2013 White House
Tribal Nations Conference
Washington, DC

Tribal Leader Briefing Book
Schedule of Events for the 5th Annual White House Tribal Nations Conference
White House events, NCAI sponsored meetings, agency, legislative, and other events.

Briefing Papers
a. Advancing Our Nation-to-Nation Relationship
   A framing paper that discusses overarching and transformative priorities that can be advanced with the attention of President Obama.

b. Crosscutting Issue Papers for Breakout Session Discussion
   A series of papers that address tribal priorities on a range of issues that will cut across various breakout discussions.
   - Honoring the Trust Responsibility in the Federal Budget
   - Veterans
   - “Indian” Mascots
   - Data

c. Breakout Session Overview Documents
   A series of papers that provide an introduction and concrete recommendations that align with key areas to be addressed in the breakout sessions.

1. Promoting Healthy Tribal Communities: Improving Access to Healthcare
   - Improving access to health care and Affordable Care Act implementation
   - Contract Support Costs

2. Strengthening Tribal Economies: Economic Development in Indian Country
   - Tribal Tax
   - Access to Capital
   - Workforce Development and Jobs
   - Energy
   - Government Contracting
   - International and Inter-Tribal Trade

3. Protecting Natural, Cultural and Sacred Resources: Management of Native Lands and Environments
   - Natural Resources
   - Agriculture, Agribusiness, & Nutrition
   - Climate Change
   - Cultural Protection and Sacred Places
   - Alaska Native Subsistence
4. **Advancing the Government-to-Government Relationships: Reinforcing Relationships Between the Federal Government and Tribes**
   - Consultation & High Level Engagement
   - Self-Governance
   - Federal Acknowledgement
   - International Indigenous Issues
   - Tribal-State
   - Elections and Voting Rights

5. **Supporting Self-Determination and Self-Governance: Honoring Tribal Control over Tribal Land, Water, Energy and Trust Assets**
   - Fixing the Trust System: Indian Lands and Natural Resources
   - *Carieri* and *Patchak*: Supreme Court Decisions
   - Water Rights

6. **Building Safe Tribal Communities: Law Enforcement, Public Safety and Disaster Response in Tribal Communities**
   - Violence Against Women Act and Tribal Law and Order Act implementation
   - Tribal Homeland Security, Border Issues, and Stafford Act Implementation

7. **Investing in the Future: Native American Youth and Education**
   - Education
   - Youth
   - Native Languages

8. **Moving Communities Forward: Developing Infrastructure in Indian Country**
   - Broadband
   - Housing
   - Transportation
**2013 White House Tribal Nations Conference**

**Schedule of Events (NCAI and White House)**

*Current as of November 8, 2013*

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**November 12**

**Pre-registration for the White House Conference** will be available from 12-2pm at the Preparatory meeting and from 6:30-8:30pm at the reception.

**Tribal Leaders Preparatory Meeting**

9am – 5pm
Washington Plaza Hotel
10 Thomas Cir NW, Washington, DC

9-10:30am  Tax Action Meeting
10:30-12pm  Tribal Leader Preparatory Meeting
12pm  Mascot Update, Native Vote & Lunch *(boxed lunches provided)*
12:30pm  ILOC Press Conference
1-2:30pm  Dialogue with Federal Partners
          *Kevin Washburn, Interior
          Elaine Buckberg, Treasury
          Nancy Berryhill, SSA*
2:30-4pm  Update on Meeting with President Obama
          Regional breakouts and discussion of topline messages
4:15pm  Dialogue with Federal Partners *(continued)*
        *Yvette Roubideaux, IHS*
4:30pm  Concluding remarks and adjourn

**Tribal Leader Reception**

6:30pm – 8:30pm
National Museum of the American Indian
4th St and Independence Avenue, SW
RSVP to NMAI-rsvp@si.edu or 202-633-7020 by 11/8/2013

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**November 13**

**White House Tribal Nations Conference**

*by White House Invitation Only*

9:00am to 4:00pm
*(Doors open at 7am)*

Department of the Interior
Sidney R. Yates Auditorium

**Secretary’s Reception for Tribal Leaders Participating in the White House Conference**

*By White House Invitation Only***

4:00 to 6:00pm

Department of the Interior

**Viewing of the White House Tribal Nations Conference**

Open to all, hosted by NCAI
Coffee and light breakfast from 8:30 a.m.
9:00am – 4:00pm
Embassy of Tribal Nations, 1516 P Street NW

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Unless otherwise noted, all events are open as long as you follow RSVP procedures noted above.
2013 WHITE HOUSE TRIBAL NATIONS CONFERENCE
SCHEDULE OF EVENTS (AGENCY & CONGRESS)
Current as of November 8, 2013

November 12

Department of Transportation
Listening Session Hosted by
Deputy Secretary John D. Porcari
USDOT HQ
1200 New Jersey Ave, SE
8:30am – 10:30am
RSVP or questions: tribalconsultation@dot.gov
Please plan on arriving approximately 15-20 minutes before the start time of the event, the
listening session will begin promptly at 8:30am

Senate Committee on Indian Affairs
Listening Session on the Impacts of
Sequestration on Indian Country
Committee Hearing Room
628 Dirksen Senate Office Building
2:00pm – 4:00pm
RSVP to Sarah Stiltner at 202-224-2251; or
Roundtable@indian.senate.gov

Department of Defense
Listening Session
Department of the Interior
Room 5160
2:00pm – 4:00pm
Questions to Joe Sarcinella
andrew.j.sarcinella.civ@mail.mil

Department of the Interior
Listening Session
Department of the Interior
4:00pm – 5:00pm

November 14

Department of Justice
Violence Against Women Government-to
Government Consultation
Office of Justice Programs, 810 7th Street, NW
Main Conference Room 3102
9am – 5pm
RSVP at: www.ovwconsultation.org
Questions can be submitted to
info@ovwconsultation.org

Departments of the Interior & Education
American Indian Education Study Group
Listening Session
Department of the Interior
1849 C Street, NW – Room 5160
10:00am – 12:00pm
RSVP & Input/Questions: iaedsolutions@bia.gov

Department of the Interior & Advisory
Council on Historic Preservation
Sacred Sites Listening Session
Department of the Interior
1849 C Street, NW – Room 5160
2:00pm – 4:00pm
RSVP to Alberta Joseph at
alberta_joseph@ios.doi.gov
Additional information on listening session
available at:
www.achp.gov

Unless otherwise noted, all events are open as long as you follow RSVP procedures noted above.
NOVEMBER 12

Center for Native American Youth
Native American Heritage Month Event The Aspen Institute
One Dupont Circle, Suite 700
12:00pm – 1:30pm
Open to the public.

Reception - Alison Lundergan Grimes for US Senate (KY)
Bistro Bis, 15 E. Street NW
5:00pm – 6:00pm
RSVP to Valerie Chraca Friedman or Rebecca Kasper at (202) 629-4764 or rkasper@cf-grp.com

NOVEMBER 13 (Continued)

Reception for Congressman Raul Ruiz (CA-36)
Hunan Dynasty, 215 Pennsylvania Avenue, SE
5:30 – 6:30pm
RSVP to Amy Strathdee at (202) 271-9682 or amy@strathdeegroup.com

Reception – Congressman Bruce Braley for Senate (IA-01)
Hunan Dynasty, 215 Pennsylvania Ave, SE
6:00 – 7:00pm
RSVP to Kristen Bautz at (202) 609-7462 or bautz@4cpartnersllc.com

NOVEMBER 13

Vigil for Leonard Peltier Simon
Bolivar Park
6:00am – 4:30pm

Alaska Congressional Delegation Constituent Coffee
Capitol Visitors Center: Room SVC 215
4:00pm – 5:00pm
RSVP by Nov 13th to kristen_daimler@murkowski.senate.gov maya_ashwal@begich.senate.gov alana.wilson@mail.house.gov

NOVEMBER 14

Breakfast – Leahy for US Senator
Bistro Bis, 15 E Street, NW
8:30am
For more information or to RSVP, contact Jennings Heussner at (202) 682-2202 or jheussner@cfc-dc.com

Unless otherwise noted, all events are open as long as you follow RSVP procedures noted above.
ADVANCING OUR
NATION-TO-NATION RELATIONSHIP

After five years of unprecedented achievements in advancing the relationship between tribal nations and the federal government, President Obama faces a unique opportunity to set the standard for tribal-federal engagement for generations to come. We trust the President and his Administration will work tirelessly over the next three years to keep the federal government’s commitments to tribal nations and to ensure tribes have the tools they need to fulfill their governmental responsibilities to their citizens.

REALIZING INDIAN COUNTRY’S ECONOMIC POTENTIAL
Many of the recommendations in this briefing book outline opportunities to invest in Indian Country’s economic potential and build stronger economies that benefit all Americans. From alternative energy to broadband, education to international trade, tribes offer real solutions that can ensure economic security and build sustainable prosperity for generations to come.

Since our first meeting with President Obama in 2009, tribes have been clear: we are not asking for a handout, we are asking for the federal government to keep its commitments. We urge the federal government to pay the obligations written into our treaties and to enable tribes to fulfill their constitutional responsibilities as governments. Tribes can contribute to a robust American economic recovery, but to do that we need the flexibility to rebuild our own nations. To use the resources we earn within our own boundaries to build and strengthen our economies.

The President has set a new standard for engaging with tribal nations. Many of the economic barriers faced by tribes are explained by one of two failures by the federal government: (1) failure to meet treaty commitments to tribal nations and (2) failure to acknowledge the inherent sovereignty of tribes and ensure federal policy recognizes government parity between tribes and states. To fully realize Indian Country’s economic potential – for the nation and for the more than 5 million citizens that are served by tribal nations – the federal government must work tirelessly to enable tribes to fulfill their rightful, constitutional place in the American family of governments.

TRANSFORMATIVE ACTION ITEMS
Indian Country’s top priorities for actions that will transform our nation-to-nation relationship include:

1. **Visit Indian Country.** President Obama has led the transformation of our nation-to-nation relationship. He has changed the White House’s engagement with Indian Country and ensured that the transformation extends throughout the agencies. As we have seen in recent months, the American public still has much to learn about tribal nations and Native peoples. A Presidential visit to Indian Country offers a unique opportunity for President Obama to draw national attention to his commitment to our nation-to-nation relationship. As the President focuses on strengthening the economic recovery, his visit should coincide with a meeting of tribal leaders (not unlike his meetings with leaders of the G20, NATO, APEC, and other international leaders; or his regular meetings with governors) and should involve a focused meeting to highlight
strategies where partnerships between our governments promise economic security for the United States.

2. **Elevate our Nation-to-Nation Relationship in the Public Discussion.** Recent policy developments, the growth of tribal economies, technology advances and other factors have increased the need to enhance understanding of tribal nations beyond the federal government. Recent national news stories have shown both the need to educate the American people about tribal nations and Native peoples (e.g. the “Baby Veronica” case) and the influence of the President’s voice on these issues (e.g. his stand against the name of the Washington NFL team). We urge the President to take every opportunity to increase the understanding of the media, the judiciary, policymakers at all levels, and the American people about the importance of tribal nations and Native peoples to America’s past, present, and future.

We appreciate the opportunity to engage with the President at the Tribal Nations Conference. We look forward to hearing the President emphasize our unique relationship in the State of the Union, refer to tribal nations when emphasizing government innovation, cite tribal businesses when highlighting job creation efforts, include tribal colleges and universities when discussing education policy, and celebrate to our nation-to-nation relationship in remarks to the United Nations.

3. **Promote Economic Security by Ensuring Governmental Parity between Tribes and States.** Federal policy that fails to recognize governmental parity between tribes and states hurts the American economy by limiting the economic potential of tribal nations. The President should act to ensure tribes are recognized alongside their state government peers in federal policy. Acknowledging governmental parity in energy policy would promote tribal economic security and contribute to America’s energy independence. Full inclusion of tribes in federal tax reform as well as significant state tax reforms such as the Marketplace Fairness Act, promises significant economic benefits that would contribute to the rebuilding of tribal economies and regional economic success throughout the nation. Tribal leaders also urge the immediate scheduling of a meeting between tribal nations and incoming IRS Commissioner Koskinen.

4. **Modernize the Trust Relationship.** Recognizing the new era that has been launched by the finalization of Cobell and other trust settlements, the President should require the Department of the Interior to take the lead – with other federal agencies – to work with tribes in a true partnership to identify strategies that remove bureaucratic hurdles and modernize the trust relationship with a focus on creating economic security and strengthening our communities.

5. **Recognize our Nation-to-Nation Relationship in International Forums.** The 2014 World Conference on Indigenous Peoples, offers a unique opportunity for the President to draw international attention to his commitment to our nation-to-nation relationship. Tribal leaders expect to see our President open the 2014 Conference by inspiring Indigenous peoples and challenging governments around the world, with the commitments his Administration has made to our nation-to-nation relationship. Two specific commitments that could be highlighted in that address include: (1) support for the creation of an appropriate, dignified, and permanent status for tribal nations at the UN in a manner consistent with our status as governments, and (2) full implementation of the UN Declaration on the Rights of Indigenous Peoples.
6. **Prioritize Appointments that Impact Indian Country.** Elevating Native people in the federal government was a top priority for Indian Country during the 2008 and 2012 Presidential transitions and the President made significant progress on priority appointments. Key priorities include:
   a. **Create an Associate Director for Native Programs position in the Office of Management and Budget (OMB).** This position would act to coordinate priorities across the federal government and ensure that OMB budgets and policies provide stable funding for tribal governments.
   b. **Appoint Native People to the Federal Judiciary.** Indian Country strongly urges the appointment of Native judges, as well as more judges who are knowledgeable and supportive of the fundamental principles of federal Indian law.
   c. **Hire Young Native Professionals to Entry and Mid-Level Positions.** Placing bright, enthusiastic Native professionals throughout the federal government will invest in our future and prepare for success in future Administrations.

7. **Direct the Census Bureau to Lead a Periodic Indian Country Economic Survey.** Current federal data about socioeconomic conditions in Indian Country are insufficient to support tribal and federal policymaking. The Census Bureau has the capacity to gather meaningful tribal input and coordinate data efforts with other agencies to develop a regular economic survey that provides data to support tribal and federal policymaking to establish economic security and prosperity for our nations.

8. **Ensure Tribes are Included in National Policy Reform Efforts.** Tribes must be at the table as the Administration works with legislative leaders to develop reform efforts on issues including tax, education, elections, immigration, and climate change. Like state governments, tribal nations have a role to play in each of these major pieces of legislation.

**EXPAND HIGH LEVEL ENGAGEMENT**

During his first campaign, President Obama’s commitment to host an annual summit with tribal leaders at the White House was transformative. His fulfillment of that promise and support of tribal consultation has had a noticeable effect on his Administration and its relationship with tribes. In addition to the specific items listed in the previous section, the President’s leadership to advance and institutionalize high level nation-to-nation engagement is critical to building a bright future for Indian Country and the United States.

Some specific recommendations to advance and institutionalize high level engagement include:

1. **Send a Special Message to Congress on the importance of the Nation-to-Nation Relationship.** In 1970, President Nixon sent a historic message to Congress on tribal self-determination. That message launched the self-determination era—the very framework that allowed tribes to prove our capacity as governments. President Obama’s Special Message to Congress could underscore the advances he has led and establish the legacy of his leadership to advance our nation-to-nation relationship.
2. **Fully implement the United Nations Declaration on the Rights of Indigenous Peoples.**
   This would include a full review of all existing and proposed federal law to ensure alignment with the Declaration.

3. **Enhance existing high level meetings.** Tribal leaders are encouraged by the President’s creation of the White House Council on Native American Affairs and his commitment to the annual Tribal Nations Conference. However, we have specific recommendations that should guide future high level meetings:
   a. **Tribal leaders must be directly engaged in the work of the White House Council.**
      The creation of the White House Council was an important response to a top priority of tribal leaders, reiterates as recently as the 2012 White House meeting. The leadership of Secretary Jewell and high level engagement across the agencies offers the potential to effectively respond to tribal concerns and work energetically to streamline federal programs. However, tribal leaders strongly urge the Council to engage directly and regularly with tribal leaders to shape the work of the Council. The Council will not be successful if its work is not guided by true nation-to-nation dialogue.
   b. **Tribes must be equal partners in planning and implementing high level meetings.** As in other nation-to-nation and government-to-government dialogues, the leaders of tribal governments must play an equal role. Tribal leaders have suggested co-chairing White House Tribal Nations Conference discussions and read outs.
   c. **Indian Country must be involved in selecting representatives to advisory groups.**
      Tribal leaders have applauded efforts to create agency level committees (such as the Secretary’s Tribal Advisory Committee, or STAC, convened by Secretary of Health and Human Services, Kathleen Sebelius) and have urged that these groups include a number of representatives selected by Indian Country. To truly advance the nation-to-nation relationship, these advisory groups cannot be selected exclusively by the agencies.
   d. **Tribal leaders must have the option for staff support comparable to that afforded to senior Administration officials.** The regional meetings at the 2011 White House Tribal Nations Conference and several White House forums since have shown promising trends toward including technical experts and staff to support tribal leaders. However, the White House Tribal Nations Conference itself, and many agency level committees, must provide tribal leaders with support comparable to that offered to senior federal officials. If federal technical experts and support staff participate in the meetings, tribal leaders should have the same option to ensure that the nation-to-nation dialogue is as informed and productive as possible.

4. **Host regular meetings on specific issues between tribal leaders and cabinet secretaries and other senior officials.** Following a model like the White House Rural Council, the President should host regular meetings—at the White House—between tribal leaders and cabinet secretaries and/or other senior Administration officials.

_NCAI welcomes ongoing feedback on the content of this briefing book and encourages tribal leaders and federal partners to send all input and questions to Peter Morris, NCAI Senior Advisor (pmorris@ncai.org or 202.466.7767) and John Dossett, NCAI General Counsel, at (jdossett@ncai.org or 202.466.7767)._
HONORING THE TRUST RESPONSIBILITY IN THE FEDERAL BUDGET

The federal government has a trust, treaty and statutory obligation to tribal nations. The underpinning of federal spending in Indian Country is based in the treaties that the tribes’ ancestors signed with the US government and other obligations. This assistance and goodwill between nations derives from the trust relationship, and is engrained within Article I, Section 8, of the US Constitution. The sovereignty of tribal nations is being undermined in part by the failure of the federal government to uphold its duty to honor its obligations to tribes.

Fulfillment of many of the trust and treaty obligations to tribes resides in the discretionary portion of the federal budget, which are currently subject to severe 2013 sequester cuts and may endure continued reductions in FY 2014 and future years due to the Budget Control Act. Tribes across the United States have effectively used federal funding received through the Departments of the Interior, Health and Human Services, Housing and Urban Development, Agriculture, Commerce, Education, Energy, Justice, and Transportation, among others, to improve the economic, social and education circumstances for American Indian and Alaska Native people. Many critical governmental services have been historically underfunded and have failed to meet the needs of tribal citizens. This stark reality has been well documented by the U.S. Commission on Civil Rights in the Quiet Crisis report, by Amnesty International in their Maze of Injustice report, and through gap reports from the Bureau of Indian Affairs and Indian Health Service.

Recommendations

1. **Turn Off the Sequester**

   Tribes continue to oppose sequestration. The Administration and Congress must reach a deal to turn off sequestration entirely because it breaks trust and treaty obligations. The United States should be a nation that meets its promises, not only to veterans and elders, but also to tribal nations. Tribal programs are not charity or an entitlement: tribes prepaid for these services. Tribes have made some progress in addressing unacceptably inadequate public services that most Americans routinely take for granted, like law enforcement, education, and infrastructure development. However, sustained progress requires governmental parity – that tribes have access to the same tools as other governments. Ongoing reductions due to the FY 2014 sequester would harm critical services to American Indian and Alaska Native children, students, families, and the most vulnerable in our communities. The trust responsibility is a federal commitment that should be honored in good budget times as well as in difficult budget times.

2. **Exempt Tribal Programs if Sequestration is not Entirely Stopped**

   Last year, Congress failed to enact legislation negating the implementation of a government-wide sequestration of FY 2013 appropriations. As a result, the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) FY 2013 budgets took an across-the-board cut of $353 million dollars. Congress is now on a path to a similar result for FY 2014. The disparity in historical funding to tribes continues to grow at an alarming rate. Funding increases for the BIA over the last 10 years have lagged far behind the other Interior Bureaus. An additional lack of budget...
equity occurred when tribal budgets incurred a 16 percent General Reduction in 1996, when across-the-board rescissions totaling another 8 percent were made from FY 2000-2013, and finally when sequestration reductions of 5 percent were incurred in 2013. Today, BIA spending power is 60 cents on the dollar. In FY 2013, the Budget Control Act spelled out how sequestration would work and left open that even exempt accounts could be sequestered. Regardless of the path taken, the federal trust obligation to tribes must be honored and vital tribal programs must be sustained.

3. Fully Fund Contract Support Costs (CSC)
For decades the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) have been underpaying Tribes and Tribal organizations that contract to operate IHS clinics and hospitals and BIA law enforcement, realty, housing and other government programs. The result has been severe offsetting reductions in patient care and in other essential governmental services for the most underserved populations in America, American Indian and Alaska Native peoples. Obtaining full funding for CSC has long been a critical priority of tribes. Tribes request Administrative support and assistance in achieving funding levels to satisfy the legal requirements for tribal CSC, as is provided for all other government contracts and contractors.1

4. Provide Advance Appropriations for Indian Health Service
Late funding and successive Continuing Resolutions undermine the capacity of the IHS and tribal health facilities to effectively budget, recruit, and deliver healthcare services, in addition to constructing and maintaining facilities. Congress recognized that the Department of Veterans Affairs (VA) had also been greatly hampered in providing health services to veterans because of late funding, and in 2010 passed legislation to enable VA advance appropriations for their health care accounts. Similar in operations, the VA and the IHS are the only agencies that provide direct, federally-funded healthcare to specific populations. Legislation in support of this budget option has been introduced in both chambers (HR. 3229 and S. 1570). The legislation does not require increased appropriations, but authorizes Congress to fund IHS one fiscal year in advance. The Congressional Budget Office’s estimate of the proposed legislation found a zero-cost to the Administration. Considering that Congress has enacted appropriations by the beginning of the fiscal year only once since 1998, funding IHS through advance appropriations would go a long way to allow the IHS and tribal health providers adequate planning time to deliver health care to our people. This strategy stabilizes the funding environment for Indian health programs. While of course, tribes would advocate for 100 percent level of need funded, Advance Appropriations allows Indian health programs to understand what the funding level will be and deliver health programs accordingly. Tribes request Administrative support on Advance Appropriations for IHS in the FY 2015 budget request.

5. Provide Equitable Support for Tribal Governmental Services
Tribes appreciate recent support for some tribal programs, especially for the Indian Health Service and law enforcement. However, comparing budget increases for the six largest Interior agencies between FY2004 enacted to FY2014 Presidents’ Request shows that BIA has received the smallest percentage increase. The increase for BIA from the FY 2004 enacted level to the FY2014 President’s requested level is about 11 percent, the smallest percent increase compared

1 Additional recommendations on CSC are included in a separate briefing paper in this packet.
to the six largest Interior agencies over that same time period. The Department of the Interior’s budget overview acknowledges that “the Congress has placed the trust responsibility for Indian matters in the Department of the Interior, primarily within the Bureau of Indian Affairs.” The President’s budget provides $11.7 billion in discretionary funding for the Department of the Interior, an increase of over four percent above the FY 2012 enacted level. The DOI (without BIA) request for FY 2014 is a 5.1 percent increase of $455,109,000, while the Bureau of Indian Affairs budget would increase by $31 million, or 1.2 percent, or $21 million without the indirect cost increase. A $134 million increase to BIA funding would be needed to be in line with the overall FY 2014 Department of the Interior increases. Tribes urge the Administration to provide equitable support for core tribal governmental services in future budget requests.

For additional information, please contact Amber Ebarb, Budget and Policy Analyst, at 202.466.7767 or aebarb@ncai.org.
Native people serve in the military at higher rates than any other group. The American Indian/Alaska Native (AI/AN) population is overrepresented in the military at a rate of almost two times what would be expected based on the population size. In some tribal communities, 1 out of every 200 adults has served in the military. Currently more than 24,000 active duty military members are AI/AN. With these numbers there will be an increased need for future programs and services available for these outstanding tribal citizens along with all veterans.

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

There are disturbing facts that we call upon the administration to find a way to address. AI/AN veterans are more likely to have on average a household income of less than $10,000 dollars, twice the proportion of veterans in the general population. Nearly 60 percent of AI/AN veterans are unemployed compared to 55 percent of the general veteran population. These are shameful statistics and we call upon the Administration to find a way to ameliorate these statistics in this pervasive Indian Country economic downturn and jobless climate.

**HEALTH CARE**

Native veterans are less likely to have health insurance than veterans of any other races. According to a Boston Globe report, Native Vietnam veterans are twice as likely as other veterans to experience Post Traumatic Stress Disorder (PTSD). Depression, anxiety and post traumatic stress disorder affect nearly 30 percent of soldiers returning from Iraq.

The Administration is well aware of the challenges presented by the ongoing problem between Indian Health Service (IHS) and VA health care providers which sometimes deny services and force Native veterans to seek treatment from the other agency. We commend the VA and IHS in make progress to better collaborate and provide veteran health care under the VA-IHS Memorandum of Understanding but there is more to be done.
HOMELESSNESS
There is not an abundance of data on Native veteran homelessness. What is known is that nearly half of homeless veterans served during the Vietnam War but they include veterans going back to World War II up through Afghanistan and Iraq deployment, and the military’s anti-drug cultivation in South America. The homeless veteran population is predominantly male with about 5 percent being female. According to the VA and HUD, an estimated 67,000 veterans are homeless on any given night.

Native veterans, both male and female, generally do not consider themselves as homeless since they may think of a relative’s home as their own home even though they may be only sleeping there occasionally. This aspect of thinking contributes to a low count of homeless Native veterans who are less likely to utilize homeless facilities. In rural areas homelessness is even harder to discern since the population is dispersed and again the homeless veteran may be living in tents or vacant buildings so they do not self-identify as homeless.

A National Coalition for Homeless Veterans report stated the reasons behind homeless include extreme shortage of affordable housing, income and access to health care, PTSD, and substance abuse that is compounded by a lack of family and social networks. The VA does have a homeless program and is serving many, but like other worthwhile federal programs, the services are limited due to budget shortfalls.

Recommendation
1. Take immediate action to address homelessness among Native veterans. We urge the VA to increase support for homeless veteran programs that will help veterans reestablish their standing in their communities as proud and productive citizens to whom we owe deep gratitude for having have served our country well. We specifically urge a focus on programs that serve Native veterans and those from rural areas.

HOUSING
It is common knowledge and distressing that there remains a severe housing shortage throughout Indian Country. Native veteran are less likely to own their own home than other veterans, 63 percent compared to 74 percent. Some efforts to address this problem have been made but the results are not yet dramatic. Many Native veterans are likely to benefit greatly from the recent passage of the Indian Veterans Housing Opportunity Act that excludes income received by a veteran or his/her family for a service-related disability, under the definition in income in the Native American Housing Assistance and Self Determination Act.

The VA Housing Loan program for tribal members is specifically for veterans but housing loan applications processing is less than 30 per year. This program requires tribes to have a signed agreement with the VA before a veteran tribal member is eligible to submit a home loan application. Several tribes do have not signed agreements with the VA, and not all tribal officials and veterans understand how the program works.
Recommendation

2. Undertake targeted outreach to tribal governments to increase awareness of VA home loan programs that can serve Native veterans.

The Housing and Urban Development Native American 184 Programs is a nationwide loan program for tribal members to buy, build, or refinance housing. HUD ONAP has done a good job of seeking out mortgage capital. The processing form for 184 housing does not contain information on whether the applicant is a veteran. This information might be helpful in the future to ascertain whether veterans housing needs are being helped through either one or the other programs.

Recommendation

3. Revise the 184 housing form to record veteran status of the applicant. A simple fix by HUD and OMB could increase data about how this program is serving Native veterans.

UNEMPLOYMENT

A recent Government Accountability (GAO) Report (GAO-13-664, September 2013), stated that the unemployment rate for all veterans has risen since the beginning of the economic downturn and that the unemployment rate for Native Americans living on tribal lands has been higher still. The Department of Labor (DOL) submitted a report to Congress in 2010 stating the agency would take actions to increase employment and training opportunities for Native American veterans living on tribal lands. While DOL has made an effort to follow up on some of the report’s recommendations; improve interagency collaboration, created an advisory subcommittee for Native American veterans, and conduct a needs assessment, more needs to be done. According to the GAO report, “DOL has taken little to no action on recommendations to increase outreach, pursue program flexibility, and boost economic development.” We strongly urge the DOL to develop and implement an across the board strategy to fulfill its obligation to this nations veterans including Native American veterans.

Recommendation

4. Direct the Department of Labor to develop a strategy to address American Indian and Alaska Native veteran employment and training services in tribal communities.

TRIBAL VETERANS TREATMENT COURTS

The incidence of criminal involvement of veterans who are afflicted with post-traumatic stress disorder (PTSD), often exacerbated by traumatic brain injuries (TBIs) is increasing at a rapid rate in Native communities. It is estimated that the incidence of PTSD in the veteran population as a whole after Vietnam was 30-35 percent. This estimate increases to 50 percent and higher among the Southwest Asia serving veterans. The types of criminal behavior attributable to this population include petty crimes, assault, domestic violence, substance abuse (from self-medication) and suicidal risk-taking behavior. Within the family structure these behaviors are extremely destructive, resulting in broken homes and all too frequently, suicide.
Veteran Treatment Courts integrated into the Tribal Justice System under the Tribal Law and Order Act would provide a further resource for justice involved veterans. The Courts would be, as they are elsewhere, cooperative efforts between tribal courts, prosecution (including DOJ and Federal Defenders where appropriate), defense bar and community social services. We believe that judicious use of existing funding and resources (such as physical structures currently unused and re-allocation of funds currently used for similar activities) pooled by participating agencies would prove in the long run to be highly cost effective.

For additional information, please contact Robert Holden, Deputy Director at 202.466.7767 or rholden@ncai.org.
“INDIAN” MASCOTS: ENDING A LEGACY OF RACISM

The use of racist and derogatory “Indian” sports mascots, logos, and symbols has perpetuated negative stereotypes of America’s first peoples. Rather than honoring Native peoples, these caricatures and stereotypes contribute to a disregard for the diverse cultural heritages of Native peoples. In 1968, NCAI launched a campaign to end negative and harmful stereotypes perpetuated by media and popular culture. These efforts have since been rooted in an attempt to achieve social justice and racial equality for Native people. Stereotypes significantly affect how Native people view the world and their place in society, while also affecting how society views Native peoples. NCAI's position is directly linked to ongoing efforts to build a healthy and nurturing environment for Native youth to flourish and become the next generation of leaders and Native citizens.

In an interview with the Associated Press in October 2013, President Obama noted that the Washington Football team name is offensive to a “sizeable group of people” and affirmed the “real and legitimate concerns” of Native peoples. His statements have further encouraged the effort to change the name of the Washington Football team and end its legacy of marketing a racial slur. Additionally, as a result of ongoing education and advocacy, over 2,000 “Indian” references in primary, secondary, and post-secondary school sports have been eliminated during the past 35 years. However, nearly 1,000 “Indian” references in school sports still exist today.

Recommendations

1. **Support H.R. 1278, the Non-Disparagement of Native American Persons or Peoples in Trademark Registration Act of 2013.** This legislation would amend the Trademark Act of 1946, banning the use of the term ‘Redsk*n’ and canceling the federal registrations of trademarks using that term. Usage of this term carries negative historic connotations reminiscent to the eras of termination of tribes and the assimilation of Native peoples. The explicit support of President Obama and his Administration would assist in this important effort.

2. **Act to change disparaging “Indian” sports references in all schools, which includes sport team names, logos, and mascots.** The Departments of Education and Justice share the important responsibility of ensuring that students are protected from discrimination, harassment, and bullying in our nation’s schools. For Native youth, racist sports images can create a hostile environment that negatively impacts their self-esteem. We urge the Secretary of Education and Attorney General to develop guidance for all schools to eliminate all disparaging “Indian” sports references.

*For additional information, please contact Brian Howard, NCAI Legislative Associate, at 202.466.7767 or bhoward@ncai.org.*
DATA THAT SUPPORTS EFFECTIVE
TRIBAL AND FEDERAL POLICYMAKING

Access to quality data and information is an essential element of tribal sovereignty and a core component of the federal government’s ability to honor the trust responsibility. Tribal, federal, state, and local policymakers and individuals are increasingly using data and information management to make decisions, ranging from job forecasting to community planning to national security to market development. Similarly, tribal leaders need access to quality data in order to make the best decisions for their citizens and develop effective community development initiatives. In what follows, we present recommendations on four priority areas, including: 1) Inter-Agency and Intra-Agency Coordination to Improve Targeted Data Collection; 2) Continued Funding for Existing Data Collection; 3) Inclusion in National Studies; and 4) Consultation with Tribal Nations and Tribal Organizations on Data Sharing Regulations and Guidelines.

INTER-AGENCY AND INTRA-AGENCY COORDINATION TO IMPROVE TARGETED DATA COLLECTION

Given that the trust responsibility extends across the federal government, federal agencies must coordinate effective data collection and reporting strategies. Poor coordination of American Indian and Alaska Native data collection, synthesis, and management will impact the next seven generations of tribal governments and expression as sovereign nations. Tribal governments have determined that current coordination efforts are inadequate, insufficiently situated to resolve ongoing data gaps, and disconnected from the Administration’s priorities.

Recommendations

1. Direct the Census Bureau to Lead a Periodic Indian Country Economic Survey. This survey would support tribal and federal policymaking, gathering meaningful tribal input and coordinating with all relevant agencies. Current federal data about socioeconomic conditions in Indian Country are insufficient to support tribal and federal policymaking. The Census Bureau has the capacity to gather meaningful tribal input and coordinate data efforts with other agencies like the Bureau of Labor Statistics and the Department of the Interior to develop a regular survey (e.g., a supplement to the Decennial Census) that provides data to establish economic security and prosperity for our nations. A few examples include the need for a measure of ‘joblessness,’ as well as unemployment, in tribal contexts due to the uniqueness of tribal economies; the small population size and mobility of Native people, which lead to harmful undercounts and inaccurate data used in federal funding formulas.

2. Establish an inter-agency working group on data collection and reporting in American Indian and Alaska Native communities to coordinate data collection; foster data linkages; and support tribal, federal, and other policymakers. While the Department of the Interior (DOI) can coordinate federal efforts, it does not have the same data and research capacity as other federal agencies, such as the Census Bureau and the Bureau of Labor Statistics. Following tribal consultation sessions where DOI recognized inadequate capacity to collect, synthesize, and provide valuable data information to tribal leaders, it was evident that greater coordination
between DOI, Census, and the Bureau of Labor Statistics could foster useful tribal demographic and labor force data, and even contribute an important measure of ‘joblessness’ to broader US labor force data collection efforts.

3. **Convene a tribal consultation at the level of the HHS Data Council** and develop an agency-wide policy on data management in Indian Country. Echoing the call from the HHS American Indian and Alaska Native Health Research Advisory Council (HRAC), NCAI requests that HHS convene a tribal consultation at the level of the HHS Data Council and develop an agency-wide policy on data management, quality, and access in Indian Country. Tribal Epidemiology Centers (TECs) can provide essential regional and local support to these efforts and ongoing work to ensure data coordination with TECs should continue.

4. **Host data institutes** where Native data collected by different federal agencies are brought together and made available to researchers for analyses. Data institutes could improve interagency coordination, especially in areas where there are persistent data gaps, such as those in the justice, health, economic, and labor force sectors. For example, the *American Indians and Crime Series*, published by the Bureau of Justice Statistics at the US Department of Justice, provided essential data between 1999 and 2004 but have not been published since. Further, a [2007 report](#) by Westat details the gaps in data related to American Indian and Alaska Native health data and offers strategies for improvement. Increased agency coordination and data institutes with Native scholars and researchers could promote data linkages across sectors like education, health, labor, and justice – which would assist agency and community leaders in planning robust and innovative initiatives and which would contribute to the growing global conversation about data linkage.

**CONTINUED FUNDING FOR EXISTING DATA COLLECTION**  
Efforts to eliminate the US Census Bureau’s American Community Survey (ACS) and reduce funding pose real threats to data that can support effective tribal and federal policymaking. Continued support from the Administration for sustainable ACS funding is especially important for two reasons: 1) the ACS replaced the Census long-form in the 2010 decennial Census and 2) Congress relies on the Census for the purposes of allocating funds under various federal grant programs to state and tribal governments.

For tribal nations, Census data is essential in determining funding for vital programs, such as the Indian Housing Block Grant Formula, Community Development Block Grants, the Workforce Investment Program, the Special Supplemental Nutrition Program for Women, Infants and Children, Temporary Assistance to Needy Families, and Low Income Energy Assistance. NCAI acknowledges the responsiveness of the Census Bureau to collect quality Native data through their commitment to oversampling in American Indian and Alaska Native communities as part of the enumeration and data collection efforts of the American Community Survey, but more needs to be done to ensure the reliability of those data.

**Recommendations**

1. **Advocate for ongoing, sustainable funding for the American Community Survey and other key data collection efforts.** The Census Bureau has indicated that reduced funding would force it to cancel some or all of the Economic Census, which provides core information
on virtually all non-farm businesses and related data on business expenditures, commodity flows, and minority and women-owned businesses. It is a fundamental building block of Gross Domestic Product (GDP) and national income and product accounts. Abandoning plans for this important assessment of economic activity across diverse sectors would be foolhardy at a time when data is an essential component of the roadmap to economic recovery and progress and job creation. Therefore, it is critical that the Administration continue to advocate for sustainable funding for existing data collection efforts such as those stewarded by the US Census Bureau.

2. **Preserve sustainable funding for Census enumeration of American Indian and Alaska Native peoples.**

**Inclusion in National Studies**
Alarmingy, American Indians and Alaska Natives continue exist as the “Asterisk Nation” in national studies because we are described as ‘too small to be included,’ ‘too difficult to enumerate,’ or ‘too costly to be sampled appropriately.’ One of two recent examples come from the exclusion of a Native subsample in the National Children’s Study and from the FDA’s and NIH’s Population Assessment of Tobacco and Health Study. The head of the FDA described this study as “signalling a major milestone in addressing one of the most significant public health burdens of the 21st century”—and one that has cultural significance to Native peoples.

**Recommendations**

1. **Include tribal governments in the Census of Governments.** This invisibility is not only true in data collection on individual American Indians and Alaska Natives, but also for data on tribal governments. For example, tribal governments should be included in the Census of Governments where tribal leaders want to be included.

2. **Establish an interagency working group** on measurement in small populations. Tribal nations cannot afford to be excluded in national studies because we are too small in number. Similarly, the federal government cannot afford to balk on its responsibility to provide services to Native people through the collection of quality data or to miss out on innovation that tribal nations have to offer the US population.

3. **Ensure tribal consultation** on the design, development, and implementation of national studies with significance for American Indian and Alaska Native peoples.

**Consultation with Tribal Nations and Tribal Organizations on Data Sharing Regulations and Guidelines**
The May 2013 release of President Obama’s Open Data Policy brought focused national attention to data sharing and coordination. While there is a great need in American Indian and Alaska Native communities to access better quality data, it is essential that there be tribal consultation as new data sharing policies and guidelines are developed. This serves to ensure that tribal nations and tribal organizations have the capacity to participate in reciprocal data sharing with federal agencies when they choose to do so and that appropriate protections are in place to prevent stigmatization and harm to Native people and communities.
Recommendations

1. **Ensure tribal consultation on data infrastructure and security of tribal data** so that tribes that choose to participate in data sharing can do so without harming their citizens. There are already strong models of data sharing in place in American Indian and Alaska Native communities (e.g., the Alaska Area Specimen Bank and the partnership between the University of Oklahoma and the Chickasaw Nation Department of Health) that can inform emerging efforts, but only when tribal nations and tribal organizations are consulted on these critical manners.

Tribal governments are engaged in ongoing discussions with the National Institutes of Health (NIH) about challenges facing tribal nations in regard to existing and emerging data sharing policies and language in funding announcements. As a result of these discussions, we continue to call for increased intra-agency coordination on data sharing across the Department of Health & Human Services and consultation with tribal nations on a consistent, cross-agency data sharing policy with tribes. The existing NIH policy on data sharing, that requires funded applications receiving $500,000 or more in direct costs in a single year to share research data, does not adequately recognize tribal sovereignty over data. Additionally, recent NIH Funding Opportunity Announcement Number PAR-11-346, “Interventions for Health Promotion and Disease Prevention in Native American Populations (R01)” included language noting that in tribally-partnered research projects, “study investigators may assume passive approval” of research protocols, protocol modifications, presentation abstracts to scientific meetings, and manuscripts for submission for publication in scientific journals if tribes do not “respond expeditiously” to requests for approval. Several tribal nations expressed concern to NCAI that their applications to NIH required that they “explicitly stipulate” their agreement to respond expeditiously to such requests and that failure to do so would lead to their applications not being reviewed. While tribal nations want to ensure there is a return on NIH’s investments in tribal research, language related to **passive approval** stands to challenge tribal sovereignty over research and thus ongoing consultation is needed to identify more appropriate solutions. Finally, NCAI hopes that NIH will consult with tribes on its Draft Genomic Data Sharing Policy.

2. **Establish an expectation that agencies foster reciprocal data sharing with tribal nations**, which requires investments in tribal data infrastructure and recognition of tribal sovereignty over tribal data. This is particularly important in the context of public health, genetics research, and criminal justice with American Indian and Alaska Native communities. Expanded use of electronic health records and electronic systems to manage and coordinate criminal justice data across jurisdictions presents challenges for many tribal nations and tribal organizations that do not yet have the technological infrastructure, telecommunications access, or administrative support to participate in data collection or reciprocal data sharing (as opposed to one-way, tribe-to-agency data sharing that fosters surveillance rather than coordination). The federal government has a responsibility to support the development of tribal data infrastructure through expanding tribal consultation and setting a priority for federal agencies around inclusion of tribal nations in data policy initiatives.

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PROMOTING HEALTHY TRIBAL COMMUNITIES: IMPROVING ACCESS TO HEALTHCARE

The health and wellness of tribal communities depends on a network of health education, service providers, prevention coordination, and tribally-driven initiatives. To date, the Administration has worked collectively with tribal leaders to identify barriers and opportunities, develop tribal consensus, and implement changes. Despite these efforts to improve the health of tribal citizens, American Indians and Alaska Natives continue to experience the greatest health disparities and there is much more work to do.

Tribal citizens encounter several barriers to adequate health care, including a lack of access to specialized care, long distances to Indian Health Service (IHS) and/or tribal facilities, and a lack of culturally competent care. Collectively, tribal communities suffer from higher rates of obesity and diabetes than the general population. In addition, tribal communities struggle with the same social ills that many larger communities battle, including alcohol and substance abuse and suicide. Of these, American Indians and Alaska Natives report higher monthly binge drinking episodes and alcohol consumption per episode than any other racial group. These factors and others result in the highest drug-induced mortality among American Indian and Alaska Native women, and suicide rates that are more than twice that of blacks, Asian Pacific Islanders, and Hispanics.\(^1\)

In recognition of the significant disparities, NCAI offers the following priorities to improve the health of American Indians and Alaska Natives.

**Recommendations:**

**Implementation of the Affordable Care Act and Indian Health Care Improvement Act**

1. **Ensure the seamless implementation of key ACA provisions in Indian Country through tribal consultation.** There are several pieces of the Affordable Care Act that still require work from the Administration, including the electronic verification of Indians in the federally facilitated health insurance marketplaces for purposes of tax credits, minimum essential coverage exemption, and special monthly enrollment. Additionally, the Administration still needs to work out a process that allows for American Indians and Alaska Natives to use electronic verification for purposes of the IHS eligibility and tribal membership exemption. Use of these electronic data can reduce cost to individuals and to overtime.

2. **Enforce Section 206 of the Indian Health Care Improvement Act (IHCIA).** Section 206 of IHCIA requires that all issuers reimburse IHS, tribal, and urban Indian facilities for delivering health services to American Indians and Alaska Natives. However, many facilities have had difficulty recovering expenses from managed care plans. IHS and the Center for Medicare and Medicaid Services must take action on these cases to ensure payments are made.

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3. **Promote successful prevention and treatment programs.** Addressing health disparities in Indian Country requires programs that support tribal governments in improving the health of entire communities. The Administration must support and promote prevention and treatment programs such as the Methamphetamine and Suicide Prevention Initiative, the Domestic Violence Prevention Initiative, and the Special Diabetes Program for Indians.

**Improving Quality and Access to Health Care**

4. **Continue to support and request increased funding for IHS.** The President’s budget has consistently supported increased funding for IHS. These increases improve access to care locally and support efforts of tribes and the agency to modernize the health care delivery system in tribal communities. Continued increases are necessary to close the gap in services and curb disturbing health disparities.

5. **Ensure tribal governments are treated equitably in public health infrastructure investments.** The Administration has made a sizable budgetary commitment to research and development totaling nearly $143 billion, almost a $2 billion increase from the FY 2013 proposed budget. In announcing the new budget, the President also announced a number of new research initiatives that feature investments in public health infrastructure, including Brain research, data policies and access, and building diversity. Tribal governments play a critical role in helping achieve goals of this Administration and should have equal access and opportunity to engage in the ongoing efforts to improve public health infrastructure.

6. **Encourage agencies to coordinate across the Administration to improve the quality of life for American Indians and Alaska Natives.** Many times several programs aim to achieve the same goals or simply correct one piece of a larger healing process in tribal communities. However, individuals need services that are flexible and meet their unique circumstances. Tribal governments are best situated to respond to these needs but often federal grants are too restrictive and uncoordinated among agencies. The Administration must work with tribes to develop coordinated responses to pressing issues like domestic violence, substance abuse, or suicide.

7. **Support legislation to reauthorize the Special Diabetes Program Initiative (SDPI).** SDPI is a proven program that is making a difference in tribal communities. Correlative data has shown that SDPI is lowering rates of diabetes and heart-related diabetes in tribal communities.

*For additional information, please contact Terra Branson, Legislative Associate, at 202.466.7767 or tbranson@ncai.org.*
Self-Determination and Education Assistance Act represents the cornerstone of this nation’s federal policy toward tribes for more than a quarter of a century. Under the Indian Self-Determination Act, the United States enters into inter-governmental contracts with tribes under which tribes administer federal trust programs, either through contracts or self-governance compacts, for the benefit of tribal members. In amending the 1975 Act, Congress in 1988 observed that the single greatest impediment to successful implementation of the Indian Self-Determination Policy was the consistent failure of the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) to pay full fixed contract support costs associated with the administration of transferred programs. Congress recognized that the failure of the BIA and IHS to pay full fixed contract support costs has often led to reductions in programs, amounting to partial termination of the federal government’s trust responsibility. **Tribal leaders respectfully but urgently call upon the Administration to promptly settle all outstanding IHS and BIA claims, honor the nation’s current and future contract obligations to tribal nations, and put into place concrete and meaningful consultation processes with Indian Country.**

**Recommendations**

1. **Promptly Settle Past Claims.** In June 2012, in the Ramah and Arctic Slope tribal contracting case decisions, the Supreme Court rejected the federal government’s defense to these breach of contract claims, and ruled that the government acted illegally in failing to pay tribes and tribal contractors the full contract price due under their Indian Self-Determination Act contracts. This breach covers thousands of contracts by the BIA and IHS extending back over more than 20 years. Rather than acting quickly to resolve these claims and to make amends to tribes and tribal contractors who have had to litigate their claims every step of the way, the agencies have instead engaged in renewed dilatory tactics which only further delay justice and further burden tribes with slow, expensive and unnecessary accounting battles.

First, the Bureau of Indian Affairs and the Indian Health Service have failed to promptly settle all outstanding historic claims over unpaid contract support costs. Despite years of data documenting the government’s underpayments, the agencies have launched a campaign to re-audit all contracts, to re-calculate new indirect cost rates, to retroactively create new accounting rules, and to essentially convert fixed-price tribal contracts into cost-reimbursable contracts, all in an effort to re-determine the amount of underpayments on a tribe-by-tribe and year-by-year basis. The result: in 16 months IHS has settled 16 out of roughly 1,600 claims—just one percent of all the outstanding claims against IHS. For its part, the BIA has yet to even begin to re-audit a sample of the 9,000 contracts that were underpaid by the agency, an exercise that could push off any settlement for years. Given the wealth of available data about the underpayments compiled by the agencies themselves, settlement of all cases should have taken but a few months; it should not take a few years. **The time to settle all outstanding claims is now.**
2. **Withdraw the Administration Proposal to Eliminate Future Contract Claims.** The Office of Management and Budget has sought to overrule the Supreme Court’s *Ramah* and *Arctic Slope* rulings by proposing anti-tribal provisions in the fiscal year 2014 appropriations and continuing resolution measures. These hostile provisions are intended to eliminate all future contract claims—essentially converting mandatory bilateral contracts into discretionary unilateral grants. This is a direct attack on the Indian Self-Determination Act and the nation’s commitment to tribal self-governance. Even the US Chamber of Commerce has condemned the proposal as a direct attack on the fundamental rules that control the government contracting process. What is worse, this proposal was developed without any input from Indian Country. The OMB proposal should be promptly withdrawn, and the Administration should re-commit to honoring in full all tribal contracts and compacts.

3. **Embrace Transparency for Developing Reforms.** The Administration has failed to pursue an inclusive, serious and transparent process for developing reforms in the contract support cost arena in the wake of the *Ramah* and *Arctic Slope* decisions. The IHS has not re-convened its contract support cost work group, it has disregarded work group recommendations for reforms, and it has announced a plan for nonpublic small-group consultations with subgroups of other advisory committees. It has failed to hold any national or regional tribal consultation sessions, and even the BIA has only held one such session. The agencies must re-commit themselves to an open, transparent and good faith consultation process before making changes to any aspect of the tribal contracting and self-governance compacting regime. IHS, in particular, must embrace tribal consultation and must look to the contract support cost work group for additional guidance in this highly technical but vitally important area.

For additional information, please contact Amber Ebarb, Budget and Policy Analyst, at 202.466.7767 or aebarb@ncai.org.
The 113th Congress has been marked as the venue for overhaul of the United States Tax Code, and tribal governments have responded with a series of proposals that are now introduced and have bipartisan support. We greatly appreciate the Administration’s support in these efforts. During the forthcoming debate, Congress must work to ensure tribal governments are included in a manner that encourages growth and acknowledges the sovereign taxing authority of Indian tribal governments.

This year’s federal budget battles have also underscored the need for development of tribal taxing authority to provide government revenue that is independent of federal appropriations. Senate inclusion of tribal governments in the Marketplace Fairness Act (S. 743) was a good step in that direction. Tribal governments are increasingly using their sovereign authority to tax to support government programs and infrastructure.

Most importantly, we urge the continued building of relationships with the Treasury and IRS. The IRS campaign to audit all Indian tribes and refusals to consult have caused significant frustration.

Recommendations for the Administration

1. **Promptly Schedule Tribal Meeting with Commissioner of Internal Revenue Service.** In 2005, the IRS Division of Tax Exempt and Governmental Entities began an audit campaign of every tribal government in the country, and this campaign has continued under the Obama Administration. Tribes have deep-seated frustration with IRS Examiners and their unfamiliarity with federal tax law regarding tribal governments. Bad decisions are made in the field, IRS central office support those decisions, and all consultation is denied. It is policymaking through field audit, and the opposite of the Administration’s stated policy of government-to-government consultation. We urgently request a direct tribal leaders meeting with the incoming Commissioner of the IRS, John Koskinen.

2. **Continue Development on a Series of Tax Policy Issues**
   a. Update and improve General Welfare Guidance Notice 2012-75
   b. Per Capita Act and trust distributions, IRS expansion of Notice 2012-60
   d. Encourage tribe to tribe trade by modernizing the Federally Licensed Indian Trader Regulations at 25 CFR 140, in accordance with NCAI Resolution TUL-13-018.
   e. Provide guidance on taxation of permanent improvements. The 25 CFR 162 leasing regulations were a strong step, but probate and buy back issues linger.
   f. Support comprehensive tax reform for Indian Country. We encourage the Administration to consider comprehensive tax reform that will enhance tribal tax jurisdiction and provide an alternative to the vagaries of the federal budget cycle.
Legislative-Related Recommendations

1. **Support S. 743, the Marketplace Fairness Act, and any legislation that allows tribal taxing authorities to participate in sales tax collection systems.** Support the inclusion of tribal governments in any legislation that regulates the collection of sales taxes. This legislation has already passed the Senate.

2. **Support legislation that allows tribes to incentivize business development on tribal lands.** Enact legislation to extend tax incentives traditionally used by businesses operating on tribal lands, such as the Accelerated Depreciation for Business Property Located in Indian Country; the Indian Employment Tax Credit; the Indian Country Coal Production Tax Credit; and the New Markets Tax Credit.

3. **Support 3043 and S. 1507, the Tribal General Welfare Exclusion Act.** Tribal governments provide services to their citizens, similar to any other government, and tribal citizens should not be subjected to taxation for services such as health care, education, or elders services.

4. **Support H.R. 3030 “Tribal Tax & Investment Reform Act of 2013.”** The act provides much needed tax parity for:
   - Tribal government bonds – parity on tax-exempt bonds
   - Tribal government pension plans
   - Tribal foundations and charities
   - Tribal child support enforcement agencies
   - Tribal access to Clean Renewable Energy Bonds

5. **Support H.R. 2332 - Adoption Tax Credit Tribal Parity Act of 2013.**

6. **Support the Indian Health Service Health Professions Tax Fairness Act of 2013.**

7. **Include tribal governments in any forthcoming tax reform bill.** The last national tax reform occurred during the 1980s. As such, any tax reform will most likely create a Tax Code which will govern the United States, its territories, and tribal governments for decades to come. For this reason, it is important that tribal governments be included in any tax reform efforts, as a matter of fairness.

8. **Promote Comprehensive Tax Reform for Tribal Governments.** Reliable funding sources have been an Achilles heel for every tribal government service for decades, and the sequester is highlighting the problems with federal funding sources. We urge the Obama Administration to develop an initiative that will promote tribal government tax authority and promote the ability of tribal governments to sustain programs and services in a more self-sufficient manner.

For additional information, please contact John Dossett, jdossett@ncai.org or David Mullon, dmullon@ncai.org at 202.466.7767.
ACCESS TO CAPITAL

For any economy to be healthy and productive, governments, businesses and individuals need access to capital of varying types. Capital is necessary to promote economic growth, support infrastructure development and create jobs. Tribal nations are no different in this area than other governments working to build a strong economy, but face more barriers than others because of their unique legal status and often rural locations of their communities. However when provided with access to capital and the tools to engage in economic development, tribal nations have demonstrated that they can rebuild their own economies and strengthen regional economies.

To create jobs in tribal communities and promote economic growth in the surrounding regional economies, the Administration must support initiatives that increase tribal access to traditional financing tools (e.g., tax-exempt financing, the New Markets Tax Credit, Section 1603 grants, as well as tribes’ ability to monetize tax credits, or transfer those credits to minority equity partners), while also supporting programs that facilitate job creation, such as those offered by the Small Business Administration (SBA).

**Recommendations**

1. **Access to capital, credit, and other financial products must meet the needs of tribes and Native communities.** Tribes and Native communities present unique challenges for their financial needs because of location, distance and history of being unbanked and underbanked. Financial regulators and government programs focused on access to capital and credit must allow for tailoring of products and flexible regulations. The President’s Advisory Council on Financial Capability recommends that appropriate financial products are a critical part of the formula for building financial capability.

2. **Create more funding opportunities** that support economic activity through local resources, like CDFIs. Native CDFIs, with more than 70 certified, have been a boon to economic development in Indian Country, including access to capital and credit for business development and job growth. Yet, insufficient resources through the CDFI program and other places is now causing these proven programs to cut back on their essential services and credit access.

3. **Publish and widely distribute the updated Native American Lending Study.** The long overdue update to the 2001 study is soon to be completed by the Community Development Financial Institution (CDFI) Fund. It is envisioned that the findings will provide data and recommendations to further document the barriers and improve access to capital and credit in Native communities. This report must be distributed widely and in a timely fashion.

4. **Support efforts to expand financial education programs in Native communities.** Resources to support building of financial capability in Native communities are key to long-term development. Government programs, across agencies, should support these efforts to provide
Native people in unbanked or under-banked communities an opportunity to build their financial skills, which would work to reduce one of the barriers to business development.

5. **Establish interagency collaboration** for tribal outreach and funding notifications. Tribal outreach is important as tribes search for ways to leverage available federal resources in their communities.

6. **Eliminate the “essential government function” test** that tribal projects must meet to qualify for tax-exempt financing. Unlike state and local governments, tribal governments are placed with the inequitable standard of meeting “essential government function” tests, which leaves important tribal projects ineligible.

7. **Urge the Secretary of Treasury to complete the Congressionally-mandated study on Tribal Economic Development (TED) Bonds.** The TED bond program can be used to fund critical infrastructure and economic development projects as they allow tribes to issues tax-exempt bonds in parity with the States. The program was to be a pilot project under the American Recovery and Reinvestment Act and the mandated study is important as it is meant to measure the effectiveness of the program, document the positive impacts, and identify ways in which to make it stronger.

8. **Ensure tribal governments, through Section 17 Corporations or other wholly owned tribal entities, are eligible for Section 1603 grants.** These grants are important as they help offset certain renewable energy project production costs. Tribal renewable energy projects have enormous potential and tribal entities should be allowed to participate.

9. **Support the elevation of the Office of Native American Affairs within the SBA.**

For additional information, please contact Sherry Salway Black, Director, Partnership for Tribal Governance at 202.466.7767 or sblack@ncai.org.
WORKFORCE DEVELOPMENT AND JOB CREATION

For generations, Native peoples have faced harsh economic conditions that are more pronounced than those generated by the Great Recession. Today, while unemployment rates across the country hover around 7 percent, tribal governments and businesses wrestle with unemployment rates that have well-exceeded ten percent and beyond for decades. The lack of employment opportunities in Native communities has had a wide-ranging impact, affecting all aspects of life. While tribal governments have successfully supported job creation both in government and the private sector, ensuring job growth keeps pace with the growing Native youth population is an ongoing challenge.

Job growth in Indian Country relies on responsible legislative and regulatory policies that support economic development by expanding access to capital, allowing tribes the ability to move quickly and utilize available resources, and maintaining parity between tribal, state, and local governments. As industries change and new ones emerge, there is a major need for job training and re-training. The Administration should focus on initiatives which include and equip tribal citizens with the necessary technical skills to make them competitive applicants for jobs in fields such as health, business and finance, technology, and energy.

Workforce development opportunities are particularly important because Indian Country has one of the youngest populations in the nation, with 42 percent of Native people under the age of 25. Partnering with tribal colleges and universities (TCUs) is important in helping develop the workforce and providing training for thousands of Native people and other rural Americans. Including TCUs in federal workforce and Department of Energy EERE education and training programs, as well as reinstating the tribal and rural set-aside in the YouthBuild program, would go a long way toward expanding opportunities for workforce development and job creation in Indian Country.

Recommendations

1. Include tribal leaders on any Secretary-level Advisory Council in the Department of Labor, and support inclusion of tribal leaders on federal, state, and local workforce investment boards.

2. Include tribal provisions for technical training in all federal agency education and job training programs.

3. Emphasize the development of technical expertise. Programs offered by federal agencies and available to tribal schools and tribal members should emphasize technology-specific curricula and training.

4. Provide access to job training initiatives that will promote technical skill development for tribal members to work in emerging industries. For example, expand the Energy Education & Workforce Development programs offered by the Department of Energy’s Office of Energy Efficiency and Renewable Energy to include tribal governments, tribal colleges and
universities, and tribal businesses in its education, training, and technical assistance programs that are a critical part of the national effort to create green jobs.

5. **Support the reauthorization of the Native American Program in the Workforce Investment Act.** Include the following tribal priorities:
   a. Restore the 10% rural and tribal set-aside for Youth Build; and
   b. Increase funding to meet the economic and financial barriers facing Native communities.

6. **Partner with federal agencies, universities, tribal colleges, and community and vocational colleges to:**
   a. Invest in developmental education and academic bridge programs, so that tribal members can succeed in college-level courses and qualify for federal workforce programs; and
   b. Provide incentives—including scholarships, loan forgiveness programs, and educational support—for professionals working in highly underserved areas.

7. **Direct the Department of Labor, the Department of the Interior, and the Office of Management and Budget to produce the statutorily required American Indian Population and Labor Force report.** Include new provisions that gather specific workforce and occupational data, and measures job market needs for Indian Country.

*For additional information, please contact Gerald Kaquatosh, Legislative Fellow, at 202.466.7767 or gkaquatosh@ncai.org.*
Developing natural resources on tribal lands continues to be problematic. Barriers such as, duplicative bureaucratic processes, disincentives to tribal financing and inequitable exclusion from federal programs continue to delay this process. Developing natural resources is crucial to economic development and sustainability for tribes.

The Administration must work with tribes and other federal agencies to;

1) Eliminate the $6,500 application fee for a permit to drill
2) Prioritize infrastructure development, such as transmission and electrification investment
3) Coordinate federal agencies that have infrastructure development authorities to facilitate tribal infrastructure development
4) Encourage and recommend that the Department of Defense engage tribes in honoring federal procurement strategies for tribes
5) Ensure that any new hydraulic fracturing regulations do not unfairly burden tribes. NCAI continues to advocate that the Bureau of Land Management (BLM) rule for hydraulic fracturing is over federal lands and that federal lands are not Indian lands. NCAI also advocated for tribes to opt out of federal lands regulation and recognize tribal regulatory authority and avoid unnecessary duplication.
6) Consult with tribal governments whenever developing regulations that will impact tribal energy development;
7) Undertake a comprehensive review to streamline processes related to Indian energy development, and;
8) Affirm tribal taxing authority over energy development activities on Indian lands

Recommendations:

1. **Include tribes in clean energy development under Executive Order 13423.** As the largest energy consumer in the US economy, the federal government was directed to lead by example and support clean energy development when President Bush signed Executive Order 13423 on January 24, 2007, and when it was codified into law as part of the 2009 Omnibus Appropriations Act. Agencies need to meaningfully include tribes when working to achieve the goals outlined in Executive Order 13423. This means that federal agencies should include tribal renewable energy products as part of their annual sustainability plans and identify how they will utilize their authority to prefer tribal energy products to meet those goals. Additionally, the Department of Defense and cooperating agencies should identify plans to engage tribes with potential energy products that meet their procurement goals.

2. **Invest in the development of renewable energy in Indian Country.** In the past few years, there has been notable improvement in federal efforts to develop renewable energy in Indian Country; however much more needs to be accomplished. The Department of Energy’s (DOE) new tribal leader and staff training programs need to be expanded. Additionally, the Department of Interior’s (DOI) resources should be focused to support tribe’s evaluation of, and entrance
into Tribal Energy Resource Agreements (TERA), as well as tribal capacity evaluations and related governance needs for TERA programs. DOI should also engage in a parallel effort to support HEARTH Act applications to take over leasing functions related to energy. DOE Office of Indian Energy’s unprecedented levels of technical assistance for tribes must be continued. The recent leveraging of competitive technical assistance and financial assistance must be included. Additionally, DOE’s authority to provide loan guarantees for tribal energy projects should be effectuated and coordinated by the Office of Indian Energy, who then should leverage other DOE energy programs.

3. **Improve government-to-government relationship.** The Indian Country Energy & Infrastructure Working Group (ICEIWG), comprised of tribes and established by the DOE in 2012 serves as a forum to regularly collaborate and consult with tribal governments to ensure that federal energy initiatives and program design are responsive to the needs and priorities of Indian Country. In order to promote better and increased federal interagency cooperation, this emerging best practice tool was expanded in 2013, as previously recommended, and provides an example of how a federal department and tribes can work together.

4. **Increase tribal energy funding.** The Administration must request and advocate for the maximum statutory amount available under the 2005 Energy Policy Act for the DOE Office of Indian Energy. It should also finalize consolidation of all DOE tribal energy program activities to the Office of Indian Energy to achieve the intent of the Energy Policy Act of 2005.

*For additional information, please contact Dean Polchies, Legislative Associate, 202.466.7767 or dpolchies@ncai.org.*
NATIVE CONTRACTING
A SUCCESSFUL TOOL FOR JOB CREATION AND ECONOMIC GROWTH IN INDIAN COUNTRY

During the last 25 years, one of the most successful economic tools for Indian Country has been participation in the federal procurement marketplace. Tribes, Alaska Native Corporations, and Native Hawaiian Organizations can participate in this market regardless of geographic location or legal structure. The profits earned by providing goods and services to the federal government are used to provide services and benefits to tribal members, shareholders, and community members.

Congress and the Administration have recognized government contracting as a critical tool for Indian Country and have responded by creating programs to facilitate Indian Country participation in government contracting in a manner that recognizes the unique needs and purpose of these community-owned entities. Further, these programs are based not only on small business policy, but equally in federal Indian policy. These programs include: the “Native 8(a)” business development program; the Indian Incentive Program at the Department of Defense; the Buy Indian Act; and unique participation in the HUBZone program.

These programs have produced significant measurable results. In a 2012 report, the Native American Contractors Association stated that its members are responsible for 109,000 jobs in all 50 states. These companies have also contributed more than $111 million in profits for services and benefits to their communities.

However, these programs have become the subject of scrutiny in recent years. Much of this has waned, with a greater understanding of the purpose of the programs and with certain changes to the regulatory structure of the 8(a) Business Development program. However, the Administration needs to take active steps to urge continued support for government contracting opportunities for Native contractors. This will send a clear message that Native contracting programs are important tools for both the federal government and for Native contractors and should not be viewed in a negative light.

Recommendations

1. **Affirm and support Native contracting programs based on the government-to-government relationship and the federal trust responsibility.** Existing unique programs for Native contractors need demonstrated support by the Administration. Agencies need to hear from senior Administration officials, in addition to the Small Business Administration, that the programs are important for economic growth and job creation within tribal communities. Native contracting should be part of the Administration’s effort to create jobs and grow the economy.

2. **Take regulatory action where possible to achieve parity among Native contractors.** The statutory authority for various Native contracting programs is disparate and at times inconsistent. To qualify for the Native 8(a) program, tribes, Alaska Native Corporations, and Native Hawaiian Organizations each have different standards to meet for participation in the
program. Absent Congressional action to achieve parity, the Administration should take regulatory steps when possible to bring consistency amongst the various programs.

3. **Educate agencies about the requirements for Section 811 of the National Defense Authorization Act for Fiscal Year 2010 and implement uniform guidance.** Section 811 requires a “Justification and approval” for direct awards in the 8(a) program exceeding $20 million. The provision has negatively impacted Native contractors as a result of misinformation about the provision and has had a “chilling effect” where agencies shy away from working with Native contractors, particularly with contracts greater than $20 million. An educational effort is necessary to educate contracting officers and agency officials on what Section 811 requires, so that it is more uniformly implemented in a manner that limits negative impact to Native firms. Such guidance could come from senior Department of Defense officials or the Office of Federal Procurement Policy.

4. **Rescind agency policies that have caused a chilling effect on Native contractors.** In January 2011, the Department of the Army issued a memo (“Extensive Use of High Dollar Sole-Source 8(a) Contracts”) that pending implementation of Section 811 of the NDAA and as a result of scrutiny on Alaska Native Corporations, sole-source awards through the 8(a) program should be “the exception not the rule.” Now that regulations implementing Section 811 have been adopted, this and other similar memos or policies should be rescinded, as they can be cited as reasons to avoid working with Native contractors.

5. **Issue clarifying guidance on Dynalantic Corp v. Dept of Defense.** The Department of Defense issued a memo in response to this court decision, which very narrowly strikes down the constitutionality of the 8(a) program in a very specific industry. The Department’s guidance was overly broad, resulting in canceled contracts for companies that should not be impacted by the decision. Clarifying guidance is needed to ensure that while the case is under appeal, the decision—as flawed as it may be—only affects the narrowest scope of contracts as possible.

*For additional information, please contact Jacqueline Pata, Executive Director, at 202.466.7767 or jpata@ncai.org.*
INTERNATIONAL AND INTER-TRIBAL TRADE OPPORTUNITIES

As the Administration seeks to partner with tribes to expand economic opportunities now is an opportune time for tribal businesses to revitalize inter-tribal trade networks and expand into new international markets. While burgeoning tribal enterprises now have increased access to resources for exploring international markets, Indian Country also has the ability to support its own economies by participating in inter-tribal trade networks. At the 2013 NCAI Annual Convention, the membership of NCAI passed a resolution calling for the Administration and Congress “to promote and secure the enactment of Indian Commerce Legislation that acknowledges the authority of Indian nations and tribes to regulate all Indian Commerce on Indian reservations and lands and between Indian reservations and lands, acknowledges the authority of Indian nations and tribes to re-establish our National Native Trade Network without interference from Federal or state laws, and pre-empts contrary state laws, regulations and taxation authority.” Tribal nations look forward to further dialogue with the administration on how inter-tribal trade networks can be strengthened and utilized to benefit Indian Country economically.

There has also been an increase in the availability of financial and non-financial assistance for both minority businesses and small to mid-size enterprises (SMEs) looking to grow internationally. Although small tribal businesses have seen significant domestic gains recently, participation in the global marketplace has been minimal. Tribes face many unique challenges in entering the international export market. These challenges include difficulty in accessing capital, receiving proper training, and the almost total lack of federal programs that specifically cater to the needs of potential exporting tribal nations or members. Tribes have demonstrated that when they possess the proper tools, they can successfully develop businesses in Indian Country and for the domestic market. Additionally, tribal 8(a) businesses have had success in providing goods and services to US government entities overseas. If federal agency programs create a focus on building the technical and financial capacity required for tribes to enter and succeed in the international export market, Indian Country will go even further in living up to its revenue-generating potential through SMEs.

CAPACITY BUILDING

Federal agencies have an array of programs that can serve – or be adapted to serve – tribal and Native citizen-owned businesses. The US Department of Commerce has many programs to help prepare small businesses for international export. Under the umbrella of the SBA, Small Business Development Centers (SBDCs) offer low-cost advice and training to help individuals develop their businesses and provide a variety of focus areas, including export assistance. Even more specifically under the SBA, US Export Assistance Centers (USEACs) are dedicated entirely to assisting SMEs with their international exporting needs. Although these non-financial assistance programs are great resources, there are no tribal-specific programs. USEACs are geographically distant from much of Indian Country, and neither the SBDCs nor USEACs maintain tribal points-of-contact. A serious

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1 A portion of this paper is based on NCAI's “International Markets & Tribal Enterprises: A Guide to Entering the International Market.” Copies of the full report can be downloaded at NCAI.org
program to prepare tribal businesses for international export operations needs both geographic proximity and programs designed to educate and assist the tribal business owner.

Federal programs also offer financial assistance to SMEs interested in exporting. Unlike the SBA 8(a) program, which provides non-financial assistance to Native businesses, the SBA also has the 7(a) loan program that provides financial aid to businesses with special requirements, such as those that export to foreign countries. The US Department of Treasury works with Native Community Development Financial Institutions (CDFIs) to provide low-interest financing to tribal businesses. Native CDFIs are able to work together to provide the required capital for loans in the millions of dollars to tribal business, depending on size and needs, where an individual CDFI could not. As with other non-financial programs, these loan programs either do not specifically address tribal needs or, in the case of Native CDFIs, have not received an adequate amount of resources.

Recommendations

1. **Promote inter-tribal trade by supporting Indian commerce legislation** that acknowledges the authority of tribal nations to regulate commerce on Indian lands and between tribes.

2. **Develop technical advice and training programs** that specifically address the unique challenges of international exporting from Indian Country.

3. **Create SBDCs and USEACs in areas and with programs and materials that will better serve Indian Country.**

4. **Offer modern (web-based) and more traditional (phone-and-paper-based) tribal points of contacts,** specifically for tribes located great distances from SBDCs and USEACs.

5. **Provide more resources to Native CDFIs** to help develop them as export financing hubs for tribal SMEs.

6. **Include representatives from tribes and ANCSA corporations in trade missions with the Secretary of Commerce and other Department of Commerce Officials and participate in Department of Commerce Export Trade events and networks.**

For additional information, please contact Mark Carter, Legal Fellow, at 202.466.7767 or mcarter@ncai.org.
PROTECTING OUR NATURAL RESOURCES

Natural resources are fundamental to tribal nations and Native peoples. Tribal nations collectively own almost 100 million acres of land with vast and diverse natural resources, and have protected rights of traditional use to significantly more land and resources. First and foremost, the treaty rights of tribes and the trust responsibility to tribes to access their own resources must be upheld. It is vitally important that the agreements allowing for the hunting, fishing, gathering, and use of natural resources be honored—especially since tribes are America’s first stewards.

Native peoples have cared for the land for millennia, managing resources for generations yet unborn and using knowledge, traditions, and practices handed down by their ancestors. Still today, the physical, cultural, social, economic, and spiritual well-being of Native peoples depends upon the health of our natural resources. Full tribal participation during the discussions on the management of Native resources at the federal level and the tribal management of natural resources in traditional and culturally appropriate methods is necessary as the vitality of tribal natural resources continues to be threatened by a diverse array of threats and inequalities.

General Natural Resources Recommendations

1. Direct each federal agency that manage natural resource programs to identify funding that is provided to states, local governments, and municipalities – but not to tribal governments – and implement a plan to provide equal access for tribes.

2. Ensure tribal inclusion and consultation in the development and implementation of laws, programs, and policies that affect tribal interests in natural resources.

3. Establish and advance the role of tribal wisdom and beliefs, Traditional Ecological Knowledge, in natural resources research and management.

TREATY RIGHTS AND TRUST RESPONSIBILITY

The federal government has treaty obligations and a trust responsibility to tribes to protect, manage, and allow tribes to access their natural resources. By not honoring these responsibilities, tribes’ cultures, communities, economies, treaty rights, and the trust responsibility are at risk because the natural resources that tribes dependent upon are disappearing because the state and federal governments are allowing them to be destroyed faster than we can restore them. This continued loss is caused by a lack of federal government taking responsibility for their obligation to protect the tribes’ treaty-reserved rights, a failure to exercise authorities, and the disparate application of conservation measures.


**Recommendations**

1. **Protect treaty-reserved rights and the federal trust responsibility by ensuring the**
   federal government controls and maintains responsibility over the implementation of
   natural resource protection and recovery plans.

2. **Establish federal oversight and coordination to align agency actions to better protect**
   habitat and achieve recovery goals. An accountability mechanism is necessary to
   allow for the resolution of issues that are impeding successful natural resource
   protection and recovery.

3. **Stop the disparate treatment of tribes when applying conservation measures.**

4. **Provide for coordinated policy direction and prioritized funding support directed at**
   resource protection and restoration. Agencies need to prioritize in their budgets the
   funding necessary to accomplish their obligation to protect treaty and trust-reserved natural
   resources and for tribes to fully participate in resource protection and restoration activities.

**ENVIRONMENTAL PROTECTION**

Tribes are heartened by the meaningful commitment and actions that the Administration has taken
in carrying out the Environmental Protection Agency (EPA) Indian policy to improve the
environmental and health conditions of tribal lands, water, natural resources, and communities. To
take EPA’s successes to the next level, we urge the Administration to address historic unmet needs.

**Recommendations**

1. **Ensure the EPA’s General Assistance Program (GAP) funding for all tribes**
   regardless of jurisdictional circumstances.

2. **Create a federal agency task force to examine strategies to harmonize similar and**
   related environmental programs provided to tribes by consolidating funding
   requirements, enabling more flexible use of that funding, and eliminating duplicative
   requirements.

3. **Implement within the EPA a four-year pilot project that could demonstrate the**
   success of self-governance in addressing the environmental policy needs of Native
   communities.

4. **Ensure that tribal environmental programs have access to, and have parity with**
   states in funding all media programs, particularly innovative environmental
   information exchange programs such as the Environmental Exchange Network.
ADDITIONAL RECOMMENDATIONS
The papers that follow in this section outline an array of specific context and recommendations relating to:

- Agriculture, agribusiness, and nutrition,
- Alaska Native subsistence,
- Climate change,
- Cultural protection and sacred places,

Papers in other sections address related issues of water rights and land.

For additional information, please contact Colby Duren, Legislative Associate at 202.466.7767 or cduren@ncai.org.
Agriculture is of growing importance to American Indian economies, with an 88 percent increase in the number of American Indian farmers between 2002 and 2007. According to the 2007 Census of Agriculture, annual Indian agriculture production exceeded $3 billion in crop and livestock sales. Indian lands constitute one of the last remaining areas in the nation with sizeable arable and grazing lands. Enhanced federal support for tribal agriculture, ranching, natural resource management, and other activities through U.S. Department of Agriculture (USDA) and the Department of Commerce programs would generate significant benefits for tribes, rural communities, and the nation. Such support would also promote economic development and job growth, along with community revitalization, self-sufficiency, youth engagement, locally grown produce, healthier eating, and active lifestyles.

**INSIST THAT CONGRESS PASS A FARM BILL THAT SUPPORTS NATIVE FOOD PRODUCTION AND PROVIDES FOOD ASSISTANCE TO TRIBAL CITIZENS**

Passing a new Farm Bill is of great importance to Indian Country since agriculture and nutrition programs are critical for economic development of tribes and food assistance to tribal citizens. For example, Native farmers and ranchers experienced firsthand the devastating impact that a natural disaster, such as the recent blizzard in South Dakota, could have on their livelihood given the government shutdown and expired Farm Bill. The Administration should insist that Congress reauthorize a Farm Bill immediately that contains the following:

- Incorporate tribal parity in Soil and Water Conservation Act Programs
- Maintain funding of the Supplemental Nutrition Assistance Program (SNAP)
- Authorize SNAP funding for 5 years
- Authorize a feasibility study for tribes to administer their own federal food assistance programs
- Allow the purchase of traditional and locally-grown food in the Food Distribution Program on Indian Reservations (FDPIR)
- Include traditional food service in public facilities

**AGENCY-WIDE TRIBAL AGRICULTURE FOCAL POINT IN USDA**

A USDA-based office that coordinates all federal agency programs that support tribal agriculture would most efficiently achieve economic growth in tribal agriculture. Such an effort would include the permanent establishment of an Indian Agriculture Office; the provision of start-up grants, loans, and technical assistance to tribes and tribal farmers, fisheries, and related businesses; programs to improve irrigation and infrastructure; and assistance in establishing value-added agriculture businesses and export operations for tribes. Finally, the inconsistencies in the interpretation and application of the leasing regulations across Bureau of Indian Affairs regions result in delays, increased costs, and lost opportunities.
Recommendations

1. Establish a single office based in USDA for tribal agriculture. This office would serve as the primary point of contact for all federal agriculture programs, regardless of what federal agency operates them.

2. Continue and expand support for the Intertribal Agriculture Council to maintain its current outreach and education programs. Also expand those programs to provide education, technical assistance, and export guidance to tribal agriculture operations.

3. Update, apply, and interpret leasing and other regulations and policies consistently across the nation.

4. Provide additional training on the federal programs that are available for food and agriculture and the application processes for each. Face-to-face training programs may be required in many instances to ensure that applications are submitted for grant and loan funding, especially with family-operated farms and ranches.

5. Require a re-examination of the Indian Land Consolidation Act rules that create problems due to the determination that permanent improvements on trust land are non-trust property.

6. Create new farm/farmer programs specific to tribes and tribal members newly engaged in agriculture as a result of payments from recent tribal settlements.

Parity in Programs Affecting Tribal Agriculture

An independent study performed under the National Indian Forest Resources Management Act found that tribal forests, including grasslands, receive only one-third of the funding on a per-acre basis as do national forests, and that at least one million acres of tribal forests are in dire need of forest management. Because two of the principal programs in the Cooperative Forest Assistance Act (CFAA)—the Forest Legacy Program and the Forest Stewardship Program—provide states (but not tribes) with the discretion to determine whether tribes participate in these programs, tribes receive virtually no funding from either program.

In another area, rural extension programs address critical needs faced by rural tribal communities. These programs revitalize rural communities, enhance local agricultural production, and involve youth in healthy activities and career opportunities. However, while USDA’s extension program exists in over 97 percent of America’s counties, the Federally Recognized Tribal Extension Program (FRTEP) currently consists of 30 extension agents on Indian reservations and serves less than four percent of reservation residents.

Recommendations

1. Ensure equitable tribal participation in the U.S. Forest Service Program.

2. Expand the Federally Recognized Tribal Extension Program (FRTEP) from the current 30 extension agents on Indian reservations to at least 100 extension agents over the next four years. To facilitate such expansion, reference the Congressional mandate for research and extension services in every county in the nation.
TECHNICAL ASSISTANCE PROGRAMS, FINANCIAL TRAINING, AND NATIVE CDFI SUPPORT

Farm management is often cited as the factor most critical to successfully run a farm business. Two of the fundamental questions regarding helping Native farmers and ranchers succeed and expand are: (1) what can be done to improve the farm management capabilities of Indian producers; and (2) how can the capacity of those working with Indian producers be expanded so they can better serve Native farmers and ranchers. Hands-on, intensive training is needed to help Native producers learn how to farm, become better farm managers, and prosper on Indian lands. More educators and more farm management training for these educators would make a difference. Both the Federally Recognized Tribes Extension Program and the 1994 Land-Grant Colleges and Universities provide some resources to help Native producers learn about and improve their farm management abilities, but these resources are spread woefully thin across Indian Country.

Recommendations

1. Support technical assistance programs that build the capacity of tribal staff and members in food and agricultural business.

2. Increase the number of Federally Recognized Tribes Extension Program (FRTEP) educators and provide additional training to increase their capacity to help producers learn more about farm financial management.

3. Utilize the Financial Literacy training offered by Native CDFIs and create programs that rely more on Native CDFI resources to provide funding, outreach, and financial training program in Indian Country.

4. Make available on reservations the farm management and benchmarking associations’ in-depth, multi-year business assistance program.

5. Engage some of the best consultants to help both beginning and established Indian producers develop business plans and use them in their businesses.

6. Develop farm management training resources that can be used by producers, educators, and 1994 colleges and universities.

7. Develop programs to provide legal technical assistance, financial education, and strategic business planning on the intergenerational transfer of assets in Indian Country through wills and the probate process.

TRADITIONAL NATIVE FOOD AND RELATED NUTRITION AND DISTRIBUTION PROGRAMS

Before processed foods entered the diets of American Indians and Alaska Natives, tribal communities relied on traditional hunting, fishing, gathering, and agriculture. Because traditional foods support better nutrition, fewer chronic health problems, and cultural sustainability, many tribal leaders have voiced their support of a return to diets that include traditional hunting, fishing, gathering, and agriculture foods. Establishing and supporting local food markets would benefit the local economy, encourage the production and consumption of tribal traditional foods, and offset additional costs for the delivery of fresh foods to rural tribal communities. Additionally, the
administration of the Food Distribution Program on Indian Reservations continues to create employment opportunities for tribal members.

**Recommendations**

1. **Create effective guidance and support programs** to promote traditional Native food sources and related nutrition and tribal distribution programs.

2. **Reform the Food Distribution Program on Indian Reservations (FDPIR)** to permanently include traditional Native foods and eliminate asset tests that do not align with requirements under the Supplemental Nutrition Assistance Program (SNAP).

3. **Allow tribes to administer the SNAP and other federal food assistance programs.**

4. **Implement labeling standards for American Indian and Alaska Native grown or raised products.**

5. **Implement programs to support traditional Native food production.**

6. **Determine the appropriate agencies and offices with authority to serve traditional foods from local sources in Native institutions.**

**ACCESS TO CAPITAL, CREDIT AND OTHER FINANCIAL PRODUCTS/TAX ISSUES**

Indian Country faces different challenges in this area than do other populations. Agriculture credit is a big issue for individual Native farmers and ranchers who need access to capital and credit to run their operations and to finance fractionated land consolidation. It has been over 10 years since the initial Native American Lending Study was done under the Community Development Financial Institutions (CDFI) program in the Treasury Department.

**Recommendations**

1. **Update the Native American Lending Study and include food and agriculture credit needs**, as well as an evaluation of the Native CDFIs and their role in supporting credit to value-added Native food and agriculture related businesses.

2. **Support efforts to expand financial education programs through food, agriculture, and capital/credit programs** to provide Native people in unbanked or under-banked communities an opportunity to build their financial skills, which would work to reduce one of the barriers to business development.

3. **Create more funding opportunities** that support funding through local resources, like CDFIs.

*For additional information, please contact Colby Duren, NCAI Legislative Associate, at 202.466.7767 or cduren@ncai.org.*
American Indians and Alaska Natives are often more impacted by the effects on global warming and climate change due to the geographical areas in which they reside and their direct connection to their surrounding environment. Native peoples who rely heavily on the cultural and subsistence practices of their ancestors to survive are particularly hard hit. Specifically, the well-established plight of those in Alaska Native villages is probably the most profound manifestation of the climate crisis and requires focused and high priority attention from the federal government.

Climate change poses threats not only to the health and food supply of Native peoples, but also to their traditional ways of life. Climate change and global warming are reducing the natural ecosystems and biodiversity on which Native peoples have come to rely. The traditional time to gather plants is changing, and animals are confused as to their migration patterns. Some villages in Alaska that are located near rivers or streams now find the water at their front door. In the southwest, tribes are experiencing prolonged drought.

**Recommendations:**

1. **Increase tribal participation on the Task Force on Climate Preparedness and Resilience.** NCAI commends the Administration for establishing a Task Force on Climate Preparedness and Resilience. However, in order to better reflect the diverse views of tribes, which have their own unique concerns, the Administration must increase the number of tribal participants, which should include Traditional Ecological Knowledge Keepers.

2. **Establish a high level interagency-tribal government task force to examine existing problems and propose solutions to help address climate change.** This group could be a working group of the White House Council on Native American Affairs or could function as a stand alone effort. This task force would: (1) recommend, develop, and implement tribal-specific solutions, enabling the agencies to support and foster tribal climate-resilient planning and investment; (2) work to ensure that there is meaningful funding and technical support to implement recommendations; and (3) provide oversight/connectivity to the President’s Climate Action Plan to ensure that implementation of the Plan is addressing tribal concerns. In order to ensure federal government commitment, the Administration must support the task force in efforts to:
   1. Ensure equitable financial resources for tribes to carry out assessments and implementation of preparedness planning;
   2. Provide assistance to tribes for climate vulnerability assessments; and
   3. Recognize the role and interaction of multiple knowledge systems. Traditional Knowledge can be useful in defining earlier environmental baselines, identifying impacts that require mitigation, providing observational evidence for modeling, and identifying culturally appropriate values for protection from direct impacts of adaptation measures.
3. **Increase funding for tribal climate adaptation efforts.** Given that tribal natural resources have been historically underfunded and no federal programs or funding streams specifically support tribal climate adaptation efforts, the BIA should increase its funding for such efforts to a minimum of $8.75 million, or 5% of the Department of the Interior's Climate Change Adaptation Initiative.

4. **Strengthen the government-to-government relationship.** The Administration's plans to implement climate adaptation strategies that promote resilience in fish and wildlife populations, forests and other plant communities, freshwater resources, and the ocean must include equitable engagement of tribes and tribal needs and perspectives. The impetus for the federal government's active engagement with tribes on climate change adaptation is thus compelled by the tribes' status as sovereign nations with certain rights established under treaties.

5. **Improve consultation and coordination with Indian tribal governments.** The federal government must assure that Secretarial Order 3289 is fulfilled in a manner that protects the nation's natural resources, cultural heritage, and tribal lands and resources from the effects of climate change, and in a manner that facilitates meaningful/effective consultation and coordination between federal, state, local, and tribal government agencies.

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CULTURAL PROTECTION AND SACRED PLACES

In December 2012, the Department of Justice (DOJ) announced a new policy on tribal member use and possession of eagle feathers. The new policy provides that, consistent with the DOJ’s traditional exercise of its discretion, a member of a federally recognized tribe will not be subjected to federal prosecution for certain types of conduct—namely possessing, using, wearing, or carrying federally protected bird feathers or parts. Additionally, on December 4, 2012, the United States Departments of Defense, the Interior, Agriculture, Energy, and the Advisory Council on Historic Preservation entered into a Memorandum of Understanding, “Regarding Interagency Coordination and Collaboration for the Protection of Indian Sacred Sites” (MOU). Actions like these demonstrate a continued commitment by the Obama Administration to protect the cultural and religious resources of Native people; however, there is still much work to be done on this front.

Recommendations

1. Direct the Office of Management and Budget and the U.S. Fish & Wildlife Service to preserve the five-year reauthorization process for ‘eagle take’ permits. The OMB and USFWS are considering changes to regulations that would extend the maximum term for programmatic permits for the “take” of bald and golden eagles from a period of five years to 30 years. This attempt to streamline regulations meant to protect bald and golden eagles threatens not only the vitality of eagle populations across the United States, but many tribal religions and cultures that depend on them.

2. Ensure tribal participation in the implementation of the interagency Memorandum of Understanding for the ‘Protection of Indian Sacred Sites.’ Since the MOU was adopted December 4, 2012, tribes have been eager to participate in providing input and guidance for the protection of sacred places. However, there have not been any major updates regarding the interagency collaboration efforts and how said agencies plan to involve tribes or receive tribal input regarding the protection of sacred places.

3. Sustain tribal consultation alongside streamlined energy projects. As the United States continues to focus on job creation and growth through the extraction of natural resources and the production of clean energy, the federal government must sustain consultation with tribes. Additionally, the Administration must continue to adhere to the laws, policies, and regulations already in place (e.g., they must continue to conduct Environmental Impact Assessments under NEPA where necessary). The Administration must stay actively engaged with tribes who may be affected by proposed developments, especially if those areas hold cultural significance. Tribes must be guaranteed a “seat at the table” early and often so they can weigh in on all development proposals which may affect their citizens or their lands.

For additional information, please contact Brian Howard, Legislative Associate, at 202.466.7767 or bhoward@ncai.org.
Federal laws protecting American Indian and Alaska Native hunting, fishing, and gathering rights apply throughout the United States, but nowhere are they more critical than in Alaska, where hunting, fishing, and gathering remain an economic necessity. Subsistence resources constitute a substantial majority of the nutritional needs of Alaska’s Native people, especially in rural areas where the need for subsistence resources for daily nutritional, spiritual, and cultural sustenance is the greatest. The Indigenous peoples of Alaska have a basic human right to their subsistence way of life and to maintain their cultural beliefs and practices.

Indian Country strongly supports the efforts of Alaska Natives to obtain stronger federal protections for Alaska Native subsistence hunting, fishing, and gathering rights. The federal government has a trust responsibility to Alaska Natives to honor the commitment it made to them in the Alaska Native Claims Settlement Act of 1971 (ANCSA) and in Title VIII of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). This commitment is to establish and implement a comprehensive federal program that will protect their way of life. Fulfilling this commitment is central to the survival of this and future generations of Alaska Natives.

**Recommendations**

1. **Develop legislation to provide lasting protection for Alaska Native subsistence.**

   The very foundation of Alaska Native culture and nutritional need is met by subsistence hunting and fishing. When Congress enacted Title VIII of ANILCA, it envisioned state implementation of the federal priority for subsistence uses on all lands and waters in Alaska through a state law implementing a rural priority. That system operated for a mere 7 years before the Alaska Supreme Court ruled in 1989 that the State Constitution precluded the State’s participation in the cooperative federalism program. Ironically, the state had insisted on a “rural” rather than “Native” subsistence preference in ANILCA. Since 1989, all efforts to amend the State Constitution to comply with ANILCA’s rural priority, and thus to have a unified subsistence management regime, have failed. Over the last decade, the State of Alaska, anti-subsistence groups, and the previous Administration have aggressively and successfully taken actions to subvert federal law and polices. They have also virtually gutted state subsistence laws, leaving those who once depended on Native-owned or state lands to fulfill their subsistence needs without meaningful protection. The erosion of federal protections led to the recently completed secretarial review of the subsistence management program.

   Unfortunately, the results of the secretarial review are inadequate. The proposed changes to the federal management program do not address the fundamental problems with the existing law. The checkerboard system of protection was not what Congress envisioned when it enacted Title VIII. Congress recognized that “the continuation of the opportunity for subsistence uses . . . is essential to Native physical, economic, traditional, and cultural existence.” Rather than defending and maintaining a system that no longer serves its intended purposes, Indian Country calls upon the White House and Congress to consider options that realize Congress’s original intention that
Alaska Native hunting, fishing, and gathering rights be protected. Necessary changes in federal law include (a) a “Native plus rural” priority for subsistence, (b) the extension of subsistence priority to Native-owned lands and all navigable waters and marine waters in Alaska, and (c) providing an ongoing and meaningful role for Alaska Natives in the federal subsistence management program. While only Congress can make the statutory changes necessary to fix the fundamental problems with Title VIII of ANILCA, the Administration can, and should, work with the Alaska Native leadership to develop legislation that the Administration can propose to Congress to ensure the continuation of this Alaska Native subsistence way of life.

2. **Convene a high-level interagency meeting with key White House officials, including the Domestic Policy Council and departments with jurisdiction over subsistence uses.**

Subsistence management and the legal rights of Alaska Natives cut across a number of departments within the Administration, including Interior, Agriculture, Justice, and Commerce. If meaningful protections are to be provided for subsistence hunting and fishing in Alaska, there must be an ongoing dialogue between Alaska Native leaders and the agencies with jurisdiction over the various aspects of Alaska Native ways of life. This is a critically important moment in history for Alaska Natives with respect to hunting and fishing, the foundation of a subsistence way of life, and a mainstay of Native nutrition and economies. Presidential involvement has been a hallmark of all of the major federal laws affecting Alaska, including the Alaska Statehood Act; ANCSA; and ANILCA, including Title VIII of that Act, which was intended to provide protection for subsistence hunting and fishing rights and to fulfill the promises of ANCSA. The same level of White House commitment and involvement is needed today.

3. **Take interim administrative measures to increase protections for subsistence.**

In addition to convening a high-level interagency meeting on subsistence, the President should issue an Executive Order to advise federal agencies and the Federal Subsistence Board that Title VIII of ANILCA is “Indian Legislation,” enacted under the plenary authority of Congress over Indian Affairs. The President should also direct the Office of Subsistence Management to implement a subsistence management program in accordance with the Executive Order. Title VIII was enacted to protect the subsistence way of life of rural Alaska residents, including residents of Native villages. In implementing the statute, Congress expressed its long-standing concern, and obligation, to protect subsistence uses of Alaska Natives and fulfilling the purposes of ANCSA. Although the statute provides for a “rural” preference, it is important to remember that the subsistence title would never have been added to ANILCA had it not been for the efforts of Alaska Natives.

4. **Support the federal recognition of Alaska Native hunting and fishing rights.** The hunting and fishing practices of Alaska Natives are essential to their social, cultural, spiritual, and economic well-being and survival. The current federal and state dual management—without Alaska Native participation—fails to provide a sustainable yield for critical traditional and customary species, resulting in a harmful reduction of Alaska Native hunting and fishing practices. It is important for the Administration to uphold their mandate to provide for meaningful tribal consultation and equal participation by Alaska Natives in management of traditional and customary resources for the continued well-being of their people.

For additional information, please contact Colby Duren, Legislative Associate at 202.466.7767 or cduren@ncai.org.
CONSULTATION & HIGH LEVEL ENGAGEMENT
STRENGTHENING OUR NATION-TO-NATION RELATIONSHIP

Throughout American history, tribal nations have been recognized as governments that pre-dated the United States and have maintained the right to govern their own people and their own lands. The United States Constitution specifically recognizes the status of tribal nations as sovereign governments. From this legal recognition stems a nation-to-nation relationship between tribes and the federal government—a relationship that is documented in historical treaties and affirmed by subsequent laws, policies, and Supreme Court opinions. We commend President Obama and his Administration for their demonstrated commitment to the nation-to-nation relationship, and we urge the redoubling of efforts to strengthen this relationship in the remaining years of the President’s second term.

Since President Obama issued his November 5, 2009, Executive Memorandum on consultation and coordination with tribal governments in line with President Clinton’s Executive Order 13175, many federal agencies have increased their consultation activities with tribes. These activities have coincided with elevated engagement with tribal leaders by the President and senior members of his Administration, as outlined below.

EXPAND HIGH LEVEL ENGAGEMENT
During his first campaign, President Obama’s commitment to host an annual summit with tribal leaders at the White House was transformative. His fulfillment of that promise and support of tribal consultation has had a noticeable effect on his Administration and its relationship with tribes.

In addition to the annual White House Tribal Nations Conference, the White House has co-hosted forums in partnership with the White House Rural Council and White House Business Council, and several Cabinet secretaries have made unprecedented efforts to engage with tribal leaders. To advance and institutionalize this high level engagement with tribal leaders, we recommend the following additional steps during the President’s second term:

**Recommendations**

1. **Send a Special Message to Congress on the importance of the Nation-to-Nation Relationship.** In 1970, President Nixon sent a historic message to Congress on tribal self-determination. That message launched the self-determination era—the very framework that allowed tribes to prove our capacity as governments. President Obama’s Special Message to Congress could underscore the advances he has led and establish the legacy of his leadership to advance our nation-to-nation relationship.

2. **Fully implement the United Nations Declaration on the Rights of Indigenous Peoples.** This would include a full review of all existing and proposed federal law to ensure alignment with the Declaration.

3. **Enhance existing high level meetings.** Tribal leaders are encouraged by the President’s creation of the White House Council on Native American Affairs and his commitment to the
annual Tribal Nations Conference. However, we have specific recommendations that should guide future high level meetings:

a. **Tribal Leaders must be directly engaged in the work of the White House Council.** The creation of the White House Council was an important response to a top priority of tribal leaders, reiterated as recently as the 2012 White House meeting. The leadership of Secretary Jewell and high level engagement across the agencies offers the potential to effectively respond to tribal concerns and work energetically to streamline federal programs. However, tribal leaders strongly urge the Council to engage directly and regularly with tribal leaders to shape the work of the Council. The Council will not be successful if its work is not guided by true nation-to-nation dialogue.

b. **White House Conferences and agency advisory councils enhance but cannot supplant consultation.** These mechanisms cannot replace specific and meaningful consultation. In general, the meetings do not provide adequate time—or sufficient representation—to supplant consultation.

c. **Tribes must be equal partners in planning and implementing high level meetings.** As in other nation-to-nation and government-to-government dialogues, the leaders of tribal governments must play an equal role. Tribal leaders have suggested co-chairing White House Tribal Nations Conference discussions and read outs.

d. **Indian Country must be involved in selecting representatives to advisory groups.** Tribal leaders have applauded efforts to create agency level committees (such as the Secretary’s Tribal Advisory Committee, or STAC, convened by Secretary of Health and Human Services, Kathleen Sebelius) and have urged that these groups include a number of representatives selected by Indian Country. To truly advance the nation-to-nation relationship, these advisory groups cannot be selected exclusively by the agencies.

e. **Tribal leaders must have the option for staff support comparable to that afforded to senior Administration officials.** The regional meetings at the 2011 White House Tribal Nations Conference and several White House forums since have shown promising trends toward including technical experts and staff to support tribal leaders. However, the White House Tribal Nations Conference itself, and many agency level committees, must provide tribal leaders with support comparable to that offered to senior federal officials. If federal technical experts and support staff participate in the meetings, tribal leaders should have the same option to ensure that the nation-to-nation dialogue is as informed and productive as possible.

4. **Host regular meetings on specific issues between tribal leaders and cabinet secretaries and other senior officials.** Following a model like the White House Rural Council, the President should host regular meetings—at the White House—between tribal leaders and cabinet secretaries and/or other senior Administration officials.

5. **Seek opportunities for the President, Cabinet, and other officials to meet with tribes in Indian Country.** As President Clinton did during his second term, President Obama has the opportunity to engage with tribal leaders and draw national attention to his commitment to the nation-to-nation relationship by visiting Indian Country and urging his Cabinet officials to do the same.
**Steps to Specifically Improve Consultation**

Reflecting on the significant progress of the past five years and anticipating the legacy of President Obama’s engagement with tribes, we recommend the following principles guide the President’s actions to improve consultation with tribal nations.

**Recommendations**

1. **Focus on substance.** Despite increased consultation sessions, agencies continue to place too much emphasis on process, rather than on the substantive requirements of E.O. 13175. We urge more agencies to focus their consultation sessions, just as the Department of Justice did with its Violence Against Women Act “framing paper,” so that the time and energy of tribal leaders and federal officials is used effectively.

2. **Establish transparent accountability mechanisms.** The Administration should focus on the immediate development and implementation of accountability mechanisms and a reporting system to track progress. Tribal leaders often spend a great deal of time and resources providing feedback to a federal agency, only to receive little response directed toward their recommendations and concerns. The President’s direction in his 2009 Executive Memorandum on E.O. 13175 laid out an important option for accountability and reporting by requiring OMB to prepare a report on consultation. We urge OMB to prepare—and publically release—an annual report that tracks agency actions to address the issues raised during tribal consultation, reports back to tribes on the status of these issues, and identifies promising practices in consultation.

3. **Make consultation enforceable.** Tribes need equal bargaining power on issues that impact their lands and their people. The President should support legislation to institutionalize consultation and make it legally enforceable.

4. **Modernize the consultation process.** While specific, in-person consultations are necessary, there is an opportunity to use technology and other strategies to streamline consultation. This would include the creation of a system for tribes to electronically engage on consultation—to monitor issues, schedule follow up meetings, and effectively coordinate comments.

5. **Facilitate stronger interagency communication and coordination.** As appropriate, agencies should explore opportunities for joint consultation sessions on similar issues to maximize tribal leader input and advance coordinated responses to tribal leader concerns.

For additional information, please contact Jacqueline Pata, Executive Director, at 202.466.7767 or jpata@ncai.org.
TRIBAL SELF-GOVERNANCE

Self-governance is a tribally-driven, Congressional legislative option, whereby tribal governments are authorized 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. Self-governance allows tribes, as sovereign nations, to exercise their right to be self-governing and to take program funds and manage them in ways that best fit the needs of their citizens and tribal communities.

Since initiation of the first self-governance agreement over two decades ago, the number of tribes operating their programs under this legislation has steadily increased. As of 2013, there are 260 Self-Governance Tribes within the Department of the Interior – Bureau of Indian Affairs (DOI-BIA) and 340 Self-Governance Tribes within the Department of Health and Human Services – Indian Health Service (DHHS -IHS). Over the last 25 years, the Self-Governance tribal leadership and representatives have held ongoing meetings with the Administration and Congress regarding ways to improve and advance self-governance.

Recommendations

1. **Enact Title IV Self-Governance Amendments.** Amending Title IV of the Indian Self-Determination and Education Assistance Act (ISDEAA) has been a top legislative priority for Self-Governance tribes for more than a decade. Over the past 35 years, the ISDEAA has been one of the most successful mechanisms allowing tribes to develop the capacity for government-building activities. However, Title IV of the ISDEAA, the Self-Governance program within the Department of the Interior (DOI), has serious gaps and problems. As such, Self-Governance tribal leaders continue to advance the vision of the ISDEAA by working to amend Title IV of the ISDEAA to create consistency and administrative efficiency for Self-Governance tribes between Title IV Self-Governance in the DOI and Title V Self-Governance in the Department of Health and Human Services (HHS).

   On May 9, 2013, Senate Committee on Indian Affairs (SCIA) introduced S. 919, the "Department of the Interior Tribal Self-Governance Act of 2013." At this time, the SCIA has yet to schedule a hearing on the bill and no House companion bill has been introduced. DOI has expressed strong support for the bill. The passage of this legislation amending Title IV would significantly advance Congress’s long-standing policy of promoting tribal self-governance.

2. **Expand Tribal Self-Governance within HHS.** In 2000, P.L. 106-260, Title VI of the Indian Self-Determination and Education Assistance Act (ISDEAA) required the Department of Health and Human Services (HHS) to conduct a study to determine the feasibility of a demonstration project extending Tribal Self-Governance to HHS agencies other than the Indian Health Service. The HHS study was submitted to Congress in 2003 and determined that it was feasible. In 2012, HHS Secretary Sebelius established the Self-Governance Tribal Federal Workgroup (SGTFW) to advance the new charge which included and made reference to the intent of the original study in 2003.
Prior to the release of the SGTFW report, on June 4, 2013, tribal members requested that the SGTFW be reconstituted to continue the work still remaining. Unfortunately, that request was denied by the HHS Secretary in a letter dated July 26, 2013. The expansion of Self-Governance within Title VI of the ISDEAA would greatly aid tribes in serving their people. Tribes would have more flexibility to redesign programs that are within the Administration on Aging, Administration on Children and Families, Substance Abuse and Mental Health Administration, and Health Resources and Services Administration, which are under the DHHS. In addition, tribes could reallocate program funding with provisions of Title VI legislation to better meet the needs of their citizens.

Tribes urge this Administration to work with us in advancing a Self-Governance Demonstration Project to be implemented in HHS in FY 2014.

3. **Expand Self-Governance to agencies beyond BIA and IHS.** The Administration must consult with tribal governments to understand and hear firsthand about their interest in expanding self-governance to programs outside of DOI-BIA and IHS. This is consistent with the authority and discretion that is fundamental to the self-governance tenets. Demonstration projects could be developed within agencies where there is a high degree of tribal interest and capacity for program administration.

*For additional information, please contact Amber Ebarb, Budget and Policy Analyst, at 202.466.7767 or aebarb@ncai.org.*
FEDERAL ACKNOWLEDGEMENT

The federal government does not create the existence of an Indian tribe. Tribes exist and have existed since time immemorial. The federal acknowledgement process found at 25 C.F.R. Pt. 83 is simply intended to recognize those tribes in the United States that have existed since historical times as political and cultural groups, and to deny recognition to groups that have not. Unfortunately, the current federal acknowledgement process is in desperate need of reform. When this process fails, it constitutes a fundamental failure of the federal trust responsibility. The Department of the Interior has begun a project to improve the regulations. We urge that the amendment process move forward with full consultation with all affected tribes.

Despite the best intentions of those who created the recognition process, it is simply no longer working. It subjects tribes to unconscionably long delays and unreasonable documentary requests. It establishes a seemingly objective list of criteria but provides no guarantees of objectivity or fairness in the application of the criteria. The length of the process leaves tribes in limbo for decades, unable to provide services to their citizens. And the increasing demands on tribes in the process inflict hundreds of thousands of dollars of unnecessary costs every year.

While the acknowledgement process began in 1978 with a firm commitment to fairness and impartiality, the process has deteriorated over the decades since the regulations were adopted. The process now fails even the simplest metric: timeliness. The process takes thirty years.

The scope of the documentation requirements place an untenable burden on tribes attempting to engage in good faith with the Secretary. These requests defy the historical and cultural realities of tribal existence over the last centuries. They appear to change with each passing year.

Most troublingly, there are significant questions about the fairness and integrity of the process. In recent years, significant concerns have been raised among tribal nations and the public at large when actions during the acknowledgment process created the appearance of undue political influence.

Recommendation

NCAI's position on federal acknowledgement remains virtually unchanged since its formative convention on the issue over thirty years ago. We continue to believe the central question in federal acknowledgement is whether the tribe has maintained tribal relations from historic times. The Administration should ensure that staff remain impartial and ensure timely, transparent, and fair consideration of each application. It should identify reasonable documentation requirements and allow tribes to address any gaps in the historical record. The process should include consideration of the historical and cultural realities informing each tribe’s relationship with the federal government. Most importantly, NCAI encourages the Administration to take steps to ensure that the integrity of the process is restored.

For additional information, please contact John Dossett, NCAI General Counsel, at 202.466.7767 or jdossett@ncai.org.
American Indians and Alaska Natives expect President Obama’s 2010 endorsement of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) will result in the Administration’s compliance with UNDRIP’s provisions, which protect the basic human and treaty rights of Indigenous peoples.

In September 2014, the United Nations (UN) General Assembly will be holding a World Conference on Indigenous Peoples (WCIP), which will be an important opportunity for the UN to take much-needed action to advance the purposes of the UNDRIP. Through a Joint Statement endorsed by more than 72 tribal nations, as well as NCAI Resolution 13-040, Tribal nations and organizations have identified three recommendations for the WCIP: 1) establish a body at the UN to monitor implementation of the UNDRIP within the UN and by States; 2) create a permanent, appropriate, and dignified status for Indigenous peoples and governments at the UN; and 3) undertake specific steps to address violence against Indigenous women.

Tribes request the President’s support for tribal recommendations for the upcoming World Conference on Indigenous Peoples.

**Recommendations**

1. **Ensure that tribal governments are appropriately engaged in the negotiations and discussions related to the WCIP.** President Obama should direct the Departments of State and the Interior to develop a process to consult on a government-to-government basis with tribal governments about any positions the United States may take in post-conference negotiations. President Obama should also include a representative of tribal nations in the official U.S. delegation for the WCIP. In addition, President Obama should encourage the UN, and any nations who plan to host preparatory events, to make all WCIP-related events open to participation by all Indigenous peoples.

2. **Support the three priority recommendations in NCAI Resolution TUL 13-040.**
   a. **Creation of a permanent, appropriate, and dignified status for Indigenous peoples at the UN.** Under present UN policies and procedures, Indigenous peoples are often relegated to applying for certification as non-governmental organizations (NGOs) or associating with other NGOs if they wish to participate in UN bodies and processes. NCAI Resolution 13-040 recommends the creation of a permanent, appropriate, and dignified status for Indigenous peoples and governments at the UN.
   b. **Support the establishment of a UN body to monitor implementation of the UNDRIP.** Experience shows that human rights instruments have limited effect unless steps are taken to implement the rights in question. An implementing and monitoring body will improve respect for Indigenous rights, encourage and foster implementation at the State level, and help to achieve the objectives of the UNDRIP. Such a monitoring body should be established and be housed within the United Nations system.

For further background materials go to: [http://goo.gl/5Lww90](http://goo.gl/5Lww90)
and implementation body should have a mandate to receive relevant information, to share best practices, to make recommendations, and otherwise to work toward the objectives of the UNDRIP.

c. **Support actions by the UN to address violence against Indigenous women.**

Indigenous women often suffer disproportionately high rates of violence based not just on their gender, but also because they are Indigenous. UN action is crucial to restore safety to Indigenous women, children, and communities. President Obama should support tribal nation recommendations to convene a high-level conference to examine challenges to the safety and well-being of Indigenous women and children; require that a UN body for monitoring and implementing the Declaration give particular attention to the rights and special needs of Indigenous women, youth, and children; and appoint a Special Rapporteur to focus exclusively on human rights issues of Indigenous women and children.

President Obama should express his support for these recommendations in an address before the UN General Assembly. In addition, the US delegation should advocate for inclusion of these three recommendations in any post-WCIP negotiations.

3. **Hold federal agencies accountable for compliance with the UN Declaration.** President Obama should issue an executive order directing each federal agency to conduct a comprehensive review of the extent of its compliance with the Declaration and require full compliance by a specific date.

*For additional information, please contact Virginia Davis, Senior Policy Advisor, at 202.466.7767 or v.davis@ncai.org.*
TRIBAL STATE RELATIONSHIPS

While the federal government, through Congress, retains exclusive jurisdiction over matters involving tribes, cooperative tribal-state relationships are critical to providing key resources to tribal citizens living on reservations.

Congress and the Administration must work hard to ensure that tribal governments and state governments work together in an effective manner that honors all members of the American family of governments. They should collaborate in areas such as public safety, tax policy, education, child welfare, business development, emergency management, and natural resources and cultural protection.

Recommendations

1. **Pass legislation that eliminates the uncertainty surrounding tribal lands since the Supreme Court’s decision in Carcieri v. Salazar.** Support Carcieri fix legislation that would enable states and tribes to work towards providing jobs and economic development opportunities for their respective communities.

2. **Support legislation that authorizes tribal taxing authorities to participate in tax collection systems designed for the future of increasing remote sales commerce.** Support inclusion of tribal governments in any legislation that would regulate the collection of sales taxes from remote sales, such as sales made over the Internet or through catalogue orders.

3. **Ensure implementation of the Violence Against Women Act by enhancing tribal access to the National Crime Information Center and related databases critical to addressing holes in the national public safety network.** Under the Tribal Law and Order Act of 2010 and the Violence Against Women Act, the Attorney General is required to provide tribal police and courts with direct access, but access is only provided through the states. Some states are excellent law enforcement partners, but many state governments refuse access to tribes. Tribal court protective orders for domestic violence must be entered into the database. The Department of Justice and the NCIC need to use their authority to ensure access to NCIC for all tribes. Tribes request a meeting with Attorney General Holder, the FBI Director, and the FBI Criminal Justice Information Services Division.

4. **Improve Indian education systems by allowing tribes a meaningful role in the education of their citizens.** Support legislation that provides tribal governments direct funding to operate Elementary and Secondary Education Act title programs in public schools on Indian lands.

5. **Provide federal oversight to ensure that tribal lands are not excluded from necessary funding available to participate in a national public safety communications network.** Create a regulatory mechanism to ensure that tribal lands are not excluded if a state opts out of FirstNet’s Request for Funding Proposal and decides to take an alternative approach for
funding, such as through the National Telecommunications and Information Administration’s (NTIA) State and Local Implementation Grant Program.

6. **Convene a working group of federal officials, Secretaries of State, and tribal leaders to address barriers to voter participation in Indian Country.** Tribal nations are the only governments in America that are not able to play an active role in federal and state election administration for citizens under their jurisdiction. The Administration should convene tribal and state partners to explore options for intergovernmental coordination to ensure tribal citizens have access to the same options for voter participation as other Americans.

7. **Encourage strong partnerships between states and tribes to provide transportation services jointly to their respective communities.** Support the development of tribal/state partnerships to operate joint transportation projects.

For additional information, please contact Mark Carter, Legal Fellow, at 202.466.7767 or mcarter@ncai.org.
Tribal nations are America’s first governments, and American Indians and Alaska Natives played a key role in inspiring and establishing American democracy. Unfortunately, since that time, the rightful place of tribal citizens at the ballot box has all too often been denied. However, recent efforts to expand citizen engagement and voter participation are starting to change that in many tribal communities. While still one of most under-registered group of voters in the United States, Native voters are becoming an increasingly powerful voting bloc due to heightened political participation in Indian Country.

In his 2012 victory speech, President Obama referred to long lines at the polls and emphasized—“we have to fix that.” Tribal nations welcome efforts to advance election reform. Existing challenges to expanding Native voter participation include:

- **Modernizing voting infrastructure:** Efforts to promote election participation, like online registration, mail-in ballots, automated registration, correcting voter information on site or online, and other initiatives, must be considered in light of physical infrastructure barriers on reservations (e.g., limited access to the Internet).

- **Voter ID efforts:** The Native Vote campaign identified six states of concern where tribal ID is not accepted at the polls and/or where photo or enhanced ID would be required to vote. Voter ID laws create logistical and financial barriers to voter participation and undermine tribal sovereignty when they place restrictions on, or do not include, tribal IDs as a valid form of voter ID. In 2013, twenty-two states introduced some form of photo ID and eight restrictive Voter ID legislations were passed in three states with Native populations. These new restrictions eliminate pre-registration for high school students, reduce early voting periods, and require voters to vote with photo ID only.

- **Election administration:** An overarching challenge is the fact that (especially with stretched state and local government budgets) federal, state, and local elections are administered by external governments and not tribal governments. This often creates challenges with access to voting and has led to unequal access to voting opportunities (e.g., absence of satellite early voting sites on a number of reservations in Montana during the 2012 election).

In addition, many Native voters have experienced outright discrimination at the polls. Unfortunately, earlier this year the Supreme Court struck down a key provision of the Voting Rights Act (VRA) that provided critical protections for many voters in Indian Country who have faced a long history and continuing record of discrimination and various barriers to voter participation. The Court’s decision essentially suspended the use of the most effective tool that American Indians and Alaska Natives had against racial discrimination in voting—Section 5 of the VRA, which required certain jurisdictions—including Alaska and South Dakota—to demonstrate to the Attorney General that any proposed changes in voting are not discriminatory.
Recommendations

1. **Support legislation to restore the Voting Rights Act.** Restoring Section 5 of the Voting Rights Act is of paramount importance to tribal communities who continue to face outright discrimination in voting.

2. **Designate all IHS-run facilities as voter registration sites.** Work with tribally-run facilities to support those that want to offer the same services (in partnership with tribal governments and Secretaries of State).

3. **Convene a working group of federal officials, Secretaries of State, and tribal leaders to address barriers to voter participation in Indian Country.** The Administration should convene tribal and state partners to explore options for intergovernmental coordination.

4. **Support legislative efforts and explore Administrative action that can expand the freedom to vote through:**
   a. Automatic voter registration;
   b. Same-day voter registration;
   c. Expanded voting options (e.g., vote-by-mail, no-excitce absentee voting, etc.);
   d. Modernized voter infrastructure (e.g., Internet registration, alternate forms of absentee voting, etc.); and
   e. Expand early voting periods for tribal citizens.

5. **Protect the voting rights of tribal citizens** by:
   a. Working to improve redistricting measures to avoid partisan control in areas where Native populations are disenfranchised;
   b. Consider state geography to avoid gerrymandering where population packing diminishes Native voting blocs;
   c. Prohibit deceptive practices of fraudulent information is distributed to prevent people from voting;
   d. Defending against attempts to remove voters from the voting rolls; and,
   e. Working with state and local authorities to ensure equal access to early voting for tribal citizens.

6. **Support efforts to institutionalize Democracy Day** as an annual event for schools and youth organizations to focus on civic education.

*For additional information, please contact Peter Morris, NCAI Senior Advisor to the Executive Director, at 202.466.7767 or pmorris@ncai.org.*
FIXING THE TRUST SYSTEM: INDIAN LANDS AND NATURAL RESOURCES
A FIVE POINT PLAN FOR REFORMING THE TRUST SYSTEM

Indian land spans over 55 million acres—an area larger than Nebraska. Land and natural resources are fundamental to the tribal cultures and economies. Indian land is held in trust or restricted status by the federal government to protect it from alienation and trespass and to protect tribal autonomy. Indian land and natural resources are also a primary source of economic activity for tribal communities.

The federal trust system for Indian land is troubled, but the Department of the Interior (DOI) can build on the successful trust settlements of the first term and empower tribes through the Helping Expedite Responsible Tribal Ownership (HEARTH) Act (enacted in 2012) and similar reforms under consideration in Congress. NCAI encourages reforms that will streamline the bureaucracy that stifles economic development in Indian Country so the problems of the past will not recur.

REFORMING THE TRUST SYSTEM FOR THE FUTURE
As a primary priority, the Administration should consult with tribes, work with Congress, and move forward on trust reform measures that will make the federal government a partner in tribal economic development, rather than a bureaucracy that stands in its way. We need to increase the efficiency of trust administration, improve returns on trust resources, and redirect trust administration to increase support for tribal development initiatives.

Recommendations

1. **Restructure the Bureau of Indian Affairs (BIA) and Office of Special Trustee (OST).** The new National Commission on Indian Trust Administration and Reform has begun its work. In the future, we hope to see a diminishing need for historical accounting as tribal trust fund cases are resolved and the Cobell settlement is put to rest. NCAI is optimistic that the Commission will develop a plan for the future of OST that focuses on reservation management of trust resources and will continue to improve the administration of Indian trust land and trust funds. The plan should create a single line of authority for all functions that are now split between the BIA and the Special Trustee, under a Deputy Secretary of Indian Affairs to supervise any activities related to Indian Affairs within any of the DOI agencies.

2. **Implement the HEARTH Act and Support Trust Asset Management.** The Administration should focus on implementing the HEARTH Act by providing technical assistance and encouraging tribes to take over resource management on their reservations. Direct service tribes also can be encouraged to engage in planning to identify trust assets, establish objectives and priorities, and allocate the available funding. Contracting and compacting tribes should be empowered to establish their own management systems consistent with federal laws. A renewed focus on planning will benefit economic development and land use.
3. **Buy Back Program.** The fractionated land buy-back program of the Indian Land Consolidation Act received $1.9 billion in funding through the Cobell settlement legislation. Because this money must be spent within 10 years or be returned to the Treasury, it is critical that the program be implemented expeditiously and efficiently. We are one year in, and no land has yet been purchased. We need to accelerate the program, and this cannot happen without considerable cooperation and assistance from tribal governments. The cooperative agreements with tribes that the DOI intends to use for the program should be creative and flexible to fit local reservation needs, allow for meaningful tribal participation in key aspects of the program, and provide tribes with adequate funding to carry out their responsibilities under the agreements.

The ILCA should be amended in certain key areas to make the buy-back program more efficient, and the DOI should re-engage with tribes and individual landowners in estate planning programs to prevent future fractionation of Indian lands. The DOI should also consider amendments to the Indian probate code and/or regulations that would provide Indian landowners with more estate planning options for their trust and restricted estates that will either avoid or at least streamline the probate process.

4. **Audit of Trust Funds.** The Inspector General of the DOI should hire an independent auditor to conduct an audit of the Secretary’s trust funds financial statements and report on the Secretary’s internal controls. The Comptroller General would conduct a review of the audit.

5. **Regulations, Policies, and Systems.** The DOI is struggling to update many old regulations and systems that date back as far as the 1930s. Work has started but much more is needed. The key is to remove obsolete bureaucratic oversight and to create greater flexibility to encourage tribal self-management and to account for the very different resources on different reservations. Title and appraisals need particular attention, as do regulations regarding leasing, probate, and improvements.

*For additional information, please contact John Dossett, NCAI General Counsel, at 202.466.7767 or jdossett@ncai.org.*
ADDRESSING THE CARCIERI & PATCHAK
SUPREME COURT DECISIONS

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

In February 2009, the U.S. Supreme Court decided Carieri v. Salazar, overturning this long-standing interpretation by construing the IRA to limit the Secretary’s authority to place land into trust to only those tribes that were “under federal jurisdiction” as of 1934. From this interpretation, two classes of tribes have been created—tribes “under federal jurisdiction” in 1934 and tribes that were not. This unequal treatment of federally recognized tribes runs counter to congressional intent and modern federal Indian policy. Legislation is needed to prevent irrevocable damage to tribal sovereignty, tribal culture, and the federal trust responsibility.

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

With over 15 federal lawsuits currently pending, the Carieri decision has already resulted in costly, protracted litigation on a broad range of issues and will likely spawn further litigation across the country. These cases are affecting all tribes, even those that were clearly recognized by the United States prior to 1934. The United States, at taxpayer expense, is a defendant in more than a half dozen of these lawsuits. A legislative fix to Carieri comes at no cost to taxpayers all while boosting economic development and self-determination in Indian Country.

The Carieri decision was exacerbated significantly in June 2012, when the Supreme Court decided Match-E-Be-Nash-She-Wish Band of Pottawatomie Indians v. Patchak. The Patchak decision allows a wide range of parties, including some parties with only a remote interest, to bring a Carieri-based lawsuit challenging a federally-approved tribal trust acquisition under the Administrative Procedures Act for up to 6 years after the land is taken into trust. Tribal trust land acquisitions are now subject to 6 years of legal limbo, discouraging a wide range of uses and suppressing economic development and self-determination.
Recommendations

1. **Support bills to affirm the Congressional intent of the IRA**
   The Administration should strongly support the enactment of legislation – H.R. 279 (Rep. Cole), or H.R. 666 (Markey/Hanabusa) – to reaffirm Congress’ intent that the IRA authorized the Secretary of the Interior to take land into trust for all federally recognized Indian tribes. The ability of all tribes, working with the Secretary, to have land placed into trust is central to tribal sovereignty, the federal trust responsibility, and the ability of tribes to protect their homelands and culture.

2. **Adopt the Administration’s proposed “Patchak Patch”**
   The Administration needs to adopt its proposed administrative remedy to the Patchak decision. This would allow parties with legitimate claims to still file them in a timely manner, while allowing the trust acquisition process to continue without the threat of frivolous challenges to new, and, in particular, older land into trust decisions inhibiting economic development and self-determination.

*For additional information, please contact John Dossett, NCAI General Counsel, at 202.466.7767 or jdossett@ncai.org.*
WATER RIGHTS

When Indian reservations were established, American Indian tribes reserved water rights, and these are possibly the most important rights many tribes have yet to exercise. Although the United States carries the legal obligation as trustee to protect these tribal rights, federal water policy and programs have too often supported non-Native communities to the detriment of tribal legal rights. As a result, many tribal communities now suffer from an inadequate, and often compromised, water supply. Many homes on Indian reservations still lack a clean and reliable water supply, and in addition, the lack of water and water infrastructure has halted economic development on some reservations and damaged precious cultural and natural resources. Increasing pressure on water supply from climate change, population growth, and economic development will require more tribes to resolve their water rights claims in the near future.

As of 2011, only 75 out of 566 federally-recognized tribes have resolved their water rights claims through litigation or settlement, and only 27 have water settlements approved by Congress. The federal government continues to bypass development of tribal water resources and move slowly on water rights settlements. In 2009, the federal government spent over $3 billion on water projects in foreign countries. Yet, since that time, the federal government has spent a total of only $1.7 billion on Indian water rights settlements.

Recommendations

1. **Lift the Department of the Interior’s Secretarial Moratorium on Approving Tribal Water Codes**
   Since 1975 the Secretary of the Department of the Interior (DOI) has upheld a moratorium on the approval of tribal laws that would regulate the use of water on Indian reservations. Tribes that, by their Constitution, require Secretarial approval of major laws and ordinances have not been able to adopt tribal water codes to regulate water use on their lands. Congressional water settlements have typically empowered tribes to adopt water codes and have provided an alternative route to establishing such codes. However, until the Secretarial moratorium is lifted, tribes requiring Secretarial approval of major laws and ordinances will be unable to develop and implement water codes.

2. **Urge Congress to Clarify that Indian Water Rights Settlements Should be Exempt from Earmark Moratoriums**
   The Earmark Moratorium Guidance adopted by the House of Representatives on March 11, 2010, and renewed on November 16, 2012, has been interpreted by Members of Congress to encompass, and therefore prohibit, the introduction of Indian water rights settlement legislation. The Administration should work with Congressional leadership to clarify that Indian water rights settlements do not fall within the definition of earmarks that are currently prohibited under the earmark moratorium. Indian water rights settlements resolve outstanding legal and equitable claims and fulfill the federal government’s obligation to manage water resources held in trust on behalf of tribes.
3. **Prioritize Reclamation Fund Monies to Fund Indian Water Rights Settlements**
   The Administration must encourage Congress to prioritize the Reclamation Fund due to its critical role as the primary funding source for Indian water rights settlements. The Reclamation Fund is an appropriate primary funding mechanism for Indian water rights settlements in the west. Created in 1902 to finance agricultural water projects and infrastructure to build up the 17 western states, the Reclamation Fund is ideally positioned to fund Indian water rights settlements that comply with Reclamation Act requirements. The Reclamation Fund acquires money through repayments on the sale, lease, or rental of public lands, as well as revenues from mineral leases and timber sales. These payments have been increasing in recent years, largely due to increasing oil and gas prices, and the available balance makes it a viable mechanism for funding Indian water rights settlement.

4. **Support water resources development and management on tribal lands**
   The federal government should work with tribes to build tribal technical capacity to develop water resources, water management, and water infrastructure. This could be done by instructing agencies, such as Bureau of Reclamation, the United States Geological Survey, and the Environmental Protection Agency, to work with tribes on water resources projects on tribal lands.

5. **Support Water Availability for Fishery Habitats**
   The Administration should support tribal involvement in state water policy development to promote healthy fisheries habitats. In addition to surface water diversions, state groundwater laws are also having a significant effect on stream flows and tribal fisheries. Many state groundwater policies regarding withdrawals have few ecosystem protections. These water withdrawals are affecting in-stream water quality and quantity, which adversely affects fishery habitats.

6. **Support Water Quality Standards that Protect Tribes and Tribal Lands**
   The Administration should promote safe water quality standards to protect surface and subsurface streams and repositories flowing into tribal lands. As trustee, the federal government should intervene on behalf of tribes when upstream users are polluting or contaminating water resources that tribes use for subsistence, economic development, and cultural practices. Chemical pollutants like cyanide, mercury, pesticides, and others that are affecting tribal water resources must be addressed by the Administration and appropriate federal agencies.

For additional information, please contact Brian Howard, Legislative Associate, at 202.466.7767 or bhoward@ncai.org.
VIOLENCE AGAINST WOMEN ACT AND TRIBAL LAW AND ORDER ACT IMPLEMENTATION

The Violence Against Women Reauthorization Act of 2013 (VAWA) recognizes and affirms the inherent sovereign authority of Indian tribes to exercise jurisdiction for domestic violence crimes over all persons within Indian country. The Obama Administration played a historic role in proposing and supporting the recognition of tribes’ inherent authority. VAWA built on the Tribal Law & Order Act of 2010 (TLOA), a law that takes a comprehensive approach to improving public safety and reforming the entire justice system in Indian Country.

The passage of VAWA and TLOA has created momentum for improving law enforcement on Indian reservations, and the federal government has done excellent work in implementing key components. However, outstanding items remain. The Administration should take direct action to ensure full and effective implementation of all provisions of the VAWA and the TLOA.

Recommendations

1. **FBI Criminal Justice Information Services Division.** Tribal access to the National Crime Information Center and related databases is critical to address holes in our national public safety network. Under TLOA and VAWA, the Attorney General is required to provide tribal police and courts with direct access to the NCIC, but access is only provided through the states. Some states are excellent law enforcement partners, but many state governments refuse or limit access. The Department of Justice and the NCIC must do more to ensure access to NCIC for all tribes. We request a meeting with Attorney General Holder, the FBI Director, and the FBI Criminal Justice Information Services Division. This issue is addressed in NCAI Resolution ABQ-10-115.

2. **Urge Congress to fully fund VAWA and TLOA programs.** Effective implementation is contingent on adequate funding for VAWA and TLOA authorized programs. Tribal justice systems have operated with woefully insufficient funds for decades, and this continues to undermine public safety. The President should prioritize funding for tribal law enforcement, courts, victim services and indigent defense, including a set-aside from the Crime Victims Fund. The Administration should urge Congress to appropriate the full seven percent set-aside of the Office of Justice Programs identified in the President's FY2013 budget, as well as requested funds for the COPS and the Office on Violence Against Women. Additional funding for law enforcement and tribal courts are greatly needed at Interior. We request the full support of the Administration in bringing this issue to the attention of appropriators.

3. **Expand the use of Special Assistant U.S. Attorneys.** The Attorney General should direct U.S. Attorneys to cross-designate tribal prosecutors as SAUSAs whenever practicable, and submit a report to the Attorney General that includes the name of the SAUSA for each tribe in the district or an explanation why it is not possible to cross-deputize the tribal prosecutor as a SAUSA.
4. **Continue and Expand the Intertribal Technical Assistance Working Group.** Tribes may implement VAWA jurisdiction on an accelerated basis with approval from the Attorney General during the two-year Pilot Project. The Intertribal Working Group has proven to be a valuable collaborative effort among tribal governments to improve tribal justice systems. We recommend that this Working Group be continued and expanded to include additional tribes and further meetings. In addition, several tribes are ready to implement now, and DOJ should move forward expeditiously to approve their requests.

5. **Require the Bureau of Indian Affairs, U.S. Attorneys, and FBI to issue guidance and engage in local coordination with Indian tribes.** VAWA implementation requires improved guidance and policies for investigation, prosecution, and detention. We need headquarters direction as well as local coordination between federal and tribal criminal justice personnel on a series of important issues:
   a. Arrest and Detention Guidance for All Persons
   b. Clarified Policies for Detention Centers and 638 Contracting
   c. DV Training for Tribal Police and Prosecutors
   d. Stronger Coordination with AUSA's on Federal Prosecution, including Improved Appointments of Tribal Special AUSA's in some districts.
   e. Best Practices in Victim Safety

The Secretary of the Interior and Attorney General should direct field personnel to convene local implementation working groups.

6. **Urge Congress to repeal VAWA 2013’s Section 910 Special Rule for Alaska.** Section 910 of VAWA limits the applicability of VAWA 2013’s tribal provisions in Alaska Native villages. Given the horrific levels of violence experienced by Alaska Native women, this exclusion is unconscionable. The White House should urge Congress to repeal Section 910.

7. **Urge DOJ to continue to improve the disposition reports mandated by the TLOA and ensure their timely delivery on an annual basis moving forward.** A centerpiece of the TLOA is Section 212, which mandates that the Attorney General submit to Congress annual “disposition reports” that contain all relevant investigation, prosecution, and declination data regarding alleged violations of federal criminal law that occurred in Indian Country and were referred for federal prosecution. The initial release of the first report was a good start, but improvements are needed.

8. **Act on pending requests for reassumption of concurrent jurisdiction immediately.** Section 221 of the TLOA authorizes tribal governments in the P.L. 280 states to request that the federal government exercise concurrent jurisdiction over reservation crimes. A number of tribes have submitted requests to the DOJ, but to date only one formal decision about concurrent jurisdiction has been made. DOJ should act on pending requests for reassumption of concurrent jurisdiction right away.

9. **Fulfill consultation responsibilities.** Several provisions of the VAWA and TLOA mandate consultations with tribal leaders and appropriate tribal justice officials. Federal agencies must engage in ample consultation and collaboration with appropriate tribal leaders and law enforcement officials at each step of the implementation process.

For additional information, please contact John Dossett or Natasha Anderson at 202.466.7767 or jdossett@ncai.org or nanderson@ncai.org.
TRIBAL HOMELAND SECURITY, BORDER ISSUES, AND STAFFORD ACT IMPLEMENTATION

In recent years tribes have seen remarkable advances in respect for tribal sovereignty and consideration of tribal public safety in federal homeland security and emergency management policy. The federal agencies charged with managing and delivering emergency management and homeland security programs, policies, funding and technical assistance to tribal governments recognized past problems associated with tribal inclusion in these important issues and are striving to improve their efforts. The Administration’s support of federal legislation to amend the Stafford Act to authorize direct tribal federal disaster declarations was a significant achievement that will improve emergency management for tribal communities. The Federal Emergency Management Agency (FEMA) has released its Draft Tribal Consultation Policy, which will be reviewed throughout Indian Country and will facilitate implementation of the Stafford Act amendments.

Despite these achievements, however, tribal governments continue to bear the financial burden of safeguarding public safety and security in tribal communities for the benefit of tribal citizens and non-citizens alike. Until tribes achieve greater equity in accessing federal homeland security grant program funding, there are potentially perilous gaps in the national homeland security infrastructure that have the potential to impact not only Indian Country but the overall safety and security of the United States.

Recommendations

Homeland Security

1. Request increased Tribal Homeland Security Program funding for tribal nations and preserve the DHS Tribal Homeland Security Grant Program. Tribal governments help to protect vital infrastructure and available funding should be provided to ensure tribes can fulfill this important governmental responsibility. In 2012, 56 DHS grants were allocated to states totaling $294 million. In contrast, 23 tribal grants were awarded totaling $6 million. It is our understanding that DHS plans to eliminate the THSGP altogether, which would be in direct conflict with the Homeland Security Act of 2002 and implementation of the recommendations of the 9/11 Commission Act of 2007.

2. Ensure agency-wide implementation of the Department of Homeland Security’s American Indian and Alaska Native Tribal Government Policy and create permanent offices of tribal affairs positions within each component. FEMA-tribal relations are at a high point thanks to laudable work of the current FEMA Administrator. Due to this positive relationship, significant progress has been made in tribal preparedness, disaster response and mitigation programs, and infrastructure development. These improvements can be institutionalized within the Department by creating permanent offices of tribal affairs in other DHS components.
3. **Ensure tribal inclusion on advisory boards and task forces that focus on interoperability and seek assurances from other agencies that tribal government considerations and representation are part of national strategies.** Tribal community public safety continues to suffer from a lack of integrated, multi-agency focus on improving broadband and telecommunication deficiencies. Without adequate communications infrastructure, tribal communities remain at risk. Having tribal representation in advisory boards across DHS will help ensure inclusion of tribal priorities.

4. **Direct DHS and DOJ to collaborate with tribal leaders and officials to address drug cartel activity and operations on tribal lands.** Some tribal communities face significant challenges with drug cartel activity that require a comprehensive and coordinated interagency and intergovernmental approach, including DHS Customs and Border Protection (CBP) and the Department of Justice Drug Enforcement Agency (DEA). Drug enforcement task forces and operations officials from appropriate federal agencies should expand and increase collaboration and partnerships with tribal government and tribal law enforcement officials.

**Border Issues**

5. **Include tribal governments in all border security strategies.** Almost 70 tribes are located on or near the borders with Mexico and Canada. As America’s first governments, tribal nations must be robustly included in the development and implementation of all border security policies. Tribal citizens are detained and delayed on a regular basis by border agents on both sides of the borders when trying to travel for cultural, business, and family affairs. Tribal citizens have Indigenous rights as well as legal authority under the Jay Treaty to cross borders and return. Any discussion of policies adversely impacting these rights that does not include tribal representatives is a violation of treaty obligations and human rights.

6. **Ensure full inclusion of tribes in any national immigration reform.** Tribes spoke clearly on the principles that must be included in immigration reform. As the first Americans and America’s first governments, tribal nations supported comprehensive reform that acknowledges the unique place of tribal governments and addresses the unique circumstances of tribal citizens. We urge the Administration to ensure any final bill meets the principles laid out by tribal nations: (1) include affected tribes in border security proposals; (2) consider the unique circumstances of tribal employers and other Native businesses in developing policies for employers; (3) include tribes in tools that streamline the process for legal immigration; and, (4) address the impact to tribes of creating a pathway to citizenship.

7. **The DHS should recognize tribal government identification as valid and secure documentation and, as part of the federal trust responsibility, assist tribes with adequate resources to develop secure tribal identification.** A lack of resources continues to preclude tribes from developing technologically advanced IDs to comply with the Western Hemisphere Travel Initiative and Real ID requirements. This makes it difficult for tribal members to cross the border and has a negative impact on tribal government trade and commerce.
Stafford Act Implementation

8. Create a FEMA Tribal Advisory Group to Develop Stafford Act Implementation policies and regulations. FEMA is in the process of developing a pilot program for the Stafford Act tribal disaster declaration requests. Until final regulations are issued, FEMA should develop policies and procedures regarding all disaster assistance programs covered under the Stafford Act including the National Flood Insurance Program, Individual Assistance, and Public Assistance. This effort could be most effectively guided by a FEMA Tribal Advisory Group that would include FEMA officials and tribal government emergency management personnel and could be coordinated by the FEMA Special Advisor for National Tribal Affairs.

9. Consult with tribes in developing an implementation plan for the FEMA Tribal Consultation Policy. FEMA recently issued its Tribal Consultation Policy and is seeking comments from Indian Country. Each FEMA program and component is to come up with its respective implementation plan. To comply with tribal consultation requirements, the FEMA Special Advisor for National Tribal Affairs, who is integral to tribal policy implementation and oversight, should be directed to coordinate a tribal work group comprised of FEMA and tribal government officials to develop the implementation plan.

For additional information, please contact Robert Holden, NCAI Deputy Director, at 202.466.7767 or rholden@ncai.org.
Native education is in a state of emergency. The federal government needs to take immediate action to ensure that Native students grow into engaged, productive citizens of both their tribes and the nation as a whole. While the previous Administration made some good faith efforts aimed at addressing the persistent lack of progress in Native education, the 2011 National Indian Education Study demonstrates that much work still needs to be done. In reading and math, American Indian and Alaska Native students continue to score significantly lower than their peers in fourth and eighth grades. The 2011 study found that the mathematics score disparity among American Indian and Alaska Native students and their non-Native counterparts is larger than in 2005, while average reading scores have not improved since 2005. The crisis of Indian education is perhaps most apparent in the Native high school dropout rate, which is one of the highest in the country.

Approximately 90% of Native children are currently enrolled in public schools, both urban and rural, while 7% attend schools within the Bureau of Indian Education (BIE) system. Regardless of where they attend school, Native students are not receiving an education steeped in their language or culture. They are also very unlikely to receive instruction or be taught in a classroom/school climate that is appropriate for them. Tribes, Native parents, and communities are best suited to influence these critical factors for academic success. Effectively reaching all Native students requires a concentrated effort from multiple partners: the federal government, tribes, and state and local education agencies.

**Recommendations:**

1. **Support a reauthorization of the Elementary and Secondary Education Act (ESEA) that improves education opportunities for Native students.** Indian Country needs strong, concerted, and sustained support to include key Native education priorities that will allow tribes to take greater control over the education of their citizens and help Native students succeed in the classroom and beyond:

   - **Strengthen tribal control of education:** Tribes should be granted the authority and funds to build capacity for their education departments in the same ways that are provided to states and districts. The ESEA reauthorization should authorize tribes to operate ESEA title programs in public schools that are located on Indian lands and serve Native students. The Department of Education would work with tribes to identify appropriate title programs for tribal administration, and tribes would work with the local educational agency on their respective reservations to implement the title program(s) in qualifying schools.
   
   - **Preserve and revitalize Native languages:** The survival of Native languages and cultures is essential to the success of our communities and ways of life. Because immersion is largely recognized as the best way to learn a language, the reauthorization of the ESEA should authorize a grant program to develop and maintain Native language immersion programs.
   
   - **Provide tribes with access to tribal member student records:** The ESEA reauthorization needs to expressly grant tribes and tribal education agencies (TEAs) access to tribal student
academic records in the same way that local educational agencies have access. Tribes and their education agencies are in the best position to track and coordinate Native student data.

- **Encourage tribal/state partnership**: States that have Indian lands within their geographic boundaries have not been required—or even encouraged—to collaborate with tribes to meet the educational needs of Native children. The ESEA reauthorization must require states and local educational agencies to consult with tribes when developing applications for various ESEA title programs.

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

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

3. **Reaffirm and acknowledge the Department of Education’s federal trust responsibility for American Indian and Alaska Native students.** The President issued his Executive Memorandum regarding implementation of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, in November 2009. The Department of Education has yet to release its consultation policy. As a result, tribes are still fighting for a seat at the table—both with the Department and states—in developing meaningful education policy for Native students. Tribes are key stakeholders in this discussion, and the Department must ensure that it consults with them prior to the development of regulations that will affect how Native students and schools are funded.

For additional information, please contact Colby Duren, Legislative Associate at 202.466.7767 or cduren@ncai.org.

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INVESTING IN OUR YOUTH

For hundreds of years, tribal nations have reflected on their decisions through the lens of its impact on the seventh generation. This perspective on policy making for the benefit of our children, and our children’s children, has led tribal leaders to increasingly urge the federal government to enact policies that focus on youth wellness and early intervention. Indian Country is young—about 32 percent of the Natives population is under 18, as compared to 26 percent for the entire United States. However, past and ongoing efforts tend to concentrate solely on the symptoms of poverty and lack of opportunity and, as a result, fail to harness the inherent potential of Native children and teenagers. Young people have the capacity to create and lead positive community change, and should be given the tools and resources to do so.

Native nations need support for a tribal youth-led wellness initiative that addresses safety, education, health care, and job skill development, with coordination across the systems and departments through which these services are delivered. Programs must be developed that cut across agencies to foster healthy lifestyles, safe and supportive environments, successful students, and stable communities.

Native youth are undoubtedly the future of tribal nations, and ongoing investments are required to ensure that they grow into healthy young adults and become the next generation of tribal leaders, community members, and business leaders. Tribal governments know better than anyone else the issues their communities face, and the Administration should provide resources to support tribes in developing these solutions.

Recommendations

1. **Support early and routine school-based assessments**
   Schools should require regular comprehensive assessments for students on everything from mental health and dental needs to drug abuse, victimization, and educational attainment. These types of assessments will not only help parents and professionals detect the need for intervention and enhance the delivery of any necessary services, but they will also help prevent juvenile delinquency by addressing children’s health, social, educational, and other needs before they manifest themselves in the form of delinquent behavior.

2. **Reform juvenile justice**
   There is a growing consensus among tribal leaders and the nation at large that while placing juvenile offenders into detention facilities may be legitimized by federal, state, and tribal law, it is not necessarily in the long-term interests of children or their communities. Detention is too often a dumping ground for youth who should be served by other public systems, kept in school with their families, and be provided with mentoring programs that focus on oversight, curfews, homework, and healthy social activities. This is especially the case for non-violent, first-time, or low-level offenders who typically pose little threat to public safety. Effective implementation of alternatives to incarceration in Indian Country will require
funding and technical assistance for new, culturally relevant programs that will meet local needs and promote tribal self-determination.

3. **Invest in school-based youth wellness activities**
   Tribes need dedicated funding to effectively address tribal youth wellness and juvenile justice reform. A new grant program could support several project phases (e.g., stage one for project development, stage two for implementation, stage three for evaluation, etc.). In the long run, however, this type of short-term grant program will not suffice – tribes will need a permanent funding stream to support youth wellness activities. Currently, most of the funding for these kinds of activities comes from either health-based or law enforcement-based programs. Yet, schools are the focal point for a large part of the type of reform suggested. As such, more educational resources should be allocated toward programs and initiatives that support tribal youth wellness.

4. **Support early financial capability training**
   To build a strong foundation for future economic development, many tribal nations have developed financial capability training programs focused on building skills for future generations. At the national level, the Tribal Exchange Stock Market Game is an excellent example of a program that promotes financial literacy. A recurring 10-week program for American Indian and Alaska Native students in grades 4 through 12, it teaches valuable financial life skills and team building while strengthening inter-tribal connections. Tribes need more support and resources to implement similar financial literacy programs. This could be pursued by ensuring tribes are included in existing federal financial capability programs and that tribal innovations are highlighted as models for the rest of the country.

For additional information, please contact Jamie Gomez, Director of External Affairs at 202.466.7767 or jgomez@ncai.org.
The survival of American Indian and Alaska Native languages is essential to the success of tribal communities and Native ways of life. Native languages are an irreplaceable part of Native religions, ceremonial practices, and cultural heritage and are currently in a state of emergency. According to UNESCO, 74 Native languages stand to disappear within the next decade and only 20 will be spoken by 2050. NCAI applauds this Administration’s recognition, in Executive Order 13592 - Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities, acknowledging that Native languages “are on the verge of extinction” and its declaration of full support to revitalize.

Immersion programs offer the best model for creating fluent Native language speakers and help ensure that the language will be carried forward for generations to come. However, establishing and operating immersion programs requires substantial resources, especially when the target language is not thriving and curriculum must be developed from scratch. Further action is needed to ensure that Native languages are supported and preserved for future generations before it is too late.

**Recommendations**

1. **Urge Congress to Reauthorize the Esther Martinez Native Languages Preservation Act.**
   The Esther Martinez Initiative provides this critical support for Native language nests, survival schools, and restoration programs (e.g. master-apprentice programs, immersion camps, curricular development, teacher training, and language classes for students’ families). It also supports 20 immersion programs in 11 states throughout Indian Country. These three-year grants are empowering tribes to build and operate immersion programs that successfully pass on Native languages to American Indian and Alaska Native children. Indian Country urges Congress to continue this successful Native language revitalization grant program by reauthorizing the Esther Martinez Act this year.

2. **Support a reauthorization of the Elementary and Secondary Education Act (ESEA) that contains a grant program aimed at developing and maintaining Native language immersion programs.**

3. **Support the development of Bureau of Indian Education pilot programs for language immersion in elementary and secondary schools in Indian Country.** The Department of the Interior should identify non-local sources of funding which can be used for the development of these pilot projects and bolster existing immersion programs in selected preschools, elementary schools, and secondary schools throughout Indian Country.

For additional information, please contact Brian Howard, Legislative Associate, at 202.466.7767 or bbhoward@ncai.org, or Colby Duren, Legislative Associate, at 202.466.7767 or cduren@ncai.org.
BROADBAND:
DEVELOPING A DIGITAL HIGHWAY
FOR INDIAN COUNTRY

On October 27, 2011, the Federal Communications Commission (FCC) adopted the Universal Service Fund/Intercarrier Compensation Transformation Order (USF/ICC Transformation Order), which has been noted as a monumental leap forward for telecommunications policy in the United States. However, while the Order adopted favorable, tribal-specific reforms such as the ‘Tribal Government Engagement Obligation’ (Tribal Engagement) Provisions; creation of the Mobility and Tribal Mobility Funds; and preserved the Link-Up program for tribal lands, a number of new challenges accompanied implementation of these provisions.

ISSUES WITH TRIBAL PARTICIPATION IN THE MOBILITY & TRIBAL MOBILITY FUND AUCTIONS

The FCC held Auction 901 for Phase 1 of the Mobility Fund on September 27, 2012. Phase 1 of the Mobility Fund disbursed $300 million in one-time support to accelerate deployment of mobile wireless and data services in unserved areas. Carriers that participated in Auction 901 were required to bid on Census blocks designated by the FCC as unserved based on data from Mosaik Solutions. Recipients of Phase 1 funds are required to deploy wireless services to provide 3G or 4G mobile services within a three-year period.

Of the 52 companies and subsidiaries that participated in the Phase 1 auction, only one tribally-owned and operated telecommunications carrier received funding – Standing Rock Telecommunications, Inc (SRTI). Unlike SRTI, many tribal telecommunications companies and other tribal entities encountered barriers to participating in Auction 901, such as the lack of access to spectrum licenses over tribal lands and requirements to provide an irrevocable letter of credit. The FCC will conduct the Tribal Mobility Fund Phase 1, Auction 902 on December 19, 2013. Auction 902 will disburse $50 million in one-time support for immediate broadband wireless deployment on tribal lands.

Recommendations

1. **Request the FCC act on WT Docket No. 11-40 to increase tribal nation access to spectrum licenses.** Action on this docket has not occurred since March 3, 2011. Due to regulatory changes and implementations since adoption of WT 11-40, the FCC should initiate a Further Notice of Proposed Rulemaking, and a Report & Order to adopt still relevant proposals from commenters.

2. **Direct the FCC to adopt a tribal waiver to require an irrevocable letter of credit for participation in future Mobility and Tribal Mobility Fund Auctions.** Tribal lands are usually the principal assets of tribes and cannot be collateralized because they are held in trust by the U.S. government. Adopting a waiver will enable tribally-owned or controlled entities to participate in future Mobility and Tribal Mobility Fund auctions.
THE NEED FOR ONGOING CONSULTATION WITH TRIBAL NATIONS

On March 1, 2013 automatic federal spending cuts, known as sequestration, were implemented by the Budget Control Act of 2011 (P.L. 112-25). These budget cuts affected numerous federal outlays dedicated to vital services needed in Indian Country. The FCC was not immune to sequestration and, as a result, the agency zeroed out funding dedicated to its tribal consultation and training efforts. Losing this important tribal office at the FCC will undermine important progress made in the agency’s efforts to develop its tribal consultation and training programs. Since the FCC’s Office of Native Affairs and Policy (FCC-ONAP) was never provided with a dedicated, annual budget by the agency or Congress, funding for tribal consultation was considered ‘discretionary’ by the FCC.

Recommendation

1. Direct the FCC and Congress to create a dedicated, annual budget for FCC-ONAP to ensure the FCC’s commitment to consult with tribal nations is preserved and exercised. FCC-ONAP is charged with consulting with tribal nations on behalf of the entire agency, and working with FCC Commissioners, Bureaus, and Offices for the development and implementation of policies benefiting tribal nations.

FOCUS ON SCIENCE AND ENGINEERING PATHWAYS IN INDIAN COUNTRY

According to U.S. Bureau of Labor Statistics labor force projections, STEM jobs are expected to grow 19% between 2008 and 2018, which is almost double that of all other occupations. Although these projections are nationwide estimates, Indian Country could contribute immensely to this vital workforce if given the opportunity. Tribal perspectives in STEM-related fields could also further contribute to the development of sound policies related to renewable energies, telecommunications, education, and other areas.

Recommendation

1. Develop mentorship and academic bridge programs that include Native students with the Departments of Agriculture, Commerce, and Labor, the National Institute of Standards and Technology, and other federal agencies with programs that include STEM related fields.

For additional information, please contact Brian Howard, Legislative Associate, at 202.466.7767 or bhoward@ncai.org.
Housing infrastructure is essential to communities in Indian Country, where there is a great need for housing. Substandard housing conditions continue to plague many Indian communities. According to U.S. Census Bureau 2006-2010 American Community Survey there are an approximate 142,000 housing units in Indian Country, and those homes frequently lack utilities and basic infrastructure. The survey shows that approximately 8.6% lack complete plumbing facilities, 7.5% lack kitchen facilities, and 18.9% lack telephone service. Close to 30% of Indian homes rely on wood for their source of heat.

The Native American Housing Assistance and Self-Determination Act of 2008 (NAHASDA) expired on September 30, 2013. This legislation authorizes tribal governments to develop, construct, and maintain housing for its members, and provides federal housing assistance to Native communities. The NAHASDA consolidates existing housing funds into a single block grant—the Indian Housing Block Grant—and enables tribes to design and implement tribal housing and other community development infrastructure programs. The NAHASDA has resulted in tens of thousands more housing units being constructed in Indian Country, as well as increased tribal capacity to address related infrastructure and economic development challenges. It is important that NAHASDA is reauthorized immediately and signed into law by the President.

**Recommendations**

1. **Urge Congress to reauthorize the Native American Housing Assistance and Self-Determination Act immediately.** NAHASDA is an important legislative authorization that empowers tribes to effectively develop, implement, and manage their specific housing needs for their respective tribal nations. NAHASDA applies best practices from other self-determination and self-governance programs and has transformed how Indian housing programs recognize tribes’ authority to make their own infrastructure decisions.

2. **Elevate the position of Deputy Assistant Secretary for Native American Programs to Assistant Secretary for Indian Housing and Community Development.** The Deputy Assistant Secretary for Native American Programs within the U.S Department of Housing and Urban Development (HUD) administers the bulk of federal housing programs for American Indians, Alaska Natives, and Native Hawaiians. Although there has been progress, Indian housing is still far more substandard than housing in the rest of the country. This position must be elevated in order to adequately reflect the duties and importance of the office.

3. **Initiate a national assessment of Indian housing that identifies the critical gaps in Indian housing.** Currently HUD is conducting a study, “Assessment of Native American, Alaska Native, and Native Hawaiian Housing Needs” that only provides a sampling of Indian housing. To address this issue, HUD needs to establish a comprehensive review of housing in Indian Country. The data should include all variables such as different types of housing, rate of homeownership, etc.
4. **Establish a Tribal Advisory Committee at HUD** made up of tribal leaders, to advise the Secretary on Indian related issues concerning housing infrastructure policies and budget.

5. **Establish a Tribal Infrastructure Task Force** made up of representatives from HUD, EPA, USDA, and IHS to better coordinate regarding issues of water and sanitation facilities in Indian Country, particularly, how priority listings are being made.

6. **Continue to coordinate and consult with tribes regarding the implementation of the Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act of 2012.**

For additional information, please contact Gwen Salt, Legislative Associate at 202.466.7767 or gsalt@ncai.org.
Safe and well-maintained transportation systems are essential to economic development and job creation on tribal lands, as well as to the improved safety and living conditions for Indian families and the millions of Americans who travel through and do business on reservations every day. Transportation construction, public transit, and highway safety and maintenance programs are essential to providing a safe and reliable transportation network for residents of reservations who rely on them to access their places of work, schools, healthcare facilities, and retail establishments.

The current transportation authorization, Moving Ahead for Progress in the 21st Century (MAP-21) is set to expire September 30, 2014. MAP-21 reorganized the transportation programs for tribal governments by establishing and consolidating the Tribal Transportation Program (formerly the Indian Reservation Programs), eliminating the separately funded IRR Bridge Program and High Priority Project Program (IRRHPP) and creating discretionary grants within the TTP for tribal bridges and highway safety programs and projects. MAP-21 overhauled the regulatory funding formula for allocating TTP “tribal shares” for transportation construction that the BIA and FHWA must phase in over a number of years. MAP-21 also increased funding for the Tribal Transit Program administered by the Federal Transit Agency and established a statutory formula for allocating transit funds among eligible Indian tribes.

Strengthening tribal communities and building tribal economies requires reliable and safe transportation systems. Tribal nations urge the Administration to undertake a concerted effort to increase funding and improve program flexibility and coordination to meet the unique needs of tribal nations with respect to transportation policy.

Recommendations

1. **Urge Congress to increase funding for the Bureau of Indian of Indian Affairs (BIA) Road Maintenance Program.** The BIA currently owns approximately 30,000 miles of roads, and under MAP-21, the BIA retains the primary responsibility, including “annual funding request responsibility” for road maintenance programs on Indian reservations. The BIA has documented a need of at least $120 million for the program but there has not been any increase to funding to the BIA Road Maintenance Program for the past 30 years. Current appropriations remain flat at $24 million.

2. **Support tribal priorities in the reauthorization of MAP-21 transportation authorization.** Include stepped increases for the TTP and the Tribal Transit Program; fund MAP-21’s Tribal High Priority Program with at least $30 million, which has not been funded since the enactment of MAP-21; and facilitate and simplify the transfer of FHWA-funded.

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1 In October 2013, NCAI released a report on tribal transportation policy that provides further background on these issues. The report can be downloaded at: www.NCAI.org.
3. Direct FHWA and BIA to issue revised draft regulations for the Part 170 regulations promptly and honor government-to-government consultation requirements.

4. Continue coordination and active consultation with Indian tribes concerning the implementation of the MAP-21 re-authorization and rulemaking for the Part 170 regulations (25 C.F.R. Part 170).

For additional information, please contact Gwen Salt, Legislative Associate, at 202.466.7767 or gsalt@ncai.org.