

National Congress of
American Indians

Policy Update



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POLICY OVERVIEW

January of 2017 marked a time of transition in Washington D.C.. The 115th Congress was sworn in on January 3rd with Republican majorities in both the House of Representatives and Senate and a total of 59 new members of Congress. On January 20th, Donald J. Trump became the 45th President of the United States. This marks the first time both the Congress and the White House have been Republican controlled in a decade and the largest majority in the House of Representatives since 1929.

A Presidential transition always has an impact on policy not only in the Administration but also in the Congress. The President needs to fill his cabinet, so the early part of the Senate calendar is focused on confirmations for Cabinet officials. As of February 10th, 9 of the 11 nominations were confirmed with the Secretaries of Education, Transportation, Health and Human Services already in place among others. The week of February 13th the Senate is expected to vote on the nomination of Congressman Zinke to be Secretary of the Interior along with the Secretaries of Energy and Housing and Urban Development.

The President has indicated that repeal and replacement of the Affordable Care Act and improving infrastructure across the United States will be two key priorities in the early days of his Administration. To date, President Trump has issued 10 Executive Orders on topics such as: repeal of the Affordable Care Act; the Dakota Access Pipeline, a temporary hiring freeze for federal agencies, and several recently signed Executive Orders on public safety including: prevention of violence against federal, state, tribal and local law enforcement officials, a task force on crime reduction and public safety, and enforcing federal law with respect to transnational criminal organizations and preventing international trafficking.

Each new Presidency and Congress presents an opportunity for tribes to advance our tribal priorities as we introduce Indian Country to new members of Congress and continue the long-standing relationships with our champions. There are several key priorities that should coincide with stated priorities of Congress and the Administration including: economic development, job creation, public safety, education, taxation, and infrastructure.

There are also areas that we need to ensure tribal governments are unintentionally harmed such as repeal of the Affordable Care Act and potential budget cuts to discretionary programs. Indian Country is also looking to carry forward conversations about how to reinforce governmental parity around those issues that impact tribal lands so that tribes are consulted early and can fully exercise their governmental authority to bring economic opportunity to their communities.

At NCAI we see many opportunities in working with a new Administration and Congress and we are also ready to educate and inform decision makers who may be unaware of the important place of tribal governments within the federal family of governments. Together with tribal leaders and advocates, we can continue to move Indian Country priorities forward and create avenues for tribes and the federal government to partner on those decisions that affect our communities.

At NCAI, we are honored to work to strengthen your voice in Washington, D.C. and we are always humbled by the support of Indian Country as we work together to advocate for tribal citizens all across these United States.

LAND AND NATURAL RESOURCES

We as Tribal Nations and Tribal citizens are place-based peoples with a direct connection to our surrounding environments, our homelands lands, waters, natural resources, and wildlife. Tribes' cultures, traditions, lifestyles, communities, foods, and economies are all dependent upon many natural resources. The restoration, protection, and use of our lands and natural resources must be done in a tribally driven fashion to ensure that it meets needs of Tribal citizens, while respecting our traditional and cultural values.

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

Many natural resources disappearing faster than they can be restored based on the realities of climate change impacts on tribal lands. Tribes are 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.

Climate change poses threats not only to the health and food supply of Native peoples, but also to their traditional ways of life. The natural ecosystems, biodiversity, traditional plant gathering times, and animal migration patterns we have relied on since time immemorial are all fluctuating. 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.

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

RESTORE TRIBAL HOMELANDS – ADDRESSING THE CARCIERI DECISION

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

In February 2009, the U.S. Supreme Court decided *Carciere v. Salazar*, overturning the long-standing interpretation by construing the IRA to limit the Secretary's authority to place land into trust to only those tribes

that were “under federal jurisdiction” as of 1934. From this interpretation, two classes of tribes have been created—tribes “under federal jurisdiction” in 1934 and tribes that were not. This unequal treatment of federally recognized tribes runs counter to congressional intent and modern federal Indian policy. Legislation is needed to prevent irrevocable damage to tribal sovereignty, tribal culture, and the federal trust responsibility.

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

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

Legislative Update

In the House of Representatives, Representatives Tom Cole (R-OK) and Betty McCollum (D-MI) have re-introduced two pieces of legislation. H.R. 130 was introduced on January 3rd, and would reaffirm federal authority to acquire lands in trust for all federally recognized tribes. In addition, they have also introduced H.R. 131, which would reaffirm lands already in trust.

To date, there is no companion legislation in the Senate. NCAI will continue to advocate for passage of this clarifying legislation.

For additional information please contact John Dossett, General Counsel, at 202.466.7767 or john_dossett@ncai.org

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Legislative Update

Public Land Transfers to State and Private Ownership. One major issue which has come up early in the 115th Congress is the transfer of federal lands to state and private ownership. An early bill that was introduced by Representative Jason Chaffetz (R-UT), H.R. 621 – Disposal of Excess Federal Lands Act of 2017, aimed to sell over 3.3 million acres of federal lands currently managed by the Bureau of Land Management (BLM) in 10 states: Arizona, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, and Wyoming. With strong opposition to the Bill from sportsmen groups, Rep. Chaffetz stated that he would withdraw the legislation. Protecting federal lands is important for tribes as many contain ancestral lands, hunting, fishing, and gathering rights, cultural resources, or sacred places. While this particular legislation may not be acted on, there is a likelihood that this issue will continue to arise in the 115th Congress. NCAI is monitoring legislation and working with tribal leaders to identify any potentially harmful legislation and also looking to see what opportunities tribes may have to have lands returned.

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 divided party lines and it was never taken up in the Senate. The bill was a \$1.5 billion, 5 year reauthorization, and 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.

This legislation was reintroduced by Rep. Don (R-AK) and is H.R. 200 - Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act in the 115th Congress.

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

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

NCAI is requesting that in any reauthorization of the MSA, must 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 utilize ecosystem-based management rather than species specific management and additional methods to better protect fish stocks and health. The management council's, as well as all fishery, plans must not only include input from tribes, but must also reflect treaty rights and subsistence rights of American Indians and Alaska Natives while limiting states' ability to interfere with treaty and subsistence rights. Finally, the MSA must provide resources for mitigation efforts when needed to protect tribal treaty rights including: increased hatchery production, habitat protection and restoration, development of alternative fisheries when primary fisheries have been reduced, and the development of value added programs to increase the value of treaty fisheries.

Wildfire Disaster Funding Legislation. One issue that has yet to see any legislation yet, but will certainly will in the 115th Congress is the longstanding issue of funding how wildfires are funded in the budget process. Last Congress, Senator Wyden (D-OR) and Representative Simpson (R-ID) introduced companion bills to address many issues with funding wildfire suppression. Specifically they address the problematic way in which appropriated sums are often insufficient to cover the large and unpredictable costs of wildfires. As a result fire suppression funds must often be "borrowed" from regular federal forest management programs. Repayment is always late and often partial, disrupting and diminishing those programs' effectiveness. Many times, this comes at the expense of tribal forestry programs and tribal forests.

NCAI supports legislative to have federal wildland fire costs that exceed 70 percent of the ten-year average paid from federal disaster assistance accounts. Such authority would allow the large, unpredictable, and often unbudgeted costs of fighting wildland fires to be treated the same as other natural disasters, and would provide more budgetary stability to regular on-going federal forest management programs. This approach garnered substantial bipartisan support from the 114th Congress and the previous Administration.

Also last Congress, Senators Lisa Murkowski (R-AK), Maria Cantwell (D-WA), Ron Wyden (D-OR), Mike Crapo (R-ID), and Jim Risch (R-ID) released a draft bill entitled Wildfire Budgeting, Response, and Forest Management

Act. The draft bill includes a similar cap adjustment to end borrowing fire suppression funds from other programs, but includes additional measures. Among other things, the draft bill will: end fire borrowing by Forest Service and the Department of the Interior to enabling a transfer of limited funds through a budget cap adjustment when all appropriated suppression funding (100% of the 10-year average) has been exhausted; reduce wildfire suppression costs over time; build on existing Healthy Forests Restoration Act authorities; accelerate needed hazardous fuel reduction work in forest types most susceptible to megafires by providing alternative arrangements for project approvals; require the Forest Service inventory of young growth in the Tongass National Forest before finalizing any forest management plan amendment; and authorize \$500 million over seven years to provide assistance to at-risk communities to invest in proven programs that reduce wildfire risk, property loss, and suppression costs. This legislation has yet to be introduced.

Administrative Update

IRRIGATE Act and DRIFT Act. As part of the Water Infrastructure Improvements for the Nation Act (WIIN Act), Public Law 114-322, the IRRIGATE Act and DRIFT Act were passed authorizing funding for the repairs of irrigation systems and dams in Indian Country.

The IRRIGATE Act provides for the much needed repair, replacement, and maintenance of back logged Indian irrigation programs in the west by creating an Indian Irrigation Fund at the Department of Treasury authorized for \$35 million annually for fiscal year 2017-2021.

The Department of the Interior initiated tribal consultation on the Indian Irrigation Fund and how to best implement the program and prioritize the funding. The comment period ends on March 3, 2017, and comments can be emailed to: consultation@bia.gov.

The DRIFT Act addresses the deferred maintenance needs of Bureau of Indian Affairs dams by establishing a High-Hazard Indian Dam Safety Deferred Maintenance Fund authorized at \$22.75 million annually for fiscal years 2017-2023 and Low-Hazard Indian Dam Safety Deferred Maintenance Fund, authorized at \$10 million annually, during the same period.

The Department of the Interior is beginning to implement the DRIFT Act program and has initiated tribal consultation and a comment period open until March 3, 2017 to determine how to best address the deferred maintenance needs for dams in Indian Country. Comments can be emailed to: consultation@bia.gov.

Climate Change. NCAI remains committed to working on climate changes with the new Administration and on allowing tribal governments to be involved as full partners in all programs, planning, and engagement climate adaption efforts. As part of this work, NCAI sent a letter to the U.S. Senate Committee on Environment and Public Works expressing concerns with Oklahoma Attorney General Scott Pruitt's nomination to serve as Administrator of the Environmental Protection Agency. The Senate must ensure that Attorney General Pruitt understands and acknowledges the realities of human impacts on global climate change, the need for the EPA and federal regulations to protect the environment, and the importance of EPA's role in protecting Tribal lands, waters, and natural resources.

NCAI also continues to support climate change initiatives through resolutions dealing specifically with the effects that climate change has on tribes.

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

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

NCAI continues to reach out and engage its members in discussions on best practices for managing water resources. For instance, NCAI has hosted several webinars and outreach meetings on the importance of quantifying water and the importance of developing sound water management tools within the regulatory jurisdiction of the Indian tribe.

For additional information please contact Colby Duren, Staff Attorney & Legislative Counsel, cduren@ncai.org.

TRUST MODERNIZATION

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

While the trust responsibility includes all facets of the relationship, such as funding, health care, housing, and public safety, some of the most glaring examples of outdated statutes involve the management of tribal lands and development of trust resources. Indian lands and natural resources are a primary source of economic activity for tribal communities, but the antiquated and inefficient federal trust resource management system contributes to the anemic condition of many reservation economies. NCAI urges Congress to support legislative reforms that will 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. For example, nearly every trust transaction requires an appraisal from the Office of the Special Trustee, and this is the most significant bottleneck in the trust system. Congress must eliminate unnecessary appraisals and permit tribes to rely on independent certified appraisals.

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

Administrative Update

Indian Trust Asset Reform Act Implementation – Public Law 114-178. On June 22, 2016, President Obama signed the Indian Trust Asset Reform Act (ITARA) 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 delay 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.

Further, ITARA addresses one of the most significant bottlenecks in the trust system: the Office of the Special Trustee (OST). OST, which was intended to be a temporary office oversight office when it was created by Congress over twenty years ago, is required to review appraisals for nearly every trust transaction, adding an additional layer of bureaucracy outside the purview of the BIA. The Secretary of the Department of the Interior is required to submit a report that will include a transition plan and time table for the termination of OST within two years of the report, or why a transition cannot be completed in that timeframe and an alternate date. Additionally, the Secretary, through tribal consultation, will consolidate the appraisals and valuations processes under a single administrative entity under DOI as well as establish minimum qualifications to prepare appraisals and valuations of Indian trust property.

Finally, ITARA allows the Secretary of the Interior to appoint an Under Secretary for Indian Affairs at the Department of the Interior. Under the existing structure, there is no single executive within the Office of the Secretary that is focused on Indian affairs *and* that possesses authority over the non-Indian agencies and bureaus in the Department. The Under Secretary is intended to fill this void. Among other duties, the Under Secretary would “to the maximum extent practicable, supervise and coordinate activities and policies” of the Bureau of Indian Affairs (BIA) with activities and policies of non-BIA agencies and bureaus within the Department. The Under Secretary is intended to serve as a cross-agency advocate for Indian Country within the Department and ensure that non-Indian agencies and bureaus within the Department do not implement policies that negatively affect tribes and beneficiaries.

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

The payment of the \$1.5 billion--minus attorneys' fees and expenses incurred in carrying out the settlement--to individuals is being carried out in two stages: first to the Historic Accounting Class (HAC) and then to the Trust Administration Class (TAC). Beginning in December of 2012, checks for the HAC in the amount of

\$1,000 were distributed by the Garden City Group, the Claims Administrator for the *Cobell* Settlement, to claimants across the country. Eligible claimants were persons who were determined, according to the records of the Department of Interior, to either be alive or have an estate in probate on September 30, 2009, and to have had an open and active Individual Indian Money (IIM) account during any period between October 25, 1994, and September 30, 2009.

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

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

On January 27, 2017, the Court announced that the deadline to submit documents for payment will November 27, 2017. The Court also transferred \$21.8 million to the Indian Education Scholarship Fund. For more information about the Cobell Scholarship, please visit: www.cobellscholar.org. For more information and updates on the progress of the settlement, go to www.indiantrust.com.

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

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

The plan's initial focus was on 40 highly fractionated reservations and active outreach to tribes from those areas to enter into the Buy-Back Program's cooperative agreement application process. This open solicitation period began on November 15, 2013 and ended on March 14, 2014. While a small number of tribes have entered into cooperative agreements to carry out certain functions of the program, several tribes have expressed concerns

with the limited roles that tribes are being offered under the program, the slow rate of program implementation, and the fact that the \$1.9 billion fund is not earning interest--a potential loss of millions of dollars that would otherwise be available to purchase fractionated interests. So far, the Buy-Back Program has purchased land for these tribes: Oglala Sioux Tribe, Rosebud Sioux Tribe, Makah Tribe, Fort Belknap Indian Community, Gila River Indian Community, Northern Cheyenne Tribe, Confederated Salish and Kootenai Tribes of the Flathead Nation, Confederated Tribes of the Umatilla Indian Reservation, Quapaw Tribe, Crow Nation, Sisseton Wahpeton Oyate, Squaxin Island Tribe, Coeur d'Alene Tribe, Cheyenne River Sioux Tribe, Standing Rock Sioux Tribe, Prairie Band Potawatomi Nation, Fort Peck Indian Reservation, Swinomish Indian Tribal Community, Lummi Nation, Cabazon Indian Reservation, Agua Caliente Indian Reservation, Round Valley Reservation, Quinault Indian Reservation, Fond du Lac Reservation, and Navajo Reservation. Ten more tribes are currently in process: Fort Hall Reservation (of the Shoshone-Band Tribes), Ponca Tribe of Indian of Oklahoma, Osage Nation Reservation, Lower Brule Reservation, Bad River Reservation, Crow Creek Reservation, Turtle Mountain Reservation, Blackfeet Reservation, and Colville Reservation.

At the end of the 114th Congress, the Senate Committee on Indian Affairs held an oversight hearing on "Examining the Department of the Interior's Land Buy-Back Program for Tribal Nations, Four Years Later" to review progress and future of the program. Department of the Interior Deputy Secretary Mike Connor testified that while the program is making a substantial difference in Indian Country, the Program will run out of money in 2022. This will leave more than 4 million purchasable fractionated acres. Deputy Secretary Connor, and the two Tribal leaders on the panel, recommended that the program be extended and even made permanent.

NCAI is looking to work with the new Administration and 115th Congress to ensure the *Cobell* settlement and land buy-back program are being implemented in accordance with the approved settlement and in a way that can be accomplished within the timeframes set out in the settlement, or to see if the timeframe can be extend to ensure that all of the funds can be used to consolidate tribal homelands, and continue land consolidation programs at the Department of the Interior.

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

Tribal leasing codes must be consistent with the BIA's recently updated leasing regulations, 25 C.F.R. 162. The BIA also published a [National Policy Memorandum](#) containing a list of criteria that should be considered with further information on BIA's HEARTH Act [website](#). Key requirements include leasing code development and an environmental review process. As of October 2, 2016, the BIA has approved the leasing codes of 26 tribes with more codes under review.

For additional information please contact Colby Duren, Staff Attorney & Legislative Counsel, cduren@ncai.org.

ENERGY

Tribal energy resources are vast, largely untapped, and critical to America's efforts to achieve energy security and independence, reduce greenhouse gases, and promote economic development. Energy 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. Tribes face barriers to energy development which do not exist elsewhere, and often are excluded from the commercial-scale project development. Cumbersome bureaucratic processes, disincentives for Tribal financing, lack of access to transmission and the energy grid, fees, inequitable exclusion from federal programs, and the requirement that Tribes and Tribal businesses obtain approval from the Department of the Interior for almost every step of energy development continue to hold Tribal energy production back.

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

Legislative Update

S. 245 – Indian Tribal Energy Development and Self-Determination Act of 2015. 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 passed out of the Senate Committee on Indian Affairs in the 114th Congress, and passed in both the House and Senate in their respective energy legislation. The bill includes additional consultation requirements for the Department of the Interior; improves the Tribal Energy Resource Agreements process in the Energy Policy Act of 2005 by recognizing tribal self-determination over energy resources; creates a process for approving Tribal Energy Development Organizations; expands direct access to the Department of Energy's Weatherization Program; supports American Indian and Alaska Native biomass demonstration projects; and amends the appraisal and right-of-way approval processes.

NCAI sent a letter to the Senate Committee on Indian Affairs expressing our longstanding support for this legislation, and the need to update Indian energy legislation to improve tribally driven energy development on tribal lands.

H.R. 210 – The Native American Energy Act of 2017. In the House of Representatives, Congressman Young (R-AK) introduced H.R. 210, the Native American Energy Act of 2017. This legislation maintains the major focus of removing regulatory hurdles to tribal energy development and is similar to legislation the House of Representatives passed in the 114th Congress as part of their large-scale energy legislation. This bill will: reform and streamline the federal appraisal process and including the option for tribes to waive the appraisal requirement; create uniform systems of reference and tracking numbers for all Department of the Interior oil

and gas wells on Indian lands; restructure the environmental review process, 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 creates a Tribal Forest Management Demonstration Project under the Tribal Forest Protection Act at the U.S. Forest Service

For additional information please contact Colby Duren, Staff Attorney & Legislative Counsel, cduren@ncai.org

AGRICULTURE & NUTRITION

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

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

Legislative Update

2018 Farm Bill – Gearing Up for the Next Reauthorization. In February 2014, Congress passed the Agriculture Act of 2014 (H.R. 2642; Pub. L. 113–79) reauthorizing the U.S. Department of Agriculture’s programs through 2018. This law brought forth many new changes and improvements for Tribal Nations and Native farmers and ranchers. The 115th Congress will begin looking at the Farm Bill programs for the 2018 reauthorization, providing Indian Country has an important opportunity to review the past requests and successes, and develop its priorities early for the upcoming reauthorization. It is imperative that Tribal Nations and Native agriculture producers have a seat at the table during these early discussions to improve the efficiency and effectiveness of agriculture and nutrition programs in Indian Country, while supporting Tribal food and agriculture businesses. The source of a majority of the issues in the 2014 Farm Bill steamed from the Nutrition Title, which accounts for 79 percent of the total funding for the entire law. Despite cutting funding in Title IV by \$8.6 billion, some

Members of Congress were looking to cut as much as \$20 billion dollars and were even looking at removing the Nutrition Title from the bill entirely. Federal food assistance programs have been included in the Farm Bill since 1973 as a means to get the support of both rural and urban Members of Congress, since both were difficult to pass on their own. With as nearly 24 percent of American Indian and Alaska Native households receive Supplemental Nutrition Assistance Program (SNAP) benefits, and 276 tribes administer the Food Distribution Program on Indian Reservations (FDPIR) commodity food program, protecting and improving Title IV will be incredibly important in 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, the two Committees with jurisdiction, 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

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

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

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

entities; and the instrumentality of a state or federally recognized tribe, including a non-profit organization chartered under the tribal law of a state or federally recognized tribe, that furnishes assistance designed to further Native American farming or ranching activities.

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

All parties with standing in the case reached an agreement on changes to the existing settlement agreement. Under the new proposal, each prevailing claimant will receive a supplemental payment of \$18,500 (a separate sum of \$2,775 will be paid to the IRS on their behalf). The remainder of the *cy pres* funds would go to non-profit organizations as described above. The Court held a hearing on this new agreement to modify the settlement on February 4, 2016. The Court approved the new agreement on April 20, 2016. An appeal of the modified settlement was filed on June 20, 2016, and class counsel hopes that the appeal will be ruled on by June 2017. On May 17, 2016, the class counsel in *Keepseagle* case announced a one-time distribution of \$38 million from the remaining settlement funds through the Native American Agricultural Fast Track Fund (NAAFTF). This will be the first distribution of \$380 million left in the Keepseagle *cy pres* fund for the benefit of Native American farming and ranching.

For additional information please contact Colby Duren, Staff Attorney & Legislative Counsel, cduren@ncai.org.

PUBLIC SAFETY

Public safety is slowly improving in Indian country as the result of strong efforts from Congress, tribal leadership, and victims' advocates. However, problems remain as a result of decades of gross underfunding for tribal criminal justice systems; a uniquely complex jurisdictional scheme; and a centuries-old failure by the federal government to fulfill its public safety obligations on tribal lands. Residents and visitors on tribal lands deserve safety and security. Congress has taken historic steps in recent years with the passage of the Tribal Law and Order Act in 2010 and the Violence Against Women Reauthorization Act of 2013 (VAWA 2013) to begin to address some of the structural barriers to public safety in tribal communities. For the promise of these laws to be fully realized, however, they must be fully implemented. Implementation cannot occur without sufficient resources for tribal justice systems.

VIOLENCE AGAINST WOMEN ACT IMPLEMENTATION

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

In the nearly four years since VAWA 2013 was enacted, a group of 45 tribes have been participating in the Inter-Tribal Technical Assistance Working Group (ITWG) established by DOJ, which is a collaboration of tribes sharing information and advice on how to best implement VAWA, combat domestic violence, recognize victims' rights and safety needs, and safeguard defendants' rights. As of January, 2017 we are aware of 13 tribes who have implemented VAWA. They are: the Tulalip Tribes, the Pascua Yaqui Tribe, the Confederated Tribes of the Umatilla Reservation, the Assiniboine & Sioux Tribes of the Ft. Peck Reservation, the Sisseton Wahpeton Oyate, the Seminole Nation of OK, the Eastern Band of Cherokee Indians, the Nottawaseppi Huron Band of Potawatomi, the Kickapoo Tribe of OK, the Sac and Fox Nation of OK, the Little Traverse Bay Band of Odawa Indians, the Standing Rock Sioux Tribe, and the Sault Sainte Marie Tribe of Chippewa Indians. The implementing tribes report that the majority of the cases so far involve children as witnesses or victims and that the offenders frequently have a history of frequent prior police contacts. Materials from the implementing tribes are available on NCAI's website and offer useful examples of how individual tribes have modified tribal code language and constructed jury pools for VAWA cases.

In September of 2016, the Department of Justice awarded \$2.1 million in grants to 7 tribes to support implementation of Special Domestic Violence Criminal Jurisdiction. This was the first time funding was made available since the law was enacted in 2013. The seven tribes receiving funding are: the Tulalip Tribes, the Confederated Tribes of the Chehalis Reservation, the Port Gamble S'klallam Tribe, the Grand Traverse Band of Ottawa and Chippewa Indians, the Little Traverse Bay Band of Odawa Indians, Santa Clara Pueblo, and the Yurok Tribe.

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

Legislative Update

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

Tribal Youth & Community Protection Act. Senators Tester and Franken introduced a bill in the last Congress, S. 2785, the Tribal Youth & Community Protection Act, which would expand tribal jurisdiction over non-Indians to fill many of these gaps. Similarly, Senators Franken and Murkowski introduced a bill last year that would have added sexual assault, stalking, and sex trafficking to the list of crimes covered by the VAWA tribal jurisdiction provision.

Administrative Update

Intertribal Technical-Assistance Working Group Recommendations. The tribes participating in the ITWG have also identified a number of issues related to VAWA implementation that require Administrative action. In particular, tribes have asked for guidance about the provision of health care to non-Indian inmates. In addition, tribes are seeking full and effective access to the National Crime Information Center databases. The Department of Justice's recent expansion of the Tribal Access Program to additional tribes is a positive step. NCAI will continue to urge full participation for all tribes.

For additional information please contact Virginia Davis, Senior Policy Advisor, at 202.466.7767 or vdavis@ncai.org.

VICTIMS OF CRIME ACT FUNDING

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

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

The CVF was established by the Victims of Crime Act in 1984. Congress created the CVF based on the idea that money which the government collects from criminals should be used to help those victimized by crime. Fines paid by convicted federal criminal offenders finance the Fund, not taxpayer dollars. Despite significant increases in collections, Congress has imposed a cap on how much is available from the CVF for

crime victim services and compensation for the past 15 years. In recent years, distributions from the CVF have been about \$700 million. Collections, however, reached as high as \$2.8 billion in 2013, leaving a balance in the fund of about \$13 billion. There has been significant pressure on Congress to make this money available for crime victims, and Congress significantly increased the distributions for FY 2015 to \$2.3 billion, and again in FY 2016 to \$2.3 billion.

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

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

Legislative Update

Victims of Crime Act. Without additional action by Congress, tribal governments will continue to have no direct access to critical CVF funds. Congress could remedy the exclusion of tribal governments by passing authorizing language that amends the Victims of Crime Act or through the appropriations process. Both the House and Senate Appropriations Committees adopted amendments to their respective Crime Justice and Science appropriations bills last year that would have included a 5% allocation for tribal governments out of the overall disbursement from the CVF, which could result in up to \$140 million for tribal governments. NCAI is working to continue to push for this critical funding as appropriations are finalized for FY 2017 and FY 2018.

SURVIVE Act. In July of 2015, a bi-partisan group of Senators introduced S. 1704, the SURVIVE Act, which would direct 5% of the total CVF disbursement to tribal governments. The Senate Committee on Indian Affairs unanimously approved the bill at a mark-up in July of 2015. NCAI will continue to work with Congress to develop and advance amendments to the Victims of Crime Act that will ensure adequate funding for tribal communities.

For more information please contact Virginia Davis, Senior Policy Advisor, at 202.466.7767 or vdavis@ncai.org

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

NCAI has urged Congress to prioritize the reauthorization of the Tribal Law and Order Act of 2010. The TLOA was a bi-partisan effort to improve the administration of criminal justice in Indian Country. All authorized funding under the TLOA expired in 2015. It is important that Congress not only reauthorize this funding, but also appropriate funds to address the crisis-level need for criminal justice in Indian Country.

The reauthorization of the TLOA should also serve as a vehicle for improvements to the Juvenile Justice system. Many Members of Congress have identified youth justice as a top priority, and Indian Country fully agrees. The Indian Law and Order Commission's "Roadmap for Making Native America Safer" discussed the disturbing reality that American Indian youth face disproportionate exposure to violence and poverty. At present, the *majority* of youth in federal detention centers are Native youth, who also make up a disproportionate percentage of the state juvenile detention population. According to the ILOC Report, youth are placed in "generally unsafe, abusive, ineffective, and horribly expensive" situations that push them further into a life of crime. It is necessary for tribal juvenile justice systems to be able to develop alternatives to incarceration aimed at rehabilitation and treatment. We also recommend the development of tribal juvenile data collection, preventative family services, and a set-aside for the Juvenile Justice and Delinquency Prevention Act which is also up for reauthorization.

The TLOA was also a vehicle for a series of important technical improvements to the federal criminal justice laws in Indian Country. Tribal justice systems now have nearly seven years of experience with implementing the law, and that implementation has led to proposals to continue to improve the law.

Specifically, we ask that Congress reauthorize and make permanent the *Bureau of Prisons Tribal Prisoner Pilot program*, which expired on November 24, 2014. The Pilot Program created the option to send highly violent offenders to federal corrections facilities. Many tribes do not have the resources or personnel to adequately and safely house these types of offenders. The federal system also offers greater access to treatment, rehabilitation, and reentry programs.

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

Legislative Update

Reauthorization of Tribal Law and Order Act. Last year, former Senate Committee on Indian Affairs Chairman Barrasso (R-WY) introduced S. 2920, a bill to reauthorize the Tribal Law and Order Act (TLOA) of 2010. This legislation was reported out of the Committee in June of 2016, but did not receive a vote by the full Senate. We

are hopeful that a new version will be introduced this year, with even more improvements for Indian country public safety.

Last year's bill would have taken very positive steps and extended the BOP Pilot Project, required consultation with tribes regarding the integration of diverse funding sources for law enforcement, addressed criminal trespass, and required notice to tribes when a member youth enters a state or local justice system, among a number of other important provisions.

NCAI has suggested additions to continue to improve public safety, including a proposal to allow tribes to consolidate available law enforcement funding, to improve declination reporting, and eliminate the requirement of "Indian" status for the Major Crimes Act.

For more information please contact John Dossett, General Counsel, at 202.466.7767 or john_dossett@ncai.org

EMERGENCY RESPONSE/HOMELAND SECURITY

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

Administrative Update

Stafford Act Tribal Disaster Declarations Pilot Guidance. On January 10, 2017, the Department of Homeland Security Federal Emergency Management Agency (FEMA) released the Tribal Declarations Pilot Guidance, which governs tribal requests for federal disaster declarations under the Stafford Act. Effective immediately under the pilot phase, significant provisions include a minimum damage threshold of \$250,000 for public assistance; utilization of historic preservation as a demographic factor; and expansion of eligibility of non-enrolled tribal community members for individual and households program. Tribal government authority to seek presidential emergency or direct major disaster declaration authority began in 2013 under Sandy Recovery Improvement Act amendments to the Stafford Act. To view the Pilot Guidance, go to: <https://www.fema.gov/tribal-declarations-pilot-guidance>.

For questions or comments on the pilot declaration guidance, contact FEMA's National Tribal Affairs Advisor Milo Booth at (202) 701-4687 or at milo.booth@fema.dhs.gov.

Tribal Capability Development Grants. Tribes continue to request that FEMA amend the Emergency Management Performance Grants (EMPGs) which funds states' emergency management programs. States can include tribes in the distribution of these funds but rarely do even if tribes meet state-determined criteria. While Congress has prohibited states from placing undue burdens on potential tribal recipients, this is still often the

case. Creating a separate, and direct tribal capability development grant and allocation for tribes to develop basic emergency services programs would eliminate the need to change the states' much protected EMPT and allow tribes to further develop their capacity and capabilities in administering these programs. In keeping with the government-to-government relationship between tribes, Congress and the federal government, tribes are seeking direct funding for this program to ensure tribal needs are met and are not restricted by state barriers.

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

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

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

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

or a Tribal Government Working Group under the Homeland Security Advisory Council, to provide timely and direct recommendations on tribal homeland security considerations and issues.

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

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

For more information please contact Robert Holden, Deputy Director, at 202.466.7767 or rholden@ncai.org

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, 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. The federal promise to provide healthcare for Indian people is a sacred agreement that was provided to the tribes in exchange for land and peace. The Indian Health Service (IHS) has been and continues to be a critical institution in securing the health and wellness of tribal communities. Moreover, tribal child welfare providers work tirelessly to serve children and families through holistic, strengths-based, culturally responsive, and family-centered services. Human and social services are a critical part of the continued wellbeing of tribal communities.

EDUCATION

In order for tribes to succeed in tribal and global economies, it is imperative American Indian and Alaskan Natives students receive quality education. However, there are still challenges facing education in Indian Country, from aging and crumbling school facilities, limited access to broadband, and difficulty recruiting and maintaining teachers. Native students often live in isolated, rural areas and have to travel distances of up to 320 miles to and from school. These challenges and others have led to a graduation rate for Native American students and Alaskan Natives are 69% compared with and 82% graduation rate for the country as a whole.

There are approximately 620,000, or 93 percent, of Native students are currently enrolled in public schools both in urban and rural, while 45,000, or seven percent, attend schools within the Bureau of Indian Education (BIE) system. There are 184 BIE-funded schools (including 14 peripheral dormitories) located on 63 reservations in 23 states. In addition, there are currently 34 accredited Tribal Colleges and Universities (TCUs) in the United States serving more than 30,000 Native students. Effectively reaching all Native students will require a concentrated effort from multiple partners: tribes, the federal government, and State Education Agencies and Local Education Agencies. Tribes, Native parents and families, and communities are best suited to influence these critical factors for academic success.

The Every Student Succeeds Act (ESSA) reauthorized education programs and included several tribal provisions: providing greater tribal consultation requirements between State Education Agencies (SEAs), Local Education Agencies (LEAs), and tribes; greater technical assistance and outreach by the Secretary of Education to LEAs or BIE schools in applying for Title VI grants; newly established language immersion programs in schools; and requires the Secretary of Education to conduct studies and reports to Congress on Native language instruction and youth suicides.

Legislative Update

H.J. Res 57 On February 1st, Congressman Todd Rokita (R-ID) and Chairman of House Subcommittee on Early Childhood, Elementary, and Secondary Education introduced H.J. Res 57, a joint resolution to invalidate the final federal rule (Docket ID ED-2016-OSES-0032) of the Department of Education published on November 29, 2016. The final regulation, “*Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act- Accountability and State Plans*” amended the regulations regarding the requirements for submission of State plans in accordance of the Every Student Succeeds Act (ESSA). The H.J. Res 57 will impact tribal provisions included in ESSA concerning the State Tribal Education Partnerships and State Goals and Accountability Systems. The joint resolution was passed on the House floor on Tuesday, February 7th by a vote of Yeas 234 to 190 No. It is expected the Senate will consider this measure, at time of print Senate has yet to introduce a similar measure. NCAI will monitor and will notify tribes on developments on this issue.

Esther Martinez Native American Languages Preservation Act S. 254 On February 1st, 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 referred to the Senate Committee on Indian Affairs. The Senate Committee on Indian Affairs held a business meeting on Wednesday, February 8th and S. 254 was favorably voted out of the Committee and is now ready for consideration by the full Senate.

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

Reauthorization of the Higher Education Act (HEA). The Higher Education Act expired at the end of 2013 with NCAI urges Congress to reauthorize this Act during this Congress. The HEA provides critical funding, resources, and opportunities for both Native students in higher education as well as the institutions they attend including tribal colleges and universities (TCUs) and other minority-serving post-secondary institutions. Both the House and Senate have held a series of hearings on reauthorization of the Higher Education Act during this Congress. NCAI will continue to monitor the reauthorization efforts and updating our membership as developments occur

Administrative Update

Hiring Freeze Executive Order. On January 23rd, President Trump issued an executive order for a hiring freeze on Federal employees, any existing employment vacancy will not be fulfilled nor will new positions be created. This Federal employment hiring freeze has impacted the Bureau of Indian Education and its hiring of teachers and other positions within the 184 BIE schools in Indian Country. NCAI will continue to monitor this issue and inform tribes on any new developments.

Betsy DeVos, Secretary of Education. On February 7th, the Senate confirmed Betsy DeVos as the Secretary of Education by a vote of 51-50 with Vice President Mike Pence to cast the tie breaking vote. This was the first time a Vice President had to cast a tie breaking vote for a Cabinet member. The following day, on February 8th,

NCAI sent a letter to Secretary DeVos requesting the Department to immediately address the continued implementation of the tribal provisions in the ESSA which includes the State Tribal Education Partnership, and the State Goals and Accountability Systems. These provisions ensure collaboration, coordination, and accountability between tribes, state, tribal education agencies, and state education agencies. Also, included in the letter NCAI urged the Secretary DeVos to appoint an Executive Director for the White House Initiative American Indian and Alaska Native Education (WHIAIANE), this initiative was established by Executive Order 13592 on December 2011. NCAI will work with the new Secretary and her staffs to ensure education policies are beneficial to our Native students, and will inform tribal leaders of any new developments.

For additional information, please contact Gwen Salt, Legislative Associate at 202-466-7767 or gsalt@ncai.org.

HEALTH

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

As of February 2017, both the Administration and Congressional Leadership have stated their intention to reform the Healthcare system. Neither branches of Government have agreed to plans, especially detailing plans on how future healthcare reform will affect Indian Country and the Indian Health Service. NCAI will continue to advocate for Indian Tribes, for the Government to uphold its trust responsibility as it relates to healthcare and to further empower tribal communities.

Congress Passes Budget Reconciliation Procedure to Repeal the Affordable Care Act. Congress took the first step to repealing the Affordable Care Act (ACA) in early January by approving a budget resolution that sets up the repeal of the health care law through the budget reconciliation process, which would occur through separate legislation. Reconciliation allows for expedited consideration of certain tax, spending, and debt limit legislation. This resolution contains language establishing a process for the repeal of the Affordable Care Act. The resolution allows the Senate to repeal the ACA's tax and budget provisions, including the individual and employer mandates, through Reconciliation, a parliamentary process requiring only 50 votes instead of the usual 60 to pass a bill through the Senate. This legislation does not repeal the Affordable Care Act but means that both chambers have agreed to the procedure by which they can repeal the healthcare law by a smaller margin of votes in the coming Congress. Repealing the law will take 50 votes but replacement legislation will begin through the normal committee system and will need 60 votes in the Senate. It is important to note that because the Indian Healthcare Improvement Act does not contain tax or budget provisions and is not subject to Reconciliation.

President Trump Healthcare Executive Orders. President Trump signed Executive Orders in January, setting up the first Executive steps in repealing President Obama's healthcare policy. The Executive Orders directed agencies to waive, defer, grant exemptions from, or delay implementation of provisions that place a fiscal burden on states or impose a cost, fee, tax, penalty, or regulatory burden on stakeholders. The order did not outline any specific next steps, though President Trump and Congressional Leaders repeatedly have addressed plans to repeal and replace the ACA.

Affordable Care Act Replacements. Many members of Congress have submitted bills to replace the Affordable Care Act. Two bills that are gaining the most steam are the Patient Freedom Act (S. 191) introduced by Senator Cassidy (R-LA) and The Obamacare Replacement Act (S.222) introduced by Senator Paul (R-KY). Both bills have been referred to their Committees but have not moved farther along in the process. The Cassidy bill contains less dramatic changes and allows states to keep their plans and allows patients to be covered for pre-existing conditions. The Paul bill would remove many of the ACA's mandates in an effort to bring the cost of insurance down, but would not cover pre-existing conditions after 2 years. The Trump Administration has stated that a replacement plan will come when nominee Tom Price is confirmed as Secretary of Health and Human Services or later. Republican Congressional leadership and the Administration have not publicly agreed to replacement plan for the healthcare law.

Indian Healthcare Improvement Act and Indian-specific provisions in the Affordable Care Act. The Indian Healthcare Improvement Act (IHCIA) was enacted in 2010 as part of the Patient Protection and Affordable Care Act. The IHCIA provides a wealth of new resources and opportunities for Tribal health care institutions, families, providers and patients. There are 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 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. It is important to note that because the Indian Healthcare Improvement Act does not contain tax or budget provisions and is not subject to Reconciliation. IHCIA is one of the more successful parts of the ACA, and leaders from both sides of the aisle are working to secure it in any healthcare replacement bill. NCAI will continue to advocate to leaders in Congress and the Administration ensure that the IHCIA and Indian-specific provisions in the ACA remain intact.

Opportunities for Improvement within the ACA. In past Congresses, members have introduced bills to improve the Indian healthcare system. Congresswoman Noem (R-ND) and Senator Daines (R-MT) introduced companion bills titled the Employer Shared Responsibility Mandate in the 114th Congress, but have not been introduced in the 115th Congress. The bills would provide an exemption for Indian tribal governments and tribally owned business from the Employer Shared Responsibility Mandate, the employer mandate within the ACA. The employer shared responsibility mandate requires tribes with 50 or more full-time and/or full-time equivalent employees to offer health coverage to full-time employees (and their dependents) or face significant penalties. Many tribal employers cannot afford to purchase health coverage for their employees and would have to sacrifice other programs and services to try and meet the requirement. As the work forces of many tribes are made up of tribal members, most of their employees are exempt from the mandate and a tribal employer should not be required to offer or pay for such coverage. Many tribal employers rely upon the Indian Health Service to provide health care to tribal member employees as part of the federal trust responsibility and do not offer health coverage on this basis. These bills have not been introduced in the current Congress.

Special Diabetes Program for Indians. The Special Diabetes Programs for Indians, enacted in 1997, provides assistance for developing local initiatives to treat and prevent the disease and has served as a comprehensive source of funding to address diabetes issues in tribal communities by providing grants for diabetes prevention and treatment services to more than 400 Indian Health Service, tribal, and urban Indian health programs in 35 states. SDPI was reauthorized in 2015 for a 2 year renewal, leaving it up for reauthorization by Congress in 2017. NCAI passed a resolution (ATL-14-003) requesting Congress to permanently reauthorize

the Special Diabetes Program for Indians and to provide full funding for permanent continuation of this program. NCAI will continue to advocate for permanent reauthorization of the Special Diabetes Program for Indians.

Medicaid protections and expanded eligibility for American Indians and Alaska Natives- Title IC of the IHCA requires Medicare and Medicaid reimbursement for services provided in IHS & Tribal health care facilities. Medicaid provides the Indian health system with much needed funding to provide basic healthcare services. Expanded eligibility under the Medicaid program has allowed the Indian Health system to realize important financial gains that have helped alleviate pressure off of discretionary appropriations. Over 40 years ago, Congress amended Section 1905(b) of the Social Security Act to apply a 100 percent federal medical assistance percentage (FMAP) paid for by the federal government for services provided to AI/ANs that were received through an IHS or Tribally-operated facility. This ensures that IHS access to state Medicaid services does not burden the states with what is a federal responsibility. As Congress considers Medicaid reform, it is critical that AI/ANs retain 100% FMAP so Medicaid costs for AI/ANs are not shifted to the states. Congress should consider special protections for AI/ANs for the Medicaid program in accordance with the federal trust responsibility

For additional information please contact Denise Desiderio, Policy Director, at 202-466-7767 or d-desiderio@ncai.org.

CHILD WELFARE

The federal government has unequivocally recognized that there is nothing more vital to the continued existence and integrity of Indian tribes than our children. As tribes turn their attention to a new Administration and new Congress, the federal government must also continue to engage, collaborate and empower tribes to safeguard their children and strengthen native families. Tribal welfare programs play a huge role in seeking to provide improved services and effective resources for tribal citizens. Much of the programs and services are comprised of a number of “discrete, yet interconnected” functions that include family social services, child protection, case management, foster care, foster home recruitment, permanent placement, court advocacy, ICWA coordination and collaboration, and referrals to other services. Tribal child welfare programs work tirelessly to service children and families and are working to implement holistic, strengths-based, culturally appropriate, and family-centered services.

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

The Attorney General’s Advisory Committee on American Indian/Alaska Native Children Exposed to Violence emphasized that “American Indian/Alaska Native children are generally served best when tribes have the opportunity to take ownership of the programs and resources they provide.” NCAI urges Congress and the new Administration to prioritize the safety and continued well-being of all children.

Legislative Update

Family First Prevention Services Act of 2016, H.R. 253. On January 4, 2017 Representatives Vern Buchanan (R-FL-16) and Sander Levin (D-MI-9) introduced a bipartisan bill that seeks to amend parts B and E of title IV of the

Social Security Act to invest in funding prevention and family services to help keep children safe and supported at home, to ensure that children in foster care are placed in the least restrictive, most family-like, and appropriate settings, and for other purposes. Under this bill, Indian tribes would receive all of the same benefits as states, because of section 42 USC 679c. The legislation also includes important provisions to give tribal programs additional flexibility in planning and reporting. These are issues that can directly benefit tribal services.

Currently, the federal child welfare finance system provides significantly more funding for the removal of children from their families than services that could safely maintain them in their homes. When children are removed from their homes, even to keep them safe from harm, there is always additional trauma for the child. Conversely, it is almost always more suitable and cost effective to provide supportive services to give families the tools they need to better parent their children than it is to remove them from their homes and place them in substitute care.

H.R. 253 has been referred to the House Committee on Ways and Means. NCAI will continue to monitor and advocate in support of this bill.

Administrative Update

Implementation of the Alyce Spotted Bear & Walter Soboleff Commission on Native Children Act, Public Law 114-244. With the start of the 115th Congress, NCAI will begin to work with members of Congress to advocate and provide recommendations of potential appointments for this (11) member Commission. On January 18, 2017, two appointments to the Commission were confirmed; including Russ McDonald, current president of the United Tribes Technical College in Bismarck, North Dakota; and Anita Fineday, Managing Director of the Indian Child Welfare Program for Casey Family Programs.

The overall focus of this Commission is to address the challenges facing Native children. The Commission will develop a comprehensive study of Federal, State, local and tribal programs that serve Native children, including issues concerning: barriers to funding, data collection, barriers of developing sustainable multidisciplinary programs designed to assist high risk children and families, barriers to interagency coordination, and examples of successful program models and best practices standards for foster care systems, education, juvenile justice systems and health.

The Commissions goal is also to develop recommendations for Federal policy relative to Native children in the short- mid-, and long-term while looking at necessary modifications and improvements to existing child welfare programs. Key items include: reducing the number and time spend in foster care for native children, increase coordination of all parties involved in foster care system to increase child safety, encouraging the hiring and retention of licensed social workers within tribal communities, address the lack of available native foster homes, reduce truancy and improve academic proficiency, extracurricular activities and graduation rates for native children in foster care, and also looking at issues of health care, mental health and physical health.

NCAI will also continue to monitor funding sources, potential appointments, and other opportunities to advance these Commission goals.

Native American Children's Safety Act, Public Law 114-165. The Native American Children's Safety Act was enacted and signed into law on June 3, 2016. This law amends the Indian Child Protection and Family Violence Prevention Act to require background checks prior to foster care placements in tribal court proceedings. This law requires the Tribe's standards to include requirements that each tribal social services agency: (1) perform criminal records checks, including fingerprint-based checks of national crime information

databases; (2) check any abuse registries maintained by the Indian tribe; (3) check any child abuse and neglect registry maintained by the state, and any tribal abuse registries maintained in the state, in which the individual resides; (4) request any other state in which the individual resided during the preceding five years to enable the agency to check its registry; and (5) any other additional requirements that the Indian tribe determines is necessary and permissible within its existing authority, such as the creation of voluntary agreements with state entities in order to facilitate the sharing of information related to the performance of criminal records checks. Additionally, the law also prohibits a foster care placement from being ordered if the investigation reveals that a covered individual has been found guilty by a federal, state, or tribal court of a felony involving child abuse or neglect, spousal abuse, a crime against a child, violence, or drugs.

NCAI will continue to advocate and advance tribal access to criminal background database information for civil and criminal purposes, in accordance with NCAI Resolution ATL-14-048: *Tribal Access to Criminal Background Database Information for Civil Purposes*.

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

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

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

Lastly, in December of 2016, the Department of Interior also published updated ICWA guidelines setting its best standards and practices for state courts and private agencies.

The Department of Health and Human Services publishes Final Rule on the Adoption and Foster Care Analysis and Reports System (AFCARS) including data collection for American Indian and Alaska Native children and ICWA elements. On December 14, 2016, the Department of Health and Human Services, Administration for Children, Youth and Families published its final rule which includes new data collection elements that states will have to report to the

federal government. These elements relate specifically to much needed information on ICWA cases and native child placements. This is the first time that these particular requirements will be included in state reporting and the first report is expected to be published by 2020.

On November 23, 2016, NCAI and the National Indian Child Welfare Association (NICWA) sent a joint letter to the U.S. Department of Health and Human Services urging the Administration to include federal data collection requirements for state government related to implementation of the Indian Child Welfare Act (ICWA), in accordance with NCAI Resolution SD-15-071: *Support for the Inclusion of ICWA Data in the Adoption and Foster Care Automated Reporting System (AFCARS)*.

Attorney General's National Task Force on Children Exposed to Violence. In November 2014, the Attorney General's Advisory Committee on American Indian/Alaska Native Children Exposed to Violence issued a report entitled, "Ending Violence so Children Can Thrive." The report was compiled following a number of hearings and listening sessions conducted throughout Indian Country, and presents the Advisory Committee's policy recommendations that are intended to serve as a blueprint for preventing American Indian and Alaska Native children's exposure to violence and for mitigating the negative effects experienced by those Native youth exposed to violence.

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

NCAI urges the new Administration and the 115th Congress to take prompt action based on the findings and recommendations in this report and to implement policies that will provide greater safety and security for Native Children.

For additional information please contact Julian Nava, Staff Attorney, at 202.466.7767 or jnava@ncai.org

CULTURAL PROTECTIONS

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

Legislative Update

Congress agreed to H. Con. Res. 122, the PROTECT Patrimony Resolution. On December 6th, 2016 the US House of Representatives passed House Concurrent Resolution 122, *the Protection of the Right of Tribes to stop the Export of Cultural and Traditional (PROTECT) Patrimony Resolution*. The resolution was sponsored by Rep. Steve Pearce (R-NM-2) with several bipartisan cosponsors. The Senate passed a similar resolution by unanimous consent in an effort led by Senators Tom Udall (D-NM) and Deb Fischer (R-NE). In response to major media coverage of Native sacred, cultural, and religious items being sold in auction houses abroad, Congressman Steve Pearce (R-NM-2) introduced the *PROTECT Patrimony Resolution* to condemn the theft, illegal possession, or sale, transfer, and export of tribal cultural items. The Resolution also calls upon the Secretaries of the Department of the Interior, Department of State, Department of Commerce, Department of

Homeland Security, and the Attorney General to consult with tribes and spiritual religious leaders regarding this issue and to stop these illegal practices and repatriate items to tribes. The Resolution also requests the Comptroller General to conduct a study to determine the scope of illegal trafficking on Native cultural items domestically and abroad.

The Ancient One Returns Home with Passage of Water Resources Development Act. After more than 20 years of court battles, legislative and administrative issues, the Ancient One (also known as Kennewick Man) is to be returned home to the Tribes of the Columbia River. The Ancient One was found in 1996 near Kennewick, Washington and is believed to be over 8,000 years old. Since 1996, the Ancient One has been held as property of the State of Washington and was housed in the Burke Museum at the University of Washington in Seattle. After court battles that did not acknowledge the Ancient One's relationship to the Columbia River Tribes, members of Congress fought to return him home. Northwest Senators Patty Murray (D-WA), Maria Cantwell (D-WA), Jeff Merkley (D-OR) and Ron Wyden (D-OR) sponsored language in the Water Resources Development Bill to return him home while Representative Dan Newhouse (R-WA) Denny Heck (D-WA), Derek Kilmer (D-WA), and Greg Walden (R-OR) sponsored an amendment in the House of Representatives. The Confederated Tribes of Colville Reservation, the Confederated Tribes and Bands of the Yakama Nation, the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation and the Wanapum Band of Priest Rapids will receive the remains for final burial. The transfer will be accomplished through the Washington State Department of Archaeology and Historic Preservation. All funds associated with the transfer will be paid by the US Army Corps of Engineers.

NCAI supports reintroduction of the Safeguard Tribal Objects of Patrimony (STOP) Act. Although a bill has not yet been introduced in the 115th Congress, NCAI supports the reintroduction of the Safeguard Tribal Objects of Patrimony (STOP) Act. In the previous 114th Congress, a bipartisan coalition of Southwestern Senators introduced the STOP Act, S. 3127 sponsored by Senator Martin Heinrich (D-NM). This legislation enhanced penalties under the Native American Graves Protection and Repatriation Act (NAGPRA) from 5 years to 10 years and also 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 US and in foreign markets as well as detailing the extent to which the US 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.

Administrative Update

President Obama designates Bears Ears as a National Monument. On December 28th, 2016 President Obama designated the Bears Ears National Monument in southeastern Utah. The Bears Ears area contains over 100,000 archaeological sites and holds sacred, cultural, and ceremonial significance to tribes in the region including the Hopi, Navajo, Ute Mountain Ute, Zuni and Uintah and Ouray Ute tribes. The aforementioned tribes have also formed the Bears Ears Inter-Tribal Coalition to protect and preserve this location. The Utah Congressional Delegation and President Trump have signaled their support for repealing the National Monument designation while the Antiquities Act remains unclear how much can be done at the

Administration level, without legislation from Congress. H. Res. 5 passed in the 115th Congress makes it easier for tribal entities to convey previously held Federal Public Lands, which could play a major role in the Bears Ears designation. NCAI will continue to monitor and oppose attempts to repeal the Bears Ears National Monument designation.

Oil and Gas Leases Canceled in Badger-Two Medicine. On November 16th, 2016 Former Secretary of the Interior, Sally Jewell, canceled 15 oil and gas leases in the Badger-Two Medicine area. The Badger-Two Medicine area is located between Glacier National Park and the Great Bear and Bob Marshall Wilderness areas. The leases were originally authorized by the Department of Interior in the early 1980's, but the leases did not go through the consultation process with Indian Tribes. This place contains sensitive plant and wild life and holds immense cultural and religious significance to the Blackfeet people.

Department of the Interior conducted consultations on repatriating tribal cultural heritage from abroad. On August 26, 2016, the Department of the Interior announced that they will be conducting government-to-government consultations and seek written comment about the repatriation of cultural items both domestically and abroad. The letter to tribal leaders reassured the Government's commitment to helping repatriate tribal cultural heritage and how to best support international repatriation through existing authorities. Although the Department of the Interior has limited authority to repatriate items already overseas, it is exploring authorities within existing law and have looked to pending legislation to address the issue, like the *Safeguard Tribal Objects of Patrimony (STOP) Act of 2016*. The Department of the Interior consulted with tribes in Washington, D.C., the NCAI Annual Conference, Alaska Federation of Natives conference as well as in Cherokee, North Carolina during October 2016. Consultations with the State Department and the Department of Interior are on hold due to the Presidential Transition. NCAI will continue to monitor this issue and make sure the PROTECT Patrimony Resolution is implemented in the new Administration.

United Nations Ad Hoc International Repatriation Working Group. On January 21, 2016, NCAI participated in a meeting hosted by the International Indian Treaty Council and the U.S. Mission to the United Nations. The purpose of the meeting was to discuss recommendations and proposals to direct the State Department and the Department of the Interior to provide assistance to tribes to repatriate sacred items and remains held in museums and other institutions abroad. NCAI became a member of an Ad Hoc International Repatriation Working Group and is committed to working with the group's member tribes and tribal organizations in developing recommendations and assisting in the facilitation of communication and input from tribes across the country.

For additional information please contact Maria Givens, Policy Analyst, mgivens@ncai.org

NATIVE AMERICAN ELDERS

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

A 2004 profile on American Indians and crime prepared by the Bureau of Justice Statistics (BJS), and the U.S. Department of Justice (DOJ), reported that among persons in the 55 or older category, the American Indian violent crime rate was 22 per 1,000 versus the overall rate of 8 per 1,000. The current public safety of elders on tribal lands are a result of decades of severe underfunding for tribal criminal justice systems, complex jurisdictional landscape, and centuries- old failure by the federal government to fulfill its obligations to Indian Country. The Older Americans Act (OAA) authorizes program for tribes, public agencies and non-profit organizations serving Native elders to assist in prioritizing issues concerning elder rights and to carry out related activities.

Administrative Update

Older American Act Reauthorization Act Implementation. On April 19, 2016, President Obama signed the Older American Act Reauthorization Act of 2016 (OAA), which extended programs for elders for FY2017 through FY2019. The Administration on Aging, within the U.S. Department of Health and Human Services will implement the reauthorization. The OAA included elder abuse screening prevention efforts and training for elderly caregivers. The legislation also places an emphasis on the Long-Term Care ombudsman program by creating new support for modernizing multipurpose senior centers. The funding for these programs will increase over the next three years by six percent. NCAI will be engaged in the department's implementation of the OAA. In addition, programs created under the OAA specifically for American Indians, Alaska Natives and Native Hawaiians will be maintained. These programs include federal funding for congregate and in home delivered meals for the elderly poor. Tribal organizations are able to receive grants in support of nutritional services and support for family and caregivers.

For additional information please contact Teresa Baldwin, NCAI Fellow, tbaldwin@ncai.org.

NATIVE VETERANS

There are many unmet health care and other needs facing native veterans and the solutions have yet to be found. The Department of Veterans Affairs is one of the agencies President Trump has vowed to cleanup regarding providing health care to veterans. President Trump began his administration with a freeze on hiring of federal workers which would impact employee workers such as hiring of doctors and nurses in the VA health care system, However the ban was clarified to exempt anyone necessary for public safety, including front-line caregivers. The administration and several members of congress are calling for overhaul and scrapping of the Affordable Health Care Act (ACA), or commonly known as Obamacare. Veterans utilize ACA coverage for preventive care and mental health treatment is mandated in the ACA. There is speculation that VA healthcare will be privatized and privatization coverage will be examined in the coming months.

The NCAI will monitor VA initiatives, administrative actions, and proposed legislation impacting American Indian and Alaska Native veterans to ensure they receive benefits and compensation for their military service. It is a tribute to native communities that our warriors continue to serve with valor and distinction in numbers higher than any ethnic minorities in the country.

Administrative Update

Veterans Affairs Secretary Confirmed. The Senate confirmed Dr. David Shulkin as Secretary of the Department of Veterans Affairs on February 7. Secretary Shulkin was appointed as VA undersecretary of health in 2015. He was responsible for the Veterans Health Administration's 1,700 facilities across the country. Secretary Shulkin

stated his plans include reforming the Choice Program regarding private sector health care for veterans and the veterans appeal process for disability claims and pension compensation. Secretary Shulkin previously managed hospitals in New Jersey and New York, and was named among the 100 most influential people in American health care by Modern Healthcare, a health care executives and industry publication.

Tribal Veteran Service Offices. The Department of Veteran Affairs is amending long sought regulations regarding recognition of tribes to establish Tribal Veteran Service Offices, effective February 21, 2017. An accredited Tribal Veteran Service Officer (TVSO) will be able to represent a native claimant in preparation, presentation and prosecution of a Veterans Affairs claim. The NCAI has provided comments to the rule change 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 the behalf of the Indian veteran, is accomplished in a culturally competent manner.

To see the TVSO revision to Part 14 Title 38 of the Code of Federal Regulations, go to: <https://www.federalregister.gov/documents/2017/01/19/2017-00947/recognition-of-tribal-organizations-for-representation-of-va-claimants> . For additional information, contact: Dana Raffaelli, Staff Attorney, Benefits Law Group, Office of the General Counsel (022D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, D.C., 20420, or phone 202.461.7699 (not a toll-free number).

For additional information please contact Robert Holden, Deputy Director, at 202.466.7767 or rholden@ncai.org.

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.³

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

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

There has been a great deal of talk about voter fraud in the wake of the 2016 election, and this has contributed to a political climate that makes it unlikely that Congress will move forward with legislation to advance voting rights. We also expect that there may be efforts at both the state and federal level that would further undermine the ability of Native voters to participate by imposing additional voter identification requirements or otherwise rolling back access to registration and the polls. At the same time, several tribes were able to successfully secure greater

access to polling places and voter registration through local and state advocacy, and we think this will continue to be a worthwhile place to focus our advocacy and attention.

The Native American Voting Rights Coalition will be holding a two-day meeting in early March to discuss our policy priorities and strategize about state and federal advocacy to continue to protect and promote voting rights for Native voters. NCAI will continue to work with our national, regional, and tribal partnership organizations to protect and promote voting rights for Native voters.

Legislative Update

Election Assistance Commission Termination Act. On February 7, the Committee on House Administration approved HR 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 HR 634.

NCAI has worked with members of Congress to develop legislation that addresses barriers to voting for Native Americans, and several bills were introduced last year that included important provisions to advance voting rights for Native Americans. It is unclear whether these bills will be reintroduced in this Congress.

For additional information please contact Julian Nava, Staff Attorney, jnava@ncai.org.

SELF-GOVERNANCE

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

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

consistency and administrative efficiency for Self-Governance tribes between Title IV Self- Governance in the DOI and Title V Self-Governance in the DHHS.

Legislative Update

Consistency between DOI and HHS Self-Governance Programs. Tribes have been seeking legislation to amend Title IV of the Indian Self-Determination and Education Assistance Act to create consistency between self-governance programs in the Department of the Interior and the Department of Health and Human Services. This legislation has been introduced and considered in the past several Congresses and has wide-spread support among tribes.

Despite legislation being voted out of the Senate during the first session of the 114th Congress, there was no House activity on self-governance legislation so this remains a top priority in the 115th Congress. Concerns related to the bill's purported impact on non-BIA programs have persisted and need to be addressed before legislation can be passed by both Chambers.

NCAI continues to work with the Self-Governance group to address concerns with the goal of passing legislation in the 115th Congress. .

For additional information please contact Denise Desiderio, Policy Director, ddesiderio@ncai.org.

ECONOMIC DEVELOPMENT AND INFRASTRUCTURE

Across Indian Country, a growing number of tribal nations are writing self-authored stories of 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, they are slowly but surely building the sustainable tribal economies they require in order to revitalize their communities and achieve the futures they seek for themselves. Driving this remarkable yet uneven economic renaissance is tribal self-determination, specifically the responsibility and wherewithal of each tribal nation to create a robust economy based on its own enduring cultural values, distinct challenges, particular circumstances, and short-and long-term community development priorities.

Featured in this section are policy overviews of several main components of Indian Country economic development. For example, tribal governments need and deserve to be at the decision-making table when it comes to policy conversations and formulation around infrastructure development, which is a critical foundation for building sustainable economies. They deserve to be at the table because they have the capacity, experience, and know-how to craft, inform, and execute solutions to the infrastructure challenges facing their communities and those of their neighbors.

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.

NATIVE AMERICAN HOUSING

Housing needs are critical for Native families on tribal lands where housing shortages and overcrowding conditions persist. Available data In a recently released U.S. Department of Housing and Urban Development (HUD) report, *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*, states data shows that it would take approximately 33,000 new units to alleviate overcrowding in Indian Country and an additional 35,000 housing units are needed to replace homes that are considered in grave condition. The total need of approximately 68,000 housing units (new and replacement), with the average development cost of a three-bedroom home the total coast is in the excess of \$33 billion.

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

The Native American Housing and Self-Determination Act (NAHASDA), which authorizes Indian housing programs for tribes to develop, construct and maintain housing for members expired in 2013. The NAHASDA has enabled tribes the self-determination capability to provide effective housing programs for tribal citizens. NAHASDA effectively replaced the various Indian housing programs under the 1937 Housing Act and

consolidated federal housing funds through direct block grants to the tribes and their housing authorities. Tribes are now exercising their right of self-determination to design and implement their own housing and other community development infrastructure programs. Since its enactment of NAHASDA in 1996, tribal housing programs have made great strides for housing and community development by using sustainable building practices and leveraging their NAHASDA and other federal funding. Currently there are approximately 500 Tribally Designated Housing Entities in Indian Country.

Legislative Update

The Native American Housing and Self-Determination Act Reauthorization. The current NAHASDA authorization expired in 2013. Legislation was introduced in the 114th Congress to reauthorize NAHASDA, but despite passing the House, it failed to pass the Senate. We anticipate legislation will be introduced in the 115th Congress to reauthorize this important legislation.

Senate Democrats announces an Infrastructure Blueprint for 115th Congress. On January 24th Senate Democratic Leader Chuck Schumer (D-NY) announced a plan to rebuild America's infrastructure. The blueprint titled, *A Blueprint to Rebuild America's Infrastructure*, calls for a \$110 billion to modernize water and sewer infrastructure, and \$10 billion in new innovative financing to increase infrastructure investment. The Trump Administration has indicated that infrastructure is a priority and Congress will be considering infrastructure legislation in the coming months.

Administrative Update

HUD Report on Housing Needs. On January 5th, the U.S. Department of Housing and Urban Development (HUD) released the *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*, a report mandated by Congress in 2014. The Office of Policy Development and Research within HUD conducted a housing needs study of American Indians, Alaska Natives and Native Hawaiians. The study included the collection of data from tribes, tribal households and other stakeholders. The report includes:

- Housing Needs of American Indians and Alaska Natives in Tribal Areas Executive Summary
- Housing Needs of American Indians and Alaska Natives in Tribal Areas
- Housing Needs of American Indians and Alaska Natives in Urban Areas
- Mortgage Lending on Tribal Land
- Continuity and Change: Demographic, Socioeconomic, and Housing Conditions of American Indians and Alaska Native

To review the report you can go here:

https://www.huduser.gov/portal/native_american_assessment/home.html

For additional information, please contact Gwen Salt, Legislative Associate at 202-466-7767 or gsalt@ncai.org.

TRANSPORTATION

Transportation infrastructure is an important component of tribal economic development and plans for safe and adequate roads, bridges, and other modes of transportation are integral to promote tribal economies. Tribal transportation also serves as the primary route that tribal members and surrounding non-tribal communities utilize for school, work, public safety and recreational purposes.

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

Legislative Update

S. 302 John P. Smith Act. Senator John Barrasso (R-WY) introduced S. 302 on February 3rd. This bill would make certain tribal transportation projects categorical exclusion from environmental review or assessments in addressing and greatly improving safety issues such as on roads, pedestrian and bicycle lanes, railway and highway crossing, highway signage and payment markings, and transportation safety planning, etc. The Secretary of Interior will identify and review transportation safety projects are categorically excluded and will have to issue propose rules on this matter. In addition the Secretary will enter into a programmatic agreement with tribes, who have to show efficient administrative procedures and other requirements in carrying out environmental review. The agreement would enable the tribes to determine on behalf of the Secretary whether the project is categorically excluded from completing an environmental review or environmental assessments.

Senate Democrats Announces an Infrastructure Blueprint for 115th Congress. On January 24th Senate Democratic Leader Chuck Schumer (D-NY) announced a plan to rebuild America's infrastructure. The blueprint titled, *A Blueprint to Rebuild America's Infrastructure*, calls for a \$20 billion for Public and tribal lands, \$210 billion to repair roads and bridges, \$180 billion to replace and expand rail and bus systems, \$65 billion to modernize America's ports, airports, and waterways, and \$10 billion in new innovative financing to increase infrastructure investment. The Trump Administration has indicated that infrastructure is a priority and Congress will be considering infrastructure legislation during this session of Congress. NCAI will advocate strongly for tribal provisions in any infrastructure legislation or plan and for tribes to be included throughout such plans.

Administrative Update

Secretary of Transportation Confirmation. On January 31st, Elaine Chao was confirmed as the Secretary of Transportation by the U.S. Senate with a vote of 93-6. Secretary Chao who is married to Senate Majority Leader and Mitch McConnell (R-KY) had previously served a labor secretary under George W. Bush Administration. She also served as Deputy Secretary of Transportation in the George H.W. Bush Administration. Secretary Chao has experience and knowledge on transportation and as a federal appointee.

Tribal Transportation Self-Governance Negotiated Rule Committee The enactment of the FAST Act included the expansion of tribal self-governance throughout the U.S. Department of Transportation (DOT). Last year, U.S.

Department of Transportation published a notice seeking nomination to serve on the Tribal Transportation Self-Governance Negotiated Rule Committee, and announced the membership of the Committee, 12 primary regional tribal representatives, five alternates, six other tribal representatives and seven federal representatives. The Negotiated Rulemaking Committee has met four times in various regions of the U.S. With the incoming new Secretary The next meeting is scheduled for March 2017.

On January 20th, President Trump issued an executive memorandum to heads all federal agencies freezing all pending regulatory action and would be reviewed before any further regulatory action can be taken. This regulatory freeze has impacted the ability of the rulemaking committee to meet during the freeze.

Tribal Interior Budget Council BIA Road Maintenance Subcommittee. Although the majority of tribal transportation programs are authorized and funded through the Department of Transportation, the Bureau of Indian Affairs (BIA) Road Maintenance program within the Department of Interior is critical to BIA owned roads and facilities. The BIA is responsible for maintaining approximately 29,500 miles of roads in Indian Country including 900 bridges. However funding for the BIA Road Maintenance has remained stagnant at approximately \$24 million for several appropriations cycles, while deferred maintenance has risen to over \$289 million for FY 2015. The condition of these roads is increasingly concerning for tribal members and members of surrounding communities. The lack of sufficient infrastructure also hampers economic development opportunities for tribes. To assist in address this deferred maintenance of BIA Road Maintenance issue the Tribal Interior Budget Council (TBIC) has formed a BIA Road Maintenance Subcommittee, the Subcommittee and have held two meetings during the TBIC meetings to discuss road maintenance.

For additional information, please contact Gwen Salt, Legislative Associate at 202-466-7767 or gsalt@ncai.org.

TRIBAL LABOR SOVEREIGNTY ACT

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

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

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

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

Legislative Update

Tribal Labor Sovereignty Act of 2017, S. 63. The Tribal Labor Sovereignty Act, S. 63 was introduced by Senator Moran (R-KS) on January 9, 2017, and referred to the Senate Indian Affairs Committee. This bill would add tribes to the definition of government entities exempt from the National Labor Relations Act, thereby ensuring tribal parity with state and other governments. On February 8, 2017, S. 63 was voted out of the Committee and is now ready for consideration by the full Senate.

On February 9, 2017, Congressman Rokita introduced companion legislation in the House of Representatives, H.R. 986. This bill is identical to the TLSA legislation that passed the House in the 114th Congress.

NCAI strongly supports passage of this legislation and will work with Congress to enact this legislation in the 115th Congress.

For more information please contact Denise Desiderio, Policy Director, d-desiderio@ncai.org.

TRIBAL TELECOMMUNICATIONS

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

The primary law governing our telecommunications sector is the 1934 Communications Act, which was last amended in 1996 due to rapid advances in wireless and cable technologies. While the recognition of tribal sovereignty and requirements for tribal consultation were excluded from the original Act—and subsequent amendments in the 1996 Telecommunications Act—the Federal Communications Commission has exercised

administrative flexibility to ensure tribal matters are addressed in its rulemakings. The 1996 amendments created six universal service principles to meet the goals of providing affordable and quality telecom services across the country.

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

Legislative Update

Senate Democrats announce Broadband Infrastructure Blueprint for 115th Congress. On January 24th, 2017, Senate Democratic Leader Chuck Schumer announced the minority party’s plans to address America’s infrastructure. The Blueprint called for a \$20 billion investment in high-speed and affordable broadband that would create 260,000 new jobs in the telecommunications sector. The \$20 billion dollar investment would fund the build out of high-speed broadband in unserved and underserved areas through programs at the Department of Commerce and the US Department of Agriculture. In preparation for the debate on our nation’s infrastructure, NCAI prepared a report titled “Tribal Infrastructure: Investing in Indian Country for a Stronger America.” In the initial report, NCAI outlined the telecommunications needs of Indian Country generally and, as it relates to telemedicine and tribal schools and libraries. The Trump Administration has signaled that infrastructure would be a top legislative priority for their administration.

Administrative Update

FCC Announces New Chairman- Ajit Pai. With the resignation of Chairman Wheeler in January, 2017, President Trump appointed Commissioner Ajit Pai to serve as Chairman of the FCC. Chairman Pai has been an advocate for closing the digital divide, defending free speech, and ensuring public safety.

FCC Announces new Broadband Deployment Advisory Committee. On January 31st, Chairman Pai announced the formation of the Broadband Deployment Advisory Committee which will advise the FCC how to deploy broadband across the country. The Committee will draft a model code for broadband deployment covering topics like local franchising, zoning, permitting, and rights-of-way regulations. Representatives of Tribal Governments and rural service providers are invited to apply. Nominations must be received by the FCC by February 15th, 2017.

FCC Lifeline Orders in Favor of Tribal Notification. On February 3rd, 2017 the FCC issued an Order on Reconsideration regarding the expedited applications of new Lifeline Broadband Providers. In December 2016 and January 2017, The FCC designated 9 Lifeline Broadband Providers, approving their applications without applicants notifying affected tribes and without the FCC holding a comment period for tribes. On January 3rd, The National Tribal Telecom Association (NTTA) filed a Petition for Reconsideration requesting the Commission to reverse the Bureau’s designation because the applicants did not provide a copy of its petition to

the affected tribal governments and tribal regulatory authority, violating FCC's rules. NTTA also noted that the FCC is required to provide tribal governments notice of applications before they put them out for public comment which was not followed. With the designation of these new lifeline providers, neither applicants nor the FCC properly consulted with tribes on issues affecting tribal lands. In the February 3rd order, the FCC suspended the streamlined Lifeline Broadband Provider (LBP) designation process, citing the lack of tribal engagement in the fast tracked process.

NCAI Comments on CenturyLink Acquisition of Level 3 Communications to FCC. On January 23rd, NCAI filed an official comment to the Federal Communications Commission, urging the Commission to exercise its authority under the public interest standard of review to address the lack of access to affordable, modern broadband service on Tribal lands when considering the merger of CenturyLink and Level 3 Communications. Because CenturyLink's 14 state service territory covers large amounts of Indian Country, NCAI wanted make sure the FCC was aware of potential effects of the merger on Tribal Lands.

Tribal Telecom Session at NCAI Executive Council Winter Session. Leaders from the Federal Communications Commission and its Office of Native Affairs and Policy (ONAP) will be holding a session at NCAI's Winter Session to discuss Section 106 protocol with deploying telecommunications infrastructure, deploying broadband in Indian Country and the future plans of the Commission under its new Chairman, Ajit Pai. The session will be on Wednesday February 15th, from 1:30-4:30 in the Pan America Room.

For additional information, please contact Maria Givens, Policy Analyst, mgivens@ncai.org.

TRIBAL TAX PRIORITIES

As national tax reform gains momentum in this new Administration, the inclusion and recognition of Native American governments as sovereign entities, retaining the inherent authority to regulate and tax commerce on tribal lands, must be included. At its core, issues of taxation should reliably provide sufficient governmental revenues free from overlapping state taxation. This creates incentives for business development, infrastructure, job creation, and access to financing tools while providing certainty of jurisdiction, certainty to capital markets, and certainty of tax policy all designed to enhance economic growth directly benefitting the health and welfare of not only tribal communities but also local communities as well. This is simply not the case in Indian Country.

The last national tax reform occurred thirty years ago with the passage of the Tax Reform Act of 1986. Under the current Tax Code, tribal governments are left without many of the benefits, incentives, and protections provided by the Code to state and local governments. This inequity significantly handicaps tribal sovereign authority to provide government revenue for tribal programs independent of federal appropriations and encourage economic growth on tribal lands. Tribal governments face a losing proposition when forced to collect state taxes: either impose a dual tax or drive business away, or collect no taxes and suffer inadequate roads, schools, police, courts and health care. To add insult to injury, reservation economies are funneling millions of dollars into state treasuries who spend the funds outside of Indian Country. This dilemma undermines the Constitution's promise of respect for tribal sovereignty, and keeps Indian reservations the most underserved communities in the nation.

Reliable funding sources have been few and far between for every tribal government service for decades and in many respects, the inclusion of tribal governments in national tax policy reform represents a very real opportunity to protect and enhance the many governmental functions and services provided by Indian tribes.

Both Congress and the Administration must actively engage with Native nations to achieve comprehensive tribal tax reform.

Tribal Tax Priorities

Achieve Tax Parity for Tribal Governments. Members of Congress and Indian tribes have identified a significant number of provisions where tribes are unable to use the Tax Code in the same manner as state and local governments. Tribal parity is needed in these areas:

- Tribal government tax-exempt bonds. Currently, tribes may only use tax-exempt bonds for “essential government functions.” The IRS has interpreted this provision to exclude economic development as a governmental function, while state and local governments frequently use tax-exempt financing for development projects. This unnecessarily prevents tribes from securing the funding needed to revitalize their communities.
- Tribal government pension plans. Tribal governments currently must provide both government and private ERISA pension plans to their employees. This largely depends on whether the employee works for the tribal government or for a tribal enterprise. This is costly and cumbersome. Tribal governments must be able to operate a single, comprehensive, government pension program for all of their employees.
- Tribal foundations and charities. Tribally-created foundations and charities do not enjoy the same tax-exempt status as state-created foundations and charities. This creates an uncertain atmosphere for benefactors seeking to maintain their tax-exempt status. In order for tribal foundations and charities to thrive, it is necessary for benefactors to make contributions without potential tax penalties.
- Tribal child support enforcement agencies. Tribal child support enforcement agencies need authority to access parent locator services and enforce child support orders through federal tax returns of parents with past due obligations.
- Indian Adoption Tax Credit. Adoption is widespread throughout Indian Country. The IRS must recognize Tribal court orders determining the ‘special needs’ of adoptive children which permits adoptive parents to receive tax credits on par with state courts.
- Tax credits granted to doctors employed by Indian Health Service facilities. Tax credits are available to most doctors employed in the public sector, but are unavailable to those employed by the Indian Health Service. Indian Health facilities need an incentive for practitioners to bring their skills to Indian Country.
- Enact a Technical Amendment to Remove the “Kiddie Tax” Penalty from Transfers of Tribal Funds to Children and College Students.

Make Tax “Extender” Incentives Permanent and Promote Development on Tribal Lands. NCAI urges Congress to consider the urgent and continuing need for economic development on Indian reservations in the context of the Indian Employment Tax Credit and Accelerated Depreciation for on-reservation business infrastructure. Both expired on December 31, 2016. Congress should make both tax incentives permanent so employers can rely on the incentives when planning to locate their business on tribal lands. The lack of certainty in the future of these tax provisions undermines their ability to attract larger, long-term investments.

Include Tribal Governments in the Marketplace Fairness Act. NCAI urges the inclusion of tribal governments in any legislation that regulates the collection of state and local sales taxes or implements the State Streamlined Sales and Use Tax Agreement.

Establish Tribal Empowerment Zones. To allow all Indian nations to become more economically empowered, NCAI proposes significant changes in the economic foundation of Indian country. Tribes must be allowed to capture wealth that is generated on tribal lands without confiscation by the federal and state governments. While the

federal government should never be relieved of its trust responsibility to support tribal governments, more should be done to allow tribes to develop their own economies.

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

Administrative Update

Action to Appoint Remaining Vacancy and Implementation to the Department of Treasury's Tribal Advisory Committee. NCAI will continue to urge the new Administration to fill the remaining vacancy and urge implementation of the (7) member Advisory Committee. Established under the Tribal General Welfare Exclusion Act of 2014, The U.S. Department of Treasury's Tribal Advisory Committee will advise the Secretary 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 Treasury appointed four members of the committee of seven. Those four appointments members include: W. Ron Allen, Chairman and Chief Executive Officer of the Jamestown S'Klallam Tribe; Lacey Horn, Treasurer of the Cherokee Nation, Marilynn "Lynn" Malerba, Lifetime Chief of the Mohegan Tribe, and Eugene Magnuson, Tribal Treasurer of the Pokagon Tribe. In late 2016, there were two additional appointments, including, Shannon Edenfield, a Tribal Council member for the Confederated Tribes of the Siletz Indians of Oregon who serves as its Tribal Administrative Officer and Patricia King, Treasurer for the Oneida Nation. One vacancy remains.

Address the Harms of Dual Taxation in Indian Country through Modernizing the Indian Trader Regulations. NCAI urges 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 Interior to license traders on Indian reservations, and the regulations are an unnecessary burden on economic development. However, the underlying law at 25 USC §262 is broad and flexible authority for the Department of Interior to adopt new regulations that would meet the economic development and tax revenue needs of Indian tribal governments in the 21st Century. We urge the Department of Interior to replace the current regulations, in accordance with recent NCAI Resolution SD-15-045: *Urging the Department of Interior to Address the Harms of State Taxation in Indian Country and Prevent Dual Taxation of Indian Communities.*

In order to ensure long-term stability of tribal communities, tribes need to generate government revenue independent of federal appropriations. Tribal governments are taking on increasing levels of government responsibility, but receive hugely inadequate federal funding. All remaining revenue must come from tribal natural resources or enterprises, and even these limited resources are frequently tapped by unconscionable dual state taxation.

For additional information, please contact John Dossett or Julian Nava or Concetta Tsosie at 202.466.7767 or jdossett@ncai.org or jnava@ncai.org or ctsosie@ncai.org.

TRIBAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

Temporary Assistance for Needy Families (TANF) is a federal block grant program designed to help needy families achieve self-sufficiency. TANF was created as part of welfare reform in 1996 under the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). Families with children receive cash assistance for their compliance with guidelines including work participation, job training, and education. Four

primary purposes of the TANF program are to: 1) provide assistance to needy families so that children of those families may be cared for inside the home; 2) to reduce dependency by promoting job preparation, work, and marriage; 3) to prevent and reduce the incidence of out-of-wedlock pregnancies; and 4) to encourage the formation and maintenance of two-parent families.

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

Since 1997, TANF grants have served 284 federally recognized tribes and Alaska Native villages through 70 approved tribal TANF programs. 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.

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.

NCAI's Tribal TANF Task Force will convene on Tuesday, February 14th during NCAI's Executive Council Winter Session in Washington D.C.

Legislative Update

Reauthorization of TANF. TANF was originally up for reauthorization in 2010. However Congress did not work on a reauthorization for TANF programs. Congress has instead issued several extensions to maintain funding. The most recent extension of funding was in the Continuing Appropriations Resolution for 2017, which extended funding for the TANF block grant through March 2017.

The funding levels for TANF block grants for states and tribes have not been increased since the original 1996 levels causing increased strain on state and tribal offices to meet the demand of higher case load than initially anticipated. This funding is maintained at \$16.5 million dollars for tribes, states and territories.

S. 3091- Empower Act of 2016. Although the legislation has not yet been introduced in the 115th Congress, NCAI supports the reauthorization of TANF. During the previous 114th Congressional Session, Senator King of Maine introduced S. 3091, the Empower Act of 2016 which aimed to reauthorize the TANF program from FY2017 through FY2021. The legislation also attempted to amend the purposes of the TANF program to include the children living in deep poverty and encouraged employment entry, retention and advancement. This bill was introduced last year to the Senate with no further action.

H.R. 2959- TANF Accountability and Integrity Improvement Act. During the previous 114th Congressional Session legislation was introduced on July 7, 2015 to amend the TANF program. The legislation aimed to reduce TANF work requirements and prevent states from counting certain expenditures. No legislation has yet been introduced by the 115th Congressional session.

Administrative Update

TANF Award Announced. On October 5, 2015 the Office of the Administration for Children and Families within the U.S. Department of Health and Human Services announced an award of \$1.8 million in TANF, Child Welfare Coordination grants to eight different tribes. The grant is a five year project period lasting from September 30, 2015 through September 29, 2020. The Child Welfare Coordination grants are being used for activities including prevention services for tribal children and their families, home visiting, and intergenerational youth and adult career counseling. No additional Child Welfare Coordination grants have been announced. For more information on the grants visit the Office of Family Assistance, Tribal Programs website.

For additional information please contact Teresa Baldwin, Legislative Fellow, tbaldwin@ncai.org.

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, customized solutions to the particular capacity building needs of tribal nations and communities. In that vein, the appropriate role of the federal government is not to impose a uniform 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. Ultimately, 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 and Section 166 of the Workforce Innovation and Opportunity Act (WIOA) among the most notable examples. But additional measures 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

S.91 & H.R. 228 – Indian Employment, Training and Related Services Consolidation Act of 2017: These companion bills – first introduced in the 114th Congress in 2015 – amend Public Law 102-477 – titled the "Indian Employment, Training and Related Services Demonstration Act of 1992" – to provide for further tribal integration of employment, training, and related services programs using federal funds. Among other things, the legislation revises and expands the types of programs that may be included within an approved tribal 477 integration plan,

enables tribes to use available funds to place participants in training positions with employers, and imposes on the Bureau of Indian Affairs a 45-day deadline to disburse funds to recipient tribes. It also treats any funds transferred to a tribe under the legislation as non-federal funds for the purposes of meeting matching requirements under any other federal law. S. 91 was introduced on January 10, 2017 by sponsor Senator Lisa Murkowski [R-AK] and referred to the Committee on Indian Affairs and voted out of Committee during a Business Meeting on February 8, 2017. Meanwhile, H.R. 228 was introduced on January 3, 2017, by sponsor Representative Don Young [R-AK] and referred to the House Committee on Natural Resources.

In addition to passage of this legislation, NCAI also 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 state-tribe collaboration on the provision of services to Native people.

Administrative Update

NCAI Briefs Department of Labor on Indian Country's Policy Recommendations for Workforce Development: In October 2016, NCAI staff provided an overview of the policy recommendations contained in NCAI's "Empowering Tribal Workforce Development" brief to senior Department of Labor (DOL) Employment and Training Administration (ETA) officials and DOL's Native American Employment and Training Council (NAETC). The NAETC also passed a resolution supporting the federal government's implementation of the recommendations contained in the brief.

NAETC Recommendations to DOL Leadership: NCAI supports NAETC recommendations 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 to 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."

Foster Closer Collaboration between Tribal Workforce and Economic Development Initiatives: The Administration should launch a joint examination by tribal leaders, tribal workforce development practitioners, and federal agency

managers to examine the regulations and policies of programs in Commerce, ED, HHS, HUD, DOI, DOL, Treasury, and the Small Business Administration that support tribal economic development and tribal workforce development to ensure that these programs work in tandem to stimulate the development of tribal economies and build the human capacity needed to sustain that development. The federal government also should exempt activities and funds spent on integrated economic and workforce development planning and operations from restrictions on expenditures, program reporting, and accountability requirements that are focused primarily on the skill development of individual participants. It also should explore statutory changes similar to the one in P.L. 102-477 that enables tribal nations participating in that initiative to spend a portion of their funds on economic development, broadly defined by the nations themselves.

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 long 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.

For additional information, please contact Ian Record, Partnership for Tribal Governance Director, irecord@ncai.org.

APPROPRIATIONS

Tribal programs funded in the federal budget will face increased pressure due to expected reductions to federal spending overall. Indian Country must continue to educate members of Congress that tribes are governments as well as the importance of the federal trust responsibility and treaty obligations.

Many tribes have made much progress in the self-determination era: measures of income, education, entrepreneurship, and physical infrastructure have all improved. Tribal programs and economies, however, are still recovering from the recession and the Budget Control Act cuts. Fulfilling the federal trust responsibility is essential to realizing the economic potential of Indian Country. Federal and tribal governments have important responsibilities, including crafting broad public investment portfolios. Public investment is spending that provides benefits in the future and can fund core infrastructure, such as new highways or fund non-core investments, such as better-educated children. Tribes currently face decades of underinvestment in physical infrastructure as well as ongoing disparities in public and social services. Too often throughout Indian Country, physical and human capital goes underutilized. When underutilized tribal land, infrastructure, and other capital are put to better use, such development adds to gross state product. While the federal treaty and trust relationship calls for federal funding of education, healthcare, and other government services, upholding Indian treaty and trust obligations is also an important component of tribal and surrounding regional economies.

FISCAL YEAR 2018 APPROPRIATIONS

Appropriations Timeline and Expected Proposals

The federal government is operating on a stopgap funding measure (PL 114-254) that will expire on April 28. The Administration's budget request for FY 2018 was due by statute on Monday, February 6, but new Administrations usually miss this deadline, including for this budget cycle. The full Administration budget proposal may not be released until April or May. The House and Senate Appropriations committees have not scheduled any budget hearings, a process which usually begins around mid-February. The lack of an overall budget framework will likely delay the FY 2018 appropriations process.

A report by *The Hill* claimed the Administration was preparing to push for \$10.5 trillion in spending reductions over a decade. Such a plan would require deep cuts to entitlements, since annual reductions of about \$1 trillion from discretionary spending alone would be impossible. The total federal budget is \$4 trillion and discretionary spending is a little more than \$1 trillion. Many of the cuts in the Administration's blueprint are reported to come from plans that the Heritage Foundation and the Republican Study Committee (RSC) that were issued last year. The Heritage plan proposed eliminating or significantly altering the following programs of significance to Indian Country

Programs proposed for elimination

- Head Start
- DOJ COPS
- Office on Violence Against Women, VAWA Grants
- Privatizing Corporation for Public Broadcasting

Huge Changes to Entitlement Programs

- Cap on all Means Tested Welfare Programs
- SNAP, Housing and Social Services

- Medicare into premium-support
- Raising Social Security retirement age
- Medicaid

The “Penny Plan” that was supported by the Trump campaign as well as the nominee for OMB director would reduce non-defense discretionary funding by 2026 to an amount that is 37 percent below the 2010 level, adjusted for inflation.

Tribal Advocacy and Meetings Related to Appropriations

- NCAI released its annual Indian Country budget document at the *State of Indian Nations*
The Tribal Interior Budget Council will hold an emergency strategy meeting on February 16, 2017, at the Capital Hilton
- Refer to the FY 2018 Indian Country Budget Request, “Investing in Indian Country for a Stronger America,” for specific funding recommendations to share with your members of Congress.

For additional information please contact Amber Ebarb, Budget/Policy Analyst and PRC Program Manager, at 202.466.7767 or aebarb@ncai.org

INTERNATIONAL ISSUES

For many years NCAI has engaged in discussions at the international level when important policy decisions are under discussion that impact tribal interests, including at the United Nations (UN) and the Organization of American States (OAS). NCAI holds ECOSOC consultative status with the UN, 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 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 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 in 2007 and the American Declaration on the Rights of Indigenous Peoples in 2016.

FOLLOW-UP to the 2014 WORLD CONFERENCE ON INDIGENOUS PEOPLES

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

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

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

During the opening session of the WCIP, the UN General Assembly adopted an Outcome Document that provides for concrete and action-oriented measures to implement and achieve the objectives of the United Nations Declaration on the Rights of Indigenous Peoples. While we did not get everything we were asking for, the Outcome Document does address all 4 of our priorities in one form or another. Over the past two years, there has been a great deal of follow-up work to the WCIP and NCAI, in partnership with the Native American Rights Fund, has been fully engaged in continuing to advocate with various UN bodies for meaningful action on our four priorities. We anticipate further engagement on our four priorities as follows.

Creating an Implementing and Monitoring Body for the UN Declaration. The UN Human Rights Council adopted a resolution at its Sept. 2016 session that will reform the mandate of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) to give it greater capacity, autonomy, and resources to press for implementation of the UNDRIP. The reformed mandate will significantly change the way that EMRIP will function. Its main tasks will be to assist states to meet the standards of the UNDRIP, facilitate dialogue between states and Indigenous Peoples, take in information about violations of indigenous rights, and provide technical advice to states and Indigenous Peoples. The membership of the EMRIP will be expanded from 5 to 7 persons to make it a more representative body and the annual meeting time will be expanded with an additional 5 working days. These changes are expected to take effect within the next year.

Enabling Indigenous Governments to take their Rightful Place in the UN. On December 23, 2015, the UN General Assembly adopted the report and resolution of its Third Committee regarding the rights of indigenous peoples. In the resolution, the General Assembly requested that the President of the 70th Session of the General Assembly to

convene consultations on the issue of indigenous government participation in the UN. The President of the General Assembly appointed four advisors, two from member states and two representing Indigenous peoples, to assist him with the consultation process. In May, the Office of the President of the UN General Assembly conducted two consultations in New York with member states and indigenous peoples on how to enable the participation of indigenous peoples' representatives and institutions (governments) at the United Nations. Additional consultations took place in June. Following the consultations, the four Advisors prepared a compilation text taking into account all of the views presented. The Advisors also prepared an addendum with recommendations for further discussion. The compilation text and addendum were presented to the member states and indigenous peoples at the EMRIP session in July.

When the 71st Session of the General Assembly began in September 2016, the new President of the UN General Assembly reappointed the four Advisors to continue their work with the goal of developing a resolution that establishes the process for enhanced participation by indigenous governing institutions during the 71st session of the General Assembly, which ends in September 2017. A meeting of indigenous representatives and the four Advisors took place Nov. 11-12 in Bangkok, Thailand. Consultations with member states and indigenous peoples took place December 14-15 and January 30-February 1, 2017 in New York. Additional consultations are expected to take place the week of February 28, and at the UN Permanent Forum on Indigenous Issues in 2017. These consultations are focused on how indigenous peoples representative institutions should be identified for enhanced participation at the UN and what those entities should be able to do within the UN system. NCAI will continue to advocate for an appropriate mechanism for tribal governments to participate at the United Nations.

Ending Violence Against Indigenous Women. In March of 2017, the Commission on the Status of Women will hold its annual convening. The agenda includes the "Empowerment of Indigenous Women" as a focus area. NCAI is joining with several partners to recommend speakers for the event and to host a side event focused on violence against indigenous women.

Climate Change. 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. In preparation for Paris, regional consultations of indigenous peoples took place in all seven regions of the world, including at NCAI's annual conference. While the indigenous caucus did not get everything it was seeking in the agreement, the advocacy of indigenous leaders was crucial for securing language concerning indigenous issues in the Agreement itself and the Decision adopting it. The Paris Agreement references to human rights, including indigenous peoples rights, gender equality, just transition and food security, will only have an impact on climate policies if they are further integrated into the modalities for the implementation of the Paris Agreement. While many countries remain open to the idea of operationalizing these principles, very few delegations appeared to have considered the relevance of human rights to the Ad Hoc Working Group on the Paris Agreement (APA) negotiations. NCAI and NARF recently participated in the first meeting focused on implementation of the Paris agreement and ongoing advocacy will be critical.

Intellectual property and traditional knowledge. The World Intellectual Property Organization (WIPO) is currently negotiating an international treaty that will create new binding international law relating to intellectual property that could provide effective protection of traditional knowledge, genetic resources, and traditional cultural expressions, including those of Indigenous Peoples. Recognizing that it is essential that tribal leaders and their experts participate in these conversations, NCAI and NARF recently made the decision to engage in the negotiations going forward. In addition to attending the negotiations, we are hosting an education and strategy

session on these issues for tribal leaders on February 15, 2017 in conjunction with NCAI's Winter Session meeting.

For additional information please contact Virginia Davis, Senior Policy Advisor, vdavis@ncai.org.

WHITE HOUSE UPDATE

On January 20, 2017, Donald J Trump was sworn in as the 45th President of the United States. In the few weeks since President Trump took office, he has nominated his Cabinet Secretaries and has signed a number of Executive Orders, several of which will impact Indian Country.

Confirmations of President Trump's Cabinet. The first days of every President's Administration includes nominations of Cabinet Members to lead the federal agencies. As outlined in the Constitution, the US Senate advises and consents on a President's Cabinet, requiring a confirmation hearing and vote before being confirmed. As of February 8th, seven of President Trump's nominees have been confirmed by the Senate including: Jeff Sessions for Attorney General, Rex Tillerson for Secretary of State, General James Mattis for Secretary of Defense, Elaine Chao for Secretary of Transportation, Betsy DeVos for Secretary of Education, John Kelly for Secretary of Homeland Security and Nikki Haley as UN Ambassador. Education Secretary Betsy DeVos was confirmed by a 51-50 vote, requiring Vice President Pence to cast the tie breaking vote as President of the Senate. This was the first time in history that a Vice President has had to break a tie on a nomination.

During the week of February 13-17, confirmation votes are expected for the following nominees: Ryan Zinke for Secretary of Interior, Rick Perry for Energy Secretary and Ben Carson for Secretary of Housing and Urban Development.

NCAI sent letters of support to the Trump Administration and the Senate Energy and Natural Resource Committee for the nomination of Ryan Zinke as Secretary of Interior. As a Congressman, Representative Zinke was an advocate for tribes in his at-large district of Montana. During his Confirmation hearing, he fielded questions about Tribal Sovereignty well.

As of February 8th, the Senate still is yet to confirm 13 of President Trump's Cabinet-level nominees. Cabinet members awaiting confirmation are: Steve Mnuchin for Secretary of the Treasury, Ryan Zinke for Secretary of Interior, Sonny Perdue as Secretary of Agriculture, Wilbur Ross as Secretary of Commerce, Andrew Puzder for Secretary of Labor, Tom Price for Secretary of Health and Human Services, Ben Carson for Secretary of Housing and Urban Development, Rick Perry for Secretary of Energy, David Shulkin for Secretary of Veterans Affairs, Scott Pruitt for Administrator of the Environmental Protection Agency, Mick Mulvaney for Director of the Office of Management and Budget, Linda McMahon for Administrator of the Small Business Administration and Robert Lighthizer for US Trade Representative.

Executive Orders:

Federal Government Hiring Freeze. On January 22, 2017, President Trump signed an Executive Order (EO) on a federal hiring freeze. This memorandum creates a hiring freeze of all Federal civilian employees applied across the executive branch. No vacant positions existing since noon on January 22 may be filled and no new positions created. NCAI wrote President Trump requesting clarification on whether the hiring freeze applies to governmental functions that are carried out by the federal government on behalf of Indian tribes. NCAI asked for clarification on how the freeze would impact programs like BIA criminal investigations, and police, BIE schools and IHS hires. NCAI will continue to make sure that the Federal Government hiring freeze has limited negative effects on Indian Country.

H.R. 981 – Indian Health Service hiring Freeze Exemption Act. On February 8th Rep. Norma J. Torres (D-CA)

and Rep. Tom Cole (R-OK) introduced the Indian Health Service Hiring Freeze Exemption Act a bill that would exempt the Indian Health Service from President Trump's federal employee hiring freeze. The IHS Hiring Freeze Exemption Act simply directs the administration to exempt the IHS from the federal employee hiring freeze in a similar manner to military personnel. With over 1,550 vacancies for medical professionals across the IHS system, failure to provide this exemption would limit IHS's ability to meet the needs of individuals in some of the most remote and rural communities around the nation.

Native American Caucus Led Letter to President Trump. On February 8th, Congresswoman McCollum and Congressman Cole, co-chairs of the Native American Caucus led a bipartisan effort to request that President Trump exempt programs for Native Americans from the hiring freeze.

Citing the unique trust and treaty obligations of the United States to American Indians and Alaska Natives, the letter requested an exemption from the federal hiring freeze for the Indian Health Service, the Bureau of Indian Affairs, and other agencies that serve the needs of Native American communities. The letter was signed by 24 members of the House of Representatives.

Affordable Care Act. President Trump signed Executive Orders in January, setting up the first Executive steps in repealing President Obama's healthcare policy. The Executive Orders directed agencies to waive, defer, grant exemptions from, or delay implementation of provisions that place a fiscal burden on states or impose a cost, fee, tax, penalty, or regulatory burden on stakeholders. The order did not outline any specific next steps, though President Trump and Congressional Leaders repeatedly have addressed plans to repeal and replace the ACA.

Dakota Access Pipeline Memorandum On January 24th, President Trump signed an Executive Memorandum directing the Secretary of the Army, Assistant Secretary of the Army for Civil Works, and the US Army Corps of Engineers to take all actions necessary for a Pipeline Approval Review. This memorandum states that "review and approve in an expedited manner, to the extent permitted by law and as warranted, to construct and operate the DAPL including easement or rights-of-ways to cross Federal areas under section 28 of the Mineral Leasing Act, permits or approvals under the Clean Water Act, permits or approvals under the Rivers and Harbors Act and other federal approvals that are necessary. On February 8th, The Army Corps of Engineers provided notice to Congress that it intends to issue the easement for the Dakota Access Pipeline, and to terminate its study of alternative routes and effects on tribal treaty rights. Next steps will include litigation to uphold tribal rights. NCAI will continue to advocate for the treaty rights of the Standing Rock Sioux Tribe and all the Missouri River Tribal Nations on this issue.

For additional information please contact Denise Desiderio, Policy Director at 202.466.7767 or ddesiderio@ncai.org.



National
Congress of
American
Indians

Embassy of Tribal Nations
1516 P Street NW
Washington, DC 20005