



NATIONAL CONGRESS OF AMERICAN INDIANS

TESTIMONY BEFORE THE U.S. SENATE COMMITTEE ON INDIAN AFFAIRS OVERSIGHT HEARING ON “INDIAN COUNTRY PRIORITIES FOR THE 114th CONGRESS: President Brian Cladoosby

January 28, 2015

On behalf of the National Congress of American Indians (NCAI), I'd like to thank you for the opportunity to testify at this important hearing as the Committee seeks to set its agenda for the 114th Congress. NCAI is the oldest and largest American Indian organization in the United States. Tribal leaders created NCAI in 1944 as a response to termination and assimilation policies that threatened the existence of American Indian and Alaska Native tribes. Since then, NCAI has fought to preserve the treaty rights and sovereign status of tribal governments, while also ensuring that Native people may fully participate in the political system. As the most representative organization of American Indian and Alaska Native tribes, NCAI serves the broad interests of tribal governments across the nation. As this Committee considers its agenda for the 114th Congress, tribal nations call on you to ensure that tribal priorities are represented and honored in the decisions made in this Congress.

INTRODUCTION

NCAI appreciates the opportunity to present testimony on the Priorities of Indian Country for the 114th Congress. It is important to note that the priorities that are highlighted were developed by tribal leaders in conjunction with NCAI, and that these priorities are all rooted in the modern trust relationship, self-determination, and sovereignty.

The Constitution, numerous treaties, and laws have created the fundamental relationship between tribal nations and the United States. In return for ceding millions of acres of land that makes the United States what it is today, tribes codified their right of continued self-government, and to exist as distinct peoples on their own lands. Part of that responsibility includes providing basic governmental services in Indian Country. As governments, tribes must deliver a wide range of critical services, such as education, workforce development, public safety, infrastructure, and healthcare to their citizens. Tribes have the capability as governments to oversee their own affairs and, as such, should be in parity with similarly situated governments who provide services to their citizens.

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The recommendations below can be accomplished in this session of Congress and further the government-to-government relationship between tribal governments and the Congress. In addition, the recommendations seek to identify areas where administrative barriers can be removed so that tribes can truly create opportunities for success – within our borders and beyond.

TRUST MODERNIZATION

Indian land and natural resources are a primary source of economic activity for tribal communities, but the federal trust resource management system is antiquated, inefficient, and contributes to the anemic condition of many reservation economies. NCAI urges the Committee to support legislative reforms that will eliminate the burdensome federal red tape stifling economic development in Indian Country, provide tribes with more flexibility and the option of 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, a much greater voice in how the trust will be administered.

Tribes have been making progress on trust reform over the last five years and want to maintain that momentum. Tribes, working with Congress and the Administration, have seen significant settlements of trust litigation, the development of the Buy-Back program for fractionated lands, passage of the HEARTH Act to promote tribal control over surface leasing of tribal lands, and new leasing regulations that assist greatly on taxation of permanent improvements, among other matters. But there is much more work to be done. NCAI has identified key areas of the trust system that need improvements to better serve Indian Country:

- Energy. The barriers to tribal energy development have been well established by roundtables and hearings conducted by the Department of Energy and this Committee. Barriers include cumbersome bureaucratic processes that are largely attributable to the requirement that tribes and tribal businesses obtain Interior approval for almost every step of energy development on tribal lands, including the approval of business agreements, leases, rights of way, and appraisals. Other major barriers include tribes' and tribal businesses' lack of access to financing and transmission and Application for Permit to Drill fees. For several Congresses, this Committee and the House Subcommittee on Indian and Alaska Native Affairs have considered legislation that would remedy the barriers to tribal energy development in the Act. This legislation, championed by Chairman Barrasso in the Senate and embodied in the 114th Congress as S. 209, would provide tribes with greater control and flexibility to develop their traditional and renewable energy resources. We urge the Committee to pass S. 209 to create careers and capital in Indian Country.
- Trust modernization legislation. In the 113th Congress, legislation was introduced that would have taken great steps towards modernizing all trust processes for tribal lands. The bill, introduced by Senator Crapo in the Senate and Representative Simpson in the House, sought to establish a demonstration project allowing comprehensive land use planning and allocation of trust funding in accordance with tribal priorities. We urge that this bill be taken up again, in consultation with Tribes and the Interior Department, and moved to the President's desk in the 114th Congress.

- Appraisals and Valuation. Nearly every trust transaction requires an appraisal from the Office of Special Trustee, and this is the most significant bottleneck in the trust system. We need to eliminate unnecessary appraisals and permit tribes to rely on independent certified appraisals.
- Lease Compliance and Trespass. Indian tribes have significant problems with lessees who violate lease terms and with outright trespass on Indian lands. We need legislation to improve enforcement mechanisms and authorities. This is explained in more detail in the proposal for Tribal Law and Order Act Reauthorization below.
- Conflict-of-Interest Issues. The Department of the Interior (including the Solicitor's Office) oversees a vast range of federal land issues that can come into conflict with their trust responsibility to protect Indian land. We need to create clearer divisions of responsibility that support the identification and resolution of conflicts of interest.
- Probate. Probate of individually-owned Indian lands continues to be a bottleneck for many trust transactions, not the least of which is the Buy-Back program. Many problem areas in the probate process can be fixed through minor amendments to the Indian Land Consolidation Act.
- Self-Determination and Tribal Use of Lands. The HEARTH Act was a good step forward to empower tribes to manage their own lands. We need to build on this progress for other trust resources, including subsurface lands, and to provide technical assistance to tribes that wish to pursue the HEARTH Act options.
- Planning and Land Management. Tribal planning processes tend to silo into grant-driven plans for housing, transportation, water, power and sewage. Tribes need resources to integrate planning for economic development and jobs, education, agriculture and natural resources, and the development of healthy communities. There is a growing emphasis on planning for rural development and business agglomeration. Tribal industries tend to cluster in certain areas, and tribes need assistance with planning to build community infrastructure that fits today's needs
- Land Consolidation. Individual Indian lands are often highly fractionated, and these lands are also very difficult to put to productive use. The *Cobell* settlement has established a Buy Back Program intended to consolidate these lands for greater use. However, tribes have significant questions and concerns about this centralized federal program. We urge the Committee to continue oversight of this program and gather more information about the track record so far, and push to make the system effective and allow greater tribal involvement.
- Federal Responsibilities for Title Maintenance, Technical Assistance, and Prevention of Land Loss. At its most basic level, the federal government has a responsibility to maintain title to federal Indian lands, to report title quickly and accurately, to include tribal governments in the title management system, and to use that system to prevent land loss. The Department of the Interior has invested some of the Buy Back program funds into updating the title system, and a review of the progress is recommended.

- Land Restoration. Most reservations have suffered significant land loss through federal laws and policies, and are in a checkerboard pattern that is difficult to manage. Some tribes have lost all of their land. The federal government has a trust responsibility to restore tribal lands for all tribes. In addition to the *Carciari* Fix discussed below, we urge Congress to continue to support tribal land restoration.
- Natural Resources and the Environment. Tribal lands are subject to environmental concerns that affect life in Indian Country. At the same time, federal environmental regulations are often unnecessarily burdensome and overly focused on process rather than substance. We urge this Committee to review existing regulations and statutes and determine where they can be streamlined to empower tribes to manage and co-manage lands effectively and efficiently.
- Taxation and Services on Tribal Lands. Indian tribes need to be able to collect taxes and control revenues in Indian Country in order to provide services to their people. See the Tax Issues section below for more background.
- Access to Capital and Financing Development on Indian Lands. Accessing capital to finance development on tribal and individual Indian lands remains a significant challenge. It is necessary to learn more about the barriers to investment so solutions can be found for alternative mechanisms to secure debt and equity investments in Indian Country.
- Updating Regulations, Policies and Procedures. There are many other areas of the trust system that need to be modernized and updated. Progress has been made at the Department of the Interior on the leasing regulations, and the pending Right-of-Way regulations, but tribes seek continued oversight from this Committee so that progress will continue on trust regulations.

TRIBAL LAND RESTORATION UNDER THE INDIAN REORGANIZATION ACT

The principal goal of the Indian Reorganization Act (IRA) was to halt and reverse the abrupt decline in the economic, cultural, governmental and social well-being of Indian tribes caused by the disastrous federal policy of “allotment” and sale of reservation lands. Between the years of 1887 and 1934, the U.S. Government took more than 90 million acres from the tribes without compensation, nearly 2/3 of all reservation lands, and sold it to settlers and timber and mining interests. Even worse, many tribes had no land at all, and the IRA is clear in its purpose to acquire land for landless tribes. The IRA is comprehensive legislation for the benefit of tribes that stopped the allotment of tribal lands, provides for the acquisition of new lands, continues the federal trust ownership of tribal lands, encourages economic development, and provides a framework for the reestablishment of tribal government institutions on their own lands.

Section 5 of the IRA, 25 U.S.C. § 465, provides for the recovery of the tribal land base and is integral to the IRA’s overall goals of recovering from the loss of land and reestablishing tribal economic, governmental and cultural life. Section 5 is designed to implement the fundamental principle that all tribes in all circumstances need a tribal homeland that is adequate to support tribal

culture and self-determination. As noted by one of the IRA's principal authors, Congressman Howard of Nebraska:

This Congress, by adopting this bill, can make a partial restitution to the Indians for a whole century of wrongs and of broken faith, and even more important – for this bill looks not to the past but to the future – can release the creative energies of the Indians in order that they may learn to take a normal and natural place in the American community. 78 Cong. Rec. 11731 (1934).

Of the 90 million acres of tribal land lost through the allotment process, only about 8 percent has been reacquired in trust status since the IRA was passed seventy-five years ago – and most were simply unallotted lands that were returned soon after 1934. Since 1934, the Bureau of Indian Affairs has maintained a conservative policy for placing land in trust. Still today, many tribes have no land base and many tribes have insufficient lands to support housing and self-government. Section 5 clearly imposes a continuing active duty on the Secretary of Interior, as the trustee for Indian tribes, to take land into trust for the benefit of tribes until their needs for self-support and self-determination are met.

In contemporary implementation of trust land acquisition, it is important to raise three important points. First, while some controversies exist, what is often misunderstood is that the vast majority of trust land acquisitions take place in extremely rural areas and are not controversial in any way. Most acquisitions involve home sites of 30 acres or less within reservation boundaries. Trust land acquisition is also necessary for consolidation of fractionated and allotted Indian lands, which most often are grazing, forestry or agricultural lands. Other typical acquisitions include land for Indian housing, health care clinics that serve both Indian and non-Indian communities, and land for Indian schools.

Second, state and local governments have a role in the land to trust process. The Interior regulations provide opportunities for all concerned parties to be heard, and place the burden on tribes to justify the trust land acquisition, particularly in the off-reservation context. It is important to recognize that land issues require case-by-case balancing of the benefits and costs unique to a particular location and community. The regulations cannot be expected to anticipate every situation that might arise, but they do provide an ample forum for local communities and governments to raise opposition to a particular acquisition and they reinforce the Secretary's statutory authority to reject any acquisition. State and local governments have an opportunity to engage in constructive dialogue with tribes on the most sensible and mutually agreeable options for restoring Indian land. In many cases, a "tax loss" of less than \$100 per year is a minimal trade-off for the development of schools, housing, health care clinics, and economic development ventures that will benefit surrounding communities as well as the tribe. Whatever issues state governments may have with the land to trust process, the *Carciari* decision is not the place to address it. The *Carciari* decision has created a problem of statutory interpretation that calls for a narrow fix to ensure equitable treatment of all tribes.

Third, the chief problem with the land to trust process is the delays caused by inaction at the Bureau of Indian Affairs. Too often tribes have spent scarce resources to purchase land and prepare a trust application only to have it sit for years or even decades without a response. In addition, during inordinate delays tribes risk losing funding and support for the projects that they have planned for the land, and environmental review documents grow stale. Tribal leaders have encouraged the

Bureau of Indian Affairs to establish internal time lines and checklists so that tribes will have a clear idea of when a decision on their application will be rendered. We are seeing some progress at Interior, and we encourage continued support for land to trust acquisition.

Legislative Action Needed to Address *Carcieri v. Salazar*. In a 2009 decision, the Supreme Court interpreted the definitions section of the IRA and held that the term “now” in the phrase “now under Federal jurisdiction” in the definition of “Indian” limits the Secretary’s authority to provide benefits of the IRA to only those Indian tribes “under federal jurisdiction” on June 18, 1934, the date the IRA was enacted.

The *Carcieri* decision is at odds with the federal policy of tribal self-determination. In particular, the decision runs counter to Congress’ intent in the 1994 amendments to the IRA. These amendments directed the Department of Interior and all other federal agencies, to provide equal treatment to all Indian tribes regardless of how or when they received federal recognition, and ratified the Department of the Interior procedures under 25 C.F.R. Pt. 83 for determining and publishing the list of federally recognized tribes.

The *Carcieri* decision does not address what it means to be “under federal jurisdiction” in 1934. As the *Carcieri* decision continues to stand unaddressed by Congress, it is engendering costly and protracted litigation on an esoteric and historic legal question that serve no legitimate purpose. The *Carcieri* decision is creating litigation on long settled actions taken by the Department pursuant to the IRA, as well as on the Secretary’s ability to make future decisions that are in the best interests of tribes. The decision is already creating significant delays in Department of Interior decisions on land into trust, a process that is already plagued with unwarranted delays.

While the *Carcieri* decision addressed only land in trust, there may be efforts to use the decision to unsettle other important aspects of tribal life under the IRA. The IRA is comprehensive legislation that provides for tribal constitutions and tribal business structures, and serves as a framework for tribal self-government. Future litigation could threaten tribal organizations, contracts and loans, tribal reservations and lands, and provision of services. Ancillary attacks may also come from criminal defendants seeking to avoid federal or tribal jurisdiction, and would negatively affect public safety on reservations across the country.

When the Supreme Court has narrowly interpreted an Act of Congress in a manner that is unfair and not in accordance with its original purposes, Congress should move quickly to amend and clarify the law. NCAI urges Congress to amend the IRA to the effect that all federally recognized tribes are included. We greatly appreciate your leadership and efforts to make clear that IRA benefits are available to all federally recognized Indian tribes.

ECONOMIC 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 6 percent, tribal governments and businesses wrestle with unemployment rates that have well-exceeded ten percent and beyond for decades. The lack of employment opportunities in Native communities has had a wide-ranging impact, affecting all aspects of life. While tribal governments have successfully supported job creation both in government and the private sector, ensuring that job growth keeps pace with the growing Native youth population is an ongoing

challenge. Considering that Indian Country has one of the youngest populations in the nation, with 42 percent of Native people under the age of 25, workforce development opportunities are of critical importance.

A comprehensive Congressional and multi-agency approach is necessary to address the issues hindering economic success for many tribes. Conditions such as minimal access to capital, poor physical infrastructure, lack of broadband access, and a need for workforce training all combine to contribute to the economic development challenges found in Indian Country. These conditions, along with inadequate funding and programs for tribes have contributed to the chronically high unemployment rates throughout Indian Country. Honoring the trust responsibility and addressing the key economic needs will unleash the economic power of Indian Country. The results will be beneficial for not only our tribal nations but for the United States as well. Tribal nations and the federal government must work together to fulfill the promises of the past to secure prosperity for future generations.

This Congress should focus on policies which bring economic opportunities to Indian Country and bring parity between tribal, state, and local governments. The empowerment of tribal efforts to manage and control their own affairs requires the federal government to grant tribes the flexibility needed to administer federal programs while removing barriers and bureaucratic hurdles and undermine tribal self-determination and discourage private investment in tribal communities. NCAI recommends that Congress act quickly on legislation to improve jobs and self-governance in Indian Country while allowing tribes the flexibility to design and implement these programs in the ways that best meet the needs of their members.

Permanently authorize the Indian Employment Training and Related Services Demonstration Act of 1992 (P.L. 102-477). The Indian Employment, Training, and Related Services Demonstration Act “477” program supports self-determination by permitting tribes to design their own programs and services, build tribal capacity, and use federal funding more effectively. The statute allows tribes to consolidate funding streams from the Departments of the Interior, Health and Human Services, and Labor into an integrated employment, supportive services, and training program with a single budget and single reporting system. This law has proven to be an exceptional success in making existing federal programming more effective in meeting the employment, training, education and welfare reform needs of Tribes and Tribal Organizations.

The 477 program maximizes federal dollars for tribal governments by fostering agency cooperation while reducing administrative burdens. This flexibility allows the creation of programs that culturally meet the needs of tribal citizens and eliminate administrative duplication.

In the last Congress, this Committee heard testimony on S. 1574 a bill introduced by Senator Murkowski. That bill would have consolidated and streamlined federal funding for tribal employment and training and related service programs in Indian Country. The legislation would also have updated and improved upon existing law which has allowed tribes to integrate their employment related funding and maximum program efficiency for the past 20 years. In the House of Representatives, Congressman Young (R-AK) has already introduced legislation that is identical to that introduced by Senator Murkowski in the 113th Congress.

NCAI recommends the Committee on Indian Affairs take up this legislation for passage in this session of Congress.

Enact Self-Governance Legislation. Self-governance allows 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 2014, there are 254 Self-Governance Tribes within the Department of the Interior – Bureau of Indian Affairs and 341 Self-Governance Tribes within the Department of Health and Human Services – Indian Health Service. Over the last 25 years, the Self-Governance tribal leadership and representatives have held ongoing meetings with the Administration and Congress regarding ways to improve and advance self-governance and have made recommendations to update and enhance the current legislation.

NCAI recommends that Congress enact Title IV Self-Governance Amendments. 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. Over the past 35 years, the ISDEAA has been one of the most successful mechanisms allowing tribes to develop the capacity for government-building activities. However, Title IV of the ISDEAA, the Self-Governance program within the Department of the Interior, has serious gaps and problems. Therefore, tribal leaders 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.

In the last Congress, the Committee on Indian Affairs favorably reported S. 919, the Department of the Interior Tribal Self-Governance Act of 2013 out of the Committee. The Department of the Interior has also expressed strong support for passage of this legislation which would significantly advance Congress's long-standing policy of promoting tribal self-governance. NCAI recommends swift introduction and action on this legislation in this session of Congress.

In addition, NCAI urges both Congress and the Administration to look at expanding self-governance programs outside of the Department of the Interior and the Indian Health Service. Demonstration projects, consistent with fundamental self-governance tenants, could be developed where agencies have a high degree of tribal programs and tribes have the capacity for program administration.

TAX INITIATIVES

NCAI greatly appreciates the Committee's support in collaborating with the Finance Committee to further tax initiatives important to Indian Country. NCAI encourages this Committee to ensure that tribes are included in any broader tax reform efforts taken up by Congress in this Session. Tribal governments should be included in the Tax Code in a manner that encourages growth and acknowledges the sovereign taxing authority of tribal governments. Federal budget difficulties have underscored the need for development of tribal taxing authority to provide government revenue

independent of federal appropriations. Tribal governments are increasingly using their taxing authority to support tribal government programs and infrastructure. NCAI has the following recommendations, and urges consultation with tribal leaders who are becoming increasingly engaged with tax matters in Indian Country:

Make Tax “Extender” Incentives Permanent -- Support legislation to incentivize business development on tribal lands. NCAI urges 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. In addition, we would like to bring your attention to proposals to modify the New Markets Tax Credit and the Low-Income Housing Tax Credit to make them more accessible to Indian reservation-based economic and housing development projects.

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 recommends 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.

NCAI also supports the proposal in the Department of Treasury FY 2015 Budget to update the Indian Employment Credit (Green Book pp. 13-15). The Indian Employment Credit is structured as an incremental credit applicable to current year qualified wages and health insurance costs in excess of such costs paid in the base year (1993, the year of original enactment). Updating the base year would achieve two goals: (1) simplicity by eliminating the need for businesses to maintain tax records long beyond normal requirements, and (2) restoration of the original incremental design of the credit. However, we note that in certain instances, this would result in a lesser amount of tax credit being available to certain businesses with on-reservation operations. We recommend use of the tax revenue savings inherent in this change to extend the credit permanently and to make the New Markets Tax Credit more accessible to tribal projects, as proposed below.

We also urge extension of a tax provision of importance tribes in coal-rich areas, the Indian Coal Production Tax Credit (ICPTC). The ICPTC was enacted for a temporary period in the Energy Tax Incentives Act of 2005 (see IRC Section 45(d)(10) and (e)(10)). The credit was later extended and expired on December 31, 2014. There is a compelling need for the ICPTC. Tribes with coal reserves rely on the jobs and revenues generated by mining operations to improve the well-being of their citizens as they strive for economic self-sufficiency. Unfortunately, on-reservation mining operations are disadvantaged by bureaucratic obstacles, additional federal regulatory requirements, and the higher financial costs associated with mining on Indian lands, which make it difficult to compete with off-reservation operations. Since 2006, the ICPTC has helped offset those disadvantages and level the playing field for tribal mining operations.

The New Markets Tax Credit (Section 45D) was established in 2000 to spur new or increased investments in operating businesses and real estate projects located in low income communities. The program has traditionally been a successful tool for attracting private capital to Indian Country.

However, neither tribal organizations nor Indian reservation-focused applicants received a single dollar in the 2013 or 2014 rounds of NMTC Funding. NCAI urges Congress to address this problem by creating a set-aside for Indian reservation-focused applicants and by amending Section 45D(i)(6) to direct Treasury to prescribe regulations to ensure that Indian reservations (as well as non-metropolitan areas) receive an allocation of qualified equity investments.

Similarly, the Low-Income Housing Tax Credit (LIHTC) is too frequently unavailable to tribes. Indian tribes have great numbers of low-income tribal members and long waiting lists of members who need housing. Unfortunately, the LIHTC allocations are provided only to state governments, who most frequently use criteria that benefit only urban areas. We urge that a set-aside be created for tribal governments.

Tax Parity for Tribal Governments. Members of Congress and Indian tribes have been identifying a significant number of provisions where tribes are unable to use the Tax Code in the same manner as state and local governments. NCAI urges the Committee to take action in these areas to ensure that tribal governments achieve tax parity with state and local governments.

- Tribal government tax-exempt bonds. Currently, tribes may only use tax-exempt bonds for “essential government functions.” Unfortunately the IRS has interpreted this in a way to exclude tribal economic development as a governmental function, while state and local governments frequently use tax exempt financing for revitalization projects. This unnecessarily prevents tribes from securing the funding needed to revitalize their communities. Tax parity is essential for tribal governments to freely implement important initiatives in Indian Country.
- Tribal government pension plans. Tribal governments currently must provide both government and private ERISA pension plans to their employees. This largely depends on whether the employee works for the tribal government or for a tribal enterprise. This requirement 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. Tribally-created foundations and charities do not enjoy the same tax-exempt status that state-created foundations and charities enjoy. This creates an uncertain atmosphere for potential benefactors seeking to maintain their tax-exempt status. In order for tribal foundations and charities to thrive, it is necessary for benefactors to feel unencumbered to make contributions without potential tax penalties.
- 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, the tax code should be amended to allow tribal child support enforcement agencies to enforce orders for support through the authority to withhold past due child support payment from the federal income tax returns of parents with past due obligations.

- Tribal access to Clean Renewable Energy Bonds (CREBs). Tribes and entities wholly owned or controlled by tribes, should be able to utilize CREBs for energy development projects. Legislation should also create a set aside for tribal projects under the CREBs provision.
- Adoption Credit. Recognize American Indian/Alaska Native tribal governments for purposes of determining under the Adoption Credit whether a child has special needs. 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.
- 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.

Inclusion of American Indian/Alaska Native tribal governments in any forthcoming tax reform bill. The last national tax reform occurred during the 1980s. As such, any tax reform will most likely create a Tax Code which will govern the United States, its territories, and Indian tribal governments for decades to come. For this reason, it is important that tribal governments be included in any tax reform efforts as a matter of fairness. Reliable funding sources have been few and far between for every tribal government service for decades. NCAI recommends 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.

Include Tribal Governments in the Marketplace Fairness Act. NCAI seeks the Committee's support of the Marketplace Fairness Act and requests 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 included tribes within last year's version of S. 743, and we are optimistic the legislation will be considered again this year.

In sum, Indian tribal governments have authority to, and increasing utilize, their authority to collect sales taxes on Indian reservations. Tribal governments use these tax revenues to provide services on their reservations, such as law enforcement, education, health care and all the basic roads and infrastructure needs.

In the Marketplace Fairness Act, Congress will be exercising its Commerce Clause authority, which includes the authority to regulate Commerce "with foreign Nations, and among the several States, and with the Indian tribes." Like states, tribal governments are subject to confusing federal common law decisions on taxing jurisdiction, and can benefit from simplified rules on remote sales taxes and the sourcing of tax jurisdiction.

We urge that any legislation passed by Congress also protect the tax status of Indian tribal governments by allowing Indian tribes to participate in the same manner as states. NCAI has worked with states and the National Conference of State Legislatures, and Indian tribes were

included in prior legislation, in S. 34 from the 110th Congress and in H.R. 5660 from the 111th. We believe that the provisions incorporated in these older bills are better model for including tribes.

Inclusion of tribes is extremely important, because the legislation will create the sales tax collection system for the next century, and sales taxes are a critical source of government revenue for Indian tribes. State governments rely on federal funding for approximately 25% of their budgets, while tribal governments rely on federal funding for more than 60% of their budgets. Most often tribal governments are supplying services that the federal government is under treaty and trust obligations to provide. At a minimum, Congress should exercise its authority in a way that supports and protects the ability of tribal governments to raise tax revenues on their own. If a new national system of sales tax collection is to be created with Congressional approval, basic fairness means that tribal governments should have the same opportunities to collect taxes as other jurisdictions within the federal system. We urge Congress to include tribal governments within the Marketplace Fairness Act.

TRIBAL INFRASTRUCTURE

Tribal infrastructure needs must be addressed in order for tribes to not only meet the needs of their members, but to attract economic development opportunities to their communities. In this session of Congress, members of this Committee will be asked to take action on transportation and housing reauthorizations that will have a great impact on the current housing and transportation programs operated by tribal governments.

Transportation:

Tribal transportation programs are critical to ensuring that tribal governments can provide for the economic and social well-being of their tribal members and members of the surrounding communities. Surface transportation in Indian Country involves thousands of miles of roads, bridges, and highways. According to the latest National Tribal Transportation Facility Inventory, there are approximately 160,000 miles of roads and trails in Indian Country owned and maintained by tribes, the Bureau of Indian Affairs, 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 Bureau of Indian Affairs 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.

Therefore, safety issues continue to be among the biggest challenges for tribal nations because many tribal communities are vulnerable due to unsafe and often inaccessible roads, bridges, and ferries. According to the Federal Highway Administration, “American Indians have the highest rates of pedestrian injury and death per capita of any racial or ethnic group in the United States.” Over the past 25 years, 5,962 fatal motor vehicle crashes occurred on Indian reservation roads, with 7,093 lives lost. While the number of fatal crashes in the nation declined 2.2 percent during this time period, the number of fatal motor vehicle crashes per year on Indian reservations increased 52.5 percent. Adult motor vehicle-related death rates for American Indians/Alaska Natives are more than twice that of the general population. These statistics are alarming and call for major changes in federal transportation safety programs serving Indian Country.

The current cost to construct for Bureau of Indian Affairs owned roads in Indian Country is approximately \$81.6 million. Indian Country will require a substantial commitment of federal resources in keeping with the trust responsibility to meet maintenance and transportation needs for tribal governments and citizens. In addition, another surface transportation program that has a growing shortfall is the Bureau of Indian Affairs Road Maintenance Program. The lack of investment in this infrastructure over the past decade has compromised highway safety in Indian Country, dramatically shortened the useful life of the Bureau of Indian Affairs transportation system, and tribal roads and bridges and undermined tribal economic development initiatives in Indian Country.

Bureau of Indian Affairs Road Maintenance Program. Although the majority of transportation programs are authorized and funded through the Department of Transportation, there is one critical tribal transportation program located within the Bureau of Indian Affairs. This program, the BIA Road Maintenance program is responsible for maintaining approximately 29,400 miles for roads in Indian Country including 900 bridges. The funding for this program has steadily declined for several fiscal year cycles and is currently funded at \$26 million for FY2015.

The current deferred maintenance for BIA roads is over \$289 million and rising. At this current level of funding it would take more than a decade to clear the current maintenance backlog on these roads, not accounting for future maintenance needs. These staggering amounts of deferred maintenance on BIA roads directly impacts tribes. The safety of our youth, elders, tribal citizens, and non-Native neighbors depend on the adequacy of these roads.

Reauthorization of MAP-21. The Moving Ahead for Progress in the 21st Century (MAP-21) is the major transportation authorization that administers highways, bridges, transits, and safety programs within the Department of Transportation. Particularly for tribes, MAP-21 comprises the Tribal Transportation Program (TTP) and Public Transportation on Indian Reservations Section 5311 (c) (also known as the Tribal Transit Program). Currently tribes receive \$450 million for TTP for the construction and maintenance of highways, roads, and bridges; and \$30 million for Public Transportation on Indian Reservations, which provides funding for development and maintenance of transit systems that serve tribal communities.

NCAI requests this Committee to hold a hearing on tribal transportation priorities in anticipation of the reauthorization of MAP-21 which expires in May of 2015. This hearing could be used to highlight the importance of tribal transportation programs and how those programs can be improved as Congress considers reauthorization of the broader transportation reauthorization.

Housing:

Housing is a core necessity for tribal communities. While tribes have made great strides toward improving housing conditions in their communities, the need for adequate, affordable housing for low-income Indian people persists. Native Americans still face some of the worst housing and living conditions in the United States. According to the U.S. Census Bureau's 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 percent lack complete plumbing facilities, 7.5 percent lack kitchen facilities, and 18.9 percent lack telephone service. Close to 30 percent of Indian homes rely on wood for their source of heat.

These staggering statistics have long been challenges facing Indian tribes, and without appropriate policies and proper government-to-government planning to address these challenges, Indian Country will continue to fall behind. Seventy percent of the existing housing stock in Indian Country is in need of upgrades and repairs, many of them extensive. The longer it takes to address these significant housing needs in Indian Country, the more expensive remedies will be in the long-term.

Tribal programs under the Native American Housing and Self-Determination Act 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. Today there are close to 500 Tribally Designated Housing Entities in Indian Country.

Reauthorization of NAHASDA. The current NAHASDA authorization expired in September of 2013. NCAI recommends the reauthorization of NAHASDA and its programs and activities. NAHASDA's programs are key to meeting the housing needs of Indian Country. In the last session of Congress, NAHASDA legislation passed the House but stalled in the last days of the Congress. NCAI recommends that this Committee work on legislation to reauthorize NAHASDA to bring certainty to housing development and programs throughout Indian Country.

Telecommunications:

As the United States progresses with the deployment and adoption of 21st Century technologies, mechanisms implemented must take into consideration the unique circumstances that exist on tribal lands. As new policy initiatives spur robust, high-speed broadband services throughout the country, adequate resources and funding for these efforts will need to keep pace. Policies focused on the deployment and adoption of these new technologies provides renewed opportunities for tribes to exert self-determinations and advance capacity building. Funding for federal commitments to consult with tribal nations and access to public media systems continue to be essential functions for bridging the Digital Divide in Indian Country.

The primary law governing our telecom sector is the 1934 Communications Act—which was last amended in 1996 due to rapid advances in wireless and cable technologies. The 1996 amendments created the Universal Service Fund to meet the goals of providing affordable and quality telecom services across the country—most notably to rural areas, and for low-income individuals. However, the law passed without consideration to the general absence of these facilities and services on tribal lands.

In the 2000 U.S. Census, it was estimated that less than ten percent of tribal lands had access to the internet—and that just 68 percent of tribal households had access to basic telephone service. With these startling statistics, tribes united to advocate for change.

NCAI urges the Committee to hold an oversight hearing on connectivity in Indian Country and make specific recommendations below to improve Administration efforts in telecommunications.

Establish the Office of Native Affairs and Policy as an independent office at the FCC. The FCC has already established a procedural framework for stand-alone offices, such as the Office of General Counsel and Office of Engineering and Technology. These offices were created to directly advise the FCC Chair and Commissioners as specific subject matter experts. When the FCC Office of Native Affairs was established (FCC-ONAP), it was placed under the Intergovernmental Affairs Bureau with the intent to report to, and work directly with the FCC Chair and across the Bureaus and Offices at the Commission. Elevating FCC-ONAP to operate as a stand-alone office will ensure that it has the unfettered access needed to address tribal concerns and advise the FCC Chair, Commissioners, and the Commission's Bureaus and Offices on all tribal matters.

Dedicated Funding for FCC-ONAP. NCAI urges continuation of a dedicated, annual budget for FCC-ONAP to ensure the FCC's commitment to consult with tribal nations is preserved and exercised. FCC-ONAP is charged with consulting with tribal nations on behalf of the entire agency, and working with FCC Commissioners, Bureaus, and Offices for the development and implementation of policies benefiting tribal nations. The passage of the 2014 Omnibus Appropriations bill was the first time Congress appropriated funds to the FCC specifically for consultation purposes with tribal nations. We urge Congress to continue funding of no less than \$300,000 for consultation purposes at the FCC through its Office of Native Affairs and Policy.

ConnectED. In June 2013, President Obama announced the ConnectED initiative to connect 99 percent of America's students to high-speed broadband and services by 2018. Shortly after this announcement, the Federal Communications Commission initiated rulemakings to modernize its \$2 billion Schools and Libraries program (E-rate)—the federal government's largest educational technology program. In the Final Order adopted by the FCC in August 2014, many tribal concerns were addressed, such as the need for training on various programmatic aspects of the E-rate program and the need for a Tribal Liaison at the Universal Service Administrative Company.

However, the Final Order missed taking action on several key recommendations to increase tribal participation in the program. Additionally, the Final Order focused on prioritizing funding to support Wi-Fi deployment, which does not address the critical need for new hardline, and in many cases first-time, connections to the nation's schools and libraries.

Amend the Library Services and Technology Act. NCAI seeks an amendment to the Library Services and Technology Act to recognize tribal authority to designate what constitutes a "library" on tribal lands.

Tribal 'libraries' are usually located in multi-service buildings that provide programs and services to tribal members, which may not constitute a formal 'stand-alone' library or necessarily be attached to a primary or secondary education institution. When the 1996 Telecommunications Act passed it recognized the Library Services and Construction Act, which provided tribes the ability to designate their own libraries. However, just months after passage of the '96 Telecom Act, the LSCA was rescinded and replaced by the Library Services and Technology Act (LSTA). Under the LSTA tribes must receive approval from a State Library Administrative Agency to designate a "library" as eligible for receiving funds for various library functions—including eligibility for participation in the E-rate program. NCAI requests legislation to amend the LSTA, or remove the

requirement that tribal libraries be eligible for LSTA under state programs and instead restore them to being treated as agencies of sovereign tribal nations.

PUBLIC SAFETY

Congress has taken historic steps in the past several years to address public safety issues in Indian Country. With the passage of the Tribal Law and Order Act in 2010, the Violence Against Women Reauthorization Act of 2013, and the Alaska Safe Families and Villages Act of 2013, Congress has begun to address some of the structural barriers to public safety in tribal communities. For the promise of these laws to be fully realized, however, they must be fully implemented at the agency level and sufficient resources must be allocated through appropriations.

In 2013, the bi-partisan Indian Law and Order Commission released its report to Congress and the President concluding that “[h]ow we choose to deal with the current public safety crisis in Native America – a crisis largely of the federal government’s own making over more than a century of failed laws and policies – can set our generation apart from the legacy that remains one of [the] great unfinished challenges of the Civil Rights Movement. Lives are at stake, and there is no time to waste.” The public safety problems that continue to plague tribal communities are the result of decades of gross underfunding for tribal criminal justice systems; a uniquely complex jurisdictional scheme; and the historic, abject failure by the federal government to fulfill its public safety obligations on American Indian and Alaska Native lands. Residents and visitor on tribal lands deserve the safety and security that is taken for granted outside of Indian Country.

Reauthorization of the Tribal Law and Order Act; with Juvenile Justice, Technical Amendments and a Joint Effort to Address the Crisis in Criminal Justice Funding. NCAI asks that the Senate Committee prioritize the reauthorization of the Tribal Law and Order Act of 2010 (TLOA). The TLOA was a strong and bi-partisan step forward by Congress to address tribal justice systems. The Act authorized funding for a number of programs to tribal governments to improve public safety and 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 the crisis-level funding needed for criminal justice in Indian Country. There is very strong, but as yet unrealized, support within Congress, and combining additional appropriations with the reauthorization will be well-received and strongly supported by tribal leaders.

The reauthorization of the TLOA may also serve as a vehicle for improvements to the Juvenile Justice system in Indian Country, which we describe in the next section. Chairman Barrasso and Vice-Chair Tester have both identified youth justice as a priority, and Indian Country fully agrees.

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.

Bureau of Prisons Tribal Prisoner Pilot Program. Specifically, we ask that the Committee reauthorize and make the Bureau of Prisons Tribal Prisoner Pilot program, which expired on November 24, 2014, permanent. 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.

At the time of enactment, NCAI believed that the program would be used sparingly for only the most violent offenders. However, there were concerns about costs and the program was limited to a pilot for four years. In that short time the program is only beginning to work, but it works extremely well. Tribal governments must develop new criminal codes, train staff, and then it took time to navigate the federal bureaucracy to use the program. Three tribes have only fairly recently transferred a total of six prisoners to federal prisons, but this is an extraordinarily useful tool for a big problem – the small number of very violent offenders. Providing tribes this flexibility will allow tribal governments to concentrate their resources on other pressing criminal justice and public safety needs. The Federal Bureau of Prisons has supported the continuance of this program in its report to Congress as required by the Tribal Law and Order Act.

Trespass. 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. First, tribes are unable to address problems with sexual assault and stalking offenders who are subject to civil protection or exclusionary orders, but continue to return to the reservation to harass victims. Violating a tribal protection or exclusionary order should be subject to more serious federal penalties. Second, tribes also have difficulties with former lease tenants who overstay agricultural and residential leases for many years and refuse to leave or pay rent. Third, tribes are also experiencing problems with timber theft, repeated poaching, illegal mining and illegal marijuana operations. These are serious property crimes that are infrequently enforced by the federal government because the penalty is a misdemeanor. The goal would be to create an effective federal deterrent that could be included in initial notices or orders. In short, 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.

Juvenile Justice. The Indian Law and Order Commission’s “A Roadmap for Making Native America Safer” report discussed the disturbing reality that American Indian/Alaska Native youth face disproportionate exposure to violence and poverty. Many of these communities lack access to funding for mental health and other support resources to offset the impacts of these conditions. As a result, Native children are particularly likely to enter the juvenile justice system. Removing these children from their families, tribal communities, and culture increases the likelihood that they will become habitual offenders. At present, the majority of youth in federal detention centers are American Indian/Alaska Native. American Indian/Alaska Native youth also make up a disproportionate number of the population in state juvenile justice systems, when compared with their non-Indian counterparts.

When faced with these realities, tribes are often unable to participate in ensuring the health and welfare of their juvenile populations. In most cases, tribes are better situated to offer culturally appropriate alternatives to incarceration, however, many tribes lack the ability to financially support the infrastructure needed to deter and rehabilitate juvenile offenders, and rely solely on federal appropriations. The immediate costs of arming Native juvenile justice systems with the tools they need to implement culturally sensitive juvenile justice solutions pale in comparison with the long

term costs of incarcerating habitual juvenile offenders into adulthood. NCAI has the following recommendations for the Committee:

Funding for American Indian/Alaska Native Juvenile Justice Programs. The Tribal Law and Order Commission's 2013 Report on juvenile justice (TLOC Report) and the Attorney General's Advisory Committee on American Indian/Alaska Native Children Exposed to Violence 2014 Report (AG Report) recommend that, rather than incarcerate Native juvenile offenders, tribes implement culturally-appropriate rehabilitation measures. Incarceration of Native juvenile offenders only exacerbates an already precarious situation. According to the TLOC Report, when placed in juvenile detention facilities, youths are placed in "generally unsafe, abusive, ineffective, and horribly expensive" situations that tend to push them further into a life of crime. It is therefore necessary for tribal juvenile justice systems to be able to fashion appropriate alternatives aimed at rehabilitation and treatment.

The TLOC Report recommends that resources be more effectively deployed to Indian Country in order to achieve parity between Native and non-Indian justice systems. The Juvenile Justice and Delinquency Prevention Act of 2002 (JJJPA), which is up for reauthorization, provides funding for juvenile justice prevention and treatment programs in Indian Country. Currently, the aggregate amount of funding provided by the JJJPA for all of Indian Country equals the amount apportioned to one state. This is unacceptable in light of the challenges facing Indian Country in implementing and sustaining juvenile justice systems. Tribes must be allocated and appropriated at least ten percent of the funding available under the JJJPA in order to provide their communities with adequate juvenile justice solutions. Both the TLOC Report and the AG Report recommend that Congress authorize additional and adequate funding for tribal juvenile justice programs in the form of block grants and self-governance compacts to support the restructuring and maintenance of tribal juvenile justice systems.

Tribal Juvenile Data collection. The TLOC Report highlights the difficulties Indian Country faces in keeping track of its juvenile offenders. In some cases, juvenile offenders disappear completely from a tribe's radar once they are in the system. At the state level, data collection is either inadequate or nonexistent. Both the TLOC Report and the AG Report emphasize that proper data collection is essential if tribes are to attempt early intervention with at-risk youth.

A number of tribes have instituted juvenile tracking programs, in which they have collected data from a variety of sources to create a comprehensive picture of each of the youths within their tribal communities. From this data, tribes have been able to foresee when family situations require preventative action, and then supply the resources necessary to maintain the youth's wellbeing. This kind of data collection is essential for tribes to maintain healthy youth communities, but many tribes lack the resources necessary to institute these kinds of comprehensive programs. Appropriated funding is therefore necessary for the long term health of these tribal communities, and will result in an overall savings in both social and fiscal costs.

Preventative Family Services. The AG Report states that Native juvenile offenders are exposed to violence at extremely high rates. This exposure negatively impacts neurological development, physical and mental health, and school performance, and increases substance abuse and delinquent behavior. Many of these issues could be resolved through early preventative services, such as providing mental health and substance abuse counseling for parents, screening youth for trauma, or providing after school programs and youth mentorship. Tribes often lack the resources to initiate

and facilitate these programs. It is therefore necessary for Congress to appropriate funding essential to the creation and implementation of preventative tribal intervention programs.

Request for Oversight Hearing on Nationwide Implementation of Tribal Domestic Violence Jurisdiction. NCAI respectfully requests the Committee hold an oversight hearing on the implementation of 25 U.S.C. § 1304, known as Special Domestic Violence Criminal Jurisdiction (SDVCJ), in March of this year. The restoration of tribal jurisdiction over non-Indian domestic violence offenders marked one of the most important and most highly visible provisions of the reauthorization of the Violence Against Women Act nearly two years ago. On March 7, 2015 all Indian tribes will become generally eligible to implement the new law without prior approval from the Attorney General. That month would be an opportune time for the Committee to hear about implementation from the three tribes in the Pilot.

Under the Pilot Program, three tribes were approved by the Attorney General to exercise SDVCJ on an accelerated basis on February 20, 2014. The three tribes include the Confederated Tribes of the Umatilla Indian Reservation (Oregon), the Pascua Yaqui Tribe (Arizona), and the Tulalip Tribes (Washington). Over the past two years, 41 tribes have worked in collaboration to prepare for implementation as part of the Intertribal Technical-Assistance Working Group. It is expected that quite a few more tribes will begin implementation in the near future.

One goal in requesting this oversight hearing is to educate more tribal leaders about the process of implementation. The pilot project tribes have done tremendous work in developing tribal codes and putting the required criminal procedural safeguards into place. They have accumulated a lot of lessons learned, and a Senate hearing would be an excellent place to share this knowledge.

In addition, this issue garnered a great deal of attention in Congress, and we feel a responsibility to keep Congress informed about progress with the new law. The pilot project has illustrated the necessity of criminal jurisdiction over non-Indians on tribal lands in order to ensure public safety. The three pilot tribes are already making multiple arrests of non-Indian domestic violence and dating violence offenders and have a great deal of data and information to share.

For example, there have been multiple related assaults and incidents involving children, which the tribes cannot prosecute under their current authority. This data is especially relevant given the Attorney General's Task Force on Children Exposed to Violence recent recommendations. In addition, it is notable how many of these SDVCJ defendants have arrest warrants in other jurisdictions and have attempted to exploit jurisdictional gaps by "hiding out" in Indian country. The pilot project has also illustrated the need for access to federal criminal databases and for clarification of authority to detain criminal offenders for federal or state prosecution. Finally, implementation has highlighted the tremendous need for increased resources for tribal justice systems.

The SDVCJ pilot project has placed these issues in spectacularly focused detail. NCAI believes that the Committee will be highly impressed with the results of any hearing that includes representatives of the three pilot project tribes.

Victims of Crime Act (VOCA) Funding. Congress created the Crime Victims Fund through the Victims of Crime Act in 1984. It is based on a simple idea: Money the government collects from those who commit crimes should be used to help those victimized by crime. Each year, criminal

finances and penalties collected in federal court are deposited into the Crime Victims Fund. The Department of Justice disburses money from this Fund to States and other entities to support victim compensation and assistance programs. It is important to note that the Fund receives no tax dollars. Unfortunately, since its inception, Indian tribes have largely been shut out of the critical funds disbursed from the Crime Victims Fund.

Since fiscal year 1999, Congress has capped the amount of money disbursed from the Crime Victims Fund. The cap on money disbursed from the Fund has remained low, even as the amount of money going into the Fund has risen dramatically. For example, from fiscal year 2009 through fiscal year 2013, the Crime Victims Fund collected an average of \$2 billion each year, but disbursed only an average of \$700 million per year.

Last year, Congress raised the cap for fiscal year 2015 to \$2.3 billion. Unfortunately, the vast majority of that funding is distributed via a formula grant to states and territories and is not reaching tribes and tribal communities. NCAI Resolution calls for 10% of the distributions from the Crime Victims Fund to be directed to tribal governments. This was also the recommendation of the Attorney General's Task Force on American Indian and Alaska Native Children Exposed to Violence. We understand that there is an effort underway in the Senate to make the increased distributions from the Crime Victims Fund permanent, and we request that the Senate Committee on Indian Affairs work with your colleagues to ensure that Indian tribes are appropriately included in distributions from the Crime Victims Fund moving forward.

APPROPRIATIONS

Annual funding decisions by Congress are an expression of our nation's policies priorities and the federal budget for tribal governmental services reflects the extent to which the United States honors its promises to Indian people.

Tribal leaders throughout Indian Country seek the same outcomes as other national leaders: to protect the health, safety, and prosperity of the populace they serve. Tribal leaders are addressing urgent societal challenges, often with inadequate resources and authority, but still facing expectations from their people for safe communities, educational opportunities, health care, clean air and water, and economic growth. Effective tribal governments that can meet the essential needs of their citizens require the fulfillment of the modern federal trust responsibility as well as respect for tribal self-determination.

The NCAI FY 2016 Budget Request, included as part of this testimony, was developed in coordination with national tribal organizations and tribal partners, and offers recommendations for ways the federal government, partnering with tribes, should meet the educational needs of a young Indian population through Bureau of Indian Education schools, tribal schools, and the public schools on and near tribal lands; provide adequate health care via the Indian Health Service, both direct and self-governance; ensure responsible resource development for the future; provide safe and secure tribal communities; and supply the long-term investments in tribal public infrastructure and services required to ensure every American Indian and Alaska Native enjoys a decent quality of life and has an opportunity to succeed.

A combination of parity in governmental and program funding as well as promoting Indian self-determination will help to achieve the vision of broader progress in Indian Country. Several areas of

tribal administration and services demonstrate the impediments to effective tribal governance due to disparities in resources, such as in tribal public safety and justice, child welfare, and natural resources, to name a few.

Contract Support Costs. The Indian Self-Determination and Education Assistance Act has represented the cornerstone of this nation's federal policy toward tribes for the last forty years. Under the Indian Self-Determination Act, the United States enters into inter-governmental contracts with tribes under which tribes administer federal programs, either through contracts of self-governance compacts for the benefit of tribal members. In amending the 1975 Act in 1988, Congress observed that the single greatest impediment to successful implementation of the Indian Self-Determination Policy was the consistent failure of the Bureau of Indian Affairs and the Indian Health Service to pay full contract support costs associated with the administration of transferred programs. Congress recognized that the failure of the BIA and HIS to pay full fixed contract support costs has often led to reductions in programs, amounting to partial termination of the federal government's trust responsibility.

NCAI calls on Congress and the Administration to honor the nation's current and future contract obligations to tribal nations and work diligently toward a permanent solution to contract support cost funding and to implement meaningful contract support cost reforms in consultation and partnership with Indian Country.

Work to secure full CSC funding without impacting program funding. Following the Supreme Court's Ramah decision, the Administration proposed "mini-caps" on contract support cost appropriations for FY2014 that would have capped the amount of CSC available for each individual Indian Self-Determination Act contractor. Congress rejected the mini-cap proposal, which was vigorously opposed by tribes, and ultimately enacted the FY2014 Consolidated Appropriations Act without any limits on contract support cost spending at the individual or aggregate level. As a result the entire unrestricted lump-sum appropriations for the IHS and BIA were legally available to pay the agencies' contract support cost obligations.

Congress and the Administration must seek permanent full funding for contract support costs that will not come at the expense of direct program funding or retained tribal shares. All tribes agree that the payment of contract support costs, which is a legal obligation, should not be achieved by reducing direct services to any tribes. Tribes and tribal organizations across the country overwhelmingly support the creation of a permanent, indefinite appropriation for contract support costs, which would ensure full funding for contract support costs on an as-needed basis without impacting the rest of the IHS and BIA budgets.

Prompt Settlement of Past Claims. In June 2012, in the Ramah and Artic Slope tribal contracting case decisions, the Supreme Court rejected the federal government's defense of these breach of contract claims and rule that the government acted illegally in failing to pay tribes and tribal contractors the full contract price due under their Indian Self-Determination Act contracts. This breach covers thousands of contracts by the BIA and IHS extending back over more than twenty years.

Rather than acting quickly to resolve these claims, which are supported by years of data documenting the government's underpayments, the agencies insisted that in order to settle these claims they must re-audit contracts and re-calculate indirect cost rates according to retroactively-

adopted accounting rules in an effort to re-determine the amount of underpayments. The result has largely been to further delay justice and further burden tribes with slow, expensive and unnecessary accounting battles, both in the contexts of individual IHS claims and the BIA Ramah class action sampling process. On the IHS side, where claims must be settled tribe-by-tribe and year-by-year, progress has been made recently, however, by the agency's own account, some 600 claims remain unresolved.

Given the wealth of available data about the underpayments compiled by the agencies themselves, settlement of all cases should have taken no more than a few months—it should not take years. While tribes appreciate the progress that has been made, further delay is not acceptable and the agencies must approach settlement with all tribes in a consistent and equitable manner.

EDUCATION

No resource is more important to the continued success and growth of our nation and Indian Country than our children. It is vital that we all work together to strengthen our human capital in all tribal communities across America. The greatest way to do just that is to provide a high-quality, culturally-appropriate education that effectively and equally benefits all of our nation's children—including our Native children.

Ensuring equal educational opportunities is not simply a matter of fairness, but even more importantly in today's challenging economic climate, it is an essential strategy for creating jobs and securing the nation's future prosperity especially in tribal communities. Education also 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.

The federal government provides education to Indian students in two ways, through federally funded Bureau of Indian Education (BIE) schools or through education assistance to public schools where Indian students attend. Currently 620,000, or 93%, of Indian students attend public schools and approximately 45,000, or 7%, attend BIE schools. There are 184 BIE-funded schools (including 14 peripheral dormitories) located on 63 reservations in 23 states.

Many challenges exist in reforming the educational system for Native students. For example, the 2011 National Indian Education Study found that Native students continue to score significantly lower than their peers in reading and math in grades four and eight. The severity of the current state of Indian education is perhaps most apparent in the Native high school dropout rate. The graduation rate for American Indian and Alaska Native high school students is 67 percent – the lowest of any racial/ethnic demographic group across all schools.¹ Even worse, the graduation rate for Native students in the Bureau of Indian Education (BIE) school system is a staggering 53 percent compared to the national average of 80 percent.² In fact, recent data finds that while the graduation rates continue to rise nationally, with strong gains by the Latino and African American

¹ *Indian Students in Public Schools – Cultivating the Next Generation: Hearing on Indian Education Before the S. Comm. On Indian Affairs, 113th cong.* (2014) (testimony of William Mendoza, Exec. Dir., White House Initiative on Am. Indian and Alaska Native Educ.).

² See Marie C. Stester & Robert Stillwell, U.S. DEP'T OF EDUC., NAT'L CTR. FOR EDUC. STAT., PUBLIC HIGH SCHOOL FOUR-YEAR ON-TIME GRADUATION RATES AND EVENT DROPOUT RATES: SCHOOL YEARS 2010-11 AND 2011-12 (10) 2014), *available at* <http://nces.ed.gov/pubs2014/2014391.pdf>.

communities, Native American students have experienced only modest improvements since 2000 and have seen their graduation rates actually decline since 2008.

NCAI applauds the work of this Committee in the last session of Congress in renewing focus on Indian education and holding five separate hearing on issues impacting Native students from pre-k to college. We request that the Committee continue this work and introduce tribal-specific legislation to improve Indian education while working with the Health, Education, Labor and Pension Committee as it proposes changes to the Elementary and Secondary Education Act.

As reauthorization of the No Child Left Behind Act begins this year it is vitally important that tribal leaders and educators are included at the forefront to ensure greater tribal participation in the educating of their children, to expand the investment in culture and language revitalization, to provide greater support for Native teachers, administrators, and leaders, and to promote greater interagency coordination for a truly holistic approach to the educational experience of all students. Specific recommendations include:

Reauthorization of ESEA (No Child Left Behind Act). Support a reauthorization of the Elementary and Secondary Education Act (ESEA) that improves education opportunities for Native students. Indian Country needs strong, concerted, and sustained support to include key Native education priorities that will allow tribes to take greater control over the education of their citizens and help Native students succeed in the classroom and beyond:

- Strengthen tribal control of education: Tribes should be granted the authority and funds to build capacity for their education departments in the same ways that are provided to states and districts. The ESEA reauthorization should authorize tribes to operate ESEA title programs in public schools that are located on Indian lands and serve Native students. The Department of Education would work with tribes to identify appropriate title programs for tribal administration, and tribes would work with the local educational agency on their respective reservations to implement the title program(s) in qualifying schools.
- Preserve and revitalize Native languages: The survival of Native languages and cultures is essential to the success of our communities and ways of life. Because immersion is largely recognized as the best way to learn a language, the reauthorization of the ESEA should authorize a grant program to develop and maintain Native language immersion programs.
- Provide tribes with access to tribal member student records: The ESEA reauthorization needs to expressly grant tribes and tribal education agencies (TEAs) access to tribal student academic records in the same way that local educational agencies have access. Tribes and their education agencies are in the best position to track and coordinate Native student data.
- Encourage tribal/state partnership: States that have Indian lands within their geographic boundaries have not been required—or even encouraged—to collaborate with tribes to meet the educational needs of Native children. The ESEA reauthorization must require states and local educational agencies to consult with tribes when developing applications for various ESEA title programs.

- Equitably Fund the Bureau of Indian Education: The Bureau of Indian Education (BIE) is currently ineligible for many of the Department of Education's flagship programs, such as Race to the Top, because the ESEA does not include language expressly making them eligible. The ESEA reauthorization should include express statutory language making all funding stream available to BIE schools, either through an overarching provision or within each ESEA program.

NCAI also requests that the Committee works with the Administration on several key recommendations that could enhance educational opportunities for Native students.

Blueprint for Reform. Last year, Secretary of the Interior Sally Jewell and the Secretary of Education Arne Duncan convened the American Indian Education Study Group (Study Group) to address the systemic challenges facing the Bureau of Indian Education (BIE) and to propose a comprehensive plan to reform the system. The Study Group held listening sessions in tribal communities and drafted a framework on proposed reforms following the listening sessions. After publication of the draft framework for reform the Study Group conducted four tribal consultations in April and May of this year and received public comment through June. NCAI and the National Indian Education Association (NIEA) submitted joint comments on the proposed framework advocating for reforms that address the needs of tribal communities and their BIE schools expressed by our membership.

Following the input from tribal leaders, Native educators, organizations, and other stakeholders, the Study Group released a "Blueprint for Reform" during President Obama's trip to Indian Country in June of this year aimed at transforming the BIE system from a director provider of education into a capacity-builder and service-provider to tribes with BIE-funded schools. The aim of the current reforms is to empower tribes to have greater control in the education of their children who are currently attending BIE schools.

Resulting from the recommendations in the "Blueprint for Reform," Secretary of the Interior Sally Jewell issued a Secretarial Order that will implement the recommendations. The implementation is currently underway in a two-phase process: the first over the course of the 2014-2015 academic year and the second over the course of the 2015-2016 academic year.

NCAI has committed to engaging tribal leaders in ensuring tribal engagement with this effort at reform of the BIE school system, but also requests that the Committee conduct oversight of this reform to ensure that it is conducted in a manner that will achieve the goals of tribal control over BIE schools.

Elevate Key Positions at the Department of the Interior and the Department of Education. Too often, Indian education is second-tier to many other important priorities facing administration officials making policy for tribal communities. The Administration must establish key positions in both federal departments that oversee the education of Indian Country's most precious resource – their children. The Bureau of Indian Education (BIE) Director is often mired in a heavily-bureaucratic structure within the Bureau of Indian Affairs (BIA) that creates barriers to effectively advance policy change. In addition, the Office of Indian Education at the Department of Education (ED) primarily serves as an administrator of Title VII – the Indian Education Title – within the broader ESEA. Taken together, the issues and concerns facing Indian education are often unable to reach the Secretarial level where effective change can truly occur. Having senior positions in both

Departments will ensure greater active participation in the formation of Indian education policy in both the BIE and the public education system.

Reissue the Executive Order on Tribal Colleges and Universities. Executive Order 13592, which established the White House Initiative on American Indian and Alaska Native Education, was a step in the right direction for Native education. However, tribal colleges and universities (TCUs) previously had a stand-alone Executive Order and their own initiative, which Executive Order 13592 rescinded and folded into a single Executive Order on Native education. Tribal leaders and Native educators did not request this change, and the net result has been less effort focused on strengthening TCUs. We urge this Committee to request that the Administration reissue the separate Executive Order and Initiative on TCUs, sufficiently fund both programs so they may meet their mandates, and direct that the two Initiatives work together. Current Executive Orders on African American education and historically black colleges and universities already do this for other students. American Indian and Alaska Native students deserve no less.

NATURAL RESOURCES

American Indian and Alaska Natives have nurtured, lived, and thrived off this land as first stewards since time immemorial. Tribes' cultures, traditions, lifestyles, communities, foods, and economies all depend upon many natural resources, and yet so many critical natural resources are disappearing faster than we can restore them. However, the ecological practices tribal peoples have cultivated for millennia are inherently sustainable and practical; they are time tested methods for resource and, correspondingly cultural survival.

Today, tribes are using their unique knowledge and skills in concert with modern management practices, often collectively with community and non-tribal organizations, to produce real accomplishments and model programs of excellence. Tribes and their communities can cite many examples where they have shaped the successful restoration and sustainable management of fragile natural resources through a commitment to stewardship that often requires arduous, through rewarding, collaboration with states, regional organizations, local governments and other stakeholders in larger ecosystem management efforts.

Tribes, as proven effective managers of their own resources, must be provided with the necessary tools and support as require by the treaty and trust responsibilities of the federal government. Congressional investment in tribal natural resources management helps to sustain tribal land and people and grow economies by fostering tribal economic self-sufficiency, cultural revitalization, and collaborative working relationships across jurisdictions, supporting communities and economies throughout the United States.

NCAI has the following recommendations on legislation that will be considered by Congress this session:

Wildfire Disaster Funding Act. The management of the forests, grasslands, and rangelands to restore them to resilient ecosystems and a sustainable environment furthers the protection of our territories, reservations, treaty and trust resources, and sacred and religious sites. As wildfires are increasing in frequency and intensity, the current practice of funding wildfire fighting, transferring funds from non-fire programs to cover the cost of essential fire suppression, has undermined the U.S. Department of Agriculture's (USDA) and Department of the Interior's (DOI) ability to

sustainably manage the forests, grasslands, and rangelands that are critical to tribal culture, religion, treaty rights, and trust resources.

Legislation introduced in the 113th Congress would treat the budget for responsible fire suppression in a similar manner to other emergencies such as floods and hurricanes, while ensuring funding for general land management and restoration actions that can reduce the need for wildfire suppression in the future. Identical legislation has been introduced in the House in the 114th Congress and NCAI urges this Committee to continue the work of the bipartisan group of Senators and Congressmen who introduced this legislation in Congress to ensure that essential forestry funding goes to the necessary programs and that the critical wildfire disaster funded just like other natural disaster emergencies.

Magnuson-Stevens Reauthorization. The Magnuson-Stevens Fisheries Conservation Act (MSFCA) is due to be reauthorized and it is time for some much needed changes and amendments to incorporate American Indian and Alaska Native 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 the upholding fishing treat 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 and 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 has resulted in the overfishing of a third of the nation's fish stocks. Without appropriate reform of the MSFCA, natural fish populations and the Alaska Native inhabitants' well-being along with the treaty-protected rights of Pacific Northwest Indian nations and tribes will continue to be at risk.

NCAI requests that the purpose of the MSFCA 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 councils as well as all fishery plans must not only include input from tribes, but must also reflect treaty rights and subsistence rights American Indians and Alaska Natives while limiting states' ability to interfere with treaty and subsistence rights. Finally, the MSFCA 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.

Protection and Health of Tribal Forests. The 2013 Indian Forest Management Assessment Team (IFMAT) III Report identifies not only the success of innovative tribal forestry management practices despite extremely limited federal funding and support, but the possibilities of continued improvements with some key legislative and administration policy and funding changes. The Report found that, on a per acre basis, tribes receive *only* one-third the funding for forestry and wildfire management as the U.S. Forest Service, but are to stretch those funds using holistic approves and traditional ecological practices to maintain some of the healthiest forests in the country. While this is a success is a testament to tribal innovation, the funding and staffing levels

continue to dwindle down to amounts well below the levels necessary to fulfill the fiduciary trust obligations leaving the ability to do so in the future very much in doubt.

There are several items this Committee and the 114th Congress can do to help support tribal forestry management while upholding the federal trust responsibility and promoting tribal self-determination. First, the Anchor Forests concept needs to be supported by legislation. Anchor Forests, “a relatively large multi-ownership area that will support sustainable long-term wood and biomass production levels backed by local infrastructure and technical expertise, and endorsed politically and publicly to achieve the desired land management objectives,” are key to forest health and sustainability. Next, while the Tribal Forestry Protection Act of 2004 (TFPA) was passed to allow tribes the ability to propose projects on adjacent federal lands to protect tribal rights, lands, and resources by reducing threats from wildfire, insects, and disease, the Act has not met these important expectations. TFPA needs to be amended to expedite consideration, approval, and implementation of TFPA projects.

In addition to these legislative proposals, NCAI requests that the Committee should work with the Administration to ensure that tribes can achieve parity with other governments in the management of their natural resources and to ensure that adequate consultation is conducted on matters that impact tribal management of natural resources.

Parity for tribal governments in Natural Resource programs. In order for tribes to adequately care for and fully utilize their natural resources and maintain natural resource management programs, funding for Bureau of Indian Affairs natural resource programs must increase. Tribal funding has declined incrementally over decades, more precipitously than other Department of the Interior natural resource programs, while tribes continue to be excluded from eligibility for billions of dollars from dozens of natural resource programs across the federal agencies that are otherwise available to states, local governments, and other entities.

Consultation. We request the Committee work with the Administration to ensure tribal inclusion and consultation in the development and implementation of laws, programs, and policies that affect tribal interests in natural resources and include tribes as eligible entities for all conservation programs and measures.

HEALTHCARE

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 our people, American Indians and Alaska Natives continue to experience the greatest health disparities in the United States when compared 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.

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. New health

care insurance opportunities under the Affordable Care Act beginning in 2014 and expanded Medicaid in some states have expanded health care resources available to many American Indians and Alaska Natives. A fix to the definition is required to ensure that all American Indians and Alaska Natives are receiving the special benefits and protections for American Indians and Alaska Natives. However, these new opportunities are still no substitute for the fulfillment of the federal trust responsibility.

Advance Appropriations for the Indian Health Service. NCAI along with many national and local health boards are on record supporting the need for legislation to authorize advance appropriations for the Indian Health Service. Since 1998, appropriated funds for medical services and facilities through IHS have only been provided before the commencement of the new fiscal year one time. Late funding has resulted in significant challenges to tribal and IHS programs as to budgeting, recruitment and retention, provision of services, and facility maintenance and construction efforts, as well as other areas.

The goal of advance appropriations is for the Indian Health Service and tribal health care providers to 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. Congress provides advance appropriations for the Veterans Administration medical accounts, and the request is for parity in the appropriations schedule for the IHS.

Definition of Indian in the ACA. The Affordable Care Act 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 seek a fix to the definition of Indian within the ACA. There are three separate definitions of Indian throughout the ACA which creates confusion in eligibility for certain benefits. Tribes seek consistency in the definitions to ensure that all those currently eligible for benefits continue with those benefits.

Permanent Reauthorization of the Special Diabetes Programs for Indians. At nearly 16.1%, the American Indian and Alaska Native population has the highest 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. 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.

The Special Diabetes Program for Indians was last reauthorized in 2014 for a period of one year, and its current authorization expires on September 30, 2015. NCAI requests that legislation permanently reauthorized and that full funding be provided for the permanent continuation of this program.

Exempt Tribal Employers from the ACA Employer Shared Responsibility Mandate. The Employer Shared mandate violates the federal trust responsibility because it requires AI/ANs to pay for the cost of their own health insurance and also requires tribes to subsidize IHS services. AI/AN are exempt from the individual mandate and AI/AN should not be required either directly or indirectly to pay for private insurance offered by their employer. Most importantly, the mandate will be unaffordable for many tribal employers and require them to use limited resources towards either insurance premiums or shared responsibility payments which could be used for other services and programs.

NATIVE VETERANS

American Indians and Alaska Natives have proudly served in the United States military since the Revolutionary War. From earlier struggles such as the Spanish-American War to the present-day conflicts in Iraq and Afghanistan, Native people continue to serve at higher percentages than any other ethnic group. It is estimated that over 150,000 veterans identify as American Indian and Alaska Native, with over 24,000 active duty Native service members currently serving in the Armed Forces. With their warrior tradition and the sacrifices that have been made, it is vital to create sound policies and programs to promote the overall wellbeing of our Native veterans. NCAI seeks fair and dignified treatment of all veterans while advocating for federal support and funding for Native veteran programs and services that are greatly needed and deserved.

Native veteran issues are similar to non-veteran tribal community members, adequate health care to address increases in the incidence of diabetes, various types of cancer, neurological and autoimmune disorders; unemployment; domestic violence; substance abuse; criminal activity; and suicide. Native veterans are the single most underserved group of veterans of the American Armed Forces. Geographical distances present challenges for many veterans to access resources and programs not only for compensation and pensions, but for economic and educational benefits through the Department of Veterans Affairs (VA), the Department of Labor, the Small Business Administration, and other federal agencies and entities. This is particularly true of those who live on reservations and in tribal communities where there are considerable distances between clinics and medical centers operated by the Department of Veterans Affairs Health Administration.

Tribal Veterans Service Officers in Indian Country – Parity with State and County Veterans Service Officers. Tribal veterans should have equal access to representation and the benefit of services from the Department of Veterans Affairs (VA). One great first step to better ensuring this happens for our veterans is to provide the establishment of Tribal Veteran Service Officers (TSVOs) who are designated by local tribal leadership. These officers would function on the same basis as state and country veterans service officers pursuant to 38 C.F. R. Sect. 14.628. The current use of Tribal Veterans Representatives (TVRs) is insufficient as their purpose is to purely disseminate information to veterans, not to be their advocates. TVRs are trained by VA personnel often with no knowledge or awareness of the local Native culture and needs. TVSOs makes sense both as a matter of tribal sovereignty of providing their own representation and advocacy on behalf of tribal governments' veterans before the VA. Further, TVSOs will ensure greater cultural competency in the pursuit of claims arising from psychic trauma and other mental/behavioral issues affecting veterans—they will provide for cultural competent mental health evaluations and facilitate the use of traditional healing practices in that process. TVSOs would meet the same

employment/appointment, training, and certification standards that apply to State and County Veterans Service Officers.

Indian Health Service/Veterans Administration – Memorandum of Understanding. It is appalling that Native veterans have become victims of bureaucratic technicalities in the health care delivery system. In 2010 the Indian Healthcare Improvement Act was permanently reauthorized as Title X under the Patient Protection and Affordable Care Act. Included in Title X was a provision mandating the Department of Veterans Affairs (VA) 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 (1) agree to enter into a model agreement the VA has developed, and (2) 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. The Veterans Administration's implementation of this provision of Title X must be done in a manner that is streamlined and focuses on providing timely and quality health care. We are asking Congress to conduct oversight hearings on this matter to ensure the most effective delivery of health services to which Native veterans are entitled.

Improper State Taxation of Reservation-Domiciled Service Members. Federal law prohibits states from taxing the pay of military service members who are not a domiciliary of that state. However, for years now the U.S. Department of Treasury has improperly withheld military pay for states from American Indian service members domiciled on reservations. The enlistment process must be changed with notification given to Native veterans who are residing in Indian Country in order to prevent this wrongful taxation. We call upon Congress to address this matter by providing Congressional oversight and ask the Chairman to address this matter and contact officials from all relevant departments and agencies including but not limited to: the Department of Defense, the Department of Veterans Affairs, the Department of Treasury, and the Department of Justice. We must make sure that our service members are receiving their full compensation for their honorable service to our nation.

CONCLUSION

NCAI appreciates the opportunity to present Indian Country's priorities for the 114th Congress to the Committee. We look forward to working with the Indian Affairs Committee and its members during this Congress to advance the interests of tribal governments in accordance with the federal trust responsibility.

The trust relationship in the 21st Century must maintain the nation-to-nation treaty obligations, such as the provision of education, public safety, health care and more, while promoting tribal capacity and governance. That relationship has evolved over time to recognize the self-governance potential of Native peoples and governments, but also needs to be modernized to reflect the needs of Native people today. The Congress, and this Committee, in meeting its treaty and trust obligations, plays a key role in Indian country. If Congress shrinks away from its commitments it leads to grave impacts to the harmony of tribal communities. But when, this Committee, and the Congress as a whole honors its commitments based in the trust responsibility while promoting tribal self-determination, Native people and leaders can solve long-standing social and economic dilemmas.