

**Legislative Update - January 17, 2001
(Broadcast #236)**

FY2001 Omnibus Appropriations Act Affects Tribal Programs - On December 21, 2000 President Clinton signed the FY2001 Omnibus Consolidated and Emergency Supplemental Appropriations Act (H.R. 4577, H.Rept. 106-1033) as Public Law 106-554. In addition to providing FY2001 funding for the Departments of Labor, Health and Human Services, and Education, as well as other federal agencies, the Act contains several legislative provisions that directly affect tribal governments. This Legislative Update summarizes funding levels for key programs contained in the Act and provides information about its non-appropriations provisions, including:

- _ Departments of Education, Health and Human Services, and Labor FY2001 Funding Levels
- _ Community Renewal Tax Relief Act
- _ Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act
- _ Colorado Ute Settlement
- _ Dakota Water Resources Act
- _ Wakpa Sica Reconciliation Place

A complete copy of the more than 1,000-page conference report is available online at <http://thomas.loc.gov/home/omni2000/@>.

FY2001 Education, Health and Human Services, and Labor Funding

Generally speaking, Indian programs fared well in the FY 2001 Labor, Health and Human Services, and Education Appropriations Act. Nearly all major Indian programs saw increases over FY2000 funding levels, as illustrated below.

dollars in millions	FY2000 Enacted	FY2001 Budget Request	FY2001 Enacted
Department of Education			
Office of Indian Education	77.0	115.5	115.5
Formula Grants to LEAs	62.0	92.8	92.8
Teacher Corps	5.0	10.0 ¹	10.0
Special Programs National	8.0	1.7	2.7

¹ The FY2001 budget request and enacted level include funding for a new Administrator Corps program.

Activities	0.05	0.0	0.05
National Advisory Council on Indian Ed.	906.5	770.0	1,075.0
Impact Aid	23.4	24.0	24.0
Rehabilitation Service Grants for Indians			
Tribally Controlled Post Secondary Voc-	4.6	4.6	5.6
Strengthening Tribal Colleges/Universities	6.0	9.0	15.0
Strengthening Alaska Native/Native			
	5.0	5.0	6.0
Department of Health and Human Services			
Administration for Native Americans	35.0	44.0	44.0
Child Care Development Block Grant	1,183.0	2,000.0	2,000.0
Head Start	5,267.0	6,267.0	6,267.0
Indian Head Start	145.0	175.0	175.0
Aging Grants for Native Americans	19.0	24.0	23.5
Department of Labor			
Native American Programs	58.4	55.0	55.0
Job Corps	1,357.8	1,393.04	1,400.0
Youth Opportunity Grants	250.0	375.0	275.0
Fathers Work/Families Win	0.0	255.0	0.0

On a broader note, the Act contains significant increases sought by the Administration, including funding for school modernization, workforce development, human services, and minority health programs.

The Act creates a new \$1.2 billion school renovation grant program, targeted to high-need districts. It provides \$900 million for urgent school repairs, including \$75 million for public schools with high concentrations of Native American students, \$300 million for special education and technology-related activities, and \$25 million for a demonstration program to assist charter schools in obtaining non-federal financing for their infrastructure needs.

The Act provides \$11.9 billion in discretionary funds for the Department of Labor, a \$700 million increase above the FY 2000 enacted level, including \$23 million to establish the Office of Disability Policy, Evaluation and Technical Assistance. Headed by a new Assistant Secretary, this office will provide leadership in helping people with disabilities enter, re-enter, and remain in the workforce.

The Act provides the Department of Health and Human Services (HHS) with \$49.9 billion in funding, \$7.1 billion above the FY 2000 level. It fully funds the Family Caregivers program established in the recently reauthorized Older Americans Act at \$125 million, including \$5 million for Native American caregivers. The program will provide information, respite care, and

other support services to 250,000 families caring for loved ones who are ill or disabled.

The Act also provides \$130 million for the newly-established Center for Research on Minority Health and Health Disparities, which will coordinate and support the National Institutes of Health's trans-Institute, billion dollar research portfolio on minority health. The bill provides \$3.9 billion for the Centers for Disease Control and Prevention, including \$163 million for domestic and global HIV/AIDS prevention efforts and provides \$357 million for the Congressional Black Caucus HIV/AIDS initiative to support an expanded scope of HIV/AIDS prevention, education, treatment, and outreach activities for minority community-based organizations working to slow the spread of HIV/AIDS in their communities.

In addition to the funding described above, the Act also allocates \$30 million to the Indian Health Service for alcohol and substance abuse activities. Of this amount, \$15 million is for Alaska Native alcohol and sobriety activities and \$15 million is for alcohol and substance abuse treatment and prevention by non-Alaska tribes.

Community Renewal Tax Relief Act

The Omnibus Appropriations Act includes the Community Renewal Tax Relief Act, H.R. 5662, which authorizes the designation of 40 Arenewal communities@ within which special tax incentives would be available. It also contains the FUTA provisions sought by tribal governments. NCAI, which has worked with NIGA and others to enact tribal FUTA legislation, appreciates all of the advocacy by tribal leaders and their representatives on this critical issue.

Renewal Community Provisions

The Secretary of HUD is authorized to designate up to 40 Arenewal communities@ from areas nominated by states and local governments. At least 12 of the designated communities must be in rural areas. For nomination purposes, tribal governments are considered to be the state and local government for areas located on reservations.

The Secretary of HUD is required to publish (within four months after enactment) regulations describing the nomination and selection process. Designations of renewal communities are to be made during the period beginning on the first day of the first month after the regulations are published and ending on December 31, 2001. The designation of an area as a renewal community generally will be effective on January 1, 2002, and will terminate after December 31, 2000.

To be designated as a renewal community, a nominated area must meet the following criteria: (1) each census tract must have a poverty rate of at least 20 percent; (2) in the case of an urban

area, at least 70 percent of the households have incomes below 80 percent of the median income of households within the local government jurisdiction; (3) the unemployment rate is at least 1.5 times the national unemployment rate; and (4) the area is one of pervasive poverty, unemployment, and general distress. Those areas with the highest average ranking of eligibility factors (1), (2), and (3) above would be designated as renewal communities. One nominated area within the District of Columbia becomes a renewal community (without regard to its ranking of eligibility factors) provided that it satisfies the area and eligibility requirements and the required state and local commitments described below. The Secretary of HUD must take into account in the extent to which nominated areas have a high incidence of crime, as well as whether they have census tracts identified in the May 12, 1998, report of the General Accounting Office regarding the identification of economically distressed areas. In lieu of the poverty, income, and unemployment criteria, out-migration may be taken into account in the designation of one rural renewal community.

There are no geographic size limitations placed on renewal communities. Instead, the boundary of a renewal community must be continuous. In addition, the renewal community must have a minimum population of 4,000 if the community is located within a metropolitan statistical area (at least 1,000 in all other cases), and a maximum population of not more than 200,000. The population limitations do not apply to any renewal community that is entirely within an Indian reservation.

In order for an area to be designated as a renewal community, governments are required to submit a written course of action in which the state and local governments promise to take at least four of the following governmental actions within the nominated area: (1) a reduction of tax rates or fees; (2) an increase in the level of efficiency of local services; (3) crime reduction strategies; (4) actions to remove or streamline governmental requirements; (5) involvement by private entities and community groups, such as to provide jobs and job training and financial assistance; and (6) the gift (or sale at below fair market value) of surplus realty by the government to community organizations or private companies.

In addition, the government must promise to promote economic growth in the nominated area by repealing or not enforcing four of the following: (1) licensing requirements for occupations that do not ordinarily require a professional degree; (2) zoning restrictions on home-based businesses that do not create a public nuisance; (3) permit requirements for street vendors who do not create a public nuisance; (4) zoning or other restrictions that impede the formation of schools or child care centers; and (5) franchises or other restrictions on competition for businesses providing public services, including but not limited to taxicabs, jitneys, cable television, or trash hauling, unless such regulations are necessary for and well-tailored to the protection of health and safety.

With respect to the first 20 designations of nominated areas as renewal communities, preference

will be given to nominated areas that are enterprise communities and empowerment zones under present law that otherwise meet the requirements for designation as a renewal community. An empowerment zone or enterprise community can apply for designation as a renewal community. If a renewal community designation is granted, then an area's designation as an empowerment zone or enterprise community ceases as of the date the area's designation as a renewal community takes effect.

A number of tax incentives will be available for renewal communities from January 1, 2002, and ending December 31, 2009. For example, a zero-percent capital gains rate applies with respect to gain from the sale of a qualified community asset acquired after December 31, 2001, and before January 1, 2010, and held for more than five years. A qualified community asset@ includes: (1) qualified community stock (meaning original-issue stock purchased for cash in a renewal community business); (2) a qualified community partnership interest (meaning a partnership interest acquired for cash in a renewal community business); and (3) qualified community business property (meaning tangible property originally used in a renewal community business by the taxpayer) that is purchased or substantially improved after December 31, 2001.

A 15-percent wage credit will be available to employers for the first \$10,000 of qualified wages paid to each employee who (1) is a resident of the renewal community, and (2) performs substantially all employment services within the renewal community in a trade or business of the employer. The wage credit rate applies to qualifying wages paid after December 31, 2001, and before January 1, 2010. Wages that qualify for the credit are wages that are considered qualified zone wages@ for purposes of the empowerment zone wage credit (including coordination with the Work Opportunity Tax Credit). In general, any taxable business carrying out activities in the renewal community may claim the wage credit. In addition, the Act expands the high-risk youth and qualified summer youth categories in the WOTC to include qualified individuals who live in a renewal community.

Finally, each state may allocate up to \$12 million of commercial revitalization expenditures@ to each renewal community located within the state for each calendar year after 2001 and before 2010. A commercial revitalization expenditure@ means the cost of a new building or the cost of substantially rehabilitating an existing building. The building must be used for commercial purposes and be located in a renewal community. In the case of the rehabilitation of an existing building, the cost of acquiring the building will be treated as qualifying expenditures only to the extent that such costs do not exceed 30 percent of the other rehabilitation expenditures. The qualifying expenditures for any building cannot exceed \$10 million.

Tribal FUTA Provisions

The Omnibus Appropriations Act contains a much-sought-after provision that treats tribal

governments (including any subdivision, subsidiary, or business enterprise chartered and wholly owned by an Indian tribe) like a non-profit organization, state, or local government for Federal Unemployment Tax (FUTA) purposes. The provision generally is effective with respect to service performed beginning on or after the date of enactment. Under a transition rule, service performed in the employ of an Indian tribe is not treated as employment for FUTA purposes if: (1) it is service which is performed before the date of enactment and with respect to which FUTA tax has not been paid; and (2) such Indian tribe reimburses a State unemployment fund for unemployment benefits paid for service attributable to such tribe for such period.

Small Business Administration Provisions

The Act also reauthorizes the Small Business Administration (SBA) and makes several changes to SBA financial programs. It amends the general business loan program at the Small Business Administration, commonly known as the 7(a) loan program, by increasing the maximum guarantee amount of a 7(a) loan to \$1 million from the current limit of \$750,000. Moreover, it institutes a cap prohibiting loans with a gross amount in excess of \$2 million, expands the guarantee rate to 85 percent and applies the two percent guarantee fee to loans up to \$150,000. The Act also changes the Certified Development Company (CDC) loan program at the Small Business Administration (SBA), commonly known as the 504 loan program to increase the maximum amount and its underlying debenture to \$1 million from the current limit of \$750,000. The maximum amount for loans with specific public policy purposes (low-income, rural, and minority owned businesses) is increased to \$1,300,000. Finally, it amends the Small Business Investment Act to make changes in the Small Business Investment Company (SBIC) program at the SBA.

Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act

The Omnibus Appropriations Act makes several changes to the Medicare, Medicaid, and SCHIP programs, including two that directly benefit Indian Country. The first provision authorizes hospitals and freestanding ambulatory care clinics operated by the IHS or tribes/tribal organizations to bill Medicare Part B for certain services furnished at the direction of the hospital or clinic. Covered services are those furnished under the physician fee schedule or by a practitioner or therapist under a fee schedule. This new authority will become effective on July 1, 2001.

The second provision increases funding for the Special Diabetes Program for Indians to \$100 million annually for fiscal years 2001 through 2003. NCAI worked with the Juvenile Diabetes Foundation and the National Indian Health Board to increase funding and permanently authorize this program. While the lack of a permanent authorization in the final Act is disappointing, tribal leaders should be pleased that their advocacy efforts paid off in terms of the funding increase,

which represents a \$70 million per year boost for the program.

Colorado Ute Settlement Act Amendments

Title III of the Omnibus Appropriations Act includes the Colorado Ute Settlement Act Amendments of 2000, S. 2508, as passed by the Senate on October 25, 2000. S. 2508 amends the Colorado Ute Indian Water Rights Settlement Act of 1988 to authorize the Secretary of the Interior, to settle the outstanding claims of the Ute Indian tribes on the Animas and La Plata Rivers in Colorado. Specifically, it requires the Bureau of Reclamation to complete construction of, operate, and maintain a reservoir, pumping plant, reservoir inlet conduit, and appurtenant facilities to divert and store water from the Animas River to provide a municipal and industrial water supply; and deliver through the use of such components, specified municipal and industrial water allocations to the San Juan Water Commission, the Animas-La Plata Conservancy District, the State of Colorado, the La Plata Conservancy District of New Mexico, the Southern Ute and Ute Mountain Ute Tribes, and the Navajo Nation.

Dakota Water Resources Act of 2000

Title VI of the Omnibus Appropriations Act includes the Dakota Water Resources Act of 2000, S. 623, as passed by the Senate on October 13, 2000. This legislation, which was supported by tribal governments in North Dakota, addresses compensation for the permanent flood the Garrison and Oahe dams on the Missouri River created by authorizing more than \$630 million to meet water needs in North Dakota, including \$200 million for tribal projects. It also calls for a study of the Red River Valley to determine whether the region's growing water needs can be met within the basin, or whether a transfer from the Missouri River is the better alternative. If a water project for the valley requires a transfer from the Missouri, that project must be approved separately by Congress.

Wakpa Sica Reconciliation Place

Title VII of the Omnibus Appropriations Act includes legislation to establish the Wakpa Reconciliation Place, S. 1658, as passed by the Senate on September 26, 2000. The provision authorizes the Secretary of the Department of Housing and Urban Development, in cooperation with the Secretary of the Interior, to provide a grant of up to \$18.3 million to the Wakpa Sica Historical Society to construct a facility, known as the Reconciliation Place. Under S. 1658, the Attorney General is directed to use available funds to provide technical and financial assistance to the National Native American Mediation Training Center to train mediators to resolve conflicts that arise between Indian tribes and neighboring communities and within tribal communities. It also creates a Native American Economic Development Council to provide expertise and technical support to help Indians establish successful businesses and in obtaining

federal assistance for economic development activities, and to provide scholarships to Indian students pursuing a business education. Finally, S. 1658 authorizes \$10 million for five fiscal years, beginning with FY 2000, for the Secretary of the Interior to make grants to the Council to fulfill its purposes.

For further information, contact NCAI at (202) 466-7767.