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American Indians

Policy Update

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POLICY OVERVIEW

As we begin the second session of the 115th Congress and the second year of the Trump Administration, we have witnessed an unsuccessful attempt to repeal the Affordable Care Act, the enactment of tax reform legislation, and tribal bills move through the legislative process. This year, Congress is likely to concentrate its efforts on reauthorizing the Farm Bill and developing an infrastructure package—both of which present opportunities to advance tribal priorities.

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

Several tribal bills have also been moving through the legislative process in the 115th Congress. In December 2017, President Trump signed his first tribal bill into law—the Indian Employment, Training and Related Services Consolidation Act, which expands and enhances the highly successful “477” program. Two more tribal bills were signed into law in January 2018: the longstanding Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act, which provides federal recognition to six Virginia tribes, and the Western Oregon Tribal Fairness Act, which places land into trust for two Oregon tribes. In addition, approximately twelve tribal bills have passed one chamber, including tribe-specific bills, as well as bills of general applicability, such as the Tribal Labor Sovereignty Act.

With respect to nominations, in October 2017, President Trump nominated both Robert Weaver to serve as Director of the Indian Health Service and Tara Sweeney to serve as the Assistant Secretary for Indian Affairs at the Department of the Interior. However, for various reasons, the advancement of these two nominees by the Senate has stalled. As a result, John Tahsuda is serving as the Acting Assistant Secretary—Indian Affairs and Rear Admiral Michael Weahkee is serving as Acting Director of the Indian Health Service.

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

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

LAND AND NATURAL RESOURCES

Tribal Nations and Tribal citizens are place-based peoples with a direct connection to surrounding environments, homelands, waters, natural resources, and wildlife. Tribes' cultures, traditions, lifestyles, communities, foods, and economies are all dependent upon natural resources.

Many natural resources are disappearing faster than they can be restored based on the realities of climate change impacts on tribal lands. Tribes are disproportionately impacted by climate change due to our geographical locations and our direct connection to our surrounding environments. Native peoples who rely heavily on the cultural and subsistence practices of their ancestors to survive are particularly hard hit.

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

RESTORE TRIBAL HOMELANDS – THE INDIAN REORGANIZATION ACT

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

In February 2009, the U.S. Supreme Court decided *Carciere v. Salazar*, which overturned the long-standing interpretation described above and construed the IRA to limit the Secretary's authority to place land into trust for only those tribes that were "under federal jurisdiction" as of 1934. This interpretation effectively created two classes of tribes—tribes "under federal jurisdiction" in 1934 and tribes that were not.

The IRA is a comprehensive federal law intended to provide tools for all tribes to establish strong vibrant tribal governments and economies. By separating tribes into two classes, the *Carciere* decision has created jurisdictional uncertainty that hinders economic development opportunities, business financing, contracts, and loans. The decision also further complicates the uncertainties of criminal jurisdiction in Indian Country and, in some instances, draws into question the validity of past federal and tribal court convictions. The decision also threatens to block or delay important land acquisitions for schools, housing, health clinics, essential tribal government infrastructure projects, and the protection of sacred sites. 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.

Lawsuits based on the *Carciere* decision have already resulted in costly, protracted litigation on a broad range of issues and will likely spawn further litigation across the country. These cases are affecting all tribes, even

those that were clearly recognized by the United States prior to 1934. The United States, at taxpayer expense, is a defendant in more than a half dozen of these lawsuits. A legislative fix to *Carciere* comes at no cost to taxpayers all while boosting economic development and self-determination in Indian Country.

Legislative Update

Legislation Addressing the Indian Reorganization Act - H.R. 130 and H.R. 131. In the House of Representatives, Representatives Tom Cole (R-OK) and Betty McCollum (D-MI), have re-introduced two pieces of legislation intended to address the impacts of the *Carciere* decision. H.R. 130 was introduced on January 3, 2017, and would reaffirm the Secretary of the Interior's authority to acquire lands in trust for all federally recognized tribes. H.R. 131 would reaffirm the status of lands already in trust.

Congressional Hearings on the Indian Reorganization Act. The Indian Reorganization Act was the topic of a May 24, 2017, hearing in the House Natural Resources Subcommittee on Oversight and Investigations entitled, "Examining Impacts of Federal Natural Resources Laws Gone Astray."

In addition, on July 13, 2017 the House Natural Resources Subcommittee on Indian, Insular and Alaska Native Affairs held an oversight hearing entitled "Comparing 21st Century Trust Land Acquisition with the Intent of the 73rd Congress in Section 5 of the Indian Reorganization Act." This hearing explored, in the Committee's words, "(1) whether the Secretary has implemented the original intent of Congress in its enactment of Section 5 of the IRA and in accordance with *Carciere v. Salazar*, and (2) whether Congress should require the Secretary to apply any standards or criteria in the acquisition of land in trust, or leave all discretion to the Secretary." Congressman LaMalfa, Chairman, House Natural Resources Subcommittee on Indian and Insular Affairs, Hearing Memorandum (July 11, 2017). The House Subcommittee has signaled that it is increasingly concerned with the fact that, in its view, "the Secretary has acquired land in trust regardless of the impact on the other tribes, states and local governments, and landowners, and regardless of the capacity of the government to manage the trust lands." *Id.*

Legislation Affecting the Trust Status of Indian Lands – H.R. 215, the American Indian Empowerment Act of 2017. In the House of Representatives, Representative Don Young (R-AK) introduced H.R. 215 on January 3, 2017. The Bill would allow tribes to request that title to trust lands be transferred from the United States to an Indian tribe, and held as restricted fee land, subject to restrictions on alienation and taxation.

Administrative Update

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

The initial Consultation Draft proposed changes to the Part 151 regulations which would:

- Significantly increase the application requirements for off-reservation fee to trust requests in general and separate off-reservation acquisitions into two groups – gaming and non-gaming acquisitions;
- Include two tiers of review for all off-reservation acquisitions;
- Change the notice to state and local governments to request comments on an additional factor, "potential conflicts of land use," along with the other items currently included in Part 151;

- Require tribes to enter into MOUs with local governments, and – if not – to describe why not; and
- Reinstigate a 30-day stay after a final agency decision is made, and prior to the United States taking title to approved requests.

DOI held a listening session during the NCAI 2017 Annual Conference in Milwaukee, WI where tribes overwhelmingly opposed the proposed Consultation Draft. DOI withdrew its initial Dear Tribal Leader Letter and canceled its scheduled consultations for 2017.

The revised December 6, 2017 DTLL did not include a Consultation Draft and instead asked for written responses to, and consultations on, a series of 10 open-ended questions about the land into trust process. In addition, the revised DTLL added 3 additional consultation sessions in more regions that the initial effort included. To date, DOI has consulted with tribes in Sacramento, CA, Prior Lake, MN and Portland, OR. Remaining consultations will be held in Phoenix, AZ, Miami, FL and Mashantucket, CT. DOI plans to host a listening session at NCAI's Executive Council Winter Session (ECWS) on February 15, 2018.

NCAI will continue to advocate for the restoration of tribal homelands, both in Congress and the Administration. In addition, NCAI will convene a Lands Working Group at ECWS to maximize NCAI and tribal resources, build cohesiveness in the Land & Natural Resources Committee work, and ensure broad participation in addressing land related issues.

LAND & NATURAL RESOURCES

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

Legislative Update

Public Land Transfers to State and Private Ownership. One major issue which came up early in the 115th Congress is the transfer of federal lands to state and private ownership. An early bill that was introduced by Representative Jason Chaffetz (R-UT), H.R. 621 – Disposal of Excess Federal Lands Act of 2017, aimed to sell over 3.3 million acres of federal lands currently managed by the Bureau of Land Management (BLM) in 10 states: Arizona, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, and Wyoming. With strong opposition to the bill from sportsmen groups, Rep. Chaffetz stated that he would withdraw the legislation. Protecting federal lands is important for tribes as many contain ancestral lands; hunting, fishing, and gathering rights; cultural resources; and sacred places. Although this legislation is unlikely to be enacted, this issue will remain important during the 115th Congress and in future Congressional sessions. NCAI is working with tribal leaders to identify potentially harmful legislation, as well as opportunities to restore tribal lands.

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

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

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

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

NCAI is requesting that in any reauthorization of the MSA, Congress amend the purpose of the Act to include promotion of Alaska Native subsistence rights and tribal fisheries based on treaty rights, including a mandate to be responsive to the needs of federally recognized tribes, and require that tribes and Native subsistence users be represented on the North Pacific Fishery Management Council. Further, it must utilize ecosystem-based management rather than species specific management and additional methods to better protect fish stocks and health. The management council's, as well as all fishery, plans must not only include input from tribes, but must also reflect treaty rights and subsistence rights of American Indians and Alaska Natives while limiting states' ability to interfere with treaty and subsistence rights. Finally, the MSA must provide resources for mitigation efforts when needed to protect tribal treaty rights including: increased hatchery production, habitat protection and restoration, development of alternative fisheries when primary fisheries have been reduced, and the development of value added programs to increase the value of treaty fisheries.

Wildfire Legislation. Wildfire funding remains an important issue for Indian Country. This Congress, Representative Simpson and Senator Wyden have again introduced House and Senate versions of the Wildfire Disaster Funding Act, H.R. 2862 and S. 1842. These bills address the problematic way in which

appropriated sums are often insufficient to cover the large and unpredictable costs of wildfires. As a result, fire suppression funds must be “borrowed” from regular federal forest management programs. Repayment is always late and often partial, disrupting and diminishing those programs’ effectiveness. Frequently, this comes at the expense of tribal forestry programs and tribal forests. Each bill awaits action in the committees of jurisdiction.

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

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

In addition to addressing funding issues, Congress will have the opportunity through the Farm Bill to consider legislation to prevent wildfire on tribal forest land. The Tribal Forest Protection Act (TFPA) was intended to stop the migration of wildfire and other threats from federal forest land to tribal forests. TFPA authorizes the Secretaries of Agriculture and Interior to enter stewardship contracts with tribes to conduct forest treatments on adjacent federal lands. TFPA has the potential to greatly reduce the threat of wildfire burning from federal lands onto neighboring tribal lands. Current legislation in both chambers would help increase the utilization of this authority by the Secretaries of Agriculture and Interior.

Administrative Update

Paris Climate Agreement. Many natural resources are disappearing faster than they can be restored based on the realities of climate change impacts on tribal lands. Tribes are disproportionately impacted by climate change due to our geographical locations and our direct connection to our surrounding environments. Native peoples who rely heavily on the cultural and subsistence practices of their ancestors to survive are particularly hard hit.

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

experiencing accelerated sea level rise, erosion, permafrost thaw, and intense weather events making the relocation of entire villages inevitable. In the West and Southwest, many tribes are experiencing prolonged drought reducing their water resources and increasing the severity and costs of wildfires. Milder winters in the Northeast have sparked a surge in Lyme disease-carrying deer ticks, while lobster and clams are suffering shell disease linked to the acidification of coastal waters.

The U.S. became a signatory of the Paris Climate Agreement in April 2016, ratified the agreement in September 2016, and the agreement took effect with respect to the U.S. in November 2016. The goal of the Paris Climate Agreement as stated in Article 2 is “to strengthen the global response to the threat of climate change” On June 1, 2017, the Administration announced its plan to withdraw from the Paris Climate Agreement. In recognition of the importance of this issue for Indian Country and the Earth, the NCAI membership passed Resolution MOH-17-053, Continued Support for the Paris Climate Agreement and Action to Address Climate Change. In accordance with this resolution, NCAI will continue to support and advocate for initiatives intended to reduce greenhouse gas emissions and promote climate resiliency.

Clean Power Plan. On October 10, 2017, the Administration issued a proposed rule intended to rescind the Clean Power Plan. The Clean Power Plan was promulgated during the previous Administration and aimed at preventing global climate change by reducing greenhouse gas emissions from power plants by 32 percent by 2030 (based on 2005 levels). Consistent with Resolution MOH-17-053, NCAI will continue to work with its partners to combat climate change and mitigate impacts in tribal communities.

On December 28, 2017, the Administration issued an Advance Notice of Proposed Rulemaking seeking public input on topics for the Environmental Protection Agency to consider when developing future regulations to limit greenhouse gas emissions from power plants.

TRUST MODERNIZATION

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

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

administered. For example, nearly every trust transaction requires an appraisal from the Office of the Special Trustee, and this is the most significant bottleneck in the trust system. Congress must eliminate unnecessary appraisals and permit tribes to rely on independent certified appraisals.

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

Administrative Update

Indian Trust Asset Reform Act Implementation – Public Law 114-178. On June 22, 2016, the Indian Trust Asset Reform Act (ITARA) was signed into law, representing an important step in the effort to modernize the trust management system into a process that recognizes that tribes are in the best position to make long lasting decisions for their communities. The trust asset demonstration project created by the law provides tribes the ability to manage and develop their lands and natural resources without the encumbrances of the federal approval process, which typically delay these endeavors by years or even decades. It authorizes tribes to engage in surface leasing or forest management activities, under certain conditions, without the approval of the Bureau of Indian Affairs—mirroring the framework of the highly successful HEARTH Act of 2012, which puts tribes in the position to make decisions about their lands and resources. NCAI will work with Interior to begin implementation of this demonstration project. To carry out implementation, NCAI urged the Administration to form a tribal workgroup. This approach would ensure the creation of a straightforward certification process of tribal plans, avoid imposing any unnecessary regulatory burdens, and account for issues that may arise in the field.

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

Interior submitted its transition plan for notice and comment to tribes toward the end of last year. NCAI and the Affiliated Tribes of Northwest Indians (ATNI) submitted joint comments on January 11, 2018 recommending that Interior clarify that its proposed plan is an interim or initial plan, and to remove any mention of OST becoming permanent. In addition, the NCAI and ATNI joint comments make note that Interior needs to identify a date certain for OST to terminate within 2 years, and to review potential cost savings from such a plan, in order to fully comply with ITARA's mandate.

Finally, ITARA authorizes the Secretary of the Interior to appoint an Under Secretary for Indian Affairs at the Department of the Interior. Under the existing structure, there is no single executive within the Office of the Secretary that is focused on Indian affairs *and* that possesses authority over the non-Indian agencies and bureaus

in the Department. The Under Secretary is intended to fill this void. Among other duties, the Under Secretary would, “to the maximum extent practicable, supervise and coordinate activities and policies” of the Bureau of Indian Affairs (BIA) with activities and policies of non-BIA agencies and bureaus within the Department. The Under Secretary is intended to serve as a cross-agency advocate for Indian Country within the Department and ensure that non-Indian agencies and bureaus within the Department do not implement policies that negatively affect tribes and beneficiaries. At this time, Interior has no plans to appoint an Under Secretary for Indian Affairs. NCAI and ATNI continue to support the appointment of an Under Secretary of Indian Affairs and have requested that Secretary of the Interior Zinke reconsider the Department’s current position.

NCAI will continue urging and working with the Administration to implement ITARA, as it would reduce burdens on tribal governments and help tribes manage their trust resources, especially in the area of renewable energy.

Land Buy-Back Program. The 2010 *Cobell* Settlement established a \$1.9 billion Trust Land Consolidation Fund and tasked the Department of the Interior to expend the Fund, within 10 years, to acquire fractional interests in trust or restricted fee land that individuals are willing to sell. Those interests will be transferred in trust to the tribal government with jurisdiction over the land. The Land Buy-Back Program was established by the Department to implement this aspect of the Settlement. The overall goal of the Land Buy-Back Program is to reduce the number of fractional interests in tribal lands, and to help consolidate tribal trust land bases.

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

In May 2017, the House Natural Resources Committee, Subcommittee on Indian, Insular and Alaska Native Affairs, held an Oversight Hearing on the Status and Future of the Cobell Land Consolidation Program. The hearing’s lone witness, a representative of the Department of the Interior, provided testimony outlining concerns that land continues to fractionate even as the federal government has spent nearly \$1 billion to reduce fractionation through the Program.

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

In response, NCAI’s membership passed [Resolution MKE-17-002, Request to Restore the Department of Interior Land Buy-Back Program to Pre-2017 Schedule](#). The Resolution urges Congress to expand the funding for the Program and to fulfill the promises of the original implementation schedule. The Resolution further urges consultation

with tribes and a hearing in the Senate Committee on Indian Affairs to further the goals of land consolidation and restoration of tribal homelands.

NCAI will continue to work with the Administration and Congress to ensure the *Cobell* settlement and Land Buy-Back Program are being implemented fairly and in accordance with the approved settlement, and to continue land consolidation programs at the Department of the Interior.

ENERGY

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

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

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

Legislative Update

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

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

H.R. 210 – The Native American Energy Act of 2017. In the House of Representatives, Congressman Young (R-AK) again introduced the Native American Energy Act. This legislation maintains the major focus of removing regulatory hurdles to tribal energy development. A version of the Native American Energy Act passed the House of Representatives in the 114th Congress on its own and as part of broader energy legislation. The bill will: reform and streamline the federal appraisal process and include the option for tribes to waive the appraisal requirement; create uniform systems of reference and tracking numbers for all Department of the Interior oil and gas wells on Indian lands; restructure the environmental review process, except for federal actions related to the Indian Gaming Regulatory Act; support tribal biomass demonstration projects; consider all tribal resource management plans as sustainable management practices; and create a Tribal Forest Management Demonstration Project under the Tribal Forest Protection Act at the U.S. Forest Service.

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

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

Administration Update

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

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

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

AGRICULTURE & NUTRITION

Agriculture is a major economic, employment, and nutrition sector in Indian Country. In 2012, there were at least 56,092 American Indian-operated farms and ranches on more than 57 million acres of land. These farms and ranches sold \$3.3 billion of agricultural products, including more than \$1.4 billion of crops and \$1.8 billion of livestock and poultry. Additionally, the 2007 Census of Agriculture Fact Sheet notes that, “American Indian farm operators are more likely than their counterparts nationwide to report farming as

their primary occupation . . . to derive a larger portion of their overall income from farming . . . [and] to own all of the land that they operate.” As a result of the huge agricultural footprint across Indian Country and the fact that more than 35 percent of American Indian and Alaska Native peoples live in rural communities, tribal governments and farmers look to active partnerships throughout the U.S. Department of Agriculture to sustain and advance common interests across the broad array of services that this federal agency provides to tribal governments.

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

Legislative Update

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

2018 Farm Bill – Gearing Up for the Next Reauthorization. In February 2014, Congress passed the Agriculture Act of 2014 (H.R. 2642; Pub. L. 113–79), which reauthorizes the U.S. Department of Agriculture programs through September 2018. This law brought forth many new changes and improvements for tribal nations and Native farmers and ranchers. The 115th Congress is reviewing the Farm Bill for the 2018 reauthorization, providing Indian Country an important opportunity to develop its priorities for the upcoming reauthorization. It is imperative that tribal nations and Native agriculture producers have a seat at the table during these discussions in order to improve the efficiency and effectiveness of agriculture and nutrition programs in Indian Country, while supporting tribal food and agriculture businesses.

The source of a majority of the issues in the 2014 Farm Bill stemmed from the Nutrition Title (Title IV), which accounts for 79 percent of the total funding for the entire law. Despite cutting funding in Title IV by \$8.6 billion, some Members of Congress proposed to cut as much as \$20 billion dollars and others sought to remove the Nutrition Title from the bill entirely. Federal food assistance programs have been included in the Farm Bill since

1973 as a means to get the support of both rural and urban Members of Congress, since both were difficult to pass on their own. With nearly 24 percent of American Indian and Alaska Native households receiving Supplemental Nutrition Assistance Program (SNAP) benefits and 276 tribes administering the Food Distribution Program on Indian Reservations (FDPIR) commodity food program, protecting and improving Title IV will be incredibly important in the 2018 Farm Bill.

Tribal Farm Bill Coalition Meeting at NCAI Executive Council. On Monday, February 12, 2018, NCAI will host a Farm Bill Coalition Pre Meeting at the NCAI Executive Council Winter Session in Washington, D.C. In this meeting, we will discuss Indian Country’s coordinated advocacy effort for the 2018 Farm Bill. NCAI has been actively working to ensure that tribal priorities are included in the next Farm Bill reauthorization. By a resolution of the membership, NCAI joined the Native Farm Bill Coalition at NCAI’s Annual Convention in October 2017 in Milwaukee, Wisconsin. At NCAI’s Annual Convention in October, 2017 as well as the Mid Year Conference in June, 2017, the Native Farm Bill Coalition met to coordinate efforts on the upcoming legislative opportunity. Since the Annual Convention, NCAI and the Native Farm Bill Coalition held 3 webinars (available at NCAI Youtube), solicited policy recommendations from tribes, and advocated to Congress for tribal inclusion in the Farm Bill.

Reauthorization of the Healthy Hunger-Free Kids Act of 2010 (Child Nutrition Reauthorization). The Healthy Hunger-Free Kids Act of 2010 is a 5-year bill that governs several food programs that impact Native children and parents: the National School Lunch and School Breakfast Programs; the Child and Adult Care Food Program; the Summer Food Service Program; the Afterschool Snack and Meal Program; the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC); the WIC Farmers Market Nutrition Program; the Fresh Fruit and Vegetable Program; and the Special Milk Program. As was seen in the Farm Bill debate, nutrition standards, costs, and program eligibility will continue to be at the forefront of the Child Nutrition Reauthorization. Since the 114th Congress was not able to pass a reauthorization—the programs still continue on without reauthorization—the Senate Committee on Agriculture and House Committee on Education and the Workforce, the two Committees with jurisdiction, will look to continue the work from last Congress to make changes to the law. NCAI is working with many major nutrition policy groups and our tribal organization partners to make sure Indian Country’s priorities are included in the Reauthorization.

Administrative Update

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

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

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

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

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

All parties with standing in the case reached an agreement on changes to the existing settlement agreement. Under the new proposal, each prevailing claimant will receive a supplemental payment of \$18,500 (a separate sum of \$2,775 will be paid to the IRS on their behalf). The remainder of the *cy pres* funds would go to non-profit organizations as described above. The Court held a hearing on this new agreement to modify the settlement on February 4, 2016. The Court approved the new agreement on April 20, 2016. An appeal of the modified

settlement was filed on June 20, 2016, and the D.C. Circuit Court of Appeals upheld the new agreement in May 2017. On May 17, 2016, the class counsel in *Keepseagle* case announced a one-time distribution of \$38 million from the remaining settlement funds through the Native American Agricultural Fast Track Fund (NAAFTF). However, these remaining payments have been held up as two named plaintiffs recently appealed the D.C. Circuit Court of Appeals' decision to the Supreme Court. The petitions for cert are currently pending and further payments are frozen until the petitions are finally resolved.

PUBLIC SAFETY

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

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

Legislative Update

FY18 Commerce, Justice, Science Appropriations Activity. To better meet the federal obligation to provide funding for public safety and justice on tribal lands, the President’s FY18 Budget proposed a flexible 7 percent set-aside for Indian tribes from all Office of Justice Programs (OJP), Office of Juvenile Justice and Delinquency Prevention (OJJDP), and COPS programs at DOJ, which would result in \$90.4 million for tribal programs at DOJ, a significant increase over FY17 funding of \$65M. The President’s budget also included a 5 percent tribal set-aside from the Crime Victims Fund for crime victim services, which would result in \$150 million for tribal governments—the first time tribes would receive direct funding from the Crime Victims Fund outlays. Both the House and Senate CJS appropriations Committees have approved bills for FY18 that include a 7 percent allocation for Indian tribes from across most OJP and COPS programs. This amounts to approximately \$80 million in the House bill and \$110 million in the Senate bill. The Senate bill also includes the 5 percent tribal set-aside from the Crime Victims Fund, which would provide \$182 million for tribal crime victim services. Unfortunately, similar language in the House bill was stripped from the bill on the floor of the House by Congressman Goodlatte immediately before the bill was passed. Congress will be working to finalize the FY18 appropriations in the coming months.

SURVIVE Act Introduced – S. 1870/H.R. 4608. Identical bills have been introduced in the Senate and House that will increase needed tribal victim assistance by creating a tribal grant program within the Department of Justice’s Office for Victims of Crime. The bills direct that five percent of the total annual outlays from the Crime Victims Fund (CVF) be provided to Indian tribes. Based on FY 17 levels, this would result in \$150 million for tribal crime victim services. In addition to ensuring that tribal governments are able to access CVF resources on a footing equal to state and territorial governments, the bill empowers tribes and Indian victims of crime by: expanding the types of victim assistance, services and infrastructure for which the funds may be used,

including domestic violence shelters, medical care, counseling, legal assistance and services, and child and elder abuse programs. Both bills have bi-partisan support. The Senate bill was reported favorably by the Indian Affairs Committee in December. The House bill was referred to the Judiciary Committee where it awaits action.

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

The bill was referred to the Senate Committee on Indian Affairs and was the subject of a legislative hearing in October 2017.

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

The Native Youth & Tribal Officer Protection Act – S. 223. Introduced by Senators Udall (D-NM), Murkowski (R-AK), and Cortez Masto (D-NV) on Dec. 14, 2017, the bill would amend 25 USC 1304 to reaffirm tribal inherent authority over child abuse and crimes that are committed against police officers and other justice officials exercising special domestic violence criminal jurisdiction (SDVCJ). The legislation has been referred to the Indian Affairs Committee for further action.

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

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

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

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

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

Administrative Update

DOJ Holding Consultation on Tribal Funding. The Department of Justice is holding a series of listening sessions and consultations on the funding available to tribes at DOJ. In particular, DOJ is seeking input on how to implement the flexible 7 percent set-aside from across OJP and COPS programs that was enacted for FY2017 and gives DOJ considerable flexibility to reform the way it provides support for tribal justice systems and victim services. A DOJ consultation takes place in conjunction with the NCAI ECWS on February 15, 2018 at 9:00 am. DOJ will be developing a framing paper to provide additional information to tribal leaders.

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

VIOLENCE AGAINST WOMEN ACT IMPLEMENTATION

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

In the nearly five years since VAWA 2013 was enacted, a group of 45 tribes have been participating in the Inter-Tribal Technical Assistance Working Group (ITWG) established by DOJ, which is a collaboration of tribes sharing information and advice on how to best implement VAWA, combat domestic violence, recognize victims' rights and safety needs, and safeguard defendants' rights. As of January 2018, we are aware of 16 tribes who have implemented VAWA. They are: the Tulalip Tribes, the Pascua Yaqui Tribe, the Confederated Tribes of the Umatilla Reservation, the Assiniboine & Sioux Tribes of the Ft. Peck Reservation, the Sisseton Wahpeton Oyate, the Seminole Nation of Oklahoma, the Eastern Band of Cherokee Indians, the Nottawaseppi Huron Band of Potawatomi, the Kickapoo Tribe of Oklahoma, the Sac and Fox Nation of Oklahoma, the Little Traverse Bay Band of Odawa Indians, the Standing Rock Sioux Tribe, the Sault Sainte Marie Tribe of Chippewa Indians, the Muscogee (Creek) Nation, the Chitimacha Tribe of Louisiana, the Alabama-Coushatta Tribe of Texas, the Lower Elwha Kllalm Tribe, and the Choctaw Nation. The implementing tribes report that the majority of the cases they have seen so far involve children as witnesses or victims and that the offenders frequently have a history of frequent prior police contacts. Materials from the implementing tribes are available on NCAI's website and offer useful examples of how individual tribes have modified tribal code language and constructed jury pools for VAWA cases.

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

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

EMERGENCY RESPONSE/HOMELAND SECURITY

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

Administrative Update

Executive Order 13767: Border Security and Immigration Enforcement Improvements. Directs the Secretary of the Department of Homeland Security (DHS) to plan, design, and construct a physical wall along the southern border; construct detention facilities to detain undocumented immigrants at or near the border; hire 5,000 border patrol agents and assign them to duty stations; and set up federal-state agreements for state and local law enforcement officers to perform functions of immigration officers. EO 13767 does not state what the wall will look like, the timeline for construction, who will bear the costs, or how much will be paid for the wall's construction. The glaring fact for tribes on and near the manufactured border is their culture, lands, and people will be impacted, sovereignty disregarded, and treaty rights infringed upon. All impacted tribal officials, many members of Congress, and several border state officials object to the proposal, as does the president of Mexico. The FY 2017 budget does not provide funding for the border wall but does provide additional funding for increased monitoring and undocumented immigration detention. The Administration issued a request for proposals for construction and received designs and options including cost estimates.

DHS FY 2017 Preparedness Grants. On June 2, 2017, the DHS Secretary announced FY 2017 Notices of Funding Opportunity for 10 DHS preparedness grants to state, local, tribal and territorial governments. The grants are for immediate security needs and community public safety. DHS continues to ignore tribal government responsibilities and needs for homeland security risks by failing to increase the funding level for the Tribal Homeland Security Grant Program (THSGP). Funding for all homeland security grants components to states and local governments total over \$1 billion but the amount available for all 573 federally recognized tribal governments stays flat at \$10 million. Tribal officials have discussed going to DHS and to Congress for creation of a tribal homeland security general assistance grant program which would be similar to the Environmental Protection Agency's Tribal General Assistance Program (GAP) that is more flexible in addressing tribal capacity-building and tribal direct funding.

Legislative Update

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

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

NCAI passed Resolution MKE-17-017 at its 2017 Annual Convention in Milwaukee. The resolution calls for supporting tribal border security and access priorities, as well as tribal efforts to work with the United States and Canadian governments. The resolution also highlights several issues that require tribal engagement including: improving border crossing policies and practices for tribal citizens; improving border security training and recognition of tribal identification credentials; implementing Jay Treaty provisions; and improving cultural sensitivity training for border agents.

HUMAN RESOURCES/SOCIAL SERVICES

The survival and prosperity of tribal communities depends on the education, health, and welfare of our youth and elders. The Administration and Congress must work with tribes to meet the educational needs of Indian youth; provide adequate health care via the Indian Health Service (IHS) for both direct and self-governance tribes; provide safe and secure tribal communities; and supply the social services required to ensure every American Indian and Alaska Native enjoys a decent quality of life and has an opportunity to succeed. Education drives personal advancement and wellness, which in turn improves social welfare and empowers communities—elements that are essential to protecting and advancing tribal sovereignty and maintaining tribes' cultural vitality. Human and social services are a critical part of the continued wellbeing of tribal communities.

EDUCATION

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

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

Legislative Update

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

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

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

Johnson-O’Malley Supplemental Indian Education Program Modernization Act – S. 943. On April 26, 2017, Senator Heidi Heitkamp (D-ND) introduced S.943, the Johnson-O’Malley Supplemental Indian Education Program Modernization Act. This bill would direct the Secretary of the Interior to conduct an accurate comprehensive student count which impacts the formula allocation for Johnson-O’Malley Program. Despite 93 percent of current Native students attending public schools, the student count has been frozen at 1995 levels, which has led to unmet student needs. On July 12, 2017, the Senate Committee on Indian Affairs held a legislative hearing on S. 943, and the legislation was favorably voted out of Committee at a Business Meeting held on October 4, 2017. NCAI has a standing resolution on this issue, Resolution REN-13-013, “Supporting Use of Accurate Student Numbers to Create a Sustainable Johnson O’Malley Supplemental Indian Education Program.”

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

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

Administrative Update

State Accountability Plans. In March 2017, U.S. Department of Education Secretary Betsy DeVos announced an updated Every Student Succeeds Act (ESSA) implementation guidance plan regarding state accountability plans. These new state plan templates differ from the previous state plan requirements under the Obama Administration in that the new implementation plan would no longer require states to consult with tribes and other stakeholders regarding state plans. As of Fall 2017, 35 states have submitted their state plans to the Department of Education for review. The plans would provide for accountability and assessment systems that cover the 2017-2018 academic year. It is unclear whether voluntary consultation with tribes occurred in the development of these plans.

Bureau of Indian Education ESSA Plan. On September 14, 2017, the Bureau of Indian Education (BIE) announced the establishment of a Standards, Assessments, and Accountability System Negotiated Rulemaking

Committee. The Committee is tasked with advising the Secretary of the Interior and developing proposed regulations for defining standards, assessments, and an accountability system under the Every Student Succeeds Act (ESSA), which reauthorized No Child Left Behind in 2015. At the close of the announcement on October 16, 2017, BIE received 30 nominations from Indian Country. The White House is currently reviewing nominations for the Committee. Once established, the Committee will work to implement the new system as expeditiously as possible.

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

Bureau of Indian Education GAO Reports. In February 2017, the Government Accountability Office listed the Bureau of Indian Education on its High Risk Report (GAO-17-317 High Risk Series). In six separate reports the GAO has provided twenty-three (23) recommendations for the BIE in order to improve its service delivery. BIE leadership has prioritized resources and critical personnel to focus efforts to address the longstanding issues outlined in the GAO reports. Since the High Risk designation, BIE has established a close working partnership with GAO and identified specific strategies and work plans to address each recommendation. In January 2018, BIE successfully closed a recommendation with goals to address additional recommendations and improve BIE services throughout the year.

HEALTH

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

Legislative Update

Indian Health Improvement Act and Indian-specific provisions in the Affordable Care Act. The Indian Health Care Improvement Act (IHCA) was enacted in 2010 as part of the Patient Protection and Affordable Care Act (Affordable Care Act or ACA). The IHCA provided new resources and opportunities for tribal governments, tribal health care institutions, families, providers and patients. There are also Indian-specific provisions in the ACA other than the IHCA that provide important protections and funding opportunities for Indian Health Service/Tribal/ and Urban Indian (collectively known as the I/T/U) health system. The IHCA states that any I/T/U should remain the payer of last resort for services provided by such, notwithstanding any federal, state,

or local law to the contrary, and granted I/T/U providers permanent authority to collect reimbursements for all Medicare Part B services. It also ensures that any health benefits provided by a tribe to its members are not included as taxable income. IHCA has proven to be one of the more successful parts of the ACA.

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

Special Diabetes Program for Indians. The Special Diabetes Programs for Indians (SDPI), enacted in 1997, provides assistance for developing local initiatives to treat and prevent diabetes and has served as a comprehensive source of funding to address diabetes issues in tribal communities. It provides grants for diabetes prevention and treatment services to Indian Health Service, tribal, and urban Indian health programs, totaling approximately 300 programs in 35 states. SDPI has led to remarkable outcomes, including reduction in average blood sugar levels, reduction in the incidence of heart disease, a significant increase in the promotion of healthy lifestyle behaviors, and a 54 percent decline in the incidence rate of end-stage renal disease (ESRD) in American Indian and Alaska Native people.

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

While it seems that Congress' preferred manner to address SDPI reauthorization is through larger legislative vehicles, there are several stand-alone SDPI reauthorization bills. Two of these bills would reauthorize the SDPI through FY 2024 and include increases in funding due to inflation adjustments: H.R. 2545, Torres, (D-CA) and S. 747, Udall, (D-NM). The House bill is pending before the Energy and Commerce Committee, while the

Senate version is pending before the Health, Education, Labor and Pensions (HELP) Committee. Additional legislation introduced by Representative Markwayne Mullin (R-OK) would reauthorize SDPI at \$112.5 million for the remainder of fiscal year 2018 and \$150 million for FY 2019.

NCAI passed Resolution ATL-14-003 requesting Congress permanently reauthorize the Special Diabetes Program for Indians and provide full funding for the permanent continuation of this program. Although NCAI will continue to advocate for permanent reauthorization of SDPI as a long-term solution to protect this program, immediate advocacy efforts will focus on ensuring the program is reauthorized past the March 31, 2018 authorization expiration.

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

House Bills to Address Health Care Disparities in Indian Country. On September 7, 2017, Representatives Frank Pallone (D-NJ) and Raul Ruiz (D-CA) introduced two bills which seek to address health care disparities in Indian Country: H.R. 3704, Native Health Access Improvement Act (Pallone) and H.R. 3706, Native Health and Wellness Act (Ruiz). H.R. 3704 seeks to improve behavioral health outcomes for American Indians and Alaska Natives by providing \$150 million in grants for the prevention and treatment of mental health and substance abuse disorders. In addition, this bill amends the ACA to clarify the definition of "Indian" and to provide "Indians" with an exemption from penalty for not maintaining minimum essential coverage. This bill has been referred to the following Committees: Natural Resources; Energy and Commerce; and Ways and Means. H.R. 3706 would provide grants to Indian tribes or tribal organizations to improve the public health system in tribal communities and increase the number of American Indians and Alaska Natives pursuing health careers. This bill has been referred to the Energy and Commerce Committee.

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

Independent Outside Audit of the Indian Health Service Act of 2017 (S. 465, Rounds, R-SD). This bill would require the Secretary of the Department of Health and Human Services to enter into contract(s) with a private entity to conduct an independent assessment of the health care delivery systems and financial management processes of the Indian Health Service. On November 8, 2017, the Senate Committee on Indian Affairs held a hearing on this legislation. "IHS will only continue to fail until we take a close look into the operations, funding, quality of

care and management at IHS," said Senator Rounds. He also indicated that changes have been made to the bill, including granting authority to the Department of Health and Human Services Inspector General to carry out the assessment. In her testimony, Elizabeth Fowler, the Deputy Director for Management Operations at IHS stated that "if the Secretary directs IHS to fund the cost of the contract with the independent entity, it is important to note that IHS's existing budget could not support a project of this scale without affecting direct health services." Fowler also spoke about some of IHS's recent improvement efforts, including the Patient Wait Times policy, updating Governing Board Bylaws, acquiring a credentialing software system, developing a standard patient experience of care survey, developing a quality assurance accountability dashboard, and awarding a master contract for accreditation of all of their hospitals. She also acknowledged some of the "longstanding challenges" that remain in the Great Plains and discussed what IHS is doing to address those issues. Chairman David Flute of the Sisseton-Wahpeton Sioux Tribe testified in support of S. 465. "IHS Administration is failing the Sisseton Wahpeton Sioux Tribe and the Great Plains Region, so we need Congress's help to turn the IHS around and provide good, reliable health care for our Native people. The introduction and passage of S. 465 is an important step towards that goal," said Chairman Flute. S. 465 is now awaiting consideration by the Committee.

Mitigating METH Act (S. 2270, Daines, R-MT). Introduced in December 2017, this bill would make Indian tribes and tribal organizations eligible for funds to help combat the opioid epidemic in Indian Country. Specifically, it would amend the 21st Century Cures Act (Cures Act)—provided funding to address the crisis directly to states through per capita block grants—to make Cures Act funding available directly to Indian tribes and tribal organizations and increase the funding pool by \$25 million. The bill has five bipartisan cosponsors and has been referred to the Senate Health, Education, Labor and Pensions (HELP) Committee. NCAI strongly supports this legislation and urges members to co-sponsor and support the bill.

Urban Indian Health Parity Act (S. 2146, Udall, D-NM). Introduced on November 16, 2017, this bill would extend the full Federal medical assistance percentage (FMAP) to urban Indian organizations. Currently, if an American Indian or Alaska Native (AI/AN) Medicaid beneficiary receives services through an Indian Health Service (IHS) or tribally operated health facility, the Centers for Medicare & Medicaid Services (CMS) matches the amount paid for those services at 100 percent, commonly referred to as 100% FMAP. However, the urban Indian health programs operated under the Indian Health Care Improvement Act are not eligible for 100% FMAP. The bill was discharged by the Senate Committee on Indian Affairs and is currently pending with the Finance Committee. In 2015, NCAI passed Resolution SD-15-070, requesting that CMS "extend 100% FMAP to services provided by urban Indian health programs funded under the Indian Health Care Improvement Act so long as they are provided to eligible beneficiaries of the Indian Health Service." In accordance with this resolution, NCAI supports S. 2146.

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

identifying ways to ensure IHS is best serving the needs of those who rely on it.

Administrative Update

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

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

President Trump Nominates Robert M. Weaver to Serve as IHS Director. In October 2017, President Trump nominated Robert M. Weaver to serve as the Director of the Indian Health Service for a term of four years. According to the White House announcement, Mr. Weaver, an enrolled member of the Quapaw Tribe of Oklahoma, is "the founder and owner of four companies that provide healthcare consulting services to tribal governments, their enterprises, and their members." One of those companies, RWI Benefits LLC, was awarded the 2017 American Indian Business of the Year by the National Center for American Indian Enterprise Development. According to the company's website, Mr. Weaver's motivation to improve access and affordability to quality healthcare for American Indians and Alaska Natives comes from "his own family's devastating experiences with the death and destruction caused by substance abuse, mental health issues, addiction and preventable diseases." Mr. Weaver's nomination is pending with the Senate Committee on Indian Affairs. Rear Admiral Michael Weahkee has been serving as the Acting IHS Director since June 2017. He previously served as the Chief Executive Office of the Phoenix Indian Medical Center

Addressing the Opioid Crisis in Indian Country. While the opioid crisis is plaguing communities across the country, studies indicate that American Indians and Alaska Natives (AI/ANs) are impacted at a higher rate than other groups. For opioid overdose fatalities, a 2013 report found that AI/AN communities had the highest death rate related to pharmaceutical opioids. Further, according to the Centers for Disease Control and Prevention (CDC), the rates of death from prescription opioid overdose among American Indian or Alaska Natives increased almost four-fold from 1999 to 2013. This epidemic is also impacting AI/AN youth. Pregnant Native American women are nearly 9 times more likely than others to be diagnosed with opioid dependency or abuse. As a result, many tribal infants suffer from opioid withdrawal and other effects. These statistics illuminate the critical need for more concerted attention on curbing the opioid epidemic in tribal communities.

In 2017, President Trump issued an Executive Order establishing the President's Commission on Combating

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

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

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

CULTURAL PROTECTIONS

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

Legislative Update

House Natural Resources Committee Marks up Antiquities Act Reform Bill. On October 11, 2017, The House Natural Resources Committee marked up H.R. 3990 The National Monument Creation and Protection Act. With the

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

Safeguard Tribal Objects of Patrimony (STOP) Act. On June 21, 2017, Senator Martin Heinrich (D-NM) introduced the Safeguard Tribal Objects of Patrimony (STOP) Act (S. 1400). On August 3, 2017, Congressman Ben Ray Lujan (D-NM-3) introduced a companion bill in the House of Representatives (H.R. 3211). This legislation enhances penalties under the Native American Graves Protection and Repatriation Act (NAGPRA) from 5 years to 10 years and prohibits the exporting of Native American cultural objects. It also requires the Government Accountability Office to submit a report to Congress detailing the number of cultural objects illegally trafficked in the U.S. and in foreign markets as well as detailing the extent to which the US Attorney General has prosecuted past violations. The report would also include recommendations for actions by the Attorney General, the Secretary of State and the Secretary of the Interior to eliminate illegal commerce of cultural objects as well as securing repatriation of those objects. The legislation sets up a Tribal Working Group made up of tribes and government agencies to collaborate on writing the report as well as giving tribes the opportunity to advise government agencies on implementation recommendations. NCAI supports the bills and has submitted letters and testimony on past versions of the bill.

House Natural Resources Committee holds Hearing on National Historic Preservation Act. On July 18, 2017, the House Natural Resources Subcommittee on Oversight and Investigations held an oversight hearing entitled "Examining Impacts of Federal Natural Resources Laws Gone Astray, Part II" that focused on the Marine Mammal Protection Act and the National Historic Preservation Act. This hearing is the second in a series of hearings by the House Natural Resources Subcommittee on Oversight and Investigations to address Natural Resources Laws that some believe have extended past their original congressional intents. The hearing focused on the "determined eligible criteria" that has been implemented with the National Historic Preservation Act that would allow a site to be eligible for the Federal Register of Historic Places, and therefore eligible for protections under the NHPA. Much of the hearing highlighted issues with the Marine Mammal Protection Act and off shore seismic activity. Members of Congress and the invited witnesses discussed what "multiple use" means for federal lands as well as taking a balanced approach to federal land management.

Senate Committee on Indian Affairs hosts Roundtable on Infrastructure Permitting. On September 28, 2017, the Senate Committee on Indian Affairs hosted a round table on "Best Practices in Tribal Consultation and Stakeholder Engagement: Federal Permitting and Infrastructure Project Review in Indian Country." The Roundtable was hosted by Senate Committee on Indian Affairs Chairman Hoeven and Vice Chairman Udall, and was attended

by Senators Heitkamp (ND), and Franken (formerly MN). Senator Carper, the Ranking Member on the Senate Environment and Public Works Committee was also in attendance. The Roundtable brought together tribal organizations, tribal industries, federal officials, and industry to discuss topics such as Section 106 Historic Preservation permitting in projects that impact tribal land, early engagement of tribal nations, and consistent treatment of permitting processes throughout the federal government. NCAI participated in the roundtable and emphasized the need for early notification and partnering with tribal nations to ensure that any on or off-reservation impacts can be mitigated.

Administrative Update

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

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

Neither the White House nor the Department of the Interior have made official statements about the fate of the other National Monuments and whether their original designations will remain the same or will be diminished in size. The Antiquities Act of 1906 grants the President the authority to designate National Monuments and was passed with the intent of protecting tribal cultural and historic properties from looters. There is no legal precedent or explicit statutory authority for the President to rescind National Monument designations. NCAI has filed public comments with the Department of the Interior twice on this issue, one comment specifically on the Bears Ears National Monument and the other on all other Monuments under review urging no changes in any Monument designations and encouraging tribal co-management of monuments. In addition, NCAI has written the President twice to urge him to protect Monument designations and work to protect tribal historic and cultural resources that reside in the Monuments. NCAI is now drafting an amicus brief in support of the 5 tribes' lawsuit regarding the Bears Ears and Grand Staircase-Escalante National Monuments.

US Department of the Interior announces \$5.7 million in Tribal Historic Preservation grants. On April 27, 2017, the U.S. Department of the Interior announced \$5.7 million in tribal historic preservation grants. Funds are collected through fees from oil drilling on the Outer Continental Shelf. With the same announcement, DOI announced \$26.9 million in grants to states and U.S. territories, of which some of the highlighted state projects address tribal cultural historic preservation.

Section 106 Streamlining Proposed Rule at the Federal Communications Commission. On April 24, 2017, the Federal Communications Commission issued a proposed rulemaking intended to streamline tribal review of wireless infrastructures' impacts on tribal historic and cultural properties. (FCC Notice of Proposed Rulemaking, Docket 17-79 "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment"). Through this rulemaking the FCC looks to find exclusions to Tribal Historic Preservation Officer review like pole replacements and Rights of Way and also looks to place limits on a tribe's ability to define their area of interest. This proposed rulemaking seeks to streamline the Tribal Section 106 Review of Wireless Infrastructure deployment through the FCC's Tower Construction Notification System. Currently, tribes review applications for most wireless infrastructure deployment in an area of interest defined by the tribe. NCAI has serious concerns in the Notice of Proposed Rulemaking that would limit the ability of tribes to protect sacred sites like certifying areas of interest, applicant self-certification, exclusions for Rights of Way and lack of consultation.

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

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

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

No New International Repatriation Consultations Announced. The Department of the Interior conducted consultations jointly with the State Department, Department of Justice and the Department of Homeland Security on international repatriation of tribal cultural heritage and properties between October 2016 and December 2016. There have been no further consultations noticed since December 2016. NCAI will continue to track this issue and advocate for the federal government to consult with tribes on the issue of International Repatriation.

NATIVE VETERANS

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

Legislative Update

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

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

Tribal HUD-VASH Act (S. 1333, Tester, D-MT and H.R. 4359, Lujan, D-NM). This bill would formally authorize a joint tribal housing initiative between the U.S. Department of Housing and Urban Development and the Veterans Affairs Supportive Housing (HUD-VASH) program, which provides housing vouchers to tribes and tribal housing authorities to construct affordable housing, provide rental assistance, and assist homeless veterans with services that aid recovery from physical and mental health conditions resulting from homelessness. In January 2015, HUD and the VA announced a demonstration program to offer a permanent home and supportive services to Native American Veterans who are experiencing or at risk of experiencing homelessness. Under the current pilot program, only 26 tribes have received HUD-VASH vouchers. S. 1333 seeks to improve and expand upon this program. The bill is cosponsored by Committee on Indian Affairs Chairman John

Hoeven (R-ND) and Vice Chair Tom Udall (D-NM), as well as Committee on Veterans Affairs Chairman Johnny Isakson (R-GA). It was ordered reported with an amendment in the nature of a substitute by the Senate Committee on Indian Affairs on September 13, 2017. The Committee filed its report on the bill in December 2017 and it is now awaiting Senate consideration. The House companion bill, which was introduced on November 9, 2017, is pending with the House Committee on Financial Services. NCAI has a standing Resolution ECWS-14-001 in support of the Tribal HUD-VASH.

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

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

Administrative Update

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

Final Rule on Recognition of Tribal Organizations. On January 19, 2017, VA issued a final rule—Recognition of Tribal Organizations for Representation of VA Claimants, 82 FR 6265—recognizing tribal authority to establish a tribal VA benefit claims office through an accredited Tribal Veteran Service Officer (TVSO). Specifically, this rule allows the Secretary to recognize tribal organizations in a similar manner as the Secretary recognizes state organizations. It also allows a tribal organization that is established and funded by one or more tribal governments to be recognized for the purpose of providing assistance on VA benefit claims. In addition, the final rule allows an employee of a tribal government to become accredited through a recognized state

organization in a similar manner as a County Veterans' Service Officer (CVSO) may become accredited through a recognized state organization. During the rulemaking process, NCAI provided comments to ensure VA provides the opportunity to ensure fair and timely examinations, assessments and the preparation of a claim, and most importantly, the advocacy of the claim on behalf of Native veterans is accomplished in a culturally competent manner. NCAI will continue to track the implementation of this rule and advocate for support for Tribal Veteran Service Officers Training Programs, as outlined in NCAI Resolution SAC-12-002.

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

TRIBAL GOVERNANCE

VOTING RIGHTS

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

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

Legislative Update

Voting Rights Advancement Act of 2017 Introduced. S. 1419 and HR 2978, companion measures entitled The Voting Rights Advancement Act of 2017, were introduced in June of 2017. The Senate bill was introduced by Senator Patrick Leahy (D-VT) and has 46 Democratic and Independent co-sponsors. The House bill was introduced by Representative Terri Sewell (D-AL) and has 188 Democratic co-sponsors. Both bills contain provisions aimed at improving access to registration and voting for voters on tribal lands. Both bills were referred to the respective Judiciary Committees and await further action.

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

Field Hearings

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

SELF-GOVERNANCE

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

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

Legislative Update

DOI Tribal Self-Governance Act. In the 114th Congress, Senator John Barrasso introduced the Department of the Interior Tribal Self-Governance Act, which aimed to streamline DOI's process for approving self-governance compacts and annual funding agreements, ultimately aligning the process used by DOI with the process used by the Indian Health Service. This legislation passed the Senate by Unanimous Consent on July 7, 2015 and was sent to the House of Representatives with well over a year left in the 114th Congress. Despite lengthy negotiations to address concerns related to the bill's purported impact on non-BIA programs, the 114th Congress expired before the House acted upon the bill. Such legislation has yet to be introduced in the 115th Congress. NCAI continues to work with the Self-Governance Advisory Committee to address concerns, with the goal of passing legislation in the 115th Congress.

ECONOMIC DEVELOPMENT AND INFRASTRUCTURE

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

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

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

TRIBAL TAX PRIORITIES

This past December 2017, Congress passed and the President signed into law the Tax Cuts and Jobs Act. The final tax reform legislation did not include any tribal tax priorities. As such, Congress and the Administration missed an opportunity to recognize the tribes' rightful place alongside other governments and to incentivize increased investment in tribal economies and infrastructure.

At its core, issues of taxation should reliably provide sufficient governmental revenues free from overlapping state taxation. This creates incentives for business development, infrastructure, job creation, and access to financing tools while providing certainty of jurisdiction, certainty to capital markets, and certainty of tax policy all designed to enhance economic growth directly benefitting the health and welfare of not only tribal communities but also local communities as well. This is simply not the case in Indian Country.

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

underserved communities in the nation.

Both Congress and the Administration must actively engage with Native nations so federal tax policy ensures tribal governments have the same opportunities as state and local governments to provide services for their own citizens. The second session of the 115th Congress may still provide several chances for Congress and the Administration to uphold the trust responsibility and enact legislation that includes tribal tax priorities.

Tribal Tax Priorities

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

- *Tax-Exempt Bonds.* Unlike other governments, tribes can only use tax-exempt bond financing for “essential government functions.” The IRS has interpreted this standard to exclude tribal economic development activities even though state and local governments routinely use tax-exempt financing for development projects. This limitation on tribes greatly inhibits infrastructure deployment and economic growth.
- *Government Pension Plans.* Unlike other governments, the Tax Code requires tribes to have separate types of pension plans (government and private) based on an employee’s job activities. Consequently, only tribes incur the monetary and compliance costs of maintaining two separate pension plans. Tribal governments must be able to operate a single, comprehensive, government pension plan for all their employees.
- *Tribal Foundations and Charities.* Charities funded or formed by tribal governments do not enjoy the same tax treatment as those funded or formed by state and local governments. This disparity makes it difficult for tribes to form charities and leverage tribal resources to raise charitable donations from outside donors.
- *Tribal Child Support Enforcement Agencies.* Like state agencies, tribal child support enforcement agencies should have access to federal parent locator services and the ability to garnish federal tax returns to enforce past due child support obligations.
- *Indian Adoption Tax Credit.* Currently, families that adopt special needs children in tribal court are ineligible for tax benefits available to families that adopt special needs children in state court. Federal tax policy should treat tribal court orders the same as state court orders for purposes of classifying an adoptive child as “special needs”.
- *Excise Taxes.* Tribal governments are not treated the same as state and local governments for a variety of excise tax exemptions, which diverts resources from government services for tribal citizens. Tribes should be treated the same as states for purposes of exemption from federal excise taxes.

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

Exempt Tribal Distributions from the “Kiddie Tax.” Due to a flaw in the tax code, distributions from minors’ trust funds established by tribal governments are subject to taxation at the rate of a minor’s parents, resulting in an

unintended disincentive to attend college. Correcting this would provide fairness to Indian youth and families receiving benefits from tribal funds.

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

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

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

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

Legislative Update

Tribal Tax Priorities on Capitol Hill Post Tax Reform. The NCAI membership emphasized the importance of reforming federal tax policy for Indian Country by passing Resolution MOH-17-011, Equitable Treatment for Tribal Nations in Congressional Tax Reform, at the Mid Year Conference in Connecticut in June 2017. Despite years of education and work with offices on Capitol Hill by tribes, NCAI, and other organizations, Congress did not include these tribal tax priorities in the tax reform legislation that passed in December 2017. This result is disappointing, but there may be several opportunities this year for Congress to pass legislation that includes Indian Country.

During tax reform discussions, some congressional members expressed interest in working on a tax extenders package during the second session. On December 20, 2017, Senator Hatch, Chairman of the Finance Committee, introduced S. 2256, the Tax Extender Act of 2017. It includes extensions of Accelerated Depreciation for Business Property on Indian Reservations, the Indian Employment Tax Credit, and the Production Credit for Indian Coal Facilities. The inclusion of these Indian Country extenders in the base text of the bill is a positive development; however, NCAI will continue to advocate for making these tax provisions permanent and for modifying the Indian Employment Tax Credit to make it an even better incentive for increasing employment and economic development in tribal communities.

Congress and the Administration seem poised to shift toward consideration of an infrastructure package. Any infrastructure package will likely include Tax Code provisions to incentivize private investment. Indian Country must be fully included in any infrastructure package, which should provide tax-exempt bond parity to tribal

governments. Several pieces of legislation have provisions that would accomplish tax-exempt bond parity, including the Tribal Tax and Investment Reform Act (H.R. 3138 & S. 1935) and the Tribal Economic Assistance Act (S. 2012). Additionally, NCAI will continue to push for increased deployment of New Markets Tax Credits and Low-Income Housing Tax Credits in Indian Country.

Given the speed with which the Tax Cuts and Jobs Act was written, considered, and passed, it is likely that Congress will have to pass technical fix legislation. Such legislation would provide an opportunity for Congress to ensure tribes are included in new programs, such as Opportunity Zones.

Action to Appoint Remaining Vacancy and Implementation of the Department of Treasury's Tribal Advisory Committee. NCAI will continue to urge Congress to fill the remaining vacancy and urge implementation of the 7 member Advisory Committee. Established under the Tribal General Welfare Exclusion Act of 2014, the Tribal Treasury Advisory Committee will advise the Secretary of the Treasury on matters related to the taxation of Indians, the training of Internal Revenue Service field agents, and the provision of training and technical assistance to Native American financial officers. In 2015, the Secretary of the Treasury appointed three members of the committee of seven. Those three appointments include: W. Ron Allen, Chairman and Chief Executive Officer of the Jamestown S'Klallam Tribe; Lacey Horn, Treasurer of the Cherokee Nation; and Marilyn "Lynn" Malerba, Lifetime Chief of the Mohegan Tribe. To date, there have been three Congressional appointments to the Committee: Eugene Magnuson, Tribal Treasurer of the Pokagon Tribe; Shannon Edenfield, a Tribal Council member for the Confederated Tribes of the Siletz Indians of Oregon who serves as its Tribal Administrative Officer; and Patricia King, Treasurer for the Oneida Nation. One vacancy to be filled by Congress remains.

Administrative Update

Address the Harms of Dual Taxation in Indian Country through Modernizing the Indian Trader Regulations. NCAI urges swift action to address dual taxation in Indian Country. The Indian Trader Regulations at 25 C.F.R §140 are an anachronism in the era of Tribal Self-Determination. They have not been updated since 1957. It is no longer necessary for the Department of the Interior to license traders on Indian reservations, and the regulations are an unnecessary burden on economic development. However, the underlying law at 25 USC §262 is broad and flexible authority for the Department of the Interior to adopt new regulations that would meet the economic development and tax revenue needs of Indian tribal governments in the 21st Century. We urge the Department of the Interior to replace the current regulations, in accordance with recent NCAI Resolution SD-15-045: *Urging the Department of Interior to Address the Harms of State Taxation in Indian Country and Prevent Dual Taxation of Indian Communities.*

The Administration had expressed interest in exploring regulatory changes and sought input from tribal governments. On April 10, 2017, NCAI submitted comments to the Department of the Interior urging the Department to update the Indian Trader Regulations for the purpose of addressing dual taxation. NCAI has continued urging the Administration to act on this issue, sending recommendations to the White House in July 2017 and the Department of the Interior in October 2017 and January 2018.

TRIBAL LABOR SOVEREIGNTY ACT

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

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

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

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

Legislative Update

Tribal Labor Sovereignty Act of 2017, S. 63 – H.R. 986. The Tribal Labor Sovereignty Act, S. 63 was introduced by Senator Moran (R-KS) on January 9, 2017, and referred to the Senate Indian Affairs Committee. This bill would add tribes to the definition of government entities exempt from the National Labor Relations Act, thereby ensuring tribal parity with state and other governments. On February 8, 2017, S. 63 was voted out of the Committee and is now ready for consideration by the full Senate.

On February 9, 2017, Congressman Rokita introduced companion legislation in the House of Representatives, H.R. 986. This bill is identical to the TLISA legislation that passed the House in the 114th Congress and has 32 bipartisan co-sponsors. On March 29, 2017, NCAI President Brian Cladoosby testified in support of H.R. 986

at a hearing of the House Subcommittee on Health, Employment, Labor, and Pensions. On January 10, 2018, this legislation passed the House as an amendment to S. 140, A Bill to Amend the White Mountain Apache Tribe Water Rights Quantification Act of 2010 to Clarify the use of Amounts in the WMAT Settlement Fund, which passed the Senate last year. The amendment to S. 140 sets the White Mountain Apache Tribe's water settlement up for reconsideration by the full Senate with the Tribal Labor Sovereignty Act provisions included.

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

TRIBAL TELECOMMUNICATIONS

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

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

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

Legislative Update

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

Tribal Connect Act- S.2205. On December 7, 2017, Senator Martin Heinrich (D-NM) and Senator Dean Heller (R-NV) introduced the Tribal Connect Act of 2017. This bill addresses the Federal Communications Commission's E-Rate program. The bill would establish a pilot program for tribal Anchor institutions (e.g. Longhouses and Chapter Houses) to be eligible for E-Rate support. The bill also would provide training and

technical assistance to apply for and implement the E-Rate program in addition to requiring the FCC to develop performance measures for ensuring that tribal libraries have affordable internet access.

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

Measuring Economic Impact of Broadband Act of 2017 - S. 645. On March 15, 2017, Senator Amy Klobuchar (D-MN) introduced S. 645 “Measuring Economic Impact of Broadband Act of 2017.” This data collection bill directs the Department of Commerce through the Bureau of Economic Analysis to assess and analyze the effects of broadband deployment and adoption on the economy of the United States in consultation with tribal governments.

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

CONNECT for Health Act of 2017 - H.R. 2556. On May 19, 2017, Representative Diane Black (R-TN) introduced the Connect for Health Act of 2017 which provides for Accountable Care Organizations to expand telehealth services. The bill would also authorize the Indian Health Service facilities, whether operated by IHS, the tribe or tribal organization, to be eligible for services under this bill.

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

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

Senate Committee on Indian Affairs hosts Roundtable on Infrastructure Permitting. On Thursday, September 28, 2017, the Senate Committee on Indian Affairs hosted a roundtable on "Best Practices in Tribal Consultation and Stakeholder Engagement: Federal Permitting and Infrastructure Project Review in Indian Country." The Roundtable was hosted by Senate Committee on Indian Affairs Chairman Hoeven and Vice Chairman Udall, and was attended by Senators Heitkamp (ND), and Franken (formerly MN). Senator Carper, the Ranking

Member on the Senate Environment and Public Works Committee was also in attendance. The Roundtable brought together tribal organizations, tribal industries, federal officials, and industry to discuss topics such as Section 106 Historic Preservation permitting in projects that impact tribal land, early engagement of tribal nations, and consistent treatment of permitting processes throughout the federal government. NCAI participated in the roundtable and reinforced the effectiveness of the Section 106 process as it currently exists and reminded the FCC that its trust responsibility is to tribal nations and not to industry partners.

Administrative Update

FCC Repeals Net Neutrality. In December 2017, the FCC voted on party lines to repeal Net Neutrality. A 2015 FCC Order barred internet service providers (ISP's) from blocking or throttling traffic or offering paid fast lanes for internet service. The 2015 Order was repealed by the December 2017 vote and will begin taking place at least three months after the vote, February 2018. NCAI filed comments with the FCC opposing the action as it would allow ISP's to charge tribal governments and their citizens more for service while also limiting self-determination.

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

Section 106 Streamlining Proposed Rule at the Federal Communications Commission. On April 24, 2017, the Federal Communications Commission issued a proposed rulemaking intended to streamline tribal review of wireless infrastructures' impacts on tribal historic and cultural properties (FCC Notice of Proposed Rulemaking, Docket 17-79 "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment). Through this rulemaking the FCC looks to find exclusions to Tribal Historic Preservation Officer review like pole replacements and Rights of Way and also looks to place limits on a tribe's ability to define their area of interest. This proposed rulemaking seeks to streamline the Tribal Section 106 Review of Wireless Infrastructure deployment through the FCC's Tower Construction Notification System. Currently, tribes review applications for most wireless infrastructure deployment in an area of interest defined by the tribe. NCAI has serious concerns in the Notice of Proposed Rulemaking that would limit the ability of tribes to protect sacred sites like certifying areas of interest, applicant self-certification, exclusions for Rights of Way and lack of consultation.

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

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

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

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

NATIVE AMERICAN HOUSING

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

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

Legislative Update

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

On December 13, 2017, the House Financial Services Committee approved an Amendment in the Nature of a Substitute (ANS) to H.R. 3864—offered by Congressman Pearce—by a vote of 32 to 22. The ANS stripped the reauthorization language of Title VIII Housing for Native Hawaiians. Congresswoman Gwen Moore (D-WI) offered an amendment to reinstate the reauthorization of Native Hawaiian Housing programs, however her amendment failed by a vote of 24 to 32. Prior to the Committee markup, NCAI sent a letter to all the Members of the House Committee on Financial Services in opposition to removing the reauthorization of the Native Hawaiian housing programs. H.R. 3864 is now ready for full House consideration, but a vote has yet to be scheduled.

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

NAHASDA authorizes Indian housing programs within the U.S. Department of Housing and Urban Development for American Indian and Alaska Natives to provide safe and decent housing. It effectively replaced the various Indian housing programs under the 1937 Housing Act and consolidated federal housing funds through direct block grants to the tribes and their housing authorities. NAHASDA allows tribes to design and implement their own housing and other community development infrastructure programs. As a result, NAHASDA has been one of the most successful self-governance programs for tribal nations.

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

On September 13, 2017, the Senate Committee on Indian Affairs approved an Amendment in Nature of a Substitute to S. 1333, which made a number of technical corrections proposed by HUD and VA. Subsequently, the bill was placed on the Senate Calendar for full Senate consideration. On November 9, 2017, Congressman

Ben Ray Lujan (D-NM) introduced a companion bill, H.R. 4359, which was referred to the House Committee on Financial Services. NCAI has a standing Resolution ECWS-14-001 in support of the Tribal HUD-VASH.

Administrative Update

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

TRANSPORTATION

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

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

Legislative Update

John P. Smith Act- S. 302. Senator John Barrasso (R-WY) introduced S. 302 on February 3, 2017. This bill would incentivize tribal transportation projects that improve safety in tribal communities by creating a categorical exclusion from environmental review or assessments. Safety projects covered under this bill include roads, pedestrian and bicycle lanes, railway and highway crossings, highway signage and payment markings, and transportation safety planning. Under this bill, the Secretary of the Interior will identify which transportation safety projects would be eligible for categorical exclusions and those recommendations would be the subject of a proposed rulemaking. In addition, the Secretary would enter into a programmatic agreement with tribes able to demonstrate sufficient administrative procedures and other requirements to determine on their own behalf which projects could be excluded from environmental review or environmental assessments. On February 2, 2017, the Senate Committee on Indian Affairs favorably reported S. 302. Subsequently, the Senate passed the bill by Unanimous Consent on November 29, 2017. S. 302 is currently being "held at the desk" in the House of Representatives.

Administrative Update

National Tribal Transportation Technical Assistance Program. On December 6 and 7, 2017, the Federal Highway Administration (FHWA) Center for Local Aid Support (CLAS) held two webinars regarding the restructuring of

the Tribal Transportation Technical Assistance Program (TTAP). The webinar announced the creation of a National TTAP at the University of Virginia Transportation Training Academy in Charlottesville, VA. The restructuring began in Fall 2017, and included the closure of the seven TTAPs around the country. The primary responsibility of the TTAP is advancement of tribes' transportation infrastructure development by providing training and technical assistance for tribal transportation departments. NCAI submitted our concerns about the lack of tribal consultation on the restructuring of the TTAP and sent a letter the Secretary of Transportation Elain Chao on December 18, 2017. NCAI has a standing Resolution MOH-17-041 requesting tribal consultation regarding the TTAP restructuring.

Tribal Transportation Self-Governance Negotiated Rule Committee. The FAST Act (P.L. 114-94) included the expansion of tribal self-governance throughout the U.S. Department of Transportation (DOT). In 2016, the Department formulated a Tribal Transportation Self-Governance Negotiated Rulemaking Committee, to implement the self-governance requirements. The rulemaking began its work in 2016, however the Committee has been stalled since January of 2017. NCAI continues to support the expansion of self-governance programs throughout the Department of Transportation and will continue to advocate for the work of the Committee to resume.

Tribal Interior Budget Council BIA Road Maintenance Subcommittee. In March 2016, the Tribal Interior Budget Council (TBIC) created a subcommittee to address the budgetary needs in the Bureau of Indian Affairs Road Maintenance Program. This program, one of the largest at the BIA, plays a critical role in meeting the infrastructure need in tribal communities. The BIA is responsible for maintaining approximately 29,500 miles of roads in Indian Country, including 900 bridges. However funding for the BIA Road Maintenance has remained stagnant at approximately \$26 million for over a decade, while deferred maintenance continues to grow and is now over \$289 million. The TBIC Road Maintenance Subcommittee held a meeting on November 7, 2017 where the Road Maintenance Survey and Road Maintenance data collection reporting were discussed. NCAI has worked with this subcommittee to ensure the funding for this vital program is increased.

NORTH AMERICAN FREE TRADE AGREEMENT

The United States, Mexico and Canada have initiated negotiations aimed at modernizing the North American Free Trade Agreement (NAFTA). NAFTA created the world's largest free trade zone, with a combined population of almost 400 million people within the U.S., Mexico and Canada and more than \$600 trillion in combined gross domestic product. However, the initial agreement did not include concerns of Indigenous Peoples. With negotiations picking back up to modernize NAFTA, Indigenous Peoples have an opportunity to make their voices heard and advocate for the inclusion of an Indigenous Chapter within any modernized NAFTA. Indigenous Peoples from Canada are working closely with Canada's Global Affairs Unit on including such a chapter and NCAI has an opportunity to add Tribal Leaders' concerns to the discussions.

Negotiations have been on a fast track, with the 4th round taking place October 11-15, 2017 in Washington, D.C. and the 5th round expected to take place shortly thereafter. Mexico and the U.S. have both indicated that they would like negotiations to be concluded by the end of the first quarter of 2018.

During the NCAI 2017 Annual Convention, NCAI members discussed this issue in more detail to identify areas of concern and opportunity, such as the protection of tribal economic development opportunities, tribal

homelands, Indigenous Peoples and natural resources, and the protection of objects of cultural significance and/or Indian arts and crafts.

TRIBAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

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

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

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

Legislative Update

Reauthorization of TANF. TANF was originally up for reauthorization in 2010. Since then, TANF has received short-term extensions to maintain funding instead of a multi-year extension. The most recent extension of funding was in the FY2017 Consolidated Appropriations Act which extended TANF funding for the remainder of FY2017 and for FY2018 at \$16.5 million dollars for tribes, states and territories. Although the legislation has not yet been introduced in the 115th Congress, NCAI supports the multi-year reauthorization of TANF.

Administrative Update

12th TANF Report Submitted to Congress. In January 2018, the Office of Family Assistance published the Temporary Assistance for Needy Families 12th Report to Congress. The report provides data for fiscal years (FY) 2014 and 2015 and presents information regarding TANF expenditures and caseloads, work participation and earnings, the characteristics and financial circumstances of TANF recipients, TANF performance measures,

interactions between TANF and child support, as well as specific provisions of state TANF programs. Chapter 7 of the report covers Tribal TANF and Native Employment Works (NEW). The report found that by the close of FY 2015, 70 Tribal TANF plans were approved to operate on behalf of 298 tribes and Alaska Native villages, and serve the non-reservation area of 122 counties. The grants allocated to approved programs totaled \$192,103,592 in federal funds. AI/AN families not served by Tribal TANF programs are eligible to be served by state TANF programs. The report found that in FY 2015, state TANF programs served approximately 25,600 AI/AN children and 7,500 AI/AN adults. With regards to the NEW program, as of June 30, 2015, there were 78 NEW grantees, 32 of which also operated Tribal TANF programs, with \$7,558,020 awarded in funding. NEW programs provide work activities, supportive services, and job retention services to help clients prepare for and obtain permanent, unsubsidized employment.

WORKFORCE DEVELOPMENT

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

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

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

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

Legislative Update

Tribal Employment and Training Bill Becomes Law. On December 18, 2017, President Trump signed his first tribal bill into law, the Indian Employment, Training and Related Services Consolidation Act of 2017 (Public Law No:

115-93). The bill, H.R. 228 (Young, R-AK), cleared the House of Representatives on February 27, 2017, then the Senate on November 30, 2017. This law makes the “477 program” permanent, extends it to additional federal agencies, and allows for participating tribes and tribal organizations to submit a 477 plan with one budget, audit, and report for all agencies. Further, it requires that an interdepartmental memorandum of agreement providing for the implementation of this Act be entered into no later than 1 year after enactment. This effort is to be led by the Secretary of the Interior, in conjunction with the Secretaries of Agriculture, Commerce, Education, Energy, Health & Human Services, Homeland Security, Housing & Urban Development, Labor, Transportation, and Veterans Affairs and the Attorney General. The Department of Justice is one of the new agencies added to the 477 program by this legislation, and DOJ released a framing paper on Jan. 24, 2018 that included this question:

“The subject matter of the [Indian Employment, Training and Related Services Consolidation] Act does not pertain to activities generally within the purview of the Department. Given the Act’s focus on employment and related services, what role do you see for the Department in the implementation of this legislation?”

DOJ will hold a consultation session on February 15, 2018 at 9 a.m. in conjunction with NCAI’s ECWS to receive input on this and other questions related to DOJ’s funding for tribal governments.

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

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

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

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

Administrative Update

NCAI’s Partnership for Tribal Governance (PTG) Releasing Additional Resources on Tribal Workforce Development. In addition to its “Empowering Tribal Workforce Development” federal policy brief, NCAI’s PTG is producing a set of five case studies documenting innovative tribal approaches to workforce development. The first four case studies – Coeur d’Alene Tribe, Confederated Salish and Kootenai Tribes, Gila River Indian Community, and

Ysleta del Sur Pueblo – have been released, and the remaining case study (Quinault Indian Nation) will be released in the coming months. PTG also will release a tribal leaders toolkit on workforce development in 2018. To learn more, please visit: <http://www.ncai.org/ptg/work-force-development>.

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

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

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

BUDGET & APPROPRIATIONS

Continuing Resolution Through February 8. On January 22, 2018, the third day of the federal government first shut down, the Senate voted to end debate on the continuing resolution (HR 195) to extend funding through February 8, 2018. The three-week CR also contained a six-year reauthorization of the Children's Health Insurance Program (CHIP). Democratic support for reopening the government was traded for a commitment by Republicans to hold a vote resolving the status of young undocumented immigrants by mid-February. Some Democrats voted for the CR after receiving a commitment to floor time for an immigration debate, including legislation that would protect young people enrolled in the Deferred Action for Childhood Arrivals (DACA) program. The President wants to end the program on March 5, 2018. Under the agreement between the Senate Majority and Minority Leaders, an immigration debate would occur if there is no bipartisan deal before the stopgap funding measure expires February 8. In addition to DACA, other issues for a longer term spending agreement remain to be worked out, such as the actual long-term spending levels, disaster relief and funding for opioid treatment and community health centers.

Spending Caps. As this NCAI Policy Update goes to print (February 6, 2018), Congress has yet to set top-level spending caps for fiscal year 2018, nor has it passed appropriations bills for agencies serving tribes. Instead, federal agencies continue to operate based on their FY 2017 funding level. Both parties agree the spending caps under the Budget Control Act of 2011 must be lifted. The point of conflict in the negotiation is how much the non-defense spending cap should be raised and whether there should be parity with the increase for the defense spending cap. Two-year agreements to lift the spending caps for both defense and non-defense spending were reached in 2013 and 2015.

The House of Representatives passed a \$1.23 trillion omnibus spending package on September 14, 2017 that would fund the government for the fiscal 2018 year. That omnibus bill violates the Budget Control Act statutory cap on defense spending by \$72 billion. If the House omnibus were to become law, it would trigger across-the-board cuts to defense programs, known as a sequester, of about 13 percent. The bill as it stands is unlikely to pass the Senate however. The FY 2018 Senate budget resolution assumes topline discretionary spending in fiscal 2018 that align with the spending caps of the 2011 Budget Control Act (BCA) (PL 112-25), \$516 billion for non-defense discretionary. The BCA caps differ from the \$511 billion for nondefense discretionary spending assumed in the House budget resolution (H Con Res 71).

House Interior Appropriations. Overall, the House Omnibus spending bill restores cuts to the Bureau of Indian Affairs and Indian Health Service that were proposed in the Administration's budget request, but provides funding level with FY 2017 amounts.

BLA/BIE: For the Bureau of Indian Affairs/Bureau of Indian Education, the House Omnibus bill would provide an increase of \$10.9 million above the FY2017 enacted level for a total of \$2.87 billion in FY 2018. The total amount the bill would provide is \$382.7 million more than requested in the President's budget.

The Omnibus bill restores most of the cuts proposed for tribal programs in the Interior spending bill that were put forward in the Administration's FY 2018 budget request. For instance, the House bill restores all of the cuts

that were proposed for the Tiwahe initiative. Cuts were restored for social services, housing improvement, and ICWA. Similarly, many natural resource programs that were proposed to be cut in the President's budget were restored, such as Rights Protection.

Implementation, Tribal Climate Resilience, Forestry, Water Resources, and Fish-Wildlife-Parks. In Trust Real Estate services, all proposed cuts are restored except for central oversight. Similarly, with Public Safety and Justice, all cuts were restored including those to law enforcement and tribal courts.

Overall, the House Omnibus bill increases Operation of Indian Programs by about 1 percent (\$21.5 million) above the FY 2017 enacted levels and 13.4 percent (\$278.4 million) above what the President proposed. The House bill also provides \$10.2 million more than enacted in FY 2017 for construction, about a 5 percent increase, and provides \$58.9 million more than the President's budget (41.1 percent more).

Indian Health Service. The House bill provides an increase of \$397.5 million over the FY 2017 enacted amount for total budget authority for the Indian Health Service, about a 2 percent increase. The bill provides \$397.6 million more than requested in the FY 2018 Administration's budget.

Senate Interior Appropriations. The Senate Appropriations Committee on November 20, 2017 released the FY 2018 chairmen's recommendation and explanatory statement for the Department of the Interior, Environment, and Related Agencies.

Indian Health Service. The Senate draft bill includes \$5.040 billion for the Indian Health Service (IHS), which is level with the fiscal year 2017 enacted level. The bill restores many of the proposed cuts in the President's request to tribal health programs, such as substance abuse and mental health services, and provides \$50 million to staff newly constructed facilities. The bill does not provide current service costs, causing cuts to IHS programs by inflation.

Bureau of Indian Affairs. The bill provides \$2.87 billion for the Bureau of Indian Affairs (BIA), \$7.5 million above the fiscal year 2017 enacted level. The bill rejects most of the cuts included in the President's budget and provides fixed costs and small increases to some programs. The overall BIA total is similar to the total in the House version of the bill. The Senate BIA total is \$2.867 billion compared to \$2.87 billion in the House bill. The Senate version restores nearly all of the cuts proposed by the President, such as for the Tiwahe initiative. Relative to the House mark, some of the increases to Operation of Indian programs include: Road Maintenance -- \$2 million more than House (\$33.6 million versus \$31.6 million) and Welfare Assistance (\$2 million more than House). It restores many natural resource programs, including the Conservation Landscape Cooperatives, but does not provide as large of an increase to the Bureau of Indian Education (\$888.8 million for BIE versus \$901.9 million in the House mark). The Senate version restores the public safety cuts as well.

FY 2019 President's Budget Request. The fiscal year 2019 President's budget was released on February 12, 2018 and incorporates many reorganization proposals for agencies. Agencies submitted preliminary plans in June, received feedback from OMB, and then submitted final drafts in September. The reorganization proposals and workforce reduction plans were required by an Administration executive order last year.

INTERNATIONAL ISSUES

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

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

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

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

indigenous governments and to consider the topic during its annual panel discussion in 2018. NCAI will continue to advocate strongly for tribal nations to have an appropriate, dignified place at the United Nations.

CLIMATE CHANGE

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

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

The Subsidiary Body for Scientific and Technical Advice (SBST) considered this issue at COP 23 in Bonn, Germany in November, 2017. In Bonn, the caucus agreed upon principles essential to the process - i) Full and effective participation of Indigenous Peoples; ii) Equal status and representation of Indigenous Peoples and Parties, including in leadership roles; iii) Self-selection of Indigenous Peoples' representatives in accordance with Indigenous Peoples' own procedures; iv) Adequate funding from the UNFCCC Secretariat and voluntary contributions to enable the aforementioned functions and v) clear linkages with the UNFCCC framework, allowing it to inform decision-making as well as actions and policies at national, regional, and international levels. Principles 1-4 were adopted in the Decision Text approved by the Parties. COP 23 decided that the SBSTA would consider at its next session in April/May, 2018 in Bonn "the further operationalisation of the platform, including the establishment of a facilitative working group, which would not be a negotiating body under the Convention, and the modalities for the development of a workplan for the full implementation of the functions with balanced representation of local communities and indigenous peoples and Parties, and ... conclude its considerations by making recommendations to COP 24 (December 2018)."

The platform provides the opportunity for Indigenous Peoples to contribute greatly to solving the climate change crisis, but it poses acute dangers to their traditional knowledge as well. It is crucial to have the input of tribal leaders and traditional knowledge holders into this process to ensure that the traditional knowledge is respected, protected and properly used. We will continue to work with the IIPFCC to achieve a platform that best serves indigenous peoples and preserves and shares traditional knowledge in a way that is respectful of Indigenous Peoples' right to self-determination and that their rights to their lands, territories, and natural resources are honored.

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

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

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

NARF and a tribal representative from the Tulalip Tribes will be attending the March session.

Over the past year, NCAI has hosted several Listening Sessions on the WIPO negotiations with the U.S. Patent & Trademark Office, the lead WIPO negotiating federal agency, as well as the U.S. Copyright Office, State Department and Interior Department. A similar Listening Session will be held in conjunction with NCAI's Executive Council Winter Session on February 15, 2018.

NORTH AMERICAN FREE AGREEMENT - INTERNATIONAL

President Trump campaigned on a promise to renegotiate NAFTA. As a result, Mexico, Canada, and the U.S. have been actively renegotiating NAFTA since August. Originally the goal was to conclude negotiations by December 2017 in order to avoid getting too close to the Mexican Presidential election and the U.S. mid-term elections. The timeline has slipped, however, and negotiations are expected to continue for at least several more months.

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

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

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

We understand that the Indigenous Chapter will also be on the agenda for discussion at a February negotiation session in Mexico and a March session in Washington, D.C. (exact dates TBD).

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

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



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