



SUPPORT FOR TRIBAL GOVERNMENTS

Ensuring tribal nations have the tools for effective governance is critical to fulfilling the promise of the Indian Self-Determination and Education Assistance Act (ISDEAA). Congress must support Indian self-determination by increasing tribal base funding, providing funding directly to tribal nations as opposed to passing funds through states, and promoting accurate data collection so that funding can better target the needs of Indian Country. ISDEAA promotes self-determination and self-governance through tribal nations' ability to enter into contracts and compacts with the federal government to administer certain federal programs. Those tribal shares of federal programs make up the “base funding” for tribal governments and provide certainty and security to tribal governments.

Federal funding opportunities for tribal governments are increasingly offered through competitive grant models that are cost prohibitive to many tribal nations. In exchange for the land and resources that made the United States the most powerful country in the world, tribal nations paid, in full, for the programs and services they receive. Competitive grant models that require tribal nations to continuously apply, compete, and justify the need for federal funding are inconsistent with the federal government's trust and treaty obligations to tribal nations. Competitive grant models also inherently create disparate treatment of tribal nations by the federal government based on which nations can afford to compete.

Key Recommendations

DEPARTMENT OF THE INTERIOR

Interior - Environment Appropriations Bill

Bureau of Indian Affairs (BIA)

- *Provide increases via tribal base funding instead of through grants to tribal governments.*

Grant funding, particularly inside the BIA, is not consistent with the intent of Indian self-determination. Tribal leaders have grown increasingly frustrated by the increase in BIA funding offered through grants. Allocating new funds via grant opportunities marginalizes and impedes the exercise of tribal self-determination. It also drains vital tribal government resources on grant writing, monitoring, and reporting that could otherwise be used to increase the quality of life for tribal citizens and in tribal communities.

When tribal nations are forced to apply for funding through grant opportunities at the BIA, the ultimate result is that federal employees in Washington, DC, not elected tribal leaders, retain program authority. Grants limit the flexibility and local control authorities available to tribal nations under ISDEAA. For example, if a nation receives funds for a detention facility and also creates a culturally-appropriate rehabilitation or prevention program, they cannot use their detention funds for those programs even though it would lower incarceration rates in their community. Base funding for tribal governments through ISDEAA contracts and compacts allows greater flexibility to utilize federal funds in ways that best promote the shared policy goals of tribal nations and the federal government.

Moreover, Congress has historically underfunded programs intended to benefit American Indians and Alaska Natives. Therefore, BIA funding should be increased and distributed via formulas developed through consultation with all tribal nations.

DEPARTMENT OF THE INTERIOR AND DEPARTMENT OF HEALTH AND HUMAN SERVICES

Interior - Environment Appropriations Bill

ISDEAA Section 105(l) Lease Program for BIA and IHS

- *Provide funding for Section 105(l) lease agreements through mandatory spending.*
- *Fund Section 105(l) leasing in the amount of such sums as may be necessary.*

ISDEAA was enacted to enhance tribal self-determination. As a result of this highly effective law, many tribal nations now administer programs that were previously administered by the federal government, which has resulted in the need for tribal facilities to house these programs. Section 105(l) of the ISDEAA provides that the Secretary of the Interior and the Secretary of Health and Human Services shall enter into leases with an Indian tribe or tribal organization for the administration and delivery of services under ISDEAA.¹⁵ Under Section 105(l), the Secretary of the Interior or Health and Human Services must compensate each Indian tribe or tribal organization that enters into a 105(l) lease. Compensation may include rent, depreciation based on the useful life of the facility, principal and interest paid or accrued, operation and maintenance expenses, and such other reasonable expenses that the Secretary determines, by regulation, to be allowable. The *Maniilaq Ass'n v. Burwell* decisions, in both 2014 (72 F. Supp. 3d 227 (D.D.C. 2014)) and 2016 (70 F. Supp. 3d 243 (D.D.C. 2016)), upheld this federal responsibility and tribal nations are now entering into leases at both the Department of the Interior and the Department of Health and Human Services to compensate for use of allowable facilities.

In the past several appropriations cycles, Appropriators have reaffirmed the mandatory nature of the funding. However, the inability to forecast the number of lease requests during a fiscal year has led to major shortfalls at the Indian Health Service, which further results in the reprogramming of funding from other critical programs and the need for Appropriators to make up the shortfalls. This has resulted in large injections of much-needed funding for the 105(l) lease program, but ultimately at the expense of crucial funding in other areas.

In the FY 2020 explanatory statement for the Interior, Environment, and Related Agencies regular appropriations bill, Appropriators acknowledge that estimates for lease costs resulting from Section 105 continue to increase and have the potential to increase quickly over a relatively short period of time. Rapidly escalating requirements for lease costs negatively impact the ability to use discretionary appropriations to support core tribal programs. Appropriators state in their FY 2020 explanatory statement that obligations of this nature are typically addressed through mandatory spending, but in this case, since they fall under discretionary spending, they are impacting all other programs funded under the Interior, Environment, and Related Agencies appropriations bill.¹⁶

As part of FY 2020 funding, Congress has directed the Department of the Interior (DOI) and the Department of Health and Human Services (HHS) to consult with tribal nations, along with other relevant federal entities, to formulate long-term accounting, budget, and legislative strategies to address the situation.

In order to secure the Section 105(l) program in the long-term, funding for these leases should be classified as mandatory spending. Funding for Section 105(l) leases must be funded in the amount of such sums as may be necessary for both DOI and HHS. While DOI and HHS study what to do with respect to funding for Section 105(l) leases, each Department should continue to enter into Section 105(l) leases with tribal nations. No solution to the Section 105(l) funding issue should detrimentally affect funding or operation of any other tribal program. As such, funding for Section 105(l) leases must be mandatory spending that does not count against any discretionary caps on funding.