National Congress of American Indians

Policy Update

2019 Annual Convention & Marketplace

Albuquerque, NM
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The first session of the 116th Congress is nearing its end, and the FY 2020 budget process remains a central feature of activity on Capitol Hill. Congress and the Administration finally reached an agreement on spending levels in August. However, the delay in enacting the budget deal set back progress on passing appropriations legislation. To avoid a second shutdown in 2019, Congress and the Administration agreed to a continuing resolution that will fund the government through November 21, 2019. Despite this time extension, issues like immigration, gun control, and the impeachment inquiry will complicate negotiations between the House, Senate, and White House. This ongoing uncertainty in the federal budget process emphasizes the need to authorize advance appropriations for federal programs serving Indian Country. NCAI is working with tribal nations and partners to advance legislation that would secure advance appropriations for the Indian Health Service and Bureau of Indian Affairs.

The Senate has begun its work on the Violence Against Women Act (VAWA) reauthorization and has focused on producing its own legislation rather than considering the House passed bill. Senate Republicans have circulated a discussion draft that recognizes the need to expand the tribal jurisdiction provisions in VAWA 2013 by including crimes against children and law enforcement and sexual violence, stalking, and trafficking. However, the proposal also includes provisions similar to those rejected in 2013 that impose requirements on tribal courts that do not apply to other courts. NCAI continues to engage with Congress to produce VAWA legislation that supports tribal sovereign rights to protect tribal citizens and communities. NCAI is also advocating to advance many other tribal priorities. During Tribal Unity Impact Days, NCAI, tribal leaders, and partners urged the Senate to finally pass legislation to fix the Carcieri case; urged the House to pass several Senate bills that would promote tribal economic development, alleviate homelessness among Native veterans, preserve and strengthen Native languages, and improve the Self-Governance program at the Department of the Interior; and called on Congress to include strong tribal provisions in the next surface transportation reauthorization.

With respect to nominations, Indian Country still awaits a Senate-confirmed Director of the Indian Health Service. In July, the Senate Committee on Indian Affairs considered and voted in favor of the nomination of E. Sequoyah Simermeyer to be the next Chairman of the National Indian Gaming Commission. His nomination now must be considered by the full Senate.

Indian Country has been actively engaging the Administration on several major priorities. In FY 2019, Congress again tasked the Department of Justice (DOJ) with administering the tribal set-aside from the Crime Victims Fund. NCAI urged DOJ to ensure that all of the funding set-aside for tribal nations is distributed to Indian Country this year, and we understand that DOJ obligated all of the funds appropriated for FY 2019. NCAI is also working with tribal nations to secure a commitment from the Administration to amend the memorandum of agreement that implements the Indian Employment, Training and Related Service Consolidation Act of 2017, which falls far short of the intent of the Act.

Although the 2020 elections are still more than a year away, events like the Frank LaMere Native American Presidential Forum and efforts across Indian Country to engage with candidates are building momentum and emphasize the importance of the Native vote.

At NCAI, we are committed to advocating on behalf of Indian Country to ensure tribal voices are heard at the national level, and we are humbled by and appreciative of your partnership and support.
Agriculture and nutrition play a major role in the economies and workforces of tribal communities. 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. U.S. Department of Agriculture (USDA) programs play an important role in Indian Country because agriculture has a large footprint in tribal communities and more than 35 percent of American Indian and Alaska Native (AI/AN) peoples live in rural communities.

In addition to agriculture, the importance of nutrition assistance cannot be overstated. Presently, 24 percent of AI/AN households receive Supplemental Nutrition Assistance Program (SNAP) benefits, 276 tribal nations administer the Food Distribution Program on Indian Reservations (FDPIR), 68 percent of AI/AN children qualify for free and reduced lunches, and AI/ANs make up more than 12 percent of the participants in the special supplemental nutrition program for Women, Infants, and Children (WIC). The sections below provide an update on legislative and administrative actions that critically impact Indian Country within the agriculture and nutrition sectors, notably implementation of the 2018 Farm Bill.

**FARM BILL**

On December 20, 2018, the Agriculture Improvement Act of 2018 (2018 Farm Bill) became law. The 2018 Farm Bill includes many strong provisions for Indian Country that will provide tremendous opportunities for tribal nations to enhance their agricultural programs, as well as their economies, workforces, and public health. NCAI continues to work with our partners, such as the Native Farm Bill Coalition, to ensure the 2018 Farm Bill is effectively implemented across Indian Country.

**Legislative Update**

**638 Food Distribution Program on Indian Reservations (FDPIR) Appropriations:** The 2018 Farm Bill included FDPIR provisions that make administrative improvements for carryover and match funding, authorize P.L. 93-638 FDPIR tribal self-determination demonstration projects, and incorporate local foods in distribution programs. These provisions allow tribal nations two-year carryover funding and require the USDA to match 80 percent of FDPIR costs while providing a waiver for tribal nations that are unable to provide matching funds.

The 2018 Farm Bill authorized $5 million for the new 638 FDPIR authority to promote tribal sovereignty and enhanced flexibility. However, the House Committee on Appropriations provided only $3 million for 638 FDPIR demonstration projects in H.R. 3164, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies spending bill for FY 2020. H.R. 3164 was packaged into H.R. 3055, a minibus appropriations bill for Commerce, Justice, Agriculture, Interior, Veterans Affairs, Transportation, and Housing and Urban Development, and Energy, and passed the House on June 25, 2019. On September 17, 2019, the Senate Committee on Appropriations Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies had a markup hearing on its spending bill, S. 2522. NCAI will continue to work with our partners to advocate for appropriations for the full $5 million authorization in the final FY 2020 Agriculture appropriations bill, as well as ensuring tribal nations are consulted as USDA designs and implements the 638 FDPIR program across Indian Country.
Administrative Update

**USDA Notice Clarifying Hemp Production for Tribal Nations:** The 2018 Farm Bill authorized the production of industrial hemp and included tribal nations in this authorization. Presently, USDA has not published regulations necessary for the implementation of the new production provisions. Therefore, tribal nations wishing to produce hemp cannot do so until after the regulations are published, unless they were authorized to do so in the 2014 Farm Bill. Tribal leaders have expressed great concern with USDA’s delay as their production efforts must be postponed, effectively restricting market access for tribally-produced hemp and leaving tribal nations behind other producers not limited by USDA’s position.

On May 28, 2019, USDA issued a notice clarifying avenues for tribal participation in hemp production pursuant to authorities in the 2014 Farm Bill. The 2014 Farm Bill allows tribal nations to enter into partnerships or contracts with higher education institutions or a state department of agriculture to grow hemp for research purposes. USDA maintains its position that tribal nations cannot begin hemp production without such a partnership or contract until it publishes its regulations implementing the hemp provisions authorized in the 2018 Farm Bill. NCAI will continue to engage with tribal leaders and USDA on this issue as the regulations are promulgated and implemented.

**USDA Tribal Consultation:** On May 1-2, 2019, USDA hosted a listening session in Washington, D.C. for tribal leaders to engage with various USDA officials, including Secretary Sonny Perdue. Discussion included hemp production regulations, the incorporation of traditional foods, the new USDA tribal advisory committee, 638 FDPIR implementation, and systemic concerns in dealing with USDA in Indian Country. As part of the consultation, USDA hosted a half-day listening session on hemp to provide tribal leaders with additional information and an update on the status of its development of regulations governing the 2018 Farm Bill production authority. NCAI attended the consultation and listening session to remain engaged in the conversation and to ensure tribal input is considered as USDA continues its work to implement the 2018 Farm Bill.

On June 10, 2019, USDA hosted a FDPIR Tribal Leader Work Group consultation in Choctaw, Mississippi. Topics included Farm Bill updates, contingency plan development, Integrated Food Management (IFMS) Automated Inventory System (AIS) updates, Food and Nutrition Services (FNS) Re-Alignment of Regions, and prior work group agenda items.

On June 26 and 27, 2019 at NCAI’s Midyear Convention in Reno, Nevada, USDA hosted a tribal consultation and listening session on the 2018 Farm Bill implementation. Topics included farm production, conservation, risk management, nutrition, rural development, research, extension, forestry, and horticulture.

**SNAP Proposed Rulemaking:** The USDA’s Food and Nutrition Service (FNS) published a proposed rule that modifies standards for waivers that allow able-bodied adults without dependents (ABAWD) to receive SNAP benefits for more than three months in a 36-month period regardless of their work status. The proposed rule encourages broader application of the statutory ABAWD work requirements. FNS also proposes ending unlimited carryover of ABAWD exemptions, which can be used by states to extend SNAP eligibility of ABAWDs subject to the time limit as provided by the Food and Nutrition Act of 2008. The proposed rule would limit the number of exemptions available to states each year.
On April 2, NCAI submitted comments in opposition to the proposed rule that addressed the following issues:

1. Congress was clear in its intent when it chose not to expand the scope of current SNAP work requirements during its consideration of the recently enacted 2018 Farm Bill;
2. USDA fell short of its federal trust responsibilities by failing to engage in meaningful consultation with tribal nations;
3. the proposed rule will undermine the delivery and effectiveness of FDPIR in Indian Country;
4. limiting the number of waivers available to states will negatively impact tribal communities; and
5. economic arguments used to justify the proposed rule do not accurately reflect conditions in Indian Country.

In addition to ABAWD, on July 25, 2019 FNS published a proposed rule to revise SNAP categorical eligibility. The proposed rule aims to restrict SNAP enrollment by reviewing the income and assets of all Temporary Assistance for Needy Families (TANF) recipients and removes those that do not meet general SNAP eligibility parameters. NCAI, the National Indian Health Board, and the National Council of Urban Indian Health submitted comments in opposition to the proposed rule that addressed the following issues:

1. USDA did not engage in meaningful consultation with tribal nations;
2. the proposed rule will undermine the effectiveness and delivery of FDPIR in Indian Country; and
3. the proposed rule will negatively impact tribal TANF programs.
Like all other governments, tribal nations strive to build strong economies and ensure the health and wellbeing of their citizens and all those who reside in their communities. Tribal nations provide a range of governmental services that include education, law enforcement, judicial systems, healthcare, environmental protection, natural resource management, and basic infrastructure such as housing, roads, bridges, sewers, public buildings, telecommunications, broadband and electrical services, and solid waste treatment and disposal. Tribal nations are assuming ever greater levels of governmental responsibility to meet their citizens’ needs in culturally appropriate ways, but receive inadequate federal funding for roads, schools, police, and other public services.

Tribal nations seek only those things promised to them and their citizens by the treaties and agreements reached between tribal nations and the United States. When tribal nations ceded millions of acres of land to the United States, the federal government promised to safeguard their right to govern themselves and to provide tribal nations adequate resources to deliver essential services effectively. These obligations are the foundation of the government-to-government relationship that exists between tribal nations and the United States. NCAI calls on Congress and the Administration to uphold these responsibilities to Indian Country by providing significant increases for programs serving tribal nations.

Partial Government Shutdown & FY 2019 Spending Deal: Earlier this year, lawmakers passed a $333 billion, seven-bill appropriations conference report, averting a second partial government shutdown. In addition to the Homeland Security bill, the measure included the Agriculture, Commerce-Justice-Science, Financial Services, Interior-Environment, State-Foreign Operations, and Transportation-HUD spending bills. These agencies operated under a Continuing Resolution (CR) following the end of the 35-day partial government shutdown. Overall, the measure rejects the large cuts proposed by the Administration, adding $54 billion, or 24 percent, to the President’s requests for all of the bills in the package other than Homeland Security. The bill text is similar to the six-bill package (H.R. 648) the House released and approved in January 2019. The Congressional Budget Office (CBO) estimates that the shutdown caused diminished economic activity mainly due to the loss of furloughed federal workers’ contribution to GDP, the delay in federal spending, and the reduction in aggregate demand. The CBO reports that the shutdown’s effects on the economy include significant effects on businesses and workers. The largest and most direct negative effects were felt by federal workers who faced delayed pay and private-sector entities that lost business. Many of these businesses will never recover that lost income.

Advance Appropriations for Budget Certainty: Tribal nations face significant challenges from uncertainty in the federal budget process. The 2019 government shutdown is the most recent example. However, short-term continuing resolutions also cause uncertainty in program administration and make planning more difficult. Congress must prevent political impasses from jeopardizing the provision of adequate, quality services in tribal communities – such as healthcare, law enforcement, and child welfare – by passing legislation authorizing advance appropriations for the Indian Health Service (IHS) and Bureau of Indian Affairs (BIA). NCAI has testified at several hearings during 2019 on budget issues. In addition to advocating for Congress and the Administration to uphold its treaty and trust obligations by providing full funding for tribal programs, NCAI has stressed that federal budget uncertainty has significant impacts in Indian Country and that Congress must pass legislation authorizing advance appropriations to address the issue.
**Broken Promises Report:** In 2003, the U.S. Commission on Civil Rights issued its report, “A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country.” The A Quiet Crisis report found that funding for programs serving Indian Country were “disproportionately lower than funding for services to other populations.” In May 2015, a bipartisan group of 20 House members sent a letter to the U.S. Commission on Civil Rights requesting an update to the 2003 A Quiet Crisis report. In the letter, House members highlighted several ongoing funding concerns that contribute to the crisis throughout Indian Country and requested the updated report “to help ensure that the federal government is making progress in fulfilling its trust and treaty responsibilities.” In December 2018, the U.S. Commission on Civil Rights released its report titled, “Broken Promises: Continuing Federal Funding Shortfall for Native Americans.” The Broken Promises report found that in the past 15 years, efforts undertaken by the federal government have resulted in only minor improvements across Indian Country. Additionally, the report noted that federal programs serving Indian Country continue to be underfunded and, in some ways, federal initiatives for Native Americans have regressed. Congress and the Administration must uphold the treaty and trust obligations to tribal nations through the federal budget process. The Broken Promises report provides a series of recommendations to make good on these promises to Indian Country. A key recommendation in the report is that Congress should pass a spending package to address all unmet needs, focusing immediately on the most critical items like core infrastructure. NCAI has urged Congress and the Administration to give the report’s recommendations serious consideration as they consider funding levels in FY 2020 and beyond.

**Legislative Update**

**NCAI Provides Testimony on Advance Appropriations to House Natural Resources Committee:** On September 25, 2019, NCAI 1st Vice President, Dr. Aaron Payment, Chairperson of the Sault Ste. Marie Tribe of Chippewa Indians, provided testimony to the House Natural Resources Committee, Subcommittee for Indigenous Peoples of the United States in favor of advance appropriations for the Bureau of Indian Affairs (BIA) and Indian Health Service (IHS). Following the 2019 government shutdown, NCAI adopted Resolution ECWS-19-001, “Support for Advance Appropriations for Bureau of Indian Affairs and Indian Health Service,” during its 2019 Executive Council Winter Session. This resolution expands on NCAI Resolution ANC-14-007, “Advance Appropriations for the Indian Health Service,” which calls for advance appropriations for IHS.

**Continuing Appropriations Act, 2020, and Health Extenders Act of 2019 – H.R. 4378:** On September 18, 2019, Representative Nita Lowey (D-NY) introduced the Continuing Appropriations Act, 2020, and Health Extenders Act of 2019. H.R. 4378 passed the House on September 19, 2019, and passed the Senate on September 26, 2019. The next day, the President signed H.R. 4378, which became Public Law 116-59. The Continuing Appropriations Act, 2020, and Health Extenders Act of 2019 provides Fiscal Year (FY) funding to federal agencies through November 21, 2019. Funds appropriated under the Continuing Resolution (CR) are mostly at FY 2019 levels with some exceptions. The CR extends through November 21, 2019 certain programs that were set to expire at the end of FY 2019, including the Special Diabetes Program for Indians, the Temporary Assistance for Needy Families program (TANF), and other related programs authorized by Part A of Title IV and Section 1108(b) of the Social Security Act.

**Bipartisan Budget Act of 2019 – H.R. 3877:** On July 23, 2019, Representative John Yarmuth (D-KY) introduced the Bipartisan Budget Act of 2019. H.R. 3877 passed the House on July 25, 2019, and passed the Senate on August 1, 2019. The next day, the President signed H.R. 3877, which became Public Law
The Bipartisan Budget Act of 2019 is a two-year budget deal that eliminated $126 million in spending cuts and suspends the debt ceiling through July 2021. The federal government debt ceiling is the limit on the amount of debt the federal government can accrue. The Bipartisan Budget Act of 2019 increases federal government spending by $320 billion, as compared to the budget caps that were in effect for FY 2020 prior to the budget deal’s passage.

**Indian Programs Advance Appropriations Act – S. 229 & H.R. 1128:** On January 25, 2019, Senator Tom Udall (D-NM) introduced S. 229, the Indian Programs Advance Appropriations Act. S. 229 would provide advance appropriations authority for the Indian Health Service and certain accounts at the Bureau of Indian Affairs. S. 229 was referred to the Senate Committee on the Budget. On February 8, 2019, Representative Betty McCollum introduced H.R. 1128 as identical companion legislation. H.R. 1128 was referred to the House Budget Committee, the Natural Resources Committee, and Energy and Commerce Committee. Consistent with NCAI Resolution #ECWS-19-001, “Support for Advance Appropriations for the Bureau of Indian Affairs and Indian Health Service,” NCAI urges Congress to pass this legislation to ensure that services like healthcare, law enforcement, and child welfare programming are not impacted by government shutdowns or short-term continuing resolutions.

**Indian Health Service Advance Appropriations Act of 2019 – S. 2541 & H.R. 1135:** On February 8, 2019, Representative Don Young (R-AK) introduced the Indian Health Service Advance Appropriations Act of 2019. H.R. 1135 would provide advance appropriations for Indian Health Services and Indian Health Facilities accounts. On September 24, 2019, Senator Lisa Murkowski (R-AK) introduced S. 2541, the Indian Health Service Advance Appropriations Act of 2019. S. 2541 would authorize advance appropriations for Indian Health Services, Indian Health Facilities, and Contract Support Costs. H.R. 1135 was referred to the House Budget Committee, Natural Resources Committee, and Energy and Commerce Committee. S. 2541 was referred to the Senate Committee on Indian Affairs. NCAI has standing resolutions supporting this legislation, Resolution #ECWS-19-001, “Support for Advance Appropriations for the Bureau of Indian Affairs and Indian Health Service,” and Resolution #ANC-14-007, “Advance Appropriations for the Indian Health Service.”

**Pay Our Doctors Act of 2019 – H.R. 195:** On January 3, 2019, Congressman Markwayne Mullin (R-OK) introduced the Pay Our Doctors Act of 2019. H.R. 195 would provide funding at the FY 2018 level for IHS in the absence of a continuing resolution from Congress funding the government. This would ensure IHS’s ability to provide care, pay contracts for Self-Governance tribal nations, offer technical assistance, and conduct normal activities for the duration of a shutdown. H.R. 195 was referred to the House Committee on Appropriations.

**FY 2020 Appropriations Update:** On August 2, 2019, P.L. 116-37, the Bipartisan Budget Act of 2019 set spending caps for FY 2020. Prior to the budget deal, the House passed ten of its 12 appropriations bills. As a result, House appropriators will need to cut about $15 billion in spending from non-defense accounts and increase defense discretionary spending in their bills by $5 billion. This is significant because it will likely impact topline allocations for each spending bill and could mean that the Indian Country funding figures in House appropriations bills will be reduced. NCAI strongly urges the House to maintain the FY 2020 spending levels it passed earlier this year for Indian Country’s priorities.

The House Appropriations Committee reported its Interior-Environment spending bill, H.R. 3052, on June 3, 2019. H.R. 3052 was consolidated into H.R. 3055, which passed the House on June 25, 2019.
The Senate Appropriations Committee reported its Interior-Environment spending bill, S. 2580, on September 26, 2019. Both the House and Senate versions reject cuts proposed by the Administration for tribal programs, while accepting the Administration’s proposal of providing the Bureau of Indian Education its own budget. S. 2580 funds tribal programs at nearly $400 million less than H.R. 3055. However, the House may decrease some of its appropriated amounts for tribal programs as part of compliance with the budget deal. The following table reflects funding levels in H.R. 3055 and S. 2580.

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<th>H.R. 3055 (Dollars in Thousands)</th>
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NCAI has submitted extensive testimony to both House and Senate appropriations subcommittees, as well as the Senate Committee on Indian Affairs, and will continue to urge Congress and the Administration to uphold its treaty and trust obligations to tribal nations through the federal budget process.
The Census is a powerful information source that will significantly impact political representation and federal policy and funding over the next decade. It is a foundational tenet of American democracy, mandated in Article 1, Section 2 of the U.S. Constitution, and is central to our representative form of government. Census data plays a key role in the allocation of more than $800 billion in federal funding. This includes funding for tribal schools, education programs, healthcare programs, housing programs, water and sewage projects, roads construction and maintenance, and economic development projects, which are distributed on the basis of data collected by the U.S. Census Bureau. Failure to fully enumerate the American Indian and Alaska Native (AI/AN) population could result in devastating consequences, including reductions in access to federal and state services and resources.

**AI/ANs at Risk for Undercounts:** AI/ANs have been historically underrepresented in the Census, and in 2020, new methodologies for enumerating the U.S. population could put other groups at risk as well. The Census Bureau estimates that in the 2010 Census, AI/ANs living on reservations or in Native villages were undercounted by approximately 4.9 percent, more than double the undercount rate of the next closest population group. The net undercount for American Indians living on reservations was also very high in 1990, with an estimated 12.2 percent missed. A large proportion of AI/ANs in certain states live in hard-to-count (HTC) tracts, e.g., 78.6 percent in New Mexico, 68.1 percent in Arizona, 65.6 percent in Alaska, 52.4 percent in South Dakota, and 49.9 percent in Montana.

**Impacts of Undercounts in Indian Country:** Undercounting AI/ANs in the 2020 Census could lead to inefficient distribution of federal funding to tribal nations. Each tribal nation and community has unique healthcare, housing, education, and economic development needs. Many programs serving tribal nations are funded based entirely or in part on Census or Census-derived data, including the Indian Housing Block Grant Program, the Native American Employment and Training Program, and the Indian Health Service, which use Census data for planning and implementation of programs.

**NCAI Policy Research Center Message Testing:** To inform NCAI’s 2020 Census work, NCAI conducted message testing in 2018. The goals of the message testing were to:

- Assess current attitudes, barriers, and actions that will help overcome AI/AN barriers to participation in the 2020 Census;
- Identify behavioral opportunities and actions that will help overcome AI/AN barriers to participation in the 2020 Census;
- Test prior messages to determine their effectiveness in the current climate; and
- Develop a message testing strategy for NCAI’s 2020 Census public education and outreach campaign to inform our next phase of work as a national hub.

NCAI’s 2018 research identified a general lack of awareness about the benefits of Census participation as well as deeply rooted suspicion of anything government related as the major hurdles to overcome in encouraging AI/ANs to participate in the 2020 Census. Messaging that strikes a careful balance between honoring heritage, acknowledging personal capability, inspiring positive civic engagement, and calling out the direct impact that participation can have on supporting a brighter future is key to increasing participation. One of the most compelling messages was: “Census data is critical. By participating, we speak for the generations of Native people before us and for those yet to come. Census data can help
determine our Native communities’ needs for schools, housing, health care facilities and roads.” NCAI is incorporating the results of our research into the Indian Country Counts initiative.

**Citizenship Question:** In December 2017, the U.S. Department of Justice requested to add a question about citizenship to the 2020 Census, despite the Constitution requiring a count, regardless of citizenship or legal status, of all persons living in the United States on Census Day. The addition of a citizenship question on the 2020 Census could have negative impacts in Indian Country, such as increasing the disproportionate undercount of AI/ANs, especially those living in rural, low-income, geographically isolated, and/or linguistically isolated households. On June 27, 2019, the U.S. Supreme Court, in *Department of Commerce v. New York*, found that the Secretary of Commerce had provided an inadequate explanation in support of the citizenship question and remanded the case. The decision effectively temporarily blocked the addition of the citizenship question to the 2020 Census. In response, in July 2019 the Administration discontinued its efforts to add this question. NCAI will continue to oppose any attempted insertion of a citizenship question in the 2020 Census, as it could result in increased undercounts in tribal communities, and continues to urge Congress not to introduce language into the Commerce, Justice, and Science appropriations bill that would mandate a citizenship question.

**Differential Privacy and AI/AN Populations:** The Census Bureau is required by law to protect the confidentiality of data collected from the decennial census. Technological advances have made previous privacy protection methods obsolete. To address this privacy threat, the U.S. Census Bureau will implement a privacy strategy called “Differential Privacy.” While this method protects confidentiality, it also alters data. Because of this impact on the data, as well as the limited access to the most altered data tables, certain populations may be impacted, specifically AI/AN populations due to their small size. This lack of access and potentially inaccurate data may sharply impact tribal nations, as federal funding is sometimes distributed by formulas that rely on census data. The Census Bureau is currently conducting tribal consultation on these changes to the decennial census, and has asked for input on the types of data and tables used by tribal governments. Given the potential impacts to Indian Country, it is critical that tribal leaders have a voice in the upcoming policy decisions about the extent to which differential privacy will be implemented.
Across Indian Country, tribal nations are achieving economic progress. From creating tribal-owned enterprises to cultivating tribal citizen-owned businesses to preparing their people to take full advantage of expanding economic opportunities, tribal nations are building sustainable economies and revitalizing their communities. However, while many tribal nations are building strong economies, many other tribal nations still need the tools and resources necessary to follow suit. The policy overview below demonstrates how focused attention and targeted actions 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 and provide their citizens with job opportunities and a good quality of life.

**TAXATION AND FINANCE**

In December 2017, the Tax Cuts and Jobs Act was signed into law and did not include any tribal tax priorities. Congress and the Administration missed an important opportunity to recognize tribal nations’ rightful place alongside other governments and to incentivize increased investment in tribal economies and infrastructure.

Despite the passage of tax reform legislation, tribal governments are still left without many of the benefits, incentives, and protections provided by the Internal Revenue Code (Tax Code) to state and local governments. This inequity significantly handicaps tribal sovereign authority to generate and allocate government revenue for tribal programs independent of federal appropriations and does not encourage economic growth on tribal lands. For these reasons, Congress and the Administration must actively engage with tribal nations to develop federal tax policies that ensure tribal governments have the same opportunities as state and local governments to provide services to their own citizens.

**Tribal Tax Priorities**

*Provide Tax Parity to Tribal Governments:* Members of Congress and tribal nations have worked together to identify provisions in the Tax Code that treat tribal governments differently than state and local governments. Congress should fix these disparities in the following areas:

- **Tax-Exempt Bonds:** Unlike other governments, tribal nations can only use tax-exempt bond financing for “essential government functions,” oftentimes excluding tribal economic development activities even though state and local governments routinely use tax-exempt financing for similar development projects. This limitation on tribal nations greatly inhibits infrastructure deployment and economic growth.

- **Government Pension Plans:** Unlike other governments, tribal nations must have separate types of pension plans (government and private) based on an employee’s job activities. Tribal nations are the only governments that incur the monetary and compliance costs of maintaining two separate pension plans. To support economic development and workforce growth, tribal governments must be able to operate a single, comprehensive, government pension plan for all of their employees.

- **Tribal Foundations and Charities:** Charities funded or formed by tribal governments do not enjoy the same tax treatment as those funded or formed by state and local governments. This disparity makes it difficult for tribal nations to form charities and leverage tribal resources to raise charitable donations from outside donors.
• **Tribal Child Support Enforcement Agencies**: Like state agencies, tribal child support enforcement agencies should have access to federal parent locator services and the ability to garnish federal tax returns to enforce child support obligations that are past due.

• **Indian Adoption Tax Credit**: Families that adopt special needs children in tribal court are currently ineligible for tax benefits available to families that adopt special needs children in state court. Federal tax policy should treat tribal court orders the same as state court orders for purposes of classifying an adoptive child as “special needs.”

• **Excise Taxes**: Tribal governments are not treated the same as state and local governments for a variety of excise tax exemptions, which diverts resources from government services for tribal citizens. Tribal nations should be treated the same as states for purposes of exemption from federal excise taxes.

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

*Exempt Tribal Distributions for Tribal Youth*: Due to a flaw in the Tax Code, distributions from minors’ trust funds established by tribal governments are subject to taxation at the rate of a minor’s parents, resulting in an unintended disincentive to attend college. Correcting this will provide fairness to tribal youth and families receiving benefits from tribal funds.

*Simplify, Expand, and Make Permanent the Indian Employment Tax Credit*: Simplifying, expanding, and making permanent the Indian Employment Tax Credit will increase its deployment, thereby promoting economic growth and job creation in Indian Country.

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

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

**Legislative Update**

*Tax Fairness for Tribal Youth Act – H.R. 2810 & S.2079*: On May 16, 2019, Representative Gwen Moore (D-WI) introduced H.R. 2810, the Tax Fairness for Native Youth Act, and on July 10, 2019, Senator Lisa Murkowski (R-AK) introduced S. 2079 as a companion bill. These bills would amend the Tax Code to treat certain payments made by tribal governments as earned income for tribal youth. This would correct a flaw in the Tax Code that subjects distributions from minors’ trust funds established by tribal governments to taxation at the rate of a minor’s parents. This bill would correct the “Kiddie Tax” issue. H.R. 2810 was referred to the House Committee on Ways and Means and S. 2079 was referred to the Senate Committee on Finance.

*Tribal Tax and Investment Reform Act – H.R. 2484*: On May 2, 2019, Representative Ron Kind (D-WI)
introduced H.R. 2484, the Tribal Tax and Investment Reform Act. This bill would amend the Tax Code to address many disparities. The bill would repeal the essential government functions test and allow tribal nations to issue tax-exempt bonds on the same basis as states, allow tribal governments to operate a single pension plan for all their employees, enhance tax parity for tribal foundations and charities, provide tribal governments access to the Federal Parent Locator Service, and recognize tribal court determinations of “special needs” status for purposes of Adoption Tax Credits. H.R. 2484 has been referred to the House Committee on Ways and Means, and the House Committee on Education and Labor.

Making Permanent the Accelerated Depreciation Tax Credit – S. 1216: On April 11, 2019, Senator James Inhofe (R-OK) introduced S. 1216, a bill to amend the Tax Code to permanently extend the depreciation rules for property used predominantly within an Indian reservation. The bill would make the Accelerated Depreciation Tax Credit permanent, which expired in December 2017. S. 1216 has been referred to the Senate Committee on Finance.

Making Permanent the Indian Employment Credit – H.R. 2017: On April 1, 2019, Representative Tom O’Halleran (D-AZ) introduced H.R. 2017 to amend the Tax Code to make the Indian employment credit permanent. Presently, the Indian employment tax credit expired in December 2017. H.R. 2017 was referred to the House Committee on Ways and Means.

Tax Extender and Disaster Relief Act – S. 617 & Taxpayer Certainty and Disaster Tax Relief Act of 2019 – H.R. 3301: On February 28, Senator Chuck Grassley (R-IA) introduced S. 617, the Tax Extender and Disaster Relief Act of 2019 and on June 18, 2019 Representative Mike Thompson (D-CA) introduced H.R. 3301, Taxpayer Certainty and Disaster Tax Relief Act of 2019. Both bills would extend expired Indian Country tax credits but at different extension lengths. S. 617 would respectively extend the Indian Employment Credit, the Accelerated Depreciation for Business Property on Indian Reservations, and the Indian Coal Production Credit until 2019, while H.R. 3301 extends these credits until 2020. S. 617 has been placed on the Senate Legislative Calendar under General Orders, and H.R. 3301 has been referred to the House Committee on Ways and Means.

Tribal Adoption Parity Act – S. 305 & H.R. 2497: On January 31, Senator Amy Klobuchar (D-MN) introduced S. 305, the Tribal Adoption Parity Act. This bill would allow tribal governments to determine whether a child has special needs for the purposes of the adoption tax credit, enhancing parity between tribal governments and state governments. On May 2, Representative Derek Kilmer (D-WA) introduced companion legislation in the House of Representatives. S. 305 was referred to the Senate Committee on Finance, and H.R. 2497 was referred to the House Committee on Ways and Means.

Tribal Tax Priorities on Capitol Hill Post Tax Reform: NCAI membership has emphasized the importance of reforming federal tax policy for Indian Country by passing NCAI Resolution #MOH-17-011, “Equitable Treatment for Tribal Nations in Congressional Tax Reform,” at the 2017 Mid Year Conference in Connecticut. Despite ongoing efforts by tribal nations, NCAI, and partner organizations, Congress did not include these tribal tax priorities in the tax reform legislation that passed in December 2017. NCAI continues to work with tribal leaders, tribal organizations, and members of Congress to advocate for tribal tax parity, increased deployment of NMTCs and LIHTCs in Indian Country, reauthorization and enhancement of tribal tax extenders, and the inclusion of tribal nations in new programs. In the summer of 2019, NCAI President Jefferson Keel created the NCAI Task Force on Tax
and Finance to (1) facilitate Indian Country’s input on issues within the Treasury Tribal Advisory Committee’s purview; (2) organize tribal priorities on legislative tax policy; (3) facilitate solutions to dual taxation; and (4) share information regarding tribal-state tax agreements. This task force will have its inaugural meeting on October 20, 2019 during NCAI’s Annual Convention in Albuquerque, New Mexico.

Administrative Update

**TTAC Convening:** On June 5, 2019 and September 18, 2019, the U.S. Department of the Treasury (Treasury) held their first two meetings for the Treasury Tribal Advisory Committee (TTAC). TTAC was created by the Tribal General Welfare Exclusion Act of 2014 (P.L. 113-168) (TGWE). During these meetings, TTAC appointed co-chairs, adopted bylaws, discussed various federal income tax issues relating to tribal nations, and created three subcommittees to address (1) implementation of the TGWE; (2) dual taxation; and (3) pensions. In 2016, NCAI passed Resolution #SPO-16-045 calling on Treasury to set the initial meeting of TTAC to begin working to fully implement the TGWE. In accordance with this resolution, NCAI looks forward to engaging with TTAC and its work in ensuring that relevant programs and policies are efficient, accessible, and developed in consultation with tribal nations and their communities.

**Opportunity Zones:** Opportunity Zones were created through the Tax Cuts and Jobs Act of 2017 to encourage long-term investments in low-income communities across the United States. An Opportunity Zone is an economically-distressed area where new investments, under certain conditions, may be eligible for preferential tax treatment. On April 17, 2019, the Treasury Department issued a notice of proposed rulemaking that clarified proposed regulations and published guidance, as well as supported greater tribal inclusion for purposes of the tax incentive. The Treasury Department will have a telephonic tribal consultation on October 21, 2019 to seek feedback necessary to finalize tax regulations regarding investments in Opportunity Zones.

**IRS Reporting Requirements for Tribal Fines:** The Treasury Department has announced a tribal consultation on the potential impacts of new reporting requirements imposed by Section 6050X of the Tax Cuts and Jobs Act of 2017. Section 6050X requires governments to file an information return with the Internal Revenue Service that contains information about any court orders or agreements between the governmental entity and a taxpayer, regarding a fine, penalty, or other violation of law where the total amount paid or incurred by a taxpayer is $600 or more. The Treasury Department held a tribal consultation on September 12, 2019 to solicit feedback on the impact of this reporting requirements on tribal nations and to assess whether tribal nations are impliedly included within Section 6050X.

**Tribally Chartered Corporations:** While not codified in law, the Internal Revenue Service (IRS) recognizes that tribal nations are not subject to federal income taxation. Based on this recognition, IRS applies a test to assess whether a tribally chartered corporation is an “integral part” of a tribal nation and therefore eligible for the same federal income tax immunity. In September 2019, Treasury announced that it was holding one in-person and one telephonic consultation in October 2019 regarding the income tax treatment of corporations chartered under tribal law. According to Treasury, the need for this consultation arose because tribal nations have requested that the Treasury Department issue guidance to specifically address the income tax status of corporations wholly-owned by a tribal government and chartered under tribal law. In the 2013 National Taxpayer Advocate’s Annual Report to Congress, the lack of published guidance on this issue was cited as creating a burden for tribal nations in pursuing
economic opportunities. NCAI intends to submit comments, monitor any proposed action, and stay engaged on this critical issue impacting tribal economic development.

**Address the Harms of Dual Taxation in Indian Country:** NCAI continues to urge swift action to address dual taxation in Indian Country. State taxation of economic activities in Indian Country reduces tribal revenues necessary for tribal government services and infrastructure development, creates uncertainty for businesses on tribal lands, and suppresses economic activity that benefits tribal nations and surrounding communities. Statutory authority for the Indian Trader Regulations (25 U.S.C. § 262) is broad and authorizes flexibility for the Department of the Interior (DOI) to adopt new regulations that would meet the economic development and tax revenue needs of tribal governments in the 21st Century. We urge DOI to replace the current regulations in accordance with NCAI Resolution #DEN-18-018, “Urging the Department of the Interior to Restart its Process of Updating the ‘Licensed Indian Trader’ Regulations and to Seek Congressional Legislation Preventing State Dual Taxation of Indian Commerce and Energy Development.”

**TRIBAL LABOR SOVEREIGNTY ACT**
The National Labor Relations Act (NLRA) was enacted in 1935 to address growing upheavals in private industry. The NLRA regulates labor relations between employees and private employers. The Act was never designed to regulate government employment, and all governments were exempted from the Act, although the NLRA did not specifically delineate every type of exempted government (e.g., the District of Columbia or tribal nations). Over many years, the National Labor Relations Board (NLRB) consistently interpreted the government exemption to include the District of Columbia and tribal nations. But in 2004, the NLRB did an about-face and, without consulting tribal nations 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’ stated intention to exempt all governments. Overnight, tribal governments became the only governments to be subject to the NLRA. More than 90,000 other units of government, which employ over 21 million Americans, are not subject to the NLRA.

Tribal nations are sovereign governments. There is no good reason to treat tribal governments differently than other governments under the NLRA. Federal law should ensure tribal government employers have the same opportunities as all other governmental employers to regulate labor with their government workforces.

Despite years of advocacy and education by tribal leaders and NCAI, Congress failed during the 115th Congress to pass the Tribal Labor Sovereignty Act (TLSA), which provides tribal government employers the same exemption from the NLRA that all other government employers already enjoy. While a majority of the Senate voted in favor of TLSA, the tally fell short of the 60 votes needed to end debate. Although this result is very disappointing, we must continue to push Congress to pass TLSA. NCAI is committed to engaging in continued education and advocacy to pass this legislation.

On January 24, 2019, Senator Jerry Moran (R-KS) and Representative John Moolenaar (R-MI) reintroduced TLSA (S. 226 & H.R. 779) in the Senate and House of Representatives. The Senate Committee on Indian Affairs passed S. 226 at a business meeting on January 29, 2019, and the bill awaits further consideration by the full Senate. H.R. 779 has been referred to the House Committee on Education and Labor.
ENTREPRENEURSHIP AND ECONOMIC DEVELOPMENT

Tribal nations and Native entrepreneurs are building strong economies and investing in their communities by developing Native-owned businesses, providing tools and resources their people need to pursue economic opportunities, and implementing innovative approaches that are tailored to their unique needs. However, many barriers continue to undermine tribal nations’ abilities to improve their economies and promote tribal entrepreneurship. Inter-agency cooperation, enhanced tribal consultation, regulatory changes that incorporate tribal priorities, and increased access to capital and entrepreneurial support resources are crucial to ensuring such barriers are addressed in Indian Country.

Legislative Update

In the 115th Congress, there were several tribal economic development bills that provided opportunities for tribal nations and Native entrepreneurs to invest in their communities. Unfortunately, these bills did not pass the House despite passing the Senate. So far, four bills have been re-introduced in both chambers and again passed the Senate. In accordance with NCAI resolutions #MOH-17-049, “Calling for Enactment of the Indian Community Economic Enhancement Act,” and #MKE-17-023, “Calling for Enactment of the Native American Business Incubators Program Act,” NCAI continues to urge Congress to pass the following bills that would increase opportunities for tribal nations to grow their economies.

The Indian Community Economic Enhancement Act – S. 212 & H.R. 1937: On January 24, 2019, Senator John Hoeven (R-ND) introduced the Indian Community Economic Enhancement Act (S. 212), which promotes tribal economic development by amending the Buy Indian Act; the Native American Programs Act of 1974; and the Native American Business Development, Trade Promotion, and Tourism Act of 2000. These long-sought programmatic changes would elevate the Office of Native American Business Development to the Office of the Secretary of Commerce, expand the Buy Indian Act, and reauthorize and expand economic development initiatives. The bill also would require interagency cooperation to promote private investment in Indian Country and update securities regulations to provide tribal nations market access for debt and equity securities. On June 27, 2019, the Senate passed S. 212 with an amendment and the bill was referred to the House Natural Resources Subcommittee for Indigenous Peoples of the United States.

On March 27, 2019, Representative Norma Torres (D-CA) introduced H.R. 1937, the Indian Community Economic Enhancement Act of 2019, which is a companion bill to S. 212. H.R. 1937 was referred to the Subcommittee for Indigenous Peoples of the United States for consideration.

The Native American Business Incubators Program – S. 294 & H.R. 1900: On January 31, 2019, Senator Tom Udall (D-NM) introduced the Native American Business Incubators Program. The bill would establish a grant program in the DOI Office of Indian Energy and Economic Development to create sustainable business incubators that provide collaborative workspace, skills training, and support resources designed to meet the unique needs of Native entrepreneurs developing businesses in Indian Country. The bill also leverages existing resources by requiring interagency coordination and partnerships between business incubators and academic institutions. On June 27, 2019, the Senate passed S. 294 without amendment and the bill was referred to the House Natural Resources Subcommittee for Indigenous Peoples of the United States.

On March 27, 2019, Representative Deb Haaland (D-NM) introduced H.R. 1900, the Native American
Business Incubators Program Act, which is a companion bill to S. 294. H.R. 1900 was referred to the Subcommittee for Indigenous Peoples of the United States for consideration.

WORKFORCE DEVELOPMENT

Workforce development success in Indian Country depends on the ability of tribal nations, Native organizations, and Tribal Colleges and Universities (TCUs) to craft innovative, customized solutions designed for the particular capacity building needs of their tribal communities. To that end, the appropriate role of the federal government is to support governance freedom, programmatic flexibility, training and technical assistance, and resources that Indian Country needs to design and implement bold strategies capable of advancing each community’s workforce development priorities. The federal government must work closely with tribal communities to identify and address obstacles that currently obstruct tribal innovation and create new opportunities for tribal ingenuity to flourish. The federal government must endow its systems, programs, and funding protocols with the ease and adaptability that tribal nations need to effectively build their human capacity in accordance with their cultural values and in furtherance of their community and economic development goals. As one longtime tribal workforce development expert explains, “It’s about letting tribes be tribes, and doing things in a tribal way.”

In the fall of 2019, NCAI released the brief “Empowering Tribal Workforce Development: Indian Country's Policy Recommendations for the Federal Government 2.0.” The brief presents a list of key policy recommendations for Congress and the Administration to support tribal nations, Native organizations, and TCUs as they design, refine, and strengthen their workforce development efforts.

In June 2018, NCAI launched its Workforce Development Toolkit for tribal leaders, workforce development practitioners, and key decision-makers to serve as an informative guide as they engage in strategic deliberations about how best to develop, evaluate, and strengthen workforce development initiatives in their communities.

Legislative Update

Elevate Act of 2019 – S. 136: On January 15, 2019, Senator Ron Wyden (D-OR) introduced S. 136 to amend the Social Security Act to establish a new employment, training, and supportive service program for the long-term unemployed and individuals with barriers to employment. Tribal nations (or intertribal consortia with a tribal family assistance plan approved under section 412) would be eligible for grant funds and technical assistance for programming. S. 136 was referred to the Senate Committee on Finance for consideration.

Drastically Increase Funding for Tribal Workforce Development in the FY 2020 Federal Budget and Beyond: Federal funding for the Comprehensive Services Program (CSP) and the Supplemental Youth Services Program (SYS) under Section 166 of the Workforce Innovation and Opportunity Act (WIOA) has utterly failed to keep pace with the increase in the Native population needing these services and the rising costs of education, training, and related services. Since its peak of $225 million in 1979, federal funding has experienced a precipitous decline to just under $68 million today, even though tribal communities still contend with the most acute and persistent workforce disadvantages of any population in the country. This decline has come despite the fact the Native population is among the fastest growing in the country, increasing by 30 percent between 2000 and 2017 (as compared to 15.7 percent for the overall U.S. population). In addition, Native people’s need for training and employment services still far exceeds that of the general population. In 2017, Census data showed a 6.6 percent unemployment rate
for the U.S. population overall. In stark contrast, the AI/AN (single race) population’s national unemployment rate was twice as high (12.3 percent), and three times as high (19.6 percent) on tribal lands. It is imperative that Congress significantly increases annual appropriations for tribal workforce development – notably the WIOA Section 166 Program – commensurate with the rapidly growing size of the service population and the rapidly increasing costs of workforce development-related services such as tuition for post-secondary educational institutions.

**Amend Section 166 of Workforce Innovation and Opportunity Act (WIOA):** NCAI is calling on Congress to pass two amendments to the current language in Section 166 of WIOA to enhance Native-led workforce development efforts:

1. Remove the application of the performance accountability provisions in WIOA Section 116 from all funds provided to support Indian and Native American Programs under Section 166. Replace them with the metrics and standards developed specifically for these programs in consultation with the Department of Labor’s Native American Employment and Training Council (NAETC) in accordance with Section 166(h); and,
2. Expand Subsection 166(i)(6) to enable tribal nations or other grantees receiving formula funds from any state for adult, youth and/or dislocated worker programs to negotiate an agreement with the state and the Secretary of Labor. Such agreements would cover utilization of the funds involved under terms applicable to Section 166 programs. This amendment will foster beneficial tribal-state collaboration in the provision of services to Native people.

**Administrative Update**

**DOI releases Interagency MOA on 477 Workforce Development Law:** On December 20, 2018, the Department of the Interior (DOI) announced the completion and signing of an interagency memorandum of agreement (MOA) between 12 federal agencies governing their administration of the federal government’s 477 program supporting tribal workforce development efforts. The MOA implements the Indian Employment, Training and Related Service Consolidation Act of 2017 (P.L. 115-93), which expands and makes permanent the highly successful 477 program, which was established in 1992.

Unfortunately, the MOA contains several grave flaws that prevent the federal government’s full and proper implementation of the 2017 law, notably: (1) restricting the types of agency programs eligible for inclusion in a 477 plan by limiting program purposes and funding types beyond the limitations set by P.L. 115-93, (2) transferring decision-making authority over program eligibility from the Secretary of the Interior to other agencies, (3) giving individual agencies the authority to delay 477 plan reviews through multiple time extensions, and (4) allowing agencies to deny waiver requests for reasons not authorized by P.L. 115-93. In July 2019, NCAI wrote to Secretary of the Interior David Bernhardt requesting that DOI and the other federal agencies adopt all amendments proposed by the 477 Tribal Workgroup, including: (1) striking language that impermissibly limits the Act’s scope; (2) changing language that unlawfully cedes DOI secretarial decision making authority to other agencies; (3) removing the provision that unlawfully limits the MOA’s applicability to only certain competitive grant programs; (4) striking provisions that encourage delays in reviewing 477 Plans; and (5) explicitly declaring that waiver requests may only be denied if they are inconsistent with either the Act or the authorizing statute of the specific program.

On September 20, 2019, NCAI participated in the first Annual Meeting of Tribes and Federal Agencies Affected by P.L. 115-93 at the Department of Interior. NCAI continues to work with the 477 Tribal
Work Group, Congressional offices, and tribal nations to urge the 12 agencies and the White House Domestic Policy Council to develop and ratify technical amendments needed to bring the interagency MOA into full compliance with P.L. 115-93.

Department of Labor (DOL) Indian and Native American Section 166 Programs: The Administration’s FY 2020 budget proposes to eliminate funding for DOL’s Indian and Native American (INA) Section 166 programs and in its place create Native adult set-aside funds within WIOA’s State Adult formula grant program, which will undoubtedly cause a drastic reduction in funding available to Section 166 tribal grantees. This change was proposed without regard to existing statutory language or consultation with tribal nations or coordination with the NAETC. NCAI and NAETC request that:

1. INA Programs continue to be administered and funded as required by existing law; and
2. DOL honor the government-to-government relationship between tribal nations and the U.S. by engaging tribal nations and tribal experts before developing new policy proposals that would affect workforce development initiatives in tribal communities.

NCAI further calls on DOL to significantly increase the staff of its Division of Indian and Native American Programs (DINAP). Increasing DINAP’s staff size from six to no less than 15 positions (13 professional positions and two administrative support staff positions) will ensure adequate technical assistance and support for WIOA Section 166 grantees.

Additionally, NCAI calls on DOL to set WIOA section 166 performance standards in accordance with grantees’ needs and priorities. DOL must work with each individual grantee reporting directly to DINAP, using the waiver authority in WIOA Section 166(i)(3) as appropriate, to ensure that the performance metrics for each grantee are appropriate for the economic and human environments in which the grantee implements its programs.

Lastly, NCAI calls on DOL to fully empower DOL’s Native American Employment and Training Council (NAETC). To accomplish this, DOL should: (1) immediately confirm those selected for appointment to the NAETC; (2) recommit to holding regular NAETC meetings; and (3) actively consult with the NAETC on an ongoing basis.

Produce the American Indian Population and Labor Force Report: The 2017 Indian Employment, Training and Related Services Consolidation Act transferred the responsibility for producing the American Indian Population and Labor Force Report from DOI to DOL. DOL staff in the Bureau of Labor Statistics, DINAP, and other federal units reportedly have been meeting to discuss how to carry out DOL’s new responsibility. However, to date they have not taken any action to involve tribal leaders, WIOA Section 166 grantees, practitioners, or researchers in this effort. DOL and specifically ETA officials must immediately inform NAETC, the Section 166 grantee community, tribal leaders, and other key tribal stakeholders about the internal discussions to date on this report. Further, they should develop and implement a plan that fully involves NAETC and tribal leaders in the design, implementation, and publication of the report.
The survival and prosperity of tribal communities depends on the education, health, and welfare of their citizens. The Administration and Congress must work with tribal nations to meet the educational needs of Native youth, provide adequate healthcare via the Indian Health Service (IHS) for both direct and self-governance tribal nations, provide safe and secure tribal communities, and supply the social services required to ensure every American Indian and Alaska Native (AI/AN) enjoys a good quality of life and has ample opportunities to thrive. Education drives personal advancement and wellness, which in turn improves social welfare and empowers communities. These elements are essential to protecting and advancing tribal sovereignty and maintaining tribal nations’ cultural vitality. Human and social services are a critical part of the continued wellbeing of tribal communities.

**EDUCATION AND LANGUAGE**

It is imperative that AI/AN students receive a quality education. However, in Indian Country, daunting challenges are preventing this from becoming a reality for all AI/AN students, including aging school facilities, limited access to broadband, ruralness and remoteness impacting school attendance, difficulty recruiting and retaining teachers, and a lack of culturally appropriate educational opportunities. These challenges have led to a graduation rate of 72 percent for AI/AN students compared to an 85 percent graduation rate for the rest of the country.

There are approximately 620,000 (93 percent) Native students enrolled in public schools in both urban and rural areas, while 45,000 (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. Today, 38 TCUs operate more than 75 sites in 17 states and serve 130,000 AI/ANs in academic and community-based programs each year. Effectively reaching all Native students requires a concentrated and sustained effort from multiple partners: tribal nations, the federal government, state and local education agencies, Native parents and families, and communities.

In October 2019, NCAI launched its report, “Becoming Visible: A Landscape Analysis of State Efforts to Provide Native American Education for All.” This report is an analysis of the landscape of current state efforts to bring high-quality educational content about Native peoples and communities into all kindergarten to 12th grade (K-12) classrooms across the United States.

**Legislative Update**

*Rebuild America’s Schools Act – H.R. 865 & S. 266*: On January 29, 2019, Senator Jack Reed (D-RI) introduced S. 266, the Rebuild America’s Schools Act and on January 30, 2019, Representative Robert Scott (D-VA) introduced H.R. 865, identical companion legislation. The Rebuild America’s Schools Act would allocate $50 million for each calendar year from 2020 through 2022 in school bond tax credits for construction, renovation, modernization, and major repair projects for schools funded by the Bureau of Indian Affairs. S. 266 was referred to the Senate Committee on Finance, and H.R. 865 was referred to the House Committee on Education and Labor and the Committee on Ways and Means. On February 26, 2019, H.R. 865 was voted favorably out of the Committee on Education and Labor. In 2009, Congress enacted a similar program in the American Recovery and Reinvestment Act (ARRA) that tribal nations unfortunately were unable to utilize due to the lack of an escrow account to support the issuance of the bonds. NCAI adopted Resolution #RAP-10-055 calling on Congress to establish an escrow account to fund the principal for the issuance of bonds for the construction of tribal schools. However, legislation
establishing the escrow account was not included in the Tax Cuts and Jobs Act of 2017 (TCJA) and the unused bond authority for tribal school construction was used as an offset for the cost of the TCJA. Additionally, NCAI adopted Resolution #REN-19-40 supporting BIE construction funding increases and innovation and is currently working with the National Indian Education Association and others to find a solution to secure adequate construction funding for tribal schools.

Esther Martinez Native American Languages Preservation Act – S. 256 and H.R. 912: On January 29, 2019, Senator Tom Udall (D-NM) introduced the reauthorization of the Esther Martinez Native American Language Preservation Act. This legislation would authorize Native language programs by providing funding to tribal nations for preserving and increasing fluency through language immersion schools and language restoration programs. NCAI has a standing resolution supporting this legislation, Resolution #SAC-12-013, “Support for the Reauthorization of the Esther Martinez Native American Languages Preservation Act.” S. 256 passed the Senate on June 27, 2019 and was referred to the House Committee on Education and Labor. On January 30, 2019, Representative Ben Ray Lujan (D-NM) introduced companion legislation, H.R. 912, which was referred to the House Committee on Education and Labor.

Tribal School Federal Insurance Parity Act – S. 279 & H.R. 895: On January 30, 2019, Senator John Thune (R-SD) introduced S. 279, the Tribal School Federal Insurance Parity Act and Representative Dusty Johnson (R-SD) introduced H.R. 895 as companion legislation. The Tribal School Federal Insurance Parity Act would allow tribal grant schools to participate in the Federal Employees Health Benefits (FEHB) and Federal Employees Group Life Insurance (FEGLI) programs by amending the Indian Health Care Improvement Act. On May 15, 2019, S. 256 was reported favorably out of the Senate Committee on Indian Affairs. H.R. 895 has been referred to the House Committee on Natural Resources in addition to the Committee on Oversight and Reform, and the Committee on Energy and Commerce for consideration. On July 16, 2019, the House Committee on Natural Resources, Subcommittee for Indigenous Peoples of the United States held a legislative hearing and heard testimony in support of H.R. 895. NCAI has a standing resolution supporting this legislation, Resolution #TUL-13-063, “Support Tribal Grant Schools to Participate in the Federal Health Employees Benefit Program in the Affordable Care Act.”

Native American Indian Education Act – S. 759 & H.R. 1688: On March 12, 2019, Senator Cory Gardner (R-CO) introduced S. 759, the Native American Indian Education Act and Representative Diana DeGette (D-CO) introduced H.R. 1688 as companion legislation. The Native American Indian Education Act would support and sustain the federal mandate of requiring certain colleges and states to waive tuition for Native students in undergraduate college programs. S. 759 was referred to the Senate Committee on Health, Education, Labor, and Pensions, and H.R. 1688 was referred to the House Committee on Education and Labor. Both bills await consideration in their respective committees. NCAI has a standing resolution in support of the goals of S. 759 and H.R. 1688, Resolution #MSP-15-009, “In Support of Full and Consistent Federal Funding for American Indian Higher Education Programs and Strengthened Federal Policies to Improve American Indian Higher Education Success.”

Native Educator Support and Training Act – S. 1161: On April 11, 2019, Senator Jon Tester (D-MT) introduced S. 1161, the Native Educator Support and Training Act. S. 1161 would create scholarships for students pursuing bachelors or graduate degrees in education or school administration. This legislation would also create student loan forgiveness plans that waive federal student loans for
educators who commit to at least five years of service at a Bureau of Indian Affairs-funded school or a K–12 school or facility that provides early childhood education and teaches a high population of Native American students. S. 1161 was referred to the Senate Committee on Indian Affairs and awaits further action.

**Fostering Undergraduate Talent by Unlocking Resources for Education Act (FUTURE) – S. 1279 & H.R. 2486:** On May 2, 2019, Senator Doug Jones (D-AL) introduced S. 1279, the Fostering Undergraduate Talent by Unlocking Resources for Education Act and Representative Adam Alma (D-NC) introduced H.R. 2486 as companion legislation. These bills would sustain mandatory funding each year through 2021 for TCUs at $30 million, Alaska Native-Serving Institutions and Native Hawaiian-Serving Institutions at $15 million, and Native American-Serving Nontribal Institutions at $5 million. S. 1279 was referred to the Senate Committee on Health, Education, Labor, and Pensions. H.R. 2486 passed the House on September 1, 2019, and is awaiting consideration in the Senate Committee on Health, Education, Labor, and Pensions.

**Tribal Nutrition Improvement Act – S. 1307 & H.R. 2494:** On May 2, Senator Tom Udall (D-NM) introduced S. 1307, the Tribal Nutrition Improvement Act of 2019 and Representative Deb Haaland (D-NM) introduced H.R. 2494 as companion legislation. This legislation amends the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 to improve nutrition in tribal areas. Significantly, this legislation would allow tribal nations to administer child nutrition programs, increasing opportunities for the incorporation of traditional foods. S. 1307 was referred to the Senate Committee on Agriculture, Nutrition, and Forestry. H.R. 2494 was referred to the House Committee on Education and Labor. NCAI has a standing resolution supporting this legislation in Resolution #DEN-18-011, “In Support of Improved Child Nutrition Programs and Services for Native Students,” and will continue to advance and track the development of this legislation.

**Building Indigenous STEM Professionals Act – S. 2037:** On June 27, 2019, Senator Lisa Murkowski (R-AK) introduced S. 2037, a bill to amend the STEM education program for American Indian, Alaska Native, and Native Hawaiian students under the Higher Education Act of 1965. On August 30, 2019, Representative Gregorio Sablan (D-MP) introduced H.R. 4222 as companion legislation. This legislation would reauthorize and amend a grant designed to help create or expand programs that produce Alaska Native and Native Hawaiian graduates in science, technology, engineering, and math fields. S. 2037 was referred to the Committee on Health, Education, Labor, and Pensions for consideration. H.R. 4222 was referred to the House Committee on Education and Labor for consideration.

**Native American Language Vitalization Act – H.R. 4188:** On August 16, 2019, Representative Gregorio Sablan (D-MP) introduced H.R. 4188, a bill to amend the Higher Education Act of 1965 to establish a Native American Language Vitalization and Training Program. H.R. 4188 would establish grants for eligible institutions, including TCUs and Alaska Native-Serving Institutions to promote the preservation, revitalization, relevancy, and use of Native languages. H.R. 4188 was referred to the House Committee on Education and Labor for consideration.

**NCAI Submits Comments to House Education and Labor Subcommittee:** On Wednesday, February 27, 2019, the House Subcommittee on Early Childhood, Elementary and Secondary Education held a hearing on the Inappropriate Use of Seclusion and Restraint Practices within K-12 schools titled “Classrooms in Crisis: Examining the Inappropriate Use of Seclusion and Restraint Practices.” NCAI
submitted comments focusing on the importance of protecting AI/AN students and students receiving special education services, who are disproportionately affected by current discipline policies.

Administrative Update

Bureau of Indian Education ESSA Plan: On September 14, 2017, BIE announced the establishment of a Standards, Assessments, and Accountability System (SAAS) Negotiated Rulemaking Committee. The Committee is tasked with advising the Secretary of the Interior and developing proposed regulations for defining standards, assessments, and an accountability system under the Every Student Succeeds Act (ESSA). On April 17, 2018, DOI published a list of proposed committee members and requested comments and additional nominees. Thirteen primary committee members and two alternates were selected. DOI further proposed appointing federal representatives to the Committee. Four federal representatives were appointed as primary team members and three as alternates. The committee is scheduled to meet a total of five times during 2018 and 2019. The first committee meeting was held in Billings, Montana. The second and third meetings occurred in Albuquerque, NM, and Arlington, VA, respectively. The last in-person meeting took place in March 2019 in Phoenix, AZ, after being postponed because of the government shutdown.

On June 10, 2019, the Bureau of Indian Affairs (BIA) published the proposed rule in the Federal Register. NCAI submitted official comments on August 9, 2019 requesting that the proposed rule: (1) avoid unintended impacts on the sovereign rights of tribal nations or the federal government’s treaty and trust responsibilities; (2) include a definite timeline for the Secretary to review and approve proposals for alternative requirements; (3) recognize the use of Native languages within the assessments and accountability system; (4) be consistent with BIE’s Strategic Direction; and (5) ensure the BIE engage in initial and ongoing consultation with tribal nations and stakeholders when creating any new standard, assessment or accountability plan, in addition to any definition change, or programmatic change that effects BIE funded schools.

Bureau of Indian Education Strategic Plan: On October 17, 2017, BIE published a notice in the Federal Register for five consultation sessions regarding its Draft Strategic Plan Proposal. The BIE completed all five tribal consultation sessions across Indian Country and hosted three listening sessions throughout the fall of 2017 to gather substantive input from tribal nations and Indian education stakeholders. After analyzing feedback, BIE published its new Strategic Direction (Direction) for 2018-2023 on August 23, 2018. The Direction is designed to improve BIE’s ability to increase its services to Native students by organizing management activities, setting priorities, and ensuring efficient and effective utilization of staff and resources. The Direction emphasizes the importance of fostering collaborative relationships among BIE, tribal nations, school boards, employees, and other stakeholders. NCAI will work with its partners to monitor BIE’s adherence to its Strategic Direction.

Department of Education NPRM on Title IX: On November 29, 2018, the U.S. Department of Education (ED) issued a notice of proposed rulemaking (NPRM) to amend regulations implementing Title IX of the Education Amendments of 1972 (Title IX). The proposed regulations would clarify and modify Title IX regulatory requirements about the availability of remedies for violations, the effect of Constitutional protections, the designation of a coordinator to address sex discrimination issues, the dissemination of a non-discrimination policy, the adoption of grievance procedures, and the process to claim a religious exemption. The proposed regulations would also specify how schools and institutions covered by Title IX must respond to incidents of sexual harassment consistent with Title IX’s prohibition against sex
discrimination. NCAI and the National Indian Education Association submitted comments expressing strong opposition to the Department’s proposal to amend rules implementing Title IX because they would limit protections under Title IX available to students, including Native students.

The National Indian Education Study (NIES) 2015: A Closer Look: On May 7, 2019, the National Center for Education Statistics (NCES), at the request of the U.S. Department of Education, Office of Indian Education (OIE), released NIES 2015: A Closer Look. NIES is designed to describe the condition of education for fourth- and eighth-grade AI/AN students in the United States. The study provides educators, policymakers, and the public with information about the academic performance in reading and mathematics of AI/AN fourth- and eighth-graders, as well as their exposure to Native American culture. This follow-up report to NIES: 2015 focuses on two major concerns that have been raised throughout the first decade of NIES:

1. What contextual factors are associated with higher and lower performing AI/AN students on NAEP mathematics and reading assessments; and
2. How do AI/AN students see themselves in terms of their Native languages, cultures, and aspirations for the future?

ELDERS AND DISABILITIES

Native elders are the keepers of our heritage, culture, and language. They are held in the highest regard in all tribal communities because they have guided our tribal nations and have strengthened the foundation for future generations. The life expectancy of American Indians is now nearly 74 years and the rate of the American Indian and Alaska Native (AI/AN) elder population is increasing at double the rate of the overall aging population. The Centers of Medicare and Medicaid services released a report that between 2000 and 2010, the number of American Indians and Alaska Natives age 65 or older increased by 40.5 percent. Even though the population is increasing, Native elders comprise the most economically disadvantaged older adult minority group in the nation. Tribal governments have little or no access to the agencies, services, long-term care ombudsman programs, or other programs that are available to states for care of their elders. In addition, state programs seldom meet the needs of Native elders due to cultural and geographic barriers.

AI/ANs with disabilities are from all ages and backgrounds. A 2007–2010 Behavioral Risk Factor Surveillance System reported that 31 percent of American Indian and Alaskan Natives have a disability, and the Department of Veterans Affairs (VA) reported in 2015 that 30 percent of AI/AN veterans had a service-connected disability compared with 21 percent of veterans of all other groups. Tribal nations, the federal government, and local governments must work together to develop programs and resources that meet the unique needs and promote the wellbeing of AI/AN elders and people with disabilities.

Legislative Update

Reauthorization of the Older Americans Act: On September 16, 2019, Representative Suzanne Bonamici (D-OR) introduced H.R. 4334, the Dignity in Aging Act. H.R. 4334 amends the Older Americans Act of 1965 to authorize appropriations for fiscal years 2020 through 2024 and includes language supportive of strengthening services for Native American aging programs. Title VI of the OAA states that the “purpose of this title is to promote the delivery of supportive services, including nutrition services, to American Indians, Alaska Natives, and Native Hawaiians that are comparable to services provided under Title III (services provided to states).” These programs and services include: congregate and home-delivered nutrition services; community centers; community service employment; long-term care
ombudsman programs; information and referral services; and services to prevent the abuse, neglect, and exploitation of elders. However, Native elders receive less than one percent of the services provided under Title III of the OAA. In order to provide Native elders and their caregivers access to supportive and nutritional services to address their unique needs, OAA reauthorization should include the following recommendations:

- Provide adequate funding for tribal supportive and nutritional services: Current funding levels for Title VI programs are inadequate and some tribal elder programs are unable to meet OAA requirements because of insufficient funding. Adequate funding is necessary in order to remedy these disparities and ensure Native elders receive the consistent and effective services they deserve.
- Enhance parity between Title III State Services and Title VI Tribal Services: Title VI services programs are essential to providing tribal governments with the resources necessary to address the needs of their elders. Such services should be comparable to Title III services that are provided to states to address disparities and ensure the needs of tribal elders are being served.
- Support the Senior Community Service Employment Program (SCSEP) and similar Employment Programs for Native Elders: SCSEP promotes self-sufficiency and economic enhancement. It is the only federal workforce development program for low-income Native elders ages 55 and older. Supporting and expanding SCSEP provides elders with services and training that allow them to gain the necessary skills to re-enter the workforce and develop a sense of economic achievement in their own communities.

Administrative Update

ACL Reorganization: On April 9, 2019, the Department of Health and Human Services’ Administration for Community Living (ACL) issued a notice of reorganization of the ACL, with the intention to improve organizational efficiency and effectiveness, strengthen infrastructure, and enhance the connections between the organization and its stakeholders, grantees, and consumers at all levels. However, the reorganization was undertaken without consultation with tribal governments that utilize ACL programs to provide services to their tribal citizens. The ACL reorganization has tribal implications, as it removed the Office of Regional Operations and created the Center for Regional Operations, which will serve as the liaison, advocate, and representative for the agency across the United States. These functions necessitate tribal consultation as changes to how the regional centers deliver support and services affect tribal organizations. NCAI will continue to work with our Aging partners to urge the ACL to conduct tribal consultations to clarify the impact the reorganization will have on tribal programs administered by the ACL and its subdivisions.

American Indian Vocational Rehabilitation Services: On June 13, 2019, the Department of Education Office of Special Education and Rehabilitative Services (OSERS) released a notice of grant funding for American Indian Vocational Rehabilitation Services (AIVRS). Vocational Rehabilitation (VR) services are crucial to catering to the interests, capabilities, and priorities of Natives with disabilities to further opportunities for economic self-sustainment. Currently, there are 97 grantees through OSERS. NCAI will continue to work to promote employment opportunities for people with disabilities.

HEALTH

The health and wellness of tribal communities depends on a network of healthcare, education, wellness service providers, prevention coordination, and tribally-driven initiatives. Despite the federal government’s trust responsibility to provide healthcare, AI/ANs continue to experience the greatest
health disparities in the U.S. when compared to other Americans. Shorter life expectancy and the disease burdens carried by AI/ANs exist because of inadequate education, disproportionate poverty, and discrimination in the delivery of healthcare services.

Legislative Update

Native American Suicide Prevention Act of 2019 – S. 467 & H.R. 1191: On February 13, 2019, Representative Raúl Grijalva (D-AZ) introduced H.R. 1191, the Native American Suicide Prevention Act of 2019, and Senator Elizabeth Warren (D-MA) introduced S. 467 as identical companion legislation. These bills would amend section 520E of the Public Health Service Act to require states and their designees receiving grants for the development and implementation of statewide suicide early intervention and prevention strategies to collaborate with each federally recognized tribal nations, tribal organizations, urban Indian organizations, and Native Hawaiian healthcare systems in their states. S. 467 was referred to the Senate Committee on Health, Education, Labor, and Pensions. H.R. 1191 was referred to the House Committee on Energy and Commerce, Subcommittee on Health for further consideration.

Assessment of the Indian Health Service Act of 2019 – S. 498: On February 14, 2019, Senator Mike Rounds (R-SD) introduced S. 498, the Assessment of the Indian Health Service Act of 2019. This legislation would initiate an independent assessment of the healthcare delivery systems and financial management processes of IHS. S. 498 was referred to the Senate Committee on Indian Affairs.

Urban Indian Health Parity – S. 1180 & H.R. 2316: On April 11, 2019, Senator Tom Udall (D-NM) introduced the Urban Indian Health Parity Act. On April 12, Representative Ben Ray Lujan (D-NM) introduced H.R. 2316 as companion legislation. These bills extend the full federal medical assistance percentage (FMAP) to urban Indian organizations. S. 1180 was referred to the Senate Committee on Finance. H.R. 2316 was referred to the House Committee on Energy and Commerce. In 2015, NCAI adopted a standing resolution supporting this legislation, Resolution #SD-15-070, “Request CMS to Extend 100% FMAP to All Services Received through the IHS or Tribal Health Facilities and Urban Indian Health Programs and to Include Services Provided through the Purchased & Referred Care Program.”

Special Diabetes Program for Indians: The Special Diabetes Program for Indians (SDPI), enacted in 1997, provides assistance for developing local initiatives to treat and prevent diabetes and serves as a comprehensive source of funding to address diabetes issues in tribal communities. SDPI provides grants for diabetes prevention and treatment services to approximately 300 IHS, Tribal and Urban Indian Health (I/T/U) programs across 35 states. SDPI has led to remarkable outcomes, including reductions in average blood sugar levels, reduction in the incidence of diabetes, a significant increase in the promotion of healthy lifestyle behaviors, and a 54 percent decline in the incidence rate of end-stage renal disease (ESRD) in AI/AN people. NCAI has a standing resolution calling on Congress to reauthorize SDPI permanently at $250 million per year, indexed to the medical inflation rate, Resolution #KAN-18-028, “A Call to Congress for Continued Support of Mandatory Funding for Special Diabetes Program for Indians (SDPI) and Permanent Authorization of SDPI.”

On January 18, 2019, Senator Lamar Alexander (R-TN) introduced S. 192, the Community and Public Health Programs Extension Act. This legislation includes reauthorizing language for SDPI at current funding levels through 2024 in addition to providing extensions for community health centers, the
National Health Service Corps, and teaching health centers that operate Graduate Medical Education (GME) programs. S. 192 was referred to the Senate Committee on Health, Education, Labor and Pensions where it awaits further action.

On May 13, 2019, Representative Tom O’Halleran (D-AZ) introduced H.R. 2680, the Special Diabetes Programs for Indians Reauthorization Act of 2019. This legislation includes reauthorizing language for SDPI at $200 million per year through the 2024 year. H.R. 2680 was referred to the House Committee on Energy and Commerce, Subcommittee on Health. On July 17, 2019, H.R. 2680 was included in broader bill and voted favorably out of Committee, but during mark-up, funding was reduced to $150 million per year through 2023. On September 19, 2019, the House passed H.R. 4378, Continuing Appropriations Act, 2020, and Health Extenders Act of 2019, which included level funding for SDPI until November 21, 2019. On September 26, 2019, the Senate passed H.R. 4378 and on September 27, it was signed by the President, becoming Public Law 116-59.

Opioid Package and Indian Country: Communities across the U.S. have been devastated by the opioid epidemic, and this is especially true in Indian Country. A 2017 Centers for Disease Control (CDC) report found that AI/ANs saw the highest drug overdose rates from 2008 to 2015 and the highest percentage increase in overdose deaths from 1999 to 2015 at 519 percent. AI/ANs also saw the second-highest opioid-related overdose death rate in 2016, at 13.9 deaths per 100,000, as well as the second-highest heroin-related overdose death rate at five deaths per 100,000. In addition to these stark findings, AI/AN overdose deaths are consistently undercounted. In the same 2017 report, the CDC indicated the rate for AI/ANs could be underestimated by up to 35 percent. These statistics illuminate the critical need for more concerted attention on curbing the opioid epidemic in tribal communities.

National opioid legislation, entitled the SUPPORT for Patients and Communities Act, was enacted in late October 2018 (P.L. 115-271). The law includes several significant provisions that would help address the opioid crisis in Indian Country. This legislation:

- reauthorizes the 21st Century Cures Act, State Opioid Response Grant program at $500 million through 2021 with a five (5) percent set-aside for tribal nations;
- reauthorizes the Child Abuse Prevention and Treatment Act at $60 million through 2023 with a three (3) percent set-aside for tribal nations to address the needs of infants born with, and identified as being affected by, substance abuse or withdrawal symptoms resulting from prenatal drug exposure or fetal alcohol spectrum disorder;
- includes eligibility for tribal nations to establish or operate comprehensive opioid recovery centers;
- makes tribal nations eligible to receive funding for support services for children, adolescents, and young adults in the prevention of, treatment of, and recovery from, substance use disorders;
- includes tribal nations as eligible for funding related to improving enhanced controlled substance overdose data collection, analysis and dissemination efforts, as well as preventing overdoses; and
- includes tribal nations as eligible to receive funds for the purpose of increasing student access to evidence-based trauma support services and mental health care programs including those under IHS.

State Opioid Response Grant Authorization Act – H.R. 2466: On May 1, 2019, Congressman David Trone (D-MD) introduced H.R. 2466, the State Opioid Response Grant Authorization Act. H.R. 2466 continues to award State Opioid Response Grants at an annual amount of $1 billion for each of fiscal
years 2020 through 2024. Of this total amount, tribal nations would receive a $50 million set-aside each fiscal year. H.R. 2466 was referred to the House Committee on Energy and Commerce.

RISE from Trauma Act – S.1770: On June 10, 2019, Senator Richard Durbin (D-IL) introduced S. 1770, a bill to identify and support children and families who experience trauma. This legislation will create grants for demonstration projects for tribal nations to enable coordinating bodies to address community trauma. Additionally, this legislation would establish grants to identify and support children exposed to violence and substance use, as well as establish law enforcement Child and Youth Trauma Coordinating Centers in partnership with tribal nations. S. 1770 was referred to the Senate Committee on Health, Education, Labor, and Pensions.

Emergency Access to Insulin Act – S.2004 & H.R. 4010: On June 29, 2019, Senator Tina Smith (D-MN) introduced S. 2004, a bill to amend the Public Health Service Act to establish insulin assistance programs. On July 25 Representative Angie Craig (D-MN) introduced H.R. 4010 as identical companion legislation. This legislation will create a matching grant program for tribal nations, and tribal organizations to set up State Insulin Assistance Programs, which would provide a short-term insulin supply for uninsured and under-insured patients and help patients identify state, federal, and private options to improve insulin affordability long-term. S. 2004 was referred to the Senate Committee on Finance for consideration. H.R. 4010 was referred to the House Committee on Energy and Commerce and the House Committee on Ways and Means.

Safer Communities Act of 2019 – H.R. 4199: On August 20, 2019, Representative Mike Thompson (D-CA) introduced H.R. 4199, a bill to strengthen the nation’s mental health infrastructure, improve the understanding of violence, strengthen firearm prohibitions and protections for at-risk individuals, and improve and expand the reporting of mental health records to the National Instant Criminal Background Check System. H.R. 4199 would provide grants to tribal governments to: (1) expand early intervention and treatment services to improve access to mental health crisis assistance and address unmet mental health care needs; (2) improve the automation and transmittal of tribal government record reporting to the National Instant Criminal Background Check System; and (3) assess a tribal government’s capability for the automation and transmission of arrest and conviction records, court orders, and mental health adjudications or commitments to federal and state record repositories. H.R. 4199 was referred to the House Committee on the Judiciary and the House Committee on Energy and Commerce.

Administrative Update
Community Health Aide Program Draft Interim Policy: In 2016, the IHS announced that it was expanding the Community Health Aide Program (CHAP) to tribal nations outside of Alaska. The Indian Health Care Improvement Act (IHCIA) gave IHS the authority to expand the CHAP program and based off the success in providing frontline medical, behavioral, and dental health services to Alaska Native communities, IHS elected to do so after tribal consultation. On May 8, 2019, IHS published its Interim Policy on CHAP expansion, which establishes the infrastructure for CHAP certification and academic review at the IHS-area level. The Interim Policy will be the program’s guiding document while the agency works with tribal nations to develop a permanent policy. NCAI adopted Resolution #REN-19-039, “Continued Support for the Community Health Representatives (CHR) Program and Support for the Community Health Aide Program (CHAP) Expansion,” and submitted comments regarding the Interim Policy to make clear that the Interim Policy only applies to the CHAP described in 25 U.S.C. § 1616l(d) and that it does not apply to the Alaska CHAP organized under 25 U.S.C. § 1616l(a) and (b). In
addition, NCAI requested that IHS clarify that the CHAP Interim Policy is separate and distinct from the Community Health Representative (CHR) Program.

Department of Health and Human Services Annual Tribal Budget Consultation: On March 5, 2019, the U.S. Department of Health and Human Services (HHS) sent a Dear Tribal Leader Letter (DTLL) announcing dates for its Annual Tribal Budget Consultation. The annual consultation provides a forum for tribal nations and tribal organizations to collectively engage with HHS officials to share their views, priorities, and recommendations with HHS officials on national health and human services funding priorities for the Department’s FY 2021 budget request. NCAI provided comments and recommendations that:

- support the permanent inclusion of non-pharmacologic practitioners as health professions within the Indian Health Service;
- urge IHS to allow tribal nations to contract or compact the Substance Abuse and Suicide Prevention Program and the Domestic Violence Prevention Initiative; and
- advocate for restoring funding for Tribal Technical Assistance Centers at the Substance Abuse and Mental Health Services Administration.

IHS Strategic Plan (2019-2023): On February 28, 2019, IHS updated its Strategic Plan. The plan focuses on the following three goals centered on access, quality, and management and operations:

- ensure that comprehensive, culturally appropriate personal and public health services are available and accessible to AI/ANs;
- promote excellence and quality through innovation of the Indian health system into an optimally performing organization; and
- strengthen IHS program management and operations.

Beginning in September 2017, IHS initiated tribal consultation on the IHS Strategic Plan initial framework and formed an IHS Federal-Tribal Strategic Planning Workgroup to review all comments and recommend a list of final goals and objectives for IHS leadership review and approval of the plan. Public comments were also solicited through the Federal Register. Development of the IHS Strategic Plan FY 2019-2023 included gathering stakeholder feedback on an ongoing basis.

Chris Traylor to Serve as New Acting Director for CMCS: In January 2019, Chris Traylor was announced as the new Acting Deputy Administrator and Director of the Center for Medicaid & Children’s Health Insurance Program (CHIP) Services (CMCS) within the Centers for Medicaid & Medicare Services (CMS) at HHS. CMCS is the office in charge of approving waivers to the Medicaid program.

CMS Medicaid Work Requirements and Political Status: In early 2018, CMS issued a letter to State Medicaid Directors inviting states to create Medicaid work requirements. CMS also issued a letter to tribal leaders, stating that CMS could not approve a tribal exemption from state Medicaid work requirements because of civil rights concerns. This policy would negatively impact tribal communities unless AI/ANs receive an exemption from state requirements. On April 11, 2018, a small tribal delegation met with CMS Senior Advisor to the Administrator, Calder Lynch, and representatives from the DHHS Office of General Counsel, including a representative from the Civil Rights Division to get more information on CMS’ “civil rights concerns.” At that meeting, DHHS officials refused to provide further information, citing unspecified ongoing litigation and privileged communication. In addition,
CMS indicated that it likely would not approve any waivers that had exemptions for AI/ANs due to the civil rights concerns.

After engaging CMS did not produce a positive outcome, NCAI, NIHB, tribal leaders, and other tribal organizations engaged members of Congress and other Departments to weigh in with CMS on the settled state of the law regarding tribal political status. Elevating the issue led members of Congress to contact DHHS and CMS, ultimately causing CMS to adjust its stance and indicate it could provide flexibility to states working with tribal nations to provide accommodations. However, CMS later readopted its original position.

On January 18, 2019, CMS approved Arizona’s 1115 Medicaid Demonstration Waiver, which includes an exemption for members of federally recognized tribal nations from work requirements as a condition of eligibility in the state of Arizona. The approval of this work requirements exemption for tribal members under the Arizona Medicaid plan is a step in the right direction. However, NCAI continues to work in partnership with other national and regional tribal organizations to remind the Department that it has the authority to provide a broader exemption for IHS-eligible beneficiaries.

Department of Health and Human Services Tribal Consultation Policy: On October 22, 2018, HHS issued a DTLL requesting feedback from tribal representatives on the HHS Tribal Consultation Policy. NCAI and NIHB provided joint comments and made recommendations including:

- HHS should be specific about the response to the comments received and the timelines for accomplishing tasks or achieving objectives that are identified through tribal consultations;
- HHS Tribal Consultation Policy must emphasize the federal government’s trust responsibility to American Indians and Alaska Natives;
- HHS should revise the policy to include evaluation and accountability measures in the position description for the agency contact person who will liaise with tribal nations;
- HHS must uphold existing law regarding the political status of tribal nations; and
- NCAI and NIHB strongly discourage HHS from consolidating three or more regional consultations for the purpose of completing the process more quickly.

Office of Management and Budget (OMB) Notice of Solicitation of Comments on Consumer Inflation Measures Produced by Federal Statistical Agencies: On May 7, 2019, OMB requested comments on using a different measure of inflation for calculating the poverty threshold each year. Specifically, OMB proposes to potentially revise the current method for adjusting the poverty threshold for the production of official statistics. NCAI submitted joint comments with the National Indian Health Board (NIHB) opposing any new method of calculation that would make it more difficult for AI/AN people to access these programs and services.

**VETERANS**

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

*Department of Veterans Affairs Tribal Advisory Committee Act – S. 524:* On February 14, 2019, Senator John Tester (D-MT) introduced S. 524, the Department of Veterans Affairs Tribal Advisory Committee Act. S. 524 establishes a Tribal Advisory Committee (TAC) to provide advice and guidance to the Secretary of Veterans Affairs on matters relating to AI/AN veterans, tribal nations, and tribal organizations. The 15-member committee would be composed of individuals representing each of the 12 service areas of IHS with no less than half being veterans. On May 16, 2019, Representative Deb Haaland (D-NM) introduced H.R. 2791 as companion legislation and this bill was referred to the House Committee on Veterans’ Affairs. On May 22, 2019, the Senate Committee on Veterans’ Affairs held a legislative hearing considering several bills, including S. 524. NCAI provided written testimony supporting the Department of Veterans Affairs Tribal Advisory Committee Act, writing that a TAC would provide vital opportunities for collaboration, communication, and coordination between VA and tribal nations. NCAI has a standing resolution supporting this legislation in Resolution #REN-19-033, “Supporting the Department of Veterans Affairs Tribal Advisory Committee Act.”

*Veterans Medical Marijuana Safe Harbor Act – S. 445 & H.R. 1151:* On February 12, 2019, Senator Brian Schatz (D-HI) introduced S. 445, the Veterans Medical Marijuana Safe Harbor Act and Representative Barbara Lee (D-CA) introduced H.R. 1151 as companion legislation. S. 445 allows veterans to use, possess, or transport medical marijuana and to discuss the use of medical marijuana with a physician of the VA as authorized by a state or tribal nation. S. 445 was referred to the Senate Committee on the Judiciary. H.R. 1151 was referred to the House Committee on Energy and Commerce and the House Committee on the Judiciary and House Committee on Veterans’ Affairs. On March 25, 2019, H.R. 1151 was referred to the Subcommittee on Crime, Terrorism, and Homeland Security for further consideration.

*Tribal Veterans Health Care Enhancement Act – S. 1001:* On April 3, 2019, Senator John Thune (R-SD) introduced S. 1001, the Tribal Veterans Health Care Enhancement Act. This legislation amends the Indian Health Care Improvement Act to allow IHS to cover the cost of a copayment of an AI/AN veteran receiving medical care or services from VA. Covered medical care includes any medical care administered at a facility of VA, including any services rendered under a contract with a non-VA health care provider. S. 1001 was referred to the Senate Committee on Indian Affairs.

*Remove the Stain Act – H.R. 3467:* On June 25, 2019, Representative Denny Heck (D-WA) introduced H.R. 3467, a bill to rescind each of the 20 Congressional Medals of Honor awarded for acts at Wounded Knee Creek, Lakota Pine Ridge Indian Reservation, South Dakota, on December 29, 1890. NCAI and its membership have called upon Congress to revoke these medals since at least 1997. H.R. 3467 was referred to the House Armed Services Committee for further consideration.

*Health Care Access for Urban Native Veterans Act – H.R. 4153 & S. 2365:* On July 31, 2019, Senator Tom Udall (D-NM) introduced S. 2365, the Health Care Access for Urban Native Veterans Act. On August 2, 2019, Representative Ro Khanna (D-CA) introduced H.R. 4153 as identical companion legislation. These bills would amend the Indian Health Care Improvement Act to provide Native veterans coverage by the VA for services at urban Indian health centers. S. 2365 was referred to the Committee on Indian Affairs. H.R. 4153 was referred to the Committee on Natural Resources and the Committee on Energy and Commerce. On September 19, 2019, the House Natural Resources Subcommittee for Indigenous Peoples of the United States held a hearing where it considered H.R.
NCAI has a standing resolution supporting this legislation, Resolution #REN-19-034, “Calling on Congress to Enact Legislation Ensuring the Provision of Health Care to American Indian and Alaska Native Veterans Living in Urban Centers.”

*Nursing Home Care for Native American Veterans Act – S. 2558 & H.R. 4532:* On September 26, 2019, Senator Kyrsten Sinema (D-AZ) introduced S. 2558, the Nursing Home Care for Native American Veterans Act and Representative Tom O’Halleran (D-AZ) introduced H.R. 4532 as identical legislation. These bills would support the construction of veteran nursing homes on tribal lands by allowing tribal nations to access federal grant money to reimburse tribal veteran nursing home construction. H.R. 4532 was referred to the House Committee on Veterans’ Affairs. S. 2558 was referred to the Committee on Veterans’ Affairs.

*NCAI Submits VA Contracted Exams Testimony to House Committee on Veterans’ Affairs:* On September 19, 2019, NCAI submitted written testimony to the House Committee on Veterans’ Affairs, Subcommittee on Disability Assistance and Memorial Affairs for a hearing titled “Update on VA Contracted Exams, Quality Review Process, and Service to Rural Veterans.” The comments highlighted some barriers rural AI/AN veterans face when completing a compensation and pension exam. These challenges include issues associated with transportation infrastructure and options, cultural competency, and the often-confusing VA system. NCAI recommended the following solutions: (1) address issues with Tribal Veteran Service Officer Accreditation by amending 38 C.F.R. 14.628(b) to recognize tribal nations as accredited organizations; (2) pass legislation to establish a Veterans Affairs Tribal Advisory Committee (VATAC); and (3) invest in tribal infrastructure, road systems, and tribal transit systems.

**Administrative Update**

*NMAI’s National Native American Veterans’ Memorial Design Competition:* On July 4, 2018, Harvey Pratt (Cheyenne/Arapaho) was selected unanimously as the winner of the National Museum of the American Indian’s (NMAI) National Native American Veterans’ Memorial Design Competition. The Memorial is to be located prominently on the grounds on the National Mall between the Smithsonian’s National Air and Space Museum and the U.S. Capitol. On September 21, 2019, NCAI participated in the groundbreaking ceremony for the National Native American Veterans Memorial in Washington, D.C. The anticipated dedication is planned for Veterans Day 2020. The Memorial is a collaborative effort by NCAI and NMAI to honor the distinguished military service of AI/ANs and is authorized by the Native American Veterans’ Memorial Establishment Act of 1994 and advanced by the Native American Veterans’ Memorial Amendments Act of 2013.

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

Under Section 412 of the Social Security Act, federally recognized tribal nations can apply for funding
to administer and operate their own TANF programs and then are required to submit a three-year Tribal TANF plan to the HHS Secretary through the Administration for Children and Families (ACF) for review and approval. If approved, Tribal TANF programs receive a portion of the state TANF block grant from the state in which the tribal nation is located. Since 1997, TANF grants have served nearly 300 federally recognized tribal nations through 70 approved tribal TANF programs. TANF gives federally recognized tribal nations flexibility in the design of welfare programs to fit the needs of their communities, which promotes tribally relevant programs designed to strengthen families.

The NCAI Tribal TANF Task Force was created in 2008 and consists of tribal leaders and Tribal TANF program staff. The goal of NCAI’s Tribal TANF Task Force is to ensure tribal nations have a national voice in TANF and related human services program policies, administration, and legislation. In 2015, NCAI passed Resolution #SD-15-064, “Support for NCAI Tribal TANF Task Force Legislative and Administrative Priorities.” These priorities include: promoting tribal consultation within the Administration for Children and Families; establishing standard TANF training programs; providing full federal and state funding to Tribal TANF programs; and providing incentives for states to fund Tribal TANF programs.

**Legislative Update**

*Tribal TANF Fairness Act of 2019 – H.R. 2128*: On April 8, 2019, Congressman Paul Cook (R-CA) introduced the Tribal TANF Fairness Act of 2019. H.R. 2128 amends Part A of Title IV of the Social Security Act to clarify that a tribal government (including a tribal government participating in an intertribal consortium) may lease land held in trust or in fee, at a fair market rate, for the administration of a tribal family assistance grant. H.R. 2128 was referred to the House Committee on Ways and Means where it awaits further action.

*Reauthorization of TANF*: Since 2010, TANF has received short-term extensions to maintain funding instead of a multi-year extension. On January 24, 2019, Representative Richard Neal’s (D-MA) bill, H.R. 430, was signed into law and reauthorized TANF until June 30, 2019. On July 5, 2019, H.R. 2940, a bipartisan bill from Representative Danny Davis (D-IL) and Representative Jackie Walorski (R-IN), was signed into law, reauthorizing TANF at the current funding level of $16.5 billion through September 30, 2019. On September 27, 2019, H.R. 4378, the Continuing Appropriations Act, 2020, and Health Extenders Act of 2019, was signed into law. This continuing resolution introduced by Representative Nita Lowery (D-NY) reauthorized TANF at current levels through November 21, 2019.

**Administrative Update**

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

Like all other governments in the United States, tribal nations strive to provide services and grow their economies to ensure the health and wellbeing of their citizens. This common responsibility means that tribal nations have the same types of infrastructure needs as other governments. However, tribal nations do not receive federal resources proportional to other governments, and thus the unmet need is often significantly greater in Indian Country. The chronic underinvestment and the growing backlog of critical infrastructure projects impacts the social, physical, and mental wellbeing of tribal communities; hampers the ability of tribal nations to fully leverage their economic potential; and frustrates the ability of tribal citizens to fully participate in the American economy.

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 communities continues to lag behind the nation overall. In a September 2018 U.S. Government Accountability Office (GAO) report titled “FCC’s Data Overstate Access on Tribal Lands,” GAO found that residents of tribal lands have lower levels of broadband internet access relative to the U.S. as a whole, and that Federal Communications Commission (FCC) data overstated tribal nations’ access to broadband service. GAO reports that these overstatements limit FCC and tribal users’ ability to target broadband funding to tribal lands and bridge the digital divide in Indian Country.

The 1996 Telecommunications Act was the last major authorizing bill to pass Congress that directs the FCC’s work. Because a comprehensive telecommunications bill has not been passed in over 20 years, Congress has recently approached the changing technological landscape through smaller pieces of legislation. Regardless of whether federal telecommunications policy is established through major legislation or smaller bills, Congress should promote broadband access in Indian Country, provide adequate funding and equal access to capital for tribal nations to build telecommunications infrastructure, require data collection on broadband access in Indian Country, improve telecommunications training opportunities and program guidance for tribal nations, and ensure federal permitting and other decision-making includes tribal nations from the outset and through project completion. The policy overview below highlights important developments in telecommunications for tribal communities.

Legislative Update

**Tribal Internet Expansion Act of 2019 – H.R. 4449:** On September 20, 2019, Representative Raul Ruiz (D-CA) introduced the Tribal Internet Expansion Act of 2019. H.R. 4449 would amend the Universal Service principles for access in rural and high cost areas found in the Communications Act of 1934 (47 U.S.C. 254(b)(3)) to include Indian Country and areas with high populations of tribal communities. H.R. 4449 was referred to the House Committee on Energy and Commerce.

**Broadband Deployment Accuracy and Technological Availability Act – H.R. 4229:** On September 6, 2019, Representative David Loebsack (D-IA) introduced the Broadband Deployment Accuracy and Technological Availability Act. H.R. 4229 would require the FCC to issue rules relating to the collection of data with respect to the availability of broadband services including within tribal areas. H.R. 4229 was referred to the House Committee on Energy and Commerce for further consideration.
Broadband Infrastructure Finance and Innovation Act of 2019 – S. 2344 & H.R. 4127: On July 30, 2019, Senator Gary Peters (D-MI) introduced the Broadband Infrastructure Finance and Innovation Act of 2019. On July 25, 2019, Representative Ben Luján (D-NM) introduced H.R. 4127, an identical companion bill. These bills would establish a broadband infrastructure finance and innovation program to make available loans, loan guarantees, and lines of credit for the construction and deployment of broadband infrastructure to tribal nations and other eligible governmental entities or public authorities. S. 2344 was referred to the Senate Committee on Commerce, Science, and Transportation. H.R. 4127 was referred to the House Committee on Energy and Commerce.

Map Improvement Act of 2019 – H.R. 4128: On July 30, 2019, Representative Ben Luján (D-NM) introduced the Map Improvement Act of 2019. H.R. 4128 would require the FCC to promulgate a final rule to standardize the methodology for mapping accurate fixed and mobile broadband internet service, require the FCC to establish an Office of Broadband Data Collection and Mapping, and establish a technical assistance program for grants to various entities, including tribal nations, to assist with mapping and to assess current broadband internet service adoption rates and advertised broadband internet service pricing in the community. H.R. 4128 was referred to the House Committee on Energy and Commerce.

Rural Broadband Network Advancement Act of 2019 – H.R. 2929: On May 22, 2019, Representative Markwayne Mullin (R-OK) introduced H.R. 2929, the Rural Broadband Network Advancement Act of 2019. This bill would require the FCC to establish a program to promote the availability and sustainability of robust rural broadband networks in high-cost rural areas through network user fees collected by edge providers. Edge providers use a customer’s internet service provider to deliver content that requires a subscription or an account in order to use the services (e.g., Facebook). Under this bill, tribal governments that also qualify as edge providers would be exempt from any network user fees. H.R. 2929 was referred to the House Committee on Energy and Commerce.

Community Broadband Act of 2019 – H.R. 2785: On May 16, 2019, Representative Anna Eshoo (D-CA) introduced H.R. 2785, the Community Broadband Act of 2019. This bill would bar any state statute, regulation, or other state legal requirement from prohibiting or having the effect of prohibiting any public provider or public/private partnership provider from providing advanced telecommunications capability or related services. While this bill would protect tribal public providers from state interference, it also would require tribal public providers to apply tribal ordinances and rules that regulate private providers without discrimination in favor of itself or any provider that it owns. This bill has been referred to the House Committee on Energy and Commerce.

Leading Infrastructure for Tomorrow’s America Act – H.R. 2741: On May 15, 2019, Representative Frank Pallone, Jr. (D-NJ) introduced H.R. 2741, the Leading Infrastructure for Tomorrow’s (LIFT) America Act. This bill would include investments in certain infrastructure projects that address climate change and reduce carbon emissions, promote clean drinking water, address America’s health infrastructure, and expand access to broadband internet. Tribal nations would be eligible for funds for the deployment of secure and resilient high-speed broadband internet service, implementation of Next Generation 9-1-1 services, and low-interest financing of broadband infrastructure through secured loans, lines of credit, or loan guarantees to finance broadband infrastructure build out projects. This bill was referred to the following House committees: Committee on Energy and Commerce, Committee on Natural Resources, Committee on Ways and Means, Committee on Transportation and Infrastructure,
and Committee on Education and Labor.


*Improving Broadband Mapping Act of 2019 – S. 842:* On March 14, 2019, Senator Amy Klobuchar (D-MN) introduced S. 842, the Improving Broadband Mapping Act of 2019. This bill would require the FCC to establish a process to use coverage data reported by consumers and tribal, state, and local government entities to verify coverage data reported by wireless carriers. This bill also would require the FCC to consider including a process for incorporation of coverage data obtained from tribal governments. This bill has been referred to the Senate Committee on Commerce, Science, and Transportation.

*Save the Internet Act of 2019 – H.R. 1644:* On March 8, 2019, Representative Michael Doyle (D-PA) introduced H.R. 1644, the Save the Internet Act of 2019. This bill would restore net neutrality by codifying the FCC’s Open Internet Order; require various reports on net neutrality and its effects on the internet, high-speed internet infrastructure, and the accuracy of broadband access mapping; and require FCC engagement and outreach to address the unique broadband internet access service challenges in Indian Country. This bill also would require the FCC to engage and obtain feedback from tribal stakeholders on the effectiveness of the FCC’s obligation to consult with tribal nations in order to determine whether the FCC needs to clarify its tribal engagement statement and ensure accessible and affordable broadband internet access across Indian Country. H.R. 1644 has passed in the House of Representatives and was referred to the Senate. On April 29, 2019, the Senate placed H.R. 1644 on the Senate Legislative Calendar under General Orders.

*Rural Broadband Permitting Efficiency Act of 2019 – H.R. 292:* On January 8, 2019, Representative John Curtis (R-UT) introduced H.R. 292, the Rural Broadband Permitting Efficiency Act of 2019. This bill would allow tribal nations to enter into Memoranda of Understanding (MOU) enabling them to prepare environmental analyses required under the National Environmental Policy Act (NEPA) for the permitting of broadband projects within an operational right-of-way on national forest system land, land managed by the Department of the Interior, or tribal lands. MOUs would not be granted to a state on tribal lands without the consent of the relevant tribal nation, and the MOUs would not permit a tribal nation or state to assume any federal responsibilities for government-to-government consultation with tribal nations. H.R. 292 has been referred to the House Natural Resources and Agriculture Committees.

*Administrative Update*

**FCC Proposed Rule on Rural Digital Opportunity Fund, Connect America Fund – 84 FR 43543:** On August 21, 2019, FCC issued a notice of proposed rulemaking (NPRM) requesting input for the establishment of the Rural Digital Opportunity Fund, which would commit at least $20.4 billion over the next 10 years to high-speed broadband networks in rural America. The FCC proposes to implement a
Tribal Broadband Factor for the Rural Digital Opportunity Fund that would better direct funds to census blocks on tribal lands. Specifically, the FCC seeks comment on the use of a 25-percent bidding credit for rural tribal areas to incentivize carriers to bid on and serve Indian Country. NCAI continues to monitor this rulemaking for developments of tribal interest.

**FCC Announces Broadcast Radio Incubator Program:** Last year, the FCC adopted a Report and Order creating an incubator program with the goal of promoting ownership opportunities for new entrants and small businesses, including tribally owned broadcast radio stations. The FCC expects the incubator program to support the entry of new voices in the broadcasting industry.

**FCC Announces Tribal Priority Window for 2.5GHz band licenses:** On July 10, 2019, the FCC adopted a Report and Order transforming the way Educational Broadband Services (EBS) spectrum in the 2.5 GHz band is licensed and used, including the creation of a tribal priority filing window for new spectrum licenses over rural tribal lands. The 2.5 GHz band has previously been reserved for educational purposes, with limited exceptions. However, significant portions of the 2.5 GHz band that could benefit tribal communities are unassigned and unused. On August 8, 2018, NCAI submitted a filing with the FCC in support of a first-round tribal priority window for any new licenses offered in the 2.5 GHz band, application of existing definitions at 47 CFR § 73.7000 for eligible tribal applicants, and deference to tribal applicants during any mutually exclusive claims to service areas that arise between a tribal and non-tribal applicant. Further, NCAI opposes in its comments application of any tribal applicant definitions that restrict eligibility to rural tribal lands, as defined by the FCC. While the FCC qualified eligibility for the tribal priority window to “rural tribal lands,” the population threshold for what constitutes rural tribal land for purposes of the tribal priority window was increased from 25,000 to 50,000.

**FCC releases NPRM on Creation of a $100 million Connected Care Pilot Telehealth Program:** On July 11, 2019, FCC released a Notice of Proposed Rulemaking seeking comment on the creation of a $100 million Connected Care Pilot Telehealth program within the Universal Service Fund (USF) to support connected care for low-income Americans and veterans. The Connected Care Pilot Telehealth program would operate as a new program within the USF that would provide funding to eligible health care providers, including tribal nations, to defray the qualifying costs of providing connected care services. NCAI continues to monitor this rulemaking for developments of tribal interest.

**FCC releases NPRM on Capping Contributions to the Universal Service Fund:** On May 31, 2019, FCC released a Notice of Proposed Rulemaking seeking comment on capping the entire Universal Service Fund (USF) through a cap on contributions from telecommunications providers. 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. USF is funded through service fees collected from wireline and wireless phone companies and voice over Internet protocol (VoIP) providers. NCAI continues to monitor this rulemaking for developments of tribal interest.

**USDA ReConnect Program Applications Under Review:** On April 23, 2019, USDA began accepting the first round of applications for the Rural e-Connectivity Pilot Program (ReConnect Program). On December 13, 2018, the U.S. Department of Agriculture (USDA) announced up to $600 million in loans and grants as part of the ReConnect Program. This pilot program allows certain telecommunications
companies, rural electric cooperatives and utilities, internet service providers, and municipalities to apply for funding to connect rural areas that currently have insufficient broadband service. USDA Rural Development is the primary agency delivering the program with assistance from other federal partners. Projects funded through this initiative must serve communities with fewer than 20,000 people with no broadband service or where service is slower than 10 megabits per second (mbps) download and 1 mbps upload.

**Native Nations Communications Task Force Meeting at FCC Headquarters:** On December 4, 2018, the newly appointed Native Nations Communications Task Force held its first meeting at FCC Headquarters. On October 24, 2018, Chairman Ajit Pai announced the appointment of 19 tribal members and eight FCC members to the FCC’s renewed Task Force. The Task Force’s mission is to provide guidance, expertise, and recommendations to specific requests from the Commission on a range of telecommunications issues that directly or indirectly affect tribal governments and their citizens.

**HOUSING**

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

U.S. Census Bureau data from the 2006-2010 American Community Survey shows that of the approximately 142,000 housing units in Indian Country, many lack utilities and basic infrastructure. The survey shows that approximately 8.6 percent lack complete plumbing facilities, 7.5 percent lack kitchen facilities, 18.9 percent lack telephone service, and nearly 30 percent of Indian homes rely on wood for their source of heat. These staggering statistics represent longstanding challenges faced by tribal nations and the need for sustained investments to address these chronic challenges. Improving and investing in tribal housing programs and related infrastructure programs will promote health, safety, and economic development in tribal communities.

**Legislative Update**


NAHASDA authorizes Indian housing programs within HUD for AI/ANs to provide safe and decent housing. It effectively replaced the various Indian housing programs under the 1937 Housing Act and consolidated federal housing funds through direct block grants to the tribal nations and their housing authorities. NAHASDA allows tribal nations to design and implement their own housing and other community development infrastructure programs. As a result, NAHASDA is one of the most successful
self-governance programs for tribal nations.

On September 19, 2019, Senator Tom Udall (D-NM) offered an amendment to reauthorize NAHASDA during a markup of the Fiscal Year 2020 Transportation, Housing, and Urban Development (T-HUD) Appropriations Bill. This amendment was defeated by a margin of 15-16 along party lines.

Tribal HUD-VASH Act – S. 257 & H.R. 2999: On January 29, 2019, Senator Jon Tester (D-MT) introduced S. 257, the Tribal HUD-VASH Act. On May 23, 2019, Representative Ben Ray Luján (D-NM) introduced H.R. 2999 as a companion bill. This legislation would make the Tribal HUD-Veterans Affairs Supportive Housing (Trial HUD-VASH) program permanent. The Tribal HUD-VASH program, which is intended to address housing needs for at-risk and homeless Native veterans residing on tribal lands, is jointly operated by HUD and the Department of Veterans Affairs. In the 115th Congress, a bill permanently authorizing the Tribal HUD-VASH program passed the Senate and nearly passed the House in the final days of the session. On June 27, 2019, S. 257 passed the Senate and was received in the House the next day. S. 257 and H.R. 2999 have each been referred to the House Committee on Financial Services. NCAI will continue to work with its partners to enact this legislation.

Landlord Accountability Act of 2019 – H.R. 232: On January 3, 2019, Representative Nydia Velazquez (D-NY) introduced H.R. 232, the Landlord Accountability Act of 2019. This bill would authorize $25 million for each fiscal year between 2020 and 2024 for a new tenant harassment prevention program, of which tribal nations are eligible to receive a portion. This bill would also prohibit discrimination based on use of rental assistance vouchers, set penalties for violation of these new provisions, and have certain public notice and HUD reporting requirements associated with the prohibition on discrimination based on use of rental assistance vouchers. As part of this bill, tax incentives would be established for maintenance of multi-family housing with rental assistance voucher user tenants. H.R. 232 was referred to the Committee on Financial Services and the Committees on Ways and Means and Judiciary.

Improving Access to Homes for Heroes Act of 2019 – H.R. 165: On January 3, 2019, Representative Al Green (D-TX) introduced H.R. 165, the Improving Access to Homes for Heroes Act of 2019. This bill would amend the U.S. Housing Act of 1937 and the National Affordable Housing Act to include veterans in housing planning and expressly includes the Tribal HUD-VASH program. H.R. 165 would also require the Secretary of HUD to submit a report to Congress on the activities of the VA during each year, including the number of homeless veterans provided assistance under the Tribal HUD-VASH program. This bill was referred to the Committee on Financial Services.

Administrative Update

HUD Proposed Rule Changing the Section 8 Definition of “Annual income” – 84 FR 48820: On September 17, 2019, HUD published a proposed rule revising HUD regulations to put section 102, 103, and 104 of the Housing Opportunity Through Modernization Act of 2016 (HOTMA) into effect. HOTMA was enacted in July 2016 and made various changes to the United States Housing Act of 1937. To implement these changes, HUD is proposing changes to the definition of “Annual income” found at 24 CFR 5.609. The proposed rule does not propose to make any changes to regulations governing the Office of Native American Programs. However, under the Indian Housing Block Grant (IHBG) Program, tribal nations and Tribally-Designated Housing Entities (TDHEs) have the option to adopt the Section 8 definition of “Annual income.” For this reason, the proposed rule could impact IHBG recipients. Comments are due by November 18, 2019.
**HUD Seeks Comment on Expansion of the Tribal HUD-VASH Program:** On June 3, 2019, HUD announced in a DTLL that it is planning to expand the Tribal HUD-VASH Program. In September 2018, HUD awarded $3.6 million of the $7 million appropriated for the Tribal HUD-VASH Program and seeks to award the remaining $3.4 million to fund new grants to eligible new and existing recipients under NAHASDA. Comments were requested by July 3, 2019. NCAI continues to monitor this request for comment on expansion of the Tribal HUD-VASH Program.

**HUD Extends Comment Period on Section 184 Proposed Rule Changes:** On May 30, 2019, HUD published a DTLL extending the tribal comment period on its draft proposed rule changes to the Section 184 Indian Home Loan Guarantee Program. HUD anticipates publication of the proposed rule in January 2020, with a 60-day comment period.

**HUD Names Hunter Kurtz as Principal Deputy Assistant Secretary for Public and Indian Housing:** On February 6, 2019, President Donald Trump re-nominated Hunter Kurtz to serve as Assistant Secretary of Public and Indian Housing. On March 28, 2019, HUD publicly announced that Mr. Kurtz would serve in the role of Principal Deputy Assistant Secretary for Public and Indian Housing.

**Government Shutdown Suspends Vital Programs:** As part of the partial government shutdown, HUD announced that it would be unable to process Section 184, Section 184A, and Title VI loans that benefit Indian Country. In addition to the interruption of many vital housing programs and services that benefit Indian Country, technical assistance could not be provided for funding opportunities that were available during the shutdown. Also, there were no personnel deemed essential during the shutdown in the HUD Office of Native American Programs, which is the office tasked with improving the living conditions and creating economic opportunities for tribal nations and Indian housing residents.

**TRANSPORTATION**
Safe and adequate roads, bridges, and other modes of transportation are integral to ensuring the safety of tribal citizens, providing economic, educational, and housing opportunities and other community services.

Surface transportation in Indian Country involves thousands of miles of roads, bridges, and highways. According to the latest National Tribal Transportation Facility Inventory (NTTFI), there are approximately 160,000 miles of roads and trails in Indian Country owned and maintained by tribal nations, the Bureau of Indian Affairs (BIA), states, and counties. Of those, tribal nations own and maintain 13,650 miles of roads and trails, of which only 1,000 miles (7.3 percent) are paved, with the remaining 12,650 miles consisting of gravel, earth, or primitive materials. The BIA is responsible for maintaining approximately 29,500 miles of roads in Indian Country, including 900 bridges. When combined, the roads owned and maintained by tribal nations 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 AI/AN communities.

**Legislative Update**

**Surface Transportation Reauthorization:** With the Fixing America’s Surface Transportation Act (FAST Act) set to expire in September 2020, now is the time to build consensus on surface transportation policy that promotes safety and prosperity in tribal communities and upholds the government-to-government relationship between tribal nations and the U.S. Though the FAST Act was an important step forward,
the unmet need in Indian Country remains great, and improvements are still necessary to ensure programs at the U.S. Department of Transportation (DOT) uphold the federal government’s treaty and trust obligations to tribal nations. Congress has begun its consideration of appropriate funding levels for surface transportation programs and possible surface transportation program improvements through modifications to existing programs and/or the creation of new surface transportation programs. The Senate Committee on Environment and Public Works has voted S. 2302, America’s Transportation Infrastructure Act of 2019 (ATIA), a surface transportation reauthorization bill, out of committee. As of October 7, 2019, no Tribal Transit Program reauthorization language has come out of the Senate Committee on Banking, Housing, and Urban Affairs. The House Committee on Transportation and Infrastructure timelines indicate a desire to have a surface transportation bill that includes tribal provisions introduced in early 2020.

**America’s Transportation Infrastructure Act of 2019 – S. 2302**: On July 29, 2019, Senators John Barrasso (R-WY), Tom Carper (D-DE), Shelley Moore Capito (R-WV), and Ben Cardin (D-MD) introduced America’s Transportation Infrastructure Act of 2019. S. 2302 would provide $2.9 billion dollars for the Tribal Transportation program over five years; authorize $270 million in funding for the Bureau of Indian Affairs Road Maintenance Program over five years; provide $100 million for the Tribal Transportation Bridge program over five years; provide enhancements to certain competitive grant programs, safety incentive programs, and climate resiliency programs to improve tribal access; and streamline and unify certain surface transportation construction and improvement review processes that benefit tribal nations. Additionally, S. 2302 would establish an Office of Tribal Government Affairs at DOT and create an Assistant Secretary for Tribal Government Affairs at DOT to oversee the Tribal Transportation Self-Governance Program. On August 1, 2019, S. 2302 was voted out of the Committee on Environment and Public Works with an amendment in the nature of a substitute. S. 2302 has been placed on the Senate Legislative Calendar under General Orders.

**House Subcommittee for Indigenous Peoples of the United States Hearing on Tribal Infrastructure**: On July 11, 2019, the House Committee on Natural Resources, Subcommittee for Indigenous Peoples of the United States held a hearing titled “Tribal Infrastructure: Roads, Bridges, and Buildings.” Testimony and questions from Subcommittee members emphasized underfunding of construction projects needed in Indian Country and the growing backlog of maintenance on roads. The hearing also highlighted how increasingly frequent adverse weather conditions leave underdeveloped tribal roads and facilities more susceptible to danger and in need of even greater construction or maintenance funding.

**Senate Committee on Indian Affairs Hearing on Tribal Transportation**: On April 3, 2019, the Senate Committee on Indian Affairs (SCIA) held a hearing titled “Enhancing Tribal Self-Governance and Safety of Indian Roads.” Testimony and questions from Committee members focused primarily on the current condition of surface transportation facilities throughout Indian Country, ways to improve the safety and condition of these facilities, and the status of the current Tribal Transportation Self-Governance Program (TTSGP) Negotiated Rulemaking.

**Addressing Underdeveloped and Tribally Operated Streets (AUTOS) Act – S. 1211**: On April 11, 2019, Chairman John Hoeven (R-ND) introduced the AUTOS Act. S. 1211 would permit certain tribal transportation safety projects to be eligible for categorical exclusion from certain Department of the Interior (DOI) environmental review processes; authorize specific funding levels for the BIA Road Maintenance Program with increases of $2 million per year over five years; allow U.S. Customs and
Border Protection (USCBP) to transfer funds to the BIA to repair roads that USCBP uses; reinstate the Tribal Transportation Bridge Program as a stand-alone program; increase the amount set aside in the Tribal Transportation Program for safety initiatives on tribal land from two to four percent; and authorize agency coordination to address the lack of consistent vehicle crash data in Indian Country. The entirety of S. 1211 was incorporated into S. 2302, America’s Transportation Infrastructure Act.

A Bill to Enhance Tribal Road Safety, and for Other Purposes – S. 207: On January 24, 2019, Senator John Barrasso (R-WY) introduced S. 207, a bill to enhance tribal road safety and for other purposes. This bill would incentivize tribal transportation projects that improve safety in tribal communities by creating a categorical exclusion from environmental reviews. Safety projects covered under this bill include roads, pedestrian and bicycle lanes, railway and highway crossings, highway signage and pavement markings, and transportation safety planning. Under this bill, the Secretary of the Interior will identify which transportation safety projects would be eligible for categorical exclusions and those recommendations would be the subject of a proposed rulemaking. In addition, the Secretary would enter into a programmatic agreement with tribal nations able to demonstrate sufficient administrative procedures and capacity to determine on their own behalf which projects could be excluded from environmental reviews. On January 29, 2019, the Senate Committee on Indian Affairs passed S. 207 at a business meeting. The bill now awaits consideration by the full Senate.

Administrative Update

DOT Publishes Proposed Rule for the Tribal Transportation Self-Governance Program (TTSGP) – 84 FR 52706: The FAST Act included the expansion of tribal self-governance throughout DOT. In 2016, the Department formulated a Tribal Transportation Self-Governance Negotiated Rulemaking Committee to implement the self-governance requirements. On October 2, 2019, DOT requested comments on a proposed rule to establish and implement the Tribal Transportation Self-Governance Program (TTSGP), as authorized by Section 1121 of the Fixing America’s Surface Transportation (FAST) Act. The proposed rule was negotiated between representatives of tribal nations and the federal government. The program would provide participating tribal nations greater decision-making authority over their use of certain DOT funding for which they are eligible recipients while reducing associated administrative burdens. The proposed regulations include eligibility criteria; describe the contents of and process for negotiating self-governance compacts and funding agreements with DOT; and set forth the roles, responsibilities, and limitations on DOT and tribal nations that participate in the TTSGP. NCAI supports the expansion of self-governance programs throughout DOT and will continue to advocate for the work of the Committee.

DOT Announces $871.2 Million in Emergency Relief for Road and Bridge Repairs: On September 10, 2019, the Federal Highway Administration (FHWA), DOT announced $871.2 million in Emergency Relief funds to help tribal governments, states, and other U.S. territories make repairs to roads and bridges damaged by storms, floods, and other unexpected events. FHWA Emergency Relief funds are provided for eligible expenses associated with damage from natural disasters or other emergency situations to help pay for the reconstruction or replacement of damaged highways and bridges, as well as the arrangement of detours and replacement of guardrails or other damaged safety devices. Of the $871.2 million announced by DOT, less than 1 percent (approximately 0.75 percent) was awarded to tribal governments to respond to events in California, Michigan, Nebraska, South Dakota, and Wisconsin.
U.S. Department of Transportation Announces FY 2018 and 2019 Program Recipients for the Nationally Significant Federal Lands and Tribal Projects Program: On June 5, 2019, DOT’s Federal Highway Administration (FHWA) announced the grant recipients for the Nationally Significant Federal Lands and Tribal Projects Program (NSFLTP). These are the first grants to be awarded under this program. The FAST Act established NSFLTP to provide financial assistance for the construction, reconstruction, or rehabilitation of transportation projects providing access to or located on federal or tribal lands. Under NSFLTP, the federal share of a project can be up to 90 percent and can be used to improve the condition of a critical transportation facility. Large-scale projects with estimated construction costs of $50 million or more are given priority consideration for selection, but the program will accept projects with estimated construction costs of at least $25 million. On October 5, 2018, A Notice of Funding Opportunity (NOFO) announced $300 million in funding for the NSFLTP.

Senate Confirms Nicole Nason as Administrator of FHWA: On March 28, 2019, the Senate confirmed Nicole Nason as Administrator of FHWA in a 95-1 vote. FHWA is the agency that oversees the Office of Federal Lands Highway and the Tribal Transportation Program. Nason served as the Assistant Secretary for Governmental Affairs from 2003 to 2006. In 2006, Nason was confirmed as Administrator of the National High Traffic Safety Administration. Beginning in June 2017, Nason served as Senior Advisor to Secretary of State Rex Tillerson and later served as Assistant Secretary of State for Administration at Department of State.

Tribal Interior Budget Council & BIA Road Maintenance Funding: In March 2016, the Tribal Interior Budget Council (TIBC) created a subcommittee to address the budgetary needs in the Bureau of Indian Affairs Road Maintenance Program. This program, one of the BIA’s largest, plays a critical role in addressing the infrastructure needs of tribal communities. However, funding for the BIA Road Maintenance program has not been sufficient to address deferred maintenance, which continues to grow and now sits at approximately $392 million. In April 2018, the Office of Management and Budget (OMB) approved the BIA Roads Maintenance Survey, which was conducted from April to September 2018. Results were provided at the November 2018 TIBC meeting and can be found on NCAI’s TIBC website (http://www.ncai.org/initiatives/bia-tribal-budget-advisory-council). The survey’s findings include top priorities, issues, and average expenditures on various roads maintenance tasks. The survey also improved the accuracy of the estimate of deferred maintenance throughout Indian Country and demonstrated that tribal nations are using Tribal Transportation Program (TTP) dollars to supplement roads maintenance, which slows down other transportation infrastructure projects that rely on TTP funds. NCAI continues to work with this subcommittee to ensure the funding for this vital program is increased.
NCAI and our member tribal nations recognize the importance of participating in international policy discussions that impact the rights of Indigenous peoples. NCAI holds Economic and Social Council (ECOSOC) consultative status with the United Nations (UN), which allows us to participate in many UN meetings. NCAI works in close partnership with the Native American Rights Fund (NARF), which represents NCAI on many international legal and policy issues.

In recent years, NCAI has prioritized certain negotiations at the UN and the Organization of American States (OAS) that have been building the structural framework for the advancement of Indigenous rights, including the negotiation and adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007 and the American Declaration on the Rights of Indigenous Peoples (ADRIP) in 2016. In addition to this foundational work, NCAI has engaged in a number of substantive policy discussions of particular concern to Indigenous peoples, including climate change and the protection of Indigenous traditional knowledge and genetic resources.

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

The resolution established a multi-year calendar of consultations, meetings, and production of a report and includes:

1. annual interactive hearings with Indigenous peoples by the President of the General Assembly (GA) during the UN Permanent Forum on Indigenous Issues (UNPFII) annual sessions (April 2018, April 2019, and April 2020);
2. regional consultations with Indigenous peoples by the UN Secretary-General (with the support of member states) before the UNPFII’s 19th Session (April 2020);
3. Secretary-General’s Report before the end of the GA’s 74th Session (September 2020); and
4. continued consideration of measures to enhance participation during the GA’s 75th Session (September 2020 – September 2021).

This outcome was disappointing to the Indigenous peoples who had been engaged in the process, and reflected the failure of the UN member states to achieve consensus on a resolution that would allow greater participation of Indigenous governments in the UN. The resolution did, however, encourage existing UN bodies including the UNPFII, Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), and the Special Rapporteur on the Rights of Indigenous Peoples (SRRIP) to enhance the participation of Indigenous governments. The resolution also encourages the UN system as a whole, in accordance with existing rules of procedure, to facilitate the participation of Indigenous governments in relevant conferences, summits, and other meetings.

NCAI and NARF made a joint statement at the 2018 and 2019 Annual Interactive Hearings held in
conjunction with the UNPFII reiterating the need to develop an appropriate status to enable the participation of Indigenous governments at the UN. NCAI also joined with Indigenous peoples from across the world to encourage supportive member states to host a convening with Indigenous peoples and member states focused on developing concrete proposals to move negotiations forward. We anticipate that this session will take place in January 2020 in Ecuador, although final dates have not yet been announced.

NCAI also joined with the Indian Law Resource Center, the Ewiaapaayp Band of Kumeyaay Indians, and NARF in making comments to the UN Human Rights Council (HRC) urging the HRC to adopt rules to accommodate the participation of Indigenous governments and to consider the topic during its annual panel discussion in 2018, which it did. In its 2018 annual resolution on Indigenous peoples, the HRC decided to hold a half-day interactive dialogue on ways to enhance the participation of Indigenous peoples’ representatives and institutions in meetings of the HRC, which took place on July 15, 2019 in Geneva, Switzerland. A report from this roundtable is forthcoming.

In its 2019 annual resolution on Indigenous peoples, adopted in September, the HRC included strong language aimed at furthering the discussion of enhancing the participation of Indigenous governments at the UN. Through the resolution, the HRC decided to hold an intercessional roundtable to “discuss possible steps to be taken to enhance the participation of indigenous peoples’ representatives and institutions in meetings of the Human Rights Council on issues affecting them.” The resolution calls for the roundtable to be co-chaired by a representative of the President of the HRC and a representative of Indigenous peoples. The resolution also encouraged EMRIP to continue its discussions on enhanced participation, and encourages states and relevant entities to support regional consultations on enhanced participation in order to seek input from Indigenous peoples from all regions.

NCAI will continue to advocate strongly for tribal nations to have an appropriate, dignified place at the United Nations.

_**Intellectual property and traditional knowledge:**_ The World Intellectual Property Organization (WIPO) is currently negotiating international instruments that, if adopted, could create new binding international law relating to intellectual property and the protection of Indigenous peoples’ traditional knowledge, genetic resources, and traditional cultural expressions. In 2016, NCAI adopted Resolution #PHX-16-054 calling on the United States to consult with Indigenous peoples on the formal negotiating positions and textual recommendations of the U.S. regarding traditional knowledge and traditional cultural expressions. NARF has attended the WIPO negotiations on behalf of NCAI since 2016.

In October 2017, the WIPO General Assembly renewed the mandate for WIPO negotiations for 2018-2019 and established a six-session work plan. The sessions proceeded as follows:

- March 2018 - Genetic Resources
- June 2018 - Genetic Resources
- September 2018 - Traditional Knowledge/Traditional Cultural Expressions
- December 2018 - Traditional Knowledge/Traditional Cultural Expressions
- March 2019 - Traditional Knowledge/Traditional Cultural Expressions
- June 2019 - Traditional Knowledge/Traditional Cultural Expressions
In 2017 and 2018, NARF and the University of Colorado Law School hosted drafting sessions to propose text for the WIPO negotiations. The first drafting session, held in May 2017, resulted in recommendations on traditional cultural expressions focused on the problem of theft and misuse. The recommendations also addressed false marketing suggesting affiliation, approval, or endorsement by Indigenous peoples. In negotiations in June 2017, three WIPO member nation states introduced portions of the proposed text for consideration into the draft WIPO instrument on traditional cultural expressions.

The second drafting session in May 2018 resulted in draft text and recommendations for the genetic resources text. Unfortunately, due to objections from the U.S. and Japan, none of the modifications to the genetic resources text negotiated by member states at the June 2018 session were maintained in the text, and the text reverted to the version that existed at the end of the March 2018 session.

Negotiations at the September 2018, December 2018, March 2019 and June 2019 sessions focused on cross-cutting issues in the traditional knowledge and traditional cultural expressions texts. During the June 2019 session, negotiators also outlined a proposed mandate and work plan for 2020-2021. The WIPO General Assembly is meeting September 30 to October 9 and will adopt the mandate and work plan for the negotiations in 2020-2021, which we expect will proceed as follows:

<table>
<thead>
<tr>
<th>February/March 2020</th>
<th>Undertake negotiations on Genetic Resources with a focus on addressing unresolved issues and considering options for a draft legal instrument.</th>
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<tr>
<td>May/June 2020</td>
<td>Undertake negotiations on Genetic Resources with a focus on addressing unresolved issues and considering options for a draft legal instrument.</td>
</tr>
<tr>
<td>September 2020</td>
<td>Undertake negotiations on Traditional Knowledge and/or Traditional Cultural Expressions with a focus on addressing unresolved and cross-cutting issues and considering options for a draft legal instrument(s).</td>
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<tr>
<td>October 2020</td>
<td>WIPO General Assembly. Factual report and consider recommendations.</td>
</tr>
<tr>
<td>November/December 2020</td>
<td>Undertake negotiations on Traditional Knowledge and/or Traditional Cultural Expressions with a focus on addressing unresolved and cross-cutting issues and considering options for a draft legal instrument(s).</td>
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<tr>
<td>March/April 2021</td>
<td>Undertake negotiations on Traditional Knowledge and/or Traditional Cultural Expressions with a focus on addressing unresolved and cross-cutting issues and considering options for a draft legal instrument(s).</td>
</tr>
<tr>
<td>June/July 2021</td>
<td>Undertake negotiations on Traditional Knowledge and/or Traditional Cultural Expressions with a focus on addressing unresolved and cross-cutting issues and considering options for a draft legal instrument(s). Stocktaking and making a recommendation.</td>
</tr>
</tbody>
</table>
On the domestic front over the past year, NCAI has hosted several listening sessions on the WIPO negotiations with the U.S. Patent & Trademark Office, the lead WIPO negotiating federal agency, as well as the U.S. Copyright Office, State Department, and Interior Department.

**CLIMATE CHANGE**

Because of their close connection to the natural world, Indigenous peoples are among those most affected by climate change. Recognizing that Indigenous homelands and ways of life are threatened by climate change, NCAI and the NARF have joined Indigenous nations and State parties in climate change negotiations at the United Nations Framework Convention on Climate Change (UNFCCC).

In December 2018, negotiations under the UNFCCC took place in Katowice, Poland at the 24th Conference of the Parties (COP 24). The Paris Decision, which adopted the Paris Agreement at COP 21, also established a Local Communities and Indigenous Peoples Platform to provide a mechanism for traditional knowledge to influence climate policy at local, regional, and international levels. While the platform was established at COP 21, the implementation has been incremental. A historic step forward in implementing the platform was taken at COP 24. Working closely with the International Indigenous Forum on Climate Change, the Subsidiary Body for Scientific and Technical Advice (SBSTA) established a Facilitative Working Group (FWG) that will be responsible for developing a work plan for the platform.

The working group has 14 representatives – seven country representatives, and seven Indigenous representatives appointed by Indigenous peoples – with one from each of the seven regions of the world. This representation of Indigenous peoples is unprecedented, marking the first time that Indigenous representatives will participate on an equal basis with states within a United Nations body with representatives of their own choice. The platform will institutionalize dialogue between states and Indigenous peoples, foster Indigenous peoples’ participation in the discussions on environmental policy, and encourage a holistic response to climate change. The first meeting on the Facilitative Working Group took place June 14-16, 2019, immediately preceding the 50th meeting of the SBSTA, June 17-27, in Bonn, Germany. A proposed two-year work plan was developed. The FWG will meet again immediately preceding COP 25 in Santiago, Chile. The work plan will be presented at COP 25 for approval.

The platform provides the opportunity for Indigenous peoples to contribute greatly to solving the climate change crisis, but it poses potential dangers to their traditional knowledge as well. The input of tribal leaders and traditional knowledge holders is crucial in this process to ensure that the traditional knowledge is respected, protected, and properly used. NCAI will continue to work with the International Indigenous Peoples’ Forum on Climate Change (IIPFCC) and the Facilitative Working Group to achieve a platform that honors the rights set out in the UN Declaration on the Rights of Indigenous Peoples, especially the right to self-determination, the right to manage their traditional knowledge, their rights to their lands, territories, and natural resources, and the right to free, prior, and informed consent.

In addition to the ongoing work under the UNFCCC, the UN Secretary-General convened a Special Summit on Climate Change on September 23, 2019 in New York City in recognition of the urgency of
the climate problem. NCAI and NARF engaged with the IIPFCC at an indigenous preparatory meeting in Mexico City. We worked with the Caucus to develop a statement of commitments of Indigenous Peoples to increased ambition. The statement was read on September 23 by a member chosen by the Caucus.

PROTECTION OF MARINE BIOLOGY

The United Nations has convened an Intergovernmental Conference to develop the text of an international, legally-binding instrument under the United Nations Convention on the Law of Sea that will govern the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. The text will address marine genetic resources, including questions on the sharing of benefits, measures such as area-based management tools, including marine protected areas, environmental impact assessments and capacity-building and the transfer of marine technology. NCAI adopted Resolution #KAN-18-008 calling on the members of the United Nations to uphold the rights of Indigenous peoples in any instrument that is developed and to meaningfully include Indigenous peoples in the negotiations. The next negotiation session will take place in the first half of 2020 in New York City, and NCAI encourages tribal nations who are interested in this topic to consider attending.
JUSTICE AND CIVIL RIGHTS

JURISDICTION, COURTS, LAW ENFORCEMENT, AND VICTIMS SERVICES
The crime rate on reservations is an urgent public safety issue. A recent Department of Justice (DOJ) study found that more than four in five AI/AN adults have experienced some form of violence in their lifetime. DOJ also found that Native victims are more likely to be injured as a result of their violent victimization, more likely to need services, and are significantly less likely to have access to services compared to their non-Native counterparts. The current public safety crisis in many tribal communities is the result of decades of gross underfunding of tribal criminal justice systems, a uniquely complex jurisdictional scheme that keeps tribal governments from being able to fully police their lands, and a centuries-old failure by the federal government to fulfill its public safety obligations on tribal lands.

There are several interrelated challenges when it comes to the funding of tribal public safety and justice systems: (1) available funding is profoundly inadequate; (2) available funding is spread across multiple federal agencies with different programmatic and administrative requirements; and (3) a significant portion of the available funding is distributed via short-term, competitive grants that undermine program stability and hamper strategic planning. BIA released an “unmet obligations” report in 2017 concluding that there is more than $2 billion in unmet need for tribal law enforcement and tribal court funding.

Legislative Update
VAWA 2019 – H.R. 1585: In April 2019, the House of Representatives passed Representative Karen Bass’ (D-CA) bill, H.R. 1585, the Violence Against Women Act (VAWA) Reauthorization. The bill contains key provisions that would restore tribal jurisdiction over non-Indians for certain crimes involving children and elders, sexual violence, stalking, sex trafficking, obstruction of justice, and assaults against law enforcement and corrections personnel. The bill also includes provisions aimed at improving the response to cases of missing and murdered Native women. NCAI strongly supported these provisions, which passed in the House with bipartisan support. The Senate has indicated that they will not take up the House VAWA bill and instead Senators Diane Feinstein (D-CA), Lindsey Graham (R-SC), and Joni Ernst (R-IA) are currently working to develop language for a Senate version of a VAWA reauthorization bill. NCAI’s priorities for VAWA reauthorization are as follows:

• include provisions like those included in the Native Youth and Tribal Officer Protection Act (S. 290) and Justice for Native Survivors of Sexual Violence Act (S. 288) that amend 25 U.S.C. § 1304 to address jurisdictional gaps, including: child abuse and endangerment; assaults against law enforcement officers; sexual violence; stalking; trafficking; and the exclusion of certain tribal nations from the law;
• create a permanent authorization for DOJ’s Tribal Access to National Crime Information Program (TAP) and ensure that TAP is available to all tribal nations;
• improve the response to and classification of incidents of missing and murdered Indian women consistent with NCAI Resolution #PHX-16-077, “Addressing Crisis of Missing and Murdered Native Women”;
• identify and address the unique barriers to safety for Alaska Native women, based upon meaningful findings, and provide access to all programs; and
• reauthorize VAWA’s tribal grant programs and ensure that funding is available to cover costs incurred by tribal nations who are exercising jurisdiction pursuant to VAWA.

A Senate Republican discussion draft of tribal jurisdiction provisions for VAWA is currently circulating.
The draft recognizes the need to expand tribal jurisdiction to cover additional crimes, including crimes against children and law enforcement and sexual violence. The draft also includes, however, several provisions similar to those rejected during the VAWA 2013 debate that would undermine the independence of tribal courts, destabilize the protections offered in tribal courts under the Indian Civil Rights Act, and hold tribal courts to standards higher than any federal, state, or territorial court in the country while also subjecting them to oversight and review that no other courts experience.

**SURVIVE Act – S. 211 & H.R. 1351:** The SURVIVE Act, which Senator John Hoeven (R-ND) introduced with broad bipartisan support in the Senate, and Representative Tom O’Halleran (D-AZ) introduced with broad bipartisan support in the House, will create a tribal grant program within the Department of Justice’s Office for Victims of Crime to improve crime victim services. The bill directs that five (5) percent of the total annual outlays from the Crime Victims Fund (CVF) be provided to tribal nations for the next 10 years. Based on recent funding levels, this could result in approximately $130-160 million for tribal crime victim services. S. 211 was reported favorably by the Indian Affairs Committee on January 29, 2019. H.R. 1351 was referred to the House Committee on the Judiciary.

**Tribal Law and Order Reauthorization and Amendments Act of 2019 – S. 210:** This legislation would reauthorize the grant programs included in the Tribal Law & Order Act of 2010. It also includes other reforms to improve public safety in tribal communities, including an extension of the Bureau of Prisons (BOP) Pilot Project that allowed tribal nations to house certain offenders in BOP facilities; the creation of a federal penalty for violations of a tribal exclusion order; and reforms aimed at improving juvenile justice, data sharing, provision of indigent defense in tribal courts, and the response to substance abuse and human trafficking. The bill was reported favorably by the Senate Committee on Indian Affairs on January 29, 2019.

**The Native Youth and Tribal Officer Protection Act – S. 290 & H.R. 958:** In the 115th Congress, identical bills (S. 2233/H.R. 6728) were introduced in the Senate and House to amend 25 U.S.C. § 1304 to reaffirm tribal inherent authority over child abuse and crimes that are committed against police officers and other justice officials exercising special domestic violence criminal jurisdiction. On January 31, 2019, Senator Tom Udall (D-NM) reintroduced the Native Youth and Tribal Officer Protection Act with Senators Lisa Murkowski (R-AK) and Tina Smith (D-MN) as original co-sponsors. On February 4, 2019 the bill was reintroduced in the House by Representatives Tom O’Halleran (D-AZ) and Tom Cole (R-OK). The Senate Committee on Indian Affairs held a hearing on the bill on June 19, 2019.

**Justice for Native Survivors of Sexual Violence Act – S. 288 & H.R. 3977:** In the 115th Congress, Senators Lisa Murkowski (R-AK), Tina Smith (D-MN), and Tom Udall (D-NM) introduced a bill, S. 3216, to amend 25 U.S.C. § 1304 to reaffirm tribal inherent authority over sexual assault, trafficking, and stalking crimes committed by non-Indians against Indians in Indian Country. On January 31, 2019, Senators Murkowski, Smith, and Udall reintroduced the Justice for Native Survivors of Sexual Violence Act, and Representative Deb Haaland (D-NM) and Tom Cole (R-OK) introduced H.R. 3977 as companion legislation. H.R. 3977 was referred to the House Committee on Natural Resources. S. 288 was referred to the Senate Committee on Indian Affairs and a hearing was held on the bill on June 19, 2019.

**Savanna’s Act – S. 227 & H.R. 2733:** Senators Lisa Murkowski (R-AK) and Catherine Cortez Masto (D-NV) reintroduced Savanna’s Act, S. 227, along with a number of other original co-sponsors. The
legislation, which has bipartisan support, is named in honor of Savanna LaFontaine-Greywind, a young Native woman who was tragically killed in North Dakota in August 2017. A similar bill was introduced in the House by Representatives Norma Torres (D-CA) and Dan Newhouse (R-WA). While the bills differ slightly, both aim to improve the response to missing and murdered Native women by: improving tribal access to the federal criminal information databases; requiring data collection on missing and murdered Native people; and directing U.S. Attorneys to review, revise, and develop law enforcement and justice protocols to address missing and murdered AI/ANs. S. 227 has been referred to the Senate Committee on Indian Affairs and a hearing was held on the bill on June 19, 2019. H.R. 2733 was referred to the House Natural Resources and Judiciary Committees. On March 14, 2019, a hearing was held in the Subcommittee for Indigenous Peoples of the United States titled, “Unmasking the Hidden Crisis of Murdered and Missing Indigenous Women (MMIW): Exploring Solutions to End the Cycle of Violence.”

**Not Invisible Act – S. 982 & H.R. 2438:** Introduced by Senators Catherine Cortez Masto (D-NV), Jon Tester (D-MT), and Lisa Murkowski (R-AK) and Representatives Deb Haaland (D-NM), Tom Cole (R-OK), Sharice Davids (D-KS), and Markwayne Mullin (R-OK), this bill seeks to improve the response to missing and murdered Indians and violent crime by: directing DOI to designate an official to coordinate across agencies on efforts to address missing, trafficked, and murdered Indians; establishing an advisory committee on violent crime within Indian lands and of Indians; tasking the advisory committee with making recommendations and developing best practices; and requiring the Secretary of the Interior and Attorney General to respond to the recommendations of the committee in writing. S. 982 has been referred to the Senate Committee on Indian Affairs and a hearing was held on the bill on June 19, 2019. H.R. 2438 was referred to the House Natural Resources and Judiciary Committees.

**Administrative Update**

**VOCA Tribal Set-Aside Funding:** For the past two years, Congress has set aside hundreds of millions of dollars for tribal governments to meet the needs of crime victims in tribal communities. Unfortunately, DOJ’s administration of this funding to date raises significant concern about DOJ’s capacity and commitment to successfully administer this funding. Of the $133.1 million appropriated for tribal crime victim services in FY 2018, less than $100 million of it was disbursed to tribal nations as directed by Congress. Over $24 million – 20 percent of the funds appropriated for tribal nations – was not obligated and ultimately was returned to the Crime Victims Fund. At the same time, only 154 of the 195 tribal nations who applied for funding received it. Many of the tribal nations that were funded saw their requested budgets slashed with little or no explanation.

Tribal nations have worked for years to educate Congress and the Administration about the dire need for victim services in tribal communities, as reflected in NCAI Resolution #ANC 14-048, “Support for a Dedicated Tribal Set-Aside in the Victims of Crime Act Fund.” It is thus troubling that 20 percent of this funding was not distributed in FY 2018. At every opportunity over the past several years, tribal nations have urged DOJ to administer this funding on a non-competitive, streamlined basis to ensure these funds are disbursed efficiently and equitably in a way that works for the tribal communities they are intended to serve. DOJ instead decided to continue administering this program through a discretionary grant solicitation to distribute the $168 million appropriated for FY 2019. We understand that DOJ obligated all of the funds appropriated for FY 2019.

DOJ has held several consultations over the past few months on the administration of tribal crime
victims funding. Tribal leaders have continued to urge DOJ to develop a methodology for distributing the funds that ensures that all eligible tribal nations have access to the funding and that removes unnecessary administrative burdens and requirements that undermine tribal self-determination.

**VOTING RIGHTS**

Native people were the last to obtain the right to vote in the U.S. 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 are in remote, isolated areas, with high rates of poverty, and in some areas, limited English proficiency.

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

**Legislative Update**

*Native American Voting Rights Act of 2019 S. 739 and H.R. 1694*: S. 739 and H.R. 1694, companion measures titled, the Native American Voting Rights Act of 2019 (NAVRA), were introduced earlier this year. The Senate bill was introduced by Senator Tom Udall (D-NM) and had 15 Democratic co-sponsors. The House bill was introduced by Representative Ben Ray Luján (D-NM) and has 1 Republican co-sponsor and 86 Democratic co-sponsors. Both bills are aimed at improving access to voting for Native people. Both bills were referred to the respective Judiciary Committees. Specifically, the legislation would:

- establish a Native American Voting Rights Task Force grant program, which will provide funds to tribal and state consortiums for purposes of boosting Native voter registration, education, and election participation in tribal communities;
- improve access to voter registration and polling sites on tribal lands;
- restore pre-clearance review for certain state actions that have been used to restrict access to the polls on tribal lands;
- require states to treat tribal IDs as identification for purposes of state voter ID laws;
- direct states to consult with tribal nations on the appropriate method for furnishing instructions, assistance, or other information related to registration and voting in Indigenous languages; and
- require DOJ to conduct annual consultation with tribal governments on voting issues.

The House has been holding a series of hearings on voting rights in both the Judiciary Committee and the House Administration Committee, Subcommittee on Elections that have included testimony from Native witnesses about the challenges many Native voters encounter when attempting to register to vote, cast a ballot, and elect the candidate of their choice.
**NAVRC Field Hearings:** From September 2017 to 2018, the NAVRC completed a series of nine field hearings in seven states. The hearings focused on identifying instances of voter suppression and documenting all the barriers Native voters face. Information from the hearings will help promote public education, identify policy solutions, and advance other legal remedies to expand Native access to voting. A final report is anticipated soon.

**JUVENILE JUSTICE**

Tribal youth are at a greater risk of entering the juvenile justice system than their non-tribal peers. Tribal youth are over-represented in federal and state detention facilities when compared to other youth. In response, tribal nations across the U.S. have focused on addressing tribal youth delinquency through innovative culturally appropriate prevention and diversion programs. However, tribal nations are unable to provide services to their youth when federal and state justice systems fail to consistently track and report their numbers and locations. To assist tribal nations and allies in the effort to support tribal youth, NCAI has launched the Tribal Juvenile Justice webpage on its website. The webpage includes various tribal juvenile justice resources such as the 2019 NCAI Tribal Juvenile Justice: Background and Recommendations policy brief, various reports on tribal youth in the juvenile justice systems, and the NCAI tribal juvenile justice podcast series.

**Legislative Update**

*Authorizing Departures from the Mandatory Minimum Sentences for Juvenile Offenders – H.R. 1949:* On March 28, 2019, Representative Bruce Westerman (R-AR) introduced H.R. 1949, which would give federal judges the authority to consider a juvenile’s age and prospect for rehabilitation and then impose a sentence that is 35 percent below the federal statutory minimum sentence. This is important as many tribal youths end up in the federal justice system based on their political status. Permitting a departure from the mandatory minimum sentences for federal crimes would have a positive impact on tribal youth, allowing them to focus on rehabilitation rather than being incarcerated. H.R. 1949 has been referred to the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security.

*Sara’s Law – H.R. 1950:* Representative Bruce Westerman (R-AR) introduced H.R. 1950, on March 28, 2019. The bill would permit federal judges to depart from mandatory minimum sentences or suspend any portion of an imposed sentence where the youth committed a violent offense against a person who had sex trafficked or sexually abused them within the past year. H.R. 1950 has been referred to the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security.

*The Reduction of Life Without Parole for Certain Juvenile Offenders – H.R. 1951:* On March 28, 2019, Representative Bruce Westerman (R-AR) introduced H.R. 1951. The bill would allow federal judges to modify the prison sentence of juveniles whose crimes were committed prior to the age of 18. The judge would weigh a list of factors and relevant information before ordering a reduction in sentence. H.R. 1951 has been referred to the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security.

*Creating Pathways for Youth Employment Act – S. 1551:* On May 20, 2019, Senator Dick Durbin (D-IL) introduced the Creating Pathways for Youth Employment Act, which was referred to the Senate Committee on Education, Labor, and Pensions. S. 1551 would provide funding for states, tribal nations, and tribal organizations to create summer youth employment programs and subsidize year-round youth employment opportunities.
Administrative Update

Office of Juvenile Justice and Delinquency Prevention (OJJDP) Lowers State Reporting Requirements:

OJJDP announced in 2018 that it would lower the number of Disproportionate Minority Contacts (DMC) that states must report from nine to five. DMC reporting requirements focus on juveniles located in states’ justice systems. The OJJDP has also permitted states to report on only four of the five listed DMCs throughout its FY 2019 grants, allowing for inconsistent data collection. This is concerning because the GAO in a September 2018 report revealed that states often do not report on the number of tribal youths in their juvenile justice systems. GAO revealed in the same report that the federal government also does not consistently report on tribal youth in the federal justice system. The lack of reliable data on tribal youth prevents tribal nations from adequately assessing and addressing the needs of their youth in state and federal justice systems. NCAI has recommended that all states be required to identify tribal youth in their justice systems by requesting their tribal affiliation and reporting the data to the OJJDP as part of the DMC requirements.

CHILD WELFARE

In 1978, Congress passed the Indian Child Welfare Act (ICWA) in response to a crisis sweeping across AI/AN communities. Congress found that AI/AN children were being removed in alarming numbers from their homes by state child welfare and private adoption agencies. For example, 25-35 percent of all AI/AN children were taken from their homes, 85 percent of those same children were adopted outside of their families and tribal communities, even though able and willing family members often were available to raise them. The consequences of these decades-old practices left AI/AN families and communities devastated across the country, and residual effects still impact the overall wellbeing of AI/AN families and communities generations later. In light of these findings, Congress, through its unique trust relationship with tribal nations and its plenary power over Indian affairs, passed ICWA to protect the best interests of AI/AN children and their families. While ICWA has improved the state of child welfare for AI/AN children, its protections and programs as well as other Congressional programs for AI/AN children are still greatly needed today to ensure all Native children grow up protected, loved, and rooted in their tribal cultures and communities.

Legislative Update

American Indian and Alaska Native Child Abuse Prevention and Treatment Act – S. 1329 & H.R. 2549:

On May 6, 2019, Senator Elizabeth Warren (D-MA) introduced S. 1329, the American Indian and Alaska Native Child Abuse Prevention and Treatment Act (AI/AN CAPTA), which was referred to the Committee on Indian Affairs. Soon after, Representative Raúl Grijalva (D-AZ) introduced H.R. 2549, an AI/AN CAPTA companion bill, which was referred to the Committee on Education and Labor and the House Natural Resources, Subcommittee for Indigenous Peoples of the United States. AI/AN CAPTA would amend the Child Abuse and Prevention Treatment Act (CAPTA) to increase funding for tribal nations and tribal organizations to support AI/AN youth, require that tribal nations are considered in the equal geographic distribution of CAPTA funds, and require that GAO issue a report on child abuse and prevention efforts in Indian Country.

Stronger Child Abuse Prevention and Treatment Act – H.R. 2480:

On May 2, 2019, Representative Kim Schrier (D-WA) introduced H.R. 2480 to reauthorize the Child Abuse and Prevention Treatment Act (CAPTA). H.R. 2480 would slightly increase CAPTA funding for tribal nations and tribal organizations and require the GAO to issue a report on child abuse and prevention efforts in Indian Country. H.R. 2480 passed the House on May 20, 2019 and is awaiting consideration in the Senate Committee on
Family First Transition and Support Act of 2019 – S. 1376 & H.R. 2702: On May 9, 2019, Senator Sherrod Brown (D-OH) introduced S. 1376, the Family First Transition and Support Act of 2019, which was referred to the Senate Committee on Finance. On May 14, Representative Karen Bass (D-CA) introduced H.R. 2702, a companion bill which was referred to the House Committee on Ways and Means. These bills would increase funding for tribal nations, increase funding to the child welfare Tribal Court Improvement Program, and remove barriers for smaller tribal nations to access federal Title IV-B funding.

National Adoption and Foster Care Home Study Act – S. 1912 & H.R. 3359: On June 19, 2019, Senator Kirsten Gillibrand (D-NY) introduced S. 1912, the National Adoption and Foster Care Home Study Act, which was referred to the Senate Committee on Health, Education, Labor, and Pensions. At the same time Representative Jared Huffman (D-CA) introduced H.R. 3359, a companion bill in the House, which was referred to the House Committee on Education and Labor. The bill would establish a national, research-based home study assessment process to evaluate perspective foster and adoptive parents. It would also provide funding to tribal nations and states who adopt and implement the process.

Administrative Update
Notice of Proposed Rulemaking to Cut 90 Percent of AI/AN and ICWA AFCARS Data Elements: On April 19, 2019, the U.S. Department of Health and Human Services, Administration on Children, Youth, and Families (ACF) issued a notice of proposed rulemaking on the adoption and foster care analysis and reporting system (AFCARS) regulations. The current AFCARS regulations require Title IV-E agencies to collect and report data to the ACF on children in out-of-home care, children who exit out-of-home care to adoption or legal guardianship, and children who are covered by a Title IV-E adoption or guardianship assistance agreement. In 2016, ACF adopted regulations requiring Title IV-E agencies to report information regarding AI/AN children, ICWA, and ICWA compliance. The proposed regulations would eliminate 90 percent of the AI/AN children and ICWA AFCARS data elements. Comments for the rulemaking were due on June 18, 2019. The final rule has not been issued by the agency yet.

Presidential Task Force on Protecting Native American Children in the Indian Health Service System: On March 26, 2019, President Donald Trump established the Presidential Task Force on Protecting Native American Children in the Indian Health Service System. The Task Force is charged with investigating systematic roadblocks that enabled the predatory practices of health care providers towards Native children. The Task Force has held three meetings to date but has not issued any findings or recommendations.

EMERGENCY RESPONSE & HOMELAND SECURITY
Tribal leaders and NCAI continue to advocate for parity in protecting tribal homelands. Since 2003, 98.75 percent of total Department of Homeland Security (DHS) funding has gone to state and local governments, leaving little for tribal nations ($55 billion for state and local governments vs. $70 million for tribal nations). DHS and its component departments, such as Customs and Border Protection, the Federal Emergency Management Agency, and the Transportation Security Administration have garnered mixed reviews from tribal officials in recent years regarding meaningful consultation and collaboration, upholding the federal trust responsibility in program service delivery, and approaches to federal grants via pass-through funding from states to tribal nations. Additionally, there is a need for positive change to
tribal homeland security and emergency management matters regarding border crossings, tribal IDs, disaster declaration authority, emergency management capacity building, and equitable yet realistic levels of grant access and funding.

Legislative Update

Legislation Concerning Construction of a Southern Border Wall: When the border was drawn between the United States and Mexico, it cut through several tribal nations’ territories and resulted in the separation of Native families and placement of tribal religious and cultural sites on both sides of the international boundary. Tribal nations who live on or near the southern border have significant interests that will be adversely affected by a border wall. Currently, several bills have been introduced related to construction of a southern border wall. NCAI will continue to monitor this and similar legislation to ensure tribal interests are protected.

Fund and Complete the Border Wall Act – H.R. 85: On January 3, 2019, Representative Andy Biggs (R-AZ) introduced the Fund and Complete the Border Wall Act. The bill would establish a Southern Border Wall Fund and would allow the Secretary of DHS to use the funds to plan, design, and maintain the border wall, as well as purchase and maintain necessary equipment for Border Patrol Agents.

Additionally, the bill would amend section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to broadly authorize the Secretary of DHS to “take such actions as may be necessary (including the removal of obstacles to detection of illegal entrants) to design, test, construct, and install physical barriers, roads, and technology along the internal land border between the United States and Mexico to prevent illegal crossings in all areas.” The bill was referred to the House Committees on Homeland Security, Ways and Means, the Judiciary, Foreign Affairs, Financial Services, Education and Labor, and Appropriations.

NCAI has the following standing resolutions addressing this topic: Resolution #ECWS-08-001, “Supporting Amending Secure Fence Act and Requiring DHS Secretary to Consult and Coordinate with Tribes in Jointly Developing a Border Strategy for Tribal Lands along the United States’ International Borders,” and Resolution #REN-08-002, “Supporting H.R. 5530, the Tribal Government Homeland Security Coordination and Integration Act.” Consistent with these resolutions, NCAI opposes waivers of federal, state, and other laws under Section 102(c) of the Illegal Immigration Reform and Immigrant Responsibilities Act of 1996 for the construction of border fencing and roads. Such waivers are unnecessary, potentially destructive, and in violation of the federal obligation to consult with tribal nations on a government-to-government basis and respect tribal sovereignty and self-determination.

National Landslide Preparedness Act – H.R. 1261 & S. 529: On February 2, 2019, Representative Suzan DelBene (D-WA) introduced H.R. 1261, the National Landslide Preparedness Act, which was referred to the House Committee on Natural Resources. On the same day Senator Maria Cantwell (D-WA) introduced S. 529, a companion bill, in the Senate, which was referred to the Senate Committee on Commerce, Science, and Transportation. The bills would establish a National Landslide Hazards Reduction Program requiring various federal agencies to coordinate with states, tribal nations, local governments, and territories to identify, map, and assess landslide hazards, and develop hazard guidelines. The Program would require the Secretary of the Interior to develop a national strategy for landslide hazards, risk reduction, and response. The bills would also require that the Secretary of the Interior to coordinate with the Secretary of Homeland Security, the Secretary of Commerce, states, tribal
nations, local governments, and territories to establish rapid deployment procedures for federal scientists, equipment, and services to a significant landslide site. Finally, the bills would establish a Cooperative Landslide Hazard Mapping and Assessment Program to provide grants to states, tribal nations, local governments, and territories. H.R. 1261 was passed out of the House on June 3, 2019 and has been received by the Senate.

**Nuclear Waste Administration Act of 2019 – S. 1234:** On April 30, 2019, Senator Lisa Murkowski (R-AK) introduced S. 1234, the Nuclear Waste Administration Act of 2019, which was then referred to the Senate Committee on Energy and Natural Resources. S. 1234 would establish the Nuclear Waste Administration (NWA) to provide for the permanent disposal of nuclear waste, including the construction and operation of new storage and test facilities. The bill would also allow the NWA to transport nuclear waste, but prior to any transportation, the NWS must provide advance notice to any tribal nations whose jurisdiction they will travel through. In addition, the Administrator of the NWS would be required to work with tribal nations when reviewing potential nuclear waste sites near tribal lands.

**Smoke-Ready Communities Act of 2019 – S.1813:** On June 6, 2019, Senator Jeff Merkley (D-OR) introduced S. 1813, the Smoke-Ready Communities Act of 2019, which was referred to the Senate Committee on Homeland Security and Governmental Affairs. S. 1813 enables the President to provide assistance, including grants, equipment, supplies and personnel to states, tribal nations, and local governments for the mitigation, management and control of smoke caused by wildfire. The bill also establishes the smoke-resilient housing grant program for states, tribal nations, homeowners, and renters.

**Department of Homeland Security Appropriations Act, 2020 – H.R. 3931 & S. 2582:** Congress has appropriated less than $2 million for the Tribal Homeland Security Grant Program (THSGP) for several years. The THSGP is the primary source of funding for tribal nations to address homeland security needs. DHS has continued to use $8 million in discretionary funding each year to increase the THSGP to $10 million. NCAI continues to advocate for Congress to increase the funding for the THSGP to $20 million and submitted testimony to the House and Senate appropriations committee this year.

On July 24, 2019, Representative Lucille Roybal-Allard (D-CA) introduced H.R. 3931, the Department of Homeland Security Appropriations Act, 2020, which was referred to the House Subcommittee on Homeland Security for consideration. H.R. 3931 increases the funding for the THSGP to $15 million. H.R. 3931 has been passed out of the committee with the increase but has not yet passed the full House. Similarly, Senator Shelley Moore Capito (R-WV), introduced S. 2582, the Department of Homeland Security Appropriations Act, 2020, which was referred to the Senate Subcommittee on Homeland Security. S. 2582 also includes an increase of $15 million in the THSGP. S. 2582 has passed out of committee but has not yet been voted on by the Senate. NCAI will continue to monitor both bills and advocate for $20 million for THSGP.

**Administrative Update**

**DHS Non-Disaster Grants:** On April 12, 2019, the Secretary of DHS announced the FY 2019 Notices of Funding Opportunity for twelve DHS preparedness grants to state, local, tribal, and territorial governments. These grants are for immediate security needs and community public safety. DHS continues to ignore its trust responsibility to tribal nations, and homeland security risks continue to increase as a result of DHS’s failure to increase the funding level for the THSGP. Funding for all
homeland security grants to states and local governments normally totals over $1.6 billion, yet the amount available for all 573 federally recognized tribal governments is flat at $10 million. Tribal nations appreciate the allocation of funding beyond the Congressional minimum, but this level of funding fails to address core capability and capacity needs. During NCAI’s 2019 Mid Year Conference, tribal leaders passed Resolution #REN-19-047 calling on Congress and DHS to establish a Resiliency Continuity Fund that would provide $330,000 to each tribal nation, roughly the funding needed for 1.5 FTEs to meet basic core capabilities outlined in national policy.

Executive Order 13767: Border Security and Immigration Enforcement Improvements: On January 25, 2017, President Trump signed Executive Order 13767 directing the Secretary of DHS to plan, design, and construct a physical wall along the southern border; construct detention facilities to detain undocumented immigrants at or near the border; hire 5,000 border patrol agents and assign them to duty stations; and set up federal-state agreements for state and local law enforcement officers to perform functions of immigration officers. E.O. 13767 does not state what the border wall will look like, the timeline for construction, how much will be paid for the wall’s construction, or who will bear the costs. The glaring fact for tribal nations on and near the southern border is their cultures, lands, and citizens will be impacted, sovereignty disregarded, and treaty rights infringed upon. All impacted tribal nations, many members of Congress, and several border state officials object to the border wall proposal.

FEMA Pre Disaster Mitigation Grant: On August 27, 2019, FEMA announced FY 2019 funding available to tribal nations through the Pre-Disaster Mitigation (PMD) grant program. The PMD program, authorized under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, seeks to establish pre-disaster natural hazard mitigation programs to reduce risk from future hazard events. FY 2019 is the first year that tribal nations will have an exclusive set aside of $20 million dollars to reduce risks in their communities.
American Indians and Alaska Natives (AI/ANs) are place-based peoples with a direct connection to their surrounding environments, which includes traditional homelands, natural resources, and wildlife. Tribal nations’ cultures, economies, and wellbeing all depend upon natural resources, many of which are disappearing faster than they can be restored.

For these reasons, the U.S. responsibility to tribal nations must be fully and actively honored when it comes to tribal lands and natural resources. The federal government must enable full tribal participation when developing policies and discussing the management of tribal resources by federal agencies or when contemplating proposed legislation. Such discussions must also consider tribal management of natural resources using traditional and culturally appropriate methods as a viable option. Tribal nations must have access to federal programs and funding opportunities to address their land and natural resource needs.

TRIBAL HOMELANDS
The Department of the Interior (DOI) has commenced actions which altered, and proposed to alter, the fee-into-trust process over the past two years. Broadly, these actions concerned proposed amendments to the fee-into-trust process under 25 C.F.R. Part 151, review of DOI’s trust acquisition authority within Alaska, and centralization of the trust acquisition process. With respect to individual tribal nations, DOI has acted to reverse a prior trust acquisition for the Mashpee Wampanoag Tribe (Mashpee). These actions affect all tribal nations as they seek restoration of their homelands for the health, safety, and welfare of their communities and cultures.

These land issues come a decade after the 2009 U.S. Supreme Court decision in Carcieri v. Salazar, which limited the Secretary’s authority to acquire land for only those tribal nations that were “under federal jurisdiction” as of 1934. This decision effectively created two classes of tribal nations under the Indian Reorganization Act – those tribal nations “under federal jurisdiction” in 1934 and those who were not. To date, lawsuits based on the Carcieri decision have resulted in costly, protracted litigation on a broad range of issues and will likely spawn further litigation across the country if not addressed by Congress.

Legislative Update
A Bill to Reaffirm the Secretary of the Interior’s Authority to Take Land into Trust for All Tribes – H.R. 375: On January 9, 2019, Representative Tom Cole (R-OK) and Representative Betty McCollum (D-MN) introduced H.R. 375, a bill to amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian Tribes, and for other purposes. This bill, which has broad bipartisan support, addresses the Carcieri decision by reaffirming existing tribal trust lands and the Secretary of the Interior’s authority under the Indian Reorganization Act to acquire land in trust for all tribal nations. NCAI submitted testimony and has educated Hill staff on this bill in accordance with NCAI Resolutions #RAP-10-024, “To Support Legislation to Address the Supreme Court Decision in Carcieri v. Salazar”; #MSP-15-044, “Reaffirmation of Tribal Government Trust Lands”; and #REN-19-017 “Support for Federal Legislation to Address Supreme Court's Misguided Carcieri Decision and Protect Existing Tribal Trust Lands.” This bill passed the House and was referred to the Senate Committee on Indian Affairs.
Administrative Update

Department of the Interior’s Proposed Amendments to its Off-Reservation Acquisition Authority: In 2017, DOI proposed amending the 25 C.F.R. Part 151 regulations to create a two-step review process for all off-reservation trust acquisitions and to distinguish between gaming and non-gaming fee-into-trust acquisitions. NCAI membership opposed this action in Resolution #MKE-17-059, “Opposing the Department of the Interior’s Efforts to Amend the BIA’s Land into Trust Regulations,” and NCAI submitted comments in opposition to the proposed amendments. On February 13, 2019, then Acting DOI Secretary David Bernhardt announced at NCAI’s Executive Council Winter Session (ECWS) that in response to tribal opposition, DOI would not move forward with its proposed fee-into-trust changes. On March 27, 2019, NCAI submitted a letter to Secretary Bernhardt requesting confirmation that this announcement would include withdrawing DOI’s non-Part 151 land-into-trust changes.

Department of the Interior Undertaking Review of its Authority to Take Land into Trust in Alaska: On June 29, 2018, DOI’s Office of the Solicitor withdrew opinion M-37043, which was a legal analysis that supported the Secretary’s authority to take land into trust in Alaska (Alaska M-Opinion). DOI also initiated consultations in Alaska on the Secretary’s authority to take land into trust in Alaska and what effects, if any, various statutes may have on that authority. On January 25, 2019, NCAI submitted comments to DOI’s consultations on both its authority to acquire lands in trust in Alaska and on the authority of Alaska Native tribal nations to organize under the Alaska Indian Reorganization Act of 1936. On March 27, 2019, NCAI submitted a letter to DOI that requested that Secretary Bernhardt’s land-into-trust announcement at NCAI’s 2019 ECWS conference include an end to DOI’s review of its fee-into-trust authority for trust acquisitions in Alaska and the re-instatement of the Solicitor’s Alaska M-Opinion.

Department of the Interior Centralization of the Trust Acquisition Process: Since 2017, the decision-making authority for off-reservation land acquisitions has been centralized with the Assistant Secretary of Indian Affairs (AS-IA). On May 31, 2018, Counselor to the Secretary of the Interior, John Tahsuda, then the Acting AS-IA, issued National Policy Memorandum NPM-TRUS-36 that established that the AS-IA had delegated authority for all land-into-trust acquisitions. This memorandum was issued despite widespread tribal opposition to this centralization which occurred without tribal consultation and effectively suspended off-reservation trust acquisitions. In accordance with Resolution #MKE-17-059, “Opposing the Department of the Interior’s Efforts to Amend the BIA’s Land into Trust Regulations,” NCAI submitted a letter to Secretary Bernhardt on March 27, 2019 that requested confirmation that DOI would end the interim centralization of off-reservation fee-into-trust land acquisitions.

Department of the Interior’s Mashpee Lands Decision: On September 7, 2018, DOI issued a decision to the Mashpee Wampanoag Tribe that underscored the need for Congress to take action and address the Carcieri decision head-on. The DOI decision failed to consider the totality of Mashpee’s evidence in determining whether it was “under the jurisdiction” of the federal government in 1934. In doing so, DOI determined that Mashpee was not under federal jurisdiction despite strong evidence indicating otherwise. This decision places Mashpee’s current reservation in danger of losing its status as tribal trust land and could potentially frustrate critical tribal self-governance plans. NCAI has asked leadership at DOI to re-docket this negative decision in a manner consistent with DOI’s prior Carcieri determinations in matters with similar fact patterns.
TRUST MODERNIZATION

The U.S. promised to protect and preserve the right of tribal nations to exist as distinct nations on their own lands. As a result, the federal government maintains the responsibility to protect tribal trust assets (e.g., timber, land, water, and other resources). Currently, this management process must be modernized to align with and support principles of tribal self-determination and self-governance.

The Indian Trust Asset Reform Act (ITARA) was signed into law in 2016. ITARA recognizes that tribal nations are best positioned to make long-lasting decisions for their communities and represents an important step in trust modernization. However, ITARA implementation largely depends on DOI’s commitment to the law. For instance, ITARA authorizes the establishment of an Under Secretary for Indian Affairs (US-IA), a Secretarial level position that would report directly to the Secretary and supervise and coordinate activities between the BIA and non-BIA agencies within DOI. The US-IA is critically important to bolster DOI’s mission to uphold the trust responsibility and fulfill treaty obligations.

More broadly, NCAI urges Congress to support legislative reforms that provide greater efficiencies in trust resource management, enable better economic returns on trust resources, and foster an increased role for tribal nations in how trust resources are managed.

Administrative Update

**DOI Reorganization:** DOI concluded its initial consultation and comment period on its reorganization plans. NCAI submitted comprehensive comments to DOI stating that tribal nations generally oppose the inclusion of BIA regions within the proposed Unified Region Structure and oppose suggesting changes to the framework of the BIA and DOI generally. NCAI’s comments also asked for continued consultation on DOI reorganization and made suggestions for how DOI can better include BIA functions within the reorganization process. In response to this advocacy by tribal nations and NCAI, DOI Secretary David Bernhardt confirmed to the House Natural Resources Committee on May 15, 2019 that DOI would not incorporate BIA and the Bureau of Indian Education (BIE) in any reorganization of DOI. NCAI continues to monitor developments in the broader DOI proposed reorganization and reiterate the opposition of tribal nations.

**Indian Trust Asset Reform Act Implementation:** Title II of ITARA authorizes the DOI Secretary to establish and carry out an Indian trust management demonstration project for tribal forestry and surface leasing programs. NCAI has advocated for allowing demonstration project tribal nations to enter into Indian Trust Asset Management Plans (ITAMPs) for all trust assets as that term is defined in 25 C.F.R. § 115.002. Further, NCAI has requested that tribal nations be able to determine the degree of management they wish to exercise and that BIA manage a tribal nation’s trust assets in accordance with their ITAMPs. Similarly, NCAI has urged DOI to develop internal coordination to enable implementation of ITAMPs that crosses Department bureaus. Additionally, NCAI has submitted technical comments in response to the draft ITAMPs developed by DOI.

With regard to overall ITARA implementation, NCAI continues to urge DOI to establish the US-IA position and to complete a review of the functions provided by OST with particular attention to which functions and resources could be transferred to BIA land and natural resource programs.

**Cobell Land Buy-Back Program:** The Cobell Settlement established a $1.9 billion Land Consolidation
Fund and tasked DOI to expend the Fund within 10 years to acquire fractional interests in trust or restricted fee land. The Land Buy-Back Program was established by DOI to implement this task. In July 2017, DOI announced its revised strategy for reducing fractional interests, thus changing how the Land Buy-Back Program is implemented. In addition, DOI also published a new list of reservations based on the revised strategy, which primarily includes tribal nations in the Great Plains, Rocky Mountains, and Northwest regions, and excludes some tribal nations on DOI’s original, pre-2017 implementation schedule.

In response, NCAI’s membership passed Resolution #MKE-17-002, “Request to Restore the Department of Interior Land Buy-Back Program to Pre-2017 Schedule.” The resolution urges Congress to expand the funding for the Program and to fulfill the promises of the original implementation schedule. The resolution also urges consultation with tribal nations and a hearing in the Senate Committee on Indian Affairs to further the goals of land consolidation and restoration of tribal homelands. NCAI has requested that DOI restore the Pre-2017 Buyback Schedule and that Congress continue to fund the successful Buy-Back program.

**ENERGY**

Tribal energy resources are extensive, underutilized, and critical to tribal nations securing their economic futures. These same tribal energy resources can play a key role in America’s efforts in achieving energy security and independence, reducing greenhouse gases, and promoting economic development. To make significant energy-based contributions to Indian Country and the United States, tribal nations need the help of Congress to remove regulatory and other impediments. Tribal nations know best whether large- or small-scale projects make sense for them and how to balance economic, cultural, and environmental issues associated with energy development.

Despite this potential, developing energy resources in Indian Country continues to be a challenge. Tribal nations face barriers to energy development that do not exist elsewhere. These barriers often result in exclusion from commercial-scale project development, with private companies instead investing in projects in neighboring jurisdictions. For example, there are approximately 49 steps and four federal agencies involved in Indian Country energy development, while there are as few as four steps required for energy development in certain state processes. Additionally, lack of grid access, access to funding, and exclusion from federal programs also hamper tribal energy production and inclusion.

NCAI urges Congress and the Administration to work with tribal nations to find pathways for greater tribal control over the development of their energy resources and to ensure tribal nations are consulted early when off-reservation development projects affect tribal resources. Such action will bolster tribal self-determination and help create careers and capital in Indian Country specifically and the U.S. more broadly.

**Legislative Update**

*American Energy Opportunity Act of 2019 – S. 2447:* On September 9, 2019, Senator Martin Heinrich (D-NM) introduced S. 2447, the American Energy Opportunity Act of 2019. This bill would establish the Distributed Energy Opportunity Board, which would be authorized to carry out a voluntary program to streamline the process for local permitting and inspection of qualified distributed energy systems. Qualified distribution energy systems mean equipment or materials installed in, on, or near a residential, commercial, or industrial building that supports local energy use, including solar and wind energy.
Tribal nations would be eligible to apply for competitive grant funding to facilitate the adoption of model protocols and inspection standards established by the Board. S. 447 has been referred to the Senate Committee on Energy and Natural Resources.

**Buffalo Tract Protection Act – H.R. 2640:** On May 9, 2019, Representative Deb Haaland (D-NM) introduced H.R. 2640, the Buffalo Tract Protection Act. The bill would remove from mineral development certain Bureau of Land Management (BLM) Lands in Placitas, New Mexico. H.R. 2640 was referred to the Committee on Natural Resources, and on September 19, 2019, the House Natural Resources Subcommittee on Energy and Mineral Resources held a hearing on the legislation.

**Hardrock Leasing and Reclamation Act of 2019 – H.R. 2579 & S. 1386:** On May 8, 2019, Representative Raúl Grijalva, (D-NM) introduced H.R. 2579, the Hardrock Leasing Reclamation Act of 2019. On the same day, Senator Tom Udall (D-NM) introduced companion legislation, S. 1386. These bills modify the requirements applicable to locatable minerals on public domain lands. Importantly, Title II of the bill provides for a consultation procedure and protection of tribal sacred sites. This includes a protocol for initial contact with a tribal nation, making arrangements for a consultation meeting, and termination of the scoping stage of consultation. On May 9, 2019, the House Committee on Natural Resources, Subcommittee on Energy and Mineral Resources held a hearing to discuss H.R. 2579. On June 5, 2019, Senator Udall wrote to the Senate Energy and Natural Resources Committee to request a hearing on S. 1386.

**Clean Energy for America Act of 2019 – S. 1288:** On May 2, 2019, Senator Ron Wyden (D-OR) introduced S. 1288, the Clean Energy for America Act. The bill proposes to make several changes to the United States Tax Code to support a low-carbon economy. Specifically, the bill would incentivize clean electricity by providing a production tax credit (PTC) to facilities that are 35 percent cleaner than average with a maximum of 2.4 c/kwh or an investment tax credit (ITC) of 30 percent to facilities with zero-carbon emissions. The bill would also incentivize clean transportation fuel by providing a tax credit for fuels that are 25 percent cleaner than average with maximum credit of $1 per gallon for fuels with zero emissions. Lastly, the bill would incentivize energy conservation by providing a performance-based tax credit for energy-efficient homes and tax deduction for energy efficient commercial buildings. The more energy conserved, the greater the tax benefit. For the purposes of encouraging energy conservation with regard to qualified commercial buildings, tribal nations and Alaska Native Corporations would be considered “eligible entities” and thus able to earn the proposed tax benefit.

**American Mineral Security Act – S. 1317:** On May 2, 2019 Senator Lisa Murkowski (R-AK) introduced S. 1317, the American Mineral Security Act. This bill would assist in making available domestic resources that meet national critical mineral or material needs. Specifically, the bill would provide, at the request of a tribal nation, technical assistance in conducting critical mineral resource assessments on non-federal land.

**RECLAIM Act of 2019 – H.R. 2156:** On April 9, 2019, Representative Matt Cartwright (D-PA) introduced H.R. 2156, the Revitalizing the Economy of Coal Communities by Leveraging Local Activities and Investing More (RECLAIM) Act. The bill would amend the Surface Mining Control and Reclamation Act of 1977 to provide funds to states and tribal nations to promote economic revitalization, diversification, and development in economically distressed communities. The Act would do this through the reclamation and restoration of land and water resources adversely affected by coal
mining carried out before August 3, 1977. On May 1, 2019, the House Committee on Natural Resources passed this bill out of committee.

**Arctic Cultural and Coastal Plain Protection Act – H.R. 1146:** On February 11, 2019, Representative Jared Huffman (D-CA) introduced H.R. 1146, the Artic Cultural and Coastal Plain Protection Act. The Act would repeal the Arctic National Wildlife Refuge Oil and Gas Program and declare that it is the policy of the United States to honor bipartisan efforts to protect the Arctic coastal plain, recognize the area as a national treasure and sustain it as such for future generations of Americans, and honor and respect the human rights of the Gwich’in people. On September 12, 2019, this bill passed the House and was referred to the Senate Committee on Energy and Natural Resources.

**Administrative Update**

**NCAI Submitted Comments in Response to Proposed Regulatory Changes to Tribal Energy Resource Agreements:** On July 2, 2019, the Bureau of Indian Affairs (BIA) proposed to amend the regulations governing Tribal Energy Resource Agreements (TERAs). The proposed regulatory changes are in response to S. 245, the Indian Energy Development and Self-Determination Act Amendments of 2017. TERAs facilitate more tribal control by authorizing tribal contracts, leases, and rights-of-ways for energy development without individual approvals by the Secretary of the Interior. The proposed changes aim to remove hefty regulatory requirements and establish an alternative to TERAs through a certification of Tribal Energy Development Organizations (TEDOs).

NCAI submitted comments that were generally supportive of the proposed changes but pointed out that additional regulations regarding TERA funding were needed, and that the regulations should be considered in concert with recent changes in law with respect to trust asset management. NCAI also provided several technical edits and suggestions to further improve the proposed regulations.

**WATER**

Tribal homelands require sufficient water to provide for their existing and future uses in order to provide for the health, safety, welfare, and development of tribal communities. Tribal nations with quantified water rights have certainty into the future. However, tribal nations with unquantified water rights still have options. These rights were usually reserved when land was acquired for a tribal nation, which often gives tribal nations priority over newer water users (e.g., municipalities, federal agencies, and individuals). As a result, tribal legal challenges to other water users are quite strong and often lead to effective water rights settlement processes. NCAI encourages Congress and the Administration to support tribal efforts to quantify and confirm their rights to water and adequately fund these settlements.

In addition to water quantity, tribal nations have a right to protect the quality of their waters – which include aquifers, ephemeral streams, and groundwater basins – from environmental degradation. Further, the United States has an obligation to safeguard tribal waters in accordance with its trust responsibility and specific treaty obligations to tribal nations. For this reason, federal agencies must engage in tribal consultation any time a federal action could have an effect on a tribal nation’s water resources.

**Legislative Update**

**Indian Water Rights Settlement Extension Act – S. 886 and H.R. 1904:** On March 27, 2019, Senator Tom Udall (D-NM) introduced S. 886, the Indian Water Rights Settlement Extension Act, and Congressman
Raúl Grijalva (D-AZ) introduced H.R. 1904 as companion legislation. Originally these bills proposed a permanent extension of the Reclamation Water Settlement Fund (RWSF) at 43 U.S.C. § 407 to ensure that tribal water rights settlements will receive continued and stable funding. Presently, the funds in the RWSF are largely committed to existing water settlements. As a result, funding for future tribal water rights settlements is uncertain and state, private, and other stakeholders are directly affected if tribal nations are forced to litigate their water rights claims. On April 4, 2019, the House Committee on Natural Resources held a hearing on H.R. 1904 and this bill now awaits a mark-up. On July 17, 2019, the Senate Committee on Indian Affairs passed S. 886 with amendments that, in relevant part, create a ten-year extension for the RWSF instead of a permanent extension. This bill awaits further consideration by the full Senate. NCAI has submitted support letters for these bills and partnered with the Native American Rights Fund and other organizations to conduct a briefing and Hill visits. NCAI will continue to advocate with Congress to uphold its trust responsibility and secure stable funding for tribal water rights settlements.

**Administrative Update**

**EPA Revisions to Section 401 Implementation under the Clean Water Act:** On May 24, 2019, NCAI submitted comments on EPA’s request for recommendations on clarifying Section 401 of the Clean Water Act (CWA) in Docket ID No. EPA-HQ-OW-20180855. Section 401 requires that an applicant for a federal license or permit to conduct activities that may result in a discharge to waters of the United States must obtain a Section 401 certification. A 401 certification ensures that the discharge will comply with applicable water quality standards. Tribal nations, like states, are authorized to deny or condition a 401 water quality certification to protect the physical, biological, and chemical integrity of their water resources. NCAI’s comments explained that the 401 certification process is the main tool for ensuring tribal participation in federal permitting that impacts tribal water resources, either as a certifying jurisdiction under Section 401(a)(1) or as an affected jurisdiction under Section 401(a)(2). To comply with its federal trust responsibility, NCAI requested that EPA consult with tribal nations on the content and impacts of its proposed clarification prior to any proposed change to the certification process.

On August 16, 2019, EPA released its proposed rule on “Updating Regulations on Water Quality Certification” under Section 401 of the CWA in EPA-HQ-OW-2019-0405. The proposed rule would significantly limit tribal and state authority to certify, condition, or deny any activity that would result in the discharge of pollutants into waters of the United States. The proposal includes reductions in tribal and state timelines for review and certification, restrictions on the scope of certification reviews and conditions, and modifications of other related requirements and procedures. Comments on the proposed rule are due on October 21, 2019. NCAI intends to submit comments addressing the content of the proposal and its impacts on tribal nations.

**EPA and USACE Issue Final Rule Changing the Definition of “Waters of the United States”:** On February 14, 2019, the Environmental Protection Agency (EPA) and the United States Army Corps of Engineers (USACE) published their proposed revised definition of “Waters of the United States” in 84 Fed. Reg. 4154 (Revised Rule). Excluded from protection under the Revised Rule are numerous previously covered waters, including groundwater that is hydrologically interconnected with surface water, ephemeral streams that flow after precipitation, and non-navigable interstate waters. On April 15, 2019, NCAI submitted comments opposing the proposed Revised Rule because available data shows that the Revised Rule will overburden tribal nations and likely violate the federal trust responsibility and treaties, and impair tribal nations’ exercise of reserved water and water-dependent rights. NCAI also
requested that prior to the issuance of a final rule, full and meaningful tribal consultation occur on the Revised Rule and that the comment period be extended to accomplish this requirement. Despite this request, on September 12, 2019, the EPA released its pre-publication of the Final Rule which incorporates its proposed reductions in CWA coverage. NCAI will continue to monitor any legislation that addresses these rollbacks and assess potential amici opportunities.

**EPA Advanced Notice of Proposed Rulemaking on Section 404g of the Clean Water Act:** The Environmental Protection Agency (EPA) sent letters in September 2018 to tribal leaders announcing its intent to revise Section 404g of the Clean Water Act (CWA). This section provides authority for the federal government to delegate permitting authority for dredge and fill disposal to states and tribal nations. EPA sought pre-rulemaking comments from tribal nations and tribal organizations in four substantive areas: (1) potential impediments to assumption; (2) areas of the regulations needing more clarity; (3) practical implications of changing the regulations; and (4) other potential issues. NCAI submitted comments in response to this notice addressing the scope of assumable waters, an assumption program for tribal nations, the economic costs and benefits of the proposed rule change, and other issues relating to agency delegation of its responsibilities to states. Rulemaking is not expected on this subject until 2020.

**FISH AND WILDLIFE**

Through the Constitution, federal laws, treaties, and other binding agreements with tribal nations, the federal government has a trust responsibility to protect, help manage, and ensure continued access for tribal nations and their citizens to their natural resources. The restoration, preservation, protection, and promotion of tribal fish and wildlife resources must be driven by the needs of tribal nations and their values, knowledge, and time-honored stewardship practices. Tribal nations must be included as meaningful and full participants in federal programs and funding opportunities that address their resource management needs and responsibilities.

**Legislative Update**

**Protect America’s Wildlife and Fish In Need (PAW and FIN) Act of 2019 – H.R. 4348:** On September 17, 2019, Representative Raúl Grijalva (D-AZ) introduced H.R. 4348, the Protect America’s Wildlife and Fish in Need (PAW and FIN) Act of 2019. This bill directly responds to the final rule promulgated by the Secretary of the Interior entitled “Endangered and Threatened Wildlife and Plants; Regulations for Prohibitions to Threatened Wildlife and Plants.” Prior to promulgation, the rule was announced in three separate Federal Register notices: 84 Fed. Reg. 44753, 44976, and 45020. Collectively, the rule makes substantial changes to the Endangered Species Act. For example, the rule removes the prohibition on considering economic impacts in the context of evaluating factors for listing and delisting species, affects how a critical habitat is assessed, changes the definition of “effects of the action,” and addresses what kinds of protections threatened species receive. H.R. 4348 seeks to void the changes proposed in the above mentioned Federal Register notices.

**Recovering America’s Wildlife Act – H.R. 3742:** On July 12, 2019, Representative Debbie Dingell (D-MI) introduced H.R. 3742, the Recovering America’s Wildlife Act. This bill amends the Pittman-Robertson Wildlife Restoration Act to create a sub-account called the “Wildlife Conservation and Restoration Subaccount.” The bill proposes that each year, beginning in FY 2020, the Secretary of the Treasury would transfer $1.3 billion dollars from the general fund into the sub-account. Title II of the Act creates a separate account entitled the “Tribal Wildlife Conservation and Restoration Account.” The
bill would direct the Secretary of the Treasury to deposit $97 million each year into the tribal account. This money would not be subject to annual appropriations and could be used in tribal efforts to recover species listed as endangered or threatened, manage tribal species of greatest conservation need, including their habitat, for law enforcement needs, and for developing, revising, and implementing comprehensive wildlife conservation strategies, among other things. This bill was referred to the House Natural Resources Committee, Subcommittee on Water, Oceans, and Wildlife.

**Wildlife Corridors Conservation Act of 2019 – H.R. 2795**: On May 16, 2019, Representative Donald Beyer (D-VA) introduced H.R. 2795, the Wildlife Corridors Conservation Act of 2019. This bill finds, among other things, that climate change threatens native fish, wildlife and plant species and that conservation of existing land and seascapes through which native species can transition plays an important role in bio-diversity and species resiliency. The Act would create a “National Wildlife Corridors Database” that would map and assist in conservation planning efforts. Additionally, Title II of the bill creates Tribal Wildlife Corridors on tribal lands. In relation to Tribal Wildlife Corridors, the Act provides an exemption for information pertaining to among other things tribal cultural resources and the Native American Graves Protection and Repatriation Act (NAGPRA). This bill was referred the House Committees on Natural Resources, Agriculture, Armed Services, and Transportation and Infrastructure. On May 17, 2019, the House Committee on Transportation and Infrastructure referred the bill to the House Subcommittee on Water Resources and Environment. On June 10, 2019, the bill was also referred to the House Subcommittee on Conservation and Forestry.

**Tribal Heritage and Grizzly Bear Protection Act – H.R. 2532**: On May 5, 2019, Representative Raúl Grijalva (D-AZ) introduced H.R. 2532, the Tribal Heritage and Grizzly Bear Protection Act. This act would make it unlawful for individuals to take, possess, or transport a grizzly bear or grizzly bear parts; violate the terms of a permit issued for the permitted taking of a grizzly bear; or violate any regulation issued by the Secretary of the Interior pursuant to the Act. H.R. 2532 also would create a Grizzly Bear Scientific Committee. Half of the Committee would be composed of tribal representatives and would be charged with carrying out expert consultations and scientific studies specific to the Act. Additionally, the Act has specific provisions for the reintroduction of grizzly bears onto tribal lands. The House Subcommittee on Oceans, Water, and Wildlife held a hearing on this bill.

**Empowering Rural Economies Through Alaska Native Sustainable Arts and Handicrafts Act – H.R. 1806 & S. 804**: On March 14, 2019, Senator Dan Sullivan (R-AK) introduced S. 804, the Empowering Rural Economies Through Alaska Native Sustainable Arts and Handicrafts Act. On the same day, Representative Don Young (R-AK) introduced a companion bill in the House. This bill amends the Marine Mammal Protection Act of 1972 to protect the cultural practices and livelihoods of makers of Alaska Native fossilized ivory products. The Act allows for the interstate sale of eligible items. The bill would also prevent states from prohibiting the importation, sale, offers for sale, transfer, trade, barter, possession, or possession with intent to sell, transfer, trade, or barter of mammoth, mastodon, or walrus ivory, marine mammal bones, teeth, or baleen produced pursuant to the Act. The bill was referred to the House Committee on Natural Resources and the Subcommittee on Water, Oceans, and Wildlife.

**Tribal Coastal Resiliency Act – H.R. 729**: On January 23, 2019, Representative Derek Kilmer (D-WA) introduced H.R. 729, the Tribal Coastal Resiliency Act. If passed, this bill would amend the Coastal Zone Management Act of 1972 and provide competitive grants to tribal nations carrying out restoration, protection, or preservation activities in tribal coastal zone areas that hold ecological, cultural, sacred
significance or traditional, historic, and esthetic value to the tribal nation. Importantly, for grants of less than $200,000, the federal government would fund the entire amount. For grant requests greater than $200,000, the federal government would fund 95 percent of the cost unless the Secretary determines that the tribal nation does not have sufficient funds. In these cases, a tribal nation’s cost-sharing portion would be adjusted. On July 25, 2019, the House Natural Resources Committee, Subcommittee on Water, Oceans, and Wildlife held a hearing on this and several other bills. On September 24, 2019 the Natural Resources Committee considered the bill in a mark-up session where it was ordered reported by voice vote.

_Columbia River In-Lieu and Treaty Fishing Access Sites Improvement Act – H.R. 91 & S. 50:_ On January 3, 2019, Congressman Earl Blumenauer (D-OR) introduced H.R. 91, the Columbia River In-Lieu and Treaty Fishing Access Sites Improvement Act, and on January 8, 2019, Senator Jeff Merkley (D-OR) introduced S. 50, a companion bill. These bills authorize the Secretary of the Interior to assess sanitation and safety conditions at Bureau of Indian Affairs (BIA) facilities constructed to provide Columbia River Treaty tribes access to traditional fishing grounds. Specifically, the bill applies to the Nez Perce Tribe, the Confederated Tribes of Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes and Bands of the Yakama Nation. The bill would also authorize the BIA to enter into contracts with tribal nations or tribal organizations to improve sanitation, safety conditions, and access to electricity, sewer, and water infrastructure. On April 29, 2019, after debate, the House passed H.R. 91, 396-18. On April 30, 2019, H.R. 91 was received in the Senate and referred to the Senate Committee on Indian Affairs. On March 13, 2019, S. 50 was reported without amendment and placed on the Senate Legislative Calendar. On June 28, 2019, the bill passed the Senate and was sent to the House.

**Administrative Update**

_Fish and Wildlife Service Publishes New Tribal Eagle Retention Policy:_ Beginning in 2017, the Fish and Wildlife Service held in-person and telephonic consultations regarding tribal access to eagles. On August 13, 2019, in response to the comments received, the Fish and Wildlife Service revised its policy regarding tribal retention of eagles. The revision allows for a tribal citizen to retain a deceased eagle or eagle remains found on his or her tribal nation’s land. This is a separate announcement from the Fish and Wildlife Services publication of a petition for rulemaking in response to a settlement agreement in the matter of McAllen Grace Brethren Church, et. al. v. S.M.R. Jewell, 764 F.3d 465 (5th Cir. 2014).

_Fish and Wildlife Service Publication of Petition Requesting Change in Who May Access Eagle Feathers:_ On April 30, 2019, the U.S. Fish & Wildlife Service (FWS) published a petition for rulemaking in the 84 FR 18230, which “asks [FWS] to revise the existing rules pertaining to the religious use of federally protected bird feathers.” Pursuant to the terms and conditions of a settlement agreement in the matter of McAllen Grace Brethren Church, et. al. v. S.M.R. Jewell, 764 F.3d 465 (5th Cir. 2014), DOI agreed to consider a petition filed by plaintiffs to modify existing regulations or issue new regulations concerning the possession of eagle feathers by persons who are not members of federally recognized tribal nations. As a result of the filed petition, on April 30, 2019, FWS issued a request for public comments.

The petition suggested DOI develop a process that would allow every person that uses eagle feathers in a sincere exercise of religion to have access to eagle feathers and eagle parts. The petition argues that not only would members of state-recognized tribal nations be afforded such access, presumably so
would members of unrecognized tribal nations, as well as non-Indians. The public comment period in response to the publication of the petition for rulemaking closed on July 1, 2019.

**CLIMATE CHANGE**

Tribal nations are disproportionately affected by the consequences of climate change. Currently, as many as 184 Alaska Native Villages are threatened with removal due to climate-based changes. Additionally, climate change impacts cultural, religious, subsistence, and scientific practices, as well as opportunities for economic development that are closely tied to the natural resources found within reservations and traditional territories. With these changes, local economies on and off reservations are affected, as are the abilities of Native peoples to practice their religions and to continue to develop their scientific and traditional ecological knowledges.

Tribal nations and organizations, including NCAI, take seriously the threats that changes in the global climate present to tribal nations and their citizens. NCAI is committed to assisting tribal nations in finding a voice and deploying our unique ecological knowledges in response to these changes. As described in the section on International Climate Change, NCAI continues to advocate for and with tribal nations in multiple settings. For example, NCAI’s first convening of its Climate Action Task Force took place during NCAI’s 2019 Mid Year Conference in Reno, Nevada. Additionally, the Climate Action Task Force’s Technical Committee will convene for the first time during NCAI’s 76th Annual Convention in Albuquerque, New Mexico. NCAI also has launched the [Climate Action Resource Center](https://ncai.org/climate-action-resource-center), an online portal designed to inform and support tribal climate action efforts and facilitate intertribal climate action partnerships. NCAI looks forward to being a resource for tribal leaders and members of Congress on this critical topic.

**Legislative Update**

*Environmental Justice Act of 2019 – H.R. 3923 & S. 2236*: On July 23, 2019, Representative Raul Ruiz (D-CA) introduced a H.R. 3923, the Environmental Justice Act of 2019. On the same day, Senator Corey Booker (D-NJ) introduced S. 2236 as companion legislation. These bills would require federal agencies to address environmental justice issues by eliminating disproportionate environmental and health impacts on populations of color, communities of color, low-income communities and indigenous communities. The bill defines “indigenous community” as a federally recognized tribe, a state recognized tribe, an Alaska Native or Native Hawaiian community or organization, and other communities of indigenous peoples, including communities in other countries. H.R. 3923 has been referred to several committees and subcommittees, including, the House Committees on Energy and Commerce, Natural Resources, Transportation and Infrastructure, and the Judiciary Committee. On August 15, 2019, the bill was referred to the House Subcommittee on the Constitution, Civil Rights, and Civil Liberties. S. 2236 was referred to the Committee on Environment and Public Works.

*Safeguarding America’s Future and Environment Act – H.R. 2748 & S. 1482*: On May 15, 2019, Representative Matt Cartwright (D-PA) and Senator Sheldon Whitehouse (D-RI) introduced H.R. 2748 and S. 1482, the Safeguarding America’s Future and Environment Act (SAFE Act). The SAFE Act seeks to create an integrated approach to respond to ongoing climate change and extreme weather events. A central component of the proposed national approach and purpose of the bill is to maximize government efficiency and reduce costs in cooperation with tribal governments. The SAFE Act would also create a national Fish, Wildlife, and Plants Climate Adaptation Strategy Joint Implementation Working Group, which would include tribal representation. In addition, the SAFE Act would create an
Advisory Committee on Climate Change and Natural Resource Sciences, which would include representatives from tribal governments. Finally, the SAFE Act would create a National Climate Change and Wildlife Science Center and would authorize tribal nations to contract with the Department of the Interior to carry out the purposes of the Center. S. 1482 was referred to the Committee on Environment and Public Works. H.R. 2748 was referred to the House Natural Resources Committee and on September 24, 2019, the House Subcommittee on Water, Oceans, and Wildlife held a hearing on this and several other bills.

Coastal Communities Ocean Acidification Act of 2019 – S. 778: On March 13, 2019, Senator Lisa Murkowski (R-AK) introduced S. 778, the Coastal Communities Ocean Acidification Act of 2019. This bill would require the National Oceanic and Atmospheric Administration (NOAA) to conduct an ocean acidification coastal community vulnerability assessment every seven years. As part of the reporting process, NOAA would be required to “collaborate” with state, local, and tribal governments that are, or have completed, vulnerability assessments. S. 778 has been referred to the Senate Committee on Commerce, Science, and Transportation.

Climate Change Resiliency Fund for America Act – H.R. 1689: On March 12, 2019, Representative Theodore Deutch (D-FL) introduced H.R. 1689, the Climate Change Resiliency Fund for America Act. This bill would establish a Climate Change Advisory Commission to develop recommendations, frameworks, and guidelines for projects responding to climate change. The Climate Change Resiliency Fund would assist projects that aid in climate adaptation, including programs carried out by tribal governments and consortia of tribal governments. The bill was referred to the House Committee on Energy and Commerce and the House Committee on Transportation and Infrastructure.

Administrative Update

Senate Request for Information on the Effects of Climate Change in Indian Country: On July 10, 2019, members of the Senate Committee on Indian Affairs and Special Committee on the Climate Crisis sent a letter to tribal leaders soliciting responses to a series of questions about the effects of climate change in Indian Country. Specifically, the Senators asked about policies and regulations that were useful in assisting in mitigating and responding to climate change impacts; local-level policies and strategies that could be scaled to the federal level; what actions the federal government could take within existing authorities to improve climate change mitigation and resilience efforts; and what new policies Congress should consider. The NCAI Climate Action Task Force (CATF) Co-chairs submitted a letter, on behalf of CATF. The letter noted the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA) as useful statutes for mitigating the impacts of climate change, highlighted tribal climate mitigation projects, and recommended Congress develop interest-free loan programs to support climate-based programs, among other recommendations. NCAI and its CATF will continue to stay in contact with relevant Congressional offices.

Fourth National Climate Assessment: In November 2018, the United States Global Change Research Program (Program) submitted its quadrennial report on climate mandated by the Global Change Research Act of 1990. Every four years, the Program reviews and integrates its recent findings; analyzes the effects of global change on the environment, agriculture, energy production and use, land and water resources, transportation, human health and welfare, human social systems, and biological diversity; and analyzes current trends in global change, both human-induced and natural. The Program also projects major trends 25 years into the future.
The Program noted that Native peoples can be affected by climate change in ways that are unique and disproportionate from the overall population. The Program highlighted three key findings from their analysis. First, climate change threatens Native peoples’ livelihoods and economies, including hunting, fishing, forestry, energy, recreation, and tourism, and that there are institutional barriers to their self-determined management of water, land, and natural resources. Second, Native peoples’ health is based on an interconnection of social and ecological systems, which is being disrupted by climate change. Third, an increasing number of tribal nations are developing climate adaptation plans based on traditional knowledge and science. Development of these plans is hampered by restricted access to traditional territories and resources as well as existing policies and funding mechanisms that fail to account for the unique social, political, economic, and legal circumstances of tribal nations.

CULTURAL PROTECTION

Securing, protecting, and preserving tribal traditional laws and cultural and religious practices for future generations is one of the founding principles of NCAI. The protection of all forms of tangible and intangible cultural and spiritual expressions is essential to the futures of tribal societies. Many laws protect tribal cultural resources including the National Historic Preservation Act (NHPA), the Native American Graves Protection and Repatriation Act (NAGPRA), the American Indian Religious Freedom Act (AIRFA), the Antiquities Act, and the Archaeological Resources Protection Act (ARPA). This complex system of laws and associated regulations provide a foothold for tribal nations to protect ancestral remains, homes, homelands, and objects. These laws also provide some protections from harms presented by off-reservation infrastructure development projects and looting. NCAI continues to prioritize its advocacy and education efforts to protect, promote, and preserve the religious freedoms and cultural preservation efforts of tribal nations and their citizens.

Legislative Update

Chaco Cultural Heritage Area Protection Act – H.R. 2181 & S. 1079: On April 9, 2019, Senator Tom Udall (D-NM) introduced S. 1079, the Chaco Cultural Heritage Area Protection Act, and Representative Ben Ray Luján (D-NM) introduced H.R. 2181 as companion legislation. Both the Senate and House bills would provide a permanent mineral withdrawal within the “Chaco Cultural Heritage Withdrawal Area,” a 10-mile radius surrounding Chaco Cultural National Historical Park and World Heritage Site. The bill was intended to prevent new energy development immediately surrounding Chaco Canyon. Existing leases and non-federal mineral rights owned by the state, tribal entities, or private owners would not be impacted by the legislation. On May 14, 2019, the Senate Committee on Energy and Natural Resources, Subcommittee on Public Lands, Forests, and Mining held a hearing on this and several other bills. On June 5, 2019, the House Committee on Natural Resources Subcommittee on National Parks, Forests, and Public Lands held a hearing to receive testimony on this bill and H.R. 1373 (see below) regarding the cultural importance of the Greater Chaco Canyon region and the effects of pollution thereon. On July 17, 2019, H.R. 1373 was reported out of the House Committee on Natural Resources. NCAI submitted letters of support when this bill was introduced during the 115th Congress. During the 116th Congress, NCAI submitted a letter to Secretary of the Interior David Bernhardt opposing the proposed oil and gas leases near Chaco Cultural National Park.

Recognizing the Heritage, Culture, and Contributions of American Indian, Alaska Native, and Native Hawaiian women in the United States – H. Res. 173: On March 5, 2019, Representative Deb Haaland (D-NM) introduced H. Res. 173. This resolution acknowledges the role American Indian, Alaska Native, and Native Hawaiian women have played in shaping the history of the United States since and before its
inception. The resolution also recognizes that changes are necessary to ensure that American Indian, Alaska Native, and Native Hawaiian women can live freely and safely and realize their full potential. Finally, the resolution urges the Administration and Congress to uphold their responsibilities to American Indians, Alaska Native, and Native Hawaiian women and to all tribal nations. This resolution was referred to the House Natural Resources Subcommittee for Indigenous Peoples of the United States on March 5, 2019. On March 6, 2019, the Resolution was referred to the Subcommittee for Indigenous Peoples of the United States. On March 7, 2019, Senator Lisa Murkowski (R-AK) introduced a similar Senate resolution, S. Res. 100, with the same title. S. Res. 100 passed the Senate without amendment on March 28, 2019.

_Yucca House National Monument Boundary Revision Act – H.R. 1492 & S. 641:_ On March 4, 2019, Representative Scott Tipton (R-CO) introduced H.R. 1492, the Yucca House National Monument Boundary Revision Act, and Senator Cory Gardner (R-CO) introduced S. 641 as companion legislation. This bill would expand the Yucca House National Monument to include 160 acres known as the “Proposed Boundary Tract.” H.R. 1492 was referred to the House Committee on Natural Resources Subcommittee on National Parks, Forests, and Public Lands. On July 18, 2019, this subcommittee held a hearing on H.R. 1492 and other bills. S. 641 was referred to the Senate Committee on Energy and Natural Resources, Subcommittee on National Parks.

_Grand Canyon Centennial Protection Act – H.R. 1373:_ On February 26, 2019, Representative Raúl Grijalva introduced H.R. 1373, the Grand Canyon Centennial Protection Act. The Act would provide protections for “current and future generations, the watershed, ecosystem, and cultural heritage of the Grand Canyon region by withdrawing 1,006,545 acres of federal lands in the State of Arizona from all forms of entry, appropriation, and disposal under public land laws; location, entry, or patent under mining laws; and operation of the mineral leasing and geothermal leasing laws and mineral materials laws.” On March 11, 2019, the bill was referred to the House Committee on Natural Resources Subcommittee on National Parks, Forests, and Public Lands. On June 5, 2019, the Subcommittee held a hearing to receive testimony on this bill. On July 17, 2019, the bill was reported out of the Committee on Natural Resources. In early 2019, NCAI joined several other organizations and sent a letter of support for H.R. 1373.

_ANTIQUITIES Act – H.R. 1050 & S. 367:_ On February 7, 2019, Representative Deb Haaland (D-NM) introduced H.R. 1050, the America’s Natural Treasures of Immeasurable Quality Unite, Inspire, and Together Improve the Economies of States (ANTIQUITIES) Act and Senator Tom Udall (D-NM) introduced S. 367 as companion legislation. The Act supports the administration of National Monuments as originally designated prior to December 4, 2017; creates a “National Monument Enhancement Fund” to fund management plans, enhance recreational infrastructure, and for federal acquisition of certain lands; establishes that Presidentially designated national monuments be surveyed in the same time frame as a Congressionally nominated national monument; and establishes that national monuments may only be reduced, diminished, or revoked by an act of Congress. H.R. 1050 was referred to the House Natural Resources Subcommittee on National Parks, Forests, and Public Lands.

_Bears Ears Expansion and Respect for Sovereignty Act – H.R. 871:_ On January 30, 2019, Representative Ruben Gallego (D-AZ) introduced H.R. 871, the Bears Ears Expansion and Respect for Sovereignty Act. Representative Gallego is joined by 106 co-sponsors, 71 of whom are original co-sponsors, including Representative Deb Haaland (D-NM). This Act would expand the Bears Ears National
Monument to 1,931,997 acres, require the Secretary of the Interior to meaningfully engage the Bears Ears Commission to ensure proper care and management, ensure management decisions reflect tribal expertise and traditional and historical knowledge, and provide guidance and recommendations on the development and implementation of management plans and on management of the monument. On February 13, 2019, the Act was referred to the House Committee on Natural Resources Subcommittee for Indigenous Peoples of the United States. S. 367 was referred to the Senate Committee on Energy and Natural Resources.

Save Oak Flat Legislation – H.R. 665 & S. 173: On January 17, 2019, Congressman Raúl Grijalva (D-AZ) introduced legislation titled “Save Oak Flat Act,” and Senator Bernie Sanders introduced S. 173 as companion legislation. These bills seek to repeal section 3003 of the National Defense Authorization Act of 2015. Repealing this section would prevent the transfer of 2,422 acres of Forest Service land in the Tonto National Forest, also known as Oak Flat, to Resolution Copper Mining LLC. S. 173 was referred to the Committee on Energy and Natural Resources. H.R. 665 was referred to the House Natural Resources Committee Subcommittees for Indigenous Peoples and the Subcommittee on National Parks, Forests, and Public Lands.

To Designate the Mountain at Devils Tower National Monument, Wyoming, as Devils Tower – H.R. 564 & S. 144: On January 15, 2019, Congresswoman Elizabeth Cheney (R-WY) again introduced a bill to permanently designate Bear Lodge as Devils Tower and Senator Michael Enzi (R-WY) introduced S. 144 as a companion bill. On February 4, 2019, H.R. 564 was referred to the House Natural Resources Subcommittee on National Parks, Forests, and Public Lands. S. 144 was referred to the Senate Committee on Energy and Natural Resources. NCAI has written letters to past Congresses opposing this designation and will continue to work to secure respect for tribal sacred places.

Safeguard Tribal Objects of Patrimony (STOP) Act – H.R. 3846 & S. 2165: On July 18, 2019, Representative Ben Ray Luján (D-NM) and Representatives Deb Halaand (D-NM), Don Young (R-AK), and Tom Cole (R-OK) introduced H.R. 3846, the Safeguard Tribal Objects of Patrimony (STOP) Act. Senators Martin Heinrich (D-NM) and Lisa Murkowski (R-AK) introduced S. 2165 as a companion bill. These bills have broad bipartisan support. The STOP Act prohibits the export of sacred items to foreign countries, increases penalties for illegal trafficking, fills gaps in domestic law that make international return of these items almost impossible, creates a framework for the voluntary return of items prior to attempted export, and creates federal and tribal working groups to assist in coordinating and aiding federal agencies whose work involves protecting or facilitating repatriation of tribal cultural heritage. On September 19, 2019, the House Natural Resources Subcommittee for Indigenous Peoples of the United States held a hearing on this and other bills. NCAI sent letters of support and conducted outreach during NCAI’s Tribal Unity Impact Days.

Administrative Update

National Park Service Proposed Changes to the National Historic Preservation Act: On March 1, 2019, the National Park Service (NPS) published a notice of proposed rulemaking in 84 FR 6996 titled “National Register of Historic Places.” The proposed changes would affect the way in which federal agencies nominate properties to the National Register of Historic Places. In 84 FR 6996, NPS claimed that government-to-government consultation pursuant to Executive Order 13175 was unnecessary because the proposed rule would have no substantial direct effect on tribal nations. On April 30, 2019, NCAI submitted a letter during the public comment period that focused on the inaccuracy of NPS’s
claim. As a result of NCAI’s letter and several other letters submitted by tribal nations, NPS hosted a consultation at NCAI’s Mid Year Conference in Reno, Nevada on Monday, June 24, 2019 and a telephonic consultation on July 1, 2019. NPS also extended the comment period for tribal nations to July 8, 2019. On June 3, 2019, in the House Committee on Appropriation Report, Representative Betty McCollum (D-MN) expressed concerns over the proposed rule and NPS’s lack of consultation with tribal, state, and federal historic preservation officers and federal land management agencies. The Committee noted, “it remains unclear…what problems the Service is trying to solve with this proposal.” On July 8, 2019, NCAI submitted substantive comments regarding the effects of the proposed rule. NCAI conducted additional outreach to both the House and the Senate regarding the proposed rule. On September 13, 2019, Representative Deb Haaland (D-NM) and Representative Tom Cole (R-OK) submitted a letter to Secretary of the Interior David Bernhardt expressing their concern over the lack of consultation with tribal nations as well as the substance of the proposed changes.

**Federal Communications Commission Rule Change – “Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment”:** On May 3, 2018, the Federal Communications Commission (FCC) issued a final rule in 83 FR 19440 titled, “Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment.” The FCC adopted rules to “streamline the wireless infrastructure siting review process to facilitate the deployment of next-generation wireless facilities…Specifically…small wireless facilities deployed on non-tribal lands [are excluded] from National Historic Preservation Act and National Environmental Policy Act review.” In March 2018, NCAI partnered with the United South and Eastern Tribes Sovereignty Protection Fund to formally oppose the proposed rule, stating, “We believe [the proposed rule] strikes the wrong balance between the trust responsibility and historic and environmental concerns on the one hand and the economic interests of the telecommunications industry on the other, and we believe it in critical part is unlawful.”

In August 2018, the United Keetoowah Band of Cherokee Indian in Oklahoma, joined by several other tribal nations, filed suit against the FCC in the U.S. Court of Appeals for the District of Columbia. The tribal plaintiffs raised three questions before the court: (1) whether the FCC failed to complete environmental analysis required by the National Environmental Policy Act (NEPA); (2) whether the FCC could lawfully avoid the NEPA analysis for the use of electromagnetic spectrum it licensed; and (3) whether the FCC’s determination that it met the public interest standard of the Communications Act was arbitrary and capricious. On August 9, 2019, the United States Court of Appeals for the District of Columbia published its decision in *United Keetoowah Band of Cherokee Indians v. FCC*. The court agreed that the elimination of NEPA and NHPA review of small-cell 5G construction was unsupported and did not respect laws protecting tribal cultural and natural resources. Unfortunately, the court allowed the FCC to limit tribal participation in the review process. Although this part of the decision is disheartening, the court was correct in its assessment that the FCC “failed to justify its confidence that small cell deployments pose little to no cognizable religious, cultural, or environmental risk.”
SELF-GOVERNANCE

Self-Governance enhances the ability of tribal nations, as sovereign nations, to exercise their right to be self-governing and manage program funds 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, Self-Governance allows tribal governments to negotiate annual appropriated funding and to assume management and control of programs, services, functions, and activities, or portions thereof, that were previously managed by the federal government. There are currently 272 federally recognized tribal nations and organizations exercising Self-Governance authority within the Department of the Interior-Bureau of Indian Affairs (DOI-BIA), and 375 federally recognized tribal nations and organizations exercising Self-Governance authority within the Department of Health and Human Services-Indian Health Service (DHHS-IHS).

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

Legislative Update

PROGRESS Act – S. 209 & H.R. 2031: In the 114th Congress, Senator John Barrasso (R-WY) introduced the Department of the Interior (DOI) Tribal Self-Governance Act, which aimed to streamline DOI’s process for approving Self-Governance compacts and annual funding agreements and ultimately align the process used by DOI with the process used by IHS. This legislation passed the Senate by unanimous consent on July 7, 2015. However, the 114th Congress expired before the House acted upon the bill. During the 115th Congress, Senator John Hoeven (R-ND) introduced S. 2515, the Practical Reforms and Other Goals to Reinforce the Effectiveness of Self-Governance and Self-Determination (PROGRESS) for Indian Tribes Act. On April 11, 2018, the Senate Committee on Indian Affairs ordered S. 2515 to be reported favorably without amendment. S. 2515 passed the Senate on September 28, 2018, but again did not pass the House.

On January 24, 2019, Senator John Hoeven introduced S. 209, the Practical Reforms and Other Goals to Reinforce the Effectiveness of Self-Governance and Self-Determination (PROGRESS) for Indian Tribes Act. The Senate Committee on Indian Affairs passed S. 209 at a business meeting held on January 29, 2019. On April 30, 2019, Representative Deb Haaland (D-NM) introduced H.R. 2031 as companion legislation. On June 27, 2019, the Senate passed S. 209. S. 209 and H.R. 2031 are each referred to the House Natural Resources Committee, Subcommittee for Indigenous Peoples of the United States. On July 16, 2019, the Subcommittee for Indigenous Peoples of the United States held a legislative hearing.
on H.R. 2031, where NCAI Treasurer and Jamestown S'Klallam Tribe Chairman W. Ron Allen provided testimony on the PROGRESS Act in his capacity as the Chairman of the Board for the Self-Governance Communication & Education Tribal Consortium. NCAI will continue to work with the Self-Governance Advisory Committee to pass this legislation during the 116th Congress.

Preserving Access to Cost Effective Drugs Acts – S. 440: On February 12, 2019, Senator Tom Cotton (R-AR) introduced S. 440, the Preserving Access to Cost Effective Drugs (PACED) Act, which (1) abrogates tribal sovereign immunity in administrative and judicial proceedings involving all patents; and (2) applies this abrogation to patent proceedings involving the International Trade Commission and biosimilar products under the Public Health Service Act.

Originally, this bill equally abrogated state sovereign immunity, but on June 28, 2019, Senator Lindsey Graham’s (R-SC) amendment was passed in the Senate Judiciary Committee which created an exemption for states and their universities. This broad exemption creates disparities between tribal nations and states and disregards recent Federal Circuit case law which held that state sovereign immunity is waived in certain patent board actions (see Regents of the Univ. of Minnesota v. LSI Corp., No. 2018-1559, --- F.3d ---, 2019 WL 2479596 (Fed. Cir. June 14, 2019)).

Protection of tribal inventions is an inherent right of tribal nations and necessary to self-governance and community and economic development. This bill has been opposed by NCAI and has bipartisan opposition from the Senate Committee on Indian Affairs. NCAI has made multiple visits to educate Hill staff on this bill’s dangerous precedent and will continue to oppose its advancement.

Administrative Update

Mandatory Federal Advisory Committee Reductions: On June 14, 2019, President Donald Trump issued Executive Order (E.O.) 13875 titled “Evaluating and Improving the Utility of Federal Advisory Committees.” This order requires federal agencies to review existing federal advisory committees formed under the Federal Advisory Committee Act and then make recommendations to the Office of Management and Budget (OMB) regarding continuing or terminating these advisory committees. This order applies to committees formed by statute, by the President, and those formed by agencies.

E.O. 13875 further requires the elimination of one-third of all agency formed federal advisory committees and sets a cap of three hundred and fifty Presidentially and agency formed federal advisory committees. Because numerous federal advisory committees advise on issues related to tribal rights and resources, NCAI’s membership passed Resolution #REN-19-043, “Requesting the Trump Administration Provide an Exemption from the Federal Advisory Committee Reduction Executive Order Requirements and Engage in Meaningful Tribal Consultation.” In response, NCAI sent 17 letters to all federal departments and the EPA requesting that the following be exempted from FACA reductions: (1) all tribal advisory committees; (2) all advisory committees that contain a tribal seat; and (3) all advisory committees containing a tribal representative. In accordance with Resolution #REN-19-043, NCAI will continue to assess educational and advocacy opportunities on this issue.