2012, including the House's own energy bill H.R. 8 – the North American Energy Security and Infrastructure Act, have veto threats issued against them by the White House.

The House passed S. 2012 by a partisan vote of 241-178 and filed a motion to go to conference with the Senate on the two versions of the bill.

NCAI is continuing to work with both Chambers to pass strong Indian energy legislation that will support tribal self-determination and economic development.

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## **AGRICULTURE & NUTRITION**

Agriculture is a major economic, employment, and nutrition sector in Indian Country. In 2012, there were at least 56,092 American Indian-operated farms and ranches on more than 57 million acres of land. These farms and ranches sold \$3.3 billion of agricultural products, including more than \$1.4 billion of crops and \$1.8 billion of livestock and poultry. Additionally, the 2007 Census of Agriculture Fact Sheet notes that, "American Indian farm operators are more likely than their counterparts nationwide to report farming as their primary occupation . . . to derive a larger portion of their overall

income from farming . . . [and] to own all of the land that they operate.” As a result of the huge agricultural footprint across Indian Country and the fact that more than 35 percent of American Indian and Alaska Native peoples live in rural communities, tribal governments and farmers look to active partnerships throughout the U.S. Department of Agriculture to sustain and advance common interests across the broad array of services that this federal agency provides to tribal governments.

With 24 percent of American Indian and Alaska Native households receiving Supplemental Nutrition Assistance Program (SNAP) benefits, 276 tribes administering the Food Distribution Program on Indian Reservations (FDPIR), 68 percent of American Indian and Alaska Native children qualifying for free and reduced price lunches, and American Indians and Alaska Natives making up more than 12 percent of the participants in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) the importance of food assistance in Indian Country cannot be overstated. Any cuts to SNAP, FDPIR, WIC, or school lunch programs directly diminish the food, and in some cases the only meals, available to Native children, pregnant women, elders, and veterans. No one, especially our tribal citizens most in need, should ever have to go without food. Additionally, food assistance programs like FDPIR must be provided the means and support to purchase traditional, locally-grown food in their food packages. Traditional and locally-grow foods from Native American farmers, ranchers, and producers encourages healthy living, cultural sustainability, and a return to traditional practices all while supporting economic development. Below is a look at the agriculture and nutrition policies that will be a focal point in the final two years of the Obama Administration and the 114th Congress.

### **Legislative Update**

Reauthorization of the Healthy Hunger-Free Kids Act of 2010 (Child Nutrition Reauthorization). The Healthy Hunger-Free Kids Act of 2010 is a 5-year bill that governs several food programs that impact Native children and parents: the National School Lunch and School Breakfast Programs; the Child and Adult Care Food Program; the Summer Food Service Program; the Afterschool Snack and Meal Program; the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC); the WIC Farmers Market Nutrition Program; the Fresh Fruit and Vegetable Program; and the Special Milk Program. As was seen in the 2014 Farm Bill debate, nutrition standards, costs, and program eligibility will continue to be at the forefront of the Child Nutrition Reauthorization. With the law expiring on September 30, 2015, the Senate Committee on Agriculture and House Committee on Education and the Workforce, the two Committees with jurisdiction, have already begun to hold oversight hearings on Child Nutrition, and will shortly determine potential changes to the law. NCAI is working with many major nutrition policy groups and our tribal organization partners to make sure Indian Country’s priorities are included in the Reauthorization.

### **Administrative Update**

2014 Farm Bill Implementation. On February 7, 2014, President Obama signed H.R. 2642 - *the Federal Agriculture Reform and Risk Management Act of 2013* into law ending over two years of work on the Farm Bill reauthorization. The final piece of legislation represented a bipartisan agreement on a majority of agriculture and nutrition policies and made a number of changes to existing programs while creating many new opportunities for Indian Country. The most noteworthy change is an \$8.6 billion cut to the Supplemental Nutrition Assistance Program (SNAP). This represents a compromise between the \$4 billion in cuts the Senate bill proposed and the nearly \$40 billion from the House bill. The savings comes from increasing the threshold amount of Low-Income Housing Energy Assistance Program (LIHEAP) assistance necessary to qualify for increased SNAP benefits- the so called "Heat and Eat" provision-from \$1 to \$20.



The new law includes several Indian Country specific provisions, including: tribal eligibility in Soil and Water Conservation Act programs; a feasibility study on tribal administration of federal food assistance programs; a Food Distribution Program on Indian Reservations (FDPIR) Traditional Foods Demonstration Project—which creates a new demonstration project with technical assistance and tribal consultation to allow the inclusion of traditional and locally grown foods from Native farmers, ranchers, and producers in FDPIR; the service of donated traditional foods in federal food service programs such as residential child care facilities, child nutrition programs, hospitals, clinics, long-term care facilities, and senior meal programs.

The focus of the Farm Bill is now on implementation of the new programs at USDA. NCAI is working with the Office of Tribal Relations on many of the new programs to ensure that Indian Country is well represented during the rulemaking phase and that tribal consultation, where applicable, is performed so the regulations follow Congress's intent and benefit tribes and Native farmers, ranchers, and producers.

NCAI submitted comments in December 2014 regarding the feasibility study for tribes to administer their own federal food assistance programs to ensure that study is conducted in a fair manner and follows the intent of the law: to determine whether legislative action or administrative action is necessary to allow tribes to take over federal food programs, particularly SNAP. So far, the outreach and questions proposed by the USDA's Food and Nutrition Service are troubling at best. They seek to review whether tribes have the current capacity to administer these programs. Instead, NCAI is advocating for the study to look at the federal framework necessary for tribes to take over the program administration with the proper funding and support from the federal government since tribes are in the best position to determine how these programs can best serve their citizens.

Keepseagle Settlement. The *Keepseagle* litigation with the U.S. Department of Agriculture for discrimination in the USDA Farm Loan Program was settled on December 27, 2011, for \$760 million. Payments were made in August and September 2012 to 3,600 individuals with claimants receiving from \$50,000 to \$250,000 depending on their type of claim. The settlement also includes payment of the taxes on settlement proceeds and payment/reduction of outstanding debt.

The final action is the disposition of the remaining \$380 million from the original \$760 million settlement after all payments to successful claimants. To assure that the remaining funds would continue to benefit American Indian agriculture into the future, Class Counsel—after their request for another round of payments to successful claimants was not accepted—submitted proposals to the U.S. Departments of Agriculture and the Department of Justice to establish an independent foundation with the \$380 million that would serve Native American farmers and ranchers. In September 2013, a group of over 300 *Keepseagle* claimants from the Great Plains region filed a motion to intervene in the negotiations but have not been involved so far. In July 2014, the *Keepseagle* Class Counsel announced a series of meetings between July 30th and August 26th to discuss the disposition of the remaining \$380 million dollars.

At the conclusion of the in-person meetings, Class Counsel filed its proposal with the court outlining in detail the creation of a *cy pres* fund called the Native American Agriculture Fund (Fund) for the remaining \$380 million, governed by a proposed Board of Directors, and guidelines for what entities are eligible to receive funding from the new Fund. The Fund would be a 501(c)3 non-profit entity and would be able to distribute funds to: 501(c)3 non-profits; 170(b)(1)(A)(ii) educational organization;

Community Development Financial Institutions (CDFI), including Certified Native CDFIs and Emerging Native CDFIs if they are 501(c)3 entities; and the instrumentality of a state or federally recognized tribe, including a non-profit organization chartered under the tribal law of a state or federally recognized tribe, that furnishes assistance designed to further Native American farming or ranching activities.

On December 2, 2014, the court held a status conference and Ms. Keepseagle was allowed to voice her concerns about the creation of a trust. The Judge saw this as a brief for relief and informed Ms. Keepseagle that she could retain counsel and submit a motion making the legal argument to reopen the settlement for an additional round of payments.

In May 2015, the Court requested briefs regarding the claims of Ms. Keepseagle's motion for relief asking for the remaining funds to be dispersed among the claimants. On July 24, 2015, the Court denied both motions to modify the settlement agree proposed. The first motion filed by Ms. Keepseagle would have allowed for the distribution of additional funds to prevailing claimants or re-open the claims process. USDA objected to this motion and the Court decided there was no legal basis for going against the Agency's objection. The Court then denied the Plaintiff's motion to create a Trust to supervise the distribution of the *cy pres* funds to non-profits, ruling that all class representatives, including Ms. Keepseagle, would have to agree on any changes to the settlement agreement.

All parties with standing in the case reached an agreement on changes to the existing settlement agreement. Under the new proposal, each prevailing claimant will receive a supplemental payment of \$18,500 (a separate sum of \$2,775 will be paid to the IRS on their behalf). The remainder of the *cy pres* funds would go to non-profit organizations as described above. The Court held a hearing on this new agreement to modify the settlement on February 4, 2016. The Court approved the new agreement on April 20, 2016 and no appeals were filed.

On May 17, 2016, the class counsel in *Keepseagle* case announced a one-time distribution of \$38 million from the remaining settlement funds through the Native American Agricultural Fast Track Fund (NAAFTF). This will be the first distribution of \$380 million left in the Keepseagle *cy pres* fund for the benefit of Native American farming and ranching.

The fast-track registration opened on May 25, 2016, and closed on June 24, 2016. The awards from NAAFTF are to be made on a competitive basis. To qualify for the awards, interested organizations: must provide documentation of agricultural, business, technical or advocacy services to Native American farmers or ranchers between January 1, 1981, and November 1, 2010; be based in the United States, and meet one of the following criteria: 501(c)(3) tax-exempt organization; 7871 designation as a non-profit organization chartered under the tribal law of a state or federally recognized tribe; an educational institution described in 170(b)(1)(A)(ii); or an instrumentality of a state or federally recognized tribe, designated under 7701(a)(40).

For more information on the NAAFTF process, go to: <http://www.indianfarmclass.com/NAAFTF.aspx>. For more information and updates on the progress of the settlement, go to [www.indianfarmclass.com/CyFunds.aspx](http://www.indianfarmclass.com/CyFunds.aspx).

*For additional information please contact Colby Duren, Staff Attorney & Legislative Counsel, at 202.466.7767 or [cduren@ncai.org](mailto:cduren@ncai.org).*

**TRIBAL TAX INITIATIVES**

The last national tax reform occurred thirty years ago with the passage of the Tax Reform Act of 1986. Under the current Tax Code, tribal governments are left without many of the benefits, incentives, and protections provided by the Code to state and local governments. This inequity significantly handicaps tribal sovereign authority to provide government revenue for tribal programs independent of federal appropriations and encourage economic growth on tribal lands.

The 113<sup>th</sup> Congress enacted the Tribal General Welfare Exclusion Act of 2014 in a demonstration of collaboration between Native nations and Congress. The Act responded to the taxation of certain governmental services provided to, or on behalf of, the tribe or its members. With the passage of the Act, Indian general welfare services provided by tribal government programs are no longer subject to taxation as gross income.

The passage of the Tribal General Welfare Exclusion Act is just the beginning of the larger effort to overhaul tribal taxation infrastructure and bolster tribal economies. Reliable funding sources have been few and far between for every tribal government service for decades. Both Congress and the Administration must continue to actively engage with Native nations to achieve tribal tax reform in a comprehensive manner.

**Administrative Update**

*Address the Harms of Dual Taxation in Indian Country through Modernizing the Indian Trader Regulations*

The Indian Trader Regulations at 25 C.F.R §140 are an anachronism in the era of Tribal Self-Determination. They have not been updated since 1957. It is no longer necessary for the Department of Interior to license traders on Indian reservations, and the regulations are an unnecessary burden on economic development. However, the underlying law at 25 USC §262 is broad and flexible authority for the Department of Interior to adopt new regulations that would meet the economic development and tax revenue needs of Indian tribal governments in the 21<sup>st</sup> Century. We urge the Department of Interior to replace the current regulations, in accordance with recent NCAI Resolution SD-15-045: *Urging the Department of Interior to Address the Harms of State Taxation in Indian Country and Prevent Dual Taxation of Indian Communities*.

In order to ensure long-term stability of tribal communities, there is an urgent need for development of tribal authority to provide government revenue independent of federal appropriations. Tribal governments are taking on increasing levels of government responsibility, but receive hugely inadequate federal funding for roads, schools, police and all government services promised by treaty and the federal trust responsibly. All remaining revenue must come from tribal natural resources or enterprises, and even these limited resources are frequently tapped by unconscionable dual state taxation. The Department of Interior is also severely affected by the lack of funding for tribal programs. NCAI urges swift action.

## Legislative Update

Tribal Tax and Investment Reform Act. H.R. 4943, the Tribal Tax and Investment Reform Act, is co-sponsored by Ron Kind (D-WI) and Lynn Jenkins (R-KS). The bill amends the federal Tax Code to ensure that Indian tribal governments are treated the same as state governments for a number of important purposes. Encouraging parity of tax treatment should be a fundamental goal of tax reform, and is an opportunity to support governmental functions and services provided by Indian tribes.

Tribal governments have a unique status in our federal system under the Constitution and numerous treaties and federal laws. Indian tribes have a governmental structure, operate and fund courts of law, police forces, and fire departments. Tribes provide a broad range of governmental services to their citizens, including education, transportation, public utilities, health, economic assistance, and domestic and social programs.

While the federal government recognizes that tribal nations are governments, tribes are frequently treated less favorably than state and local governments under the Tax Code. Such differential and unjust treatment typically results in tribal governments being denied federal tax benefits and economic development incentives that state and local governments enjoy. H.R. 4943 will build on the Indian Tribal Governmental Tax Status Act of 1982 to provide comparable governmental tax treatment.

- *Tribal government tax-exempt bonds.* Currently, tribes may only use tax-exempt bonds for “essential government functions. The IRS has interpreted this tribal-only to exclude economic development as a governmental function, while state and local governments frequently use tax exempt financing for development projects. Tribes need this tool to create jobs. *(In 2009, Congress authorized a limited volume of tribal economic development bonds, but the allocation process is convoluted and a permanent fix to the Tax Code is needed.)*
- *Tribal government pension plans.* Tribal governments currently must provide both government and private ERISA pension plans to their employees. This is both costly and cumbersome. Tribal governments must be able to operate a single, comprehensive, government pension program for all of their employees.
- *Tribal foundations and charities.* Foundations and charities funded and controlled by tribal governments do not enjoy the same public charity status that other government-controlled and funded foundations and charities enjoy. In order for tribal foundations and charities to thrive, these tax-exempt organizations should not be treated as private foundations, but should enjoy the same status as state-government controlled foundations and charities.
- *Tribal child support enforcement agencies.* Tribal child support enforcement agencies need authority to access parent locator services, which are currently only available to state and local governments but not tribes. Also, tribal child support enforcement agencies should be able to enforce past due obligations through federal income tax returns.
- *Indian Adoption Tax Credit.* Adoption is widespread throughout Indian Country. Tribal courts need the ability to make a determination of special needs in order to grant tax credits to adoptive parents on par with state courts.

Include American Indian/Alaska Native tribal governments in any forthcoming tax reform bill. Any comprehensive tax reform will likely create a Tax Code which will govern the United States, its territories, and Indian tribal governments for decades to come. NCAI will continue to work with Congress to ensure further consultation with tribes to develop an initiative that will promote tribal government tax authority and promote the ability of tribal governments to sustain programs and services in a more self-sufficient manner.

Make Tax “Extender” Incentives Permanent -- Support legislation to incentivize business development on tribal lands. NCAI will continue to urge Congress to consider the urgent and continuing need for economic development on Indian reservations in the context of the Indian Employment Tax Credit (IRC Section 45A), the Accelerated Depreciation Provision for on-reservation business infrastructure (IRC Section 168(j)), and the Indian Coal Production Tax Credit (IRS Section 45) which expired on December 31, 2014, and should be reenacted as soon as possible and on a permanent basis.

The Employment Credit provides private businesses with an incentive for employing Indian tribal members in reservation-based business operations. The Accelerated Depreciation Provision provides businesses with the opportunity to take accelerated depreciation deductions on business property located on Indian reservations. NCAI will continue to recommend that Congress make both tax incentives permanent so that employers can rely on the incentives when planning to locate a facility in Indian Country. The lack of certainty in the future of these tax provisions undermines their ability to attract larger, long-term investments.

Tax credits granted to doctors employed by Indian Health Service facilities. Tax credits are available to doctors employed in other areas of the public sector, but are unavailable to those employed by the Indian Health Service. This would create an incentive for practitioners to bring their skills to Indian Country, where they are greatly needed.

Enact a Technical Amendment to Remove the “Kiddie Tax” Penalty from Transfers of Tribal Funds to Children and College Students. The Kiddie tax was intended to prevent wealthy parents from transferring income to their children in lower tax brackets. It is unfairly applied to Native youth who receive tribal funds, and creates a significant disincentive for continuing higher education.

Include Tribal Governments in the Marketplace Fairness Act. NCAI will continue to advocate for the inclusion of tribal governments in any legislation that regulates the collection of sales taxes or implements the State Streamlined Sales and Use Tax Agreement. The Senate has included tribes within this year’s version of S. 698, and NCAI will continue to advocate for inclusion in the House version, H.R. 2775.

Establish Tribal Empowerment Zones. To allow all Indian nations to become more economically empowered, NCAI proposes significant changes in the economic foundation of Indian country. Tribes must be allowed to capture wealth that is generated on tribal lands without confiscation by the federal and state governments. While the federal government should never be relieved of its trust responsibility to support tribal governments, more should be done to allow tribes to develop their own economies.

Tribal Access to Clean Renewable Energy Bonds (CREBs). Tribes and entities wholly owned or controlled by tribes, to utilize CREBs for energy development projects. Legislation should create a set aside for tribal projects under the CREBs provision.

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## **NATIVE AMERICAN WORKFORCE DEVELOPMENT**

For generations, Native peoples have faced harsh economic conditions that are more pronounced than those generated by the Great Recession. Today, while unemployment rates across the country hover around 5.5 percent, tribal governments and Indian communities continue to wrestle with widespread unemployment that has well exceeded 10 percent and beyond for decades. The lack of employment opportunities in Native communities has had a far-reaching impact, affecting all aspects of life. While tribal governments have successfully supported job creation both in government and the private sector, a remaining challenge is ensuring that job growth keeps pace with the growing Native youth population. Considering that Indian Country has one of the youngest populations in the nation, with about 32 percent of Native people under the age of 18 compared to 24 percent of the total US population, workforce development opportunities and building capacity for the growing workforce are of critical importance.

Indian Employment, Training and Related Services Consolidation Act of 2015, S. 1443. S. 1443 was introduced by Senator Murkowski (R-AK) in May 2015 and passed out of the Senate Committee on Indian Affairs in October 2015. The bill amends the Indian Employment, Training and Related Services Demonstration Act of 1992 to allow tribes to integrate employment, training and related services from diverse federal sources. The impetus of the legislation is to facilitate the ability of tribes to administer the various programs under Public Law 102-477, or the 477 program. The bill also requires the Secretary of the Interior to approve or deny any plans submitted by tribes within 90 days, and makes the demonstration program permanent.

On July 14, 2016, the Senate passed S. 1443, and the bill will now be sent to the House for consideration. The House version of the bill, H.R. 329, was introduced by Representative Young (D-AK-At Large) in January 2015, and passed the House Committee on Natural Resources on March 3, 2016.

Indian Community Economic Enhancement Act of 2016, S. 3234. On July 14, 2016, Senator Barrasso (R-WY) introduced S. 3234. The bill was introduced in response to tribal feedback received by the Senate Committee on Indian Affairs to provide economic development opportunities to tribes. Specifically, the bill amends and improves several existing laws including the Native American Business Development, Trade Promotion, and Tourism Act of 2000; the Buy Indian Act; the Indian Trader Act; and the Native American Programs Act of 1974.

The Native American Business Incubators Program Act, S. 3261. On July 14, 2016, Senator Tester (D-MT) introduced S. 3261. The bill is intended to assist tribally-owned small businesses by establishing a business incubators program within the Department of the Interior.

Native American Tourism and Improving Visitor Experience Act (NATIVE Act), S. 1579. The NATIVE Act was introduced by Senator Schatz (D-HI) in June 2015 and the Senate passed the bill on April 25, 2016. The bill would require the Departments of Commerce and the Interior, and other federal agencies with recreational travel or tourism functions, to update their management plans and tourism initiatives to include tribes, tribal organizations, and Native Hawaiian organizations.

On July 13, 2016, the House Committee on Natural Resources passed the bill, as amended, during a business meeting. S. 1579 is now ready for consideration by the full House of Representatives.

Reauthorization of the Workforce Investment Act. In July 2014, the Congress reauthorized the *Workforce Investment Act* (WIA) of 1998 through the Workforce Innovation and Opportunity Act (WIOA). The bill was signed into law by the President ending an 11-year absence of reauthorization. WIOA includes the Native American Program which supports unemployed, under-employed, and under-skilled American Indians, Alaska Natives, and Native Hawaiians, through a network of over 175 grantees. The reauthorization is the result of bicameral and bipartisan negotiations intended to modernize and improve existing federal workforce development programs.

The Native American Program under WIOA contained the following provisions:

- Primary Performance Indicators were placed on all programs, including Native American Programs;
- Native American program funding will increase incrementally each year through Fiscal Year 2020 up to \$54,137,000;
- Alaska Native descendants are defined as eligible for services provided;
- Every 4 years the Secretary of Labor will make grants or enter in contracts or cooperative agreements with tribal grantees, instead of every 2 years; and
- Entrepreneurial skills are included in the purpose of the program.

It is imperative that tribes' voices are heard throughout the implementation of the WIOA and equally important that all agencies implement programs that provide opportunities for Native youth.

### **Administrative Update**

Implementation of the Workforce Innovation and Opportunity Act. The Administration, through the Department of Labor's Division of Indian & Native American Programs (DINAP), has organized various activities to carry out implementation of WIOA including webinars, listening sessions, and town halls.

As a part of the WIOA, the Departments of Labor and Education are required to publish a set of regulations for implementation. In April 2015, the Employment and Training Administration within DOL concurrently published five Notices of Proposed Rulemaking (NPRMs) to implement WIOA. The five notices cover:

- Joint Rule on unified and combined state plans, performance accountability, and the one-stop system (DOL/ED);
- DOL-administered activities including 166 Indian and Native American Programs (DOL only);
- Title II Adult Education and Family Literacy Activities (ED only);
- Miscellaneous program changes (ED only); and
- State Vocational Rehabilitation Services program, state-supported Employment Service programs, and limitations on the use of subminimum wage (ED only).

The Departments of Labor and Education anticipate issuing Final Rules this year.

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## **TRIBAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES**

Temporary Assistance for Needy Families (TANF) is a federal block grant program designed to help needy families achieve self-sufficiency. TANF was created as part of welfare reform in 1996 under the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). Families with children receive cash assistance for their compliance with guidelines including work participation, job training, and education. Four primary purposes of the TANF program are to: 1) provide assistance to needy families so that children of those families may be cared for inside the home; 2) to reduce dependency by promoting job preparation, work, and marriage; 3) to prevent and reduce the incidence of out-of-wedlock pregnancies; and 4) to encourage the formation and maintenance of two-parent families.

As of January 2015, there are 70 approved tribal TANF programs that serve 284 federally recognized tribes and Alaska Native Villages. TANF gives federally-recognized Indian tribes flexibility in the design of welfare programs that promote work, responsibility, and strengthening of families. Similar to states, tribes receive block grants to design and operate programs that accomplish one of the four purposes of the TANF program.

Under section 412 of the Social Security Act, federally-recognized Indian tribes can apply for funding to administer and operate their own TANF programs—in which case the tribe will be required to submit a three-year Tribal TANF plan to the Secretary of the Department of Health and Human Services (HHS) through the Administration for Children and Families (ACF) for review and approval. If approved, Tribal TANF programs will receive a portion of the state TANF block grant from the state where the tribe is located.

In partnership with tribal leaders and program representatives, NCAI established a Tribal TANF Task Force to develop national tribal priorities for TANF reauthorization. NCAI and the Task Force continue to advocate for further reauthorization of TANF and to advance national tribal TANF priorities. A meeting of the Tribal TANF Task Force will convene on Monday, February 22 during NCAI's Executive Council Winter Session in Washington, D.C..

### **Legislative Update**

House Committee on Ways and Means. On May 24, 2016 the House Committee on Ways and Means held an oversight hearing titled, “Moving America’s Families Forward: Setting Priorities for Reducing Poverty and Expanding Opportunity.” The hearing is part of the House’s overarching commitment to welfare reform.

TANF Accountability and Integrity Improvement Act, H.R. 2959. This legislation was introduced in July 2015 by Representative Noem (R-SD-At Large) and would amend the Social Security Act to exclude third party contributions and medical service expenses from qualified state maintenance of effort expenditures. The penalty of noncompliance would be the reduction of a state’s TANF grant.

On May 5, 2016 H.R. 2959 passed out of the House Committee on Ways and Means and is now ready for consideration by the full House. To date, no companion legislation has been introduced in the Senate.

Improving Employment Outcomes of TANF Recipients Act, H.R. 2952. This legislation was introduced in July 2015 by Representative Boustany (R-LA-03) and would amend the Social Security Act to require the Department of Health and Human Services to make a grant to a state for each fiscal year it achieves a requisite level of performance. The requisite level of performance would be formed in agreement with HHS and would be based on the percentage of former TANF recipients who are in unsubsidized



employment upon exiting the TANF program. The new HHS grants to states would replace the current bonus grants program for high performing states.

On May 24, 2016 H.R. 2952 passed out of the House Committee on Ways and Means and is now ready for consideration by the full House. To date, no companion legislation has been introduced in the Senate.

Reauthorization of TANF. TANF was originally scheduled for reauthorization in 2010, but Congress has instead issued several extensions to maintain funding. The most recent extension of funding was in the Consolidated Appropriations Act of 2016, which extended funding for the TANF block grant through September 30, 2016.

In July 2015 the House Ways and Means Subcommittee on Human Resources held an Oversight Hearing titled “Welfare Reform Proposals and TANF Reauthorization,” to encourage dialogue regarding the Discussion Draft Bill - *the Improving Opportunity in America Welfare Reauthorization Act of 2015*. To date, no formal reauthorization legislation has been introduced in the House. NCAI submitted testimony for the record urging the Congress to reauthorize tribally administered TANF grant funds, maintain flexibility in program design and evaluation and leasing rights provisions (included in H.R. 3026). The NCAI testimony is available to view here: <http://www.ncai.org/resources/testimony/u-s-house-of-representatives-july-15th-hearing-on-welfare-reform-proposals-and-tanf-reauthorization>.

Tribal TANF Fairness Act of 2015. In July 2015, Representative Cook (R-CA-08) introduced H.R. 3026, *the Tribal TANF Fairness Act of 2015*, which allows a tribal government – including a tribal government participating in a tribal consortium – to lease land held in trust or in fee at a fair market rate, for the administration of a tribal family assistance grant by the tribal government or the tribal consortium. NCAI submitted a letter on October 2, 2015 in support of H.R. 3026 urging inclusion of this language in any reauthorization of the TANF program.

### **Administrative Update**

GAO Report on TANF. In February 2016 the Government Accountability Office (GAO) released a report titled, “Temporary Assistance for Needy Families: Update on States Counting Third-Party Expenditures toward Maintenance of Effort Requirements.” The report is an update to a similar report completed in 2012 and found that 16 of 51 states, or nearly one-third, counted nongovernmental third party expenditures such as the value of food donated by food banks and programs serving youth toward its state maintenance of effort (MOE) requirement in fiscal year 2015. The findings of the report are consistent with the priorities of NCAI’s Tribal TANF Task Force which, among other objectives, calls on Congress to provide incentives for states to fund tribal TANF programs (NCAI Resolution #SD-15-064). Since states are not required to fund tribal TANF programs, a state match or rebate of 3-to-1 MOE credit would incentivize states to fund tribal TANF programs and eliminate states’ circumvention of MOE requirements by counting nongovernmental third party expenditures.

NCAI will continue to urge the Congress to reauthorize TANF with tribal priorities included.

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### **TRIBAL LABOR SOVEREIGNTY ACT**

Indian tribes are sovereign governments, recognized in the U.S. Constitution. The National Labor Relations Act (NLRA) regulates labor relations between employees and private employers. Congress has

recognized that it is most appropriate for each government to determine their own governmental labor policies by providing governmental exemptions for federal, state, county and city governments from the Act. Tribal governments must also be included.

The NLRA was enacted in 1935 to address growing upheavals in private industry. The Act was never designed to regulate government employment, and all governments were expressly exempted from the Act. Although the NLRA did not specifically list out every type of exempted government (e.g., the District of Columbia or Indian tribes), the NLRB consistently interpreted the government exemption to include the District of Columbia and tribal governments. But in 2004 the NLRB did an about-face and, without either consulting tribes or writing new regulations, the NLRB declared that Congress intended the Act to apply to tribal governments after all. This interpretation of the law is diametrically opposed to Congress's stated intention to exempt governments. Overnight, tribal governments became the only governments to be subject to the NLRA. Over 90,000 other units of government, who employ over 21 million Americans, are not subject to the NLRA.

Congress's wisdom in exempting governments from the Act is plain. Applying a private sector model of forced collective bargaining over all conditions of employment, under the threat of protected strikes, is a formula for bringing a government to its knees. A government would have to choose between surrendering its right to enact laws, or to permit government itself be shut down by work stoppages. This is particularly problematic for tribal governments who lack any type of effective tax base. Tribal economic activities are as critical to the delivery of essential government services as is a tax base to any other government. Unlike private businesses, no government can safely shut down operations because of labor disputes. Tribal police and fire departments, schools and hospitals, courts, and tribal legislatures must stay open. Likewise, it is a basic aspect of tribal sovereignty for Indian Nations to control relations with our governmental employees on our tribal lands. A tribal exemption from the NLRA is crucial to our existence as sovereign tribal governments.

The Tribal Labor Sovereignty Act builds upon a principle that has been long established by Indian tribes across the country: when tribal sovereignty is respected and acknowledged, successful, accountable and responsible governments follow. This is not merely a legal issue but a moral imperative of protecting and defending the sovereignty of America's Indian Tribes, and guarding against any discrimination against those Tribes.

### **Legislative Update**

*Tribal Labor Sovereignty Act of 2015, S. 248 & H.R. 511.* The Tribal Labor Sovereignty Act, H.R. 511, passed the House of Representatives with bi-partisan support on November 17, 2015. The bill and its companion, S. 248, are pending in the Senate. The TLSA is a critical part of Congress's efforts to respect the sovereignty of tribal governments, and does so by adding "tribes" to the definition of government entities exempt from the National Labor Relations Act. The legislation is sponsored by Senator Moran (R-KS) in the Senate and Congressman Rokita (R-IN) in the House, and a long list of co-sponsors.

The bill is now ready for a vote in Senate, and we need 60 votes. Tribal governments are seeking action on this legislation in this Congress. Please ask your Senators to support the Tribal Labor Sovereignty Act.

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## **VIOLENCE AGAINST WOMEN ACT IMPLEMENTATION**

The Violence Against Women Reauthorization Act (VAWA) of 2013 included historic provisions that reaffirm tribal criminal jurisdiction over non-Indians in certain domestic violence cases. This provision took effect nationwide on March 7, 2015. As of that date, any Indian tribe who meets the statutory requirements is able to prosecute non-Indians who abuse Indian women on tribal lands for the first time since the *Oliphant v. Suquamish* decision. Importantly, there are a number of due process requirements that must first be met. NCAI has developed a website to assist tribes as they implement the new law: <http://www.ncai.org/tribal-vawa>.

In the three years since VAWA 2013 was enacted, a group of 45 tribes have been participating in the Inter-Tribal Technical Assistance Working Group (ITWG) established by DOJ, which is a collaboration of tribes sharing information and advice on how to best implement VAWA, combat domestic violence, recognize victims' rights and safety needs, and safeguard defendants' rights. As of May 2016, we are aware of 12 tribes who have implemented VAWA. They are: the Tulalip Tribes, the Pascua Yaqui Tribe, the Confederated Tribes of the Umatilla Reservation, the Assiniboine & Sioux Tribes of the Ft. Peck Reservation, the Sisseton Wahpeton Oyate, the Seminole Nation of OK, the Eastern Band of Cherokee Indians, the Nottawaseppi Huron Band of Potawatomi, the Kickapoo Tribe of OK, the Sac and Fox Nation of OK, and the Standing Rock Sioux Tribe. The implementing tribes report that the majority of the cases so far involve children as witnesses or victims and that the offenders frequently have a history of frequent prior police contacts. Materials from the implementing tribes are available on NCAI's website and offer useful examples of how individual tribes have modified tribal code language and constructed jury pools for VAWA cases.

All tribes seeking to implement special domestic violence criminal jurisdiction (SDVCJ) are encouraged to join the Intertribal Technical-Assistance Working Group (ITWG) or contact [tribal-vawa@ncai.org](mailto:tribal-vawa@ncai.org) for more information or with any questions.

### **Legislative Update**

The ITWG has identified a number of areas where additional Congressional action would improve implementation of the VAWA jurisdiction provision. Most notably, tribal prosecutors for the pilot tribes have expressed frustration that their jurisdiction is limited to domestic or dating violence crimes, and, as a result, they are not able to charge defendants for crimes related to abuse or endangerment of a child or for other crimes, including property or drug crimes, that might have co-occurred with the domestic violence incident. Tribes have also expressed concern that they have no jurisdiction over non-Indian domestic violence defendants for any crimes they might commit within the criminal justice system, including perjury, assaulting a bailiff, obstruction of justice, and other crimes. Tribes considering implementation also continue to raise concerns about the costs associated with implementation. Congress recently appropriated \$2.5 million for these purposes, but significantly more is needed.

*Senate Resolution 514*. On June 28, 2016, Senator Daines (R-MT) and Senator Tester (D-MT) introduced S. Res. 514 to designate May 5, 2017 as the "National Day of Awareness for Missing and Murdered Native Women and Girls." The resolution acknowledges the life of Hanna Harris (Northern Cheyenne of Montana) who was born on May 5, 1992. The resolution is intended to raise awareness for and commemorate the lives of all missing and murdered tribal women and girls whose cases are documented and undocumented in public records and the media.

Representative Zinke (R-MT-At Large) introduced the House version, H. Res. 807, on July 5, 2016, which has strong bi-partisan support.

### **Administrative Update**

The tribes participating in the ITWG have also identified a number of issues related to VAWA implementation that require Administrative action. Tribes have asked the BIA to clarify its policies related to the arrest and detention of non-Indians. They have also asked for guidance about the provision of health care to non-Indian inmates.

In addition, tribes are seeking full and effective access to the National Crime Information Center databases. The Department of Justice's recent selection of 10 tribes to participate in the Tribal Access Program Pilot Project, is a positive step which will facilitate NCIC access for these tribes. NCAI will continue to urge full participation for all tribes.

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### **VICTIMS OF CRIME ACT FUNDING**

American Indian and Alaska Natives experience the highest crime victimization rates in the country: American Indians and Alaska Natives are 2.5 times more likely to experience violent crime than other Americans; more than 4 in 5 American Indians and Alaska Natives have experienced intimate partner violence, sexual violence and stalking in their lifetime; and due to exposure to violence, Native children experience rates of post-traumatic stress disorder at the same levels as Iraq and Afghanistan war veterans.

Despite these devastating rates of victimization in tribal communities, Indian tribes have largely been left out of the Crime Victims Fund (CVF), which is the federal government's principle means of providing resources to crime victims.

The CVF was established by the Victims of Crime Act in 1984. Congress created the CVF based on the idea that money which the government collects from criminals should be used to help those victimized by crime. Fines paid by convicted federal criminal offenders finance the Fund, not taxpayer dollars. Despite significant increases in collections, Congress has imposed a cap on how much is available from the CVF for crime victim services and compensation for the past 15 years. In recent years, distributions from the CVF have been about \$700 million. Collections, however, reached as high as \$2.8 billion in 2013, leaving a balance in the fund of about \$13 billion. There has been significant pressure on Congress to make this money available for crime victims, and Congress significantly increased the distributions for FY 2015 to \$2.3 billion, and again in FY 2016 to \$2.3 billion.

Unlike state and territorial governments who receive an annual formula distribution from the CVF, Indian tribes are only able to access CVF funds in one of two ways: 1) via pass-through grants from the states, or 2) by applying for a very limited number of short-term competitive, discretionary grants from the Department of Justice. In practice, pass-through funding has proven wholly unsuccessful in distributing funds to tribal victim service providers. The vast majority of tribal victim service programs report that they are not able to access these funds at all. DOJ's competitive funding process is also problematic. All federally-recognized tribes compete with each other for a very small amount of funding. Because grants are limited to a three-year duration, this process also greatly hinders development of tribal victim service programs. Often when a grant ends, tribal programs must

completely shut down.

In 2014, NCAI adopted Resolution ANC-14-048 urging Congress to establish a 10 percent allocation from the CVF for tribal governments. Recognizing the disproportionate need for victim services in tribal communities, the Office for Victims of Crime's *Vision 21* report also called for increasing resources to tribal communities in order to "ensure that victims in Indian Country are no longer a footnote to this country's response to crime victims." The Attorney General's Task Force on American Indian and Alaska Native Children Exposed to Violence similarly called for a 10 percent tribal allocation from the CVF in its 2014 report.

### **Legislative Update**

Without additional action by Congress, tribal governments will continue to have no direct access to critical CVF funds. Congress could remedy the exclusion of tribal governments by passing authorizing language that amends the Victims of Crime Act. In July of 2015, a bi-partisan group of Senators introduced S. 1704, the SURVIVE Act, which would direct 5% of the total CVF disbursement to tribal governments. The Senate Committee on Indian Affairs unanimously approved the bill at a mark-up last July.

Alternatively, appropriators are currently considering how much should be disbursed from the CVF in the upcoming year, and whether to direct a portion of that funding to tribal governments through the appropriations process. The Senate Appropriations Committee adopted an amendment in April that includes a 5% allocation for tribal governments out of the \$2.9 billion disbursed from the CVF. The inclusion of this amendment, which was offered by Senators Tester, Daines, and Murkowski, would result in about \$140 million for tribal governments if it is included in the final bill. The House Appropriations Committee added the same language to its bill by adopting an amendment offered by Cong. Honda. In both the House and the Senate, the Chairmen of the Judiciary Committees have raised concerns about including this funding for tribes in the appropriations bill. NCAI is working to protect this critical funding as the CJS appropriations bill is finalized for FY 2017.

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### **REAUTHORIZATION OF THE TRIBAL LAW AND ORDER ACT & EXPANSION OF SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION**

NCAI urges that Congress prioritize the reauthorization of the Tribal Law and Order Act of 2010. The TLOA was a bi-partisan effort to improve the administration of criminal justice in Indian Country. All authorized funding under the TLOA is expiring this year. It is important that Congress not only reauthorize this funding, but also appropriate funds to address the crisis-level need for criminal justice in Indian Country.

The reauthorization of the TLOA should also serve as a vehicle for improvements to the Juvenile Justice system. Many Members of Congress have identified youth justice as a top priority, and Indian Country fully agrees. The Indian Law and Order Commission's "Roadmap for Making Native America Safer" discussed the disturbing reality that American Indian youth face disproportionate exposure to violence and poverty. At present, the *majority* of youth in federal detention centers are Native youth, who also make up a disproportionate percentage of the state juvenile detention population. According to the TLOC Report, youth are placed in "generally unsafe, abusive, ineffective, and horribly expensive" situations that push them further into a life of crime. It is necessary



for tribal juvenile justice systems to be able to develop alternatives to incarceration aimed at rehabilitation and treatment. We also recommend the development of tribal juvenile data collection, preventative family services, and a set-aside for the Juvenile Justice and Delinquency Prevention Act which is also up for reauthorization.

The TLOA was also a vehicle for a series of important technical improvements to the federal criminal justice laws in Indian Country. Tribal justice systems now have nearly five years of experience with implementing the law, and that implementation has led to proposals to continue to make technical amendments to improve the law. Specifically, we ask that Congress reauthorize and make permanent the *Bureau of Prisons Tribal Prisoner Pilot program*, which expired on November 24, 2014. The Pilot Program created the option to send highly violent offenders to federal corrections facilities.

Many tribes do not have the resources or personnel to adequately and safely house these types of offenders. The federal system also offers greater access to treatment, rehabilitation, and reentry programs.

NCAI has also received increasing technical feedback from tribes on criminal justice concerns. As an example, we recommend that Congress consider updating the 18 U.S.C. 1165 regarding trespass. Trespass on an Indian reservation is treated as a misdemeanor under federal law, which may be appropriate for minor hunting and fishing trespasses. However, Indian reservations are experiencing increasing problems with serious criminal trespass and a lack of deterrence. Tribes are unable to address problems with sexual assault and stalking offenders who continue to return to the reservation to harass victims. Tribes also have difficulties with former lease tenants who overstay agricultural and residential leases for many years and refuse to leave or pay rent. Tribes are also experiencing problems with timber theft, repeated poaching, illegal mining and illegal marijuana operations. The Indian Country trespass crime should be updated to increase penalties and deterrence for those who cause serious threats to persons and loss of property.

### **Legislative Update**

On May 11, 2016 Senate Committee on Indian Affairs Chairman Barrasso (R-WY) introduced S. 2920, a bill to reauthorize the Tribal Law and Order Act (TLOA) of 2010. Senators Tester (D-MT) and Franken (D-MN) also introduced S. 2785, the Tribal Youth and Community Prevention Act, legislation to expand tribal criminal jurisdiction over non-Indians for drug related crimes, domestic violence against children, and related crimes that occur in conjunction with one of the listed offenses. A legislative hearing was held on May 19 on both pieces of legislation, and on June 22, 2016, the bills were passed out of the Senate Committee on Indian Affairs. S. 2920 and S. 2785 are now ready for consideration by the full Senate.

S. 2920 would extend the BOP Pilot Project, require consultation with tribes regarding the integration of diverse funding for law enforcement, public safety, and substance abuse and mental health programs, address criminal trespass, and require notice to tribes when a member youth enters a state or local justice system, among a number of other important provisions. In testimony, NCAI has suggested a number of additions to continue to improve public safety, including a proposal to allow tribes to contract directly for all available law enforcement funding, to improve declination reporting, and eliminate the requirement of “Indian” status for the Major Crimes Act.

NCAI testimony also strongly supported S. 2785. In 2013 Congress passed the Reauthorization of the Violence Against Women Act which included Special Domestic Violence Criminal Jurisdiction. The act restored tribes inherent power to prosecute non-Indians for criminal offenses, but limited to crimes of domestic violence with spouses and intimate partners, and violations of protection orders. This bill would allow tribal prosecutors to prosecute non-Indians for drug-offenses and domestic violence towards children, and also related criminal conduct that occurs in conjunction with these offenses. The legislation is an important step forward that is based on the experiences of those tribes who are implementing the new law.

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### **EMERGENCY RESPONSE/HOMELAND SECURITY**

Tribal leaders and the NCAI continue to advocate for parity in protecting the homeland. Since 2003, 98.75% of total Department of Homeland Security (DHS) funding has gone to state and local governments (\$40 billion vs. \$50 million). The Department of Homeland Security and its component departments, such as Customs and Border Protection, the Federal Emergency Management Agency (FEMA), and Transportation Security Administration have had mixed reviews from tribal officials in the past year regarding meaningful consultation and collaboration, upholding the federal trust responsibility in program service delivery with tribal nations, and approaches to federal grant funding through states that has been detrimental to tribal-federal government relations and tribal sovereignty. Considering DHS was only established in 2003, and in this final year before transition to a new administration, there is needed positive change to address tribal homeland security and emergency management matters regarding border crossing and tribal IDs, disaster declaration authority, emergency management capacity building, and equitable yet realistic levels of grant access and funding.

#### **Administrative Update**

##### *Revised Tribal Declarations Pilot Guidance*

The 2013 amendments to the Stafford Act provisions authorized federally recognized tribes authority to request a presidential emergency or major disaster declaration. The Federal Emergency Management conducted two consultation phases and listening sessions and is about to release the second draft of the Tribal Declarations Pilot Guidance on implementing requests for assistance. The current revision can be found on the FEMA website at: <http://www.fema.gov/fema-tribal-affairs>.

##### *Tribal Capability Development Grants*

Tribes continue to request that FEMA amend the Emergency Management Performance Grants (EMPGs) which funds states' emergency management programs. States can include tribes in the distribution of these funds but rarely do even if tribes meet state-determined criteria. While Congress has prohibited states from placing undue burdens on potential tribal recipients, this is still often the case. Creating a separate, and direct tribal capability development grant and allocation for tribes to develop basic emergency services programs would eliminate the need to change the states' much protected EMPT and allow tribes to further develop their capacity and capabilities in administering these programs. In keeping with the government-to-government relationship between tribes, Congress and the federal government, tribes are seeking direct funding for this program to ensure tribal needs are met and are not restricted by state barriers.

### *Tribal Homeland Security Grant Program*

Budget increases are necessary for tribes to meet homeland security challenges through the Tribal Homeland Security Grant Program (THSGP). The current allocation formula by Congress is less than \$2 million but the DHS Secretary has made \$10 million available in competitive grants for a small portion of the 566 federally recognized tribal governments, but this program has remained stagnant for several years. Additionally, this program faces continued administrative threats with Agency recommendations that would combine all national preparedness grant programs into one program available only to the States. Tribal leaders are urged to propose legislative changes that will directly fund EMPGs to tribes and to request a minimum 100 percent increase in THSGP funding. Furthermore, NCAI encourages Congress to eliminate THSGP's "directly eligible tribe" status and allow all tribes to apply. Tribes must be provided adequate funding in a homeland security programmatic grant to meet the minimum requirements recently established by FEMA and those that already do should be allowed to use this funding for other homeland security efforts and to meet other existing unfunded mandates.

### *FEMA Proposed Rule to Establish a Deductible for FEMA's Public Assistance Program*

Tribal officials are expressing disappointment and concern over FEMA's Advanced Notice of Proposed Rule to Establish a Deductible for FEMA's Public Assistance Program, in the Federal Register on January 20, 2016.( <https://federalregister.gov/a/2016-00997>). The disaster deductible would require a predetermined level of financial or other commitment from a grantee tribe, state, or territorial government, before FEMA will provide assistance under the Public Assistance Program when authorized by a presidential major disaster declaration.

Tribes have only recently begun to exercise direct federal disaster declaration authority and disaster declaration policies and procedures are not finalized, and establishing a deductible will complicate tribal participation. Tribes are in the process of developing comments to the Revised Tribal Declarations Pilot Guidance and to force limited technical tribal staff to undergo review barrage of additional disaster declaration policies is unduly burdensome. The total cost of tribal disasters is far less than 1% of the disaster assistance provided to states and territories and should not have to consider financial commitment. Several tribes have submitted comments before the comment period closed on March 20, 2016.

### *National Advisory Council*

The Federal Emergency Management Agency (FEMA) supports the National Advisory Council (NAC), which was established by the enactment of the Post-Katrina Emergency Management Reform Act of 2006 to ensure effective and ongoing coordination of Federal preparedness, protection, response, recovery, and mitigation for natural disasters, acts of terrorism, and other manmade disasters. The NAC advises the FEMA Administrator on all aspects of emergency management. The authorizing statute requires participation from tribal government experts, but FEMA limits participation to two tribal representatives and does not proactively share NAC activities with American Indian or Native Alaskan leaders. To strengthen the whole community doctrine the Secretary of Homeland Security should set up and fund a DHS Tribal Advisory Council or a Tribal Government Working Group under the Homeland Security Advisory Council, to provide timely and direct recommendations on tribal homeland security considerations and issues.



### *Tribal Border Security Summit*

The DHS has yet to work with all appropriate and impacted tribes to assess tribal government tribal homeland security capacity and formulate a deliberate border security strategy, similar to state-directed activities. There are 30 tribes within 100 miles of international borders, fabricated borders, and 50 more within 150 miles. Providing tribes with adequate homeland security for tribal communities which are the first perimeters of this country will result in an overall safer nation, and would seem to be part of the federal trust responsibility of appropriate DHS components. A national tribal border security strategy summit should be planned, coordinated and supported by DHS.

### *Countering Violent Extremism*

As the administration shifts its focus to countering homegrown violent extremism, tribal governments must be part of those efforts. As noted above, when tribes are absent from the discussions and decision-making, the government leaves an integral governmental partner out of the equation, leading to limited access to the training, funding, and key infrastructure needs of not only Indian Country, but surrounding communities as well. DHS should consider every opportunity to include the 567 federally-recognized tribes in its decisions. A national dialogue on both existing and emerging homeland security matters with tribal leaders and staff should occur at a DHS hosted conference. Such a conference would provide DHS staff an opportunity to work with tribal government counterparts and have open discussion on these matters.

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**EDUCATION**

Education is the key to the development and success of Native children. It is crucial for Indian Country to improve the quality of education for our children in our tribal communities. To accomplish this, we need to possess and provide a high-quality, culturally-appropriate education that successfully benefits all of our Native children. It is becoming more evident that guaranteeing uniform educational opportunities is essential in today’s challenging economic climate, in order to create a workforce that can be successful for the future prosperity of tribal communities. Education provides many benefits, it drives personal advancement and wellness, which in turn improves social welfare and empowers communities—elements that are essential to protecting and advancing tribal sovereignty and maintaining tribes’ cultural vitality.

Approximately 620,000, or 93 percent, of Native children are currently enrolled in public schools, both urban and rural, while 45,000, or 7 percent, attend schools within the Bureau of Indian Education (BIE) system. There are 184 BIE-funded schools (including 14 peripheral dormitories) located on 63 reservations in 23 states. In addition, there are currently 34 accredited Tribal Colleges and Universities (TCUs) in the United States serving more than 30,000 Native students. Regardless of where they attend school, the majority of Native students are not receiving a high-quality education that is also rooted in their language or culture – the core of their identity. Tribes, Native parents and families, and communities are best suited to influence these critical factors for academic success. Effectively reaching all Native students requires a concentrated effort from multiple partners: tribes, the federal government, and State Education Agencies and Local Education Agencies.

**Legislative Update**

Every Student Succeeds Act, S. 1177. The new education reauthorization, the Every Student Succeeds Act (ESSA), was signed into law by President Obama on December 10, 2015. The previous authorization, the No Child Left Behind Act, expired September 30, 2007. Tribal provisions included in the ESSA include provisions to: provide greater tribal consultation requirements between State Education Agencies (SEAs), Local Education Agencies (LEAs), and tribes; increase technical assistance and outreach by the Secretary of Education to LEAs or BIE schools applying for Title VI grants; establish language immersion programs in schools; requires the Secretary of Education to conduct studies and report to Congress on Native language instruction and youth suicides. NCAI’s focus on reauthorization will now turn from Congress to the Administration as implementation of this reauthorization will begin at the Department of Education and the Department of the Interior.

Johnson-O'Malley Supplemental Indian Education Program Modernization Act, S. 2982. On April 21, 2016 Senator Heitkamp (D-ND) introduced S. 2982. The legislation was cosponsored by Senators Lankford (R-OK) and Daines (R-MT). The bi-partisan legislation would update existing data on Indian students in public schools eligible to receive federal program funding. The bill would provide necessary updates to the Johnson-O'Malley (JOM) Program, which awards supplemental assistance to tribal organizations, school districts, and other partner organizations to address the unique cultural and academic needs of Native American students. The bill would 1) direct the Secretary of the Interior to take all practicable steps to ensure full participation of all qualified students in the JOM program; 2) facilitate a coordinated, proactive effort to identify tribal organizations and school districts to ensure participation in JOM programs; 3) require the Secretary to provide a count of eligible Indian students based on available data, and direct DOI to consult with JOM contractors to reconcile available data to establish an accurate count for future years; 4) ensure consultation by the Secretary with federally recognized tribes and school districts with currently unserved

Native student populations; and 5) require an annual program assessment report to Congress. The report by the Secretary would update a data report of Indian students in public schools eligible for JOM Program resources that has not been conducted by the Bureau of Indian Affairs since 1995.

On May 11, 2016 the Senate Committee on Indian Affairs held a hearing to receive testimony on S. 2982, and the bill awaits further Senate action. A House version, H.R. 4390, was introduced in January 2016 by Representative McCollum (D-MN-04) and awaits further action.

*Native American Education Opportunity Act, S. 2711.* On March 17, 2016 Senator McCain (R-AZ) introduced S. 2711, the Native American Education Opportunity Act. The legislation provides additional education options for Bureau of Indian Education (BIE) students who live in states that operate education savings account (ESA) programs, which include Arizona, Florida, Mississippi, Nevada, and Tennessee. The impetus of the ESA program is to direct state funds designated for a child's education into a parent's account to offer parents a choice in funding programs and services for their child such as private school, tutoring, online courses, special needs services, or saving unspent funds for higher education. Note that the funds disbursed under this program would be in lieu of the student attending a BIE school and not supplemental to those funds.

On April 4, 2016 the Senate Committee on Indian Affairs held a hearing to receive testimony on S. 2711, and is awaiting further Senate action. To date, no companion legislation has been introduced in the House.

*Reforming American Indian Standards of Education Act (RAISE Act), S. 2580.* On February 25, 2016 Senate Committee on Indian Affairs (SCIA) Chairman Barrasso (R-WY) introduced the RAISE Act. The legislation would create the Indian Education Agency as an independent agency within the Department of the Interior. The Indian Education Agency would be headed by a Director, appointed by the President with the advice and consent of the Senate. The Director would then appoint an Assistant Director of Education Curriculum and an Assistant Director of Facilities Management. The bill would transfer to the Director any function or authority relating to Indian education that was previously performed or carried out by the Secretary or any bureau, office or other unit of the Department of the Interior. The bill also requires, upon consultation with affected tribes, a report from the Director on activities of the Indian Education Agency; assessment of the effectiveness of the RAISE Act; and recommendations for legislation to improve the Agency. The report would be presented to the SCIA, the House Committee on Natural Resources, and the House Committee on Education and the Workforce.

The RAISE Act passed out of the SCIA on May 11, 2016 and is now ready for consideration by the full Senate. To date, no companion legislation has been introduced in the House.

*Safe Academic Facilities and Environments for Tribal Youth Act (SAFETY Act), S. 2468.* The SAFETY Act was introduced by Senate Committee on Indian Affairs (SCIA) Vice Chairman Tester (D-MT), and cosponsored by Senator Cantwell (D-WA) on January 27, 2016. The bill addresses education-related facilities needs in Indian Country, which includes Impact Aid schools, Tribal Colleges and Universities (TCUs), Department of Education, and Bureau of Indian Education (BIE) schools. The bill would establish a demonstration grant program to allow eligible Indian tribes and TCUs to address improvements and construction of BIE educational facilities and TCU equipment and facilities; provide housing assistance funding to educators working for BIE schools, and public schools with large American Indian or Alaska Native populations; and it would create federal agency accountability by requiring the BIE and the Office of Management and Budget (OMB) to develop a 10-year plan to bring all BIE schools into

good condition, while requiring a Government Accountability Office (GAO) Report on the needs of Impact Aid facilities.

The SAFETY Act passed out of the SCIA on April 27, 2016 and is now ready for consideration by the full Senate. A House companion bill, H.R. 4744, was introduced in March 2016 by Representative Kirkpatrick (D-AZ-01) and awaits further action.

*Tribal Early Childhood, Education and Related Services Integration Act of 2015, S. 2304.* In November 2015 Senate Committee on Indian Affairs (SCIA) Vice Chairman Tester (D-MT) introduced S. 2304. The legislation was cosponsored by Senator Schatz (D-HI). The bill amends the Native American Programs Act of 1974 to provide tribes and tribal organizations the ability to obtain technical assistance and training to administer new childhood education initiatives, better access to early childhood education resources, and coordination among six early childhood initiatives operated by the Department of Health and Human Services. The bill also bolsters infrastructure and the recruitment and retention of teachers by providing supplementary funding for school structures and extending the federal loan forgiveness program for early childhood educators.

S. 2304 passed out of the SCIA on April 27, 2016 and is now ready for consideration by the full Senate. On April 26, 2016 a House version, H.R. 5072, was introduced by Representative Torres (D-CA-35) and awaits further action.

*Native Educator Support and Training Act, S. 1928.* In August 2015, Senate Committee on Indian Affairs (SCIA) Vice Chairman Tester (D-MT) introduced the NEST Act. The bill establishes three separate scholarship programs for students that 1) seek education or school administration degrees; and 2) commit to working at least three years for a Bureau of Indian Education (BIE) school, a tribally controlled school, or any school or local education agency (LEA) serving high percentages of Native students. The bill also establishes loan forgiveness plans for educators who have taught at least five years in any tribal school or LEA serving primarily Native Americans, and extends the federal Perkins Loan Cancellation Program to BIE school educators and Native language immersion program teachers. Lastly, the NEST Act authorizes professional development grants for Native-serving elementary and secondary schools, and provides grants to institutions of higher education for Native language teacher training programs.

The NEST Act passed out of the SCIA on April 27, 2016 and is now ready for consideration by the full Senate. To date, no companion legislation has been introduced in the House.

*Native Languages Legislation.* In the First Session of the 114<sup>th</sup> Congress, both chambers introduced the *Native American Languages Reauthorization Act of 2015* – S. 1163 was introduced by Senator Udall (D-NM) and H.R. 2174 by Representative Lujan (D-NM-03). This legislation reauthorizes the Native American Programs Act of 1974 through FY2020 and revises a grant program administered by the Administration for Native Americans at HHS by decreasing the required minimum number of enrollees in Native American language nests from 10 to 5 and Native American language survival schools from 15 to 10 enrollees. The bills also increase the duration of grants provided by the program. S. 1163 passed out of the Senate Committee on Indian Affairs on May 11, 2016 and is now ready for consideration by the full Senate. H.R. 2174 is awaiting further House action.

In May 2015, Senate Committee on Indian Affairs (SCIA) Vice Chairman Tester (D-MT) introduced S. 1419, the *Native Language Immersion Student Achievement Act* to establish a new grant program to support schools prekindergarten through postsecondary that use Native languages as the primary language of instruction. The grant program would be administered by the Department of Education, and would assist schools in developing, maintaining, improving, or expanding language immersion programs. S. 1419 passed out of the SCIA on February 29, 2016 and is now ready for consideration by the full Senate. To date, no companion legislation has been introduced in the House.

*Reauthorization of the Head Start Act.* The authorization of the Head Start Act expired in 2012 and NCAI urges Congress to reauthorize this important Act. The Head Start Act was created in 1965 during the Johnson administration to provide comprehensive services to low-income three- and four-year-old children to help prepare them to enter kindergarten by improving the conditions necessary for success in school and life. The 1994 reauthorization of the Head Start Act created an Early Head Start program in order to expand services to children from birth to age three. This Act is long due for reauthorization and NCAI will continue to advocate for reauthorization during this session of Congress.

*Reauthorization of the Higher Education Act (HEA).* The Higher Education Act expired at the end of 2013. The HEA provides critical funding, resources, and opportunities for both Native students in higher education as well as the institutions they attend including tribal colleges and universities (TCUs) and other minority-serving post-secondary institutions. Both the House and Senate have held a series of hearings on reauthorization of the Higher Education Act during this Congress.

### **Administrative Update**

*U.S. Department of Education Tribal Consultations.* The Department of Education (ED) has held three of four tribal consultation sessions in 2016 pursuant to Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and ED's Tribal Consultation Policy. The consultations are intended for tribes to comment on the newly passed Every Student Succeeds Act (ESSA), with a specific focus on the following: 1) new grant program for Native language immersion schools and projects; 2) report on Native American language medium education; and 3) report on responses to Indian student suicides. The fourth and final ED tribal consultation will be held in conjunction with NCAI's Mid Year Conference on June 27th in Spokane, Washington.

*Bureau of Indian Education (BIE) Blueprint for Reform.* As part of President Obama's trip to Indian Country in 2014, the Administration announced the "Blueprint for Reform" to address the shortcomings of the BIE that have plagued the Bureau for years. The Blueprint for Reform was followed up with a Secretarial Order (Order No. 3334) to execute a restructuring of the BIE school system. The restructuring efforts have been ongoing since last summer with the goal of institutionalizing the reforms at the end of the 2015-2016 school year.

The new restructuring aims to transform the BIE from a direct provider of education into a capacity-builder and service-provider to tribes with BIE-funded schools. The reforms are being offered to tribes who voluntarily wish to take greater control of BIE-funded schools in their communities. Congress has also been monitoring the ongoing restructuring efforts with both the Senate Committee on Indian Affairs and the House Education and Workforce Committee holding oversight hearings on BIE.

On September 15, 2015 the BIE sent a letter to Representative Ken Calvert, Chairman of the House Subcommittee on Interior, Environment, and Related Agencies, outlining the proposed reorganization and reprogramming efforts. As part of its commitment to engaging tribal leaders, educators and other stakeholders during the ongoing reform process, NCAI hosted a webinar on October 13th to further discuss the BIE letter to Representative Calvert and how the proposed realignment plan will impact the delivery of educational services to Native students. Additionally, The BIE provided an update on the status of the BIE Blueprint for Reform on October 21<sup>st</sup> at NCAI's Annual Convention in San Diego, California.

On December 18, 2015, the BIE received conditional approval from the Interior Subcommittee to continue with the reorganization. NCAI hosted a webinar on June 2nd, 2016 to provide an update on the BIE Reorganization, and will continue to update stakeholders on its progress.

*School Environment Listening Tour – Native American Students.* In fall 2014, the White House Initiative on American Indian and Alaska Native Education (Initiative) and the Department of Education's Office for Civil Rights launched the first-ever school environment listening tour geared towards Native students across the country. The Administration visited schools and communities from across the country on ways to better meet the unique educationally and culturally-related academic needs of Native American students. The Department of Education released the “School Environment Listening Sessions Final Report” on October 15, 2015, with recommendations on improving school conditions for Native students in order to remove barriers to academic success.

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## **HEALTH**

The health and wellness of tribal communities depends on a network of health, education, and wellness service providers, prevention coordination, and tribally-driven initiatives. Despite the federal government's trust responsibility to provide health care to American Indians and Alaska Natives, American Indians and Alaska Natives continue to experience the greatest health disparities in the United States when compared to other Americans. Shorter life expectancy and the disease burdens carried by American Indians and Alaska Natives exist because of inadequate education, disproportionate poverty, discrimination in the delivery of health services, and cultural differences. These are broad quality of life issues rooted in economic adversity, poor social conditions, and decades of historical trauma.

*Advanced Appropriations for IHS.* Tribal leaders recognize that the responsibility for wellness of their community lies with the tribal government working in concert with their citizens and with agencies across the federal government. The Indian Health Service has been, and continues to be, a critical institution in securing the health and wellness of tribal communities, and advance appropriations are necessary for IHS. NCAI passed a resolution (ANC-14-007) requesting Congress to amend the Indian Health Care Improvement Act to authorize Advance Appropriations and to include IHS Advance Appropriations in the budget resolution and in the enacted appropriations bill.

*Special Diabetes Program for Indians.* At nearly 16.1 percent, the American Indian and Alaska Native population has the highest rate of diabetes among all U.S. racial and ethnic groups, and an estimated 30 percent of American Indians and Alaska Natives are pre-diabetic. In 1997, Congress addressed the growing epidemic of diabetes in American Indian and Alaska Native communities by passing the Balanced Budget Act which established the Special Diabetes Programs for Indians (SDPI).

The Special Diabetes Programs for Indians provides assistance for developing local initiatives to treat and prevent the disease and has served as a comprehensive source of funding to address diabetes issues in tribal communities by providing grants for diabetes prevention and treatment services to more than 400 Indian Health Service, tribal, and urban Indian health programs in 35 states. These grants are critical to improving the overall health of American Indian and Alaska Native people because they greatly enhance the effectiveness of preventative health programs and allow programs aimed at stopping the spread of diabetes to children and young adults to be established.

NCAI passed a resolution (ATL-14-003) requesting Congress to permanently reauthorize the Special Diabetes Program for Indians and to provide full funding for permanent continuation of this program.

*Affordable Care Act/Indian Healthcare Improvement Act Implementation.* The Patient Protection and Affordable Care Act (ACA) provided for permanent reauthorization of the Indian Health Care Improvement Act, ending a 17-year effort for reauthorization. Tribes are adamantly opposed to repeal of the ACA. However, if this Congress takes up specific provisions of the bill, tribal leaders will seek a fix to the definition of Indian within the ACA. There are three separate definitions of Indian throughout the ACA which creates inconsistency in eligibility for certain benefits. Tribes seek consistency in the definitions to ensure that all American Indians and Alaska Natives have access to the special benefits and protections.

NCAI passed a resolution (ABQ-10-080) requesting that one definition of “Indian” be recommended in implementation of the Affordable Care Act, providing support for the definition of “Indian” that was adopted by the Centers for Medicare and Medicaid Services in its implementation of the Medicaid cost sharing protections (45 C.F.R. 447.50), limiting the use of the definition to implementation of the Affordable Care Act, and prohibiting the use of the definition or interpretation to affect who is eligible for services.

*Behavioral Health.* In 2007, the National Center for Health Statistics noted that American Indians and Alaska Natives experience serious psychological distress one and a half times more than the general population. Data from the Centers for Disease Control and Prevention reveal that the suicide rate for American Indian and Alaska Native adolescents and young adults from 15-34 is two and a half times the national average for that age group. Unlike other groups where the suicide rate increases with age, American Indian and Alaska Natives rates are highest among the youth and decrease with age. Holistic behavioral and mental health services designed and implemented by and for American Indian and Alaska Native people are needed to promote cultural strength and healing. New initiatives such as First Kids First and Generation Indigenous (Gen-I) are also critical to promoting wellness with our children and youth.

The Substance Abuse and Mental Health Services Administration (SAMHSA) has released an early draft of its Tribal Behavioral Health Agenda (TBHA). The TBHA was developed based on recommendations by SAMHSA's Tribal Technical Advisory Committee and in meetings with tribal leaders, tribal health administrators, tribal members, advocates for tribal health, Native youth and federal agency representations.

Those meetings led to the framework of the proposed agenda which is centered on five foundational elements that support the recognition of youth, identity, culture, self-sufficiency, data and tribal leadership. Upon release of the full draft the agency will solicit input from tribal leaders.



Community Health Aide Program. Recognizing the need for comprehensive, quality health care in tribal communities, on June 1, 2016, Indian Health Service (IHS) released a policy statement to explore the necessary steps to expand the use of Community Health Aide Programs (CHAP) throughout Indian Country.

The CHAP program would fund nursing aides, behavioral health aides, and in some cases, mid-level dental providers called Dental Health Aide Therapists (DHAT), along with other types of community health workers, to ensure residents of rural communities have access to health services.

The IHS is seeking input from tribal leaders and stakeholders on the Draft Policy to expand the CHAP program. Comments from tribes are due by July 29, 2016 and can be submitted to [consultation@ihs.gov](mailto:consultation@ihs.gov).

Oral Health. American Indians and Alaska Natives face significant disparities in oral health when compared to the United States population. American Indians and Alaska Natives lack access to dentists, consistent dental treatment, and prevention services. By age five, 75 percent of American Indian and Alaska Native children have experienced tooth decay. Poor oral health has been linked to decreased school performance and other health complications, including diabetes, chronic pain, infections, nutritional deficiencies, childhood growth and social development, and loss of teeth. This is compounded by low dentist to patient ratios, identified backlog of treatment, and grossly inadequate expenditure levels.

Mid-level providers such as Dental Health Aide Therapists (DHATs) are the solution to this crisis. For more than 90 years the DHAT model has been used worldwide, and for over 10 years has been used in Alaska, where the Alaska Native Tribal Health Consortium (ANTHC) adopted the model in 2003. The model builds community capacity and creates jobs by training community members to become DHATs. The Indian Health Care Improvement Act, as enacted by the ACA, limits expansion of the DHAT model to the lower 48. NCAI believes that tribes have the sovereign right to address the oral health needs in their communities through mid-level providers.

Catastrophic Health Emergency Fund. On May 10, 2016 the Indian Health Service requested public comment on a proposed regulation for the Catastrophic Health Emergency Fund (CHEF). The purpose of the CHEF regulations is to meet the extraordinary medical costs associated with the treatment of victims of disasters or catastrophic illnesses who are eligible to receive service at the Indian Health Service. NCAI submitted comments on the proposed regulations detailing concerns that (1) the rule would shift more financial burden onto tribal resources by expressly redefining “alternate resources” to include tribes and tribal self-insurance programs as a primary payor; (2) the IHS is listed as the payor of last resort contrary to language in the Affordable Care Act, and (3) there was not meaningful consultation on the development of the proposed regulations. These comments were developed based on an NCAI resolution (ECSW-16-003). On June 1, 2016, a Dear Tribal Leader Letter was released by IHS stating that additional tribal consultation would occur before any final action by the agency.

## **Legislative Update**

Advance Appropriations for the Indian Health Service On January 14, 2015, Rep. Don Young (R-AK), along with Rep. Ben Ray Lujan (D-NM), introduced the “*Indian Health Service Advance Appropriations Act of 2015*” (H.R. 395). Advance appropriations will ensure that the Indian Health Service and tribal health care providers have adequate advance notice of the amount of federal appropriations to expect to administer health programs and services to American Indian and Alaska Native people and thus not be subjected to the uncertainties of late funding and short-term continuing resolutions. To date, there is no

companion legislation in the Senate. NCAI will continue to encourage action on advance appropriations for IHS in this Congress.

Special Diabetes Program for Indians. The Special Diabetes Program for Indians was last reauthorized on April 16, 2015 and was extended through September 30, 2017. The extension of the SDPI program was included in the Medicare Access and CHIP Reauthorization Act of 2015. Although this extension of SDPI is welcome, NCAI continues to advocate for permanent reauthorization and full funding of this vital program.

Employer Mandate. On July 15, 2015, Sen. Steve Daines (R-MT) and Rep. Kristi Noem (R-SD) sponsored Tribal Employment and Jobs Protection Act bills under S. 1771 and H.R. 3080, respectively. The bills provide an exemption for Indian tribal governments and tribally owned business from the Employer Shared Responsibility Mandate. On June 15, 2016, the House Ways and Means Committee favorably reported H.R. 3080 out of Committee. This bill is now ready for consideration by the full House of Representatives.

The employer shared responsibility mandate, effective January 1, 2015, requires tribes with 50 or more full-time and/or full-time equivalent employees (FT/FTE) to offer health coverage to full-time employees (and their dependents) or face significant penalties. Many tribal employers cannot afford to purchase health coverage for their employees and would have to sacrifice other programs and services to try and meet the requirement. As the work forces of many tribes are made up of tribal members, most of their employees are exempt from the mandate and a tribal employer should not be required to offer or pay for such coverage. Many tribal employers rely upon the Indian Health Service to provide health care to tribal member employees as part of the federal trust responsibility and do not offer health coverage on this basis.

Throughout ACA implementation, tribes have been informed by HHS and the Center for Consumer Information and Insurance Oversight (CCIIO) that the special benefits and protections for American Indians/Alaska Natives under the ACA support the federal trust responsibility and have been encouraged to carry this message to tribal citizens to encourage enrollment in the Marketplace. Many tribes have sponsored trainings and hosted enrollment events for tribal members, and many have even implemented premium sponsorship programs.

The application of the employer mandate to tribes is inconsistent with the federal trust responsibility because it denies tribal member employees the opportunity to take advantage of the special benefits and protections available to American Indians/Alaska Natives. In 2015, if a tribal employer offers coverage that meets the requirements of the mandate to tribal member employees the tribal member employees will be disqualified from receiving a premium tax credit, making the coverage unaffordable and the American Indian/Alaska Native cost sharing exemptions inaccessible. The tribal member employees would then be faced with having to pay for less beneficial employer coverage (e.g., a portion of the employee premium, 100 percent of dependent coverage, and high cost sharing) or opt for having no coverage.

If a tribal employer decides not to make an offer of health coverage to full-time tribal member employees, these employees would be eligible for a premium tax credit in the Marketplace. Receipt of a tax credit by one full-time employee subjects the employer to a penalty of \$2,000 per employee per year multiplied by the number of full-time employees. Even if a tribal employer offers coverage, a tribal employer could incur the second type of penalty if the coverage is not affordable or does not provide minimum value, allowing a full-time tribal member employee to receive a tax credit. In this case, the penalty would be \$3,000 per year multiplied by the number of full-time employees who have received a

tax credit.

The IRS and CClO policies conflict with each other. Tribal employers should not have to decide between: complying with the mandate which denies tribal members' benefits to which they are entitled, and paying costly insurance premiums which they cannot afford for tribal members who are exempt from the individual mandate; or allowing tribal members to access the benefits at the expense of paying costly penalties to the federal government when the federal government has a trust responsibility to provide health care to American Indians/Alaska Natives.

*Pharmacy and Medically Underserved Areas Enhancement Act.* On January 28, 2015, Rep. Brett Guthrie (R-KY) introduced the "*Pharmacy and Medically Underserved Areas Enhancement Act*" (H.R. 592) and on January 29, 2015, Sen. Chuck Grassley (R-ID) introduced the (S. 314). The Pharmacy and Medically Underserved Areas Enhancement Act would recognize pharmacists as non-physician providers under Medicare Part B and make them eligible for reimbursement for services they provide to seniors in underserved areas. It will allow pharmacists to deliver care to patients in medically underserved communities (medically underserved areas, underserved populations and health professional shortage areas as defined by the Health Resources Service Administration). This legislation will help with provider shortages and access issues for Medicare beneficiaries and will benefit American Indians and Alaska Natives who are living in medically underserved communities.

*Comprehensive Addiction and Recovery Act.* On February 12, 2016, S. 524, the Comprehensive Addiction and Recovery Act (CARA), was introduced by Senator Sheldon Whitehouse (D-RI). The bill will support the ongoing fight against heroin and opioid abuse in Indian Country. The bill directs the Department of Health and Human Services to formally assemble a Pain Management Best Practices Inter-Agency Task Force. The bill also helps to create funding to support efforts to reduce heroin and opioid addiction through the creation of grants. CARA will amend the Omnibus Crime Control and Safe Streets Act of 1968, and will authorize the Attorney General to make grants to tribes along with states and local governments to expand prevention education as well as promote the understanding of addiction as a chronic disease while promoting treatment and recovery.

CARA implements a concentration on treatment for those who have a substance abuse disorder or a mental illness, by offering alternatives to incarceration. Focus will be placed on the development of programs for individuals with history in the juvenile or criminal justice systems. CARA will also support tribal law enforcement agencies to develop demonstration law enforcement programs that work to prevent opioid and heroin overdose deaths.

On July 13, 2016, S. 524 passed the Congress and has since been sent to the President to be signed into law.

*IHS Accountability Act of 2016.* On May 19, 2016, Senator Barrasso (R-WY) introduced S.2953 the IHS Accountability Act of 2016. The bill recognizes the long standing issues at the Indian Health Service by addressing patient safety and quality of care issues as well as employee recruitment and retention needs. The bill will also require tribal consultation, in the designated region, prior to hiring key leadership positions. On June 16, 2016, the Senate Committee on Indian Affairs held a town hall meeting in Rapid City, South Dakota to discuss the provisions in S. 2953. An oversight/legislative hearing was held the following day on "Improving Accountability and Quality of Care at the Indian Health Service though S. 2953."

The House version of the bill is H.R. 5406, the Helping Ensure Accountability, Leadership, and Trust in Tribal Healthcare Act (HEALTH Act). The HEALTH Act was introduced on June 8, 2016 by Representative Noem (R-SD-At Large). The House Subcommittee on Indian, Insular and Alaska Native Affairs held a legislative hearing to receive testimony on the bill on July 12, 2016.

Tribal Veterans Health Care Enhancement Act. On December 17, 2015, Senator Thune (R-SD) introduced S. 2417, the Tribal Veterans Health Care Enhancement Act. The bill will allow the Indian Health Service to cover the cost of co-payments for Native American/Alaska Native veterans that receive medical services from the Department of Veterans Affairs. On June 8, 2016, the Senate Committee on Indian Affairs favorably reported S. 2417 out of Committee. The bill is now ready for full consideration by the Senate.

### **Administrative Update**

Affordable Care Act. Several issues remain or have emerged with implementation of the Affordable Care Act, including, to name a few: inadequate or incomplete data on American Indian/Alaska Native enrollment in qualified health plans (QHPs); concern about network adequacy and the lack of QHPs contracting with Indian health care providers; the availability of cost sharing protections to American Indians and Alaska Natives with incomes below 100% of the federal poverty level; and the need for an American Indian/Alaska Native Customer Service Unit (NCAI passed a resolution ATL-14-074) knowledgeable on the American Indian/Alaska Native special benefits and protections.

Medicare Like-Rates. Tribes submitted comments on the IHS Proposed Rule entitled “Payment for Physician and Other Health Care Professional Services Purchased by Indian Health Programs and Medical Charges Associated with Non-Hospital-Based Care,” 79 Fed. Reg. 72160 (Dec. 5, 2014). The final regulations have not been issued.

Employer Mandate. Members of HHS Secretary’s Tribal Advisory Committee recently discussed concerns about the employer mandate with the Secretary. Tribal leaders also engaged with the Department of the Treasury on a conference as well as during the Direct Services Tribal Advisory Committee, and the Secretary’s Tribal Advisory Committee. The Department of the Treasury has taken the position that an administrative fix is not available. Tribal leaders are now seeking a one year Administrative delay of the mandate to determine a longer term solution. NCAI will continue to work with other national organizations, tribes, and the Administration to address this issue.

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### **CHILD WELFARE**

The federal government has unequivocally recognized that there is nothing more vital to the continued existence and integrity of Indian tribes than our children. The federal government must empower tribes to safeguard children and strengthen families. Tribal welfare programs are comprised of a number of “discrete, yet interconnected” functions that include family social services, child protection, case management, foster care, foster home recruitment, permanent placement, court hearings, ICWA coordination and collaboration, and referrals to other services.

Tribal child welfare programs work tirelessly to serve children and families and are working to implement holistic, strengths-based, culturally appropriate, and family-centered services. Throughout Indian Country, tribes implement innovative child welfare services such as family group

decision-making processes, peacemaking courts, Positive Indian Parenting classes, culture camps, and customary adoptions to protect and support children while keeping them connected to their families and communities. In providing these services, a great number of tribes work simultaneously, in numerous jurisdictions across the country, to defend tribal and family rights threatened by state child welfare and court systems. Tribes' enduring service to children, families, and communities persists in the face of elevated risks of child abuse and neglect.

The Attorney General's Advisory Committee on American Indian/Alaska Native Children Exposed to Violence emphasized that "American Indian/Alaska Native children are generally served best when tribes have the opportunity to take ownership of the programs and resources they provide."

NCAI urges Congress and the Administration to prioritize the safety and well-being of all children.

### **Legislative Update**

*Family Stability and Kinship Care Act of 2015, S. 1964 and H.R. 3781.* Currently, the federal child welfare finance system provides significantly more funding for the removal of children from their families than services that could safely maintain them in their homes. When children are removed from their homes, even to keep them safe from harm, there is always additional trauma for the child. Conversely, it is almost always more suitable and cost effective to provide supportive services to give families the tools they need to better parent their children than it is to remove them from their homes and place them in substitute care. Introduced by Senator Wyden (D-OR) on August 5, 2015, S. 1964 provides front-loaded funding that creates a real incentive for improving in-home child care and allows for more flexibility in fashioning rehabilitative programs for families. Congressman Doggett introduced a companion bill, H.R. 3781, in the House on October 21, 2015.

S. 1964 has been referred to the Senate Committee on Finance, while H.R. 3781 has been referred to the House Committee on Ways and Means.

*Native American Children's Safety Act, S. 184 & H.R. 1168.* On January 16, 2015, Senator Hoeven (R-ND) introduced the Native American Children's Safety Act, a bill to amend the Indian Child Protection and Family Violence Prevention Act to require background checks prior to foster care placements in tribal court proceedings. On February 27, 2015, Congressman Cramer introduced a companion bill in the House.

S. 184 was signed into law by the President on June 3, 2016 and is now Public Law 114-165.

*Alyce Spotted Bear and Walter Soboleff Commission on Native Children Act, S. 246 & H.R. 2751.* This legislation, introduced by Senator Heitkamp (D-ND) creates an 11-member Commission on Native Children to conduct a comprehensive study on the programs, grants, and support available for Native children, both at the federal level and on the ground in Native communities. This legislation passed the Senate on June 1, 2015, and was referred to the House Subcommittee on Indian, Insular and Alaska Native Affairs. A House companion bill, H.R. 2751, was introduced by Congresswoman McCollum on June 12, 2015.

S. 246 passed out of the House Committee on Natural Resources on July 13, 2016 and is now ready for consideration by the full House of Representatives.

## **Administrative Update**

Department of Interior Publishes Final Rule for State Courts and State Agencies in Indian Child Welfare Proceedings subject to the Indian Child Welfare Act. On June 14, 2016, the Department of Interior published its Final Rule on the Indian Child Welfare Act of 1978 (ICWA). These new regulations establish the Department's interpretation of ICWA as a binding interpretation ensuring that state courts and state agencies abide by these minimum Federal standards designed to protect the interests of Indian children, Indian families and Indian tribes involved in state child welfare proceedings. The final rule addresses requirements for state courts in ensuring implementation of ICWA in Indian child-welfare proceedings and requirements for states to maintain records under ICWA. This Final Rule will take effect on December 12, 2016.

ICWA establishes minimum Federal standards for the removal of Indian children from their families and the placement of these children in foster or adoptive homes, and confirms Tribal jurisdiction over child-custody proceedings involving Indian children. The previous ICWA regulations had a narrow scope and covered only the administration of ICWA service programs authorized under the Act. Revisions to the regulations were sorely needed and long overdue, as implementation guidance has been lacking and compliance with ICWA has been highly inconsistent since passage of the Act. Moreover, these regulations were fashioned after consultation with tribal and child welfare stakeholders, who stressed the need for binding procedures to ensure uniform compliance with ICWA as originally intended by Congress. Absent these regulations with the force of law, state courts have largely ignored, misapplied, and misinterpreted ICWA's mandates.

These regulations will serve the best interests of the Indian child and promote uniform implementation of ICWA by: 1) ensuring early, permanent placements by mandating early agency and state court compliance in all child custody proceedings involving an Indian child, 2) providing clear steps and definitions to meet the procedural requirements of ICWA, 3) defining "active efforts" agencies and state courts must employ to prevent the breakup of the Indian family, and 4) mandating the end of emergency removal placements the moment the emergency has ended. NCAI fully supports these much-needed regulations and has provided comments stressing the need for early, uniform implementation.

Lastly, the Department of Interior also anticipates issuing updated guidelines setting its best standards and practices prior to the effective date of this rule.

Child Care and Development Block Grant Act of 2014 Implementation. In the last session of Congress, S. 1086, the Child Care and Development Block Grant Act of 2014 (CCDBG) was enacted and signed into law on November 19, 2014. This law is now being implemented by the Administration for Children and Families within the Department of Health & Human Services.

Several provisions within this bill have a direct impact on tribes including: a tribal set-aside of not less than 2 percent (prior law said "up to" 2 percent); a requirement for state training and professional development to be accessible to Tribal Child Care and Development Fund provides and appropriate for Native Children; State Lead Agencies must demonstrate in their Plan how they are encouraging partnerships with tribes and tribal organizations; and at the option of tribes, States must coordinate with Tribes in the development of the State Plan.

Attorney General's National Task Force on Children Exposed to Violence. In November 2014, the Attorney General's Advisory Committee on American Indian/Alaska Native Children Exposed to Violence issued a report entitled, "Ending Violence so Children Can Thrive." The report was compiled following a

number of hearings and listening sessions conducted throughout Indian Country, and presents the Advisory Committee's policy recommendations that are intended to serve as a blueprint for preventing American Indian and Alaska Native children's exposure to violence and for mitigating the negative effects experienced by those Native youth exposed to violence.

The recommendations fall within five main areas: (1) Building a Strong Foundation; (2) Promoting Well-Being for American Indian and Alaska Native Children in the Home; (3) Promoting Well-Being for American Indian and Alaska Native children in the Community; (4) Creating a Juvenile Justice System that Focuses on Prevention, Treatment and Healing; and (5) Empowering Alaska Tribes.

NCAI urges the Administration and Congress to take prompt action based on the findings and recommendations in this report and to implement policies that will provide greater safety and security for Native Children.

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### **CULTURAL PROTECTIONS**

The protection of Native cultures spans across complex statutory and regulatory aspects of the federal government. Success in navigating these complex structures has resulted in the repatriation of cultural items, guidance regarding tribal member possession of eagle feathers, and increased access to sacred places for religious and spiritual practices. NCAI continues to prioritize its advocacy and education efforts to protect the religious freedoms of Native peoples while supporting cultural preservation efforts.

#### **Legislative Update**

*NCAI supports introduction of the Safeguard Tribal Objects of Patrimony Act of 2016 (STOP Act), S. 3127.* On July 6, 2016, Senator Heinrich (D-NM) introduced S. 3127, which was cosponsored by Senator Udall (D-NM) and Senator Flake (R-AZ) and referred to the Senate Committee on Indian Affairs for consideration. Over the past few years the sale of tribal cultural and sacred items in foreign auction houses have increased awareness on this issue, and many tribes have approached Congress urging that legislation be enacted to strengthen federal laws to protect these items. Specifically, the STOP Act is meant to strengthen federal laws to protect tribal sacred and cultural items by enacting the following:

- Increased prison sentences for individuals knowingly selling or purchasing Native American human remains and cultural items;
- Codifying explicit prohibitions on the transportation and exportation of tribal cultural items and archaeological resources;
- Provision of limited immunity for individuals that voluntarily repatriate Native American cultural items back to their respective tribes; and
- Mandating the federal government to conduct studies on the theft and illegal trafficking of these items as well as providing recommendations on how federal agencies can halt these activities.

On July 6 NCAI also participated in a Press Conference, alongside Senator Heinrich and tribal leaders, to voice our support for the STOP Act and continue to raise awareness on this important issue. NCAI will continue to support S. 3127, and work with Congress to codify vital changes to existing federal laws that will strengthen the ability of tribal nations to protect items of sacred and cultural patrimony.



NCAI opposes Senate Amendment to block designation of Bears Ears as a National Monument. On March 14, 2016 NCAI sent a letter to Senate Majority Leader Mitch McConnell and Minority Leader Harry Reid stating our opposition to Senate Amendment 3447 to S. 2012, the *Energy policy Modernization Act of 2015*. Senate Amendment 3447 to S. 2012 was filed on March 7, 2016 by Senator Mike Lee (R-UT) to block the President's authority to designate the Bears Ears area in southeastern Utah as a National Monument. The Bears Ears area contains over 100,000 archaeological sites and holds sacred, cultural, and ceremonial significance to tribes in the region including the Hopi, Navajo, Ute Mountain Ute, Zuni and Uintah and Ouray Ute tribes. The aforementioned tribes have also formed the Bears Ears Inter-Tribal Coalition to protect and preserve this location and have been working with the Administration to get the Bears Ears designated as a National Monument to conserve and protect the area. NCAI will continue to monitor and oppose Congressional attempts to limit the President's authority to designate areas as National Monuments when those areas include tribal sacred places.

NCAI requests the renaming of "Devils Tower" to the "Bear Lodge National Monument". On March 15, 2016, NCAI sent a letter to Chairman Bill Cassidy and Ranking Member Martin Heinrich of the Senate Subcommittee on National Parks stating our opposition to S. 2039, *A bill to designate the mountain at Devils Tower National Monument, Wyoming, as Devils Tower and for other purposes*. Throughout history many areas of tribal cultural, religious, and historical importance received different name designations by early non-tribal settlers and the federal government. These names either attempted to reflect the English translations of tribal designations, or entirely replaced them with an unrelated non-tribal description. However, in the case of "Devils Tower" early documented evidence has shown this area labeled as "Bear Lodge" by early settlers, commissioned cartographers, and the U.S. military. The Bear Lodge area also holds immense sacred, religious, and cultural importance to tribes in the region, which has been thoroughly documented by the National Park Service. NCAI's letter referenced Resolution #SD-15-001, "In Support of the Name Bear Lodge National Monument (Currently 'Devils Tower')", which was adopted at NCAI's 2015 Annual Convention in San Diego, CA. NCAI will continue to advocate for the change of "Devils Tower" to the more culturally appropriate "Bear Lodge National Monument".

NCAI supports introduction H. Con. Res. 122, the PROTECT Patrimony Resolution. On March 3, 2016, NCAI supported the introduction of House Concurrent Resolution 122, the *Protection of the Right of Tribes to Stop the Export of Cultural and Traditional Patrimony Resolution (PROTECT Patrimony Resolution)*. In response to major media coverage of Native sacred, cultural, and religious items being sold in auction houses abroad, Congressman Stevan Pearce (R-NM-2) introduced the *PROTECT Patrimony Resolution* to condemn the theft, illegal possession, or sale, transfer, and export of tribal cultural items. The Resolution also calls upon the Secretaries of the Department of the Interior, Department of State, Department of Commerce, Department of Homeland Security, and the Attorney General to consult with tribes and spiritual religious leaders regarding this issue and to stop these illegal practices and repatriate items to tribes. The Resolution also requests the Comptroller General to conduct a study to determine the scope of illegal trafficking on Native cultural items domestically and abroad. NCAI will continue to work with Congress and the Administration to raise awareness on this issue and advance policies that support the repatriation of these cultural and religious items to tribes.

## **Administrative Update**

Adidas Announces Support to Retire "Indian" Themed Mascots, Logos, and Names. During the 2015 White House Tribal Nations Conference executives from major sports apparel company Adidas announced the launch of an initiative to provide financial support and design resources to any US High School looking to transition away from the use of stereotypical "Indian" themed mascots, names, and logos. Since

announcing the initiative it has been reported that nearly 100 schools have reached out to the company to begin discussions and plans for retiring these derogatory and stereotypical depictions of Native peoples. Adidas is the first major multinational corporation to take a public stance against the continued use of these stereotypical mascots while also offering full financial support to assist schools in retiring these outdated representations.

Protect the Badger-Two Medicine. On March 23, 2015, NCAI sent a letter to Secretary Sally Jewell of the Department of the Interior calling for the cancellation of oil and gas leases in the Badger-Two Medicine area. The Badger-Two Medicine area is located between Glacier National Park and the Great Bear and Bob Marshall Wilderness areas. This place contains sensitive plant and wild life and holds immense cultural and religious significance to the Blackfeet people. In 1982, absent tribal consultation and a thorough review of environmental and cultural studies, the U.S Forest Service granted 47 oil and gas permit leases in and around the Badger-Two Medicine area. For over two decades the Blackfeet Tribe of Montana and many non-Native conservation and historical preservation groups have sought the cancellation of these permit leases.

On September 21, 2015, the Advisory Council on Historic Preservation (ACHP) submitted comments and recommendations to Secretary Vilsack of the Department of Agriculture and Secretary Jewell of the Department of the Interior recommending the cancellation of oil and gas leases in and around the Badger-Two Medicine area. ACHP's recommendations were made on the grounds that the Badger-Two Medicine site is recognized as a Tribal Cultural District (TCD) and that proposed gas explorations and developments would irreparably harm the area. ACHP also recognized that proposed mitigation measures would be insufficient in resolving any adverse effects to the TCD.

In October 2015, a federal judge ruled that the Department of the Interior (DOI) must make a ruling on whether to lift suspensions on the oil and gas lease permits, or cancel them, and in November 2015, DOI announced it would move to cancel the leases by December 2015. However, as of February 2016, the oil and gas lease permits have not been cancelled by DOI yet. NCAI will continue to work with DOI to advocate for an expedited cancellation of these permits based on the long record of evidence and recommendations calling for such actions.

Protection of Tribal Sacred Places Through Presidential Declarations as National Monuments. The 1906 Antiquities Act allows the President to act in the national interest to designate National Monuments to protect areas that have cultural, historical, and environmental significance. Tribes have sought designations of certain areas, including sacred places, as National Monuments to provide such areas protections from development or otherwise invasive disturbance. There are currently a number of areas—that hold significant tribal cultural and religious significance—being considered for designation as National Monuments. For instance, NCAI last year worked with the Bears Ears Inter-Tribal Coalition and non-Native conservancy organizations to request it be proclaimed as a National Monument by the President. The Bears Ears area holds cultural and religious significance to the Hopi, Navajo, Ute Mountain Ute, Zuni, and Uintah and Ouray Ute Tribes of the southwest. NCAI will continue to work on behalf of tribes to request these Presidential proclamations to increase federal protections for these areas holding cultural and religious importance.

United Nations Ad Hoc International Repatriation Working Group. On January 21, 2016, NCAI participated in a meeting hosted by the International Indian Treaty Council and the U.S. Mission to the United Nations. The purpose of the meeting was to discuss recommendations and proposals to direct the State

Department and the Department of the Interior to provide assistance to tribes to repatriate sacred items and remains held in museums and other institutions abroad. NCAI became a member of an Ad Hoc International Repatriation Working Group and is committed to working with the group's member tribes and tribal organizations in developing recommendations and assisting in the facilitation of communication and input from tribes across the country.

*For additional information please contact Brian Howard, Legislative Associate, at 202.466.7767 or [bhoward@ncai.org](mailto:bhoward@ncai.org).*

### **NATIVE AMERICAN ELDERS**

In tribal communities, elders are held in the highest regard due to their traditional status as “wisdom-keepers” and are deserving of honor and respect. However, American Indian and Alaska Native elders are at a growing risk of financial exploitation, neglect, and abuse. In fact, it is these same elders in Indian Country that comprise the most economically disadvantaged elderly minority in the nation.

The number of American Indian and Alaska Native Elders 65 and older is expected to double by 2030. As the elder population continues to grow, so too does abuse and maltreatment of those who require care.

A 2004 profile on American Indians and crime prepared by the Bureau of Justice Statistics (BJS), and the U.S. Department of Justice (DOJ), reported that among persons in the 55 or older category, the American Indian violent crime rate was 22 per 1,000 versus the overall rate of 8 per 1,000.<sup>1</sup>

The Older Americans Act (OAA) is the major federal statute that authorizes social and nutritional services to elders. These supportive services include congregate and home-delivered nutrition services; community centers; community service employment; long-term care ombudsman programs; information and referral services; and services to prevent the abuse, neglect, and exploitation of the elderly population. The OAA specifically states “it is the purpose of this Title to promote the delivery of supportive services, including nutrition services, to American Indians, Alaska Natives [SIC], and Native Hawaiians that are comparable to services provided under Title III” (Grants for State and Community Programs on Aging).

Grants to tribes have a history of being insufficiently funded to meet existing needs. Due to inadequate funding to carry out the purpose of Title III, “comparable services” for Native elders have not been achieved. Tribal governments have little or no access to the same agencies, departments, ombudsman, or programs that are available to states. In addition, state programs seldom serve Native elders due to cultural and geographic barriers. Immediate action needs to be taken in order to remedy these disparities and ensure that Native elders are well taken care of.

In preparation for reauthorization of the Older Americans Act (OAA), the Administration on Aging (AoA) began an open process in 2010 to solicit input from throughout the country. More than 60 listening sessions were held and online input was received that represented the interests of thousands of consumers of OAA services. Input led to the creation of the targeted changes proposed by the Administration. The Administration has since provided information on program outcomes and the important role that the Act's services play in the lives of our elders.

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<sup>1</sup> U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. (2004). American Indians and crime: A BJS statistical report, 1992-2002. Retrieved February 14, 2015 from [http://www.justice.gov/otj/pdf/american\\_indians\\_and\\_crime.pdf](http://www.justice.gov/otj/pdf/american_indians_and_crime.pdf)

## **Legislative Update**

Reauthorization of the Older Americans Act. The new elders' reauthorization, the Older Americans Act Reauthorization Act of 2016, was signed into law by President Obama on April 19, 2016. The previous authorization, the Older Americans Act Amendments of 2006, expired in 2011. The new law, Public Law 114-144, amends the Older Americans Act of 1965 (OAA) to reauthorize programs through FY2019.

P.L. 114-144 puts in place strong protections against elder abuse by increasing existing abuse screenings and prevention efforts, strengthens the Long-Term Care Ombudsman Program, and improves coordination between federal, state and local, and tribal agencies and service providers. The law also enables national trainings for directors of Indian Programs, and preserves authorized funding levels through 2019.

## **Administrative Update**

White House Conference on Aging. The White House Conference on Aging occurred in July 2015 in light of the 50<sup>th</sup> anniversary of Medicare, Medicaid and the Older Americans Act and the 80<sup>th</sup> anniversary of Social Security. The White House Conference on Aging recognized the importance of these vital programs and encouraged increased support for caretakers, families and other stakeholders. The conference brought together agencies, organizations and resources, with remarks from President Obama, to promote and advance the steps being taken to improve the quality of life as Americans age. The Administration also announced the launching of its new website designed to offer government-wide information about helping older Americans live fulfilling and independent lives. The new website can be accessed at: <http://www.hhs.gov/aging>.

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## **NATIVE VETERANS**

President Barack Obama recently stated that American Indian and Alaska Natives (AI/AN) have bravely fought to protect the legacy of native peoples through serving as members of the armed forces. He also stated that they have shown exceptional valor and heroism on battlefields from the American Revolution to Iraq and Afghanistan. Native American service members are younger as a cohort than all other service members, serve at a higher rate than other ethnic groups, and have a higher concentration of female service members. It is unfortunate that despite their distinguished service, AI/AN veterans have lower incomes, lower educational attainment, and higher employment than veterans of other races. They also are more likely to lack health insurance, and to have a disability, service-connected or otherwise, than veterans of other races. NCAI endeavors to protect the rights of all veterans while emphasizing the circumstances of AI/AN veterans which creates disparate treatment through access to resources and programs for healthcare, housing, and employment.

## **Legislative Update**

Tribal Veterans Health Care Enhancement Act, S. 2417. S. 2417 was introduced by Senator Thune (R-SD) in December 2015. The legislation amends the Indian Health Care Improvement Act to require the IHS to cover the cost of copayment(s) for any American Indian or Alaska Native veteran that has been referred to or receives medical care or services from the Department of Veterans Affairs (VA), authorized under the Purchased/Referred Care program. The bill also requires the Director of the IHS and the Secretary of the VA to enter into an MOU for repayments, in consultation with tribes that will be impacted. The Director and Secretary are required to submit a report that describes 1) the number of veterans in each state who are IHS eligible and have received health care from the VA; and 2) the number of veterans in each state

who are IHS eligible and were referred to a VA health care facility in each year from 2010-2015. The report is to be submitted to the Senate Committees on Indian Affairs and Veterans Affairs and House Committees on Veterans Affairs and Natural Resources within 45 days of enactment.

S. 2417 passed out of the Senate Committee on Indian Affairs on June 8, 2016 and is now ready for consideration by the full Senate. To date, no companion legislation has been introduced in the House.

Expanding VA Nursing Home Grant Eligibility to Tribes. On March 13, 2015, Representative Ann Kirkpatrick (D-AZ) introduced H.R. 1127 to authorize the VA Secretary to make certain grants available to assist nursing homes for veterans located on tribal lands. The bill would amend the definition of “state homes” to include homes established by federal recognized Indian tribes for veterans who, by reason of disability, are incapable of earning a living. The bill would require the VA Secretary to pay those tribes for the hospital, nursing home, domiciliary, and medical care they provide to veterans in those homes. It also would make those tribes eligible for grants from the VA Secretary for the construction of state homes. The bill has been referred to the House Committee on Veterans’ Affairs – Subcommittee on Health. As of yet no hearing has been held on the bill.

### **Administrative Update**

U.S. Department of Veterans Affairs Tribal Consultations. The Department of Veterans Affairs (VA) will hold two tribal consultation sessions in 2016 pursuant to its Tribal Consultation Policy and the current shift in how VA is delivering benefits and services to Veterans. The consultations are an opportunity to comment on the top 3 to 5 priorities that tribes have for serving Native Veterans, and may contribute to the development of an Indian Country Veterans Affairs policy agenda. The policy agenda would inform tribal governments, VA, Congressional Members, and other entities that serve Veterans in the coming years. The first of the two consultations will take place in conjunction with NCAI’s Mid Year Conference on June 29th in Spokane, Washington. The second consultation will occur later this year upon confirmation of a date and time from VA.

Tribal Veterans Service Officers in Indian Country – Parity with State and County Veterans Service Officers. The VA declined has not published a Proposed Rule to authorize Tribal Veteran Service Officers in Indian Country. VA Secretary McDonald spoke to the NCAI National Council Winter Session in March, 2016, expressing support for tribal sovereignty and stating there would be forthcoming changes to Sect. 14.628(d) to provide for Tribal Veterans Service Officers. What was published in the Federal Register in April, 2016 as a proposed Notice of Tribal Consultation was a series of conditions counter to tribal sovereignty and the trust relationship between the federally recognized tribes and the federal government.

The proposed regulations first provided for recognition through state organizations. While some tribes in some states may choose to have a working relationship with state organizations, this is not true of all tribe. Tribes have expressed that even if they have a working relationship with state organizations they would prefer independent certification directly to the Dept. of Veterans Affairs. Unfortunately in many instances, tribes are left to the vagaries of state politics and prejudices. The proposed requirements clearly indicate an intent to "shoehorn" tribal veterans service offices into the structure and requirements of voluntary membership entities such as the national VSOs, which are more in the nature of voluntary membership clubs, not governmental entities. Nor was the reality of tribal financing recognized by the proposals - such as required accounting of funds used to fund TVSO offices and the sources of those funds. Sovereign nations are not required to account for any funds except those originating with the federal government.

The proposed rule also demonstrates an intent to require the tribal organization to demonstrate "The urgency of this situation", in which VA apparently is reluctant to provide for certification of tribal VSOs prior to the November shutdown of the rulemaking entity from which a Rule for certification must come, which will be a profound change in the Appeals structure within the Veterans Benefits Administration. Within the framework of the changes, there will be little, if any, remaining opportunity for effective use of the appeals system by Indian veterans in tribal communities lacking certified representation. Native veterans are sometimes reluctant to trust the VA and may have no choice but to communicate with non-Indian representatives who have little or no understanding of the cultural aspects of their claims. The NCAI is working to ensure VA provides the opportunity to ensure that examinations, assessments and the preparation of a claim, and most importantly, the advocacy of the claim on the behalf of the Indian veteran, is accomplished in a culturally competent manner.

*Deficient VA Tribal Consultation on HUD/VASH program*

The NCAI passed Resolution MSP-15-041 at the 2015 Mid-Year Conference last June requesting that the Housing and Urban Development/Veterans Affairs Supporting Housing (HUD/VASH) program delay implementing its Voucher Distribution Program as published in the Federal Register, until adequate consultation with tribal governments takes place. The HUD/VASH program combines Housing Choice Voucher rental assistance for homeless veterans with case management and clinical services provide by VA. VA provides these services for participating veterans at VA medical centers and community-based outreach clinics. Tribal officials stressed that federal officials failed to send a critical letter to tribes about submitting data bases about housing needs, per capita of veterans, homeless veterans and other information for distribution formula purposes was never sent.

*Indian Health Service/Veterans Administration – Memorandum of Understanding.* Native veterans have become a casualty of bureaucratic red tape between federal agencies. In 2010 the Indian Healthcare Improvement Act was permanently reauthorized as Title X under the Affordable Care Act. Included in Title X was a provision mandating the Department of Veterans Affairs to reimburse tribes, the IHS, and tribal organizations for services provided to veterans.

A memorandum of understanding has since been established between the VA and the Indian Health Services to aid this provision. However, the Veterans Administration is only reimbursing tribes that agree to enter into a model agreement that the VA has developed, and the VA does not allow for reimbursement of purchased/referred care provide through tribal health programs to veterans, limiting reimbursement to only direct service care.

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### **VOTING RIGHTS AMENDMENT ACT**

Native Americans were the last to obtain the right to vote in the United States, and Native voters continue to face persistent barriers in exercising that right. Some jurisdictions continue to implement schemes that impair the ability of Native people to fully participate in the electoral process. Native voters often live far from established polling places and voter registration sites in remote, isolated areas, with high rates of poverty, and in some areas, limited English proficiency. As a result, turnout in the 2012 elections among American Indians and Alaska Natives nationwide was 17 percentage points below that of other racial and ethnic groups.<sup>3</sup>

Section 5 of the Voting Rights Act was an important mechanism for protecting Native voters. Some areas with very large Native populations were covered under Section 5's preclearance procedures, which required the Department of Justice to approve changes in voting procedures before they were implemented by these jurisdictions. Since the Supreme Court's *Shelby County* decision, states and localities have pushed forward potentially discriminatory changes to voting including the elimination of in-person voting for the residents of more than a dozen Native villages in Alaska, many of whom are Native language speakers. Stricter voter ID laws, the moving and elimination of polling places, and diminished access to voter registration opportunities have further burdened Native Americans' right to vote since the *Shelby County* decision.

American Indian and Alaska Native stakeholders from across the country have identified five issues frequently encountered by Native voters that should be addressed by Congress:

- *Access to the Polls:* The most common and serious concern consistently raised by Native voters is distance to polling locations. Some Alaska Native Villages, for example, are assigned to polling places that are a 150-mile roundtrip and accessible only by plane or boat. Similarly, compared to other voters, many Native people have less access to early voting and voter registration opportunities.
- *Voter ID Laws:* For many Native people, their only identification document is issued by their tribe. However, state laws vary on whether these are acceptable forms of identification for voting. States should not be permitted to discriminate against tribal documents in their voter ID laws.
- *Voter intimidation:* Every election cycle there are reports of Native voters being harassed or intimidated at the polls. Tribal communities should have the ability to secure federal election monitors when they have reason to believe that harassment or discrimination may occur.
- *Language access:* Many Native voters, particularly elders, speak their indigenous language and require language assistance to vote. The Voting Rights Act provides that voting materials shall be provided in the language of the applicable language minority group as well as in the English language. However, some jurisdictions interpret the VRA to deny language assistance to Native voters even when a written form of the applicable Native language currently exists.
- *Voting Rights Consultation and Enforcement:* Because of isolation and a historic lack of access to legal services, there has been less litigation to enforce the Voting Rights Act in Indian Country than in other places. Litigation is very costly and time-consuming and Indian Country needs protections that do not rely on lawsuits brought by disenfranchised voters with few resources. The Department of Justice is well-positioned to use its resources to help ensure enforcement of the



Voting Rights Act in Indian Country and should be required to consult with Indian tribes on a government-to-government basis to gather information about voting issues experienced by Native voters.

### **Legislative Update**

The Department of Justice held a consultation with American Indian/Alaska Native leaders last year to discuss the possibility of proposing federal legislation addressing the obstacles facing Native voters. In May of 2015, the Department of Justice sent proposed legislation to Congress that would allow tribal governments to select sites for polling places on tribal lands in order to ensure equal access to polling places for Native voters.

NCAI has worked with Congress to develop legislation that addresses these issues. S. 1912, the Native American Voting Rights Act, was introduced by Senator Tester and focuses on improving access to voting for Native Americans. S. 1659/H.R. 2867, the bi-partisan Voting Rights Advancement Act, addresses voting rights for all Americans and includes several important provisions addressing issues in tribal communities.

*For additional information please contact Julian Nava, Staff Attorney, at 202.466.7767 or [jnava@ncai.org](mailto:jnava@ncai.org).*

### **SELF-GOVERNANCE**

Self-Governance enables tribes, as sovereign nations, to exercise their right to be self-governing and to take program funds and manage them in ways that best fit the needs of their citizens and tribal communities. It places the federal government's Indian Country programs firmly in the hands of the people who are served by them, enhancing and empowering tribal governments and their institutions, all while reducing the federal bureaucracy. As a tribally-driven initiative created through Congressional legislation, it allows tribal governments to negotiate annual appropriated funding and to assume management and control of programs, services, functions, and activities—or portions thereof—that were previously managed by the federal government.

As of 2015, there are 254 Self-Governance tribes within the Department of the Interior-Bureau of Indian Affairs (DOI-BIA) and 341 Self-Governance Tribes within the Department of Health and Human Services-Indian Health Service (DHHS-IHS). Over the past 35 years, the ISDEAA has been one of the most successful mechanisms empowering tribes to develop the capacity for government-building activities. Self-Governance tribal leadership and representatives have held ongoing meetings with the Administration and Congress for more than 25 years regarding ways to improve and advance tribal self-governance. Amending Title IV of the Indian Self-Determination and Education Assistance Act (ISDEAA) has been a top legislative priority for Self-Governance tribes for more than a decade. However, Title IV of the ISDEAA, the Self-Governance program within DOI, has serious gaps and problems. Therefore, leaders of Self-Governance tribes continue to advance the vision of the ISDEAA by working to amend Title IV of the ISDEAA to create consistency and administrative efficiency for Self-Governance tribes between Title IV Self-Governance in the DOI and Title V Self-Governance in the DHHS.

## **Legislative Update**

*S. 286 – Department of the Interior Tribal Self-Governance Act of 2015.* On January 28, 2015, Senators Barrasso (R-WY) and Tester (D-MT) the Chair and Vice-Chair of the Senate Committee on Indian Affairs (SCIA) introduced S. 286 – the Department of the Interior Tribal Self-Governance Act of 2015. S. 286. This legislation would amend Title IV of the Indian Self-Determination and Education Assistance Act to create consistency between self-governance programs in the Department of the Interior and the Department of Health and Human Services. This legislation has been introduced and considered in the past several Congresses and has wide-spread support among tribes.

In February of 2015, S. 286 was favorably reported out of Committee and passed the full Senate on in July or 2015. After Senate passage, the Association of Fish and Wildlife Agencies (AFWA) raised concerns about the bill with Senate and House Members and staff. Their primary concerns relate to the bill's purported impact on non-BIA programs. The Title IV Tribal Task Force is working to address AFWA's concerns with the goal of passing the Senate version of the legislation in the House of Representatives.

NCAI will continue to support passage of S. 286 in this session of Congress.

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## TRIBAL INFRASTRUCTURE

### **NATIVE AMERICAN HOUSING**

Housing remains a priority for Indian tribes. Housing overcrowding and shortages are challenges that persist in tribal communities. Statistics illustrate the increasing need for housing in Indian Country. According to the U.S. Census Bureau 2006-2010 American Community Survey there are an approximate 142,000 housing units in Indian Country, and those homes frequently lack utilities and basic infrastructure. The survey shows that approximately 8.6% lack complete plumbing facilities, 7.5% lack kitchen facilities, and 18.9% lack telephone service. Close to 30% of Indian homes rely on wood for their source of heat. These staggering statistics represent longstanding challenges facing Indian tribes, and without sufficient funding investments and proper government-to-government consultation to address these challenges.

The Native American Housing and Self-Determination Act (NAHASDA) authorized Indian tribal programs authorized Indian tribal governments to develop, construct and maintain housing for members. Tribal programs under NAHASDA have been successful in allowing tribes the self-determination necessary to provide effective programs for tribal citizens. NAHASDA effectively replaced the various Indian housing programs under the 1937 Housing Act and consolidated federal housing funds through direct block grants to the tribes and their housing authorities. Tribes are now exercising their right of self-determination to design and implement their own housing and other community development infrastructure programs. NAHASDA has resulted in tens of thousands more housing units being constructed as well as increased tribal capacity to address related infrastructure and economic development challenges. Since the enactment of NAHASDA in 1996, tribal housing programs have been making great strides for housing and community development by using sustainable building practices and leveraging their NAHASDA and other federal funding. Currently there are approximately 500 Tribally Designated Housing Entities in Indian Country.

#### **Legislative Update**

Reauthorization of NAHASDA. The current authorization of the Native American Housing Assistance and Self-Determination Act of 1996 expired September 30, 2013, which is over three years. In the First Session of the 114<sup>th</sup> Congress, the U.S. House of Representatives passed H.R. 360, Native American Housing Assistance and Self-Determination Act of 2015, and was referred to the Senate. In June 2015, the Senate Committee on Indian Affairs approved S. 710, Native American Housing Assistance and Self-Determination Reauthorization Act of 2015, however NAHASDA of 2015. The inclusion of the reauthorization of Native Hawaiians Housing programs, this has caused political challenges against S. 710 and prevents the Senate from taking full consideration. There is uncertainty if S. 710 will be gain passage through the Senate this Second Session of the 114<sup>th</sup> Congress because of the issues regarding Native Hawaiians issue. NCAI continues to urge Congress to reauthorize NAHASDA.

#### **Administration Update**

Indian Housing Block Grant Program Allocation Formula. On May 31<sup>st</sup>, HUD published a proposed rule to revise the Indian Housing Block Grant (IHBG) Program allocation formula authorized by section 302 of NAHASDA. For the past two years, the Negotiated Rulemaking Committee have been negotiating on a proposed rule. The proposed regulatory changes are the result of consensus decisions reached by HUD and the tribal representatives who served on the Negotiated Rulemaking Committee on the current regulations regarding the IHBG Program formula. The deadline to submit comment is due August 1, 2016.

Deputy Assistant Secretary of the Office of Native American Programs. Last month, HUD announced the selection of Heidi J. Frechette as Deputy Assistant Secretary of the Office of Native American Programs (ONAP).

For additional information, please contact Gwen Salt, Legislative Associate at 202-466-7767 or [gsalt@ncai.org](mailto:gsalt@ncai.org).

### **TRIBAL TRANSPORTATION**

Surface transportation in Indian Country involves thousands of miles of roads, bridges, and highways. According to the latest National Tribal Transportation Facility Inventory (NTTFI), there are approximately 160,000 miles of roads and trails in Indian Country owned and maintained by tribes, the Bureau of Indian Affairs (BIA), states and counties. Of those, Indian tribes own and maintain 13,650 miles of roads and trails, of which only 1,000 (or 7.3 percent) are paved, with another 12,650 miles consisting of gravel, earth, or primitive materials. Of the 29,400 miles owned and maintained by the Bureau of Indian Affairs, 75 percent of them are graveled, earth, or primitive. When combined, the roads owned and maintained by Indian tribes and the BIA are among the most underdeveloped and unsafe road networks in the nation, even though they are the primary means of access to American Indian and Alaska Native communities by Native and non-Native residents and visitors alike.

At the end of last year, a new transportation authorization Fixing America’s Surface Transportation Act, or “FAST Act”, was signed into law. The FAST Act authorized transportation programs for Indian tribal governments by authorizing the Tribal Transportation Program (TTP): Tribal Transit Program administered by the Federal Transit Administration; establishes a tribal self-governance with the U.S. Department of Transportation; and addresses the safety for tribal transportation.

FAST Act authorized the following tribal specific provisions: Increased funding authorization for the Tribal Transportation Program at \$465 million for FY 2016; \$475 million for FY 2017; \$485 million for FY 2018; \$495 million for FY 2019; and \$505 million for FY 2020. It expands tribal self-governance throughout the U.S. Department of Transportation. The funding authorization for the Tribal Transit program was increased from \$30 million to \$35 million per year (with \$30 million for the formula component of the Tribal Transit Program and \$5 million for the discretionary competitive transit grant program. Provides a new grant program for “Nationally Significant” Federal lands and Tribal Transportation project, in which tribes are eligible to apply. In addition, it decreases the administrative cost of BIA and FHWA from 6% to 5%. FAST Act includes a Tribal Data Collection, which requires tribes who receive Tribal Transportation Program to report description of projects, current status of projects, and jobs created. One of many challenges facing tribes is the high vehicle accident and fatality rates, so the FAST Act stipulates: Tribal Safety Data which directs the Secretary of the DOT to report to Congress, after consulting with the Secretary of the Interior, the Secretary of DHHS, the Attorney General and Indian tribes, describing the quality of transportation safety data collected by States, counties, and tribes for transportation safety systems to improve the collection and sharing of data regarding crashes on Indian reservations; and requires the Secretary of DOT, after consultation with the Secretary of the Interior, the AG, States and Indian tribes, to provide a report to Congress within two years of enactment of the FAST Act that identifies and evaluates options to improve safety on public roads on Indian reservations.

#### **Administrative Update**

Tribal Transportation Self-Governance Negotiated Rule Committee. The enactment of the FAST Act included the expansion of tribal self-governance throughout the U.S. Department of Transportation. In April the Department published a notice seeking nominations to serve on the Tribal Transportation Self-Governance Negotiated Rule Committee, the deadline to submit nominations was June 9<sup>th</sup>.

FAST Act. NCAI continues to monitor and provide updates to tribes regarding the implementation of the FAST Act by the Department of Transportation and the Bureau of Indian Affairs.

Tribal Interior Budget Council BIA Road Maintenance Subcommittee. Although the majority of tribal transportation programs are authorized and funded through the Department of Transportation, the Bureau of Indian Affairs (BIA) Road Maintenance program within the Department of Interior is critical to BIA owned roads and facilities. The BIA is responsible for maintaining approximately 29,400 miles of roads in Indian Country including 900 bridges. However funding for the BIA Road Maintenance has remained stagnant at approximately \$24 million for several appropriations cycles, while deferred maintenance has risen to over \$289 million for FY 2015. The condition of these roads is increasingly concerning for tribal members and members of surrounding communities. The lack of sufficient infrastructure also hampers economic development opportunities for tribes. To assist in address this deferred maintenance of BIA Road Maintenance issue the Tribal Interior Budget Council (TBIC) has formed a BIA Road Maintenance Subcommittee, the Subcommittee will hold its first meeting on July 11<sup>th</sup> - 12<sup>th</sup> before TBIC's next meeting next month in Rapid City, SD.

*For additional information, please contact Gwen Salt, Legislative Associate at 202-466-7767 or [gsalt@ncai.org](mailto:gsalt@ncai.org).*

### **TRIBAL TELECOMMUNICATIONS**

The U.S. continues to be a global leader in the technology and wireless industries. However, access to telecommunications infrastructure and services in rural and tribal lands continues to lag behind the nation overall. The Federal Communications Commission's (FCC) *2016 Broadband Progress Report* found that 41 percent of residents on tribal lands, with 68 percent of residents on rural tribal lands, lack access to high-speed Internet services. There are still significant barriers to tribal lands receiving this vital infrastructure and residents accessing it at affordable rates.

The primary law governing our telecommunications sector is the 1934 Communications Act, which was last amended in 1996 due to rapid advances in wireless and cable technologies. While the recognition of tribal sovereignty and requirements for tribal consultation were excluded from the original Act—and subsequent amendments in the 1996 Telecommunications Act—the Federal Communications Commission has exercised administrative flexibility to ensure tribal matters are addressed in its rulemakings. The 1996 amendments created six universal service principles to meet the goals of providing affordable and quality telecom services across the country.

To meet these mandated goals, the 1996 Telecommunications Act created the Universal Service Fund (USF) to provide financial subsidies and offset costs for the deployment of telecommunications services, especially in rural areas and for low-income individuals. The USF is comprised of four programs—the Connect America Fund (formerly the High Cost Program); the low-income (Lifeline/Link-Up) program; the Schools & Libraries (E-rate) program; and the Rural Health Care Program. The USF is not funded through the collection of taxes but instead through service fees collected from wireline and wireless phone companies and voice over Internet protocol (VoIP) providers. While the Federal Communications Commission regulates the telecom industry and manages the USF, the USDA Rural Utilities Service predominantly funds deployment of the nation's telecommunications infrastructure.

## Legislative Update

Senate Committee on Indian Affairs Hearing on, “The GAO Report on, ‘Telecommunications: Additional Coordination and Performance Measurement Needed for High-Speed Internet Access Programs on Tribal Lands’”. On March 16, 2016 the Senate Committee on Indian Affairs held an oversight hearing on a Government Accountability Office (GAO) report released in February that affirmed several economic, geographic, and administrative barriers to broadband deployment and adoption on tribal lands. Twenty-one tribes, six Internet service providers, and five other groups—including NCAI—were interviewed for the report. Interviewed tribes noted the importance of high-speed Internet for economic development, education, and healthcare. However, despite the benefits of service a number of barriers including rugged and remote terrain, high poverty rates, and a lack of technical expertise were barriers to infrastructure deployment and broadband adoption on tribal lands. GAO noted other issues such as high costs—both for infrastructure deployment and service affordability for consumers on tribal lands—and low population densities on rural tribal lands as additional barriers to broadband availability. While the report noted that the 21 tribes interviewed all had some level of Internet service at varying speeds on their lands, there were documented limitations in 4G high-speed mobile broadband services. Furthermore, half of the interviewed tribes noted other Internet issues such as small data allocations, slow download speeds, and unreliable connections.

On May 11, 2016, NCAI submitted Testimony for the Record on the Oversight Hearing. Specifically, NCAI’s testimony referenced numerous issues with data collection, across multiple federal agencies, on broadband availability on tribal lands. Additionally, NCAI recommended that Congress should elevate the Federal Communications Commission, Office of Native Affairs and Policy as a stand-alone office with a permanent, dedicated annual budget; urge the FCC to adopt of a Tribal Broadband Factor in the High Cost Fund to support deployment to tribal lands; enact legislation to grant tribes the authority to designate their own library facilities to be eligible for E-rate funding; increase access to spectrum licenses for tribes; establish a stand-alone broadband fund; and establish a tribal seat on the Federal-State Joint Board on Universal Service. To view NCAI’s full testimony, please visit: <http://bit.ly/1V24JKE>.

## Administrative Update

Federal Communications Commission considers establishment of a Tribal Broadband Factor in the High Cost Fund. On March, 23, 2016 the FCC adopted a Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking to modernize Universal Service Fund, High Cost Fund disbursements for Rate-of-Return (RoR) carriers. Included among the proposed reforms to the High Cost Fund was a proposal advanced by the National Tribal Telecommunications Association (NTTA) to create a Tribal Broadband Factor within the High Cost Fund. This Tribal Broadband Factor was developed to provide reliable and ongoing funds for RoR carriers to purchase and maintain new equipment needed to build phone and Internet services on tribal lands. NTTA has been pushing for this proposal for the past two years after proposed, and adopted, RoR reforms threatened needed subsidies for capital and operating expenses of the tribal telecommunications providers. The FCC’s prescription not only threatened the financial operations and capabilities of the tribal telcos, but analyses showed that many non-tribal RoR carriers would see reductions in USF support for tribal lands they served.

On June 8, 2016, NCAI submitted Reply Comments in support of comments filed by NTTA, Gila River Telecommunications, Inc., and Sacred Wind Communications, Inc. requesting that the Commission adopt a Tribal Broadband Factor with tribal and non-tribal carriers having the option to voluntarily receive the increased funding if they meet certain build-out and certification requirements. This would ensure that Rate-of-Return telecommunications companies receiving High Cost funds through the Tribal



Broadband Factor are held accountable for broadband Internet deployment and maintenance on tribal lands.

Additionally, NCAI also requested that the FCC waive or adjust limits on permitted operating expenses (opex) recoverable under the Tribal Broadband Factor—this would ensure that carriers have adequate opex funds to meaningfully engage with tribal governments to deploy services on tribal lands as well as working through multiple tribal and federal regulatory structures. To view NCAI’s Reply Comments, please visit: <http://bit.ly/1XZGzaP>.

*For additional information, please contact Brian Howard, Legislative Associate, at 202-466-7767 or [bhoward@ncai.org](mailto:bhoward@ncai.org).*



## APPROPRIATIONS

Despite the lack of a budget resolution in either the House or Senate, both chambers have begun passing spending bills. The statuses of various fiscal year (FY) 2017 appropriations bills are included in the chart below.

Bill	House			Senate			Conf.	President
	Subcom.	Comm.	Passage	Subcom.	Comm.	Passage		
<b>Agriculture</b> HR 5054 S 2956	13-Apr voice vote	19-Apr voice vote		17-May voice vote	19-May roll call 30-0			
<b>CJS</b> HR 5393 S 2837	18-May voice vote	24-May voice vote		19-Apr voice vote	21-Apr roll call 30-0			
<b>Energy-Water</b> HR 5055 S 2804	13-Apr voice vote	19-Apr voice Vote	26-May roll call 112-305	13-Apr voice vote	14-Apr roll call 30-0	12-May roll call 90-8		
<b>Interior-Env.</b> House draft S 3068	25-May voice vote	15-Jun roll call 31- 18		14-Jun voice vote	16-Jun roll call 16-14			
<b>Labor-HHS-Ed.</b> House draft S 3040				7-Jun voice vote	9-Jun roll call 29-1			
<b>T-HUD</b> HR 5394 S 2844	18-May voice vote	24-May voice vote		19-Apr voice vote	21-Apr roll call 30-0	19-May roll call 89-8		

CJS refers to the Commerce, Justice, Science appropriations bill.

### Interior-Environment

The House and Senate appropriations committees have approved their respective versions of the Interior Appropriations bill. The House version provides a 2.6% increase over the FY 16 enacted level for Bureau of Indian Affairs/Bureau of Indian Education (BIA/BIE) and the Senate version would provide a 2.1% increase. The Indian Health Service (IHS) budget would receive a 5.6% increase over the FY 16 enacted level in the House bill and a 3.9% increase in the Senate version. The House Appropriations Committee approved its FY 2017 draft spending bill on June 15, 2016 and the Senate Appropriations committee approved its version on June 16. Once the versions of the Interior appropriations bills pass each chamber, the House and Senate must resolve the differences between their versions of the bill prior to sending it to the President.

	FY 2016 Enacted	FY 2017 Request	House Bill	House vs. Enacted	Senate Bill	Senate vs. Enacted
Total BIA and BIE	2,796,120	2,933,715	2,868,434	72,314	2,854,579	58,459
% Δ from FY16 Enacted		4.9%	2.6%		2.1%	
Total IHS	4,807,589	5,185,015	5,078,636	271,047	4,993,778	186,189
% Δ from FY16 Enacted		7.9%	5.6%		3.9%	

The increase for the BIA/BIE in the house version is the largest among the Department of Interior bureaus funded in the bill. The subcommittee reports the increases will be for schools, law enforcement, road maintenance, and economic development. The Senate version would provide \$2.85 billion for the BIA and BIE, an increase of \$58 million above the FY2016 enacted level. Increases would support public safety and justice, human services, and resource management programs.

The House bill includes a tribal recognition rider: “SEC. 125. None of the funds made available by this or any other Act may be used by the Secretary of the Interior to implement, administer, or enforce the final rule entitled “Federal Acknowledgment of American Indian Tribes” published by the Department of the Interior in the Federal Register on July 1, 2015 (80 Fed. Reg. 37862 et seq.)”

Road Maintenance would receive a \$3.2 million increase above the budget request for a total of \$30 million in the House bill. The House Committee Report recognized that only 16 percent of BIA-owned roads and only 67 percent of BIA-owned bridges are in fair condition or better. The House report noted concerns about the BIA’s substantial road maintenance backlog. The Senate version would provide an increase of \$3.6 million for road maintenance. The Senate committee report noted concern about the future funding of the Road Maintenance account and the backlog for deferred maintenance of roads in Indian Country.

The House version does not include the requested increases for the Nativeonestop.gov web portal citing the limited funding for core tribal government programs. The House Committee report encourages Indian Affairs to coordinate with the Grants.gov web portal, to share costs with other Federal agencies, and to reconsider the need to hire regional staff, before including the proposal in the fiscal year 2018 budget request.

Tiwahe: Both the House and Senate would provide increases for Social Services, Indian Child Welfare Act funding, and the Housing Improvement Program. The Senate draft bill includes \$159,161,000 for human services programs, an increase of \$12,157,000 above the enacted level. Program increases include \$7,164,000 for Social Services, \$3,305,000 for the Indian Child Welfare Act, and \$1,687,000 for the Housing Program in order to expand and continue the Tiwahe initiative. The Senate committee report recommends increasing funds for Tiwahe as a way to strengthen tribal communities in Indian country by leveraging programs and resources; the committee report however called for measuring program effectiveness as the initiative continues to grow. The Committee directs the Bureau to report back in 90 days of enactment of this act on the performance measures being used to monitor and track the initiative’s effectiveness in Indian country.

Public Safety and Justice: The Senate bill does not accept the proposed \$8,206,000 decrease for tribal justice support and restores this amount to ensure \$10,000,000 remains available to address the needs of Public Law 83–280 States. The Senate Committee Report noted concerns about the “tribal courts needs as identified in the Indian Law and Order Commission’s November 2013 report which notes Federal investment in tribal justice for Public Law 83–280 States has been more limited than elsewhere in Indian Country.” The Senate report directs BIA to work with Indian tribes to consider options that promote, sustain, design, or pilot tribal court systems for tribal communities subject to full or partial State jurisdiction under Public Law 83–280. This would include consultations with tribes on how this funding may result in a strategic plan identifying the funding and technical infrastructure needs for these States.

**Indian Health Service:** The Indian Health Service would be funded at \$5.1 billion, an increase of \$271 million above the FY 2016 enacted level. The IHS funding increase is the largest increase bill-wide. The increases include operating costs for staffing at new facilities, and increases for growth in contract support costs, medical inflation, and the aging population.

The Senate version would provide \$4.99 billion for the IHS, an increase of \$186 million above the FY2016 enacted level. Additional funds are focused on suicide prevention, domestic violence prevention,

and alcohol and substance abuse problems. Funds are also included for infrastructure improvements to health care facilities.

	<b>FY 2016 Enacted</b>	<b>FY 2017 Request</b>	<b>House Bill</b>	<b>House vs. Enacted</b>	<b>Senate Bill</b>	<b>Senate vs. Enacted</b>
Total IHS	4,807,589	5,185,015	5,078,636	271,047	4,993,778	186,189
% Δ from FY16 Enacted		7.9%	5.6%		3.9%	

The House Committee report directs the Government Accountability Office to report on the use of advance appropriations authority for healthcare programs across the Federal government, including problems encountered, any estimates of cost savings, and applications to the Indian Health Service.

The Senate bill fully funds the programmatic budget request for high priority programs designed to address some of the most difficult issues facing Indian Country such as suicide and alcohol and substance abuse. Increases above the enacted level in the services account include \$4 million for the Domestic Violence Prevention Program and \$16.8 million for the alcohol and substance abuse program to focus on tribal youth and incorporate more holistic healthcare models. The Senate version would fully fund the programmatic request for mental health programs of \$25 million, which includes \$3.6 million for the Zero Suicide Initiative and \$21.4 million for the Behavioral Health Integration Initiative.

**Transportation HUD**

The House version would provide \$655 million for Native American Housing Block Grants, which is \$5 million above the FY 2016 enacted level and \$45 million below the budget request.

(in thousands of dollars)	<b>FY 2016 Enacted</b>	<b>FY 2017 Request</b>	<b>House Bill</b>	<b>House vs. Enacted</b>	<b>Senate Bill</b>	<b>Senate vs. Enacted</b>
Native American Housing Block Grants	650,000	700,000	655,000	5,000	648,500	-1,500
Native Hawaiian Block Grant	----	500	---	-500	5,000	4,500
Indian Housing Loan Guarantee	7,500	5,500	5,500	-2,000	6,500	1,000
Indian CDBG	60,000	80,000	60,000	--	60,000	--

The House bill also provides \$3,500,000 for organizations representing Native American housing interests to provide training and technical assistance to Indian housing authorities and TDHEs. Of this amount, no less than \$2,000,000 is for a national organization as authorized under NAHASDA. Bill language is included in the House draft to reduce formula allocation funding from any grantee that has an unexpended balance greater than three times its formula allocation, unless that grantee’s formula allocation is less than \$8,000,000. The Senate version includes \$5,500,000 for technical assistance needs in Indian country to support both the IHBG and ICDBG programs. The Committee directs that these technical assistance funds be administered by Public and Indian Housing and not be merged with the broader Community Compass initiative administered by the Office of Policy Development and Research.

Vouchers for homeless Native American veterans: The House version recommends \$7,000,000 for renewal of vouchers for Native American veterans who are homeless or at risk of homelessness living on or near a reservation, or other Indian areas. Because of the unique nature of the program, a separate renewal line is required for this program, which was first funded in FY 2015. The Senate

recommendation includes \$7,000,000 for rental assistance and associated administrative costs for Tribal HUD-VASH to serve Native American veterans that are homeless or at-risk of homelessness living on or near a reservation or other Indian areas.

### **Commerce, Justice, Science**

The Senate Commerce, Justice, Science and Related Agencies (CJS) FY 2017 Appropriations Bill, S. 2387, passed the full Senate Appropriations Committee on April 21, 2016, and provides more than \$355 million in funding for tribal justice programs for FY 2017—more than \$200 million increase from FY 2016, including a 7% tribal allocation from all discretionary Department of Justice (DOJ) Office of Justice Programs (OJP), a 5% tribal allocation from the Crime Victims Fund, and retains the rest of Indian Country programs (VAWA, COPS etc).

Funding in the bill includes: \$145 million for Indian tribes through a 5% set-aside from the Crime Victim's Fund for providing services to crime victims; \$114 million for Indian tribes through a 7% set-aside from across the Office of Justice Programs that can be used to develop the capacity of tribal criminal justice systems; \$30 million for tribal programs at the Community Oriented Policing Services (COPS) office; \$10 million for the Tribal Youth Program; an estimated \$39 million for the Office on Violence Against Women's (OVW) Grants to Tribal Governments Program through set-asides from other OVW programs; an estimated \$6.5 million for OVW's Tribal Coalitions Program through set-asides from OVW programs; an estimated \$3.5 million for OVW's Tribal Sexual Assault Services Program; \$4 million for implementation of Special Domestic Violence Criminal Jurisdiction; \$1 million for research on violence against Native women; \$500,000 for the National Indian Country Clearinghouse on Sexual Assault

The House CJS FY 2017 Appropriations Bill passed the full House Appropriations Committee on May 24, 2016, and includes a 5% tribal set-aside in the VOCA Fund, but does not include the 7% set-aside from OJP for tribal criminal justice systems. The House includes \$65,000,000 for OJP tribal grant programs, an increase of \$35,000,000 above the enacted level. The House Committee report directs OJP to continue to consult closely with tribes to determine how tribal assistance funds will be allocated among grant programs that improve public safety in tribal communities.

### **Energy and Water**

Office of Indian Energy Policy and Programs: The House bill recommends \$21,330,000, to coordinate and implement energy management, conservation, education, and delivery systems for Native Americans. Within this amount, \$18,130,000 is included for the Tribal Energy Program and \$3,200,000 for Program Direction. The House version includes funding for the Department's request in this account rather than in a new account, as requested. The Senate version recommends \$20,000,000 for the Office of Indian Energy. The activities of this office have previously been funded through the Department of Administration appropriation. The Committee notes that the Department did not repeat its request to initiate a Tribal Indian Energy Loan Guarantee Program for fiscal year 2017. Within available funds, the Senate Committee Report encourages the Office of Indian Energy to facilitate the utilization of existing loan programs by tribal governments, including the title 17 Innovative Technology Loan Guarantee Program and the Transmission Infrastructure Program.

**Labor, HHS, Education Appropriations**

(in thousands)	FY 2016 Enacted	FY 2017 Request	Senate Bill	S. Bill vs. Enacted	S. Bill vs. Request
DOL Native American Programs	50,000	52,000	48,500	-1,500	-3,500
ACF Admin. for Native Americans	50,000	53,100	50,000		-3,100
<b>Administration for Community Living</b>					
Native American Caregivers Support	7,531	7,531	7,531		
Grants for Native Americans	31,158	31,158	26,158	-5,000	-5,000
<b>Higher Education</b>					
Strengthening NA-Serving Nontribal Inst	3,348	3,348	3,348		
Strengthening Tribal Colleges	27,599	27,599	27,599		
Strengthening AN and NH-Serving Inst	13,802	13,802	13,802		
<b>INDIAN EDUCATION</b>					
Grants to Local Educational Agencies	100,381	100,381	100,381		
Federal Programs					
Special Programs for Indian Children	37,993	67,993	37,993		-30,000
National Activities	5,565	6,565	5,565		-1,000
Subtotal, Federal Programs	43,558	74,558	43,558		-31,000
Total, Indian Education	143,939	174,939	143,939		-31,000
<b>Substance Abuse and Mental Health Services Administration</b>					
<b>Mental Health Appropriation</b>					
AI/AN Suicide Prevention Initiative	2,931	2,931	2,931		
Tribal Behavioral Grants	15,000	15,000	15,000		
<b>Substance Abuse Prevention Appropriation</b>					
Tribal Behavioral Health Grants	15,000	15,000	15,000		

The Senate version of the Labor, HHS, Education spending bill, S. 3040, did not include many of the requested increases from the President’s budget.

Within the Administration for Native Americans, the Senate recommendation includes \$12 million for Native American language preservation activities, including no less than \$4 million for Native American language nests and survival schools, as authorized by sections 803C(b)(7)(A)-(B) of the Native American Programs Act.

Indian Education: the Senate bill recommends \$143,939,000 for Indian education programs. The Senate bill does not provide the \$30 million increase from the President’s budget for an expansion of the Native Youth Community Projects (NYCP) under the Special Programs for Indian Children.

Tribal Behavioral Health Grants: The Senate bill fully funds the President’s requested level for tribal behavioral health grants.

*For additional information please contact Amber Ebarb, Budget/Policy Analyst and PRC Program Manager, at 202.466.7767 or [aebarb@ncai.org](mailto:aebarb@ncai.org).*

(Amounts in Thousands)	FY 2016 Enacted	FY 2017 Request	House Bill	H. Bill vs. Enacted	H. Bill vs. Request	Senate Bill	S. Bill vs. Enacted	S. Bill vs. Request
<b>Tribal Government</b>								
Aid to tribal government	24,833	27,118	27,118	2,285		27,118	2,285	
Consolidated tribal government pgm	77,088	75,429	75,429	-1,659		75,429	-1,659	
Self governance compacts	162,321	162,346	162,346	25		162,346	25	
New tribes.	464		-464			464		464
Small and needy tribes.	1,845	3,095	1,845		1,250	4,645	2,800	1,550
<b>Road maintenance.</b>	26,693	26,783	30,000	3,307	3,217	30,307	3,614	3,524
Tribal government program oversight	8,273	12,377	8,377	104	-4,000	8,377	104	-4,000
Subtotal	301,517	307,148	305,115	3,598	-2,033	<b>308,686</b>	7,169	1,538
<b>Human Services</b>								
<b>Social services</b>	45,179	57,343	55,500	10,321	-1,843	52,343	7,164	-5,000
Welfare assistance	74,791	74,773	74,773	-18		74,773	-18	
<b>Indian child welfare act</b>	15,641	18,946	18,509	2,868	-437	18,946	3,305	
<b>Housing improvement program</b>	8,021	9,708	9,708	1,687		9,708	1,687	
Human services tribal design	246	254	254	8		254	8	
Human services program oversight	3,126	3,137	3,137	11		3,137	11	
Subtotal	147,004	164,161	161,881	14,877	-2,280	159,161	12,157	-5,000
<b>Trust - Natural Resources Management</b>								
Natural resources, general	5,168	7,953	4,953	-215	-3,000	4,953	-215	-3,000
Irrigation operations and Maintenance	11,398	12,905	11,405	7	-1,500	12,905	1,507	
<b>Rights protection implementation</b>	37,638	40,161	40,161	2,523		39,661	2,023	-500
<b>Tribal management/development program</b>	9,263	14,266	9,266	3	-5,000	11,266	2,003	-3,000
Endangered species	2,684	3,685	2,685	1	-1,000	2,685	1	-1,000
Cooperative landscape conservation	9,955	13,056	9,956	1	-3,100	9,956	1	-3,100
Integrated resource information program	2,996	3,996	2,996		-1,000	2,996		-1,000
Agriculture and range	30,751	30,769	30,769	18		30,769	18	
<b>Forestry</b>	51,914	52,155	52,155	241		54,155	2,241	2,000
Water resources	10,367	15,000	10,450	83	-4,550	10,450	83	-4,550
<b>Fish, wildlife and parks</b>	13,646	15,658	14,414	768	-1,244	16,203	2,557	545
Resource management program oversight	6,066	5,993	5,993	-73		5,993	-73	
Subtotal	191,846	215,597	195,203	3,357	-20,394	201,992	10,146	-13,605
Trust - Real Estate Services	127,486	136,192	121,192	-6,294	-15,000	123,092	-4,394	-13,100
<b>Education</b>								
Elementary and Sec Pgms (forward funded)	553,458	574,075	575,075	21,617	1,000	569,575	16,117	-4,500
(Tribal grant support costs)	73,276	75,335	75,335	2,059		75,335	2,059	
Post secondary programs (fwd funded)	74,893	77,207	77,207	2,314		77,207	2,314	
<b>Subtotal, fwd funded education</b>	628,351	651,282	652,282	23,931	1,000	646,782	18,431	-4,500
Elementary and secondary programs	134,263	144,295	140,540	6,277	-3,755	140,195	5,932	-4,100
Post secondary programs	64,602	66,841	66,841	2,239		60,031	-4,571	-6,810
Education management	25,151	50,012	33,223	8,072	16,789	27,151	2,000	-22,861
Subtotal, Education	852,367	912,430	892,886	40,519	-19,544	874,159	21,792	-38,271
<b>Public Safety and Justice</b>								
Law enforcement	347,976	341,281	352,551	4,575	11,270	354,742	6,766	13,461
<b>Tribal courts</b>	28,173	30,753	30,753	2,580		30,753	2,580	
<b>Fire protection</b>	1,274	1,426	1,426	152		1,426	152	
Subtotal	377,423	373,460	384,730	7,307	11,270	386,921	9,498	13,461
Community and economic development	40,619	42,844	42,844	2,225		41,844	1,225	-1,000
Executive direction and Administrative Services	229,662	243,954	231,784	2,122	-12,170	230,484	822	-13,470
(Amounts available until expended, account-wide)	(43813)	(47848)	(48815)	(+5,002)	(+967)	(47848)	(+4,035)	
Total, Operation of Indian Programs	2,267,924	2,395,786	2,335,635	67,711	-60,151	2,326,339	58,415	-69,447
Contract support costs	272,000	273,000	273,000	1,000		273,000	1,000	
Indian self-determination fund	5,000	5,000	5,000			5,000		
Total, Contract Support Costs	277,000	278,000	278,000	1,000		278,000	1,000	
<b>Construction</b>								
Education	138,245	138,257	138,257	12		133,257	-4,988	-5,000
Public safety and justice	11,306	11,306	11,306			11,306		
Resources management	34,488	36,513	36,513	2,025		36,513	2,025	
General administration	9,934	10,941	10,941	1,007		10,941	1,007	
Total, Construction	193,973	197,017	197,017	3,044		192,017	-1,956	-5,000
Indian Land and Water Claims Settlements and Misc P	49,475	55,155	49,025	-450	-6,130	49,475		-5,680
Indian Guaranteed Loan Program	7,748	7,757	8,757	1,009	1,000	8,748	1,000	991
<b>Total BIA and BIE</b>	<b>2,796,120</b>	<b>2,933,715</b>	<b>2,868,434</b>	<b>72,314</b>	<b>-65,281</b>	<b>2,854,579</b>	<b>58,459</b>	<b>-79,136</b>

	FY 2016 Enacted	FY 2017 Request	House Bill	H. Bill vs. Enacted	H. Bill vs. Request	Senate Bill	S. Bill vs. Enacted	S. Bill vs. Request
<b>INDIAN HEALTH SERVICE</b>								
Indian Health Services								
Clinical Services:								
Hospital and health clinics	1,857,225	1,979,998	1,928,879	71,654	-51,119	1,890,303	33,078	-89,695
Dental health	178,286	186,829	186,029	7,743	-800	180,923	2,637	-5,906
Mental health	82,100	111,143	86,143	4,043	-25,000	108,331	26,231	-2,812
Alcohol and substance abuse	205,305	233,286	216,486	11,181	-16,000	225,750	20,445	-7,536
Purchased/referred care	914,139	962,331	960,831	46,692	-1,500	914,139		-48,192
<b>Subtotal</b>	<b>3,237,055</b>	<b>3,473,587</b>	<b>3,378,368</b>	<b>141,313</b>	<b>-95,219</b>	<b>3,319,446</b>	<b>82,391</b>	<b>-154,141</b>
Preventive Health:								
Public health nursing	76,623	82,040	82,040	5,417		78,312	1,689	-3,728
Health education	18,255	19,545	19,545	1,290		18,562	307	-983
Community health representatives	58,906	62,428	62,428	3,522		58,906		-3,522
Immunization (Alaska)	1,950	2,062	2,062	112		2,062	112	
<b>Subtotal</b>	<b>155,734</b>	<b>166,075</b>	<b>166,075</b>	<b>10,341</b>		<b>157,842</b>	<b>2,108</b>	<b>-8,233</b>
Other services:								
Urban Indian health	44,741	48,157	48,157	3,416		45,741	1,000	-2,416
Indian health professions	48,342	49,345	49,345	1,003		49,345	1,003	
Tribal management grant program	2,442	2,488	2,488	46		2,442		-46
Direct operations	72,338	69,620	70,420	-1,918	800	69,620	-2,718	
Self-governance	5,735	5,837	5,837	102		5,735		-102
<b>Subtotal</b>	<b>173,598</b>	<b>175,447</b>	<b>176,247</b>	<b>2,649</b>	<b>800</b>	<b>172,883</b>	<b>-715</b>	<b>-2,564</b>
<b>Total, Indian Health Services</b>	<b>3,566,387</b>	<b>3,815,109</b>	<b>3,720,690</b>	<b>154,303</b>	<b>-94,419</b>	<b>3,650,171</b>	<b>83,784</b>	<b>-164,938</b>
<b>Contract Support Costs</b>								
Contract support	717,970	800,000	800,000	82,030		800,000	82,030	
Indian Health Facilities								
Maintenance and improvement	73,614	76,981	76,464	2,850	-517	76,981	3,367	
Sanitation facilities construction	99,423	103,036	103,036	3,613		103,036	3,613	
Health care facilities construction	105,048	132,377	120,934	15,886	-11,443	115,048	10,000	-17,329
Facilities and environmental health support	222,610	233,858	233,858	11,248		226,005	3,395	-7,853
Equipment	22,537	23,654	23,654	1,117		22,537		-1,117
<b>Total, Indian Health Facilities</b>	<b>523,232</b>	<b>569,906</b>	<b>557,946</b>	<b>34,714</b>	<b>-11,960</b>	<b>543,607</b>	<b>20,375</b>	<b>-26,299</b>
<b>TOTAL, INDIAN HEALTH SERVICE</b>	<b>4,807,589</b>	<b>5,185,015</b>	<b>5,078,636</b>	<b>271,047</b>	<b>-106,379</b>	<b>4,993,778</b>	<b>186,189</b>	<b>-191,237</b>

	FY 2016 Enacted	FY 2017 Request	House Bill	H. Bill vs. Enacted	H. Bill vs. Request	Senate Bill	S. Bill vs. Enacted	S. Bill vs. Request
Total BIA and BIE	2,796,120	2,933,715	2,868,434	72,314	-65,281	2,854,579	58,459	-79,136
% Change from FY 2016 Enacted		4.9%	2.6%			2.1%		
<b>Total IHS</b>	<b>4,807,589</b>	<b>5,185,015</b>	<b>5,078,636</b>	<b>271,047</b>	<b>-106,379</b>	<b>4,993,778</b>	<b>186,189</b>	<b>-191,237</b>
% Change from FY 2016 Enacted		7.9%	5.6%			3.9%		



### **OAS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES**

On June 16, after 19 rounds of negotiations and 27 years of work, the Organization of American States (OAS) adopted the American Declaration on the Rights of Indigenous Peoples. The OAS is a regional intergovernmental organization comprised of all 35 countries of the Americas. The American Declaration is significant because the OAS houses two unique bodies – the Inter-American Court on Human Rights and the Inter-American Commission on Human Rights, which have a strong body of jurisprudence on indigenous peoples' rights in the Americas. These bodies will apply and implement the American Declaration in their work. Indigenous peoples can now use the American Declaration to assert and defend their rights in the Americas.

The American Declaration protects many of the same rights as those enshrined in the UN Declaration on the Rights of Indigenous Peoples. In some areas, the American Declaration goes further and includes more specificity than the UN Declaration.

### **2014 WORLD CONFERENCE ON INDIGENOUS PEOPLES**

On September 22-23, 2014, the United Nations (UN) hosted the World Conference on Indigenous Peoples (WCIP). The WCIP included over 1,000 indigenous representatives from all over the world, as well as all 193 UN member countries. The purpose of the WCIP was for members of the UN and indigenous peoples to discuss implementation of the Declaration on the Rights of Indigenous Peoples.

Leading up to the World Conference, NCAI joined with a large group of American Indian and Alaska Native tribes, inter-tribal associations, and non-profit organizations to advocate for four priorities at the World Conference. These priorities were:

1. establishing an appropriate status for Indigenous governments at the UN;
2. creating a UN mechanism to monitor and promote implementation of the Declaration;
3. adopting measures to prevent violence against Indigenous women and children; and
4. protecting sacred places and objects.

During the opening session of the WCIP, the UN General Assembly adopted an Outcome Document that provides for concrete and action-oriented measures to implement and achieve the objectives of the United Nations Declaration on the Rights of Indigenous Peoples. While we did not get everything we were asking for, the Outcome Document does address all 4 of our priorities in one form or another. It is crucial that we maintain this momentum to make sure that the decisions of the World Conference are fully implemented, and begin to realize the promise of the UN Declaration on the Rights of Indigenous Peoples.

Over the past year and a half, there has been a great deal of follow-up work to the WCIP and NCAI, in partnership with the Native American Rights Fund, has been fully engaged in continuing to advocate with various UN bodies for meaningful action on our four priorities. We anticipate further engagement on our four priorities as follows.

### **Creating an Implementing and Monitoring Body for the UN Declaration**

A UN expert workshop to revise the mandate of the Expert Mechanism on the Rights of Indigenous Peoples to enable it to monitor and implement the UN Declaration took place April 4-5, 2016 in Geneva,

Switzerland. The report and recommendations from the workshop will be discussed by states, indigenous peoples, and other stakeholders at the 9<sup>th</sup> session of the Expert Mechanism in July, 2016, and considered by the Human Rights Council during its 33<sup>rd</sup> session in September, 2016.

### **Enabling Indigenous Governments to take their Rightful Place in the UN**

On December 23, 2015, the UN General Assembly adopted the report and resolution of its Third Committee regarding the rights of indigenous peoples. In the resolution, the General Assembly requested that the President of the 70<sup>th</sup> Session of the General Assembly to convene consultations in 2016 on the issue of indigenous government participation in the UN, with a final decision on the matter to be made during the General Assembly's 71<sup>st</sup> Session, which begins in September, 2016. In May, the Office of the President of the UN General Assembly conducted two consultations in New York with member states and indigenous peoples on how to enable the participation of indigenous peoples' representatives and institutions (governments) at the United Nations. Following the consultations, the Office of the President released the third draft compilation of views. NCAI has participated in these consultations, and a final consultation session is scheduled to take place on June 30. Consultation results will be presented during the annual session of the Expert Mechanism on the Rights of Indigenous Peoples (July 11-15) in Geneva, Switzerland.

When the 71<sup>st</sup> Session of the General Assembly begins in September, we expect the effort to develop a resolution that establishes the process for enhanced participation by indigenous governing institutions to begin in earnest. NCAI will continue to advocate for an appropriate mechanism for tribal governments to participate at the United Nations.

### **Ending Violence Against Indigenous Women**

During its June 2016 session, the UN Human Rights Council held a full-day panel discussion on women's rights; considered the reports of the Special Rapporteur on violence against women and of the Working Group on the issue of discrimination against women in law and in practice on its country visit to the United States; and adopted the annual resolutions on violence against women (with a focus on indigenous women) and discrimination against women. On June 16, the Council will held a panel to examine the issue of violence against indigenous women and girls and its root causes.

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## WHITE HOUSE INITIATIVES

### **YOUTH - GENERATION INDIGENOUS**

President Obama launched Generation Indigenous (Gen-I) at the White House Tribal Nations Conference in December 2014. This youth initiative is focused on removing the barriers that stand between Native youth and their opportunity to succeed. The Gen-I initiative is intended to take a comprehensive, culturally appropriate approach to help improve the lives and opportunities of Native youth through engagement, strategic investments and policies.

As part of the launch of Gen-I, the Obama Administration released its Native Youth Report that acknowledges past failures of federal policy on the education of Native students, recognizes the challenges facing Native youth and makes recommendations for moving forward to address these challenges.

In addition, the Administration launched the Cabinet Native Youth Listening Tour so that Cabinet officials can hear directly from Native youth on how effective federal policies can improve youth outcomes. To date, Cabinet members have visited Native youth in tribal communities including Secretary of the Interior Sally Jewell, Office of Personnel Management Director Katherine Archuleta, Environmental Protection Agency Administrator Gina McCarthy, Secretary of Labor Tom Perez, Secretary of Commerce Penny Pritzker and former Secretary of Education Arne Duncan. The Administration is also focused on expanding federal outreach on youth internships and employment opportunities across federal agencies.

On July 9, 2015, the White House held a White House Tribal Youth Gathering that engaged 1,100 Native youth from across the country in a day-long convening. At the gathering youth had the opportunity to voice their concerns, suggest to federal employees how their communities could be improved and see what their peers are doing to effectively create change. For those youth that were unable to attend the event it was live streamed and they were able to ask questions virtually at the plenary sessions.

At the 2015 White House Tribal Nations Conference in November, a Generation Indigenous 2015 Update Report was released. The report highlights polices and investments to benefit Native youth, increased public awareness of them and their issues, and opportunities provided for Native youth to connect with one another. More information on Gen-I can be found at [www.whitehouse.gov](http://www.whitehouse.gov).

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### **WHITE HOUSE COUNCIL ON NATIVE AMERICAN AFFAIRS**

President Obama established the White House Council on Native American Affairs by Executive Order on June 26, 2013, and the inaugural meeting was held on July 29, 2013. The Council, which includes more than 30 federal departments and agencies, coordinates the Administration's engagement with tribal governments and works across executive departments, agencies and offices to develop policy recommendations and expand efforts to leverage federal programs and resources available to tribal communities.

The Executive Order establishing the Council also institutionalized the White House Tribal Nations Conference as an annual event. The White House Conference brings together tribal leaders from all

federally recognized tribes with Cabinet members and senior Administration officials. This year's White House Conference will be the seventh conference hosted by President Obama.

The Council has continued to prioritize its focus on issues such as: reform of Indian Education, promoting sustainable tribal economic development; and supporting sustainable management of Native lands, environments and natural resources.

In the coming months, NCAI will focus its efforts on ensuring the next Administration recognizes the importance of the Council in ensuring that federal agencies work collaboratively to address issues of important to tribal communities.

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