National Congress of American Indians

Policy Update

2015 Annual Convention & Marketplace

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OVERVIEW

The 114th Congress was sworn in on January 6, 2015, with a Republican majority in both the Senate and the House of Representatives for the first time in eight years. While the leadership in both the House and the Senate remained the same at the start of the Congress, the recently announced retirement of Speaker Boehner has left a void in leadership in the House. The vote for the next Speaker of the House is critical as the Congress faces a deadline to raise the debt limit by November 5 and the current continuing budget appropriations expires on December 11th. In the Senate, the Majority Leader is Senator McConnell with Senator Reid as Minority Leader. In May, Senator Reid announced that he will not run for reelection in 2016, vacating his leadership post at the end of the Congress.

And, while the 2016 Presidential election won't take place until next November, the election cycle has started early with at least 19 declared candidates for the Presidency. The upcoming election impacts the Administration as well as Congress because lawmakers become more cautious about passing key legislation the closer it gets to the election. So, the National Congress of American Indians (NCAI) is advocating for early action on legislation that impacts Indian Country to avoid being caught up in larger political discussions as the elections near.

Indian Country's priorities for the 114th Congress have been focused on passing key legislation that enhances tribal self-determination in areas such as energy, trust modernization, education, public safety, and tribal infrastructure including transportation, housing, telecommunications and irrigation. There has been significant progress on legislation in each of these areas which is detailed throughout this Policy Update.

Two significant issues that have received a great deal of attention this year are the Tribal Labor Sovereignty Act and *Carcieri*-fix legislation. The Tribal Labor Sovereignty Act provides a simple amendment to the National Labor Relations Act that would include tribes in the same exempt category as all other governments. This legislation has strong bipartisan and tribal support, but we face strong opposition and pressure from labor organizations. Tribes have continued to seek passage in both the House and the Senate to ensure this legislation – which simply seeks to provide parity for tribal governments – can be signed into law by the President.

In this Congress there are at least six pieces of legislation intended to address the issues created by the Supreme Court's 2009 decision in *Carcieri v. Salazar*. Since that decision, tribes have sought two key principals: 1) to reaffirm the Secretary's authority to take lands into trust for all tribes; and 2) reaffirm the trust status of lands already in trust. Legislation is needed to ensure that all tribes are treated equally and to bring certainty to the land in trust process.

This year, the President will host the seventh annual White House Tribal Nations Conference. With a little over a year remaining for the Obama Administration, it is vital to implement and institutionalize policies and programs that will strengthen tribal self-determination now and into the future.

NCAI is honored to be a strong voice in Washington, D.C. for tribal nations and ensure that tribes' voices are heard and considered at every stage of the advocacy process. Collectively, we can continue to have a positive impact on the lives of our tribal members and communities.

RESTORE TRIBAL HOMELANDS – ADDRESSING THE *CARCIERI* DECISION

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

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

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

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

Legislative Update

In July Senator Barrasso introduced S. 1879, the *Interior Improvement Act*. This bill reaffirms the Secretary's authority to take lands into trust and affirms lands already in trust. In addition, for off-reservation parcels the bill creates incentivizes for cooperative agreements between tribes and counties. The legislation makes the land in trust process more transparent and clarifies when the timeframe for notification to counties begins. This legislation incorporates the comments heard at prior hearings and a February roundtable about improving the land in trust process for tribes and local governments.

S. 1879 complements other legislation that has been introduced to address concerns raised by tribes since the 2009 Supreme Court decision. Senator Tester, Congressman Cole, and Congresswoman McCollum have all introduced legislation that would reaffirm Secretarial authority and reaffirm lands already in trust (S. 732, H.R. 249 & H.R. 3137). In addition, two pieces of legislation have been introduced that would reaffirm the status of lands taken into trust, provided the tribe was federally-recognized on the date the lands were taken into trust. In the House, Congressman Cole introduced H.R. 3137, and in the Senate companion legislation, S. 1931, was introduced by Senator Moran in August.

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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 as key elements of their culture. Through the Constitution, federal laws, and various agreements with tribal nations, the federal government has treaty and trust responsibilities to Indian tribes to protect, manage, and allow access to tribes' natural resources.

Tribes' cultures, traditions, lifestyles, communities, foods, and economies are all dependent upon many natural resources and they are disappearing faster than they can be restored. These impacts are intensified by effects of climate change on tribal lands. American Indians and Alaska Natives are disproportionately impacted by climate change due to the geographical areas in which they reside and their direct connection to their surrounding environments. Native peoples who rely heavily on the cultural and subsistence practices of their ancestors to survive are particularly hard hit. Specifically, the well-established plight of those in Alaska Native villages is probably the most profound manifestation of the climate crisis and requires focused and high priority attention from the federal government.

Climate change poses threats not only to the health and food supply of Native peoples, but also to their traditional ways of life. Climate change is reducing the natural ecosystems and biodiversity on which Native peoples have come to rely. The traditional time to gather plants is changing, and the migration patterns of animals are being altered. Wildland fires on federal lands are significantly increasing in size, intensity, and cost. In California and the Southwest, many tribes are experiencing prolonged drought which is having an effect on their water resources and rights while some villages in Alaska that are located near rivers or streams now find the water at their front door.

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.

Legislative Update

Wildfire Disaster Funding Act of 2015 (S. 235 & H.R. 167). Senator Wyden (D-OR) and Representative Simpson (R-ID) introduced companion bills to address many issues with funding wildfire suppression. Specifically they address the problematic way in which appropriated sums are often insufficient to cover the large and unpredictable costs of wildfires so as a result fire suppression

funds must often be "borrowed" from regular federal forest management programs. Repayment is always late and often partial, disrupting and diminishing those programs' effectiveness. Many times, this comes at the expense of tribal forestry programs and tribal forests. NCAI supports the legislative initiative proposed both in Congress and by the Administration to have federal wildland fire costs that exceed 70 percent of the ten-year average paid from federal disaster assistance accounts. Such authority would allow the large, unpredictable, and often unbudgeted costs of fighting wildland fires to be treated the same as other natural disasters, and would provide more budgetary stability to regular on-going federal forest management programs. Since these bills have been introduced, they have received broad bipartisan support. To date, S. 235 has 19 co-sponsors (15 Democrats and 4 Republicans) and H.R. 167 has 142 co-sponsors (64 Republicans and 78 Democrats).

Neither the House nor Senate Committees of jurisdiction have held direct legislative hearings on this legislation, but both the Senate Committee Energy and Natural Resources and House Committee on Natural Resources (which do not have direct jurisdiction because it is a funding measure) have held hearings discussing the issues of wildland fire funding and the need for reform. NCAI continues to support enactment of this legislation in the 114th Congress. As part of the Continuing Resolution passed on September 30, 2015 to extend government funding through December 11, 2015, Congress included $700 million in emergency funding for wildland fire suppression.

S. 438 - A bill to provide for the repair, replacement, and maintenance of certain Indian irrigation projects (IRRIGATE Act). This bipartisan legislation, introduced by Senator Barrasso (R-WY) on February 10, 2015, will provide the funding necessary to address deferred maintenance and back logged programs for 16 Indian irrigation programs in the west. The legislation creates a fund at the U.S. Department of Treasury called the "Reclamation Rural Water Construction and Settlement Implementation Fund," which would be funded in the amount of $150 million annually. The Senate Committee on Indian Affairs held a legislative hearing on March 4, 2015, and promptly marked-up the bill two weeks later, reporting it out of the Committee favorably with an amendment in the nature of a substitute. While an official Committee Report on the bill has not been filed yet, once it is, S. 438 will be ready for Senate floor consideration.

Magnuson-Stevens Fishery Conservation and Management Act Reauthorization. In the last session of Congress, there were multiple hearings and proposals on reauthorization of the Magnuson-Stevens Fisheries Conservation Act (MSA), however Congress was unable to pass legislation. With reauthorization on the table again for this session of Congress, it is time for some much needed changes and amendments to incorporate American Indians and Alaska Natives in the decision making processes, as well as a need for improved practices to protect the health of our fish resources.

Despite being charged with upholding fishing treaty rights of Northwest tribes and the right to fish of Alaska tribes, the management of the North Pacific Fishery Management Council fails to consider the needs of American Indian and Alaska Native people. The structure of the Council prevents tribes from participating as part of the decision making process and engages in a flawed single-species based management system which does not consider the food web dynamics, fishing gear impacts, and non-target species taken as bycatch which has resulted in the overfishing of one-third of the nation's fish stocks.

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

NCAI is requesting that as Congress considers reauthorization of the MSA, that the purpose of the Act be amended 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.

The House Committee on Natural Resources leadership acted swiftly and unilaterally in the middle of May 2015, by taking a smaller piece of legislation, which was focused on one component of the MSFCA reauthorization, and marked-up it into a large scale reauthorization of the entire Act. Now, Rep. Don Young's *H.R. 1335 - Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act* is a $1.5 billion, 5 year reauthorization, and includes 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.

During the mark-up, the Committee did not consider any amendments offered by its Democratic members who objected to not being included in the process. However, H.R. 1335 was voted favorably out of the Committee by a strict party line vote. In the Committee Report, the Democrats noted some of their concerns with the legislation, including that it caters to large fishing companies which will harm jobs, and would allow Fisheries Councils to circumvent the National Environmental Policy Act, the Endangered Species Act, the Antiquities Act, and the National Marine Sanctuaries Act by making them subservient to the Councils under the MSA.

On June 1, 2015, H.R. 1335 narrowly passed the House by a 225-152 vote, split primarily along party lines. The Bill has now been sent to the Senate where it will be considered by the Committee on Commerce, Science, and Transportation.

NCAI is continuing to advocate for the changes in MSA that reflect the treaty and trust rights of Natives who practice traditional and customary lifeways and protect the health of our fish and water resources.

Administrative Update

Climate Change. On November 1, 2013, President Obama announced the creation of the White House Task Force on Climate Preparedness and Resilience and appointed two Native representatives to the group: Karen Diver, Chairwoman of the Fond du Lac Band of Lake Superior Chippewa, and Reggie Joule, Mayor of Alaska's Northwest Arctic Borough. The Task Force released its Report and Recommendations to the President in November 2014 with five overarching principles: (1) require consideration of climate-related risks and vulnerabilities as part of all federal policies, practices, investments, and regulatory and other programs; (2) maximize opportunities to take actions that have dual-benefits of increasing community resilience and reducing greenhouse gas emissions; (3) strengthen coordination and partnerships among federal agencies, and across federal, state, local, and tribal jurisdictions and economic sectors; (4) provide actionable data and information on climate change impacts and related tools and assistance to support decision-making; and (5) consult and cooperate with tribes and indigenous communities on all aspects of Federal climate preparedness and resilience efforts, and encourage States and local communities to do the same.

The final Task Force report was supplemented by tribal-specific recommendations offered by Chairwoman Diver and Mayor Joule from the input they received from tribes during their tenure on the Task Force. The goals highlighted the need for tribes to be included as active participants, but explicitly recommended: (1) tribes have more access to federal agencies' data and information related to climate change; (2) removal of barriers that prohibit tribal access to federal programs; (3) direct access to federal funding; and (4) the establishment of a permanent federal government Climate Adaption Task Force.

NCAI is continuing to work with the Administration and federal agencies on the taskforce recommendations to ensure they are implemented and that tribal governments are involved as full partners in all programs, planning, and engagement on climate adaption efforts. NCAI also continues to support climate change initiatives through resolutions dealing specifically with the effects that climate change has on tribes.

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

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

NCAI continues to reach out and engage its members in discussions on best practices for managing water resources. For instance, NCAI has hosted several webinars and outreach meetings on the importance of quantifying water and the importance of developing sound water management tools within the regulatory jurisdiction of the Indian tribe. NCAI held a webinar on October 21, 2014 on federal perspectives for approving tribal water codes. That webinar can be found on NCAI's website at www.ncai.org.

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TRUST MODERNIZATION

Many of the federal statutes and regulations governing the management of trust systems were adopted several decades ago—some over 100 years ago—and have not kept up with the modern trust relationship between tribes and the federal government. 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 eliminate the burdensome federal red tape stifling economic development in Indian Country, provide tribes with more flexibility and greater control over decision making, and prevent the reoccurrence of the trust mismanagement problems of the past. There is a need for greater efficiency in the trust resource management system, better economic returns on trust resources, and, above all, an increased tribal voice in how the trust is administered. For example, nearly every trust transaction requires an appraisal from the Office of the Special Trustee, and this is the most significant bottleneck in the trust system. Congress must eliminate unnecessary appraisals and permit tribes to rely on independent certified appraisals.

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

Legislative Update

S. 383 & H.R. 812 – To provide for Indian trust asset management reform, and for other purposes.

Senator Crapo (R-ID) and Representative Simpson (R-ID) both introduced their mirror bi-partisan bills that will take an essential 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. Through the trust asset demonstration project created in the legislation, tribes will have 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. This provision of the bill also authorizes tribes to engage in surface leasing or forest management activities, under certain conditions, without the approval of the Bureau of Indian Affairs—mirroring the framework of the highly successful HEARTH Act of 2012, which puts tribes in the position to make decisions about their lands and resources.

Further, S.383 and H.R. 812 address one of the most significant bottlenecks in the trust system: the Office of the Special Trustee (OST). OST, which was intended to be a temporary office oversight office when it was created by Congress over twenty years ago, is required to review appraisals for nearly every trust transaction, adding an additional layer of bureaucracy outside the purview of the BIA. This legislation requires the Secretary of the Department of the Interior to submit a report that will include a transition plan and time table for the termination of OST within two years of the report, or why a transition cannot be completed in that timeframe and an alternate date. Additionally, the Secretary, through tribal consultation, will consolidate the appraisals and valuations processes under a single administrative entity under DOI as well as establish minimum qualifications to prepare appraisals and valuations of Indian trust property.

On April 30, 2015, the House Committee on Natural Resources Subcommittee on Indian, Insular, and Alaska Native Affairs held a hearing on H.R. 812 and received in-person testimony from two tribal witnesses: Ernest Stensgar, Vice Chairman of Affiliated Tribes of Northwest Indians from the Coeur d'Alene Tribe; and William Nicholson II, Secretary of the Colville Business Council for the Confederated Tribes of the Colville Reservation. Both tribal witnesses spoke in favor of H.R. 812, and cited how it would help economic development and update antiquated trust asset management laws. Subcommittee Chairman Don Young (R-AK), spoke in support of the legislation and affirmed the Committee's support for taking quick action on the bill.

In the Senate, the Senate Committee on Indian Affairs marked-up S. 383, passing it favorably out of Committee with an amendment in the nature of a substitute.

NCAI submitted a letters to the Senate Committee and House Subcommittee voicing support for passage of S. 383 & H.R. 812 and continues to work with Congress and our partner organizations on developing pathways to move this legislation forward in the 114th Congress.

Administrative Update

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

The payment of the $1.5 billion--minus attorneys' fees and expenses incurred in carrying out the settlement--to individuals is being carried out in two stages: first to the Historic Accounting Class (HAC) and then to the Trust Administration Class (TAC). Beginning in December of 2012, checks for the HAC in the amount of $1,000 were distributed by the Garden City Group, the Claims Administrator for the *Cobell* Settlement, to claimants across the country. Eligible claimants were persons who were determined, according to the records of the Department of Interior, to either be alive or have an estate in probate on September 30, 2009, and to have had an open and active Individual Indian Money (IIM) account during any period between October 25, 1994, and September 30, 2009.

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

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

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

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

The plan's initial focus was on 40 highly fractionated reservations and active outreach to tribes from those areas to enter into the Buy-Back Program's cooperative agreement application process. This open solicitation period began on November 15, 2013 and ended on March 14, 2014. While a small number of tribes have entered into cooperative agreements to carry out certain functions of the program, several tribes have expressed concerns with the limited roles that tribes are being offered under the program, the slow rate of program implementation, and the fact that the $1.9 billion fund is not earning interest--a potential loss of millions of dollars that would otherwise be available to purchase fractionated interests. So far, the Buy-Back Program has purchased land for these tribes: Oglala Sioux Tribe, Rosebud Sioux Tribe, Makah Tribe, Fort Belknap Indian Community, Gila River Indian Community, Northern Cheyenne Tribe, Confederated Salish and Kootenai Tribes of the Flathead Nation, Confederated Tribes of the Umatilla Indian Reservation, Quapaw Tribe, Crow Nation, Sisseton Wahpeton Oyate, Squaxin Island Tribe, Coeur d'Alene Tribe, Cheyenne River Sioux Tribe, Standing Rock Sioux Tribe, and Prairie Band Potawatomi Nation.

It is anticipated that oversight hearings will be held in this Congress to ensure the *Cobell* settlement and land buy-back program are being implemented in accordance with the approved settlement and in a way that can be accomplished within the timeframes set out in the settlement.

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

Tribal leasing codes must be consistent with the BIA's recently updated leasing regulations, 25 C.F.R. 162. The BIA also published a National Policy Memorandum containing a list of criteria that should be considered with further information on BIA's HEARTH Act website. Key requirements include leasing code development and an environmental review process. As of June 4, 2015, the BIA has approved the leasing codes of 20 tribes with more codes under review.

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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 development is integral to tribal efforts to generate jobs and to improve tribal members' standard of living. 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, and solar energy 2 times, the total amount of electricity the United States currently generates per year. However, developing energy resources on tribal lands, not unlike other trust resources, continues to be a challenge as tribes face barriers to energy development which do not exist outside of tribal lands.

Cumbersome bureaucratic processes, disincentives to tribal financing, Applications for Permit to Drill fees, inequitable exclusion from federal programs, and the requirement that tribes and tribal businesses obtain approval from the Department of the Interior for almost every step of energy development on tribal lands— including the approval of business agreements, leases, rights of way, and appraisals—continue to delay energy development in Indian Country. Since the last major update to Indian energy policy was 10 years ago, NCAI urges Congress and the Administration to work with tribes to remove the unnecessary barriers that persist in energy development, bolster tribal self-determination, and help create careers and capital in Indian Country.

Legislative Update

S. 209 – Indian Tribal Energy Development and Self-Determination Act of 2015. On January 21, 2015, Senator Barrasso (R-WY) reintroduced his longstanding legislation to provide tribes with greater control and flexibility to develop their traditional and renewable energy resources and streamline many of the burdensome processes tribes persistently face. The current bill is identical to the version passed out of the Senate Committee on Indian Affairs in the 113th Congress, with one notable exception explained below. The bill includes additional consultation requirements for the

Department of the Interior; improves the Tribal Energy Resource Agreements process in the Energy Policy Act of 2005 by recognizing tribal self-determination over energy resources; creates a process for approving Tribal Energy Development Organizations; expands direct access to the Department of Energy's Weatherization Program; supports American Indian and Alaska Native biomass demonstration projects; and amends the appraisal and right-of-way approval processes.

This Congress, the Committee marked-up and favorably passed this legislation out of Committee on February 4, 2015. One notable provision not included in S. 209 that was included in prior versions, is the Indian Energy Efficiency Program. This was offered as an amendment during in 113th Congress, but was not offered during the mark-up in the 114th.

H.R. 538 – The Native American Energy Act of 2015. In the House of Representatives, Congressman Young (R-AK) introduced H.R. 538, his Native American energy legislation, which contains a few changes from the previous iterations, but maintains the major focus of removing regulatory hurdles to tribal energy development. This legislation will: reform and streamline the federal appraisal process and including the option for tribes to waive the appraisal requirement; create uniform systems of reference and tracking numbers for all Department of the Interior oil and gas wells on Indian lands; restructure the environmental review process; support tribal biomass demonstration projects; and consider all tribal resource management plans as sustainable management practices. On September 10, 2015, the House Committee on Natural Resources favorably passed this legislation out of Committee and it is ready for consideration by the House.

On October 8, 2015, H.R. 538 passed the House of Representatives on a vote of 254-173, with two amendments: (1) not limiting comments under the National Environmental Policy Act to for lands pursuant to the Indian Gaming Regulatory Act; and (2) an amendment creating a Tribal Forest Management Demonstration Project under the Tribal Forest Protection Act at the U.S. Forest Service.

As the Congressional leadership in the 114th Congress begins to develop its legislative focuses and records, it is clear that energy policy will continue to be at the forefront of the agenda. NCAI is continuing to work with the Senate Committee on Indian Affairs, Senate Committee on Energy and Natural Resources, and the House Committee on Natural Resources to pass strong Indian energy legislation that will support tribal self-determination and economic development.

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AGRICULTURE & NUTRITION

Agriculture is a major economic, employment, and nutrition sector in Indian Country. In 2012, there were at least 56,092 American Indian-operated farms and ranches on more than 57 million acres of land. These farms and ranches sold $3.3 billion of agricultural products, including more than $1.4 billion of crops and $1.8 billion of livestock and poultry. Additionally, the 2007 Census of Agriculture Fact Sheet notes that, "American Indian farm operators are more likely than their counterparts nationwide to report farming as their primary occupation . . . to derive a larger portion of their overall income from farming . . . [and] to own all of the land that they operate." As a result of the huge agricultural footprint across Indian Country and the fact that more than 35 percent of

American Indian and Alaska Native peoples live in rural communities, tribal governments and farmers look to active partnerships throughout the U.S. Department of Agriculture to sustain and advance common interests across the broad array of services that this federal agency provides to tribal governments.

With 24 percent of American Indian and Alaska Native households receiving Supplemental Nutrition Assistance Program (SNAP) benefits, 276 tribes administering the Food Distribution Program on Indian Reservations (FDPIR), 68 percent of American Indian and Alaska Native children qualifying for free and reduced price lunches, and American Indians and Alaska Natives making up more than 12 percent of the participants in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) the importance of food assistance in Indian Country cannot be overstated. Any cuts to SNAP, FDPIR, WIC, or school lunch programs directly diminish the food, and in some cases the only meals, available to Native children, pregnant women, elders, and veterans. No one, especially our tribal citizens most in need, should ever have to go without food. Additionally, food assistance programs like FDPIR must be provided the means and support to purchase traditional, locally-grown food in their food packages. Traditional and locally-grow foods from Native American farmers, ranchers, and producers encourages healthy living, cultural sustainability, and a return to traditional practices all while supporting economic development. Below is a look at the agriculture and nutrition policies that will be a focal point in the final two years of the Obama Administration and the 114th Congress.

Legislative Update

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 2014 Farm Bill debate, nutrition standards, costs, and program eligibility will continue to be at the forefront of the Child Nutrition Reauthorization. With the law expiring on September 30, 2015, the Senate Committee on Agriculture and House Committee on Education and the Workforce, the two Committees with jurisdiction, have already begun to hold oversight hearings on Child Nutrition, and will shortly determine potential 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

2014 Farm Bill Implementation. On February 7, 2014, President Obama signed *H.R. 2642 - the Federal Agriculture Reform and Risk Management Act of 2013* into law ending over two years of work on the Farm Bill reauthorization. The final piece of legislation represented a bipartisan agreement on a majority of agriculture and nutrition policies and made a number of changes to existing programs while creating many new opportunities for Indian Country. The most noteworthy change is an $8.6 billion cut to the Supplemental Nutrition Assistance Program (SNAP). This represents a compromise between the $4 billion in cuts the Senate bill proposed and the nearly $40 billion from the House bill.

The savings comes from increasing the threshold amount of Low-Income Housing Energy Assistance Program (LIHEAP) assistance necessary to qualify for increased SNAP benefits- the so called "Heat and Eat" provision-from $1 to $20.

The new law includes several Indian Country specific provisions, including: tribal eligibility in Soil and Water Conservation Act programs; a feasibility study on tribal administration of federal food assistance programs; a Food Distribution Program on Indian Reservations (FDPIR) Traditional Foods Demonstration Project—which creates a new demonstration project with technical assistance and tribal consultation to allow the inclusion of traditional and locally grown foods from Native farmers, ranchers, and producers in FDPIR; the service of donated traditional foods in federal food service programs such as residential child care facilities, child nutrition programs, hospitals, clinics, long-term care facilities, and senior meal programs.

The focus of the Farm Bill is now on implementation of the new programs at USDA. NCAI is working with the Office of Tribal Relations on many of the new programs to ensure that Indian Country is well represented during the rulemaking phase and that tribal consultation, where applicable, is performed so the regulations follow Congress's intent and benefit tribes and Native farmers, ranchers, and producers.

NCAI submitted comments in December 2014 regarding the feasibility study for tribes to administer their own federal food assistance programs to ensure that study is conducted in a fair manner and follows the intent of the law: to determine whether legislative action or administrative action is necessary to allow tribes to take over federal food programs, particularly SNAP. So far, the outreach and questions proposed by the USDA's Food and Nutrition Service are troubling at best. They seek to review whether tribes have the current capacity to administer these programs. Instead, NCAI is advocating for the study to look at the federal framework necessary for tribes to take over the program administration with the proper funding and support from the federal government since tribes are in the best position to determine how these programs can best serve their citizens.

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

The final action is the disposition of the remaining $380 million from the original $760 million settlement after all payments to successful claimants. To assure that the remaining funds would continue to benefit American Indian agriculture into the future, Class Counsel—after their request for another round of payments to successful claimants was not accepted—submitted proposals to the U.S. Departments of Agriculture and the Department of Justice to establish an independent foundation with the $380 million that would serve Native American farmers and ranchers. In September 2013, a group of over 300 *Keepseagle* claimants from the Great Plains region filed a motion to intervene in the negations 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 *cypres* 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 currently with standing have the ability to appeal these rulings, however there is the possibility that all interested class representatives could come to an agreement and file it with the Court, which would have to approve any settlement agreement modification.

For additional information please contact Colby Duren, Staff Attorney & Legislative Counsel, at 202.466.7767 or cduren@ncai.org

TRIBAL TAX INITIATIVES

The last national tax reform occurred just under thirty years ago with the passage of the Tax Reform Act of 1986. Under the current Tax Code, tribal governments are left without many of the benefits, incentives, and protections provided by the Code to state and local governments. This inequity significantly handicaps tribal sovereign authority to provide government revenue for tribal programs independent of federal appropriations and encourage economic growth on tribal lands.

Last year, the 113th Congress enacted the Tribal General Welfare Exclusion Act of 2014 in a demonstration of collaboration between Native nations and Congress. The Act responded to the taxation of certain governmental services provided to, or on behalf of, the tribe or its members. With the passage of the Act, Indian general welfare services provided by tribal government programs are no longer subject to taxation as gross income.

The passage of the Tribal General Welfare Exclusion Act is just the beginning of the larger effort to overhaul tribal taxation infrastructure and bolster tribal economies. Reliable funding sources have been few and far between for every tribal government service for decades. Congress must continue to actively engage with Native nations to achieve tribal tax reform in a comprehensive manner.

Legislative Update

Make Tax "Extender" Incentives Permanent -- Support legislation to incentivize business development on tribal lands. NCAI will continue to urge Congress to consider the urgent and continuing need for economic development on Indian reservations in the context of the Indian Employment Tax Credit (IRC Section 45A), the Accelerated Depreciation Provision for on-reservation business infrastructure (IRC Section 168(j)), and the Indian Coal Production Tax Credit (IRS Section 45) which expired on December 31, 2014, and should be reenacted as soon as possible and on a permanent basis.

The Employment Credit provides private businesses with an incentive for employing Indian tribal members in reservation-based business operations. The Accelerated Depreciation Provision provides businesses with the opportunity to take accelerated depreciation deductions on business property located on Indian reservations. NCAI will continue to recommend that Congress make both tax incentives permanent so that employers can rely on the incentives when planning to locate a facility in Indian Country. The lack of certainty in the future of these tax provisions undermines their ability to attract larger, long-term investments.

Achieve tax parity for Tribal Governments. Members of Congress and Indian tribes have identified a significant number of provisions where tribes are unable to utilize the Tax Code in the same manner as state and local governments. NCAI will continue to advocate on behalf of tribes to achieve parity in these areas:

- *Tribal government tax-exempt bonds.* Currently, tribes may only use tax-exempt bonds for "essential government functions." The IRS has interpreted this in a way to exclude economic development as a governmental function, while state and local governments frequently use tax exempt financing for revitalization projects. This unnecessarily prevents tribes from securing the funding needed to revitalize their communities.

- *Tribal government pension plans*. Tribal governments currently must provide both government and private ERISA pension plans to their employees. This largely depends on whether the employee works for the tribal government or for a tribal enterprise. This is both costly and cumbersome. Tribal governments must be able to operate a single, comprehensive, government pension program for all of their employees.
- *Tribal foundations and charities*. Tribally-created foundations and charities do not enjoy the same tax-exempt status that state-created foundations and charities enjoy. This creates an uncertain atmosphere for potential benefactors seeking to maintain their tax-exempt status. In order for tribal foundations and charities to thrive, it is necessary for benefactors to feel unencumbered to make contributions without potential tax penalties.
- *Tribal child support enforcement agencies*. Tribal child support enforcement agencies need authority to access parent locator services, which are currently only available to state and local governments but not tribes. Also, the tax code should be amended to allow tribal child support enforcement agencies to enforce orders for support through the authority to withhold past due child support payment from the federal income tax returns of parents with past due obligations.
- *Tribal access to Clean Renewable Energy Bonds (CREBs)*. Tribes and entities wholly owned or controlled by tribes, to utilize CREBs for energy development projects. Legislation should create a set aside for tribal projects under the CREBs provision.
- *Indian Adoption Tax Credit*. Adoption is widespread throughout Indian Country. Tribal courts need the ability to make a determination of special needs in order to grant tax credits to adoptive parents on par with state courts.
- *Tax credits granted to doctors employed by Indian Health Service facilities*. Tax credits are available to doctors employed in other areas of the public sector, but are unavailable to those employed by the Indian Health Service. This would create an incentive for practitioners to bring their skills to Indian Country, where they are greatly needed.
- *Enact a Technical Amendment to Remove the "Kiddie Tax" Penalty* from Transfers of Tribal Funds to Children and College Students.

Include American Indian/Alaska Native tribal governments in any forthcoming tax reform bill. Any comprehensive tax reform will likely create a Tax Code which will govern the United States, its territories, and Indian tribal governments for decades to come. NCAI will continue to work with Congress to ensure further consultation with tribes to develop an initiative that will promote tribal government tax authority and promote the ability of tribal governments to sustain programs and services in a more self-sufficient manner.

Include Tribal Governments in the Marketplace Fairness Act. NCAI will continue to advocate for the inclusion of tribal governments in any legislation that regulates the collection of sales taxes or implements the State Streamlined Sales and Use Tax Agreement. The Senate has included tribes within this year's version of S. 698, and NCAI will continue to advocate for inclusion in the House version, H.R. 2775.

Establish Tribal Empowerment Zones. To allow all Indian nations to become more economically empowered, NCAI proposes significant changes in the economic foundation of Indian country. Tribes must be allowed to capture wealth that is generated on tribal lands without confiscation by the federal and state governments. While the federal government should never be relieved of its trust

responsibility to support tribal governments, more should be done to allow tribes to develop their own economies.

Adopt Amendments to Avoid Dual Taxation on Reservation. The Supreme Court in Moe v. Salish & Kootenai (1976), and Washington v. Colville Tribes (1980) has issued confusing and one-sided rules regarding state taxation in Indian country where state governments can collect excise taxes on sales of imported products that occur on tribal lands. At the same time, tribal governments retain their right to tax all sales within the reservation. This results in the inequity of dual taxation where the collection of a state tax prevents the tribal government from implementing its own tax, because the double taxation would drive business away.

Through the Streamlined Sales and Use Tax Agreement (SSUTA) the state governments are coming to a common agreement on tax sourcing rules for sales taxes on internet and traditional store sales. Without action, there is great risk that the antiquated tax rules in Indian country will be further exacerbated by a modernized state tax system. Amendments must be made to the Indian Trader Regulations (25 CFR 140) to ensure the tax sourcing provisions of the SSUTA apply to any reservation that opts into the system.

For additional information please contact John Dossett, General Counsel, or Christina Snider, Staff Attorney, at 202.466.7767 or john_dossett@ncai.org or csnider@ncai.org

NATIVE AMERICAN WORKFORCE DEVELOPMENT

For generations, Native peoples have faced harsh economic conditions that are more pronounced than those generated by the Great Recession. Today, while unemployment rates across the country hover around 5.5 percent, tribal governments and Indian communities continue to wrestle with widespread unemployment that has well exceeded 10 percent and beyond for decades. The lack of employment opportunities in Native communities has had a far-reaching impact, affecting all aspects of life. While tribal governments have successfully supported job creation both in government and the private sector, a remaining challenge is ensuring that job growth keeps pace with the growing Native youth population. Considering that Indian Country has one of the youngest populations in the nation, with about 32 percent of Native people under the age of 18 compared to 24 percent of the total US population, workforce development opportunities and building capacity for the growing workforce are of critical importance.

Reauthorization of the Workforce Investment Act. In July 2014, the Congress reauthorized the *Workforce Investment Act* (WIA) of 1998 through the Workforce Innovation and Opportunity Act (WIOA). The bill was signed into law by the President ending an 11-year absence of reauthorization. WIOA includes the Native American Program which supports unemployed, under-employed, and under-skilled American Indians, Alaska Natives, and Native Hawaiians, through a network of over 175 grantees. The reauthorization is the result of bicameral and bipartisan negotiations intended to modernize and improve existing federal workforce development programs.

The Native American Program under WIOA contained the following provisions:

- Primary Performance Indicators were placed on all programs, including Native American Programs;
- Native American program funding will increase incrementally each year through Fiscal Year 2020 up to $54,137,000;

- Alaska Native descendants are defined as eligible for services provided;
- Every 4 years the Secretary of Labor will make grants or enter in contracts or cooperative agreements with tribal grantees, instead of every 2 years; and
- Entrepreneurial skills are included in the purpose of the program.

It is imperative that tribes' voices are heard throughout the implementation of the WIOA and equally important that all agencies implement programs that provide opportunities for Native youth.

Administrative Update

Implementation of the Workforce Innovation and Opportunity Act. Over the past year, the Administration, through the Department of Labor's Division of Indian & Native American Programs (DINAP), has organized various activities to carry out implementation of WIOA including webinars, listening sessions, and town halls.

As a part of the WIOA, the Departments of Labor and Education are required to publish a set of regulations for implementation. In April of this year, the Employment and Training Administration within DOL concurrently published five Notices of Proposed Rulemaking (NPRMs) to implement WIOA. The five notices cover:

- Joint Rule on unified and combined state plans, performance accountability, and the one-stop system (DOL/ED);
- DOL-administered activities including 166 Indian and Native American Programs (DOL only);
- Title II Adult Education and Family Literacy Activities (ED only);
- Miscellaneous program changes (ED only); and
- State Vocational Rehabilitation Services program, state-supported Employment Service programs, and limitations on the use of subminimum wage (ED only).

The Departments of Labor and Education anticipate issuing Final Rules in early 2016.

For additional information please contact Mike LaValley, Legislative Fellow, at 202.466.7767 or mlavalley@ncai.org.

TRIBAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

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

As of January 1, 2015, there are 70 approved tribal TANF programs that serve 284 federally recognized tribes and Alaska Native Villages. TANF gives federally-recognized Indian tribes flexibility in the design of welfare programs that promote work, responsibility, and strengthening of families. Similar to states, tribes receive block grants to design and operate programs that accomplish one of the four purposes of the TANF program.

Under section 412 of the Social Security Act, federally-recognized Indian 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.

In partnership with tribal leaders and program representatives, NCAI established a Tribal TANF Task Force to develop national tribal priorities for TANF reauthorization. NCAI and the Task Force continue to advocate for further reauthorization of TANF and to advance national tribal TANF priorities. A Tribal TANF Task Force will convene on Sunday, October 18 during NCAI's Annual Convention in San Diego, California.

Legislative Update

Reauthorization of TANF. TANF was originally scheduled for reauthorization in 2010, but Congress has instead issued several extensions to maintain funding. The most recent extension of funding was in the Continuing Appropriations Resolution for 2016, which extended funding for the TANF block grant through December 11, 2015.

On July 15, 2015 the House Ways and Means Subcommittee on Human Resources held an Oversight Hearing titled "Welfare Reform Proposals and TANF Reauthorization," to encourage dialogue regarding the Discussion Draft Bill - *the Improving Opportunity in America Welfare Reauthorization Act of 2015*. To date, no formal reauthorization legislation has been introduced in the House. NCAI submitted testimony for the record urging the Congress to reauthorize tribally administered TANF grand funds, maintain flexibility in program design and evaluation and leasing rights provisions (included in H.R. 3026). The NCAI testimony is available to view here: http://www.ncai.org/resources/testimony/u-s-house-of-representatives-july-15th-hearing-on-welfare-reform-proposals-and-tanf-reauthorization.

Tribal TANF Fairness Act of 2015. On July 10, 2015, Representative Paul Cook introduced H.R. 3026, *the Tribal TANF Fairness Act of 2015*, which allows a tribal government – including a tribal government participating in a tribal consortium – to lease land held in trust or in fee at a fair market rate, for the administration of a tribal family assistance grant by the tribal government or the tribal consortium. NCAI submitted a letter on October 2, 2015 in support of H.R. 3026 urging inclusion of this language in any reauthorization of the TANF program.

NCAI will continue to urge the Congress to reauthorize TANF with tribal priorities included.

Administrative Update

The Administration, through the Department of Health and Human Services, sent representatives from the Administration on Children and Families (ACF) to provide an update on tribal programs at the Tribal TANF Task Force meeting during NCAI's Executive Council Winter Session in February.

ACF released a funding opportunity in March 2015 (closed in June) for Coordination of Tribal TANF and Child Welfare Services to Tribal Families at Risk of Child Abuse or Neglect.

The grant is aimed at reducing the number of out-of-home placements and the incidence of child abuse and neglect among Native American children in TANF or TANF-eligible families through effective coordination of Tribal TANF and child welfare services.

For additional information please contact Mike LaValley, Legislative Fellow, at 202.466.7767 or mlavalley@ncai.org.

TRIBAL LABOR SOVEREIGNTY ACT

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

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

Congress's wisdom in exempting governments from the Act is plain. Applying a private sector model of forced collective bargaining over all conditions of employment, under the threat of protected strikes, is a formula for bringing a government to its knees. 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 2015, S. 248 & H.R. 511. The Tribal Labor Sovereignty Act is a simple amendment to the NLRA to include tribal governments in the same exempt category as all other governments. It is sponsored by Senator Moran (R-KS) in the Senate and Congressman Rokita (R-IN) in the House, and a long list of co-sponsors. The Senate Committee on Indian Affairs held a legislative hearing on S. 248 on April 29, 2015 and reported the bill favorably. In the House, the Subcommittee on Health, Employment, Labor and Pensions held a hearing on June 16, 2015 and reported the bill favorably. The bill is now ready for votes in both the House and Senate.

NCAI urges tribes to ask Members of Congress to co-sponsor and support the Tribal Labor Sovereignty Act of 2015.

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

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 two 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 October 1, 2015, 8 tribes have implemented VAWA. They are: the Tulalip Tribes, the Pascua Yaqui Tribe, the Confederated Tribes of the Umatilla Reservation, the Assiniboine & Sioux Tribes of the Ft. Peck Reservation, the Sisseton Wahpeton Oyate, the Seminole Nation of OK, and the Eastern Band of Cherokee Indians. The implementing tribes report that the majority of the cases so far involve children as witnesses or victims and that the offenders frequently have a history of frequent prior police contacts. Materials from the implementing tribes are available on NCAI's website and offer useful examples of how individual tribes have modified tribal code language and constructed jury pools for VAWA cases.

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

Legislative Update

The ITWG has identified a number of areas where additional Congressional action would improve implementation of the VAWA jurisdiction provision. Most notably, tribal prosecutors for the pilot tribes have expressed frustration that their jurisdiction is limited to domestic or dating violence crimes, and, as a result, they are not able to charge defendants for crimes related to abuse or endangerment of a child or for some property crimes that might have been a part of the incident. Tribes considering implementation also continue to raise concerns about the costs associated with implementation, and Congress has not appropriated any money for these purposes.

Administrative Update

The tribes participating in the ITWG have also identified a number of issues related to VAWA implementation that require Administrative action. In particular, tribes seek full and effective access to the National Crime Information Center (NCIC) databases and have also asked for the BIA to clarify its policies related to the arrest and detention of non-Indians.

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

VICTIMS OF CRIME ACT FUNDING

American Indian and Alaska Natives experience the highest crime victimization rates in the country: American Indians and Alaska Natives are 2.5 times more likely to experience violent crime than other Americans; approximately 34 percent of American Indian and Alaska Native women are raped and 61 percent are assaulted in their lifetime; and due to exposure to violence, Native children experience rates of post-traumatic stress disorder at the same levels as Iraq and Afghanistan war veterans.

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

The CVF was established by the Victims of Crime Act in 1984. Congress created the CVF based on the idea that money which the government collects from criminals should be used to help those victimized by crime. Fines paid by convicted federal criminal offenders finance the Fund, not taxpayer dollars. Despite significant increases in collections, Congress has imposed a cap on how much is available from the CVF for crime victim services and compensation for the past 15 years. In recent years, distributions from the CVF have been about $700 million. Collections, however, reached as high as $2.8 billion in 2013, leaving a balance in the fund of about $13 billion. There has been significant pressure on Congress to make this money available for crime victims, and Congress significantly increased the distributions for FY 2015 to $2.3 billion. There is language in the FY 2016 Budget Resolution that will likely result in even higher disbursements this year. The pending House and Senate CJS Appropriations bill set disbursements at $2.7 and $2.6 billion respectively.

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

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

Legislative Update

Without additional action by Congress, tribal governments will continue to have no direct access to critical CVF funds. Congress could remedy the exclusion of tribal governments by passing authorizing language that amends the Victims of Crime Act. In July of this year, a bi-partisan group of Senators introduced S. 1704, the SURVIVE Act, which would direct 5% of the total CVF disbursement to tribal governments. The Senate Committee on Indian Affairs unanimously approved the bill at a mark-up in July.

Alternatively, even if authorizing legislation is not enacted, appropriators will be considering over the next several months how much should be disbursed from the CVF in the upcoming year, and whether to direct a portion of that funding to tribal governments through the appropriations process. The pending Senate CJS bill includes $52 million to tribal governments out of the $2.6 billion disbursed from the CVF. The House bill does not include a tribal allocation. NCAI recently sent a letter to the Appropriations Committee Chairs urging them to include at least the $52 million included in the Senate bill as they negotiate a compromise bill..

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

REAUTHORIZATION OF THE TRIBAL LAW AND ORDER ACT & CRIMINAL JUSTICE

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

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

The TLOA was also a vehicle for a series of important technical improvements to the federal criminal justice laws in Indian Country. Tribal justice systems now have nearly five years of experience with implementing the law, and that implementation has led to proposals to continue to make technical amendments to improve the law. Specifically, we ask that Congress reauthorize and make permanent the *Bureau of Prisons Tribal Prisoner Pilot program*, which expired on November 24, 2014. The Pilot Program created the option to send highly violent offenders to federal corrections facilities.

Many tribes do not have the resources or personnel to adequately and safely house these types of offenders. The federal system also offers greater access to treatment, rehabilitation, and reentry programs.

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

Legislative Update

NCAI has requested the Senate Committee on Indian Affairs to hold hearings on reauthorization of the TLOA. On July 15, 2015 the Committee held a hearing on "Juvenile Justice in Indian Country, Challenges and Promising Practices." This was an important hearing with excellent testimony on the need to develop programmatic alternatives to incarceration for youth. In August, the Committee then traveled to Alaska to hear from tribal court practitioners about successful healing strategies that can keep youth out of the justice system during a hearing entitled "Strengthening Alaska Native Families: Examining Recidivism, Reentry, and Tribal Courts in Alaska."

On October 8, 2015, the House Education and the Workforce Committee heard witnesses speak about "Reviewing the Juvenile Justice System and How it Serves At-Risk Youth." During the hearing, witnesses presented positive data and outcomes from youth diversion programs already in effect and urged Congress to pass the Juvenile Justice and Delinquency Prevention Act of 2015, which has built-in mechanisms encouraging culturally-informed alternates to incarceration for non-violent youth offenders. We urge tribes to continue to engage with Congress on improvements to the criminal justice system in Indian country.

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EMERGENCY RESPONSE/HOMELAND SECURITY

Since 2003, Congress has provided more than $40 billion in grant funding to states, but less than $60 million to federally recognized tribes for homeland security efforts. Despite the recognition of tribal government sovereignty, underfunding of Department of Homeland Security (DHS) federal programs obstructs tribal government homeland security and emergency response capacity building. Congressional budget committees have authority to increase DHS funding for tribal specific programs, but until DHS makes a credible tribal budget request which Congress can act upon, it can be assumed that tribes will not be provided a realistic level of funding.

Safety and security funding for all facets of homeland security and emergency management infrastructure has been given to the states, but only a few tribes, utilizing their own resources, have

been able to enhance similar capabilities. All jurisdictions remain at risk from increased domestic terrorist threats and external risk factors, and all jurisdictions should be entitled to share in federal funding made available for this purpose. DHS and the Congress have to acknowledge their trust responsibility to assist tribal governments in achieving parity with states before there can be dependable homeland security readiness and response in this country.

Administrative Update

In January 2013, Congress with the support of NCAI, the tribes and DHS Federal Emergency Management Agency (FEMA), amended the Stafford Act to include a provision that allows federally recognized Indian tribes to submit direct requests to the President of the United States for federal declaration of emergency or major disaster. FEMA released its Tribal Consultation Policy in August 2014 establishing guidance for FEMA on "regular and meaningful" consultation and collaboration with tribal officials on actions that have tribal implications. Tribes are waiting for FEMA to release its Tribal Declarations Pilot Guidance which will describe the process tribal governments will use to request Presidential emergency or major disaster declarations. The guidance will also outline FEMA criteria used in determining a Presidential disaster declaration. More information can be found for both documents on the FEMA website at http://www.fema.gov/fema-tribal-affairs. It is expected the guidance will operate as an Interim Rule until it is finalized.

Tribes continue to request FEMA to amend the Emergency Management Performance Grants (EMPGs) which funds states' emergency management programs. States could include tribes in the distribution of these funds but rarely do even if tribes meet state-determined criteria, often including unfunded mandates. While Congress has prohibited states from placing undue burdens on potential tribal recipients this still does not address the nation-to-nation relationship that tribes have with the U.S. federal government. Furthermore, the trust responsibilities of the national government cannot be devolved to states or their local governments.

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

The Federal Emergency Management Agency (FEMA) supports the National Advisory Council (NAC), which was established by the enactment of the Post-Katrina Emergency Management Reform Act of 2006 to ensure effective and ongoing coordination of Federal preparedness, protection, response, recovery, and mitigation for natural disasters, acts of terrorism, and other manmade disasters. The NAC advises the FEMA Administrator on all aspects of emergency

management. The authorizing statute requires participation from tribal government experts, but FEMA limits participation to two tribal representatives and does not proactively share NAC activities with American Indian or Native Alaskan leaders. To strengthen the whole community doctrine the Secretary of Homeland Security should set up and fund a DHS Tribal Advisory Council to provide timely and direct recommendations on tribal homeland security considerations and issues.

NCAI Resolution #ATL-14-037 at the 2014 Annual Session, requested Congress to task its Congressional Research Service or the General Accountability Office to conduct lacking research in what the federal government has done, and what the state of tribal emergency preparedness and homeland security is. Tribal Nations are the most often the first to respond to disasters and last to recover from them. With over 80 percent of disasters in American Indian or Native Alaskan communities never receiving any federal assistance the time is not to limit funding for development of homeland security capacity in Indian country but to re-double those efforts. The Secretary of Homeland Security should consider supporting independent research on the state of federal support for tribal homeland security. This inward looking examination can likely support the Department's goals and strategies to more fully include the 567 sovereign nations with whom it has committed to upholding nation-to-nation relationships.

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EDUCATION

No resource is more important to the continued success and growth of our nation and Indian Country than our children. It is vital that we all work together to strengthen our human capital in all tribal communities across America. The most effective way to do that is to provide a high-quality, culturally-appropriate education that effectively and equally benefits all of our nation's children—including our Native children. Ensuring equal educational opportunities is not simply a matter of fairness, but even more importantly in today's challenging economic climate, it is an essential strategy for creating jobs and securing the nation's future prosperity especially in tribal communities. Education also drives personal advancement and wellness, which in turn improves social welfare and empowers communities—elements that are essential to protecting and advancing tribal sovereignty and maintaining tribes' cultural vitality.

The federal government provides education to Indian students in two ways, through federally funded Bureau of Indian Education (BIE) schools or through education assistance to public schools where Indian students attend. Currently 620,000, or 93 percent, of Indian students attend public schools and approximately 45,000, or 7 percent, attend BIE schools. 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 (TCU's) in the United States serving more than 30,000 Native students. TCUs were created in response to the higher education needs of American Indians and generally serve geographically isolated populations that have no other means accessing education beyond the high school level. TCUs have become increasingly important to educational opportunity for Native American students and are unique institutions that combine personal attention with cultural relevance to encourage American Indians—especially those living on reservations—to overcome the barriers they face to higher education.

As Congress renews its efforts this year in reforming Indian Education it is critical for tribal priorities to be included.

Legislative Update

Elementary and Secondary Education Act Reauthorization. On July 16, 2015 both the House and the Senate passed legislation to reauthorize the Elementary and Secondary Education Act (ESEA). The House bill – H.R. 5, *the Student Success Act* – preserves the American Indian, Alaska Native and Native Hawaiian Education Title as it currently exists. The Senate bill, S.1177, *the Every Child Achieves Act,* incorporates several tribal provisions, including a proposed new language immersion program in Title VII; stronger consultation requirements between State Education Agencies (SEAs)/Local Education Agencies (LEAs) and tribes; reauthorization of the State Tribal Education Partnership Program (STEP); technical assistance and outreach by the Secretary of Education to assist eligible LEAs/BIE schools with grant applications and improving implementation; and interagency research between the Departments of Interior and Education to identify policy implementation barriers, funding limitations, options for the recruitment and retention of teachers/administrators, and strategies to increase high school graduation rates.

For ESEA reauthorization to pass this year, either chamber can take up the other chamber's bill or agree on language through a conference process.

Native Education Support and Training Act. On August 4, 2015 Senator Tester introduced S.1928, *The Native Education Support and Training (NEST) Act*, which aims to recruit and retain teachers in Indian Country by creating scholarships for Native students seeking education or school administration degrees, federal student loan forgiveness plans and teacher development courses for educators who commit to teaching at a tribal or BIE school.

Native Languages Legislation. On April 30, 2015 both chambers introduced *the Native American Languages Reauthorization Act of 2015* – S.1163 was introduced by Senator Udall and H.R.2174 by Representative Lujan. This legislation reauthorizes the Native American Programs Act of 1974 to through FY2020 and revises a grant program administered by the Administration for Native Americans at HHS by decreasing the required minimum number of enrollees in Native American language nests from 10 to 5 and Native American language survival schools from 15 to 10 enrollees. The bills also increase the duration of grants provided by the program.

On May 21, 2015 Senator Tester introduced S.1419, *the Native Language Immersion Student Achievement Act* to amend Title VII of ESEA by establishing a new grant program to support schools using Native languages as the primary language of instruction and would assist schools in developing and maintaining language immersion programs.

These pieces of legislation, along with other issues pertaining to Native languages will be discussed during the Native Languages Working Group meeting which will convene on October 18th at NCAI's Annual Convention in San Diego, California.

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

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

Administrative Update

Bureau of Indian Education (BIE) Blueprint for Reform. As part of President Obama's trip to Indian Country in 2014, the Administration announced the "Blueprint for Reform" to address the shortcomings of the BIE that have plagued the Bureau for years. The Blueprint for Reform was followed up with a Secretarial Order (Order No. 3334) to execute a restructuring of the BIE school system. The restructuring efforts have been ongoing since last summer with the goal of institutionalizing the reforms at the end of the 2015-2016 school year.

The new restructuring aims to transform the BIE from a direct provider of education into a capacity-builder and service-provider to tribes with BIE-funded schools. The reforms are being offered to tribes who voluntarily wish to take greater control of BIE-funded schools in their communities. Congress has also been monitoring the ongoing restructuring efforts with both the Senate Committee on Indian Affairs and the House Education and Workforce Committee holding oversight hearings on BIE.

On September 15, 2015 the BIE sent a letter to Representative Ken Calvert, Chairman of the House Subcommittee on Interior, Environment, and Related Agencies, outlining the proposed reorganization and reprogramming efforts. As part of its commitment to engaging tribal leaders, educators and other stakeholders during the ongoing reform process, NCAI hosted a webinar on October 13th to further discuss the BIE letter to Representative Calvert and how the proposed realignment plan will impact the delivery of educational services to Native students. Additionally, The BIE will provide an update on the status of the BIE Blueprint for Reform on October 21st at NCAI's Annual Convention in San Diego, California.

School Environment Listening Tour – Native American Students. Last fall, the White House Initiative on American Indian and Alaska Native Education (Initiative) and the Department of Education's Office for Civil Rights launched the first-ever school environment listening tour geared towards Native students across the country. The Administration visited schools and communities from across the country on ways to better meet the unique educationally and culturally-related academic needs of Native American students. The Department of Education will be sharing the results of the tour during NCAI's Annual Convention in San Diego, California.

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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.

Advanced Appropriations for IHS. Tribal leaders recognize that the responsibility for wellness of their community lies with the tribal government working in concert with their citizens and with agencies across the federal government. The Indian Health Service has been, and continues to be, a critical institution in securing the health and wellness of tribal communities, and advance appropriations are necessary for IHS. NCAI passed a resolution (ANC-14-007) requesting Congress to amend the Indian Health Care Improvement Act to authorize Advance Appropriations and to include IHS Advance Appropriations in the budget resolution and in the enacted appropriations bill.

Special Diabetes Program for Indians. At nearly 16.1 percent, the American Indian and Alaska Native population has the highest rate of diabetes among all U.S. racial and ethnic groups, and an estimated

30 percent of American Indians and Alaska Natives are pre-diabetic. In 1997, Congress addressed the growing epidemic of diabetes in American Indian and Alaska Native communities by passing the Balanced Budget Act which established the Special Diabetes Programs for Indians (SDPI).

The Special Diabetes Programs for Indians provides assistance for developing local initiatives to treat and prevent the disease and has served as a comprehensive source of funding to address diabetes issues in tribal communities by providing grants for diabetes prevention and treatment services to more than 400 Indian Health Service, tribal, and urban Indian health programs in 35 states. These grants are critical to improving the overall health of American Indian and Alaska Native people because they greatly enhance the effectiveness of preventative health programs and allow programs aimed at stopping the spread of diabetes to children and young adults to be established.

NCAI passed a resolution (ATL-14-003) requesting Congress to permanently reauthorize the Special Diabetes Program for Indians and to provide full funding for permanent continuation of this program.

Affordable Care Act/Indian Healthcare Improvement Act Implementation. The Patient Protection and Affordable Care Act (ACA) provided for permanent reauthorization of the Indian Health Care Improvement Act, ending a 17-year effort for reauthorization. Tribes are adamantly opposed to repeal of the ACA. However, if this Congress takes up specific provisions of the bill, tribal leaders will seek a fix to the definition of Indian within the ACA. There are three separate definitions of Indian throughout the ACA which creates inconsistency in eligibility for certain benefits. Tribes seek consistency in the definitions to ensure that all American Indians and Alaska Natives have access to the special benefits and protections.

NCAI passed a resolution (ABQ-10-080) requesting that one definition of "Indian" be recommended in implementation of the Affordable Care Act, providing support for the definition of "Indian" that was adopted by the Centers for Medicare and Medicaid Services in its implementation of the Medicaid cost sharing protections (45 C.F.R. 447.50), limiting the use of the definition to implementation of the Affordable Care Act, and prohibiting the use of the definition or interpretation to affect who is eligible for services.

Behavioral Health. News about the increasing number of suicides in our communities, and among our youth, makes behavioral health a top priority for NCAI. American Indian and Alaska Native children and communities deal with complex behavioral health issues at higher rates than any other population. Many tribes recognize historical trauma as the root of disproportionate rates of depression, suicide, and reoccurring trauma from domestic violence and sexual assault.

In 2007, the National Center for Health Statistics noted that American Indians and Alaska Natives experience serious psychological distress one and a half times more than the general population. Data from the Centers for Disease Control and Prevention reveal that the suicide rate for American Indian and Alaska Native adolescents and young adults from 15-34 is two and a half times the national average for that age group. Unlike other groups where the suicide rate increases with age, American Indian and Alaska Natives rates are highest among the youth and decrease with age. Holistic behavioral and mental health services designed and implemented by and for American Indian and Alaska Native people are needed to promote cultural strength and healing. New initiatives such as First Kids First and Generation Indigenous (Gen-I) are also critical to promoting wellness with our children and youth.

Oral Health, Another focus is on reducing the oral health disparities in our communities. American Indians and Alaska Natives face significant disparities in oral health when compared to the United States population. American Indians and Alaska Natives lack access to dentists, consistent dental treatment, and prevention services. By age five, 75 percent of American Indian and Alaska Native children have experienced tooth decay. Poor oral health has been linked to decreased school performance and other health complications, including diabetes, chronic pain, infections, nutritional deficiencies, childhood growth and social development, and loss of teeth. This is compounded by low dentist to patient ratios, identified backlog of treatment, and grossly inadequate expenditure levels.

Mid-level providers such as Dental Health Aide Therapists (DHATs) are the solution to this crisis. For more than 90 years the DHAT model has been used worldwide, and for over 10 years has been used in Alaska, where the Alaska Native Tribal Health Consortium (ANTHC) adopted the model in 2003. The model builds community capacity and creates jobs by training community members to become DHATs. The Indian Health Care Improvement Act, as enacted by the ACA, limits expansion of the DHAT model to the lower 48. NCAI believes that tribes have the sovereign right to address the oral health needs in their communities through mid-level providers.

Legislative Update

Advance Appropriations for the Indian Health Service On January 14, 2015, Rep. Don Young (R-AK), along with Rep. Ben Ray Lujan (D-NM), introduced the *"Indian Health Service Advance Appropriations Act of 2015*" (H.R. 395). Advance appropriations will ensure that the Indian Health Service and tribal health care providers have adequate advance notice of the amount of federal appropriations to expect to administer health programs and services to American Indian and Alaska Native people and thus not be subjected to the uncertainties of late funding and short-term continuing resolutions. To date, there is no companion legislation in the Senate. NCAI will continue to encourage action on advance appropriations for IHS in this Congress.

Special Diabetes Program for Indians. The Special Diabetes Program for Indians was last reauthorized on April 16, 2015 and was extended through September 30, 2017. The extension of the SDPI program was included in the Medicare Access and CHIP Reauthorization Act of 2015. Although this extension of SDPI is welcome, NCAI continues to advocate for permanent reauthorization and full funding of this vital program.

Employer Mandate. On July 15, 2015, Sen. Steve Daines (R-MT) and Rep. Kristi Noem (R-SD) sponsored Tribal Employment and Jobs Protection Act bills under S. 1771 and H.R. 3080, respectively. The bills provide an exemption for Indian tribal governments and tribally owned business from the Employer Shared Responsibility Mandate. The employer shared responsibility mandate, effective January 1, 2015, requires tribes with 50 or more full-time and/or full-time equivalent employees (FT/FTE) to offer health coverage to full-time employees (and their dependents) or face significant penalties (transition relief is available for employers with 50-99 FT/FTE). Many tribal employers cannot afford to purchase health coverage for their employees and would have to sacrifice other programs and services to try and meet the requirement. As the work forces of many tribes are made up of tribal members, most of their employees are exempt from the mandate and a tribal employer should not be required to offer or pay for such coverage. Many tribal employers rely upon the Indian Health Service to provide health care to tribal member employees as part of the federal trust responsibility and do not offer health coverage on this basis.

Throughout ACA implementation, tribes have been informed by HHS and the Center for Consumer Information and Insurance Oversight (CCIIO) that the special benefits and protections for American Indians/Alaska Natives under the ACA support the federal trust responsibility and have been encouraged to carry this message to tribal citizens to encourage enrollment in the Marketplace. Many tribes have sponsored trainings and hosted enrollment events for tribal members, and many have even implemented premium sponsorship programs.

The application of the employer mandate to tribes is inconsistent with the federal trust responsibility because it denies tribal member employees the opportunity to take advantage of the special benefits and protections available to American Indians/Alaska Natives. In 2015, if a tribal employer offers coverage that meets the requirements of the mandate to tribal member employees the tribal member employees will be disqualified from receiving a premium tax credit, making the coverage unaffordable and the American Indian/Alaska Native cost sharing exemptions inaccessible. The tribal member employees would then be faced with having to pay for less beneficial employer coverage (e.g., a portion of the employee premium, 100 percent of dependent coverage, and high cost sharing) or opt for having no coverage.

If a tribal employer decides not to make an offer of health coverage to full-time tribal member employees, these employees would be eligible for a premium tax credit in the Marketplace. Receipt of a tax credit by one full-time employee subjects the employer to a penalty of $2,000 per employee per year multiplied by the number of full-time employees. Even if a tribal employer offers coverage, a tribal employer could incur the second type of penalty if the coverage is not affordable or does not provide minimum value, allowing a full-time tribal member employee to receive a tax credit. In this case, the penalty would be $3,000 per year multiplied by the number of full-time employees who have received a tax credit.

The IRS and CCIIO policies conflict with each other. Tribal employers should not have to decide between: complying with the mandate which denies tribal members' benefits to which they are entitled, and paying costly insurance premiums which they cannot afford for tribal members who are exempt from the individual mandate; or allowing tribal members to access the benefits at the expense of paying costly penalties to the federal government when the federal government has a trust responsibility to provide health care to American Indians/Alaska Natives.

Pharmacy and Medically Underserved Areas Enhancement Act. On January 28, 2015, Rep. Brett Guthrie (R-KY) introduced the "*Pharmacy and Medically Underserved Areas Enhancement Act*" (H.R. 592) and on January 29, 2015, Sen. Chuck Grassley (R-ID) introduced the (S. 314). The Pharmacy and Medically Underserved Areas Enhancement Act would recognize pharmacists as non-physician providers under Medicare Part B and make them eligible for reimbursement for services they provide to seniors in underserved areas. It will allow pharmacists to deliver care to patients in medically underserved communities (medically underserved areas, underserved populations and health professional shortage areas as defined by the Health Resources Service Administration). This legislation will help with provider shortages and access issues for Medicare beneficiaries and will benefit American Indians and Alaska Natives who are living in medically underserved communities.

Administrative Update

Affordable Care Act. Several issues remain or have emerged with implementation of the Affordable Care Act, including, to name a few: inadequate or incomplete data on American Indian/Alaska Native enrollment in qualified health plans (QHPs); concern about network adequacy and the lack of QHPs

contracting with Indian health care providers; the availability of cost sharing protections to American Indians/Alaska Natives with incomes below 100% of the federal poverty level; and the need for an American Indian/Alaska Native Customer Service Unit (NCAI passed a resolution ATL-14-074) knowledgeable on the American Indian/Alaska Native special benefits and protections).

Medicare Like-Rates. Tribes submitted comments on the IHS Proposed Rule entitled "Payment for Physician and Other Health Care Professional Services Purchased by Indian Health Programs and Medical Charges Associated with Non-Hospital-Based Care," 79 Fed. Reg. 72160 (Dec. 5, 2014). The final regulations have not been issued.

Employer Mandate. On September 10, 2015, tribal leaders met with White House representatives to request relief for tribes from the employer mandate. In addition, members of HHS Secretary's Tribal Advisory Committee discussed concerns about the employer mandate with the Secretary several times this year. Tribal leaders also requested a joint consultation session with HHS and Department of the Treasury. The Department of the Treasury has taken the position that an administrative fix is not available. Tribal leaders are now seeking a one year Administrative delay of the mandate to determine a longer term solution. NCAI will continue to work with other national organizations, tribes, and the Administration to address this issue.

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CHILD WELFARE

The federal government has unequivocally recognized that there is nothing more vital to the continued existence and integrity of Indian tribes than their children. The federal government must empower tribes through programs and services necessary to safeguard their children and strengthen their families. Tribal welfare programs are comprised of a number of "discrete, yet interconnected" functions that include child abuse prevention, child protection, case management, foster care, foster home recruitment, permanent placement, court hearings, ICWA coordination and collaboration, and referrals to other services.

Tribal child welfare programs work tirelessly to successfully serve children and families through holistic, strengths-based, culturally appropriate, and family-centered services. Throughout Indian Country, tribes implement innovative child welfare services such as family group decision-making processes, peacemaking courts, Positive Indian Parenting classes, culture camps, and customary adoptions to protect and support children while keeping them connected to their families and communities. In providing these services, a great number of tribes work simultaneously, in numerous jurisdictions across the country, to defend tribal and family rights threatened by state child welfare and court systems. Tribes' enduring service to children, families, and communities persists in the face of elevated risks of child abuse and neglect.

The Attorney General's Advisory Committee on American Indian/Alaska Native Children Exposed to Violence emphasized that "American Indian/Alaska Native children are generally served best when tribes have the opportunity to take ownership of the programs and resources they provide."

NCAI urges Congress and the Administration to prioritize the safety and well-being of all children.

Legislative Update

Family Stability and Kinship Care Act of 2015, S. 1964. Currently, the federal child welfare finance system provides significantly more funding for the removal of children from their families than services that could safely maintain them in their homes. When children are removed from their homes, even to keep them safe from harm, there is always additional trauma for the child. Conversely, it is almost always more suitable and cost effective to provide supportive services to give families the tools they need to better parent their children than it is to remove them from their homes and place them in substitute care. Introduced by Senator Wyden (D-OR) on August 5, S. 1964 provides front-loaded funding that creates a real incentive for improving in-home child care and allows for more flexibility in fashioning rehabilitative programs for families.

Native American Children's Safety Act, S. 184 & H.R. 1168. On January 16, 2015, Senator Hoeven (R-ND) introduced the Native American Children's Safety Act, a bill to amend the Indian Child Protection and Family Violence Prevention Act to require background checks prior to foster care placements in tribal court proceedings. On February 27, 2015, Congressman Cramer introduced a companion bill in the House.

S. 184 passed the Senate on June 1, 2015, and has been sent to the House of Representatives where it has been held at the desk for consideration by the full House.

Alyce Spotted Bear and Walter Soboleff Commission on Native Children Act, S. 246. This legislation, introduced by Senator Heitkamp (D-ND) creates an 11-member Commission on Native Children to conduct a comprehensive study on the programs, grants, and support available for Native children, both at the federal level and on the ground in Native communities. This legislation passed the Senate on June 1, 2015, and has been referred the House Subcommittee on Indian, Insular and Alaska Native Affairs. A companion bill, H.R. 2751 was introduced in the House by Congresswoman McCollum on June 12, 2015. This bill was also referred to the Subcommittee on Indian, Insular and Alaska Native Affairs.

Administrative Update

Bureau of Indian Affairs Proposed Guidelines and Regulations for State Courts and Agencies in Indian Child Custody Proceedings. On February 25, 2015, the Bureau of Indian Affairs (BIA) released guidelines to assist agencies and state courts in implementation of the Indian Child Welfare Act (ICWA). The guidelines provide best practices for state courts and agencies in complying with ICWA's mandates, as well as clarification of scenarios that trigger ICWA's application to child custody proceedings.

Shortly thereafter, on March 20, 2015, BIA proposed substantially similar regulations that, once finalized, will bind state courts and agencies in applying these best practices. The proposed regulations were fashioned after consultation with tribal and child welfare stakeholders, who stressed the need for binding procedures to ensure uniform compliance with ICWA as originally intended by Congress. Absent these regulations with the force of law, state courts have largely ignored, misapplied, and misinterpreted ICWA's mandates.

The proposed regulations will serve the best interests of the Indian child and promote uniform implementation of ICWA by: 1) ensuring early, permanent placements by mandating early agency and state court compliance in all child custody proceedings involving an Indian child, 2) providing clear steps and definitions to meet the procedural requirements of ICWA, 3) defining "active efforts"

agencies and state courts must employ to prevent the breakup of the Indian family, and 4) mandating the end of emergency removal placements the moment the emergency has ended. NCAI fully supports these much-needed guidelines and regulations and has provided comments stressing the need for early, uniform implementation.

Child Care and Development Block Grant Act of 2014 Implementation. In the last session of Congress, S. 1086, the Child Care and Development Block Grant Act of 2014 (CCDBG) was enacted and signed into law on November 19, 2014. This law is now being implemented by the Administration for Children and Families within the Department of Health & Human Services.

Several provisions within this bill have a direct impact on tribes including: a tribal set-aside of not less than 2 percent (prior law said "up to" 2 percent); a requirement for state training and professional development to be accessible to Tribal Child Care and Development Fund provides and appropriate for Native Children; State Lead Agencies must demonstrate in their Plan how they are encouraging partnerships with tribes and tribal organizations; and at the option of tribes, States must coordinate with Tribes in the development of the State Plan.

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

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

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

For additional information please contact Denise Desiderio, Policy & Legislative Director, or Christina Snider, Staff Attorney, at 202.466.7767 or ddesiderio@ncai.org or csnider@ncai.org

CULTURAL PROTECTIONS

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

Legislative Update

Introduction of the Save Oak Flat Act. Last year the Southeast Arizona Land Exchange and Conservation Act was added as Section 3003 of the 2015 NDAA. This federal lands transfer was one of nearly 100 last minute land bill riders added to the must-pass Fiscal Year 2015 National Defense Authorization Act (2015 NDAA).

On June 17, Ranking Member Raul Grijalva (AZ) of the House Natural Resources Committee introduced H.R. 2811, the *Save Oak Flat Act* to repeal Section 3003 of the 2015 NDAA. Section 3003, the Southeast Arizona Land Exchange and Conservation Act, authorized the transfer of 2,422 acres of the Tonto National Forest to Resolution Copper for the purposes of developing a block cave mine to extract copper resources. For nearly a decade, the San Carlos Apache Tribe opposed passage of the Southeast Arizona Land Exchange and Conservation Act because the Arizona federal lands proposed to be conveyed included the Oak Flat site—a sacred place of worship to the San Carlos Apache Tribe.

H.R. 2811, the *Save Oak Flat Act* received bipartisan support, cosponsored by Republicans Tom Cole (OK), Markwayne Mullen (OK), and Walter Jones (NC), and Democrats Betty McCollum (MN), Norma Torres (CA), Patrick Murphy (FL), Alcee Hastings (FL), Ben Ray Lujan (NM), Raul Ruiz (CA), Tony Cardenas (CA), Xavier Becerra (CA), Jared Polis (CO), Ruben Gallego (AZ) and Gwen Moore (WI).

Administrative Update

Support for Bring Jim Thorpe Home. On July 2, NCAI joined the Native American Rights Fund in filing an Amicus Brief requesting the Supreme Court to hear a case to repatriate the remains of Jim Thorpe from Pennsylvania to his tribal lands in Oklahoma. Members of Congress, Scholars of Statutory Interpretation and Indian Law, and Religious Groups also joined in filing Amicus Briefs on the case. In 2010 the Sac and Fox Nation and Jim Thorpe's sons filed a cased to repatriate Jim Thorpe's remains under the Native American Graves and Repatriation Act. In 2013 a federal District Court ruled that the Pennsylvania borough where Jim Thorpe's remains are kept were covered by NAGPRA. However, in 2014 the Third Circuit Court of Appeals overturned the decision. Unfortunately, on October 5, the Supreme Court denied the appeal to consider the case.

Protect the Badger-Two Medicine. On March 23, 2015, NCAI sent a letter to Secretary Sally Jewell of the Department of the Interior calling for the cancelation of oil and gas leases in the Badger-Two Medicine area. The Badger-Two Medicine area is located between Glacier National Park and the Great Bear and Bob Marshall Wilderness areas. This place contains sensitive plant and wild life and holds immense cultural and religious significance to the Blackfeet people. In 1982, absent tribal consultation and a thorough review of environmental and cultural studies, the U.S Forest Service granted 47 oil and gas permit leases in and around the Badger-Two Medicine area. For over two decades the Blackfeet Tribe of Montana and many non-Native conservation and historical preservation groups have sought the cancellation of these permit leases.

On September 21, the Advisory Council on Historic Preservation (ACHP) submitted comments and recommendations to Secretary Vilsack of the Department of Agriculture and Secretary Jewell of the Department of the Interior recommending the cancellation of oil and gas leases in and around the Badger-Two Medicine area.

ACHP's recommendations were made on the grounds that the Badger-Two Medicine site is recognized as a Tribal Cultural District (TCD) and that proposed gas explorations and developments would irreparably harm the area. ACHP also recognized that proposed mitigation measures would be insufficient in resolving any adverse effects to the TCD.

For additional information, please contact Brian Howard, Legislative Associate at 202-466-7767 or bhoward@ncai.org

NATIVE AMERICAN ELDERS

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

The number of American Indian and Alaska Native Elders 65 and older is expected to double by 2030. As the elder population continues to grow, so too does abuse and maltreatment of those who require care.

A 2004 profile on American Indians and crime prepared by the Bureau of Justice Statistics (BJS), and the U.S. Department of Justice (DOJ), reported that among persons in the 55 or older category, the American Indian violent crime rate was 22 per 1,000 versus the overall rate of 8 per 1,000.[1]

The Older Americans Act (OAA) is the major federal statute that authorizes social and nutritional services to elders. These supportive services include congregate and home-delivered nutrition services; community centers; community service employment; long-term care ombudsman programs; information and referral services; and services to prevent the abuse, neglect, and exploitation of the elderly population. The OAA specifically states "it is the purpose of this Title to promote the delivery of supportive services, including nutrition services, to American Indians, Alaska Natives [SIC], and Native Hawaiians that are comparable to services provided under Title III" (grants for state and community programs on aging).

Grants to tribes have a history of being both well-managed and insufficiently funded to meet existing needs. Due to inadequate funding to carry out the purpose of Title III, "comparable services" for Native elders have not been achieved. Tribal governments have little or no access to the same agencies, departments, ombudsman, or programs that are available to states. In addition, state programs seldom serve Native elders due to cultural and geographic barriers. Immediate action needs to be taken in order to remedy these disparities and ensure that Native elders are well taken care of.

In preparation for reauthorization of the Older Americans Act (OAA), the Administration on Aging (AoA) began an open process in 2010 to solicit input from throughout the country. More than 60 listening sessions were held and online input was received that represented the interests of thousands of consumers of OAA services. Input led to the creation of the targeted changes proposed by the Administration. The Administration has since provided information on program outcomes and the important role that the Act's services play in the lives of our elders.

[1] U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. (2004). American Indians and crime: A BJS statistical report, 1992-2002. Retrieved February 14, 2015 from http://www.justice.gov/otj/pdf/american_indians_and_crime.pdf

NCAI adopted several resolutions at the 2014 Annual Convention related to reauthorization of the Older Americans Act and improvement of elder services and protections in Indian Country. All resolutions are accessible online at www.ncai.org

Legislative Update

Reauthorization of the Older Americans Act. The current authorization of the Older Americans Act (OAA) of 1965 expired in 2011 and has since been due for reauthorization. In the last session of the 113th Congress, bills were introduced in both the House and the Senate to reauthorize the Older Americans Act through FY2018. Neither bills made it to the floor to be voted upon.

On January 20, 2015, Senator Alexander (R-TN) introduced the bipartisan *Older Americans Reauthorization Act of 2015*, S. 192. Among other important provisions, the bill puts in place strong protections against elder abuse by increasing existing abuse screenings and prevention efforts. It also preserves authorized funding levels through 2018. S. 192 passed the Senate in July of 2015 and has been referred to the House of Representatives for consideration.

NCAI urges this 114th Congress to take swift action to reauthorize the Older Americans Act

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Administrative Update

White House Conference on Aging. The White House Conference on Aging occurred on July 13, 2015 in light of the 50th anniversary of Medicare, Medicaid and the Older Americans Act and the 80th anniversary of Social Security. The White House Conference on Aging recognized the importance of these vital programs and encouraged increased support for caretakers, families and other stakeholders. The conference brought together a myriad of agencies, organizations and resources, with remarks from President Obama, to promote and advance the steps being taken to improve the quality of life as Americans age. The Administration also announced the launching of its new website designed to offer government-wide information about helping older Americans live fulfilling and independent lives. The new website can be accessed at: http://www.hhs.gov/aging.

Indian Health Service Consultation. On August 11, 2015, the Indian Health Service in conjunction with the Administration for Community Living/Administration of Aging, held a tribal consultation to hear from tribes on the Older Americans Act, the Indian Health Care Improvement Act Long-Term Services and Support provisions and disability issues in Indian Country.

For additional information please contact Mike LaValley, Legislative Fellow, at 202.466.7767 or mlavalley@ncai.org.

NATIVE VETERANS

American Indians and Alaska Natives have proudly served in the United States military since the Revolutionary War. From earlier struggles such as the Spanish-American War to the present-day conflicts in Iraq and Afghanistan, Native people continue to serve at higher percentages than any other ethnic group. It is estimated that over 150,000 veterans identify as American Indian and Alaska Native, with over 24,000 active duty Native service members currently serving in the Armed Forces. With their warrior tradition and the sacrifices that have been made, it is vital to create sound policies and programs to promote the overall wellbeing of our Native veterans. NCAI seeks fair and dignified treatment of all veterans while advocating for federal support and funding for Native veteran programs and services that are greatly needed and deserved.

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

Legislative Update

Expanding VA Nursing Home Grant Eligibility to Tribes. On March 13, 2015, Representative Ann Kirkpatrick (D-AZ) introduced H.R. 1127 to authorize the VA Secretary to make certain grants available to assist nursing homes for veterans located on tribal lands. The bill would amend the definition of "state homes" to include homes established by federal recognized Indian tribes for veterans who, by reason of disability, are incapable of earning a living. The bill would require the VA Secretary to pay those tribes for the hospital, nursing home, domiciliary, and medical care they provide to veterans in those homes. It also would make those tribes eligible for grants from the VA Secretary for the construction of state homes. The bill has been referred to the House Committee on Veterans' Affairs – Subcommittee on Health. As of yet no hearing has been held on the bill.

Providing Equitable Treatment of Alaska Native Vietnam Veterans in Land Acquisition. On May 15, 2015, Representative Don Young (R-AK) introduced H.R. 2387 – the Alaska Native Veterans Land Allotment Equity Act. The bill would amend the Alaska Native Claims Settlement Act (ANCSA) to ensure Alaska Native Vietnam veterans are able to acquire their 160 acres allotment of land as promised under the 1906 Alaska Native Allotment Act. Many Vietnam era Alaska Native veterans were unable to acquire their land due to their military service overseas. Passage of ANCSA repealed the Alaska Native Allotment Act in 1971 (during the ongoing Vietnam War) thereby denying Alaska Native Vietnam veterans their opportunity to acquire land as promised. H.R. 2387 would provide more equitable treatment of land acquisition for Alaska Native veterans by (1) increasing the availability of land for allotment for veterans by authorizing Alaska Native Vietnam veterans to apply for land that is federally owned and vacant, (2) expanding the military service dates to coincide with the Vietnam Conflict in its totality (August 5, 1964-May 7, 1975) rather than what is currently law (January 1, 1969-December 31, 1971), and (3) extending the deadline of the allotment application to 3 years after the Secretary of the Interior issues final regulations under Section 4 of this bill. A legislative hearing was held on June 10, 2015, by the House Natural Resources Committee.

Administrative Update

Tribal Veterans Service Officers in Indian Country – Parity with State and County Veterans Service Officers. Tribal veterans should have equal access to representation and the benefit of services from the Department of Veterans Affairs (VA). One great first step is the establishment of Tribal Veteran Service Officers (TVSOs) who are designated by local tribal leadership. These officers would function on the same basis as state and country veterans service officers pursuant to 38 C.F.R §14.628. The current use of Tribal Veterans Representatives (TVRs) is insufficient as their purpose is to purely disseminate information to veterans, not to be their advocates. TVRs are trained by VA personnel often with no knowledge or awareness of the local Native culture and needs. TVSOs make sense both

as a matter of tribal sovereignty by allowing tribal governments to determine their own representation and advocacy on behalf of Native Veterans before the VA, as well as ensuring greater cultural competency in the pursuit of claims arising from trauma and other mental/behavioral issues affecting veterans. This will enhance the use of culturally competent mental health evaluations and facilitate the use of traditional healing practices in the process. TVSOs would be required to meet the same employment/appointment, training, and certification standards that apply to State and County Veterans Service Officers.

NCAI has advocated for Veterans Administration (VA) regulatory changes which will enable tribes to designate and train accredited Tribal Veterans Service Officers for the purpose of providing culturally competent representation to Native American veterans before the Regional Offices and the Board of Veterans Appeals. VA had planned to publish rules in the Federal Register to make the change. The publication was designed to be dual – a final direct rule and a companion proposed rule, virtually identical. Absent significant, adverse comment / objection the Direct Final Rule would take effect 60 days after publication. VA has backed away from the rulemaking. NCAI is requesting the tribes to strongly urge the VA to publish the notice.

Indian Health Service/Veterans Administration – Memorandum of Understanding. Native veterans have become a casualty of bureaucratic red tape between federal agencies. In 2010 the Indian Healthcare Improvement Act was permanently reauthorized as Title X under the Affordable Care Act. Included in Title X was a provision mandating the Department of Veterans Affairs to reimburse tribes, the IHS, and tribal organizations for services provided to veterans. A memorandum of understanding has since been established between the VA and the Indian Health Services to aid this provision. However, the Veterans Administration is only reimbursing tribes that agree to enter into a model agreement that the VA has developed, and the VA does not allow for reimbursement of purchased/referred care provide through tribal health programs to veterans, limiting reimbursement to only direct service care.

NCAI passed a resolution (ANC-14-053) requesting that the Department of Veterans Affairs recognize tribal sovereignty and recognize the language of the law and reimburse tribes and tribal health care programs for all direct and referral care services provided to veterans. NCAI will continue to advocate with both the Administration and the Congress to ensure the most effective and efficient delivery of health care services to Native veterans.

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

VOTING RIGHTS AMENDMENT ACT

Native Americans were the last to obtain the right to vote in the United States, and Native voters continue to face persistent barriers in exercising that right. Some jurisdictions continue to implement schemes that impair the ability of Native people to fully participate in the electoral process. Native voters often live far from established polling places and voter registration sites in remote, isolated areas, with high rates of poverty, and in some areas, limited English proficiency. As a result, turnout in the 2012 elections among American Indians and Alaska Natives nationwide was 17 percentage points below that of other racial and ethnic groups.[3]

Section 5 of the Voting Rights Act was an important mechanism for protecting Native voters. Some areas with very large Native populations were covered under Section 5's preclearance procedures, which required the Department of Justice to approve changes in voting procedures before they were implemented by these jurisdictions. Since the Supreme Court's *Shelby County* decision, states and localities have pushed forward potentially discriminatory changes to voting including the elimination of in-person voting for the residents of more than a dozen Native villages in Alaska, many of whom are Native language speakers. Stricter voter ID laws, the moving and elimination of polling places, and diminished access to voter registration opportunities have further burdened Native Americans' right to vote since the *Shelby County* decision.

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

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

ensure enforcement of the Voting Rights Act in Indian Country and should be required to consult with Indian tribes on a government-to-government basis to gather information about voting issues experienced by Native voters.

Legislative Update

The Department of Justice held a consultation with American Indian/Alaska Native leaders last year to discuss the possibility of proposing federal legislation addressing the obstacles facing Native voters. In May, the Department of Justice sent proposed legislation to Congress that would allow tribal governments to select sites for polling places on tribal lands in order to ensure equal access to polling places for Native voters.

NCAI has worked with Congress to develop legislation that addresses these issues. S. 1912, the Native American Voting Rights Act, was introduced by Senator Tester and focuses on improving access to voting for Native Americans. S. 1659/H.R. 2867, the bi-partisan Voting Rights Advancement Act, addresses voting rights for all Americans and includes several important provisions addressing issues in tribal communities.

For additional information please contact Christina Snider, Staff Attorney, at 202.466.7767 or csnider@ncai.org.

SELF-GOVERNANCE

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

As of 2015, there are 254 Self-Governance tribes within the Department of the Interior-Bureau of Indian Affairs (DOI-BIA) and 341 Self-Governance Tribes within the Department of Health and Human Services-Indian Health Service (DHHS-IHS). Over the past 35 years, the ISDEAA has been one of the most successful mechanisms empowering tribes to develop the capacity for government-building activities. Self-Governance tribal leadership and representatives have held ongoing meetings with the Administration and Congress for more than 25 years regarding ways to improve and advance tribal self-governance. Amending Title IV of the Indian Self-Determination and Education Assistance Act (ISDEAA) has been a top legislative priority for Self-Governance tribes for more than a decade. However, Title IV of the ISDEAA, the Self-Governance program within DOI, has serious gaps and problems. Therefore, leaders of Self-Governance tribes continue to advance the vision of the ISDEAA by working to amend Title IV of the ISDEAA to create consistency and administrative efficiency for Self-Governance tribes between Title IV Self-Governance in the DOI and Title V Self-Governance in the DHHS.

Legislative Update

S. 286 – Department of the Interior Tribal Self-Governance Act of 2015.

On January 28, 2015, Senate Committee on Indian Affairs (SCIA) Chairman John Barrasso (R-WY) and Vice Chairman Jon Tester (D-MT) introduced S. 286 – the Department of the Interior Tribal Self-Governance Act of 2015. S. 286 was referred to the SCIA and is cosponsored by Senators Lisa Murkowski (R-AK), Mike Crapo (R-ID), Brian Schatz (D-HI) and Al Franken (D-MN). SCIA held a mark-up and S. 286 was ordered to be reported without amendment favorably. Senator John McCain filed four amendments to S. 286 but all were withdrawn and were not offer during the mark up. Chairman John Barrasso stated that he would continue to work to address the intent of these amendments with Senator McCain, Indian tribes, and the Department of Health and Human Services Inspector General. The amendments related to the Health and Human Services Office of Inspector Generator (HHS-OIG) report, "*Alert to Tribes on use of Indian Self-Determination and Education Assistance Act (ISDEAA) and Third Party Funds*". This report raised concerns over how certain contracting dollars are being used and audit questions.

Congressional Budget Office released the cost estimate for S. 286 in early February 2015 finding that implementing the legislation would have no significant effect on the federal budget over the 2015-2020 fiscal years and would not affect direct spending or revenues, therefore, pay-as-you-go procedures do not apply. Further, the bill contains no intergovernmental or private sector mandates as defined in the Unfunded Mandates Reform Act.

On July 7, 2015, S. 286 passed the Senate by Unanimous Consent and was sent to the House next for consideration. The Title IV Tribal Task Force has met with members in the House of Representatives; however, a primary sponsor has not yet been identified to introduce the Title IV amendments.

After the bill was passed, the Association of Fish and Wildlife Agencies (AFWA) raised concerns about the bill with Senate and House Members and staff. The primary concerns identified relate to the bill's purported impact on non-BIA programs. The Task Force is helping SCIA staff and others address AFWA's concerns and working towards having a bill identical to the Senate passed version introduced in the House.

For additional information please contact Colby Duren, Staff Attorney & Legislative Counsel, at 202.466.7767 or cduren@ncai.org.

NATIVE AMERICAN HOUSING

Housing is a core necessity for tribal communities. While tribes have made great strides toward improving housing conditions in their communities, the need for adequate, affordable housing for low-income Indian people persists. Native Americans still face some of the worst housing and living conditions in the Unites States. According to the U.S. Census Bureau's 2006-2010 American Community Survey, there are an approximate 142,000 housing units in Indian Country, and those homes frequently lack utilities and basic infrastructure. The survey shows that approximately 8.6 percent lack complete plumbing facilities, 7.5 percent lack kitchen facilities, and 18.9 percent lack telephone service. Close to 30 percent of Indian homes rely on wood for their source of heat.

The Native American Housing Assistance and Self-Determination Act is the main authorization of tribal programs (NAHASDA). Tribal programs under NAHASDA have been successful in allowing tribes the self-determination necessary to provide effective programs for tribal citizens. NAHASDA effectively replaced the various Indian housing programs under the 1937 Housing Act and consolidated federal housing funds through direct block grants to the tribes and their housing authorities. Tribes are now exercising their right of self-determination to design and implement their own housing and other community development infrastructure programs. NAHASDA has resulted in tens of thousands more housing units being constructed as well as increased tribal capacity to NAHASDA in 1996, tribal housing programs have been making great strides for housing and community development by using sustainable building practices and leveraging their NAHASDA and other federal funding. Today there are close to 500 Tribally Designated Housing Entities in Indian Country.

Legislative Update

Reauthorization of NAHASDA. The current authorization of the Native American Housing Assistance and Self-Determination Act of 1996 has been expired since September 30, 2013. Earlier this year, the House of Representatives passed H.R. 360, Native American Housing Assistance and Self-Determination Act of 2015, which was referred to the Senate. In June, the Senate Committee on Indian Affairs approved S. 710, Native American Housing Assistance and Self-Determination Reauthorization Act of 2015. This bill is ready for consideration by the full Senate.

NCAI has a standing resolution on reauthorization of NAHASDA and continues to advocate for enactment of this reauthorization during this session of Congress.

Administrative Update

The Department of Housing and Urban Development established an Indian Housing Block Grant (ICDBG) Program Negotiated Rulemaking Committee in 2013. This Committee has held regular meetings for the purpose of negotiating the formula allocation of the Indian Housing Block Grant. Following a series of meetings, the Committee is now reviewing and considering all of the public comments received during the rulemaking and is expected to release a draft rule later this year.

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

TRIBAL TRANSPORTATION

According to the latest National Tribal Transportation Facility Inventory (NTTFI), there are approximately 160,000 miles of roads and trails in Indian Country owned and maintained by tribes, the Bureau of Indian Affairs (BIA), states and counties. Of those, Indian tribes own and maintain 13,650 miles of roads and trails, of which only 1,000 (or 7.3%) are paved—12,650 miles are gravel, earth, or primitive. These 12,650 miles of roadways are still 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. Of the 29,400 miles owned and maintained by the BIA, 75% of them are graveled, earth, or primitive. These roads are the primary means of travel for Native peoples across the nation, but they remain the most underdeveloped road system in the United States.

The current authorization, Moving Ahead for Progress in the 21st Century (MAP-21), administers highway, bridge, transit, and safety programs within the Department of Transportation. Particularly for tribes, MAP-21 comprises the Tribal Transportation Program (TTP) and Public Transportation Program on Indian Reservations (Section 5311 (c), also known as the Tribal Transit Program). Currently tribes receive $450 million for TTP for the construction and maintenance of highways, roads, and bridges; and $30 million for Public Transportation on Indian Reservations. This funding represents the majority of all funding available to tribes for development and maintenance of transit systems that serve tribal communities. Adequate funding is crucial to enable tribal governments to ensure that tribal transportation programs can provide for the economic and social well-being of their tribal members and members of the surrounding communities.

Legislative Update

Surface Transportation Reauthorization. In the first session of the 114th Congress there have been two short-term extensions of the transportation authorization of MAP-21. The current extension was a five month extension expiring on October 31, 2015 and was intended to give Congress an opportunity to find necessary funding to pay for a new surface transportation bill.

Despite this extension, in July the Senate was able to consider and pass, H.R. 22, Developing a Reliable and Innovative Vision for the Economy Act (DRIVE Act) a multiyear transportation bill. However, the Senate has only been able to secure three-years of funding of this six-year transportation bill. The DRIVE Act has been sent to the House for consideration. The DRIVE Act contains several important provisions for Tribes including:

- Authorizes the funding level for the Tribal Transportation Program (TTP) at $465,000,000 for fiscal year 2016; $475,000,000 for fiscal year 2017; $485,000,000 for fiscal year 2018; $495,000,000 for fiscal year 2019; $505,000,000 for fiscal year 2020; and $515,000,000 for fiscal year 2021. This funding level for FY 2016 is a $15 million increase, and with stepped increases of $10 million for each fiscal year through FY 2021.
- Reduces the Federal Highway Administration and Bureau of Indian Affairs administrative expenses from the current six percent to five percent.
- Tribes and Federal lands are eligible in the Nationally Significant Federal Lands and Tribal Projects Program, which is authorized for $150 million to fund projects that construct, reconstruct or rehabilitate significant tribal transportation projects.
- Includes a provision to collect data from tribes who receive TTP funding on the following: names of projects or activities; description of the projects, current status of the projects; and the estimated number of jobs created and retained by the identified project.

- Authorizes the funding level for Section 5311(c) Public Transportation on Indian Reservations (Tribal Transit Grant Program) at $5 million for discretionary grants and $30 million for formula grants within the Tribal Transit Grant Program for each year. This is a $5 million increase for the formula grant portion.
- Includes provision for the Motor Carrier Safety Assistance Program for Indian tribes to work in partnership with Secretary of U.S. Department of Transportation, States, and other entities to establish programs that improve motor carrier, commercial motor vehicle, and driver safety.
- States are allowed to provide funding for Highway Improvement Program and National Priority Safety Programs to include tribal governments.
- Tribal governments are eligible for grants of at least $50 million for high cost critical projects costs that exceed no lesser than $350 million.

The House has been working on drafting their version of a transportation bill since the convening of the 114th Congress. Action on a House bill is expected this Fall and may be as early as the end of October.

As noted, the main challenge in enactment of a multi-year transportation bill is funding. Currently, the Highway Trust Fund which receives money from a federal fuel tax of 18.3 cents per gallon on gasoline and 24.4 cents per gallon of diesel fuel and related excise taxes is the mechanism that funds all transportation programs including the Tribal Transportation Program, and Tribal Transit Program. Over the past two decades, the gasoline tax revenue generated in the Highway Trust Fund has steadily declined due to automobiles becoming more gas efficient and people driving less. The biggest challenge facing Congress is generating and sustaining funding revenue in the Highway Trust Fund. Neither Chamber is willing to consider raising the gasoline tax, so there is no clear direction in Congress for keeping the Highway Trust Fund solvent in order to pay for a long term surface transportation bill. With the most recent extension ending on October 31st, it is uncertain whether there will be another extension or whether either the House or Senate bills will be taken up.

Tribal Transportation Self-Governance Act of 2015, H.R. 1068. In a previous transportation authorization, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, enabled tribal governments to determine whether they chose BIA or the Federal Highway Administration (FHWA) to administer their TTP program. Under 23 U.S.C. 202(a), the Secretary of Transportation is authorized to enter into "agreements" with tribal government to carry out a highway, road, bridge, parkway, or transit program or projects. This enables tribes to directly work with the FHWA in the administration of their TTP program. The BIA can also enter into an agreement with a Tribal government to carry out their transportation program.

In February of this year, Congressmen DeFazio and Young introduced H.R. 1068, the Tribal Transportation Self-Governance Act of 2015. This legislation would allow tribes to enter into agreements with the Secretary of Transportation and expand tribal self-governance programs to other areas at the Department of Transportation outside of just FHWA. Currently, there are 128 Indian tribes who have entered into agreements with FHWA. NCAI supports this legislation and the expansion of tribal transportation self-governance within DOT via #MSP-15-016, Support for Tribal Self-Governance within the Department of Transportation.

Bureau of Indian Affairs Road Maintenance Program. NCAI continues to advocate for increases in funding for the Bureau of Indian Affairs Road Maintenance Program. This critical program, located within the Department of the Interior, is critical for ensuring the maintain of BIA roads on tribal lands. The BIA Road Maintenance program is solely responsible for maintaining approximately 29,400 miles of BIA roads in Indian Country along with 900 bridges. The funding for this program remained stagnant for several years, with no substantial increase in over a decade. With a current backlog of deferred maintenance of $81.6 million, the annual appropriated amount of $26 million does little to address the current and growing need for maintenance of the BIA road system on tribal lands. NCAI continues to urge Congress to adequately fund the BIA Road Maintenance program.

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

TRIBAL TELECOMMUNICATIONS

The U.S. continues to be a global leader in the technology and wireless industries. However, access to telecommunications infrastructure and services in rural and tribal lands continues to lag behind the nation overall. While various reports and data findings have highlighted an increase in access to telecommunications services, tribal lands still remain the least connected areas of the country. There are still significant barriers to tribal lands receiving this vital infrastructure and residents accessing it at affordable rates.

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

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

Legislative Update

Increasing Tribal Access to Spectrum Licenses. On October 7, 2015 the Senate Commerce, Science, & Transportation Committee held an oversight hearing on "Removing Barriers to Wireless Broadband Deployment". While the Committee didn't have a witness to highlight specific issues regarding wireless availability on tribal lands, there was an expressed general recognition of the lack of these services in rural and tribal areas.

NCAI submitted testimony for the record on the hearing outlining several specific tribal considerations that the Federal Communications Commission (FCC) had proposed to increase tribal access to spectrum licenses in 2011, but have since failed to take any action on.

Specifically, NCAI referenced FCC WT Docket No. 11-40, in the matter of *Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands* (WT 11-40), which is a Notice of Proposed Rulemaking that was released by the Commission in March 2011 but has remained bereft of further consideration. In WT 11-40, there are a number of tribal proposals that should be included in legislation to increase tribal access to spectrum licenses, such as: creation of a "Tribal Priority" for spectrum licenses up for auction if they include tribal land service areas; ensure good faith and fair negotiation procedures between tribes and telecommunications service providers to deploy wireless services on tribal lands; and the creation of a "build or divest" program to require spectrum licensees to deploy services on tribal lands, and failure to comply would result in the divestiture of said license over tribal lands.

NCAI will continue to work with Congress to ensure tribal considerations are included in any telecommunications legislation that may be introduced regarding wireless deployment and spectrum licensing.

Administrative Update

Reform and Modernization of the Lifeline and Link Up Programs. On June 18, the Federal Communications Commission (FCC) held an Open Meeting to announce proposed reforms for the Lifeline and Link Up programs. While questions were posed regarding the necessity of maintaining the Link Up program on tribal lands, many of the proposed reforms to the Lifeline program focused on transitioning the program to support broadband services. However, there were specific proposals included in the *Second Further Notice of Proposed Rulemaking* that were directed at the enhanced tribal subsidy of the program. The Lifeline program provides a monthly telephone/cell phone discount of $9.25 to low-income individuals, but low-income residents of tribal lands are eligible for an enhanced subsidy providing a monthly discount of up to $34.25. The enhanced tribal Lifeline program became a focal point in the Commission's proceeding since almost all of Oklahoma was recognized as "tribal land" and thereby eligible for the increased tribal support.

During the Open Meeting on June 18, Commissioner Pai noted in his dissenting remarks that Oklahoma had become "ground zero" for waste, fraud, and abuse in the program, particularly because of the designation of tribal lands in the state. While proposals in the rulemaking questioned whether the enhanced tribal Lifeline support should be retained or increased, under the rulemaking's *Report & Order* (R&O) the Commission moved forward with redesignating what constituted tribal lands in Oklahoma. Without first consulting with tribes in the state, the Commission adopted a historical map of Oklahoma former reservations between 1870 and 1890. Adoption of the new map means that low-income tribal members residing in and around Oklahoma City and Tulsa are now ineligible for the enhanced tribal Lifeline support.

On August 31, NCAI filed comments in the Commission's proceeding stressing that consultation with tribal nations must occur prior to final rulings that have tribal implications. NCAI's initial comments also referenced opposition to remarks by Commissioner Pai that stated he wanted to limit the enhanced tribal Lifeline support to counties with less than 15 people per square mile. NCAI also advocated for the preservation of the enhanced tribal Lifeline support for all tribal lands and low-

income tribal members residing in a close nexus to tribal lands, along with an increase in the tribal discount to support broadband services.

On September 30, NCAI filed Reply Comments reemphasizing tribal commenters to preserve and increase the enhanced tribal Lifeline support and issues regarding the lack of tribal consultation prior to the decision to redesignate tribal lands in Oklahoma. NCAI also assisted tribes in filing a template letter of support regarding the aforementioned issues on consultation and the enhanced tribal subsidy. In total 33 tribal comments were filed in the docket, representing 30 tribes and tribal organizations. NCAI's initial comments can be viewed at http://bit.ly/1LkLP13, to view NCAI's reply comments visit http://bit.ly/1OogXiM.

For additional information, please contact Brian Howard, Legislative Associate at 202-466-7767 or bhoward@ncai.org

APPROPRIATIONS

Congress is scheduled to be in session only three more weeks before Treasury expects it will reach the debt limit and seven weeks before government funding expires under the current short-term continuing resolution. NCAI's main request is to end sequestration for fiscal year (FY) 2016 by raising the caps on non-defense discretionary funding, which is where most federal tribal programs are funded. The obligations to tribal citizens funded in the federal budget are the result of treaties negotiated and agreements made between Indian tribes and the U.S. in exchange for land and resources, known as the trust responsibility. Of the possible routes for final FY 2016 appropriations, a year-long CR would be the worst scenario for tribes, given that both House and Senate versions of appropriations bills include increases for tribal programs. NCAI urges a long-term budget deal to raise defense as well as non-defense spending caps.

Background

The outlook for the FY 2016 appropriations cycle remains uncertain. While a short-term Continuing Resolution (CR) is in place through December 11, Congress must reach a larger agreement for the remainder of FY 2016. Appropriations bills moved through Congress under the tight caps of the Budget Control Act of 2011, which are in effect through fiscal year 2021. The caps were meant to force Congress to find alternative ways to reduce the deficit, but instead negotiations to develop an alternative budget deal, similar to the 2014 Murray-Ryan deal, remain elusive. Republicans would like to see increased military spending, while Democrats, looking to increase funding for domestic programs, blocked spending bills that followed lower spending allocations. The White House has issued a blanket veto threat against any appropriations measure that adheres to the Republican budget resolution framework. Possible outcomes include a Ryan-Murray type budget deal that eases austerity to continuing resolutions at current levels to a government shutdown. A year-long CR would be undesirable for tribal programs, as many tribal programs, even under the low caps of the current budget resolution, would see increases in the House and Senate versions of bills.

The House has passed six spending bills, including Commerce-Justice-Science (HR 2578), Energy-Water (HR 2028), and Transportation-HUD (HR 2577). In the Senate, seven spending bills have been reported out of committee, including Commerce-Justice-Science and Interior-Environment. The Interior-Environment bill has not been marked up in the Senate since 2009.

Two bills have been introduced that would exempt many tribal programs from sequestration (H.R. 3063 and S.1497). NCAI has passed many resolutions calling for programs that fulfill trust, treaty, and statutory obligations to tribes to be exempt from sequestration

FY 2016 INTERIOR-ENVIRONMENT APPROPRIATIONS

Status: Versions approved by the Appropriations Committees of both the House and Senate

The House Appropriations Committee on June 16 advanced, by a vote of 30-21, a $30.2 billion fiscal year (FY) 2016 Interior-Environment spending bill. The legislation includes funding for the Department of the Interior including the Bureau of Indian Affairs (BIA) and Bureau of Indian Education (BIE), the Forest Service, the Indian Health Service (IHS), the Environmental Protection Agency, and others. In total, the bill includes $30.17 billion in base funding, a decrease of $246 million below the FY2015 enacted level and a reduction of $3 billion below the President's budget

request. The Senate Appropriations committee marked up the Interior-Environment bill June 18th. Below is a summary of BIA and IHS funding levels in the bill.

(Dollars in millions)	FY 2015 Enacted	FY 2016 B.R.	House Bill	Bill vs. Enacted	Bill vs. B.R.	Senate Bill	Sen. vs. Enacted	Sen. vs. B.R.
OIP and CSC	2,429.2	2,660.6	2,505.7	76.4	-154.9	2,509.4	80.2	-151.2
Construction	128.9	188.9	187.6	58.7	-1.4	135.2	6.3	-53.8
Total BIA and BIE	2,601.5	2,924.9	2,766.4	164.9	-158.5	2,693.0	91.5	-231.9
% over FY15		12.4%	6.3%			3.5%		
IHS Facilities	460.2	639.7	466.3	6.1	-173.4	521.8	61.6	-117.9
Total IHS, with CSC	4,642.4	5,102.9	4,787.9	145.5	-315.1	4,779.3	136.9	-323.7
IHS % over FY15		9.9%	3.1%			2.9%		

B.R. = Budget Request; OIP = Operation of Indian Programs; CSC = contract support costs

Bureau of Indian Affairs (BIA) and Bureau of Indian Education (BIE)

In the House bill, many BIA/BIE budget line items would be funded at the FY 2015 enacted level, except increases for contract support costs, road maintenance, tribal grant support costs, elementary and secondary programs, tribal courts, the Indian Energy Service Center, and a $58 million increase for Education Construction which reestablishes the budget line item for replacement of individual BIE facilities. Overall, the Operation of Indian Programs would be 3 percent more than the FY 2015 enacted level, and BIA construction would receive a 45 percent increase. According to House Interior Appropriations Subcommittee Chairman Calvert, increases for BIA and IHS represent the largest percentage increase in the House Interior bill.

The Senate bill includes $2.69 billion for the Bureau of Indian Affairs, $232 million less than the President's request. The Senate version includes an increase of $24.5 million above the enacted level for Public Safety and Justice, following the recommendations of the Indian Law and Order Commission report, "A Roadmap for Making Native America Safer," and to address the added tribal responsibilities outlined in the Violence Against Women Reauthorization Act of 2013. The Senate bill also includes $10 million to assess needs, consider options, and pilot tribal court systems for tribal communities subject to Public Law 83-280. While the House version includes $75 million for Tribal Grant Support Costs, the Senate includes $64.4 million.

Contract Support Costs

The House bill fully funds contract support costs and the House committee report states that bill language has been added to make contract support costs available until expended and to protect against the use of other appropriations to meet shortfalls (House Committee report, page 36 -37).

The Senate version includes new language establishing an indefinite appropriation for contract support costs estimated to be $277,000,000. The budget request proposed to fund these costs within the "Operation of Indian Programs" account through Contract Support and the Indian Self Determination Fund budget lines. Under the Senate bill's new budget structure, the full amount tribes are entitled to will be paid and other programs will not be reduced in cases where the agency may have underestimated these payments when submitting its budget. Additional funds may be provided by the agency if its budget estimate proves to be lower than necessary to meet the legal obligation to pay the full amount due to tribes, but this account is solely for the purposes of paying contract support costs and no transfers from this account are permitted for other purposes.

Riders in the Interior-Environment Bill

The House Interior Appropriations bill contains a rider that would prevent the completion of the amendments to the Federal Recognition Regulations. The Senate bill does not include the tribal recognition rider. The text of the rider is on page 35 of the House FY 2016 Interior and Environment Bill:

> Provided further, That none of the funds made available by this or any other Act may be used by the Secretary to finalize, implement, administer, or enforce the proposed rule entitled "Federal Acknowledgement of American Indian Tribes" published by the Department of the Interior in the Federal Register on May 29, 2014 (79 Fed. Reg. 30766 et seq.).

Under Trust-Real Estate Services, the House report lays out concerns about the "Department's goal of placing more than 500,000 acres of land into trust by the end of fiscal year 2016" (House Committee report, page 37). The report mentions that on March 9, 2015, the Department took into trust approximately 152 acres in Clark County, WA on behalf of the Cowlitz Indian tribe, while litigation was ongoing in the matter. The Committee Report "directs the Department to: (1) report to the Committee within 30 days of enactment of this Act on (a) the process it has established for taking the land out of trust should the court order the Department to do so; and (b) the cost to the Department of taking the land out of trust; and (2) focus not on an acre goal but on reducing the current backlog of fee-to-trust applications." The House bill includes cuts to central and regional oversight.

Administration Letter to the House Appropriations Committee: In a June 15th letter to Appropriations Committee Chairman Hal Rogers, the Administration laid out a number of concerns about the House Interior bill, which would underfund investments due to sequestration levels. Relevant excerpts from the letter are below:

> The bill cuts funding for Native American health care programs and facilities of the Indian Health Service (IHS) by more than $300 million, or 6 percent, below the President's Budget. This would result in inadequate funding for the provision of health care to a population that faces greater sickness and poverty, on average, than the national population. For example, compared to the President's Budget, the bill reduces funding by nearly $50 million for Purchased and Referred Care, a program that supports health care not available in IHS and tribal facilities, which would exacerbate existing levels of denied care and waiting lists for services. In addition, the bill cuts funding for the Bureau of Indian Affairs (BIA) funding by 5 percent compared to the President's Budget, which would limit DOI's ability to support priorities in Indian Country, such as programs for Native youth.
>
> The Subcommittee bill also contains problematic language related to tribal Contract Support Costs (CSC) for BIA and IHS. Specifically, the bill contains a limitation on funding for CSC that could perpetuate the funding issues described in the Supreme Court's Salazar v. Ramah Navajo Chapter decision. The Congress should pursue a long-term solution for CSC appropriations, providing an increase in funding in FY 2016 as part of a transition to a new three-year mandatory funding stream in FY 2017, as proposed in the President's Budget.

Indian Health Service
For IHS, overall budget authority in the House bill would be 3 percent more than enacted in FY 2015 compared to the nearly 10 percent increase proposed in the President's FY 2016 budget for IHS. The Senate's version of the bill includes $4.78 billion for tribal health programs of the Indian Health Service (IHS), $324 million less than the President's request. The bill does not include $69 million in proposed increases for purchased and referred care programs, $23 million for suicide prevention programs or the more than $100 million to cover other services and facility needs. The Senate bill provides $40 million for Indian Health Service, Facilities Maintenance and Improvement and Sanitation Facility Construction to address critical infrastructure needs in villages and on reservations nationwide; $20 million for Facilities construction to start on the next facility on the Indian Health Service list; provides full funding for staffing packages for new facilities; and provides $2 million for Village Built Clinics.

COMMERCE, JUSTICE, SCIENCE APPROPRIATIONS BILL

Status: Passed House; approved by Senate Appropriations Committee

The Senate version includes higher levels for many tribal programs compared to the House version. NCAI urges passage of the 7% tribal set-aside of Office of Justice Program (OJP) funding.

State and Local Law Enforcement Assistance: The Senate version recommends funding tribal grant programs by permitting 7% of OJP discretionary grant and reimbursement program funds to be used for tribal criminal justice assistance. The Senate Committee directs OJP to consult with tribal stakeholders in how tribal assistance will be awarded for detention facilities, courts, alcohol and substance abuse programs, civil and criminal legal assistance, and other priorities. The Senate bill includes $10 million for the Tribal Youth Program, while the House bill does not. The House bill does not include the 7% tribal allocation across OJP discretionary funds, but instead would appropriate $30 million under COPS for tribal assistance at OJP.

Office of Justice Programs (OJP), Crime Victims Fund (CVF): Both the House and Senate would substantially increase disbursements from the CVF. The Senate directs $52 million of the CVF to tribal governments. The House does not include a direct allocation for tribal governments, but does include report language directing the Department of Justice to consult with Indian tribes on the distribution of the CVF funds.

LABOR-HEALTH AND HUMAN SERVICES (HHS)-EDUCATION

Status: Versions approved by the Appropriations Committees of both the House and Senate

Major Differences: The House version includes $143.9 for Indian Education. The Grants to Local Educational Agencies FY16 amount would be the same as FY 15, but the Special Programs for Indian Children would see an increase of $20 million above the FY 2015 enacted level and $30 million below the budget request.

The House version includes an overall total of $32.9 million for the expansion of suicide prevention, overall mental health and substance abuse prevention activities for Native American youth. The

Senate version does not include the increases proposed in the President's budget for Tribal Behavioral Health grants.

The House bill includes a policy provision prohibiting the National Labor Relations Board (NLRB) from exercising jurisdiction over Indian tribes. The Senate committee report includes language expressing concerned that the NLRB has sought in some cases to exercise jurisdiction over Indian-owned businesses within tribal territories.

TRANSPORTATION HUD APPROPRIATIONS BILL

The House passed the Transportation-HUD spending bill, HR 2577, on June 9, 2015. The bill passed 216-210, and is the fifth spending bill to pass the House. The bill adheres to the Budget Control Act spending caps imposed by PL 112-25. The Office of Management and Budget warned that the president would veto the bill because the funding is too low and because of policy riders.

Native American Housing Block Grants

Dollars in millions	FY15 Enacted	FY16 PB	House	House vs. FY15	House vs. PB
NAHBG	650	660	650	0	10

The House Committee recommends $650 million for Native American Housing Block Grants, the same as the FY 2015 enacted level and $10 million below the budget request. $3.5 million is for organizations representing Native American housing interests to provide training and technical assistance to Indian housing authorities and Tribal Designated Housing Entities (TDHEs), with no less than $2 million for a national organization as authorized under NAHASDA. $2 million for Title VI loan would guarantee up to $17.45 million. The House bill continues language requiring FY 2016 funds to be spent within 10 years. Bill language is included to withhold reduced formula allocation funding from any grantee that has an unexpended balance greater than three times its formula allocation, unless that grantee's formula allocation is less than $5,000,000.

Indian Housing Loan Guarantee Fund Program Account

(Dollars in millions)	FY2015 Enacted	FY16 Pres. Bud.	House	Bill vs. FY2015	Bill vs. FY2016 PB
Credit Subsidy	7	8	8	1	- - -
Limit on guaranteed loans	744	1,269.8	1,269.8	525.8	- - -

Section 184 of the Housing and Community Development Act of 1992 establishes a loan guarantee program for Native American individuals and housing authorities to build new housing or purchase existing housing on trust land. This program provides access to private financing that otherwise might be unavailable because of the unique legal status of Indian trust land. The House bill includes $8 million in new credit subsidy for the Section 184 loan guarantee program, which is $1 million above the FY 2015 enacted level and the same as the budget request. This will guarantee a loan volume of $1,269,841,000, which is $525,794,000 above the FY 2015 enacted level and the same as the budget request.

Indian Community Development Block Grant

The house bill includes $60 million for the Indian Community Development Block Grant, which is $6,000,000 below FY 2015 enacted and $20,000,000 below the budget request. No funding is provided for the teacher housing set-aside requested in the budget.

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2014 WORLD CONFERENCE ON INDIGENOUS PEOPLES

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

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

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

During the opening session of the WCIP, the UN General Assembly adopted an Outcome Document that provides for concrete and action-oriented measures to implement and achieve the objectives of the United Nations Declaration on the Rights of Indigenous Peoples. While we did not get everything we were asking for, the Outcome Document does address all 4 of our priorities in one form or another. It is crucial that we maintain this momentum to make sure that the decisions of the World Conference are fully implemented, and begin to realize the promise of the UN Declaration on the Rights of Indigenous Peoples.

Indigenous peoples and tribal leaders need to be directly involved in the follow-up work to see that the details of these decisions are worked out in a way that will be of meaningful use to tribes and others. In fact, the Outcome Document requires indigenous consultation throughout this process, and indigenous leaders and experts need to be heard directly. Over the past year, there has been a great deal of follow-up work to the WCIP and NCAI, in partnership with the Native American Rights Fund, has been fully engaged in continuing to advocate with various UN bodies for meaningful action on our four priorities. This has included participation in the following meetings:

1. **February 26.** The United States Department of State held a consultation on follow-up work to the WCIP.
2. **March 3-5**. Open-ended meeting of indigenous peoples on the follow-up to the WCIP in conjunction with meetings of the Human Rights Council in Geneva, Switzerland.
3. **March 9-20**. UN Commission on the Status of Women at UN Headquarters, New York.
4. **April 20-May 1**. Discussion of WCIP follow-up at the UN Permanent Forum on Indigenous Peoples at UN Headquarters, New York.
5. **July 20-24**. Expert Mechanism on the Rights of Indigenous Peoples discussion on follow up on the work of the WCIP, Geneva.
6. **September 14-October 2**. Human Rights Council, Geneva. Includes a discussion to follow up on the WCIP Outcome Document.

Organization of American States. The Organization of American States (OAS) has been working on a regional Declaration on the Rights of Indigenous Peoples for several years. In December 2014, following a 3-year hiatus on negotiations, the OAS announced that it was redoubling its efforts to complete negotiations on the Draft Declaration with the goal of adopting the Declaration in June of 2015. NCAI participated in monthly negotiation sessions between February and May that resulted in significant progress. Unfortunately, on the final day of negotiations, it became clear that it would be impossible for the indigenous representatives and the member states to reach consensus on several key points. As a result, the indigenous caucus withdrew from the negotiations. The OAS plans to revive the negotiations in early 2016. NCAI will continue to engage in the process with the goal of securing a strong regional Declaration that provides additional tools for protecting and promoting indigenous rights in the Americas.

Universal Periodic Review. In May of 2015, the UN Human Rights Council conducted its Universal Periodic Review of the United States government's compliance with its international human rights obligations. NCAI co-submitted "shadow reports" on violence against indigenous women and Indian child welfare issues. As a result of NCAI's advocacy the *Report of the Working Group on the Universal Periodic Review* includes several recommendations made by UN member states for actions by the United States to improve its human rights compliance in these areas.

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

WHITE HOUSE INITIATIVES

YOUTH - GENERATION INDIGENOUS

President Obama has launched Generation Indigenous (Gen-I), a youth initiative focused on removing the barriers that stand between Native youth and their opportunity to succeed. The Gen-I initiative is intended to take a comprehensive, culturally appropriate approach to help improve the lives of Native youth by creating policies and programs that will help Native youth succeed.

As part of this initiative, the White House released its Native Youth Report at the White House Tribal Nations Conference in December of 2014. This report acknowledges past failures of federal policy on the education of Native students, recognizes the challenges facing Native youth and makes recommendations for moving forward to address these challenges.

In addition, the Administration has launched the Cabinet Native Youth Listening Tour so that Cabinet officials can hear directly from Native youth on how effective federal policies can improve youth outcomes. To date, several Cabinet members have visited Native youth in tribal communities including Secretary of the Interior Sally Jewell, Office of Personnel Management Director Katherine Archuleta, Environmental Protection Agency Administrator Gina McCarthy, Secretary Tom Perez, and Secretary of Education Arne Duncan. The Administration is also focused on expanding federal outreach on youth internships and employment opportunities across federal agencies.

On July 9th, the White House held a White House Tribal Youth Gathering that engaged 1,100 Native youth from across the country in a day-long convening. At the gathering youth got the opportunity to voice their concerns, suggest to federal employees how their communities could be improved and see what their peers are doing to effectively create change. For those youth that were unable to attend the event it was live streamed and they were able to ask questions and get involved virally for the plenary sessions.

For additional information please contact Tyler Owens, Youth Programs Assistant, at 202.466.7767 or towens@ncai.org

WHITE HOUSE COUNCIL ON NATIVE AMERICAN AFFAIRS

President Obama established the White House Council on Native American Affairs by Executive Order on June 26, 2013, and the inaugural meeting was held on July 29, 2013. The Council, which includes more than 30 federal departments and agencies, coordinates the Administration's engagement with tribal governments and works across executive departments, agencies and offices to develop policy recommendations and expand efforts to leverage federal programs and resources available to tribal communities.

The Executive Order establishing the Council also institutionalized the White House Tribal Nations Conference as an annual event. The White House Conference brings together tribal leaders from all federally recognized tribes with Cabinet members and senior Administration officials. This year's White House Conference will be the seventh conference hosted by President Obama.

The Council has continued to prioritize its focus on issues such as: reform of the Bureau of Indian Education, promoting sustainable tribal economic development; and supporting sustainable management of Native lands, environments and natural resources.

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