



National Congress of  
American Indians

# Policy Update

*2018 Mid Year  
Conference*

*Kansas City, MO*

## Table of Contents

<b>POLICY OVERVIEW</b> .....	<b>1</b>
<b>LAND AND NATURAL RESOURCES</b> .....	<b>2</b>
RESTORE TRIBAL HOMELANDS – THE INDIAN REORGANIZATION ACT .....	2
LAND & NATURAL RESOURCES.....	3
TRUST MODERNIZATION.....	6
ENERGY .....	8
AGRICULTURE & NUTRITION .....	9
<b>PUBLIC SAFETY</b> .....	<b>14</b>
VIOLENCE AGAINST WOMEN ACT IMPLEMENTATION .....	17
EMERGENCY RESPONSE/HOMELAND SECURITY.....	18
<b>HUMAN RESOURCES/SOCIAL SERVICES</b> .....	<b>21</b>
EDUCATION.....	21
HEALTH.....	24
CULTURAL PROTECTIONS .....	31
NATIVE VETERANS .....	34
VOTING RIGHTS.....	37
<b>TRIBAL GOVERNANCE</b> .....	<b>37</b>
SELF-GOVERNANCE .....	38
<b>ECONOMIC DEVELOPMENT AND INFRASTRUCTURE</b> .....	<b>39</b>
TRIBAL TAX PRIORITIES.....	39
TRIBAL LABOR SOVEREIGNTY ACT .....	42
TRIBAL TELECOMMUNICATIONS .....	43
NATIVE AMERICAN HOUSING .....	46
TRANSPORTATION .....	48
TRIBAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES .....	50
WORKFORCE DEVELOPMENT .....	51
<b>BUDGET &amp; APPROPRIATIONS</b> .....	<b>54</b>
<b>INTERNATIONAL ISSUES</b> .....	<b>56</b>
CLIMATE CHANGE.....	57
NORTH AMERICAN FREE TRADE AGREEMENT.....	59
<b>CENSUS</b> .....	<b>61</b>



## POLICY OVERVIEW

During the second session of the 115<sup>th</sup> Congress and the second year of the Trump Administration, we have witnessed an unsuccessful attempt to repeal the Affordable Care Act, the enactment of tax reform legislation, FY 2018 omnibus appropriations legislation, and tribal bills move through the legislative process. This year, Congress is likely to concentrate on reauthorizing the Farm Bill, confirming nominees, and passing legislation to fund the government in FY 2019—all of which present opportunities to advance tribal priorities.

Despite Congress' heavy focus on repealing and replacing the Affordable Care Act (ACA) in 2017, their effort was ultimately unsuccessful. Even so, Indian Country worked diligently to receive assurances from key members of Congress that the Indian Health Care Improvement Act would have been exempt and voiced opposition to proposals that would have negatively impacted health care delivery to tribal citizens. Congress subsequently turned its attention to tax reform. Despite Indian Country's tireless efforts, the bill signed into law by President Trump in December 2017 did not include tribal tax priorities. Nevertheless, we will continue to look for opportunities to advance these priorities during the second session.

In March, we saw the FY 2018 omnibus spending bill become law. This legislation rejected the eliminations and cuts proposed by the President, and instead provided an increase of \$203.8 million for the Bureau of Indian Affairs, and an additional \$497.9 million for the Indian Health Service. Several tribal bills have also been moving through the legislative process. In December, President Trump signed his first tribal bill into law—the Indian Employment, Training and Related Services Consolidation Act, which expands and enhances the highly successful “477” program. Several more tribal bills were signed into law: the longstanding Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act, the Western Oregon Tribal Fairness Act, the Ashlyne Mike AMBER Alert in Indian Country Act, and the Oregon Tribal Economic Development Act. Additionally, several other national and tribe-specific tribal bills have passed one chamber.

With respect to nominations, in October 2017, President Trump nominated both Robert Weaver to serve as Director of the Indian Health Service and Tara Sweeney to serve as the Assistant Secretary for Indian Affairs at the Department of the Interior. The Administration has since withdrawn its nomination for Mr. Weaver and has not yet announced another nominee. In recent weeks, the Senate Committee on Indian Affairs held a hearing to consider the nomination of Tara Sweeney. A vote on her confirmation is expected in the beginning of June. In the meantime, John Tahsuda, the Principal Deputy Assistant Secretary—Indian Affairs and Rear Admiral Michael Weahkee, the Acting Director of the Indian Health Service, are leading their respective offices in the Administration.

There is a lengthy list of priorities for the Administration, Congress, and Indian Country to address before the 115<sup>th</sup> Congress expires. These include reauthorizing the Farm Bill, addressing the opioid epidemic, advancing tribal legislation and nominees, and ensuring increases in the budget for tribal programs. Working through this list will be especially challenging during a mid-term election year. Many Members of Congress have already announced their retirement and there will be hotly contested races as both parties fight for control of Congress. However, this long list of priorities and the evolving environment on Capitol Hill mean tribes have the opportunity to make progress now and lay the groundwork for future successes.

Indian Country's strong voice and tireless advocacy on the issues that impact our tribal communities will be crucial. Working together, we can advance tribal priorities that will ultimately improve the lives and well-being of tribal citizens. At NCAI, we are humbled for the continued partnership and support as we conduct our advocacy on behalf of Indian Country.

## LAND AND NATURAL RESOURCES

Tribal nations and tribal citizens are place-based peoples with a direct connection to their surrounding environments, which include traditional homelands, natural resources, and wildlife. Tribes' cultures, traditions, and economies all depend upon natural resources, many of which are disappearing faster than they can be restored. In addition, tribes continue to be disproportionately impacted by climate change due to our geographical locations and our direct connection to our surrounding environments. Native peoples who rely heavily on the cultural and subsistence practices of their ancestors to survive are particularly hard hit.

For these reasons, the United States' responsibility toward tribes must be active in this area and allow for full tribal participation during discussions on the management of Native resources at the federal-level, including the tribal management of natural resources in traditional and culturally appropriate methods. Further, tribes must have access to federal programs and funding opportunities to address their land and resource needs, including those available to states and local governments.

### **RESTORE TRIBAL HOMELANDS – THE INDIAN REORGANIZATION ACT**

Since 1934, the Department of the Interior (DOI) has exercised its authority under the Indian Reorganization Act (IRA) to place land into trust for all federally recognized tribes. Over the following 75 years, DOI restored lands to enable tribal governments to promote economic development and protect cultural resources and sacred sites, and to build schools, health clinics, hospitals, housing, and community centers to serve their people. To date, the Secretary of the Interior has approved trust acquisitions that make up less than 5 percent of the more than 100 million acres of lands lost through the failed federal policies of removal, allotment, and assimilation.

In February 2009, the U.S. Supreme Court decided *Carcieri v. Salazar*, which overturned DOI's long-standing legal interpretation of the IRA and construed the IRA to limit the Secretary's authority to place land into trust for only those tribes that were "under federal jurisdiction" as of 1934. This interpretation effectively created two classes of tribes—tribes "under federal jurisdiction" in 1934 and tribes that were not. By separating tribes into two classes, the *Carciere* decision has created jurisdictional uncertainty that hinders economic development opportunities, business financing, contracts, and loans. The decision also threatens to block or delay important land acquisitions for schools, housing, health clinics, essential tribal government infrastructure projects, and the protection of sacred sites.

To date, lawsuits based on the *Carciere* decision have resulted in costly, protracted litigation on a broad range of issues and will likely spawn further litigation across the country. These cases are affecting all tribes, even those that were clearly recognized by the United States prior to 1934. The United States, at taxpayer expense, is a defendant in more than a half dozen of these lawsuits. This unequal treatment of federally recognized tribes runs counter to congressional intent and modern federal Indian policy. Legislation is needed to remedy this flawed decision.

### **Legislative Update**

Legislation Addressing the Indian Reorganization Act - H.R. 130 and H.R. 131. Representatives Tom Cole (R-OK) and Betty McCollum (D-MI), re-introduced two pieces of legislation intended to address the impacts of the

*Carciari* decision. Both bills were introduced on January 3, 2017 and referred to the House Subcommittee on Indian, Insular and Alaska Native Affairs on February 10, 2017. H.R. 130 would reaffirm the Secretary of the Interior's authority to acquire lands in trust for all federally recognized tribes. H.R. 131 would reaffirm the status of lands already in trust.

*Legislation Affecting the Trust Status of Indian Lands - H.R. 215, the American Indian Empowerment Act of 2017.* Representative Don Young (R-AK) introduced H.R. 215 on January 3, 2017, and the bill was referred to the House Subcommittee on Indian, Insular and Alaska Native Affairs on February 10, 2017. On October 25, 2017, a Subcommittee Hearing was held on the bill. The bill would allow tribes to request that title to trust lands be transferred from the United States to an Indian tribe, and held as restricted fee land, subject to restrictions on alienation and taxation.

### **Administrative Update**

On December 6, 2017, the Department of the Interior (DOI) issued a revised Dear Tribal Leader Letter (DTLL) to all tribes which replaced its October 4 Dear Tribal Leader Letter that included a Consultation Draft of proposed changes to DOI's land acquisition regulations at 25 C.F.R. Part 151.

The revised December 6, 2017 DTLL did not include any proposed changes to 25 C.F.R. Part 151 and instead asked for written responses to, and consultations on, a series of 10 open-ended questions about the land into trust process. Comments are due June 30, 2018.

To date, DOI has consulted with Tribes in Sacramento, CA; Prior Lake, MN; Portland, OR; Phoenix, AZ; Miami, FL; Mashantucket, CT; and Rapid City, SD. In addition, DOI will host a listening session on Sunday, June 3, 2018, in Kansas City, MO in conjunction with NCAI's 2018 Mid-Year Conference.

NCAI is developing comments in response to DOI's DTLL in close coordination with tribes and will submit detailed comments by the June 30 deadline. For more information on NCAI's comments in this area, please contact Derrick Beetso at [dbeetso@ncai.org](mailto:dbeetso@ncai.org).

## **LAND & NATURAL RESOURCES**

Native peoples, as first stewards of this land, have nurtured, lived, and thrived off their homelands since time immemorial, and continue to rely on their natural resources to sustain themselves. Through the Constitution, federal laws, treaties and other binding agreements with tribal nations, the federal government has a trust responsibility to tribes to protect, manage, and allow access to tribes' natural resources. The restoration, protection, and use of tribal lands and natural resources must be done in a tribally driven fashion to ensure that the needs of tribal citizens and nations are met. Tribes, as proven effective managers of their own resources, must be included in federal programs as well as funding opportunities addressing resource management needs.

### **Legislative Update**

*S. 2800, America's Water Infrastructure Act of 2018.* Senator Barrasso recently introduced the America's Water Infrastructure Act of 2018 (S. 280), which makes a number of amendments to the previously enacted Water

Resources Development Act (WRDA) and aims to streamline processes by which water infrastructure projects are built, including increasing funding flexibility and streamlining permitting processes.

H.R. 4419, Bureau of Reclamation and Bureau of Indian Water Project Streamlining Act. On November 16, 2017, Representative Dan Newhouse introduced H.R. 4419, the Bureau of Reclamation and Bureau of Indian Affairs Water Project Streamlining Act. The Department of the Interior testified in support of its principles in a Subcommittee of Water, Power and Oceans hearing held November 30, 2017. The bill would place timelines on certain feasibility studies carried out by the Department of the Interior and seek to streamline environmental permitting processes associated with water delivery projects carried out by DOI. On May 16, 2018, the House Committee on Natural Resources held a markup on the bill and voted to report the bill favorably out of Committee with a slight technical amendment offered by Representative LaMalfa.

H.R. 200 – Magnuson-Stevens Fishery Conservation and Management Act Reauthorization. In the 114th Congress, the House of Representatives passed a reauthorization of the Magnuson-Stevens Fisheries Conservation Act (MSA) along party lines, and it was never taken up in the Senate. The bill was a \$1.5 billion, 5 year reauthorization that included many changes to MSA, such as: loosening the 10 year time frame for rebuilding overfished/depleted fisheries and the standards used to determine the time frame; changes to the Annual Catch Limits allowing more flexibility in raising the limits; allowing the North Pacific Council to change the harvest limitation under the American Fisheries Act; and requiring the Governor of each applicable state to consult with subsistence fishing representatives before submitting a list of potential fisheries councils nominees to the Secretary of Commerce.

Representative Don Young (R-AK) again introduced the Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act (H.R. 200) this Congress. The House Natural Resources Committee held a hearing on the bill on September 26, 2017. On December 13, 2017, H.R. 200 was ordered reported favorably as amended by the House Committee on Natural Resources along party lines. It awaits consideration on the House floor. H.R. 200 is similar to the bill introduced in the 114th Congress.

There are many needed changes and amendments to incorporate tribes in the decision making processes, as well as a need for improved practices to protect the health of our fish resources. Despite being charged with upholding fishing treaty rights of Northwest tribes and the right to fish of Alaska tribes, the management of the North Pacific Fishery Management Council fails to consider the needs of American Indian and Alaska Native people. The structure of the Council prevents tribes from participating as part of the decision making process and engages in a flawed single-species based management system which does not consider food web dynamics, fishing gear impacts, and non-target species taken as bycatch which has resulted in the overfishing of one-third of the nation's fish stocks.

Without appropriate MSA reform, natural fish populations, the well-being of Alaska Natives, and the treaty-protected rights of Pacific Northwest tribal nations will continue to be at risk.

NCAI requests that in any reauthorization of the MSA, Congress amend the purpose of the Act 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 use ecosystem-based management rather than species specific management and additional methods to better protect fish

stocks and health. The management council's, as well as all fisheries', plans must not only include input from tribes, but must also reflect treaty rights and subsistence rights of American Indians and Alaska Natives while limiting states' ability to interfere with treaty and subsistence rights. Finally, the MSA must provide resources for mitigation efforts when needed to protect tribal treaty rights including: increased hatchery production, habitat protection and restoration, development of alternative fisheries when primary fisheries have been reduced, and the development of value added programs to increase the value of treaty fisheries.

Wildfire Legislation. Wildfire funding remains an important issue for Indian Country. This Congress, Representative Simpson and Senator Wyden have again introduced House and Senate versions of the Wildfire Disaster Funding Act, H.R. 2862 and S. 1842. These bills address the problematic way in which appropriated sums are often insufficient to cover the large and unpredictable costs of wildfires. As a result, fire suppression funds must be "borrowed" from regular federal forest management programs. Repayment is always late and often partial, disrupting and diminishing those programs' effectiveness. Frequently, this comes at the expense of tribal forestry programs and tribal forests.

NCAI supports legislation to have federal wildland fire costs exceeding the ten-year average of suppression costs paid from federal disaster assistance accounts. Such authority would allow the large, unpredictable, and often unbudgeted costs of fighting wildland fires to be treated the same as other natural disasters, and would provide more budgetary stability to regular on-going federal forest management programs.

The FY 2018 omnibus appropriations bill included a wildfire fix. The legislation provided \$1.946 billion for fire suppression in FY 2018 (more than the 10-year average). Starting in FY 2020, the bill increases the cap for wildfire to \$2.25 billion, which grows to \$2.95 billion by FY 2027. This increased investment in suppression will ensure that other resources will be available for fire prevention and other management activities.

### **Administrative Update**

Executive Order 13807. On August 15, 2017, the White House issued Executive Order (E.O.) 13807, *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure*. E.O. 13807 aims to streamline the interagency review process under the National Environmental Policy Act (NEPA) and other environmental laws and regulations, with the intent of improving the approval process for infrastructure projects carried out by federal agencies. As agencies seek to implement E.O. 13807, NCAI and its membership should stay actively engaged in this discussion to ensure that tribal rights and the federal trust responsibility is honored by each agency.

Paris Climate Agreement. The U.S. became a signatory of the Paris Climate Agreement in April 2016, ratified the agreement in September 2016, and the agreement took effect with respect to the U.S. in November 2016. The Agreement was signed by 195 nations and is intended to bind the world community to battle rising earth temperatures. The goal of the Agreement as stated in Article 2 is "to strengthen the global response to the threat of climate change . . . ."

These goals resonate well with Indian Country since climate change poses threats not only to the health and food supply of Native peoples, but also to our traditional ways of life. For instance, many Alaska Native villages are experiencing accelerated sea level rise, erosion, permafrost thaw, and intense weather events making the relocation of entire villages inevitable. In the West and Southwest, many tribes are experiencing prolonged

drought reducing their water resources and increasing the severity and costs of wildfires. Milder winters in the Northeast have sparked a surge in Lyme disease-carrying deer ticks, while lobster and clams are suffering shell disease linked to the acidification of coastal waters.

On June 1, 2017, the Administration announced it submitted its formal intent to withdraw from the Paris Climate Agreement. However, due to how the Agreement is structured, the earliest date the U.S. can completely withdraw from the Agreement is November 4, 2020.

In response, the NCAI membership passed Resolution MOH-17-053, Continued Support for the Paris Climate Agreement and Action to Address Climate Change. In accordance with this resolution, NCAI will continue to support and advocate for initiatives intended to reduce greenhouse gas emissions and promote climate resiliency.

Clean Power Plan. On October 10, 2017, the Administration issued a proposed rule intended to rescind the Clean Power Plan. The Clean Power Plan was promulgated during the previous Administration and aimed at preventing global climate change by reducing greenhouse gas emissions from power plants by 32 percent by 2030 (based on 2005 levels). Initially, comments to the proposal were due December 2017, but the deadline was extended to January 2018. The deadline was further extended to April 26, 2018 due to public concerns and requests for additional time to comment. Consistent with Resolution MOH-17-053, NCAI will continue to work with its partners to combat climate change and mitigate impacts in tribal communities. Additionally, on December 28, 2017, the Administration issued an Advance Notice of Proposed Rulemaking seeking public input on topics for the Environmental Protection Agency to consider when developing future regulations to limit greenhouse gas emissions from power plants.

### **TRUST MODERNIZATION**

In exchange for Indian tribes ceding millions of acres to the United States, the federal government has recognized the Native right to self-government, to exist as distinct peoples on their own lands, as well as the federal responsibility to protect Indian trust assets. However, the trust relationship and responsibility must be modernized to stay consistent with self-determination, as well as be rooted in inherent sovereign authority to create a 21st Century trust for 21st Century tribes.

While the trust responsibility includes all facets of the relationship, such as funding, health care, housing, and public safety, some of the most glaring examples of outdated statutes involve the management of tribal lands and development of trust resources. Indian lands and natural resources are a primary source of economic activity for tribal communities, but the antiquated and inefficient federal trust resource management system contributes to the anemic condition of many reservation economies. NCAI urges Congress to support legislative reforms that will provide for greater efficiencies in the trust resource management system, better economic returns on trust resources, and, above all, an increased tribal voice in how the trust is administered.

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

## **Administrative Update**

Indian Trust Asset Reform Act Implementation - Public Law 114-178. On June 22, 2016, the Indian Trust Asset Reform Act (ITARA) was signed into law, representing an important step in the effort to modernize the trust management system into a process that recognizes that tribes are in the best position to make long lasting decisions for their communities.

The trust asset demonstration project created by the law provides tribes the ability to manage and develop their lands and natural resources without the encumbrances of the federal approval process, which typically delays these endeavors by years or even decades. It authorizes tribes to engage in surface leasing or forest management activities, under certain conditions, without the approval of the Bureau of Indian Affairs—mirroring the framework of the highly successful HEARTH Act of 2012, which puts tribes in the position to make decisions about their lands and resources.

NCAI will work with the Department of the Interior to begin implementation of this demonstration project. To carry out implementation, NCAI urged the Administration to form a tribal workgroup. This approach would ensure the creation of a straightforward certification process of tribal plans, avoid imposing any unnecessary regulatory burdens, and account for issues that may arise in the field. Further, proper implementation of ITARA would reduce burdens on tribal governments and help tribes manage their trust resources, especially in the area of renewable energy.

Land Buy-Back Program. The *Cobell* Settlement established a \$1.9 billion Trust Land Consolidation Fund and tasked the Department of the Interior to expend the Fund, within 10 years, to acquire fractional interests in trust or restricted fee land that individuals are willing to sell. Those interests will be transferred in trust to the tribal government with jurisdiction over the land. The Land Buy-Back Program was established by Interior to implement this aspect of the Settlement. The overall goal of the Land Buy-Back Program is to reduce the number of fractional interests in tribal lands, and to help consolidate tribal trust land bases.

In July 2017, the Department of the Interior announced its revised strategy on reducing fractional interests—changing how the Land Buy-Back Program is implemented. The revised process for determining which ownership interests to purchase looks at factors including: severity of fractionation; appraisal complexity; degree of ownership overlap between locations or geographic proximity; tribal readiness; past response rate; and cost and efficiency (including land value). Interior also published its new list of reservations based on those factors, which primarily includes tribes in the Great Plains, Rocky Mountains, and Northwest; and notably excludes some tribes on the Department's original, pre-2017, implementation schedule.

In response, NCAI's membership passed [Resolution MKE-17-002, Request to Restore the Department of Interior Land Buy-Back Program to Pre-2017 Schedule](#). The Resolution urges Congress to expand the funding for the Program and to fulfill the promises of the original implementation schedule. The Resolution also urges consultation with Indian tribes and a hearing in the Senate Committee on Indian Affairs to further the goals of land consolidation and restoration of tribal homelands. NCAI will continue to work with the Administration and Congress to ensure the *Cobell* settlement and Land Buy-Back Program are implemented fairly and in accordance with the approved settlement, and to continue land consolidation programs at Interior.

## ENERGY

Tribal energy resources are vast, largely untapped, and critical to America's efforts to achieve energy security and independence, reduce greenhouse gases, and promote economic development. Energy infrastructure is also integral to many tribes' efforts to create jobs, infrastructure, and improve lives of their citizens. Empowering tribal energy development can yield strong results not only for tribes, but also for rural America. The Department of the Interior estimates that undeveloped traditional energy reserves on Indian lands could generate up to \$1 trillion for tribes and surrounding communities. Further, the Department of Energy estimates that tribal wind resources could provide 32 percent of the total U.S. electricity demand, and tribal solar resources could generate twice the total amount of energy needed to power the country.

However, developing energy resources in Indian Country continues to be a challenge. Tribal nations face barriers to energy development that do not exist elsewhere, and often are excluded from commercial-scale project development. Cumbersome federal approvals and bureaucratic processes, the lack of grid access, and exclusion from federal programs are just a few of the factors that hinder tribal energy production.

Since the last major update to Indian energy policy was more than 10 years ago, NCAI urges Congress and the Administration to work with tribal nations to put tribes in control of developing their energy resources, to bolster tribal self-determination, and to help create careers and capital in Indian Country.

### **Legislative Update**

*S. 245, Indian Tribal Energy Development and Self-Determination Act Amendments.* On January 30, 2017, Senator Hoeven (R-ND) reintroduced longstanding legislation to provide tribes with greater control and flexibility to develop their traditional and renewable energy resources and streamline many of the burdensome processes tribes persistently face. The current bill is identical to the version that passed the Senate twice in the 114th Congress—once by itself and once in the broader Senate energy bill. The bill includes additional consultation requirements for the Department of the Interior; improves the Tribal Energy Resource Agreements (TERAs) process in the Energy Policy Act of 2005 by recognizing tribal self-determination over energy resources; creates a process for approving Tribal Energy Development Organizations; expands direct access to the Department of Energy's Weatherization Program; supports American Indian and Alaska Native biomass demonstration projects; and amends the appraisal and right-of-way approval processes.

S. 245 passed the Senate on November 11, 2017. It has been referred to the Natural Resources Committee and Committee on Energy and Commerce in the House. Additionally, it has been included in the broader energy bill that is being considered in the Senate Energy and Natural Resources Committee.

*H.R. 210, the Native American Energy Act of 2017.* In the House of Representatives, Congressman Young (R-AK) again introduced the Native American Energy Act. This legislation maintains the major focus of removing regulatory hurdles to tribal energy development. A version of the Native American Energy Act passed the House of Representatives in the 114th Congress on its own and as part of broader energy legislation. The bill will: reform and streamline the federal appraisal process and include the option for tribes to waive the appraisal requirement; create uniform systems of reference and tracking numbers for all Department of the Interior oil and gas wells on Indian lands; restructure the environmental review process, except for federal

actions related to the Indian Gaming Regulatory Act; support tribal biomass demonstration projects; consider all tribal resource management plans as sustainable management practices; and create a Tribal Forest Management Demonstration Project under the Tribal Forest Protection Act at the U.S. Forest Service.

H.R. 210 was voted out of the House Natural Resources Committee favorably with an amendment on October 4, 2017. It is now one step closer to consideration on the House floor.

NCAI Support for Indian Energy Bills. NCAI submitted letters of support for both S. 245 and H.R. 210. The letters focused on ensuring new Indian energy legislation passes in the 115th Congress, as variations of these bills have been introduced for several years, and Congress has still not passed significant Indian energy legislation for more than a decade.

### **Administration Update**

The Administration indicated energy is one of its top priorities and expressed interest in assisting tribes by helping remove regulatory barriers that inhibit deployment of tribal traditional and renewable energy projects. The White House held meetings with tribal governments last year to discuss this purpose. As part of those meetings, the White House requested recommendations from Indian Country on how to remove barriers to tribal energy deployment. To ensure a comprehensive approach, NCAI compiled a list of recommendations from Indian Country and submitted it to the Administration in July 2017.

On October 24, 2017, the Department of the Interior issued a report that looked at Departmental actions that potentially burden domestic energy production. In the section on the Bureau of Indian Affairs, the Department indicated that it is developing guidance to clarify what constitutes an “inherently federal function” for purposes of TERAs. This clarification is intended to provide certainty, which would allow tribes to better assess the usefulness of entering a TERA for their energy development activities.

NCAI continues to work with the Administration on initiatives that will provide tribal governments greater flexibility and control over their traditional and renewable energy resources.

### **AGRICULTURE & NUTRITION**

Agriculture is a major economic, employment, and nutrition sector in Indian Country. In 2012, there were at least 56,092 American Indian-operated farms and ranches on more than 57 million acres of land. These farms and ranches sold \$3.3 billion of agricultural products, including more than \$1.4 billion of crops and \$1.8 billion of livestock and poultry. Additionally, the 2007 Census of Agriculture Fact Sheet notes that, “American Indian farm operators are more likely than their counterparts nationwide to report farming as their primary occupation . . . to derive a larger portion of their overall income from farming . . . [and] to own all of the land that they operate.” As a result of the huge agricultural footprint across Indian Country and the fact that more than 35 percent of American Indian and Alaska Native peoples live in rural communities, tribal governments and farmers look to active partnerships throughout the U.S. Department of Agriculture to sustain and advance common interests across the broad array of services that this federal agency provides to tribal governments.

The importance of food assistance in Indian Country cannot be overstated considering that 24 percent of American Indian and Alaska Native households receive Supplemental Nutrition Assistance Program (SNAP) benefits, 276 tribes administer the Food Distribution Program on Indian Reservations (FDPIR), 68 percent of American Indian and Alaska Native children qualify for free and reduced price lunches, and American Indians and Alaska Natives make up more than 12 percent of the participants in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). Any cuts to SNAP, FDPIR, WIC, or school lunch programs directly diminish the food, and in some cases the only meals, available to Native children, pregnant women, elders, and veterans. No one, especially tribal citizens most in need, should ever have to go without food. Additionally, food assistance programs like FDPIR must be provided the means and support to purchase traditional, locally-grown food in their food packages. Traditional and locally-grown foods from Native American farmers, ranchers, and producers encourage healthy living, cultural sustainability, and a return to traditional practices all while supporting economic development. Below is a look at the agriculture and nutrition policies that will continue to be a focal point during the 115th Congress, including the reauthorization of the Farm Bill which expires in September 2018.

### **Legislative Update**

*NCAI and Native Farm Bill Coalition participate in Senate Roundtable on Farm Bill.* On February 18, 2018, NCAI, the Inter-Tribal Agriculture Council, the Indigenous Food and Agriculture Initiative, and the Shakopee Mdewakanton Sioux Community advocated for tribal inclusion in the next Farm Bill at a roundtable held by the Senate Committee on Indian Affairs. Issues discussed included tribal administration of SNAP through 638 Contracts, utilizing traditional foods in USDA Nutrition programs, and expanding the Substantially Underserved Trust Areas provision across all Rural Development programs.

*2018 Farm Bill.* In February 2014, Congress passed the Agriculture Act of 2014 (H.R. 2642; Pub. L. 113–79), which reauthorizes the U.S. Department of Agriculture programs through September 2018. This law brought forth many new changes and improvements for tribal nations and Native farmers and ranchers. The 115th Congress is reviewing the Farm Bill for the 2018 reauthorization. Indian Country has an important opportunity to advocate for the inclusion tribal priorities in the next Farm Bill. It is imperative that tribal nations and Native agriculture producers engage Congress and the Administration to improve the efficiency and effectiveness of agriculture and nutrition programs in Indian Country, and to support tribal food and agriculture businesses.

*House Farm Bill.* In April 2018, Representative Michael Conway (R-TX), Chair of the House Agriculture Committee, introduced [H.R.2](#), the Agriculture and Nutrition Act of 2018. This bill reauthorizes through FY 2023 and modifies Department of Agriculture (USDA) programs that address commodity support, conservation, trade and international food aid, nutrition assistance, farm credit, rural development, research and extension activities, forestry, horticulture, and crop insurance.

The bill changes agriculture and nutrition policies to expand work requirements and modify the eligibility rules for SNAP; repeals the Conservation Stewardship Program and incorporate parts of the program into the Environmental Quality Incentives Program; revises the requirements and process for the Environmental Protection Agency pesticide registration program; requires farmers to make a one-time election to obtain either price loss coverage or agricultural risk coverage for the 2019-2023 crop years; allows payment yields used for price loss coverage payments to be updated once in counties affected by drought; renames the Margin

Protection Program for dairy producers as the Dairy Risk Management Program and modifies coverage levels and premiums; combines several trade programs into a single International Market Development Program; increase the loan limits for guaranteed farm ownership and operating loans; establishes new broadband standards for projects financed through USDA; and expands the categorical exclusions that exempt certain forest management activities from requirements under the National Environmental Policy Act (NEPA).

On May 18, the House voted on H.R. 2, which failed 198-213. Democrats voted against the measure because of expanded work requirements and cuts to SNAP. A group of conservative Republicans voted against the bill to force a vote on other legislation. The measure was held over for reconsideration and is expected to receive another vote on June 22.

Senate Farm Bill. The Senate Agriculture Committee has been working on a bipartisan basis to produce the Senate Farm Bill. Although it has not yet been introduced, Chairman Roberts (R-KS) has indicated that Committee action could occur as early as the beginning of June. NCAI is working with the Native Farm Bill Coalition to secure support for the inclusion of tribal priorities in the Senate version of the Farm Bill.

Hoeven-Udall Tribal Agriculture Bill. In May 2018, Senator Hoeven and Senator Udall introduced the Cultivating Resources, Opportunity, Prosperity, and Sustainability (CROPS) for Indian Country Act. This bipartisan legislation will advance several long-term tribal goals at USDA. The CROPS Act extends 638 self-determination contracting to Tribal Forest Protection Act projects and the Food Distribution Program on Indian Reservations. Under the CROPS Act, USDA will partner with the Office of Self-Governance of the Bureau of Indian Affairs to establish 638 compacts.

The CROPS Act would also establish a USDA Tribal Advisory Council, direct USDA to include Tribal Agricultural and Food Products in future trade missions, instruct USDA to study the efficacy and applicability of the Risk Management Agency's crop insurance products in relation to Indian Country, and expand access to forestry grants for Tribal Colleges and Universities.

The CROPS Act passed unanimously out of the Senate Committee on Indian Affairs on Wednesday, May 16. NCAI looks forward to these measures being incorporated into the final version of the Senate Farm bill currently being drafted by the Senate Agriculture Committee.

Native Farm Bill Coalition. The Native Farm Bill Coalition met at NCAI's 2017 Mid Year and Annual Conferences to coordinate advocacy efforts, and NCAI joined the Native Farm Bill Coalition last October. Since the 2017 Annual Convention, NCAI and the Native Farm Bill Coalition have held 3 webinars (available at NCAI YouTube), solicited policy recommendations from tribes, and advocated to Congress for tribal inclusion in the Farm Bill. NCAI also hosted a Farm Bill Coalition pre meeting at the NCAI Executive Council Winter Session in Washington, D.C. In May, the Native Farm Bill Coalition hosted a fly-in for members to meet with key legislators. Following up with the fly-in, Native Farm Bill Coalition members have continued outreach to members of the House and Senate Agriculture Committees to ensure that tribal priorities are included in the final version of the 2018 Farm Bill.

Reauthorization of the Healthy Hunger-Free Kids Act of 2010 (Child Nutrition Reauthorization). The Healthy Hunger-Free Kids Act of 2010 is a 5-year bill that governs several food programs that impact Native children

and parents: the National School Lunch and School Breakfast Programs; the Child and Adult Care Food Program; the Summer Food Service Program; the Afterschool Snack and Meal Program; the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC); the WIC Farmers Market Nutrition Program; the Fresh Fruit and Vegetable Program; and the Special Milk Program. As was seen in the Farm Bill debate, nutrition standards, costs, and program eligibility will continue to be at the forefront of the Child Nutrition Reauthorization. Since the 114th Congress was not able to pass a reauthorization—the programs still continue on without reauthorization. The Senate Committee on Agriculture and House Committee on Education and the Workforce will look to continue the work from last Congress to make changes to the law. NCAI is working with many major nutrition policy groups and our tribal organization partners to make sure Indian Country’s priorities are included in the reauthorization.

### **Administrative Update**

USDA Relocates Office of Tribal Relations. On September 7, 2017, the U.S. Department of Agriculture announced its reorganization plans which include moving the Office of Tribal Relations out of the Office of the Secretary and into a new office called “Office of Partnerships and Public Engagement.” This new office is said to house the Office of Advocacy and Outreach; the Faith-Based and Neighborhood Partnerships staff; and the Military Veterans Liaison. However, in the 2014 Farm Bill, Congress specifically located the Office of Tribal Relations within the Office of the Secretary in order to faithfully uphold the trust responsibility to tribal nations. This effort is part of an Administration-wide effort to reorganize the entire federal government started by Executive Order 13781, “Comprehensive Plan for Reorganizing the Executive Branch”, which requires each federal agency to submit a reorganization plan in an effort to streamline the government. NCAI filed comments with the U.S. Department of Agriculture on October 6, 2017, urging the Department to maintain the Office of Tribal Relations within the Office of the Secretary. NCAI has further urged Congress to reaffirm its commitment to the provisions in the 2014 Farm Bill and exercise its oversight authority over the Department’s reorganization activities.

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

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

At the conclusion of the in-person meetings, Class Counsel filed its proposal with the court outlining in detail the creation of a *cy pres* fund called the Native American Agriculture Fund (Fund) for the remaining \$380 million, governed by a proposed Board of Directors, and guidelines for which entities are eligible to receive funding from the new Fund. The Fund would be a 501(c)3 non-profit entity and would be able to distribute funds to: 501(c)3 non-profits; 170(b)(1)(A)(ii) educational organizations; Community Development Financial Institutions (CDFI), including Certified Native CDFIs and Emerging Native CDFIs if they are 501(c)3 entities; and the instrumentality of a state or federally recognized tribe, including a non-profit organization chartered under the law of a state or federally recognized tribe, that furnishes assistance designed to further Native American farming or ranching activities.

On December 2, 2014, the court held a status conference and Ms. Keepseagle was allowed to voice her concerns about the creation of a trust. The judge saw this as a brief for relief and informed Ms. Keepseagle that she could retain counsel and submit a motion making the legal argument to reopen the settlement for an additional round of payments. In May 2015, the Court requested briefs regarding the claims of Ms. Keepseagle's motion for relief, asking for the remaining funds to be dispersed among the claimants. On July 24, 2015, the Court denied both motions to modify the settlement agreement. The first motion filed by Ms. Keepseagle would have allowed for the distribution of additional funds to prevailing claimants or re-open the claims process. USDA objected to this motion, and the Court decided there was no legal basis for going against the Agency's objection. The Court then denied the Plaintiff's motion to create a Trust to supervise the distribution of the *cy pres* funds to non-profits, ruling that all class representatives, including Ms. Keepseagle, would have to agree on any changes to the settlement agreement.

All parties with standing in the case reached an agreement on changes to the existing settlement agreement. Under the new proposal, each prevailing claimant will receive a supplemental payment of \$18,500 (a separate sum of \$2,775 will be paid to the IRS on their behalf). The remainder of the *cy pres* funds would go to non-profit organizations as described above. The Court held a hearing on this new agreement to modify the settlement on February 4, 2016. The Court approved the new agreement on April 20, 2016. An appeal of the modified settlement was filed on June 20, 2016, and the D.C. Circuit Court of Appeals upheld the new agreement in May 2017. On May 17, 2016, the class counsel in the *Keepseagle* case announced a one-time distribution of \$38 million from the remaining settlement funds through the Native American Agricultural Fast Track Fund (NAAFTF). However, these remaining payments have been held up as two named plaintiffs recently appealed the D.C. Circuit Court of Appeals' decision to the Supreme Court.

In March, the Supreme Court denied a petition seeking to overturn the D.C. Circuit Court decision to distribute \$380 million dollars in leftover funds from the Keepseagle Settlement. The approximately 3,600 members of the Keepseagle class will now receive an \$18,500 check directly, plus a \$2,775 payment made on their behalf to the Internal Revenue Service. Altogether, nearly \$77 million in additional funds will be flowing to individual Indian beneficiaries, on top of the \$300 million on they previously received.

Tribes, non-profits, and educational institutions are due to share in \$38 million from the leftover portion immediately to help farmers and ranchers in their communities. Another \$265 million will be invested in a trust fund, whose proceeds will be used to address the needs of Indian farmers and ranchers, and those who want to join the industry. The money is to be distributed over a 20-year period by a board of experts.

## PUBLIC SAFETY

The crime rate on reservations is a vital public safety issue. Despite federal and tribal government attempts to reduce violence on Indian lands, reservations continue to face staggering rates of violent crime and victimization. A recent DOJ study found that more than four in five American Indian and Alaska Native adults have experienced some form of violence in their lifetime. DOJ also found that Native victims are *more* likely to be injured as a result of their violent victimization, *more* likely to need services, and are significantly *less* likely to have access to services compared to their non-Native counterparts. The current public safety crisis in many tribal communities is the result of decades of gross underfunding for tribal criminal justice systems; a uniquely complex jurisdictional scheme that keeps tribal governments from being able to fully police their lands; and a centuries-old failure by the federal government to fulfill its public safety obligations on tribal lands.

There are several interrelated challenges related to funding for tribal public safety and justice systems: 1) available funding is profoundly inadequate; 2) available funding is spread across multiple federal agencies with different programmatic and administrative requirements; and 3) a significant portion of the available funding is distributed via short-term, competitive grants that undermine program stability and hamper strategic planning. BIA released an “unmet obligations” report in 2016 concluding that there is more than \$2 billion in unmet need for tribal law enforcement and tribal court funding.

### Legislative Update

FY 2019 Commerce, Justice, Science Appropriations Activity. To better meet the federal obligation to provide funding for public safety and justice on tribal lands, the President’s FY 2019 Budget proposed a flexible 7 percent set-aside for Indian tribes from all Office of Justice Programs (OJP), Office of Juvenile Justice and Delinquency Prevention (OJJDP), and Community Oriented Policing Services (COPS) programs at DOJ, which would result in \$93.8 million for tribal programs at DOJ, a significant increase over FY 2018 funding of \$70 million. The President’s budget also included a 5 percent tribal set-aside from the Crime Victims Fund for crime victim services, which would result in \$115 million for tribal governments. On May 17, 2018, the House Appropriations Committee approved its CJS appropriations bill for FY 2019. The House bill includes \$5 million for the Tribal Youth Program at the Office of Juvenile Justice and Delinquency Prevention, \$35 million for tribal law enforcement hiring at the Office of Community Oriented Policing Services (COPS), and \$40 million for tribal assistance at the Office of Justice Programs. The House bill also includes the 5 percent tribal set-aside from the Crime Victims Fund, which was added via an amendment sponsored by Representatives Cole and McCollum and would provide \$130M for tribal crime victim services. The Senate is expected to mark up its version of the CJS appropriations bill the week of June 11.

SURVIVE Act Introduced - S. 1870/H.R. 4608. Identical bills have been introduced in the Senate and House that will increase needed tribal victim assistance by creating a tribal grant program within the Department of Justice’s Office for Victims of Crime. The bills direct that 5 percent of the total annual outlays from the Crime Victims Fund (CVF) be provided to Indian tribes. Based on recent levels, this could result in \$130-160 million for tribal crime victim services. In addition to ensuring that tribal governments are able to access CVF resources on a footing equal to state and territorial governments, the bill empowers tribes and Indian victims of crime by: expanding the types of victim assistance, services and infrastructure for which the funds may be used, including domestic violence shelters, medical care, counseling, legal assistance and services, and child and elder abuse

programs. Both bills have bi-partisan support. The Senate bill was reported favorably by the Indian Affairs Committee in December. The House bill was referred to the Judiciary Committee where it awaits action.

*Tribal Law and Order Reauthorization and Amendments Act of 2017 - S. 1953.* On October 5, 2017, Senator Hoeven (R-ND) introduced S. 1953, Tribal Law and Order Reauthorization and Amendments Act of 2017. The legislation, which is co-sponsored by Senators McCain (R-AZ) and Barrasso (R-WY), would reauthorize the grant programs included in the Tribal Law & Order Act of 2010 and includes other reforms to improve public safety in tribal communities by extending the Bureau of Prisons pilot program, which allows tribally convicted defendants of violent crimes to be housed in federal facilities; making permanent the Shadow Wolves program within the Department of Homeland Security; directing the Federal Public Defender to designate a tribal liaison for each district that includes Indian Country; improving Department of Justice data collection related to trafficking of Native Americans; improving justice for Indian youth by requiring the Interior Secretary, Attorney General, and Administrator of the Office of Juvenile Justice and Delinquency Prevention to coordinate and assist tribes in addressing juvenile offenses, to consult with tribes on delinquency prevention, and to develop a means for collecting data on Indian youth and notifying tribes when a tribal member youth comes in contact with federal, state, and other local juvenile justice systems.

The bill was referred to the Senate Committee on Indian Affairs and was the subject of a legislative hearing in October. It was reported favorably by the Indian Affairs Committee in February.

*Justice for Native Survivors of Sexual Violence Act - S. 1986.* The bill, which was introduced in October 2017 with Senators Murkowski (R-AK), Franken (D-MN), and Udall (D-NM) as original co-sponsors, would amend 25 U.S.C. § 1304 to reaffirm tribal inherent authority over sexual assault, trafficking, and stalking crimes committed by non-Indians against Indians in Indian Country. The bill also amends section 1304 to remove the exceptions to jurisdiction that required the defendant to live or work in the Indian country of the tribe or be in a relationship with a qualifying Indian. The bill was referred to the Indian Affairs Committee for further action.

*The Native Youth & Tribal Officer Protection Act - S. 2233.* Introduced by Senators Udall (D-NM), Murkowski (R-AK), and Cortez Masto (D-NV) on Dec. 14, 2017, the bill would amend 25 U.S.C. § 1304 to reaffirm tribal inherent authority over child abuse and crimes that are committed against police officers and other justice officials exercising special domestic violence criminal jurisdiction (SDVCJ). The legislation has been referred to the Indian Affairs Committee for further action.

*Savanna's Act - S. 1942/H.R. 4485.* On October 5, 2017, Senator Heitkamp (D-ND) introduced S. 1942, a bill to direct the Attorney General to review, revise, and develop law enforcement and justice protocols appropriate to address missing and murdered Indians, and for other purposes, known as "Savanna's Act". The legislation, which has bi-partisan support, is named in honor of Savanna LaFontaine-Greywind, a young Native woman who was tragically killed in North Dakota in August 2017. An identical companion bill was introduced in the House by Representatives Torres (D-CA) and Cole (R-OK). The legislation aims to improve the response to missing and murdered Native women by improving tribal access to the federal criminal information databases, requiring data collection on missing and murdered Native people, and by directing the Attorney General to review, revise, and develop law enforcement and justice protocols to address missing and murdered American Indians and Alaska Natives. The Senate bill was referred to the Senate Committee on Indian Affairs and was the

subject of a legislative hearing in October. The House bill was referred to the Natural Resources Committee, Subcommittee on Indian, Insular, and Alaska Native Affairs for further action.

*The Violence Against Women Act (VAWA)*. The Violence Against Women Act is up for reauthorization in 2018. Members of the Judiciary Committees in both the House and Senate have been working to develop draft language for a reauthorization bill. NCAI has encouraged members to look to some of the legislation described above—including the Native Youth and Tribal Officer Protection Act, the Justice for Survivors of Sexual Violence Act, Savanna’s Act, and the Tribal Law and Order Act Reauthorization—for language that should be included in a larger VAWA reauthorization bill in order to further enhance safety for Native women. A legislative hearing on VAWA reauthorization was held by the Senate Judiciary Committee in March, and NCAI submitted written testimony for the record that included a comprehensive 5-year report on implementation of the tribal jurisdiction provision included in VAWA 2013 (see below for an update on implementation of VAWA 2013).

*The Juvenile Justice and Delinquency Prevention Act (JJDP A)*. JJDP A is currently up for reauthorization. One bill, H.R. 1809, the Juvenile Justice Reform Act of 2017, was approved by the House in May 2017. A companion bill, S. 860, the Juvenile Justice and Delinquency Prevention and Reauthorization Act of 2017, passed the Senate in August 2017. Although the bills would both reauthorize JJDP A, they are not identical. The House and Senate have been working toward a compromise that would merge provisions from each bill into one piece of legislation to send to the President’s desk.

Both of these bills include significant reforms aimed at reducing the reliance on incarceration and improving outcomes for youth in the justice system. NCAI has expressed concerns that several of our priorities relating to Native youth that are included in TLOA reauthorization bills from the 114th and 115th Congresses have not been included in the JJDP A reauthorization bills.

Specifically, NCAI has prioritized the inclusion of a provision that would let the tribes know when Native youth come into contact with, or leave, state or local justice systems, and allow access for tribes to school attendance and disciplinary records for their members. State courts are currently required to notify tribes of proceedings involving tribal juveniles who have committed status offenses, but not delinquency proceedings. NCAI has also asked for language to ensure that culturally relevant, trauma-informed assessments and care are incorporated as a standard in juvenile justice systems. Additional recommendations would require states to engage in meaningful consultation with tribes on shaping juvenile justice and would allow federal authorities to defer to tribal jurisdiction in matters involving tribal youth, as they are currently authorized to do with respect to states and territories.

### **Administrative Update**

*DOJ Implementation of Tribal Crime Victim Services Funding*. The FY 2018 Omnibus Appropriations bill, which was passed in March, included a tribal set-aside from the Crime Victims Fund for the first time. This had been a priority issue for NCAI for several years and was a significant victory. The set-aside provides \$133 million for “grants to Indian tribes to improve services to victims of crime.” The Office for Victims of Crime at the U.S. Department of Justice is charged with administering the funds.

DOJ has indicated that they will be holding a series of conference calls to get input from tribal stakeholders during the month of June. Because DOJ's funding decisions need to be made before September 30, 2018, there will likely be a quick turnaround time for the release of a funding solicitation and application deadline. NCAI encourages tribal governments to begin identifying projects or programs related to meeting the needs of crime victims that they may want to fund through this program.

*DOJ Expands Tribal Access Program.* On October 3, 2017, the Department of Justice announced the selection of 15 additional Indian tribes to participate in the expansion of the Tribal Access Program for National Crime Information (TAP), a program aimed at improving tribal access to the national crime information databases for both civil and criminal purposes. TAP is currently deployed to 32 tribes with over 160 tribal criminal justice and civil agencies participating. The service provides software to enable tribes to access national crime information databases and/or a kiosk-workstation that provides the ability to submit and query fingerprint-based transactions via FBI's Next Generation Identification (NGI) for both criminal and civil purposes.

### **VIOLENCE AGAINST WOMEN ACT IMPLEMENTATION**

The Violence Against Women Reauthorization Act (VAWA) of 2013 included historic provisions that reaffirm tribal criminal jurisdiction over non-Indians in certain domestic violence cases. This provision took effect nationwide on March 7, 2015. As of that date, any Indian tribe who meets the statutory requirements is able to prosecute non-Indians who abuse Indian women on tribal lands for the first time since the *Oliphant v. Suquamish* decision in 1978. Importantly, there are a number of due process requirements that must first be met. NCAI has a website to assist tribes as they implement the new law: <http://www.ncai.org/tribal-vawa>.

In the five years since VAWA 2013 was enacted, a group of 50 tribes have been participating in the Inter-Tribal Technical Assistance Working Group (ITWG) established by DOJ, which is a collaboration of tribes sharing information and advice on how to best implement VAWA, combat domestic violence, recognize victims' rights and safety needs, and safeguard defendants' rights. As of May 2018, we are aware of 19 tribes who have implemented VAWA. They are: the Tulalip Tribes, the Pascua Yaqui Tribe, the Confederated Tribes of the Umatilla Reservation, the Assiniboine & Sioux Tribes of the Ft. Peck Reservation, the Sisseton Wahpeton Oyate, the Seminole Nation of Oklahoma, the Eastern Band of Cherokee Indians, the Nottawaseppi Huron Band of Potawatomi, the Kickapoo Tribe of Oklahoma, the Sac and Fox Nation of Oklahoma, the Little Traverse Bay Band of Odawa Indians, the Standing Rock Sioux Tribe, the Sault Sainte Marie Tribe of Chippewa Indians, the Muscogee (Creek) Nation, the Chitimacha Tribe of Louisiana, the Alabama-Coushatta Tribe of Texas, the Lower Elwha Klallam Tribe, the Choctaw Nation, and Cherokee Nation of Oklahoma. The implementing tribes report that the majority of the cases they have seen so far involve children as witnesses or victims and that the offenders frequently have a history of frequent prior police contacts. Materials from the implementing tribes are available on NCAI's website and offer useful examples of how individual tribes have modified tribal code language and constructed jury pools for VAWA cases.

In September of 2017, the Department of Justice awarded nearly \$3.5 million in grants to 7 tribes to support implementation of Special Domestic Violence Criminal Jurisdiction. This was the second time funding was made available since the law was enacted in 2013.

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

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

Tribal leaders and the NCAI continue to advocate for parity in protecting the homeland. Since 2003, 98.75 percent of total Department of Homeland Security (DHS) funding has gone to state and local governments (\$40 billion vs. \$50 million). DHS and its component departments, such as Customs and Border Protection (CBP), the Federal Emergency Management Agency (FEMA), and Transportation Security Administration have had mixed reviews from tribal officials in recent years regarding meaningful consultation and collaboration, upholding the federal trust responsibility in program service delivery with tribal nations, and approaches to federal grant funding being distributed through states. Also, there is need for positive change to address tribal homeland security and emergency management matters regarding border crossing and tribal IDs, disaster declaration authority, emergency management capacity building, and equitable yet realistic levels of grant access and funding.

#### **Administrative Update**

*Executive Order 13767: Border Security and Immigration Enforcement Improvements.* Directs the Secretary of Homeland Security (DHS) to plan, design, and construct a physical wall along the southern border; construct detention facilities to detain undocumented immigrants at or near the border; hire 5,000 border patrol agents and assign them to duty stations; and set up federal-state agreements for state and local law enforcement officers to perform functions of immigration officers. E.O. 13767 does not state what the wall will look like, the timeline for construction, or who will bear the costs and how much will be paid for the wall's construction. The glaring fact for tribes on and near the manufactured border is their culture, lands, and people will be impacted, sovereignty disregarded and treaty rights infringed upon. All impacted tribal officials, many members of Congress, and several border state officials object to the proposal, as does the president of Mexico. The FY 2018 Omnibus appropriations bill provided nearly \$1.6 billion for border security, including \$641 million for about 33 miles of new fencing. This is far less than the \$1.6 billion requested by the Trump Administration to build new fencing. In March, the Administration announced that they have funding to begin building 100 miles of new and replacement fencing, which will include 28 miles of replacement fencing in the San Diego area; a new two-mile, 30-foot-high barrier in Calexico, CA; and 20 miles of fencing to replace vehicle barriers in New Mexico. In May, the President said he would demand full funding for the border wall this year—which would be \$25 billion—and threatened a government shutdown if it is not included in this year's spending bills.

*DHS Non-disaster grants.* Because of the timing of the federal budget this year, the FY 2018 preparedness grant opportunities from DHS are likely to be released in late May or early June. The DHS Secretary will announce FY 2018 Notices of Funding Opportunity for 10 DHS preparedness grants to state, local, tribal and territorial governments. The grants are for immediate security needs and community public safety. DHS continues to ignore its trust responsibilities to tribes, and homeland security risks continue to increase as a result of DHS's failure to increase the funding level for the Tribal Homeland Security Grant Program (THSGP). Funding for all homeland security grants components to states and local governments total over \$1.6 billion but the amount available for all 573 federally recognized tribal governments normally stays flat at \$10 million. Tribes appreciate the allocation of funding beyond the Congressional minimum, but this funding meets core capability and

capacity needs. Tribal officials have discussed going to DHS and to Congress for creation of a tribal homeland security general assistance grant program which would be similar to the Environmental Protection Agency's Tribal General Assistance Program (GAP) that is more flexible in addressing tribal capacity-building and tribal direct funding. It has been proposed that this program provide \$330,000 to each tribe, roughly the funding needed for 1.5 FTE's to meet basic core capabilities outlined in national policy.

### **Legislative Update**

H.R. 3548, the Border Security for America Act of 2017. Representative McCaul (R-TX) introduced H.R. 3548, the Border Security for American Act of 2017, on July 28, 2017. Since then, the bill has seen considerable action since it represents a high priority for the current Administration. It was referred to the Committees on Homeland Security, Foreign Affairs, Natural Resources, Agriculture, Oversight and Government, Transportation, Ways and Means, and Armed Services. It was reported favorably out of the Committee on Homeland Security, as amended, and discharged from each of the other committees of jurisdiction. On March 23, 2018, it was placed on the Union Calendar as Calendar No. 471.

The bill would promote the construction of a border wall on the Mexican border; waive or authorize waivers of numerous federal environmental and archeological protection laws; authorize National Guard deployments on federal lands; prohibit the Secretary of the Interior from impeding, prohibiting or restricting the construction of a border wall, or other tactical infrastructure and technology; and would authorize CBP immediate access to covered "Federal land" within 100 miles of the international land borders of the United States. The bill would also amend Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to broadly authorize the Secretary of DHS to "take such actions as may be necessary (including the removal of obstacles to detection of illegal entrants) to construct, install, deploy, operate, and maintain tactical infrastructure and technology in the vicinity of the United States border to deter, impede, and detect illegal activity in high traffic areas" and would amend the term "fence" to "physical barriers."

Consistent with Resolutions ECWS-08-001 and REN-08-002, NCAI opposes waivers of federal, state and other laws under Section 102(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 for the construction of border fencing and roads. Such waivers are unnecessary, potentially destructive, and in violation of the federal obligation to consult with Indian tribes on a government-to-government basis and to respect tribal sovereignty and self-determination.

H.R. 4760, S. 2192, and S.1757. Also recently, Rep. Goodlatte (R-VA) introduced H.R. 4760, the Securing America's Future Act of 2018, on January 10, 2018; Sen. Grassley (R-IA) introduced S. 2192, the SECURE Act of 2017, on December 5, 2017; and Sen. Cornyn (R-TX) introduced S. 1757, Building America's Trust Act, on August 3, 2017. Each of these bills includes similar waivers, or authorizations for waivers, of numerous federal environmental and archeological protection laws as H.R. 3548 above.

H.R. 4760 was referred to the Subcommittee on Immigration and Border Security, its eighth Subcommittee referral in January 2018. There is currently a discharge petition circulating that would force this legislation out of committee for a vote on the House floor. Discharge requires 218 member signatures, and as of the date of printing, the petition had acquired 213 member signatures. S. 2192 was introduced and read the first time on

December 5, 2017, then subsequently read the second time on December 6, 2017 and placed on the Senate Legislative Calendar for possible consideration. S. 1735 was introduced and read the first time on August 3, 2017, then subsequently read the second time on September 5, 2017 and placed on the Senate Legislative Calendar for possible consideration.

*Support More Assets, Resources, and Technology on the Border Act of 2017 (SMART Border Act of 2017) - H.R. 22.* Sponsored by Rep. Poe (R-TX-02), the bill directs the Secretary of Homeland Security (DHS) to take actions to achieve and maintain operational control of the U.S.-Mexico border (defined as a condition in which all illegal border crossers are apprehended and narcotics and other contraband are seized); and (2) report to the Government Accountability Office (GAO) on such actions, achievement, and maintenance. It also authorizes a governor to deploy the National Guard in concert with Secretary of Defense. It further requires consultation with state and local officials along the Mexican border, but not tribes. This legislation has been referred to the Committee on Homeland Security, among others. The bill has not received a hearing.

*Tsunami Warning, Education and Research Act of 2017 - S. 53 and H.R. 312.* This legislation, sponsored by Senator Cantwell (D-WA), authorizes strengthening tsunami detection, forecast, warning, research, and mitigation programs under the National Oceanic and Atmospheric Administration. Coastal tribes and villages are potentially impacted by tsunamis, and the legislation would provide a community-based hazard mitigation program to improve preparedness and resiliency. S. 53 has been referred to the Commerce, Science and Transportation Committee. A companion bill (H.R. 312) has been introduced in the House by Representative Bonamici (D-OR). H.R. 312 was referred to the Committee on Science, Space, and Technology.

## HUMAN RESOURCES/SOCIAL SERVICES

The survival and prosperity of tribal communities depends on the education, health, and welfare of our youth and elders. The Administration and Congress must work with tribes to meet the educational needs of Indian youth; provide adequate health care via the Indian Health Service (IHS) for both direct and self-governance tribes; provide safe and secure tribal communities; and supply the social services required to ensure every American Indian and Alaska Native enjoys a decent quality of life and has an opportunity to succeed. Education 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. Human and social services are a critical part of the continued wellbeing of tribal communities.

### **EDUCATION**

It is imperative that American Indian and Alaskan Native (AI/AN) students receive a quality education. However, in Indian Country, there are daunting challenges that are preventing this from becoming a reality for all AI/AN students, including aging school facilities; limited access to broadband; rural locations of schools, which impacts school attendance; difficulty recruiting and retaining teachers; and a lack of culturally appropriate educational opportunities. These challenges have led to a graduation rate of 69 percent for Native American students and Alaskan Natives compared to an 82 percent graduation rate to the rest of country.

Currently, there are approximately 620,000 (93 percent) Native students enrolled in public schools, both in urban and rural areas, while 45,000 (7 percent) attend schools within the Bureau of Indian Education (BIE) federal system. There are 184 BIE-funded schools (including 14 peripheral dormitories) located on 63 reservations in 23 states. In addition, there are currently 34 accredited Tribal Colleges and Universities (TCUs) in the United States serving more than 30,000 Native students. Effectively reaching all Native students requires a concentrated and sustained effort from multiple partners: tribes, the federal government, state and local education agencies, Native parents and families, and communities.

### **Legislative Update**

*Esther Martinez Native American Languages Preservation Act - S. 254 and H.R. 1169.* On February 1, 2017, Senator Tom Udall (D-NM) introduced the reauthorization of the Esther Martinez Native American Languages Preservation Act. The legislation would authorize Native language programs by providing funding to tribes for preserving and increasing fluency through language immersion schools, and language restoration programs. S. 254 was passed by the Senate by unanimous consent on November 29, 2017 and referred to the House Committee on Education and the Workforce on November 30, 2017. In February 2017, Congressman Ben Lujan (D-NM) introduced companion legislation, H.R. 1169, in the U.S. House of Representatives, which was referred to the House Committee on Education and the Workforce.

*Native American Indian Education Act - H.R. 1528 and S. 660.* On March 15, 2017, Congressman Scott Tipton (R-CO) introduced H.R. 1528, the Native American Indian Education Act, which would amend the Higher Education Act of 1965. This legislation would ensure the federal mandate of requiring certain colleges and states to waive tuition for Native American students in undergraduate college programs. H.R. 1528 was referred to the House Committee on Education and Workforce. On March 15, 2017, Senator Cory Gardner (R-CO) introduced a Senate companion bill, S. 660, which was referred to the Senate Committee on Health, Education,

Labor, and Pensions. NCAI has a standing resolution in support of the goals of these bills, Resolution MSP-15-009, “In Support of Full and Consistent Federal Funding for American Indian Higher Education Programs and Strengthened Federal Policies to Improve American Indian Higher Education Success.”

Johnson-O'Malley Supplemental Indian Education Program Modernization Act - S. 943. On April 26, 2017, Senator Heidi Heitkamp (D-ND) introduced S. 943, the Johnson-O'Malley Supplemental Indian Education Program Modernization Act. This bill would direct the Secretary of the Interior to conduct an accurate comprehensive student count which impacts the formula allocation for the Johnson-O'Malley Program. Despite the growth of Native student population over the past two decades, the student count has been frozen at 1995 levels, which has led to unmet student needs. On July 12, 2017, the Senate Committee on Indian Affairs held a legislative hearing on S. 943, and the legislation was favorably voted out of Committee at a business meeting held on October 4, 2017. On March 22, 2018, the Senate passed S. 943 with an amendment. The legislation was received in the House and referred to the Committee on Education and Workforce. It awaits further consideration. NCAI has a standing resolution on this issue, Resolution REN-13-013, “Supporting Use of Accurate Student Numbers to Create a Sustainable Johnson O'Malley Supplemental Indian Education Program.”

The Students, Teacher, and Officers Preventing (STOP) School Violence Act of 2018. On March 5, 2018, a bipartisan group of Senators including Senator Orrin Hatch (R-UT) and Senator Tom Udall (D-NM) introduced legislation to invest in early intervention and prevention programs to stop school violence before it occurs. The legislation would authorize grants to states and tribal governments to improve school security and identify signs of violence. Funding for this initiative was included in the Omnibus Appropriations Act of 2018, which was passed on March 23, 2018. NCAI is working with our partners at the National Indian Education Association on behalf of tribal participation in this new initiative.

Native American Education Opportunity Act - S. 1294. On June 6, 2017, Senator John McCain (R-AZ) introduced S. 1294, the Native American Education Opportunity Act. This bill would establish a Tribally-Based Education Saving Account Program to be used for educational purposes by parents of children at Bureau of Indian Education (BIE) schools for private school tuition, textbooks, tutoring, and other educational services. S. 1294 is similar to legislation introduced in the 114th Congress. S. 1294 was referred to the Senate Committee on Indian Affairs.

Native Educator Support and Training Act (NEST Act) - S. 458. On February 27, 2017, Senator Jon Tester (D-MT) introduced S. 458, the Native Educator Support and Training Act. This bill would create scholarship, loan forgiveness, and training programs for educators who are committed to working at Bureau of Indian Education or public schools, where the majority of students are Native. In addition, the bill would establish grants for elementary and secondary schools that serve majority Native students, and establish a Native American Language Teacher Training Program for higher education institutions. On May 17, 2017, the Senate Committee on Indian Affairs voted S. 458 favorably out of the Committee. On May 25, 2017, Congressman Raul Ruiz (D-CA) introduced a companion bill, H.R. 2727, in the House of Representatives. The bill was referred to the House Committee on Education and the Workforce.

## **Administrative Update**

State Accountability Plans. In March 2017, U.S. Department of Education Secretary Betsy DeVos announced an updated Every Student Succeeds Act (ESSA) implementation guidance plan regarding state accountability plans. These new state plan templates differ from the previous state plan requirements under the Obama Administration in that the new implementation plan would no longer require states to consult with tribes and other stakeholders regarding state plans. As of May 2018, 44 states received approval of their plans from the Department of Education. The plans would provide for accountability and assessment systems that cover the 2018-2019 academic year. Consultation with tribes was required by statute in the development of the state plans, but the degree of meaningful consultation in the development of the plans varied by state.

Bureau of Indian Education ESSA Plan. On September 14, 2017, the Bureau of Indian Education (BIE) announced the establishment of a Standards, Assessments, and Accountability System Negotiated Rulemaking Committee. The Committee is tasked with advising the Secretary of the Interior and developing proposed regulations for defining standards, assessments, and an accountability system under the Every Student Succeeds Act (ESSA), which reauthorized No Child Left Behind in 2015. At the close of the announcement on October 16, 2017, BIE received 30 nominations from Indian Country. On April 17, 2018, the Department of the Interior (DOI) published a list of proposed committee members and requested comments and additional nominees. DOI further proposed appointing federal representatives to the Committee. The comment period closed on May 17, 2018, and DOI is reviewing submissions. Once established, the Committee will work to implement the new system as expeditiously as possible.

Bureau of Indian Education Strategic Plan. On October 17, 2017, the Bureau of Indian Education published notice in the Federal Register for five consultation sessions regarding its Draft Strategic Plan Proposal. Once completed, the BIE Strategic Plan is intended to improve agency coordination and services provided to Indian students as well as fully address recommendation number two in the Government Accountability Office (GAO) 13-774 Report. The BIE completed all five tribal consultation sessions across Indian Country and hosted three listening sessions throughout the fall of 2017 to gather substantive input from tribes and Indian education stakeholders. The BIE is currently analyzing feedback and will publish a report with regards to the consultations in 2018.

Bureau of Indian Education GAO Reports. In February 2017, the Government Accountability Office listed the Bureau of Indian Education on its High Risk Report (GAO-17-317 High Risk Series). In six separate reports the GAO has provided twenty-three (23) recommendations for the BIE in order to improve its service delivery. BIE leadership has prioritized resources and critical personnel to focus efforts to address the longstanding issues outlined in the GAO reports. Since the High Risk designation, BIE has established a close working partnership with GAO and identified specific strategies and work plans to address each recommendation. In January 2018, BIE successfully closed a recommendation with goals to address additional recommendations and improve BIE services throughout the year. In February 2018, the House Education and Workforce Committee, Subcommittee on Early Childhood, Elementary, and Secondary Education held an oversight hearing to examine BIE's progress in addressing GAO's findings. In May 2018, the Senate Committee on Indian Affairs held a hearing on BIE's safety and security efforts.

## HEALTH

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

### **Legislative Update**

Indian Health Improvement Act and Indian-specific provisions in the Affordable Care Act. The Indian Health Care Improvement Act (IHCIA) was enacted in 2010 as part of the Patient Protection and Affordable Care Act (Affordable Care Act or ACA). The IHCIA provided new resources and opportunities for tribal governments, tribal health care institutions, families, providers and patients. There are also Indian-specific provisions in the ACA other than the IHCIA that provide important protections and funding opportunities for Indian Health Service/Tribal/ and Urban Indian (collectively known as the I/T/U) health system. The IHCIA states that any I/T/U should remain the payer of last resort for services provided by such, notwithstanding any federal, state, or local law to the contrary, and granted I/T/U providers permanent authority to collect reimbursements for all Medicare Part B services. It also ensures that any health benefits provided by a tribe to its members are not included as taxable income. IHCIA has proven to be one of the more successful parts of the ACA.

Congress Attempts to Repeal the Affordable Care Act. During the first session of the 115<sup>th</sup> Congress, there were several attempts to repeal and replace the Affordable Care Act (ACA). In January 2017, Congress took the first step to repeal the ACA by approving a budget resolution that set the stage for repeal through the budget reconciliation process, which requires only 50 votes to pass a bill through the Senate. After the Senate's attempt to pass the "skinny repeal" bill failed in July 2017, most thought that the effort to repeal and replace the ACA had come to an end. However, less than two weeks before the September 30, 2017 deadline to use the budget reconciliation process, another proposal was introduced by Senators Lindsey Graham (R-SC), Bill Cassidy (R-LA), Dean Heller (R-NV) and Ron Johnson (R-WI). This proposal would have repealed the structure and architecture of the ACA and replaced it with a block grant given annually to states. On September 20, 2017, NCAI and the National Indian Health Board (NIHB) sent a joint letter to Majority Leader Mitch McConnell (R-KY), which outlined Indian Country's opposition to the bill due to its violation of the federal trust responsibility and its drastic cuts to Medicaid. Unable to secure the 50 necessary votes, Senate leadership decided against bringing the bill to the floor. Despite the inability to pass repeal-specific legislation, the individual mandate—a signature piece of the ACA—was repealed in the tax reform package signed by President Trump in December 2017.

Special Diabetes Program for Indians. The Special Diabetes Programs for Indians (SDPI), enacted in 1997, provides assistance for developing local initiatives to treat and prevent diabetes and has served as a comprehensive source of funding to address diabetes issues in tribal communities. It provides grants for diabetes prevention and treatment services to I/T/U programs, totaling approximately 300 programs in 35 states. SDPI has led to remarkable outcomes, including reduction in average blood sugar levels, reduction in the incidence of heart

disease, a significant increase in the promotion of healthy lifestyle behaviors, and a 54 percent decline in the incidence rate of end-stage renal disease (ESRD) in American Indian and Alaska Native people.

In 2015, Congress reauthorized SDPI for 2 years at \$150 million annually in the Medicare Access and CHIP Reauthorization Act. On September 29, 2017, the day before SDPI was set to expire, Congress enacted H.R. 3823, the Disaster Tax Relief and Airway and Airport Extension Act, which contained a provision extending SDPI through the first quarter of Fiscal Year 2018 (December 31, 2017) at the current funding level. SDPI was further reauthorized through March 31, 2018 via a short-term continuing resolution (CR) that was enacted in December 2017. A subsequent short-term CR, which funded the government until February 8, 2018, contained a six-year reauthorization of the Children's Health Insurance Program (CHIP), but did not include SDPI. As a result, NCAI, along with the National Indian Health Board (NIHB) and the National Council on Urban Indian Health (NCUIH) sent a letter to House Speaker Paul Ryan urging the House to advance a long-term reauthorization of SDPI on the next CR or legislative vehicle moving through Congress. In February, Congress reached a budget deal that reauthorized SDPI at the current funding level of \$150 million until the end of FY 2019.

There are several stand-alone SDPI reauthorization bills. Two of these bills would reauthorize SDPI through FY 2024 and include increases in funding due to inflation adjustments: H.R. 2545 (Torres (D-CA)) and S. 747 (Udall (D-NM)). The House bill is pending before the Energy and Commerce Committee, while the Senate version is pending before the Health, Education, Labor and Pensions (HELP) Committee.

NCAI supports permanent reauthorization of SDPI at \$200 million per year with medical inflation rate increases annually or, in the alternative, reauthorization of SDPI through 2024 at \$150 million per year with medical inflation rate increases annually.

*Restoring Accountability in the Indian Health Service Act (H.R. 2662, Noem (R-SD) and S. 1250, Barrasso (R-WY))*. This legislation seeks to improve IHS by providing incentives for recruitment and retention, establishing standards to measure the timeliness of health care services, requiring a cultural training program, and increasing congressional oversight. The Senate Committee on Indian Affairs held a hearing on S. 1250 on June 13, 2017 and the House Natural Resources, Subcommittee on Indian, Insular and Alaska Native Affairs held a hearing on H.R. 2662 on June 21, 2017. The IHS representative at these hearings, RADM Chris Buchanan (in his capacity as Acting IHS Director, then Deputy IHS Director, respectively), testified that IHS shares the "urgency of addressing longstanding systemic problems that hamper our ability to fully carry out the IHS mission." He concluded his testimony in both hearings by expressing IHS's willingness to work with congressional staff as the legislation moves through the legislative process. On April 11, 2018, S. 1250 was ordered to be reported with an amendment in the nature of a substitute favorably and will now await consideration in the broader Senate. H.R. 2662, still awaits committee consideration.

*House Bills to Address Health Care Disparities in Indian Country*. On September 7, 2017, Representatives Frank Pallone (D-NJ) and Raul Ruiz (D-CA) introduced two bills which seek to address health care disparities in Indian Country: H.R. 3704, the Native Health Access Improvement Act (Pallone) and H.R. 3706, the Native Health and Wellness Act (Ruiz). H.R. 3704 seeks to improve behavioral health outcomes for American Indians and Alaska Natives by providing \$150 million in grants for the prevention and treatment of mental health and

substance abuse disorders. In addition, this bill amends the ACA to clarify the definition of “Indian” and to provide “Indians” with an exemption from penalty for not maintaining minimum essential coverage. This bill has been referred to the following Committees: Natural Resources; Energy and Commerce; and Ways and Means. H.R. 3706 would provide grants to Indian tribes or tribal organizations to improve the public health system in tribal communities and increase the number of American Indians and Alaska Natives pursuing health careers. This bill has been referred to the Energy and Commerce Committee.

*Native Behavioral Health Access Improvement Act of 2018.* On March 14, 2018, Senator Tina Smith (D-MN) introduced S. 2545, the Native Health Access Improvement Act. This bill would establish a Special Behavioral Health Program for Indians (SBHPI) grant program for the prevention and treatment of mental health and substance abuse disorders. Modeled after the Special Diabetes Program for Indians (SDPI), the SBHPI program would be administered by the Indian Health Service. The bill authorizes \$150 million for each of fiscal years 2018 through 2022. The bill has been referred to the Senate Committee on Indian Affairs. This legislation is a companion bill to H.R. 3704 (Pallone, D-NJ). The House bill also contains an amendment to the Affordable Care Act definition of “Indian.”

*Indian Health Service Advance Appropriations Act of 2017 (H.R. 235, Young (R-AK)).* This legislation would amend the Indian Health Care Improvement Act to authorize advance appropriations for the Indian Health Service by providing 2-fiscal-year budget authority. The bill has been referred to the following House committees: Budget, Natural Resources, and Energy & Commerce.

*Independent Outside Audit of the Indian Health Service Act of 2017 (S. 465, Rounds (R-SD)).* This bill would require the Secretary of the Department of Health and Human Services to enter into contract(s) with a private entity to conduct an independent assessment of the health care delivery systems and financial management processes of the Indian Health Service. On November 8, 2017, the Senate Committee on Indian Affairs held a hearing on this legislation. “IHS will only continue to fail until we take a close look into the operations, funding, quality of care and management at IHS,” said Senator Rounds. He also indicated that changes have been made to the bill, including granting authority to the Department of Health and Human Services Inspector General to carry out the assessment. In her testimony, Elizabeth Fowler, the Deputy Director for Management Operations at IHS stated that “if the Secretary directs IHS to fund the cost of the contract with the independent entity, it is important to note that IHS's existing budget could not support a project of this scale without affecting direct health services.” Fowler also spoke about some of IHS's recent improvement efforts, including the Patient Wait Times policy, updating Governing Board bylaws, acquiring a credentialing software system, developing a standard patient experience of care survey, developing a quality assurance accountability dashboard, and awarding a master contract for accreditation of all of their hospitals. She also acknowledged some of the “longstanding challenges” that remain in the Great Plains and discussed what IHS is doing to address those issues. Chairman David Flute of the Sisseton-Wahpeton Sioux Tribe testified in support of S. 465. “IHS Administration is failing the Sisseton Wahpeton Sioux Tribe and the Great Plains Region, so we need Congress’s help to turn the IHS around and provide good, reliable health care for our Native people. The introduction and passage of S. 465 is an important step towards that goal,” said Chairman Flute. S. 465 is now awaiting consideration by the Committee.

*Urban Indian Health Parity Act (S. 2146, Udall (D-NM)).* Introduced on November 16, 2017, this bill would extend

the full federal medical assistance percentage (FMAP) to urban Indian organizations. Currently, if an American Indian or Alaska Native (AI/AN) Medicaid beneficiary receives services through an Indian Health Service (IHS) or tribally operated health facility, the Centers for Medicare & Medicaid Services (CMS) matches the amount paid for those services at 100 percent, commonly referred to as 100% FMAP. However, the urban Indian health programs operated under the Indian Health Care Improvement Act are not eligible for 100% FMAP. The bill was discharged by the Senate Committee on Indian Affairs and is currently pending with the Finance Committee. In 2015, NCAI passed Resolution SD-15-070, requesting that CMS “extend 100% FMAP to services provided by urban Indian health programs funded under the Indian Health Care Improvement Act so long as they are provided to eligible beneficiaries of the Indian Health Service.” In accordance with this resolution, NCAI supports S. 2146.

House IHS Task Force. In May 2017, House Energy and Commerce Committee Chairman Greg Walden (R-OR) and Ranking Member Frank Pallone, Jr. (D-NJ) announced the creation of the Indian Health Service (IHS) Task Force. Markwayne Mullin (R-OK) and Raul Ruiz (D-CA) serve as co-chairs of the bipartisan task force, which is composed of 14 members both on and off the committee. The working group is tasked with reviewing the health care delivery system for American Indians and Alaska Natives (AI/AN), informing fellow policy makers on the current state of IHS and public health programs that serve the AI/AN population, and identifying ways to ensure IHS is best serving the needs of those who rely on it.

Opioid Legislation for Indian Country. While the opioid crisis is plaguing communities across the country, studies indicate that American Indians and Alaska Natives (AI/ANs) are impacted at a higher rate than other groups. According to the CDC, AI/ANs had the highest drug overdose death rates compared to all other groups in 2015. According to the CDC, the drug overdose death rates for AI/ANs in nonmetropolitan areas increased by more than 500 percent between 1999 and 2015. Pregnant AI/AN women are nearly 9 times more likely than others to be diagnosed with opioid dependency or abuse. According to the CDC, one in 10 AI/AN youths age 12 or older used prescription opioids for nonmedical purposes in 2012, double the rate for white youths. These statistics illuminate the critical need for more concerted attention on curbing the opioid epidemic in tribal communities.

- The Opioid Crisis Response Act (S. 2680, Alexander (R-TN) and Murray (D-WA)). Senators Alexander and Murray, leadership of the Senate Committee on Health, Education, Labor, and Pensions, introduced the Opioid Crisis Response Act on April 16, 2018. In May, the Committee reported the bill favorably with an amendment in the nature of a substitute. This broad opioids legislation is a likely vehicle to address the epidemic. The Committee indicated that this legislation should provide the framework for further discussion on opioids but recognized that several other committees will still need to weigh in. Notably, this legislation would reauthorize the 21<sup>st</sup> Century Cures Act, State Opioid Response Grant program through 2021 and include a 5 percent set-aside for tribes.
- The Comprehensive Addiction Resources Emergency (CARE) Act (S. 2700, Warren (D-MA) and H.R. 5545, Cummings (D-MD)). This bill would allocate \$100 billion over ten years to the opioid epidemic and reserves a 10% set-aside for tribes within three separate funding programs for states, local governments, and clinics/non-profit entities. In general, funding for tribes would go through the Indian Health Service. The bill includes programmatic requirements but recognizes the need for flexibility in Indian

Country by allowing the Secretary to adjust requirements to better suit the needs of tribal communities. There are also miscellaneous provisions that provide set-asides or include tribes along with states, including 10percent set-asides for innovative substance abuse treatment models and education training centers (TCUs, IHS grant-funded institutions and partner institutions). The bill would also provide tribes access to federally purchased naloxone and federally negotiated rates for naloxone, which is medication used to reverse opioid overdoses. The last section of the bill gives a no less than 1.5 percent set-aside for Tribal Epidemiology Centers and research.

- *The Tribal Addiction and Recovery Act (H.R. 5140, Mullin (R-OK))*. Similar to S. 2270, this bill amends the Cures Act to make State Targeted Opioid Response (STR) Grant funding available directly to Indian tribes and tribal organizations and increases the funding pool by \$25 million. It also allows a state or Indian tribe to use the STR grant funding for prevention and treatment of the use of other substances deemed to have a substantial public health impact.
- *The Opioid Response Enhancement Act (S. 2437, Baldwin (D-WI))*. This legislation contains provisions similar to both S. 2270 and H.R. 5140: 1) it amends the 21<sup>st</sup> Century Cures Act to allow tribal entities to be eligible for State Targeted Opioid Response (STR) Grants, and 2) it would allow states and tribes to use STR Grant program funding to address other substance abuse issues. In addition, S. 2437 provides a 10 percent set aside for tribal entities and establishes an STR Enhancement Grant for \$2 billion over five years for at least ten states and tribal entities with high needs. Overall, the bill provides \$10 billion over five years for the current STR Grant program for FY 2019 - FY 2023.
- *The Youth Opioid Use Treatment Help Act or “Youth Act” (H.R. 3382, Clark (D-MA) and S. 2055, Peters (D-MI))*. These bills would establish a demonstration program to expand access to medication-assisted treatment for opioid use disorders among adolescents and young adults. Under this legislation, Indian tribes and tribal organizations are both considered an “eligible entity” to carry out a demonstration program. The bills authorize \$5 million to carry out the program, which is to last up to three years.
- *Mitigating METH Act (S. 2270, Daines (R-MT))*. Introduced in December 2017, this bill would make Indian tribes and tribal organizations eligible for funds to help combat the opioid epidemic in Indian Country. Specifically, it would amend the 21<sup>st</sup> Century Cures Act (provided funding to address the crisis directly to states through per capita block grants) to make Cures Act funding available directly to Indian tribes and tribal organizations and increase the funding pool by \$25 million. The bill has five bipartisan cosponsors and has been referred to the Senate Health, Education, Labor and Pensions (HELP) Committee. NCAI strongly supports this legislation and urges members to co-sponsor and support the bill.
- *CARA 2.0 Act (H.R. 5311, Blackburn (R-TN) and S. 2456, Portman (R-OH))*. This bill would build on the original Comprehensive Addiction and Recovery Act of 2016 by increasing the funding authorization levels to better coincide with the February 2018 budget agreement. CARA 2.0 authorizes \$1 billion in dedicated resources to evidence-based prevention, enforcement, treatment, and recovery programs. The bill makes “Indian tribes and tribal organizations” eligible for the “Evidence-Based Prescription Opioid and Heroin Treatment and Intervention Demonstrations” and increases the funding for that program to \$300 million for each of fiscal years 2019 through 2023. In April, S. 2456 was considered at a legislative hearing by the Judiciary Committee, Subcommittee on Crime and Terrorism.

## **Administrative Update**

Senate Confirms Alex Azar to Serve as HHS Secretary. On January 24, 2018, the Senate confirmed Alex Azar to serve as the Secretary of the Department of Health and Human Services by a vote of 55 to 43. During his nomination hearings, Azar stated that he would focus on four critical areas: making healthcare more affordable, more available, and more tailored; harnessing the power of Medicare to shift the focus from paying for procedures and sickness to paying for health and outcomes; addressing high drug prices; and tackling the opioid epidemic. Secretary Azar has some familiarity with tribal health issues as evidenced by a speech he delivered during his previous tenure at HHS on “Behavioral Health in Alaska Native Communities” in Anchorage, Alaska.

Secretary Azar replaces former HHS Secretary Tom Price who resigned in September 2017 after reports surfaced that he took more than two dozen private flights, costing the taxpayers hundreds of thousands of dollars. During his short tenure as HHS Secretary, Price did a fair amount of outreach to Indian Country. He visited Alaska where he participated in a roundtable with the Alaska Native Tribal Health Consortium and toured the Alaska Native Medical Center. He also visited tribal health facilities at the Pawnee and Cherokee Nations of Oklahoma. While at the Cherokee Nation, he convened a meeting of the Secretary’s Tribal Advisory Committee (STAC), which marked the first time the group met in Indian Country.

IHS Director Nominee. In October 2017, President Trump nominated Robert M. Weaver to serve as the Director of the Indian Health Service for a term of four years. The nomination has been withdrawn, and Rear Admiral Michael Weahkee has been serving as the Acting IHS Director since June 2017. He previously served as the Chief Executive Office of the Phoenix Indian Medical Center. The Administration has not yet put forward a new nominee for IHS Director.

Addressing the Opioid Crisis in Indian Country. In 2017, President Trump issued an Executive Order establishing the President’s Commission on Combating Drug Addiction and the Opioid Crisis (President’s Commission), and declared the opioid crisis a public health emergency. However, Indian Country was not represented on the President’s Commission and limited resources were provided for the public health emergency declaration. NCAI worked with former Congressman Patrick Kennedy, a member of the President’s Commission, to ensure that Indian Country’s concerns and priorities related to the opioid epidemic were known. These include ensuring that any resources stemming from the public health emergency declaration or upcoming legislation are made available directly to Indian tribes and tribal organizations, inclusion of tribal representatives on federal task forces, and greater coordination and collaboration among agencies.

On September 12, 2017, NCAI and the National Indian Health Board (NIHB) sent a letter to former Health and Human Services Secretary Tom Price requesting that the Pain Management Best Practices Inter-Agency Task Force (Task Force) include a tribal representative. The Task Force was authorized by the Comprehensive Addiction and Recovery Act of 2016 (CARA), a bill signed into law in 2016 to address the growing heroin and opioid epidemic. The Task Force will provide advice and recommendations for development of best practices for pain management and prescribing pain medication and a strategy for disseminating such best practices to relevant federal agencies and the general public. NCAI has also re-established its Substance Abuse Prevention Taskforce to address opioid and other substance abuse issues in tribal communities and to ensure that advocacy efforts around prevention and treatment are prioritized in the Administration and Congress.

HHS Strategic Plan FY 2018-2022. On February 28, the U.S. Department of Health and Human Services updated its strategic plan. The plan identifies the IHS in several strategic objectives. Additionally, the plan specifically calls for “increase[ing] telebehavioral health encounters nationally among American Indians and Alaska Natives [and] . . . intimate partner (domestic) violence screening American Indian and Alaska Native females”.

IHS Developing Strategic Plan (2018-2022). On September 15, 2017, the Indian Health Service (IHS) began its outreach on the IHS Strategic Plan (2018-2022) by sending a letter announcing Tribal Consultation and Urban Confer, as well as opening a 30-day comment period. Specifically, IHS sought feedback on the initial framework’s mission, vision, goals, objectives as well as the direction and priorities IHS should pursue over the next 5 years. IHS held a listening session on its draft Strategic Plan during NCAI's 2017 annual conference in Milwaukee, WI. Additional IHS outreach included a tribal leader conference call, urban Indian organization leader conference call and a listening session at a National Indian Health Board (NIHB) conference. In November 2017, IHS began hosting a series of workgroup meetings to review the comments submitted and finalize a draft strategic plan. IHS had intended to open a 30-day comment period on the draft Strategic Plan in March 2018, followed by the publication of the Final IHS Strategic Plan in April 2018. However, IHS has pushed back the timeline and now plans to open a 30-day comment period on the draft Strategic Plan in May or June 2018.

CMS Medicaid Work Requirements and Political Status. The Centers for Medicare and Medicaid Services (CMS) recently issued a letter to State Medicaid Directors inviting states to create Medicaid work requirements. CMS also issued a letter to tribal leaders, stating that CMS could not approve a tribal exemption from state Medicaid work requirements because of civil rights concerns. This policy will negatively impact tribal communities unless American Indians and Alaska Natives receive an exemption from state requirements. On April 11, a small tribal delegation met with CMS Senior Advisor to the Administrator, Calder Lynch, and representatives from the HHS Office of General Counsel, including a representative from the Civil Rights Division to get more information on CMS’s “civil rights concerns.” At that meeting, HHS refused to provide further information, citing unspecified ongoing litigation and privileged communication. In addition, CMS indicated that it likely would not approve any waivers that had exemptions for Indians due to the civil rights concerns.

On May 7, Administrator Verma made the following statement regarding tribes and state community engagement requirements: “While on the topic of community engagement, you may have heard how this impacts local tribes. We believe we can give states flexibility and discretion to implement the community engagement requirements with respect to local tribal members. We look forward to working with states and tribes to try to help them achieve their goals and determine how to best apply community engagement to serve their populations.” Jack Kalavritinos, Acting Director of the Office of Intergovernmental and External Affairs at the U.S. Department of Health and Human Services, sent an email confirming the Administration’s approach announced by Administrator Verma.

From these communications, it is notable that CMS did not reference “civil rights concerns.” Instead, it is simply reminding states to work with tribal governments. This response is not our desired outcome; however, we know several tribes are already working with states to secure appropriate accommodations. NCAI is monitoring these interactions, and will continue to work with tribal governments, other organizations, members of Congress, and the Administration to ensure the United States respects and honors the political status of tribal

nations on this issue and all others.

## **CULTURAL PROTECTIONS**

Securing traditional laws, cultures and ways of life for future generations is one of the founding principles of the National Congress of American Indians. The protection of culture, religion and ancient remains is important to the future of Native cultures. Many laws protect Indian cultural resources including the National Historic Preservation Act, the Native American Graves and Repatriation Act, the American Indian Religious Freedom Act and the Antiquities Act. This complex system of laws and regulations can allow for tribes to protect ancient remains and settlements, repatriate objects and human remains, and also prevent off-reservation infrastructure from desecrating sacred places. NCAI continues to prioritize its advocacy and education efforts to protect the religious freedoms of Native peoples while supporting cultural preservation efforts.

### **Legislative Update**

House Natural Resources Committee Marks up Antiquities Act Reform Bill. On October 11, 2017, The House Natural Resources Committee marked up H.R. 3990, the National Monument Creation and Protection Act. With the President's review of National Monuments bringing attention to the issue, Congress has taken up the Monument discussion in the House Natural Resources Committee. H.R. 3990 amends the Antiquities Act of 1906 by only recognizing objects of antiquity and removing eligibility for historic landmarks and prehistoric structures. The bill also limits the size of future monuments to 640 acres and considers the proximity to other monuments. The bill would also require approvals from the U.S. Department of the Interior, or U.S. Department of Agriculture before going to county and state governments for approval. The bill would also limit emergency declarations. The bill was passed out of the Natural Resources Committee and is up for consideration by the full House of Representatives. NCAI strongly opposes efforts to weaken Monument protections and has multiple resolutions in favor of protecting tribal historical landmarks and prehistoric structures. NCAI will continue to advocate in strong support of protecting all National Monuments and the cultural resources within them, especially those targeted in H.R. 3990.

Safeguard Tribal Objects of Patrimony (STOP) Act. On June 21, 2017, Senator Martin Heinrich (D-NM) introduced the Safeguard Tribal Objects of Patrimony (STOP) Act (S. 1400). On August 3, 2017, Congressman Ben Ray Lujan (D-NM) introduced a companion bill in the House of Representatives (H.R. 3211). This legislation enhances penalties under the Native American Graves Protection and Repatriation Act (NAGPRA) from 5 years to 10 years and prohibits the exporting of Native American cultural objects. It also requires the Government Accountability Office to submit a report to Congress detailing the number of cultural objects illegally trafficked in the U.S. and in foreign markets, as well as detailing the extent to which the U.S. Attorney General has prosecuted past violations. The report would also include recommendations for actions by the Attorney General, the Secretary of State, and the Secretary of the Interior to eliminate illegal commerce of cultural objects, as well as securing repatriation of those objects. The legislation sets up a tribal working group made up of tribes and government agencies to collaborate on writing the report, as well as giving tribes the opportunity to advise government agencies on implementation recommendations. On May 16, 2018, S. 1400 was ordered to be reported without amendment favorably and will now await consideration by the broader Senate. NCAI supports the bills and has submitted letters and testimony on past versions of the bill.

Senate Committee on Indian Affairs hosts Roundtable on Infrastructure Permitting. On September 28, 2017, the Senate Committee on Indian Affairs hosted a roundtable on “Best Practices in Tribal Consultation and Stakeholder Engagement: Federal Permitting and Infrastructure Project Review in Indian Country.” The roundtable was hosted by Senate Committee on Indian Affairs Chairman Hoeven and Vice Chairman Udall, and was attended by Senators Heitkamp (D-ND), and Franken (formerly D-MN). Senator Carper, the Ranking Member on the Senate Environment and Public Works Committee was also in attendance. The roundtable brought together tribal organizations, tribal industries, federal officials, and industry to discuss topics such as Section 106 historic preservation permitting in projects that impact tribal land, early engagement of tribal nations, and consistent treatment of permitting processes throughout the federal government. NCAI participated in the roundtable and emphasized the need for early notification and partnering with tribal nations to ensure that any on or off-reservation impacts can be mitigated. NCAI also reinforced the effectiveness of the Section 106 process as it currently exists and reminded the FCC that its trust responsibility is to tribal nations and not to industry.

### **Administrative Update**

National Monuments Update. On April 26, 2017, President Trump signed Executive Order 13792 to direct the Department of the Interior to conduct a review of certain National Monuments designated or expanded since 1996. Of the 27 Monuments under review, The Department of the Interior has announced that there will be no changes made to Hanford Reach (WA), Upper Missouri River Breaks (MT), Craters of the Moon (ID), Canyon of the Ancients (CO), Grand Canyon Parashant (AZ) and Sand to Snow (CA) National Monuments.

On August 24, 2017, Secretary Zinke delivered the Department of the Interior’s report to the President, as outlined by the Executive Order for the President, recommending a reduction in size to Bears Ears and Grand Staircase-Escalante National Monuments, as well as Oregon’s Cascade-Siskiyou National Monument. Subsequently, on December 4, 2017, President Trump issued a proclamation purporting to modify Bears Ears and Grand Staircase-Escalante National Monuments, which effectively revoked the initial monument and replaced it with two much smaller and isolated monuments. The Hopi Nation, the Navajo Nation, the Ute Mountain Ute Tribe, the Pueblo of Zuni and the Ute Tribe of the Uintah and Ouray Reservation immediately filed suit in the United States District Court for the District of Columbia.

Neither the White House nor the Department of the Interior have made official statements about the fate of the other National Monuments and whether their original designations will remain the same or will be diminished in size. The Antiquities Act of 1906 grants the President the authority to designate National Monuments and was passed with the intent of protecting tribal cultural and historic properties from looters. There is no legal precedent or explicit statutory authority for the President to rescind National Monument designations.

NCAI has filed public comments with the Department of the Interior twice on this issue, one comment specifically on the Bears Ears National Monument and the other on all other Monuments under review urging no changes in any Monument designations and encouraging tribal co-management of Monuments. In addition, NCAI has written the President twice to urge him to protect Monument designations and work to protect tribal historic and cultural resources that reside in the Monuments. NCAI now intends to submit amicus briefs in support of the 5 tribes’ lawsuit regarding both the Bears Ears and Grand Staircase-Escalante National Monuments.

U.S. Army Corps of Engineers Return Ancient One to Columbia River Tribes, Finally Put to Rest. The Ancient One, also known as the Kennewick Man, was returned to the Umatilla, Yakama, Nez Perce and Colville Tribes by the U.S. Army Corps of Engineers in February 2017. In 1996, the Ancient One was found near Kennewick, Washington. The tribes fought in court for the right to have the Ancient One returned for a proper burial. In December 2016, the Water Infrastructure Improvements for the Nation Act passed both Houses of Congress, authorizing the U.S. Army Corps to return the Ancient One's remains to the tribes. The Ancient One was put to rest in February 2017.

United Nations Ad Hoc International Repatriation Working Group. U.S. tribal representatives and leaders participated in a consultation during the 15th session of the UN Permanent Forum on Indigenous Issues on May 13, 2016 to discuss recommendations and next steps for the development of the new UN mechanism for international repatriation. In addition to U.S. tribal leaders, presenters included representatives of the UNPFII, the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), UNESCO and Indigenous Peoples from other regions. U.S. tribal leaders also participated in a follow up side event on May 2, 2017 at the UNPFII 16th session, which also included participation by UN bodies, to present updates, progress, continued challenges and next steps.

In a recent, very important development, on August 9, 2017, the UNESCO Executive Committee provisionally adopted a new Draft Policy on Engaging with Indigenous Peoples. The final draft affirmed the UN Declaration on the Rights of Indigenous Peoples and included a paragraph on repatriation of human remains and cultural items as follows: "Indigenous peoples have the right to repatriation of their human remains and States should seek to enable access and/or repatriation of ceremonial objects and human remains in states' possession through fair, transparent and effective mechanisms developed in conjunction with the indigenous peoples concerned".

On October 17, 2017, at the 202nd session of the UNESCO Executive Board, UNESCO's Programme and External Relations Commission recommended the adoption of a draft decision taking note "with satisfaction" of the new policy as a "living document"; calling on "the Secretariat to produce a document detailing its implementation of application of the UNDRIP to the Organization's mandated areas"; and calling on "Member States to make voluntary financial and in-kind contributions to support the implementation of UNESCO's programmes and activities in line with the UNESCO policy on engaging with indigenous peoples".

Next steps will be full adoption and implementation of this policy by UNESCO including by developing effective mechanisms for international repatriation as called for by the UN Declaration on the Rights of Indigenous Peoples and the WCIP Outcome Document. Recommendations include that UNESCO: (1) address implementation of the new Policy's provision pertaining to repatriation of sacred items and human remains as an agenda item of upcoming sessions of the Subsidiary Committee for the UNESCO's 1970 Convention with the participation of Indigenous Peoples' representatives; (2) organize seminars with UN EMRIP and Indigenous Peoples to discuss the development of new mechanisms, procedures and protocols for international repatriation; (3) establish and host a new data base and encourage States to post information on sacred items in the possession of national museums and other institutions; and (4) adopt a new regulation requiring proof of

Free Prior and Informed Consent from appropriate Tribal/Cultural Indigenous entities before sale or international transport of ceremonial items or human remains is permitted.

## **NATIVE VETERANS**

Per capita, American Indians and Alaska Natives (AI/ANs) serve at a higher rate in the Armed Forces than any other group of Americans and have served in all of the Nation's wars since the Revolutionary War. In fact, AI/AN Veterans served in several wars before they were even recognized as American citizens. Despite their esteemed service, AI/AN Veterans have lower personal incomes, higher unemployment rates, and are more likely to lack health insurance compared to Veterans of other races. NCAI has been monitoring Department of Veterans Affairs (VA) initiatives, administrative actions, and proposed legislation impacting Native veterans to ensure they receive the proper benefits and compensation for their military service.

### **Legislative Update**

*Tribal Veterans Health Care Enhancement Act (S. 304, Thune (R-SD))*. This legislation amends the Indian Health Care Improvement Act to allow the Indian Health Service (IHS) to cover the cost of a copayment of an American Indian or Alaska Native Veteran receiving medical care or services from the Department of Veterans Affairs (VA) authorized under the Purchased/Referred Care program. On March 29, 2017, the Senate Committee on Indian Affairs ordered that the bill be reported without amendment. The Committee report, which was filed on June 15, 2017, included Minority views from Vice Chairman Tom Udall (D-NM) who called upon the Senate to oppose this legislation and any legislation that would exclude Indian veterans from financial liability protections afforded by Congress. Udall further advocated for legislation that would alleviate the financial burden imposed by VA copayments on Indian veterans.

*Alaska Native Veterans Land Allotment Equity Act (S. 785, Sullivan (R-AK) and H.R. 1867, Young (R-AK))*. These bills would amend the Alaska Native Claims Settlement Act to provide equitable treatment of Alaska Native Vietnam Veterans in their acquisition of land under the Native Allotment Act of 1906. Approximately 2,800 Alaska Natives who were out of the country serving during the Vietnam War missed an opportunity to apply for a land allotment under the 1906 Alaska Native Allotment Act. This legislation seeks to remedy this situation by making these Veterans eligible for 160 acre allotments. On July 26, 2017, the Senate Energy and Natural Resources, Subcommittee on Public Lands, Forests, and Mining held a hearing on S. 785. The Administration testified that it "supports the goals of S. 785 and looks forward to working with the sponsor and the Committee to provide technical edits to further enhance this legislation and offer timely and efficient resolution of longstanding Native allotment processes." No major action has been taken on the House bill, which is pending before the Natural Resources Committee. In 2015, NCAI passed Resolution SD-15-016, urging Congress to amend Alaska Native Vietnam Veterans Allotment Act to obtain allotments within the State of Alaska.

*Tribal HUD-VASH Act (S. 1333, Tester (D-MT) and H.R. 4359, Lujan (D-NM))*. This bill would formally authorize a joint tribal housing initiative between the U.S. Department of Housing and Urban Development and the Veterans Affairs Supportive Housing (HUD-VASH) program, which provides housing vouchers to tribes and tribal housing authorities to construct affordable housing, provide rental assistance, and assist homeless veterans with services that aid recovery from physical and mental health conditions resulting from homelessness. In January 2015, HUD and the VA announced a demonstration program to offer a permanent home and supportive services to Native American Veterans who are experiencing or at risk of experiencing

homelessness. Under the current pilot program, only 26 tribes have received HUD-VASH vouchers. S. 1333 seeks to improve and expand upon this program. The bill is cosponsored by Committee on Indian Affairs Chairman John Hoeven (R-ND) and Vice Chair Tom Udall (D-NM), as well as Committee on Veterans Affairs Chairman Johnny Isakson (R-GA). It was ordered reported with an amendment in the nature of a substitute by the Senate Committee on Indian Affairs on September 13, 2017. The Committee filed its report on the bill in December 2017 and it is now awaiting Senate consideration. The House companion bill, which was introduced on November 9, 2017, is pending with the House Committee on Financial Services. NCAI has a standing Resolution ECWS-14-001 in support of the Tribal HUD-VASH.

*Nursing Home Care for Native American Veterans Act (H.R. 2716, O'Halleran (D-AZ))*. Introduced on May 25, 2017, this bill is designed to encourage construction of veteran nursing care homes on tribal lands. Currently, tribal lands are excluded from a law that provides a 65 percent construction reimbursement and per diem to veteran nursing care homes built on land owned by states or territories or land possessed by the United States. This exclusion is likely part of the reason that there are currently no veteran nursing homes located on tribal lands. This bill would define “state homes” to include homes established by federally recognized Indian tribes for veterans who, by reason of disability, are incapable of earning a living. In addition, the bill would require the Department of Veterans Affairs (VA) to pay those tribes for the hospital, nursing home, domiciliary, and medical care they provide to veterans in those homes and make those tribes eligible for VA grants for the construction of state homes. The bill has been referred to the House Veterans Affairs, Subcommittee on Health.

*A bill to amend title 38, United States Code, to authorize the Secretary of Veterans Affairs to provide certain burial benefits for spouses and children of veterans who are buried in tribal cemeteries, and for other purposes (S. 2248, Tester (D-MT) and H.R. 3657, Poliquin (R-ME))*. Currently, national and state veterans’ cemeteries allow immediate family members to receive memorial headstones alongside their loved ones. However, the benefit only extends to family members who passed away after 2006 and does not extend to family members of veterans buried in tribal veterans cemeteries. This bill would extend those benefits to the spouses and children of veterans buried in tribal cemeteries. The Senate bill is pending with the Senate Veterans’ Affairs Committee and the House bill is pending with the House Committee on Veterans’ Affairs. H.R. 3657 and S. 2248 have each passed their respective chambers and await further consideration.

*Hearing on Rural Veterans*. On May 8, 2018, President Jefferson Keel testified before the Blue Dog Task Force on Rural America at the Hearing on Rural Veterans. His testimony focused on ensuring that issues affecting Native veterans are considered and addressed in legislation, as well as when Congress exercises its oversight authority over agencies charged with providing services to veterans.

### **Administrative Update**

*VHA-IHS Memorandum of Understanding*. On January 6, 2017, the Indian Health Service issued a Dear Tribal Leader Letter to announce that the IHS recently signed an Interagency Agreement with the U.S. Department of Veterans Affairs (VA) authorizing the IHS to use the Veterans Health Administration's Consolidated Mail Outpatient Pharmacy (CMOP). With this development, tribes and tribal organizations with Indian Self-Determination and Education Assistance Act (ISDEAA) agreements are now able to access the CMOP through the National Supply Service Center (NSSC).

*Final Rule on Recognition of Tribal Organizations.* On January 19, 2017, VA issued a final rule—Recognition of Tribal Organizations for Representation of VA Claimants, 82 FR 6265—recognizing tribal authority to establish a tribal VA benefit claims office through an accredited Tribal Veteran Service Officer (TVSO). Specifically, this rule allows the Secretary to recognize tribal organizations in a similar manner as the Secretary recognizes state organizations. It also allows a tribal organization that is established and funded by one or more tribal governments to be recognized for the purpose of providing assistance on VA benefit claims. In addition, the final rule allows an employee of a tribal government to become accredited through a recognized state organization in a similar manner as a County Veteran Service Officer (CVSO) may become accredited through a recognized state organization. During the rulemaking process, NCAI provided comments to ensure VA provides the opportunity to ensure fair and timely examinations, assessments and the preparation of a claim, and most importantly, the advocacy of the claim on behalf of Native veterans is accomplished in a culturally competent manner. NCAI will continue to track the implementation of this rule and advocate for support for Tribal Veteran Service Officers Training Programs, as outlined in NCAI Resolution SAC-12-002.

*NMAI's National Native American Veterans' Memorial Design Competition.* On January 25, 2018, the National Museum of the American Indian (NMAI) announced the five finalists for the design competition for the National Native American Veterans Memorial—Daniel SaSuWeh Jones (Ponca) and Enoch Kelly Haney (Seminole); Harvey Pratt (Cheyenne/Arapaho); Leroy Transfield (Māori: Ngai Tahu/Ngati Toa); Stefanie Rocknak; and James Dinh. The jury examined each of the 120 completed submittals, and each received a rigorous evaluation resulting in the five design concepts that were selected for Stage II. On February 7, the museum introduced the Stage II finalists at “Meet Your Designers,” a public event. The finalists had until May 1 to refine their design concepts to a level that fully explains the spatial, material, and symbolic attributes of the design and how it responds to the vision and design principles for the National Native American Veterans Memorial. The Stage II design concepts will be exhibited at both the Washington, D.C., and New York museums May 19 through June 3, 2018. The winner is scheduled to be announced on July 4. The National Native American Veterans Memorial is to be located prominently on the National Museum of the American Indian’s grounds on the National Mall, between the Smithsonian’s National Air and Space Museum and the U.S. Capitol. The anticipated dedication is planned for Veterans Day 2020. The Memorial is a collaborative effort by NCAI and NMAI to honor the distinguished military service of American Indians and Alaska Natives, authorized by the Native American Veterans' Memorial Establishment Act of 1994 and advanced by the Native American Veterans' Memorial Amendments Act of 2013.

## TRIBAL GOVERNANCE

### VOTING RIGHTS

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

Since 2015, NCAI has actively participated along with other interested organizations in the Native American Voting Rights Coalition (NAVRC) to ensure that our work to protect and advance the voting rights of American Indians and Alaska Natives is coordinated and as effective as possible. The project's main goal is to remove barriers to Native American voter registration and voting, increase Native civic engagement, and foster a more informed and active Native electorate. With mounting evidence of voter suppression and violations of voting rights laws, NAVRC has accelerated its work. This work includes: (1) planning for redistricting related to the 2020 census; (2) addressing violations observed in the 2016 elections; (3) overseeing the largest survey of Native voters ever conducted to discover the extent of voting problems in Indian Country; and (4) holding a series of regional field hearings to hear from Native voters about the challenges they are experiencing.

#### **Legislative Update**

*Voting Rights Advancement Act of 2017 Introduced.* S. 1419 and H.R. 2978, companion measures entitled The Voting Rights Advancement Act of 2017, were introduced in June of 2017. The Senate bill was introduced by Senator Patrick Leahy (D-VT) and has 48 Democratic and Independent co-sponsors. The House bill was introduced by Representative Terri Sewell (D-AL) and has 188 Democratic co-sponsors. Both bills contain provisions aimed at improving access to registration and voting for voters on tribal lands. Both bills were referred to the respective Judiciary Committees and await further action.

*Election Assistance Commission Termination Act.* On February 7, 2017, the Committee on House Administration approved H.R. 634, which would dismantle the federal Election Assistance Commission (EAC). The EAC has played a critical role in helping to improve the integrity of elections in the United States. Through its work with state and local election officials and voting advocacy organizations, the EAC has canvassed the nation to identify the best practices for effective election administration. The EAC's efforts have helped state and local governments to modernize the election system and take steps to dismantle barriers to registration and voting that Native Americans continue to face. H.R. 634 would roll back that progress and impede the efforts of Native voters to exercise their fundamental right of citizenship. NCAI joined the Native American Voting Rights Coalition in a letter of opposition to H.R. 634.

*Field Hearings.* In September 2017, NAVRC began holding field hearings across the country to collect information from Native American voters. The hearings focus on identifying instances of voter suppression and documenting all the barriers Native voters face. Information from the hearings will help promote public education, identify policy solutions, and advance other legal remedies to expand Native access to voting.

## **SELF-GOVERNANCE**

Self-Governance enables tribes, as sovereign nations, to exercise their right to be self-governing and to take program funds and manage them in ways that best fit the needs of their citizens and tribal communities. It places the federal government's Indian Country programs firmly in the hands of the people who are served by them, enhancing and empowering tribal governments and their institutions, all while reducing the federal bureaucracy. As a tribally-driven initiative created through Congressional legislation, it allows tribal governments to negotiate annual appropriated funding and to assume management and control of programs, services, functions, and activities—or portions thereof—that were previously managed by the federal government. There are currently 272 federally recognized tribes and tribal organizations exercising self-governance authority within the Department of the Interior-Bureau of Indian Affairs (DOI-BIA) and 352 federally recognized tribes and tribal organizations exercising self-governance authority within the Department of Health and Human Services-Indian Health Service (DHHS-IHS).

Over the past 40 years, the Indian Self-Determination and Education Assistance Act (ISDEAA) has been one of the most successful mechanisms empowering tribes to develop the capacity for government-building activities. Self-Governance tribal leadership and representatives have held ongoing meetings with the Administration and Congress for more than 25 years regarding ways to improve and advance tribal self-governance. Amending Title IV of ISDEAA has been a top legislative priority for Self-Governance tribes for more than a decade. Therefore, leaders of Self-Governance tribes continue to advance the vision of the ISDEAA by working to amend Title IV of the ISDEAA to create consistency and administrative efficiency for Self-Governance tribes between Title IV Self-Governance in the DOI and Title V Self-Governance in the DHHS.

### **Legislative Update**

DOI Tribal Self-Governance Act. In the 114<sup>th</sup> Congress, Senator John Barrasso introduced the Department of the Interior Tribal Self-Governance Act, which aimed to streamline DOI's process for approving self-governance compacts and annual funding agreements, ultimately aligning the process used by DOI with the process used by the Indian Health Service. This legislation passed the Senate by Unanimous Consent on July 7, 2015, and was sent to the House of Representatives with well over a year left in the 114<sup>th</sup> Congress. Despite lengthy negotiations to address concerns related to the bill's purported impact on non-BIA programs, the 114<sup>th</sup> Congress expired before the House acted upon the bill.

On March 7, 2018, Senator Hoeven (R-ND) introduced S. 2515, the Practical Reforms and Other Goals to Reinforce the Effectiveness of Self-Governance and Self-Determination (PROGRESS) for Indian Tribes Act. Senator Hoeven indicated that the issues that stalled legislation in the 114<sup>th</sup> Congress have been addressed in the PROGRESS Act. On April 11, 2018, the Senate Committee on Indian Affairs ordered S. 2515 to be reported favorably without amendment. The bill now awaits consideration by the broader Senate.

NCAI continues to work with the Self-Governance Advisory Committee to address concerns, with the goal of passing legislation in the 115<sup>th</sup> Congress.

## ECONOMIC DEVELOPMENT AND INFRASTRUCTURE

Across Indian Country, tribal nations are achieving economic progress. From creating successful nation-owned enterprises to cultivating tribal citizen-owned businesses to preparing their people to take full advantage of expanding economic and job opportunities, tribes are slowly but surely building sustainable economies and revitalizing their communities. However, while many tribes are building strong economies, many other tribes are in need of the tools and resources necessary to help improve their economies.

The policy overviews below demonstrate how focused attention and targeted action by the federal government – in consultation and collaboration with tribal governments and key national Native organizations – can greatly enhance the ability of tribal nations to achieve economic prosperity, prosperity capable of providing their citizens with job opportunities and a good quality of life.

### **TRIBAL TAX PRIORITIES**

This past December, Congress passed and the President signed into law the Tax Cuts and Jobs Act. The final tax reform legislation did not include any tribal tax priorities. As such, Congress and the Administration missed an opportunity to recognize the tribes' rightful place alongside other governments and to incentivize increased investment in tribal economies and infrastructure.

As a result, despite the passage of tax reform, tribal governments are still left without many of the benefits, incentives, and protections provided by the Code to state and local governments. This inequity significantly handicaps tribal sovereign authority to provide government revenue for tribal programs independent of federal appropriations and encourage economic growth on tribal lands. For this reason, it is important that both Congress and the Administration actively engage with Native nations to develop federal tax policy that ensures tribal governments have the same opportunities as state and local governments to provide services for their own citizens. The second session of the 115th Congress may still provide several chances for Congress and the Administration to uphold the trust responsibility and enact legislation that includes tribal tax priorities.

#### **Tribal Tax Priorities**

Provide Tax Parity to Tribal Governments. Members of Congress and Indian tribes have worked together to identify provisions in the tax code that treat tribes differently than state and local governments. Congress should fix the disparity in the following areas:

- *Tax-Exempt Bonds.* Unlike other governments, tribes can only use tax-exempt bond financing for “essential government functions.” The IRS has interpreted this standard to exclude tribal economic development activities even though state and local governments routinely use tax-exempt financing for similar development projects. This limitation on tribes greatly inhibits infrastructure deployment and economic growth.
- *Government Pension Plans.* Unlike other governments, the Tax Code requires tribes to have separate types of pension plans (government and private) based on an employee's job activities. Consequently, only tribes incur the monetary and compliance costs of maintaining two separate pension plans. Tribal governments must be able to operate a single, comprehensive, government pension plan for all their employees.

- *Tribal Foundations and Charities.* Charities funded or formed by tribal governments do not enjoy the same tax treatment as those funded or formed by state and local governments. This disparity makes it difficult for tribes to form charities and leverage tribal resources to raise charitable donations from outside donors.
- *Tribal Child Support Enforcement Agencies.* Like state agencies, tribal child support enforcement agencies should have access to federal parent locator services and the ability to garnish federal tax returns to enforce past due child support obligations.
- *Indian Adoption Tax Credit.* Currently, families that adopt special needs children in tribal court are ineligible for tax benefits available to families that adopt special needs children in state court. Federal tax policy should treat tribal court orders the same as state court orders for purposes of classifying an adoptive child as “special needs”.
- *Excise Taxes.* Tribal governments are not treated the same as state and local governments for a variety of excise tax exemptions, which diverts resources from government services for tribal citizens. Tribes should be treated the same as states for purposes of exemption from federal excise taxes.

*Provide Tax Incentive Parity for Indian Health Service Health Professionals.* Indian Health Service health professionals are ineligible for tax incentives available to other public sector health professionals. The Indian Health Service should have the same recruitment and retention tax incentives as other public sector health systems.

*Exempt Tribal Distributions from the “Kiddie Tax”.* Due to a flaw in the tax code, distributions from minors’ trust funds established by tribal governments are subject to taxation at the rate of a minor’s parents, resulting in an unintended disincentive to attend college. Correcting this would provide fairness to Indian youth and families receiving benefits from tribal funds.

*Provide Tribal Leader Social Security Parity.* Currently, tribal leaders do not even have the option to participate in the Social Security program, making retirement planning after a lifetime of public service significantly more difficult. Authorizing tribes to enter Section 218 agreements would ensure tribal leaders have the same opportunities to plan for retirement as state and local government officials.

*Simplify, Expand, and Make Permanent the Indian Employment Tax Credit.* Congress passed the Indian Employment Tax Credit to create jobs in tribal communities. Simplifying, expanding, and making permanent the Indian Employment Tax Credit would increase its deployment, thereby promoting economic growth and job creation on Indian reservations.

*Increase New Markets Tax Credits (NMTC) Deployment in Indian Country.* Increasing deployment of NMTCs for projects in Indian Country through a set-aside or other incentives would spur investment in infrastructure, promote economic development, and create jobs in tribal communities.

*Increase Low-Income Housing Tax Credits Deployment in Indian Country.* Congress should treat tribes as states for LIHTC allocations, establish a tribal set-aside, and adjust the Tax Code to increase deployment of the tax credits in Indian Country. The LIHTC program could provide much needed private investment in affordable housing in tribal communities.

## **Legislative Update**

Tribal Tax Priorities on Capitol Hill Post Tax Reform. The NCAI membership emphasized the importance of reforming federal tax policy for Indian Country by passing Resolution MOH-17-011, Equitable Treatment for Tribal Nations in Congressional Tax Reform, at last year's Mid Year Conference in Connecticut. Despite years of education and work with offices on Capitol Hill by tribes, NCAI, and other organizations, Congress did not include these tribal tax priorities in the tax reform legislation that passed in December. This result is disappointing, but there may be opportunities this year for Congress to pass legislation that includes Indian Country.

During tax reform discussions, some congressional members expressed interest in working on a tax extenders package during the second session. In February, Congress retroactively extended through 2017 the Indian Employment Credit, Accelerated Depreciation in Indian Country, and the Indian Coal Production Credit as part of the budget agreement. Although this short-term extension was a positive development, NCAI will continue to advocate for making these tax provisions permanent and for modifying the Indian Employment Tax Credit to make it an even better incentive for increasing employment and economic development in tribal communities.

Additionally, several necessary Tax Code fixes have been identified since the whirlwind consideration and passage of the Tax Cuts and Jobs Act. Legislation addressing these issues may provide an opportunity for Indian Country to advance its tax priorities. NCAI is monitoring legislative developments and will continue to advocate for tribal tax parity; increased deployment of New Markets Tax Credits and Low-Income Housing Tax Credits in Indian Country; and the inclusion of tribes in new programs.

All 7 Members Appointed to the Department of Treasury's Tribal Advisory Committee. The 7 member Advisory Committee has been filled. Established under the Tribal General Welfare Exclusion Act of 2014, the Tribal Treasury Advisory Committee will advise the Secretary of the Treasury on matters related to the taxation of Indians, the training of Internal Revenue Service field agents, and the provision of training and technical assistance to Native American financial officers. In 2015, the Secretary of the Treasury appointed three members of the committee of seven. Those three appointments include: W. Ron Allen, Chairman and Chief Executive Officer of the Jamestown S'Klallam Tribe; Lacey Horn, Treasurer of the Cherokee Nation; and Marilyn "Lynn" Malerba, Lifetime Chief of the Mohegan Tribe. The remaining four Congressional appointments to the Committee are: Eugene Magnuson, Tribal Treasurer of the Pokagon Tribe; Shannon Edenfield, Tribal Council member for the Confederated Tribes of the Siletz Indians of Oregon who also serves as its Tribal Administrative Officer; Patricia King, Treasurer for the Oneida Nation; and Rebecca Benally, a member of the Navajo Nation that currently serves as a county commissioner of San Juan County in Utah.

## **Administrative Update**

Address the Harms of Dual Taxation in Indian Country through Modernizing the Indian Trader Regulations. NCAI continues to urge swift action to address dual taxation in Indian Country. The Indian Trader Regulations at 25 C.F.R. § 140 are an anachronism in the era of Tribal Self-Determination. They have not been updated since 1957. It is no longer necessary for the Department of the Interior to license traders on Indian reservations, and

the regulations are an unnecessary burden on economic development. However, the underlying law at 25 U.S.C. § 262 is broad and authorizes flexibility to the Department of the Interior to adopt new regulations that would meet the economic development and tax revenue needs of Indian tribal governments in the 21<sup>st</sup> Century. We urge the Department of Interior to replace the current regulations, in accordance with NCAI Resolution SD-15-045: *Urging the Department of Interior to Address the Harms of State Taxation in Indian Country and Prevent Dual Taxation of Indian Communities*.

### **TRIBAL LABOR SOVEREIGNTY ACT**

Indian tribes are sovereign governments, recognized in the U.S. Constitution. The National Labor Relations Act (NLRA) regulates labor relations between employees and private employers. Congress has recognized that it is most appropriate for each government to determine their own governmental labor policies by providing governmental exemptions for federal, state, county and city governments from the Act. Tribal governments must be exempted also. Unfortunately, Congress recently failed to address tribal concerns in this area.

On April 16, 2018 the Senate failed to come up with the necessary votes to proceed with a full vote on the Tribal Labor Sovereignty Act, an amendment to the National Labor Relations Act that would include tribes in the same exempt category as all other government employers in the United States. The Senate voted 55-41 in favor of moving forward with the legislation, but this tally fell short of the 60 votes needed to prevent a filibuster.

“Obviously, this is disappointing,” said NCAI President Keel. “But I want to thank the Senate for taking up this important issue, and thank each Senator for the time he or she spent to understand the issue and the nature of tribal governments. From the comments we heard on the Senate floor today, we still have much work to do to educating Congress about the fact that tribal sovereignty is not a conditional proposition. However, I am encouraged that we won a majority of votes, and that our issue made it to the Senate floor. We will be back.”

Keel continued: “Everyone knows that the U.S. Constitution set up our federal system of government, but far too few know that the Constitution also recognizes the sovereignty of Indian tribes. The reason is found in our history. Our lands and resources were stolen despite the guarantees of treaties and federal laws, and when there was little left to take from us, our rights have simply been ignored. This is the dark history we have inherited. However, tribes have struggled and succeeded in establishing the federal policy of tribal self-determination, economic development is taking hold in many places, and our government structures are growing ever more effective and secure.

“Tribal sovereignty is not an abstract principle. Tribal self-government is critical for us to maintain our cultures and our viability as distinct groups of people. We want our children to grow up with the same traditions and values that we grew up with. These are reasons that everyone in America can understand because these are the basic values of cultural survival that we all share just as much as our need to breathe the air.”

There is no good reason to treat tribal governments in any way different from other governments. Federal law should uphold, not undercut, parity of treatment and equality of opportunity for tribal governments. NCAI will continue to educate members of Congress and advocate for the passage of the Tribal Labor Sovereignty Act.

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

### **TRIBAL TELECOMMUNICATIONS**

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

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

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

#### **Legislative Update**

The 1996 Telecommunications Act was the last major authorizing bill to pass Congress that directs the FCC's work. Because a comprehensive telecommunications bill has not been passed in over 20 years, Congress has elected to approach the changing technological landscape through smaller pieces of legislation. The following House bills are pending in the Energy and Commerce Committee and the following Senate bills are pending in the Commerce Committee.

*Tribal Connect Act - S.2205*. On December 7, 2017, Senator Martin Heinrich (D-NM) and Senator Dean Heller (R-NV) introduced the Tribal Connect Act of 2017. This bill addresses the Federal Communications

Commission's E-Rate program. The bill would establish a pilot program for tribal Anchor institutions (e.g., Longhouses and Chapter Houses) to be eligible for E-Rate support. The bill also would provide training and technical assistance to apply for and implement the E-Rate program in addition to requiring the FCC to develop performance measures for ensuring that tribal libraries have affordable internet access. On April 27, 2018, Representatives Ben Ray Lujan (D-NM) and Markwayne Mullin (R-OK) introduced companion legislation, H.R. 5661.

*New Deal Rural Broadband Act of 2017 - H.R. 800.* On February 1, 2017, Congressman Jared Huffman (D-CA-2) introduced H.R. 800, the New Deal Rural Broadband Act of 2017, that establishes an Office of Rural Broadband Initiatives within the U.S. Department of Agriculture. The bill also has a Tribal Broadband Assistance title that authorizes \$25 million per year for 5 years to provide broadband services on tribal lands.

*Measuring Economic Impact of Broadband Act of 2017 - S. 645.* On March 15, 2017, Senator Amy Klobuchar (D-MN) introduced S. 645, the Measuring Economic Impact of Broadband Act of 2017. This data collection bill directs the Department of Commerce through the Bureau of Economic Analysis to assess and analyze the effects of broadband deployment and adoption on the economy of the United States in consultation with tribal governments. A House companion bill, H.R. 5093, was introduced on February 26, 2018 by Representative Khanna (D-CA).

*Tribal Digital Access Act - H.R. 1581.* On March 16, 2017, Congressman Raul Ruiz (D-CA-36) introduced the H.R. 1581, Tribal Digital Access Act of 2017. The Tribal Digital Access Act amends the Communications Act of 1934 to extend Universal Service principles to Indian Reservations, Indian Communities, allotments and areas with high populations of Indian people. The Universal Service program's mission is to create accessible telecommunications rates and access to high cost rural and insular areas. This legislation would extend that mission to Indian Country.

*CONNECT for Health Act of 2017 - H.R. 2556 and S. 1016.* In May 2017, Representative Diane Black (R-TN) and Senator Brian Schatz introduced the Connect for Health Act of 2017, which provides for Accountable Care Organizations to expand telehealth services. The bill would also authorize the Indian Health Service facilities, whether operated by IHS, the tribe or tribal organization, to be eligible for services under this bill.

*16 Members of Congress ask the FCC to move on the Operating Expense Limitation Rule.* On July 31, 2017, a bipartisan group of 16 Members of Congress wrote the FCC to ask for swift action on the Operating Expense Limitation Rule. The Operating Expense Limitation Rule would exempt telecommunications providers from expense limitations when they are serving tribal lands. Led by Congresswoman Torres (D-CA) and Congressman Young (R-AK), the letter urges the FCC to vote on this item as soon as possible.

*NCAI and NIHB Submit Telehealth Testimony to House Small Business Committee.* On July 27, 2017, NCAI and the National Indian Health Board submitted joint testimony for the record to the House Small Business Committee for the hearing entitled, "21st Century Medicine: How Telehealth Can Help Rural Communities." The joint comments highlighted the great potential for telehealth in Indian Country and recommended better coordination between FCC, USDA and IHS; requested a tribal set-aside for 5 percent of Rural Health Care funds; and requested increased data collection on tribal telehealth.

Legislation to Streamline NEPA and Section 106. On March 21, Representative Scalise (R-LA) and Senator Moran (R-KS) introduced H.R. 5378 and S. 2576, the Reducing Antiquated Permitting for Infrastructure Deployments (RAPID) Act. The bill would instruct the Federal Communications Commission to review classes of activities that should not be considered federal undertakings. If an activity is determined not to be a federal undertaking, it would be exempt from the National Environmental Policy Act and the National Historic Preservation Act, thereby eliminating opportunities for tribes to protect their natural and cultural resources under those laws.

### **Administrative Update**

FCC Repeals Net Neutrality. In December 2017, the FCC voted on party lines to repeal Net Neutrality. A 2015 FCC Order barred internet service providers (ISP's) from blocking or throttling traffic or offering paid fast lanes for internet service. The 2015 Order was repealed by a December 2017 vote and will begin taking place at least three months after the vote. NCAI filed comments with the FCC opposing the action as it would allow ISP's to charge tribal governments and their citizens more for service while also limiting self-determination.

Senator Markey (D-MA) introduced a Senate Joint Resolution (S. J. Res. 52) disapproving of the FCC's rule under the Congressional Review Act. This Joint Resolution acquired over 40 cosponsors, which under Senate Rules would force a vote on the item. On May 16, 2018, the Senate passed S. J. Res. 52. On the state level, 21 States have sued the FCC in federal appeals court in Washington, D.C. Montana Governor Steve Bullock (D-MT) signed an executive order requiring ISP's with state contracts to abide by Net Neutrality principles. Although the FCC's repeal includes a ban on states implementing their own net neutrality rules, the State of Montana is moving forward.

Section 106 Streamlining Proposed Rule at the Federal Communications Commission. On April 24, 2017, the Federal Communications Commission issued a proposed rulemaking intended to streamline tribal review of wireless infrastructure impacts on tribal historic and cultural properties (FCC Notice of Proposed Rulemaking, Docket 17-79 "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment). The Notice of Proposed Rulemaking was very concerning because it would limit the ability of tribes to protect their sacred sites and cultural resources.

NCAI hosted a webinar on April 11, 2017 on this issue which can be viewed on the NCAI website. On June 15, 2017, NCAI, United South and Eastern Tribes Sovereignty Protection Fund, National Association of Tribal Historic Preservation Officers, Affiliated Tribes of Northwest Indians, Alaska Federation of Natives, All Pueblo Council of Governors, California Association of Tribal Governments, Great Lakes Inter-Tribal Council, Great Plains Tribal Chairman's Association, Inter-Tribal Council of Arizona, Inter-Tribal Council of the Five Civilized Tribes, Midwest Alliance of Sovereign Tribes, Southern California Tribal Chairmen's Association, and United Tribes of Michigan submitted joint comments to the FCC on this docket expressing strong concerns.

On March 1, 2018, the FCC issued a draft Report and Order purporting to narrow the FCC's obligations under the National Historic Preservation Act and the National Environmental Policy Act, as well as restrict tribal nation rights secured by these laws. NCAI and USET-SPF submitted comments to oppose the FCC's draft Report and Order because it proposed to categorically remove 'small cell tower deployments' from consideration as 'major federal actions' pursuant to the National Environmental Policy Act, and also as 'federal undertakings' for purposes of the National Historic Preservation Act. Despite that opposition, on March 22,

2018, FCC voted to approve the Report and Order and move forward with the proposal. Several tribes and other groups have since filed suit to challenge the FCC's decision. NCAI has been hosting coordinating calls with the various parties in opposition to the decision, and discussing this issue broadly with certain tribes that are considering challenging the decision as well.

Telemedicine Notice of Inquiry. On May 24, 2017, NCAI and the National Indian Health Board (NIHB) filed comments on docket 16-46 "Actions to Accelerate Adoption and Accessibility of Broadband-Enabled Health Care Solutions and Advanced Technologies." NCAI and NIHB commented on the lack of broadband in Indian Country and the potential for success of telemedicine in the Indian Health Service (IHS). While the IHS does have existing telehealth programs related to behavioral health, NCAI urged the FCC to collaborate with IHS on accelerating telemedicine in Indian Country. The FCC held four listening sessions on telehealth throughout August and September 2017. The different sessions focused on healthcare providers, rural and consumer issues, technology and broadband, and policymakers.

FCC Order Surrenders Radio Stations for Possible Tribal Acquisition. On May 26, 2017, the FCC adopted a consent decree (FCC Order DA 17-458) ordering a renewal of 12 radio station licenses while surrendering 9 other stations for donation to tribal entities or other non-profit groups. The Surrendered Stations include: KXWY, Hudson, WY; KTWY, Shoshoni, WY; KWWY, Shoshoni, WY; KFMR, Ballard, UT; KZLM, Lewiston, MT; KZNM, Milan, NM; KHSK, Allen, NE; KDNM, Reserve, NM; and KSFQ, Thatcher, AZ. Qualified tribal nations will have the opportunity to relocate stations pursuant to tribal priority requirements.

NCAI Submits Comment in favor of Tribal Telco's Petition for Waiver of High Cost Loop Support. On October 9, 2017, NCAI submitted a filing with the Federal Communications Commission in support of the Gila River Telecommunication Inc.'s petition for a waiver of the National Average Cost Per Loop Freeze. The FCC elected to freeze the national average cost per loop, thereby cutting substantial Universal Service funding to high cost providers, including tribally-owned telecommunications companies. NCAI filed comments in 2014 urging the Commission to not take this action. These across the board cuts have harmed tribal businesses and have made deploying broadband on tribal lands costlier.

### **NATIVE AMERICAN HOUSING**

Housing needs are critical for Native families on tribal lands where housing shortages and overcrowding conditions persist. In 2017, the U.S. Department of Housing and Urban Development (HUD) released a report titled "Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report from the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs." The report highlighted the issue of overcrowding and determined that it would take approximately 33,000 new units to alleviate overcrowding in Indian Country with an additional 35,000 housing units needed to replace existing homes considered in dire condition. The HUD report also indicated that a total of 68,000 new and/or replacement homes are needed in Indian Country.

U.S. Census Bureau data from the 2006-2010 American Community Survey shows that of the approximately 142,000 housing units in Indian Country, many lack utilities and basic infrastructure. The survey shows that approximately 8.6 percent lack complete plumbing facilities, 7.5 percent lack kitchen facilities, 18.9 percent lack telephone service and nearly 30 percent of Indian homes rely on wood for their source of heat. These staggering

statistics represent longstanding challenges facing Indian tribes and the need for sustained investments to address these chronic challenges.

### **Legislative Update**

*The Native American Housing and Self-Determination Act Reauthorization - S. 1895 and H.R. 3864.* On September 28, 2017, Senator Tom Udall (D-NM) and Congressman Stevan Pearce (R-NM) introduced legislation to reauthorize the Native American Housing and Self-Determinations Act (NAHASDA), which expired in September of 2013. These bills would reauthorize both the Indian Housing Block Grant Program and Section 184 Home Loan Guarantee Program; consolidate certain environmental review requirements; make the HUD-Veterans Affairs Supportive Housing Program (HUD-VASH) permanent and statutorily enable tribes to be eligible to participate in this program; establish a private investment demonstration program for tribes to construct and develop affordable housing; and reauthorize the Native Hawaiian Homeownership Act and the housing loan guarantees for Native Hawaiian housing. S. 1895 was referred to the Senate Committee on Indian Affairs and H.R. 3864 was referred to the House Committee on Financial Services.

On December 13, 2017, the House Financial Services Committee approved an amendment in the nature of a substitute to H.R. 3864—offered by Congressman Pearce—by a vote of 32 to 22. The amendment stripped the reauthorization language of Title VIII Housing for Native Hawaiians. Congresswoman Gwen Moore (D-WI) offered an amendment to reinstate the reauthorization of Native Hawaiian Housing programs; however, her amendment failed by a vote of 24 to 32. Prior to the Committee markup, NCAI sent a letter to all the members of the House Committee on Financial Services in opposition to removing the reauthorization of the Native Hawaiian housing programs. The report for H.R. 3864 was filed on March 8, 2018, and the bill is now ready for consideration by the broader House. A vote has yet to be scheduled.

NCAI has continually advocated for NAHASDA reauthorization since it expired in 2013. In 2013, NCAI passed two standing resolutions in support of NAHASDA: 1) Resolution REN-13-070 in support of the reauthorization of NAHASDA and 2) Resolution REN-13-071 supporting Title VIII of NAHASDA, which covers the Native Hawaiian housing programs.

NAHASDA authorizes Indian housing programs within the U.S. Department of Housing and Urban Development for American Indian and Alaska Natives to provide safe and decent housing. It 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. NAHASDA allows tribes to design and implement their own housing and other community development infrastructure programs. As a result, NAHASDA has been one of the most successful self-governance programs for tribal nations.

*Tribal HUD-VASH Act of 2017 - S. 1333 and H.R. 4359.* On June 12, 2017, Senator Jon Tester (D-MT) introduced S. 1333, which would permanently authorize HUD to renew grants made under the Tribal HUD-Veterans Affairs Supportive Housing (Tribal HUD-VASH) program. In addition, the bill would authorize HUD to allocate no less than five percent of the total HUD-VASH program funds for the Tribal HUD-VASH program. This program, which is intended to address housing needs for at-risk and homeless Native Veterans residing on tribal lands, is jointly operated by HUD and the Department of Veterans Affairs.

On September 13, 2017, the Senate Committee on Indian Affairs approved an amendment in the nature of a substitute, which made a number of technical corrections proposed by HUD and VA. Subsequently, the bill was placed on the Senate Calendar for full Senate consideration. On November 9, 2017, Congressman Ben Ray Lujan (D-NM) introduced a companion bill, H.R. 4359, which was referred to the House Committee on Financial Services. NCAI has standing Resolution ECWS-14-001 in support of the Tribal HUD-VASH Program, and President Keel urged Congress to pass the Tribal HUD-VASH Act at a recent House hearing.

### **Administrative Update**

HUD Energy and Performance Information Center. On December 1, 2017, HUD's Office of Native American Programs invited tribes to comment on a new on-line system, the Energy and Performance Information Center (EPIC), which is intended to make it easier for Indian Housing Block Grant (IHGB) recipients to submit the required reports and paperwork. The new on-line system was rolled out on May 1, 2018.

Assistant Secretary for Public and Indian Housing. On September 15, the President nominated Hunter Kurtz to be the next Assistant Secretary for Public and Indian Housing at HUD. Mr. Kurtz currently works as the deputy chief of staff for policy and programs in the office of HUD Secretary Ben Carson. On January 17, 2018, Mr. Kurtz's nomination was reported out of the Committee on Banking, Housing, and Urban Affairs. He now awaits consideration by the broader Senate.

New Competitive Indian Housing Block Grant Funds. On March 23, 2018, the FY 2018 omnibus spending bill became law. It included a \$100 million increase in the funding available for the Indian Housing Block Grant in the form of competitive grants. HUD has not yet announced how it will disburse this funding.

## **TRANSPORTATION**

Transportation infrastructure is an important component of tribal governance and economic development for tribal communities. Safe and adequate roads, bridges, and other modes of transportation are integral to ensuring the safety of tribal citizens, providing economic, educational and housing opportunities as well as other community services.

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

### **Legislative Update**

John P. Smith Act. Senator John Barrasso (R-WY) introduced S. 302 on February 3, 2017. This bill would incentivize tribal transportation projects that improve safety in tribal communities by creating a categorical exclusion from environmental reviews. Safety projects covered under this bill include roads, pedestrian and

bicycle lanes, railway and highway crossings, highway signage and pavement markings, and transportation safety planning. Under this bill, the Secretary of the Interior will identify which transportation safety projects would be eligible for categorical exclusions and those recommendations would be the subject of a proposed rulemaking. In addition, the Secretary would enter into a programmatic agreement with tribes able to demonstrate sufficient administrative procedures and capacity to determine on their own behalf which projects could be excluded from environmental reviews. On February 2, 2017, the Senate Committee on Indian Affairs favorably reported S. 302. Subsequently, the Senate passed the bill by unanimous consent on November 29, 2017. S. 302 is currently being “held at the desk” in the House of Representatives.

### **Administrative Update**

National Tribal Transportation Technical Assistance Program. On December 6 and 7, 2017, the Federal Highway Administration (FHWA) Center for Local Aid Support (CLAS) held two webinars regarding the restructuring of the Tribal Transportation Technical Assistance Program (TTAP). The webinar announced the creation of a National TTAP at the University of Virginia Transportation Training Academy in Charlottesville, VA. The restructuring began in Fall 2017 and included the closure of the seven TTAPs around the country. The primary responsibility of the TTAP is advancement of tribes’ transportation infrastructure development by providing training and technical assistance for tribal transportation departments. NCAI submitted concerns about the lack of tribal consultation regarding the restructuring of the TTAP and sent a letter to the Secretary of Transportation Elain Chao on December 18, 2017. NCAI has a standing resolution (Resolution MOH-17-041) requesting tribal consultation regarding the TTAP restructuring. In April 2018, NCAI submitted testimony that brought this issue to the attention of Senate appropriators and requested sustained funding of no less than \$5 million for the program.

Tribal Transportation Self-Governance Negotiated Rule Committee. The FAST Act (P.L. 114-94) included the expansion of tribal self-governance throughout the U.S. Department of Transportation (DOT). In 2016, the Department formulated a Tribal Transportation Self-Governance Negotiated Rulemaking Committee, to implement the self-governance requirements. The Rulemaking Committee began its work in 2016, however the Committee stalled in January 2017. In December 2017, FHWA finally announced an additional meeting, and the Committee has since met in January and February 2018.

NCAI supports the expansion of self-governance programs throughout the Department of Transportation and will continue to advocate for the work of the Committee.

Tribal Interior Budget Council BIA Road Maintenance Subcommittee. In March 2016, the Tribal Interior Budget Council (TIBC) created a subcommittee to address the budgetary needs in the Bureau of Indian Affairs Road Maintenance Program. This program, one of the largest at the BIA, plays a critical role in meeting the infrastructure need in tribal communities. The BIA is responsible for maintaining approximately 29,500 miles of roads in Indian Country, including 900 bridges. However, funding for the BIA Road Maintenance program has not been sufficient to address deferred maintenance, which continues to grow and is now over \$289 million. The TIBC Road Maintenance Subcommittee held meetings on November 7, 2017, and May 22, 2018, at which the Road Maintenance Survey and Road Maintenance data collection reporting were discussed. NCAI has worked with this subcommittee to ensure the funding for this vital program is increased.

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

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

Under section 412 of the Social Security Act, federally-recognized tribes can apply for funding to administer and operate their own TANF programs—in which case the tribe will be required to submit a three-year Tribal TANF plan to the Secretary of Health and Human Services (HHS) through the Administration for Children and Families (ACF) for review and approval. If approved, Tribal TANF programs will receive a portion of the state TANF block grant from the state where the tribe is located. Since 1997, TANF grants have served nearly 300 federally recognized tribes and Alaska Native villages through 70 approved tribal TANF programs. TANF gives federally-recognized Indian tribes flexibility in the design of welfare programs to fit the needs of their communities which promotes tribally relevant programs to assist in strengthening families.

The NCAI Tribal TANF Task Force was created in 2008 and consists of tribal leaders and Tribal TANF program staff with the goal of ensuring that tribes have a national voice in TANF and related human services programs' policies, administration and legislation. In 2015, NCAI passed Resolution SD-15-064 titled, "Support for NCAI Tribal TANF Task Force Legislative and Administrative Priorities." These priorities included: promoting tribal consultation within ACF; establishing standard TANF training programs; providing full federal and state funding to Tribal TANF programs; and providing incentives for states to fund Tribal TANF programs.

### **Legislative Update**

Reauthorization of TANF. TANF was originally up for reauthorization in 2010. Since then, TANF has received short-term extensions to maintain funding instead of a multi-year extension. The most recent extension of funding was in the FY 2017 Consolidated Appropriations Act which extended TANF funding for the remainder of FY 2017 and for FY 2018 at \$16.5 million dollars for tribes, states and territories.

On May 17, 2018, Representative Adrian Smith (R-NE) and Representative Kevin Brady (R-TX), Chairman of the House Ways and Means Committee, introduced legislation to reauthorize TANF. H.R. 5861, the Joining the Opportunity with Benefits and Services for Success (JOBS) Act, would reauthorize TANF for 5 years and make changes to the current TANF program, including expanding work requirements. On May 23, the legislation was marked up by the Committee on Ways and Means.

Although NCAI supports a multi-year reauthorization of TANF, any reauthorizing legislation must not make it more difficult for tribal governments to provide services to our most vulnerable families. NCAI will monitor developments as Congress makes decisions to fund TANF in FY 2019 and beyond.

## **Administrative Update**

12<sup>th</sup> TANF Report Submitted to Congress. In January 2018, the Office of Family Assistance published the Temporary Assistance for Needy Families (TANF) 12<sup>th</sup> Report to Congress. The report provides data for fiscal years FY 2014 and FY 2015 and presents information regarding TANF expenditures and caseloads, work participation and earnings, the characteristics and financial circumstances of TANF recipients, TANF performance measures, interactions between TANF and child support, as well as specific provisions of state TANF programs. Chapter 7 of the report covers Tribal TANF and Native Employment Works (NEW). The report found that by the close of FY 2015, 70 Tribal TANF plans were approved to operate on behalf of 298 tribes and Alaska Native villages and serve the non-reservation area of 122 counties. The grants allocated to approved programs totaled \$192,103,592 in federal funds. AI/AN families not served by Tribal TANF programs are eligible to be served by state TANF programs. The report found that in FY 2015, state TANF programs served approximately 25,600 AI/AN children and 7,500 AI/AN adults. With regards to the NEW program, as of June 30, 2015, there were 78 NEW grantees, 32 of which also operated Tribal TANF programs, with \$7,558,020 awarded in funding. NEW programs provide work activities, supportive services, and job retention services to help clients prepare for and obtain permanent, unsubsidized employment.

## **WORKFORCE DEVELOPMENT**

Workforce development success in and for Indian Country is demonstrated to hinge above all else on the ability of tribal nations, Native organizations, and tribal colleges and universities (TCUs) to craft innovative solutions customized to the particular capacity building needs of tribal nations and communities. In that vein, the appropriate role of the federal government is *not* to uniformly impose a standard set of answers to tribal workforce development challenges nationwide. Its job instead is to provide tribal nations, Native organizations, and TCUs with the governance freedom, programmatic flexibility, training and technical assistance, and resources that they need to design and implement bold strategies capable of advancing the distinct workforce development priorities of the specific tribal communities that they serve.

This means working closely with tribal nations and communities to identify and remove the obstacles that currently obstruct tribal innovation, and create new opportunities for tribal ingenuity to take root and flourish. The federal government's task is to endow its systems, processes, programs, and funding protocols with the ease and adaptability that tribal nations and communities have shown that they need to effectively build their human capacity in accordance with their cultural values and in furtherance of their community and economic development goals. As one longtime tribal workforce development expert explains, "It's about letting tribes be tribes, and doing things in a tribal way."

Fulfilling these obligations will take time, focused attention, and sustained effort. It is important to acknowledge the progress that the federal government already has made in providing tribal nations and communities with greater latitude to devise their own tailored workforce development solutions, with Public Law 102-477, Section 166 of the Workforce Innovation and Opportunity Act (WIOA), and the Indian Employment, Training and Related Services Consolidation Act (2017) among the most notable examples. But additional measures (see policy brief below) can be taken to more effectively bolster Native-led workforce development efforts.

In October 2016, NCAI released a policy brief “[Empowering Tribal Workforce Development](#),” that presents a comprehensive set of policy recommendations for Congress and the Administration to consider as they engage with tribal nations, leaders, and workforce development practitioners about the best paths forward.

### **Legislative Update**

*Tribal Employment and Training Bill Becomes Law.* On December 18, 2017, President Trump signed his first tribal bill into law, the Indian Employment, Training and Related Services Consolidation Act of 2017 (Public Law No: 115-93). The bill, H.R. 228 (Young, R-AK), cleared the House of Representatives on February 27, 2017, then the Senate on November 30, 2017. This law makes the “477 program” permanent, extends it to additional federal agencies, and allows for participating tribes and tribal organizations to submit a 477 plan with one budget, audit, and report for all agencies. Further, it requires that an interdepartmental memorandum of agreement providing for the implementation of this Act be entered into no later than one year after enactment (December 18, 2018). This effort is to be led by the Secretary of the Interior, in conjunction with the Secretaries of Agriculture, Commerce, Education, Energy, Health & Human Services, Homeland Security, Housing & Urban Development, Labor, Transportation, and Veterans Affairs, and the Attorney General. The Department of Justice is one of the new agencies added to the 477 program by this legislation, and DOJ released a framing paper on January 24, 2018, that included this question: “The subject matter of the [Indian Employment, Training and Related Services Consolidation] Act does not pertain to activities generally within the purview of the Department. Given the Act’s focus on employment and related services, what role do you see for the Department in the implementation of this legislation?” DOJ held a consultation session on February 15, 2018, in conjunction with NCAI’s ECWS to receive input on this and other questions related to DOJ’s funding for tribal governments through tribal 477 plans.

The 477 program was established by Congress in 1992 in order to enable Indian tribes to coordinate and integrate employment and training programs administered by the Departments of Labor, Interior, Education, and Health and Human Services. Today, there are approximately 60 active 477 plans, representing more than 250 tribes and tribal organizations in 17 states.

NCAI recommends the following legislative initiatives in the 115th Congress:

*Amend Section 166 of WIOA.* Congress should pass three amendments to the current language in Section 166 of WIOA to enhance Native-led workforce development efforts: The amendments – which the Administration should champion – are as follows:

- (1) Revise the language in Section 166(h)(1) to ensure that the performance indicators and standards applicable to Section 166 programs are standards specifically appropriate to that program;
- (2) Remove the application of the performance accountability provisions in the current Section 116 from all funds provided to implement the Native American programs in Section 166 and use the metrics and standards developed specifically for these programs in consultation with the Native American Employment and Training Council in accordance with Section 166(h); and
- (3) Expand Subsection 166(i)(6) to enable tribal nations or other grantees receiving formula funds from any state under the adult, youth, and/or dislocated worker programs to negotiate an agreement with the

state and the Secretary providing for the utilization of the funds involved under the terms applicable to Section 166 programs. This amendment would foster tribal-state collaboration on the provision of services to Native people (for details on these recommendations, see page 7 of NCAI's brief).

### **Administrative Update**

*Fully and Promptly Implement the Indian Employment, Training and Related Services Consolidation Act of 2017.* The Administration should direct and hold accountable all federal agencies covered by the law to work together to implement the law in direct consultation with tribal governments and Native organizations in accordance with the timetable prescribed by the legislation. DOI also should approve, without unwarranted delay, all new or modified 477 plans submitted to the Department since the new law took effect in December 2017.

*NAETC Recommendations to DOL Leadership.* NCAI supports the recommendations of DOL's Native American Employment and Training Council (NAETC) to the Secretary of Labor, including: (1) strengthening Indian Country's voice within DOL by elevating the authority of the NAETC to have direct consultation with the Office of the Secretary, and elevate the Division of Indian and Native American Programs within the ETA organizational structure in order to have a direct relationship with the Office of the Assistant Secretary and the Secretary; and (2) that the DOL work with NAETC and WIOA Section 166 and Public Law (P.L.) 102-477 grantees to convene a tribal workforce summit "to plan a path forward that will be in the best interest of our communities and the Nation as a whole."

*The American Indian Population and Labor Force Report is Long Overdue.* The report, which the Department of the Interior is required by statute to produce every two years, was last produced for the year 2013, making the next report now three years overdue. This report can be an important tool for assessing the current state of the Native workforce and crafting solutions to expand/strengthen it. For the next report to provide substantive value to tribal nations, Native organizations, and TCUs, its development must involve tribal leaders and data experts, and it should be informed by workforce and occupational data generated by tribal researchers, to which the federal government should provide technical expertise and financial resources in order to perform the work. This data should be geared towards measuring the distinct job market needs in Indian Country and illustrating the particular socio-economic conditions that impact Native people specifically.

*NCAI's Partnership for Tribal Governance (PTG) Releasing Additional Resources on Tribal Workforce Development.* In addition to its "[Empowering Tribal Workforce Development](#)" federal policy brief, NCAI's PTG produced a set of five case studies documenting innovative tribal approaches to workforce development. The first four case studies – Coeur d'Alene Tribe, Confederated Salish and Kootenai Tribes, Gila River Indian Community, and Ysleta del Sur Pueblo – have been released, and the fifth case study (Quinault Indian Nation) will be released in summer 2018. PTG will also release a decision-framing workforce development toolkit for tribal leaders and key decision-makers in June 2018. To learn more, please visit: <http://www.ncai.org/ptg/work-force-development>.

## BUDGET & APPROPRIATIONS

FY 2019 Appropriations Update. The budget cycle begins with the President's budget request to Congress, which the Administration sent to Congress on February 12, 2018. However, Congress will ultimately decide what to do with the many proposals in the President's FY 2019 budget, and input from tribal leaders on spending levels, reorganization plans, and reclassifications will be important for Congress to hear. Some tribal program funding would be reduced or eliminated in the proposed budget; however, increases are proposed for Justice programs. For a detailed analysis of the President's FY 2019 budget, see NCAI's website.

When tribal nations agreed to accept a smaller land base, the federal government promised to safeguard our right to govern ourselves, to enable tribal governments to deliver essential services, and to provide them resources to do so effectively. Congress and the Administration are responsible for carrying out the treaty and trust obligations in the federal budget. The proposed budget cuts to tribal governmental services, if enacted, would represent a clear retreat from the federal commitments and treaty promises made to tribes.

NCAI has appreciated the fact that members Congress have worked to protect the federal trust and treaty obligations in the budget in a nonpartisan way. We have again urged Congress to restore the eliminations and reductions proposed by the President and build on the increases made in the FY 2018 omnibus appropriations bill. As a reminder, the Bureau of Indian Affairs budget received an increase of \$203.8 million over the FY 2017 enacted level, a 7.1 percent increase, for a total of \$3.01 billion. The Indian Health Service received an additional \$497.9 million over the FY 2017 enacted level, an increase of 10 percent, for a total of \$5.5 billion. The bill included a 3 percent set-aside for Indian tribes within the funds available under the Victims of Crimes Act (VOCA). The cap for these funds was set at \$4.4 billion, which amounts to \$133 million.

Timeline. Senate appropriators are preparing to mark up their FY 2019 spending bills in May and plan to have some of them on the floor in June. The goal is to prevent a large omnibus at the end of the year that combines all 12 appropriations measures. The Office of Management and Budget director reiterated recently a large omnibus is no longer an option.

The House has planned an aggressive timetable as well. The House Appropriations Committee approved its sixth spending bill of the year on May 28. This means half of the annual spending bills that fund the government for FY 2019 have been approved out of the full committee.

Interior-Environment Bills. The House Interior-Environment Subcommittee advanced a draft of its FY 2019 spending bill by voice vote on May 15, 2018. Overall, the House bill rejects the deep cuts proposed in the President's budget for Bureau of Indian Affairs.

The bill provides \$35.3 billion for Interior-Environment and related agencies in FY 2019. Overall, the Bureau of Indian Affairs and Bureau of Indian Education would receive \$3.1 billion, \$40 million more than in FY 2018, which represents a 1.3 percent increase over the FY 2018 enacted amount and 9 percent over the FY 2017 enacted level. The Indian Health Service would be funded at \$5.9 billion, \$369.8 million more the FY 2018 enacted level, and an increase of 6.7 percent over the FY 2018 enacted amount.

	FY 2017 Enacted	FY 2018 Enacted	FY 2019 Subcommittee	FY 2019 vs. FY 2018	FY19 vs. FY18
<b>GRAND TOTAL</b>	\$8,277,450	\$8,961,199	\$9,350,085	\$388,886	4.3%
% of the entire bill	25.37%	25.42%	26.52%		
<b>Indian Health Service</b>	\$5,039,886	\$5,537,764	\$5,907,614	\$369,850	6.7%
Indian Health Services	\$3,694,462	\$3,952,290	\$4,202,639	\$250,349	6.3%
Contract Support Costs	\$800,000	\$717,970	\$822,227	\$104,257	14.5%
Indian Health Facilities	\$545,424	\$867,504	\$882,748	\$15,244	1.8%
<b>Bureaus of Indian Affairs and Education</b>	\$2,859,765	\$3,063,642	\$3,103,642	\$40,000	1.3%
<i>Rescission</i>	-\$3,400	-\$8,000	\$0	\$8,000	
<b>Operation of Indian Programs</b>	\$2,339,346	\$2,411,200	\$2,432,821	\$21,621	0.9%
Contract Support Costs	\$278,000	\$241,600	\$247,000	\$5,400	2.2%
Construction	\$192,017	\$354,113	\$354,485	\$372	0.1%
Land and Water Claim Settlements and Miscellaneous Payments	\$45,045	\$55,457	\$50,057	-5,400	-9.7%
Guaranteed Loan Program	\$8,757	\$9,272	\$19,279	\$10,007	107.9%
Office of the Special Trustee	\$139,029	\$119,400	\$113,692	-5,708	-4.8%

Increases are provided for staffing newly constructed hospitals; urban health clinics; the Indian Health Care Improvement Fund; road maintenance; police officers and courts; schools and colleges; economic development; and forest management.

The Committee Report includes the following language on the reorganization: “State and Tribal Consultation.—The Committee recognizes concerns raised by State and Tribal leaders about the Department’s insufficient level of consultation regarding the Department’s proposed reorganization. The Committee urges the Department to redouble its efforts to consult with State and Tribal leaders, including entering into formal Tribal consultation, and to adjust its reorganization proposal as necessary to meet the Department’s needs while avoiding undue additional burdens on States and Tribes.”

On tribal consultation, the following report language is included: “The Committee notes with concern the frustrations heard from Tribes about agency failures to conduct “true” and “meaningful” government-to-government consultation. Although the level of frustration varies by agency and event, the common theme is that while most consultations solicit input and feedback from Tribes, the communication is one way and fails to return feedback to Tribes. Tribes often report that they don’t know whether and how their input is considered. On decisions made in consultation with Tribes, the Committee expects agencies funded in this bill to publish decision rationale in the context of and in reasonable detail to the Tribal input received during consultation.”

## INTERNATIONAL ISSUES

NCAI and our member tribes recognize the importance of participating in international policy discussions that impact the rights of indigenous peoples. NCAI holds ECOSOC consultative status with the United Nations, which allows us to participate in many UN meetings. NCAI works in close partnership with the Native American Rights Fund (NARF), who represents NCAI on many international legal and policy issues. Given the time and expense of international advocacy, NCAI and NARF are selective about when we engage on international issues. In recent years, we have prioritized certain negotiations at the UN and the Organization of American States (OAS) that have been creating the structural framework for the advancement of indigenous rights, including the negotiation and adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007 and the American Declaration on the Rights of Indigenous Peoples (ADRIP) in 2016. In addition to this foundational work, we have engaged in a number of substantive policy discussions of particular concern to indigenous peoples including climate change, the protection of indigenous traditional knowledge and genetic resources, and the renegotiation of the North American Free Trade Agreement (NAFTA).

*Enabling Indigenous Governments to Take their Rightful Place in the UN.* Since 2015, the UN has been engaged in consultations on the issue of indigenous government participation in the UN. Multiple consultation sessions were held with indigenous peoples and member states with the goal of developing a resolution for adoption by the UN General Assembly in 2017 that would enhance the participation of indigenous governments at the UN. After several months of difficult negotiations among UN member states, the General Assembly adopted a compromise resolution on September 8, 2017. The resolution agreed to extend consideration of the issue of enabling the participation of indigenous governments at the United Nations through the 75<sup>th</sup> session in 2020-2021. The resolution establishes a multi-year calendar of consultations, meetings, and production of a report including:

1. Annual interactive hearings with indigenous peoples by the President of the General Assembly during the PFII's annual sessions (April 2018, April 2019, and April 2020)
2. Regional consultations with indigenous peoples by the Secretary-General (with the support of member states) before the Permanent Forum's 19<sup>th</sup> Session (April 2020)
3. Secretary-General's Report before the end of the GA's 74<sup>th</sup> Session (September 2020)
4. Continued consideration of measures to enhance participation during the GA's 75<sup>th</sup> Session (September 2020-September 2021)

This outcome was very disappointing to the indigenous peoples who had been engaged in the process and reflects the failure of the UN member states to achieve consensus at this time on a resolution that would allow greater participation of indigenous governments in the UN. The resolution does, however, encourage existing UN bodies including the Permanent Forum on Indigenous Issues (PFII), Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), and the Special Rapporteur on the Rights of Indigenous Peoples (SRRIP) to enhance the participation of indigenous governments. The resolution also encourages the UN system as a whole, in accordance with existing rules of procedure, to facilitate the participation of indigenous governments in relevant conferences, summits, and other meetings. NCAI recently joined with the Indian Law Resource Center, the Ewiiapaayp Band of Kumeyaay Indians, and the Native American Rights Fund in making comments to the Human Rights Council urging the Council to adopt rules to accommodate the participation of

indigenous governments and to consider the topic during its annual panel discussion in 2018. NCAI and NARF also made a joint statement at the 2018 Annual Interactive Hearing held in conjunction with the UNPFII reiterating the need to develop an appropriate status to enable the participation of indigenous governments at the UN. NCAI will continue to advocate strongly for tribal nations to have an appropriate, dignified place at the United Nations.

### **CLIMATE CHANGE**

Despite having a negligible carbon footprint, indigenous peoples often are the most severely impacted by the effects of climate change because of their close relation with the land and reliance on natural resources. Right now, as many as 184 Alaska Native villages are threatened with removal due to climate-based changes. And the effects are only getting worse. Communities are losing homes, hunting and fishing landscapes are changing drastically, and changes in weather patterns are adversely affecting the harvesting of plant-based foods and medicines.

Indigenous peoples from around the world, including NCAI, NARF, and many tribal leaders from the U.S., participated in the negotiations and preparations leading up to the historic Paris Agreement, which was finalized in December of 2015. Following President Trump’s announcement of his intention to withdraw from the agreement in June of 2017, NCAI and NARF released a statement recommitting to work towards implementation of the agreement. A number of tribal nations have released similar statements. NCAI is committed to working to ensure that all parties respect, promote, and consider indigenous peoples’ rights in all climate change actions, as is required by the Paris Agreement. Indigenous peoples often can offer unique knowledge on how to respond to climate changes. It is essential that this place-based knowledge is included in any discussion of climate change. Based on years of hard work, the International Indigenous Peoples Forum on Climate Change (IIPFCC), in which NCAI and NARF actively participate, achieved some notable success in the Paris Agreement and Paris Decision on climate change. The preambles of both the Agreement and Decision acknowledge the need to take the rights of Indigenous Peoples into account in all climate change actions. Operative Article 7, paragraph 5 acknowledges the need to take the traditional knowledge of Indigenous Peoples into account in adopting adaptation measures. Paragraph 135 of the Paris Decision calls for strengthening traditional knowledge and establishes a local community and Indigenous Peoples traditional knowledge platform.

The purpose, function and structure of the platform are presently being formulated. The Subsidiary Body for Scientific and Technical Advice (SBSTA) considered this issue at COP 23 in Bonn, Germany in November 2017. In Bonn, the caucus agreed upon principles essential to the process: 1) full and effective participation of Indigenous Peoples; 2) equal status and representation of Indigenous Peoples and Parties, including in leadership roles; 3) self-selection of Indigenous Peoples’ representatives in accordance with Indigenous Peoples’ own procedures; 4) adequate funding from the UNFCCC Secretariat and voluntary contributions to enable the aforementioned functions; and 5) clear linkages with the UNFCCC framework, allowing it to inform decision-making as well as actions and policies at national, regional, and international levels. Principles 1-4 were adopted in the Decision Text approved by the Parties. COP 23 decided that the SBSTA would consider at its next session in April/May 2018 in Bonn “the further operationalisation of the platform, including the establishment of a facilitative working group, which would not be a negotiating body under the Convention, and the

modalities for the development of a workplan for the full implementation of the functions with balanced representation of local communities and indigenous peoples and Parties, and conclude its considerations by making recommendations to COP 24 (December 2018).” The Parties agreed on the functions of the Platform:

1. **Knowledge:** the platform should provide a space for documenting and sharing experience and best practices, respecting the unique nature of and need to safeguard indigenous and local community knowledge systems;
2. **Climate change policies and actions:** the platform should facilitate the integration of indigenous and local knowledge systems as well as the engagement of indigenous peoples and local communities in relevant climate change related actions, programs and policies; and
3. **Capacity for engagement:** the platform should help to build the capacities of indigenous peoples and local communities to help enable their engagement in and support the UNFCCC process, including the implementation of the Paris Agreement, and other climate-related processes.

In addition, COP 23 decided that the first activity of the platform would be a multi-stakeholder workshop on implementing these functions which would be co-moderated by the Chair of the Subsidiary Body for Scientific and Technological Advice and a representative of local communities and indigenous peoples’ organizations. The multi-stakeholder dialogue was held in Bonn on May 1, 2018 and was co-moderated by Roberto Borerro from the North American region of the IIPFCC. The dialogue was a success in allowing viewpoints to be expressed, but the following substantive dialogue was highly problematic. A final recommendation and report was to be made to COP 24, in Katowice, Poland, but agreement proved elusive. Instead of a recommendation, a heavily bracketed text will go to Poland and additional meetings will be held there with the hope of getting a decision at COP 24.

The platform provides the opportunity, for Indigenous Peoples to contribute greatly to solving the climate change crisis, but it poses potential dangers to their traditional knowledge as well. It is crucial to have the input of tribal leaders and traditional knowledge holders into this process to ensure that the traditional knowledge is respected, protected, and properly used. We will continue to work with the IIPFCC to achieve a platform that honors the rights set out in the United Nations Declaration on the Rights of Indigenous Peoples, especially the right to self-determination, the right to manage their traditional knowledge, their rights to their lands, territories, and natural resources and the right to free, prior, and informed consent.

*Intellectual property and traditional knowledge.* The World Intellectual Property Organization (WIPO) is currently negotiating an international instrument that, if adopted, would create new binding international law relating to intellectual property and the protection of traditional knowledge, genetic resources, and traditional cultural expressions, including those of Indigenous Peoples. In May 2017, NARF and the University of Colorado Law School hosted a drafting session to propose text for the WIPO negotiations related to traditional cultural expressions. The draft proposed text focuses on the problem of theft and illegal possession of tribal cultural expressions. It also addresses false marketing suggesting affiliation, approval, or endorsement by indigenous peoples. Three WIPO member nation states introduced the proposed text for consideration into the draft WIPO instrument on traditional cultural expression.

The WIPO General Assembly decided last October to renew the mandate for the WIPO negotiations and established a work plan for 2018 and 2019. There will be six negotiating sessions over the next two years to discuss provisions related to genetic resources, traditional knowledge, and traditional cultural expressions. The sessions are scheduled as follows:

- March 2018 - Genetic Resources
- June 2018 - Genetic Resources
- September 2018 - Traditional Knowledge/Traditional Cultural Expressions
- December 2018 - Traditional Knowledge/Traditional Cultural Expressions
- March 2019 - Traditional Knowledge/Traditional Cultural Expressions
- July 2019 - Traditional Knowledge/Traditional Cultural Expressions

NARF and a tribal representative from the Tulalip Tribes attended the March session. To prepare for the June negotiating session, NARF and the University of Colorado Law School held a second drafting session on May 21-22 to prepare draft text and recommendations for “The Consolidated Document Relating to Intellectual Property and Genetic Resources Rev. 2,” which will be the subject of the June negotiation. Representatives from NARF and the Tulalip Tribes plan to attend the June session in Geneva.

Over the past year, NCAI has hosted several listening sessions on the WIPO negotiations with the U.S. Patent & Trademark Office, the lead WIPO negotiating federal agency, as well as the U.S. Copyright Office, State Department and Interior Department.

*Marine Biodiversity.* The United Nations has convened an Intergovernmental Conference to develop the text of an international, legally-binding instrument under the United Nations Convention on the Law of Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. The text will address marine genetic resources, including questions on the sharing of benefits, measures such as area-based management tools, including marine protected areas, environmental impact assessments and capacity-building and the transfer of marine technology. The Conference will meet for four sessions, with the first session to be convened from September 4-17, 2018 in New York City. Given the importance of oceans and waterways to many Indigenous peoples for subsistence, medicine, and traditional spiritual practices, these negotiations have a clear impact on the rights of Indigenous peoples. NCAI will be monitoring these negotiations and advocating for the protection of indigenous rights.

### **NORTH AMERICAN FREE TRADE AGREEMENT**

President Trump campaigned on a promise to renegotiate NAFTA. As a result, Mexico, Canada, and the U.S. have been actively renegotiating NAFTA since August 2017. Originally the goal was to conclude negotiations by December 2017 in order to avoid getting too close to the Mexican Presidential election and the U.S. mid-term elections. The timeline has slipped, however, and negotiations continue. It is unclear whether there is still time left to successfully conclude negotiations this year.

The original NAFTA generally did not address Indigenous Peoples, except that Canada and the U.S. both included exceptions to the text of the agreement that protect minority preference programs. Many indigenous

advocates have criticized the impact of NAFTA. Criticisms include sovereignty concerns that Indian tribes should not be subject to restrictions on trade that are negotiated by the U.S. Other criticisms related to the impacts on indigenous farmers, particularly in Mexico; on the environment, particularly with regard to the development of fossil fuels; and concerns about the protection of indigenous traditional knowledge. At the same time, some Indian tribes have made use of the economic development opportunities presented by NAFTA. The Mississippi Choctaw, for example, were the first Indian tribe to open a factory in Mexico to take advantage of the benefits under NAFTA.

Canada has stated that they are looking for progressive reforms in the renegotiation, including a chapter on Trade and Indigenous Peoples. NCAI has joined with the Assembly of First Nations (AFN) in Canada to endorse the concept of an Indigenous Chapter. A draft text of the chapter was tabled by Canada in December, and was discussed by the three countries at the January 23, 2018 negotiating session. Although the text is not public, we understand that the Canadian draft does three primary things:

- 1) Commits all 3 countries to implementation of UNDRIP;
- 2) Commits all 3 countries to promote indigenous trade and provide technical assistance to facilitate the engagement of indigenous peoples and businesses in international trade; and
- 3) Creates a standing committee to monitor implementation of the Chapter and deal with any issues that may come up.

In addition to negotiations on the text of an Indigenous Chapter, there are other provisions throughout NAFTA that impact indigenous rights. NAFTA includes a chapter on procurement that deals with access to the government procurement markets of the respective countries. NAFTA generally bars each participating country from giving preference to domestic companies in government procurement. NAFTA includes an exception, however, that protects existing federal minority contracting preferences. There are also negotiations taking place around intellectual property and traditional knowledge that could impact tribal interests.

NCAI has requested a meeting with the U.S. Trade Representative to discuss our concerns and priorities for the NAFTA renegotiation and will continue to partner with AFN to advocate for the advancement of indigenous rights as negotiations continue.

## CENSUS

The United States Census, mandated by the United States Constitution, is a critical and powerful information source that has a significant impact on American and American Indian policy for the coming decade. It is a foundational tenet of American democracy, mandated in article 1, section 2 of the U.S. Constitution and central to our representative form of government. A fair democracy requires an accurate population count.

The U.S. population is enumerated every 10 years and census data are used to allocate congressional seats, electoral votes, and is the basis for political redistricting. Under the 14<sup>th</sup> Amendment's guarantee of equal representation, congressional districts must have roughly equal numbers of people, so census data are used to draw district lines. Census data is used for redistricting at the federal, state, and local levels and an accurate count is necessary to ensure that American Indian and Alaska Native (AI/AN) voters have an equal voice in the political process of non-tribal elections. Jurisdictions also use census data to comply with the Voting Rights Act, such as making sure Native voters have access to language assistance when they cast their votes in an election.

The credibility of the Census Bureau is critical for public trust in the integrity of the 2020 Census, particularly among American Indians and Alaska Natives. In addition to its use in fair voting representation, census data play a key role in the allocation of more than \$800 billion in funding for federally funded programs, including federal funding for Indian schools, Indian education programs, Indian health programs, Indian housing programs, water and sewage projects, roads, and economic development, which are distributed on the basis of data collected by the Census Bureau.

*American Indians/Alaska Natives at Risk for Undercounts.* Certain population groups are at higher risk of being missed in the decennial census – groups considered hard-to-count. Native people especially on reservations and in Alaska Native villages have been historically underrepresented in the census, and in 2020, new methodologies for enumerating the U.S. population could put other groups at risk as well.

The Census Bureau estimates that in the 2010 Census, American Indians and Alaska Natives living on reservations or in Native villages were undercounted by approximately 4.9 percent, more than double the undercount rate of the next closest population group. The net undercount for American Indians living on reservations was also very high in 1990, with an estimated 12.2 percent missed.

About one in three Native people live in hard-to-count census tracts. The Census Bureau identifies twelve characteristics that are associated with census undercounts, including linguistic isolation, poverty, low educational attainment, lacking a telephone, unemployment, and others. A recent report found that although the rural population is generally easier to enumerate than the urban population, certain rural areas will be difficult to count in 2020, such as American Indians on reservation and Alaska Natives, as well as Hispanics in the Southwest, residents of Appalachia, migrant workers, and African Americans in the rural South.

A large proportion of American Indians/Alaska Natives in certain states live in hard-to-count (HTC) tracts; for instance, in New Mexico 78.6 percent of AI/AN people live in HTC tracts, 68.1 percent in Arizona, 65.6 percent in Alaska, 52.4 percent in South Dakota, and 49.9 percent in Montana.

Other factors that impact Native individuals also lead to undercounting. Households in poverty are very hard to count and in 2015, 38.3 percent of Native individuals on reservations were in poverty compared to the

national rate of 13 percent. Young children are also often undercounted, and Native people on reservations have a median age of nine years lower than the national average. Other characteristics that make American Indians and Alaska Natives hard to count also remain, such as economic characteristics and education. To combat these factors, the Census Bureau will need adequate resources to enumerate accurately the AI/AN population in the 2020 Census.

*Barriers, Attitudes, and Motivators.* The Census Bureau plans to conduct the Census Barriers, Attitudes, and Motivators Survey (CBAMS) to inform work on the 2020 Census Integrated Partnership and Communications Plan. While attitudes and the climate may have changed since the 2010 CBAMS, the results of the last study is informative as baseline data to understand the critical need for effective education and outreach activities for 2020. The 2010 CBAMS results showed that among racial and ethnic groups, AI/AN people and Asians had the lowest overall intent to respond. Overall, the survey indicated that although Native people understood the purpose of the census, they did not view it as favorable and expressed cynicism and suspicion about the use and purpose of the census.

The 2010 report recommended that, “while strong conclusions about this group are not warranted, the data suggest that messages focusing on civic duty might be effective among American Indians”. The analysis suggested that while AI/AN people expressed negative feelings about the Census and skepticism, they are relatively knowledgeable about its purpose. The report recommended focusing on census as a civic duty, security of census data, and how Census has benefited AI/AN communities.

These results are important since many aspects of public life have changed since the last Census, with heightened concern around security of digital data, federal government agency breaches, as well as the perception of increasingly strained race relations.

The already pre-existing negative views of the census could be exacerbated by the addition of a citizenship question to the 2020 Census. The addition of this question could greatly diminish responsiveness and jeopardize the responses of hard-to-count communities, including those in Indian Country, especially those living in rural, low-income, geographically isolated, and/or linguistically isolated households. Because of the lengthy and complicated history of discrimination against indigenous peoples in this country, American Indians and Alaska Natives share a strong distrust of non-tribal government. The inclusion of a citizenship question will add another layer to that distrust, making it more difficult to convince hard-to-count American Indians and Alaska Natives to participate in the Census.

These new elements of the social landscape may exacerbate some of the barriers to Census participation, especially mistrust of government and the perception that participation in the census will not lead to improvements in one’s community. Messages appealing to civic duty for AI/AN people may also have to be implemented in new ways. However, AI/AN trust in government varies based on whether the government is local (tribal), state, or federal – trust in tribal government is often much higher than trust in the federal government. Finding the trusted messengers in Indian Country is critical to an effective public education and outreach campaign, especially for AI/AN people.

Impacts of Undercounts in Indian Country. Undercounting AI/AN people in the 2020 Census could lead to inefficient distribution of federal funding to tribes. Each tribe and tribal community has unique health, housing, education, and economic development needs. Many programs serving tribes are funded based entirely or in part on census or census-derived data, including the following.

The Indian Housing Block Grant Program (IHBG) is a formula grant that provides a range of affordable housing activities on Indian reservations and Indian areas. The block grant approach to housing for Native Americans was enabled by the Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA). The block grant program, which is based almost entirely on census data, served, helped build, or rehabilitated 5,014 units in 2015.

Population data used in the IHBG program are also used to allocate money for the Tribal Transportation Programs administered by the Bureau of Indian Affairs. Several child welfare programs administered by the Children's Bureau in the Department of Health and Human Services also use Census data for fund allocation.

The Native American Employment and Training program in the Department of Labor allocated \$58 million in FY 2015 and relies on Census data. The program supports employment and training activities in order to develop more fully academic, occupational and literacy skills; make individuals more competitive in the workforce; and promote economic and social development in accordance with the goals and values of such communities.

The Indian Health Service provides access to comprehensive and culturally acceptable healthcare to AI/AN people, a critical program that fulfills the federal treaty and trust obligations to tribal people. The IHS provides services to 2.2 million Natives nationwide and uses Census data for planning and implementation of programs.

Concerns with the 2020 Census. Careful planning and adequate funding now and leading up to 2020 are essential to minimizing undercounts of the American Indian and Alaska Native population. As we move into the middle of FY 2018, funding for the Census Bureau appears to be a significant problem.

Peak operations for the 2020 Census will start in two years. Early operations are underway for an important “dress rehearsal” in 2018 (the End-to-End Census Test). State, local, and tribal governments are preparing to review address lists and digital maps for their communities (the Local Update of Census Addresses program, or LUCA), which create the universe for the count in 2020. As in every decade, the U.S. Census Bureau must have a steady annual funding ramp-up between now and 2020 for the constitutionally required enumeration, to ensure on-time, comprehensive final testing and preparations.

The Census Bureau is funded through the Commerce, Justice, and Science (CJS) Appropriations bill. Throughout the entire 2020 Census lifecycle (FY 2012—FY 2021), Congress every year has not allocated the amount of money the Census Bureau requested. This means that *the 2020 Census has been underfunded from the start.*

For context, the Census Bureau generally ramps up for the decennial count with a decade-long cycle of spending, starting with research and testing in the fiscal year ending in “2.” Generally, after modest but important increases earlier in the decade, Census budgets begin to rise significantly in the fiscal year ending in “6,” when the Bureau must begin to operationalize the census design and conduct larger field tests. After

preparation during the year ending in “8,” address canvassing takes place in the eighth year of the cycle (e.g., 1989 before the 1990 Census).

Census outreach and promotion, as well as recruitment of hundreds of thousands temporary field staff, begins in the year before the census. Peak Census operations start in late January in remote Alaska in the year ending in “0” – Census Year! Census operations wind down in the 10<sup>th</sup> year of the lifecycle (e.g. 2021), with tabulation and publication of the census data that will carry our nation through the next decade.

Impact on American Indians/Alaska Natives. Unfortunately, uncertainty about FY 2017 funding levels and lack of sufficient appropriations resulted in the Census Bureau canceling planned field tests on the Standing Rock Reservation in North and South Dakota and the Colville Reservation and Off-Reservation Trust land in Washington State, which eliminated critical testing of methods for the 2020 Census. These field tests would have helped the Bureau evaluate methods for counting people in tribal areas lacking street addresses, and test methods of making in-person counts in Native households. Inadequate funding has compelled the Census Bureau to announce “pauses” and modifications for key 2020 Census activities, which could greatly diminish the Bureau’s ability to take an accurate, cost-effective census and is expected to increase the disproportionate undercount of American Indian and Alaska Natives, especially those living in rural, low-income, geographically isolated, and/or linguistically isolated households.

### **Legislative Update**

On February 14, 2018, the Senate Committee on Indian Affairs held an oversight hearing specific to Indian Country entitled “Making Indian Country Count: Native Americans and the 2020 Census.” NCAI President Jefferson Keel testified at the hearing along with representatives from the Native American Rights Fund, the Cook Inlet Housing Authority and the Associate Director for Economic Programs at the United States Census Bureau. The tribal witnesses from this hearing subsequently sent a letter to the Secretary of the Department of Commerce expressing tribal concerns about the addition of a citizenship question to the 2020 Census.

Overall Recommendations. NCAI urges Congress to ensure a sufficient funding ramp-up for the 2020 Census, without undermining other core programs such as the American Community Survey (ACS), Economic Census, and other economic and demographic surveys and programs, such as the Current Population Survey (CPS) and Small Area Health Insurance Estimates (SAHIE), all of which are critical to American Indians and Alaska Natives. NCAI also supports restoration of the cancelled field tests on Tribal Lands and other testing, public education, and programs in preparation for the 2020 Census to ensure that American Indians and Alaska Natives are fully and accurately counted.

Funding Details. NCAI continues to support funding the census in a manner to will fully fund critical outreach, promotion, and partnership activities. The Omnibus included \$2.8 billion in funding which was \$960 million over the President’s requested budget.

Appropriations for fiscal year 2019 are still being considered by Congress, but the House version of the Commerce, Justice and Science Budget includes a total of \$4.7 billion which is \$933 million above the President’s request, with \$270 million dedicated to current surveys and programs.

Lawmakers should continue to allocate funding in order to:

- **Restore testing in rural and remote areas (which includes methods used on American Indian reservations and in Alaska Native villages).** With cancellation of two of three 2018 dress rehearsal sites, the Census Bureau will be forced to use methods and operations in 2020 that are untested or not fully tested. That is a recipe for an undercount and cost increases.
- **Develop and pay for a plan to ensure an accurate census in communities devastated by recent hurricanes and wildfires.** Congress should review the implications for census preparations and operations quickly and allocate sufficient funding to support rigorous activities in areas affected by natural disasters.
- **Increase the number of Partnership Specialists engaged in outreach to states, localities, and community-based organizations.** Congress should provide increased funding in fiscal years 2019 through 2020 for the Partnership Program and related promotion campaign, which are sound investments in a cost-efficient 2020 Census and can help keep in check the much higher cost of follow-up with reluctant, unresponsive households.
- **Increase funding for communications, to put development of the advertising campaign back on track, address public fears about cyber-security, and expand targeting to diverse hard-to-count communities in both rural and urban areas.** Congress should provide increased funding to develop a targeted, effective Communications Campaign in FY 2018 and to deploy targeted advertising in a sufficient number of languages and to diverse “ethnic” communities in 2019 and 2020.
- **Expand the Census Bureau’s “footprint” in the field, by increasing the number of local (“Area”) census offices and census takers for peak census operations (2019-2020).** Given the growing and significant challenges the 2020 Census faces – including cyber-security risks/fears; the digital divide, especially in rural areas; a climate of fear in some communities, growing anti-government sentiment in others – and the projected lower self-response rate, as well as the reduced number of Regional Census Centers (6 in 2020 vs. 12 in 2010), Congress should allocate more money over the next three years to plan and execute an expanded field infrastructure, including more census field staff and local census offices. Such an expansion will allow the Census Bureau to understand and address the diverse perspectives and experiences that will make a fair and accurate census far more difficult to achieve than in past decades.





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