



NATIONAL CONGRESS OF AMERICAN INDIANS

Testimony for the Oversight Hearing on "The President's FY2019 Budget Request for Indian Programs" March 21, 2018

On behalf of the National Congress of American Indians (NCAI), thank you for holding a hearing on the President's FY 2019 Budget Request for Indian Programs. Overall, NCAI calls for restoration of cuts to many tribal programs, formula funding rather than grants for both Justice funding and opioids, a set-aside in the Crime Victims Fund, increases for Census 2020, and others listed below in our testimony.

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Federal Commitments Funded in the Budget

Tribes seek only those things promised to us and every citizen by the Constitution, and the solemn treaties and agreements reached between our tribal nations and the United States. At the founding, the United States dealt with our tribal governments as sovereign equals. In exchange for Federal protection and the promise of certain benefits our ancestors gave forever to the people of the United States title to the very soil of our beloved country. To settle the process for admission of new states, the thirteen original states agreed to transfer western land claims to the United States under the principles in the Northwest Ordinance, including:

The utmost good faith shall always be observed towards the Indians; their land and property shall never be taken from them without their consent; and, in their property, rights, and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity, shall from time to time be made for preventing wrongs being done to them, and for preserving peace and friendship with them.

These provisions signify the intent of the Framers to provide for the governance of Indian country, a compact between the original States and all that followed. We have never asked anything except that these protections be continued. Many of the proposed deep reductions in the President's Budget threaten to limit this protection and these benefits. The proposed budget cuts to tribal governmental services, if enacted, would represent a clear retreat from the federal commitments and treaty promises made to tribes.

The President's budget would cut the Bureau of Indian Affairs (BIA) by about half a billion dollars, or 15 percent. BIA Social Services would be reduced by more than a third, Indian Child Welfare by more than a quarter, and critical human services programs, law enforcement and courts programs, environmental protection, housing, and education programs would face unconscionable reductions. Infrastructure programs, such as the Indian Community Development Block Grant would be eliminated, and the Indian Housing Block Grant and road maintenance would be reduced.

We support proposals that treat tribal governments equitably, such as the proposed set-asides in the Department of Justice for tribes. Tribal parity should be a principle for every other department or initiative as well, including addressing the opioid epidemic and building and repairing infrastructure. We are also heartened to see increases requested for the Indian Health Service (IHS).

Throughout our testimony, we call on Congress to uphold the federal government's trust responsibility to tribal nations. When tribal nations agreed to accept a smaller land base, the federal government promised to safeguard our right to govern ourselves and to enable tribal governments to deliver essential services and provide them resources to do so effectively. That is the trust relationship embodied in the U.S. Constitution. Congress and the Administration is responsible for carrying out that trust in the federal budget.

Summary of Major Changes

As Congress has the final say on discretionary spending, NCAI notes the following proposals in the President's budget as significant. Some of the proposed eliminations include:

Eliminations

- Indian Community Development Block Grant (in Housing and Urban Development)
- Low Income Home Energy Assistance Program (LIHEAP)
- Indian and Native American Program (INAP in Department of Labor)
- Community Development Financial Institutions, Native American program (Treasury)
- Tribal Energy Loan Guarantee Program
- Eliminations within BIA include:
 - Small and Needy Tribes
 - Housing Improvement Program (\$10 million)
 - Tribal Climate Resilience
 - Alaska Native Programs
 - Johnson O'Malley Program (\$15 million)
 - Scholarships and Adult education (\$35 million)

NCAI requests that Congress restore these eliminations. When programs are zeroed out in the President's budget, even if they are eventually restored, holdbacks of zeroed out programs cause a disruption of high priority programs throughout Indian Country.

Major Reductions

- Native American Housing Block Grant cut from \$654 million to \$600 million, -8.2 percent
 - Bureau of Indian Affairs cut by \$433 million, or -15.6 percent
- Major Reductions in BIA include
- Social Services cut by \$19 million, or -37 percent
 - Indian Child Welfare Act cut by \$5 million, or -27 percent
 - Welfare Assistance cut by \$8.4 million, or -11 percent
 - Rights Protection Implementation cut by \$14.7 million, or -37 percent
 - Job Placement and Training cut by \$4.4 million, or -35 percent

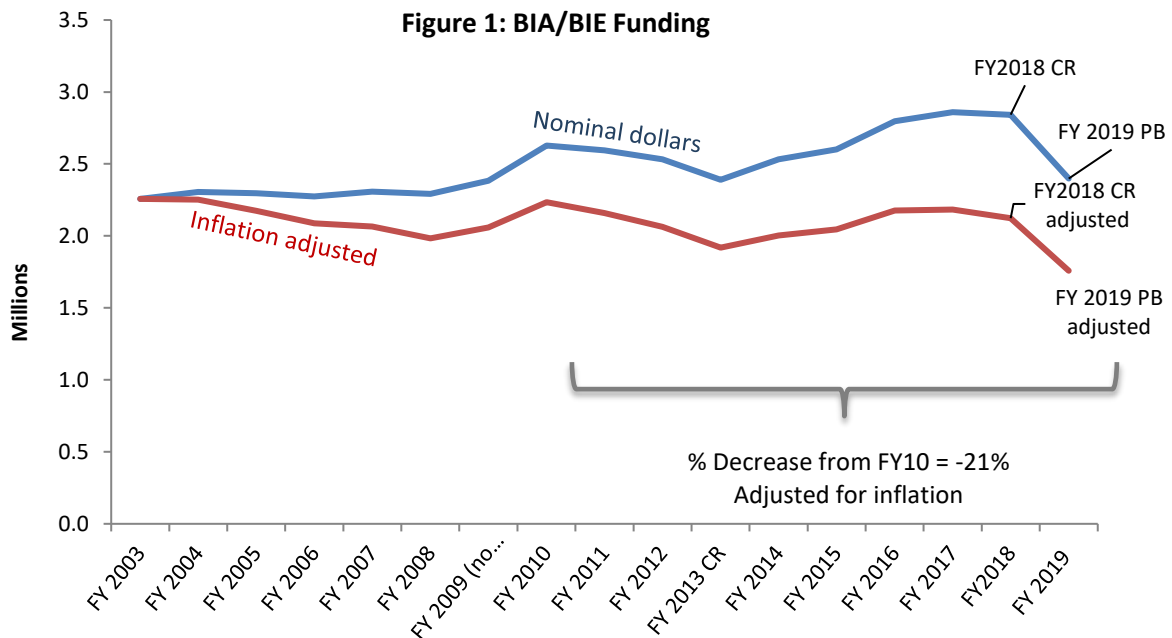
NCAI requests that Congress reject these proposed reductions. It is a particular concern that some proposed cuts target the programs identified by tribes through budget formulation as top ranked programs needing increases.

Proposed Increases

- Indian Health Service Clinical Services, increase of \$353 million to expand direct health care services.
- IHS would receive \$150 million for Opioid multi-year competitive grants based on need; this is out of the \$10 billion proposal for opioid funding.
- In the Department of Justice, the budget proposes:
 - \$115 million for Indian tribes through a 5 percent set-aside from the Crime Victims Fund for providing services to crime victims. Indian tribes have never directly received funding from the Crime Victims Fund;
 - A 7 percent set-aside from across the Office of Justice Programs totaling \$93.8 million for tribal assistance.

Bureau of Indian Affairs

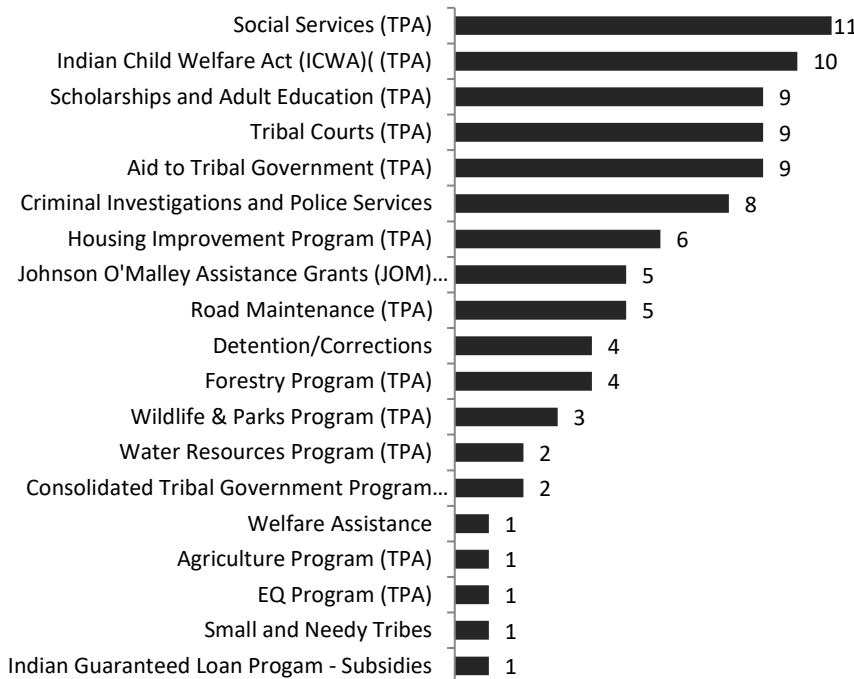
The 2019 President’s budget for Indian Affairs is \$2.4 billion in current appropriations, a 15.6% decrease from the FY 2018 CR level. Nearly every line item in the BIA budget would see reductions in the FY 2019 budget request. One increase would be \$2.5 million to fight the opioid epidemic, to “expand BIA capacity to address the increase in drug-related activities through interdiction programs to reduce drug use, distribution, and drug related crime.” The BIA’s budget provides funding for tribal base operations, including social services, education, road maintenance, water resources, forestry, law enforcement, tribal courts, and many other core governmental services.



The proposed overall level for BIA/BIE would take funding in nominal dollars back to the FY 2013 sequestration levels. However, adjusted for inflation, the proposed funding is lower than any enacted amount going back to FY 2003, and 21 percent lower than the level in FY 2010.

NCAI urges Congress to reject the steep reductions in the BIA’s proposed budget and instead invest in the programs ranked as most in need of increases as a part of the FY 2019 tribal budget formulation process. Figure 2 shows the roll up of the top 19 preferred programs identified by tribes as part of the Tribal Interior Budget Council (TIBC).ⁱ

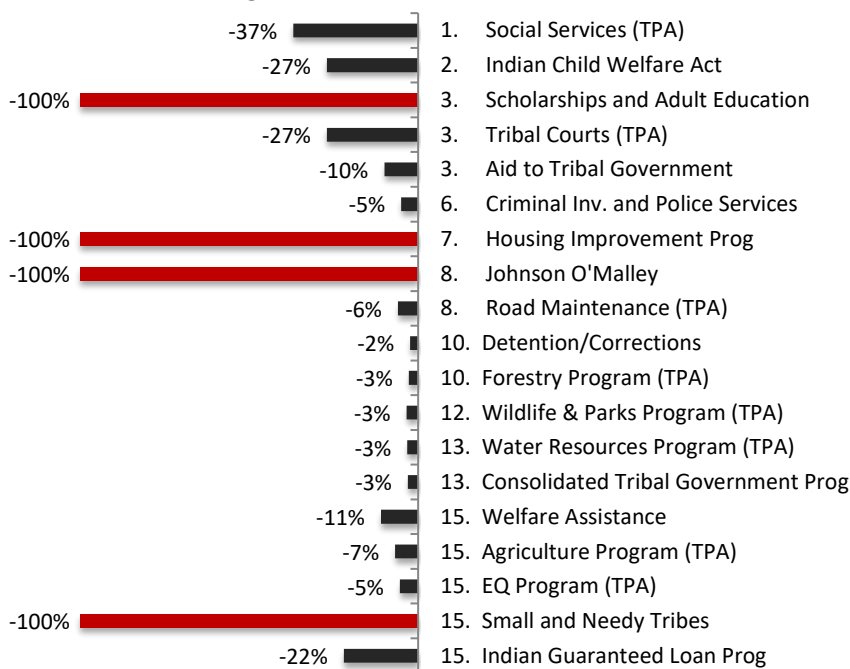
Figure 2: 2019 PRIORITY RANKING RESULTS



As part of the FY 2019 budget formulation process, tribes from each BIA region completed a survey to outline which 10 budget lines they would prefer to provide increased funding to and why. The results of this process show that BIA Social Services, Indian Child Welfare Act (ICWA), Scholarships and Adult Education, Tribal Courts, an Aid to Tribal Government made up the top five.

Unfortunately, most of the programs identified by tribes as needing increases in FY 2019 would receive reductions in the FY 2019 President’s Budget Request.

Figure 3: PROPOSED DECREASES IN FY 2019



Four programs in the top 15 identified by tribes were proposed to be eliminated in the President’s Budget: Scholarships and Adult Education, Housing Improvement Program, Johnson O’Malley Program, and Small and Needy Tribes.

Social Services and ICWA would be cut 37 percent and 27 percent respectively, both cuts disproportionately larger than the overall reduction for the Department of the Interior, which would see a reduction of 16.8 percent.

For **Public Safety and Justice Programs**, Indian Country faces funding shortfalls in a number of areas while at the same time facing increased need due to a climbing drug trend. The BIA submitted a report to Congress in 2016 estimating that to provide a minimum base level of service to all federally-recognized tribes, \$1 billion is needed for tribal law enforcement, \$1 billion is needed for tribal courts, and \$222.8 million is needed to adequately fund existing detention centers. Based on recent appropriation levels, BIA is generally funding tribal law enforcement at about 20 percent of estimated need, tribal detention at about 40 percent of estimated need, and tribal courts at a dismal 3 percent of estimated need.

The BIA Office of Justice Services (OJS) reports that at the end of 2014 and into 2015, Indian Country faced a drastic increase in violent crime, partially due to a change in Uniform Crime Reporting (UCR) definitions, but also due to increasing drug trends.ⁱⁱ Anytime the drug trend climbs, so does violent crime and property crime. In 2016 OJS had an increase in methamphetamine seizures of 106 percent over the year before and an increase of opioid seizures of 56 percent. With about 30 BIA criminal investigators nationwide to address that, the opioid and meth trends require a much higher level of staffing to adequately address the issue. NCAI recommends an increase in funding for BIA law enforcement and detention of \$353 million for FY 2019.

Similarly, **BIA Social Services** help to address the underlying such as drug addiction, poverty, and violence that tend to create and perpetuate the circumstances that produce victims. Sub-activities include services in the areas of family and domestic violence, child abuse and neglect, and protective services. However, many tribes' Social Services departments are understaffed and experience high turnover rate. As an example, in FY 2017, Osage Nation case workers averaged 25-30 cases a month each. This exceeds the standard of one case worker for every 15 cases administered. A lack of increased yearly funding tends to hinder these protective services.

With **child welfare**, tribal governments receive approximately one-half of one percent of all federal child welfare funds while their children represent approximately 2 percent of the United States population under the age of 18 and 4 percent of the child welfare population.ⁱⁱⁱ ICWA funding is the foundation of most tribal child welfare programs. In order for AI/AN children and families to get the best possible services at home and in state systems and allow tribes to assist state agencies and courts, adequate funding must be provided to tribal governments to support their child welfare programs. At the time that ICWA was passed in 1978, Congress estimated that between \$26 million–\$62 million would be required to fully fund tribal child welfare programs on or near reservations.⁴⁵ Even after recent increases in FY 2015, current funding levels fall far short of this estimate—especially after adjusting for inflation.

The need for every other program listed in the Figure 2 has similar levels of shortfall. NCAI urges Congress to invest in these areas as well as providing an overall increase to the BIA's budget to support the base budget for core tribal programs.

Indian Health Service

One agency that would receive increases in the President's budget is the Indian Health Service. Indian Health Service (IHS). Overall, IHS would receive \$5.4 billion, \$413 million over FY 2018 CR and an 8 percent increase over the current FY 2018 CR. However, the proposal would also cut or eliminate several important programs at IHS. To put the request in context, the IHS Tribal Budget Formulation Workgroup recommended \$6.4 billion in FY 2019.

A troubling proposal would be to move the Special Diabetes Program for Indians (SDPI) from mandatory to discretionary. Congress would provide funding to SDPI through the annual appropriations process. This proposal moves in opposite policy direction of what tribes have been calling for – to make the entire IHS budget mandatory instead of discretionary.^{iv}

The President's Budget includes \$10 billion to combat the opioid epidemic. IHS would receive \$150 million "to provide multi-year competitive grants based on need for opioid abuse prevention, treatment, and recovery support in Indian Country."^v Competitive grants are not the best way to administer this funding, and we instead request formula funding.

While the opioid crisis is plaguing communities across the country, studies indicate that American Indians and Alaska Natives (AI/ANs) are impacted at a higher rate than other groups. According to the Centers for Disease Control, the drug overdose death rates for AI/ANs in nonmetropolitan areas increased by more than 500 percent between 1999 and 2015. In addition, pregnant AI/AN women are nearly 9 times more likely than others to be diagnosed with opioid dependency or abuse. The epidemic has even led several tribal communities to declare public health emergencies.

Indian Country is resilient and determined to eliminate this deadly crisis from our communities. Many tribal nations have invested their own limited resources on prevention, treatment, recovery, and public safety. However, Indian Country needs Congress to uphold its trust and treaty responsibility. Congress missed a significant opportunity when it failed to provide direct funding to tribal communities in the 21st Century Cures Act. While we work diligently to remedy that situation, Congress has the chance to do the right thing at the outset as it finalizes funding for fiscal year 2018.

Accordingly, it is critical that Congress allocates a portion of the \$6 billion for combatting the opioid epidemic that was included in the recent budget agreement to address the unique needs of Indian Country. NCAI strongly encourages Congress to allocate funding directly to tribal communities in order to address this crisis in a flexible and culturally relevant manner.

Department of Justice

The President's budget proposal for FY 2019 includes funding for several tribal programs at DOJ. Specifically, funding in the bill includes:

- \$115 million for Indian tribes through a 5 percent set-aside from the Crime Victims Fund for providing services to crime victims. Indian tribes have never directly received funding from the Crime Victims Fund;
- A 7 percent set-aside from across the Office of Justice Programs totaling \$93.8 million for tribal assistance. This compares to a 7 percent set-aside from certain OJP and OJJDP programs for FY 17 and is a significant increase in funding overall over FY 17 levels;
- \$10 million for Community Oriented Policing Services Tribal Law Enforcement. In FY 16, this was funded at \$30 million. For FY 17, the Attorney General has the discretion to take up to 7 percent from COPS programs overall for tribal assistance. The FY 19 budget proposal eliminates the COPS Office and merges the program into the Office for Justice Programs (OJP).
- An estimated \$39.25 million for the Office on Violence Against Women's (OVW) Grants to Tribal Governments Program through statutory set-asides from other appropriated programs. This is a slight increase over FY17 funding levels.
- An estimated \$6.739 million for OVW's Tribal Coalitions Program through statutory set-asides from other OVW appropriations. This is a slight decrease from FY17 funding levels.
- An estimated \$3.5 million for OVW's Tribal Sexual Assault Services Program through statutory set-asides from other OVW appropriations. This is the same level of funding as FY 17.
- \$4 million for implementation of Special Domestic Violence Criminal Jurisdiction. This is the same level of funding as FY 17.
- \$1 million for research on violence against Native women. This is the same level of funding as FY 17.
- \$500,000 for the National Indian Country Clearinghouse on Sexual Assault. This is the same level of funding as FY 17.

Tribal Grants across the Department of Justice

NCAI recommends that DOJ eliminate competitive grant funding process and utilize Justice Department appropriations as base funding where tribes and tribal courts themselves determine their own priorities.

One of the most significant issues with DOJ funding is that it is competitive funding awarded at the discretion of DOJ. In order to obtain this funding, tribes – on behalf of their justice systems – must compete against each other under DOJ's priorities and guidelines. In the end, often the tribes that have the financial and human resources to employ experienced grant writers end up receiving funding, while the under-resourced tribes may be left without. Moreover, tribes cannot count on funding continuing beyond the current grant period, and Indian Country has numerous stories of successful programs disappearing at the end of a two- or three-year grant cycle.

Tribal governments have been asking for reforms to the DOJ grant making process for years in order to reduce administrative inefficiencies, improve program effectiveness, and increase the ability of tribal governments to leverage available DOI and DOJ funding to best address the comprehensive public safety and justice needs in their communities. Beginning in 2012, Congress has responded to this request from tribal leaders by appropriating a fixed amount for "tribal

assistance” rather than appropriating funds for specifically authorized tribal programs. This approach gives DOJ considerable flexibility to work with tribal governments to determine how best to administer the appropriated funds. In FY 17, Congress shifted from a lump sum for tribal assistance to a percentage set-aside model for the first time, creating a 7 percent tribal set-aside from some COPS and OJP programs. Appropriators carved out several of the largest appropriation lines from the tribal allocation, however, resulting in an overall tribal funding decrease from FY16 levels. Both the House and Senate CJS bills for FY18 that are currently pending include a 7 percent tribal allocation from across a wider range of OJP and COPS programs. If enacted, this would help restore funding levels for DOJ tribal justice programs to a more appropriate level.

DOJ is currently engaged in government-to-government consultation with Indian tribes about its grant-making process, which we hope will improve the effectiveness of DOJ funding in tribal communities.

OJP Tribal Set-Aside

A flexible tribal set-aside from across OJP programs would allow for a more flexible funding structure at DOJ. In 2010, the Department of Justice launched its Coordinated Tribal Assistance Solicitation (CTAS). CTAS attempts to streamline the grant application process for tribes, enabling them to submit a single application for DOJ programs, as opposed to previous years in which they were required to submit multiple grant applications. However, this streamlined application model still results in multiple grant awards with separate reporting requirements, award periods, and grant managers. CTAS will not achieve its intended purpose of streamlining tribal grants until it is accompanied by a streamlined funding mechanism.

NCAI has been advocating for a 10 percent OJP tribal set-aside that would streamline the federal funding process by which tribes receive resources to establish tribal courts; assist in developing detention facilities; provide legal assistance; develop and maintain juvenile delinquency prevention programs; and provide substance abuse prevention programs. Further, the tribal set-aside gives tribes the flexibility to develop a comprehensive strategy on how best to spend those resources. It would also create new possibilities for coordinating BIA and DOJ funding to reduce inefficiencies and unnecessary administrative costs.

Crime Victims Fund 5 percent set-aside

The Victims of Crime Act (VOCA) is the largest source of federal funding for crime victims. Currently, the Crime Victims Fund (CVF) contains more than \$12 billion collected as fines and penalties in federal criminal cases. In FY 2015, distributions from the Crime Victims Fund were increased more than three times to over \$2.3 billion. In FY 2016 2017, distributions increased again to more than \$3 billion. Despite having the highest rates of crime victimization in the country, none of these funds are directed to tribal governments. Instead, tribal governments are forced to rely on pass-through funding from the states. Over the past five years, states have passed-through less than 0.5 percent of available funds. NCAI recommends that 5 percent of CVF distributions should be directed to tribal governments in order to ensure that tribal crime victims are able to access victim services and victim compensation.

Department of Labor, Employment and Training

The President's proposed FY 2019 budget zeroes out funding for the Department of Labor's Division of Indian and Native American Programs (DINAP). DINAP is a vital workforce development division specifically dedicated to working with tribal nations and Native organizations -- specifically Workforce Innovation and Opportunity Act (WIOA) Section 166 grantees -- to support the provision of quality employment and training services to unemployed and low-income Native people. As the only federal employment and job training program that serves American Indians and Alaska Natives who reside both on and off reservations, it is imperative that funding be maintained at an adequate level for the WIOA Section 166 program.

Department of the Treasury

Of great concern to Indian Country is the President's proposal to eliminate funding for Community Development Financial Institutions (CDFIs) through the CDFI Fund. In FY17, Congress appropriated \$15.5 million for the Native American CDFI Assistance (NACA) Program, which, according to the Treasury Department, translates to \$15.395 million in annualized CR funding for FY18. The President's FY19 Request would eliminate funding for the NACA program and the three other discretionary CDFI grant programs.

The Native Initiative of the CDFI Fund is an important program that expands access to capital for individuals and small businesses in Indian Country. The NACA program makes awards that assist community development financial institutions (CDFIs) in increasing their lending services and financial products, and in building their own internal capacity to serve their target markets. Native CDFIs provide a wide range of low interest loans to microenterprises, small businesses, consumers, and for housing and homeownership. Native CDFIs also offer financial education and entrepreneurial development training, homebuyer education and foreclosure prevention counseling, credit counseling, small business planning, debt relief counseling, counseling to improve financial capability, match savings programs called Individual Development Accounts, and free tax preparation services in Native communities across the country. NCAI urges Congress to restore the Native American CDFI Assistance program and appropriate \$16 million for the program in FY 2019.

Department of Energy

(Dollars in millions)	FY 2017 Enacted	FY 2018 Est.	FY 2019 Request	FY2019 v. FY2017
Office of Indian Energy Policy and Programs (DA)	18	10	10	-8
Tribal Indian Energy Loan Guarantee Program	9	9	0	-9

The Office of Indian Energy Policy and Programs provides technical assistance, education and capacity building, and financial assistance to tribal governments. It also coordinates activities across the Department, and works with tribes, tribal organizations, and other agencies to promote tribal energy initiatives.

In FY19, the Department of Energy would receive \$10 million to fund the Office of Indian Energy Policy and Programs. This marks a significant budgetary cut of \$8 million dollars compared to FY2017 levels. An \$8 million dollar reduction further limits the services and amount of resources available to tribes who are planning energy and infrastructure projects. Limitations on tribal energy development continue to be problematic for many tribes due to a lack of access to capital, capacity issues, and the complicated legal and regulatory structure governing the use of Indian lands.

The Tribal Indian Energy Loan Guarantee Program, which was authorized by the Energy Policy Act of 2005, received an appropriation for the first time in FY17. Congress provided \$8.5 million for the loan guarantee and \$500,000 for administrative expenses. The President's Request would eliminate funding for this program.

Census Bureau and the 2020 Census

The U.S. population is enumerated every 10 years and census data are used to allocate Congressional seats, electoral votes, and is the basis for funding allocations for federally funded programs. Federal funding for Indian schools, Indian education programs, Indian health programs, Indian housing programs, water and sewage projects, roads and economic development are based on data collected by the Census Bureau every ten (10) years. The allocation of congressional seats across the United States are directly tied to data collected by the U.S. Census. Public Law No. 94-171 data is used for redistricting at the federal, state, and local levels and an accurate count is necessary to ensure that American Indian and Alaska Native voters have an equal voice in the political process of non-tribal elections.

However, in the 2010 Census, the Census Bureau estimates that American Indians and Alaska Natives living on reservations or in Native villages were undercounted by approximately 4.9 percent, more than double the undercount rate of the next closest population group. Additionally, uncertainty about FY 2017 funding levels and lack of appropriations resulted in the Census Bureau canceling planned field tests on the Standing Rock Reservation in North and South Dakota and the Colville Reservation and Off-Reservation Trust land in Washington State, which eliminated critical testing of methods for the 2020 Census for counting people in tribal areas lacking street addresses, testing methods of making in-person counts in Native households, and determining where and how to use oversampling to counteract the undercount facing Native people living on reservations and in Native villages. Inadequate funding has compelled the Census Bureau to announce "pauses" and modifications for key 2020 Census activities, which could greatly diminish the Bureau's ability to take an accurate, cost-effective census and is expected to increase the disproportionate undercount of American Indian and Alaska Natives, especially those living in rural, low-income, geographically isolated, and/or linguistically isolated households.

The Census Bureau must have a significant funding ramp-up and receive the funding on time for the next two years, to ensure a fair and accurate census – one that counts all communities including Indian Country.

To keep 2020 Census preparations on track and preserve other vital Census Bureau data, Congress should allocate ~\$4.735 billion for the U.S. Census Bureau in FY2019, which is \$933.5 million above the president's request, but only \$475.5 million above the Commerce Department's own cost estimate for 2020 Census activities. Here's the breakdown of our FY2019 funding recommendation (compared to the president's request):

- +\$912.5 million for 2020 Census preparations and early implementation, for a total of \$3.928 billion
- +\$21 million to restore vital ongoing economic and demographic surveys to their FY2017 funding level of \$270 million in the Current Population and Surveys account

Conclusion

For a nation that bases its greatness to a significant degree on its rule of law, treaties and intergovernmental agreements carry paramount importance. We look forward to working with this Committee as the FY 2019 budget moves through Congress to ensure federal commitments made to tribes are honored in the FY 2019 budget.

ⁱ Indian Affairs Fiscal Year 2019 Budget Formulation Guidelines, October 2016, accessible at http://www.ncai.org/2019_IA_Budget_Formulation_Guide_-3-.pdf

ⁱⁱ Bureau of Indian Affairs, Office of Justice Services, Presentation November 8-9, 2017 to the Tribal Interior Budget Council http://www.ncai.org/PS-J_Presentation_TIBC_Nov_2017.pptx

ⁱⁱⁱ Stoltzfus, E. (2014). Child welfare: An overview of federal programs and their current funding. Washington, DC: Congressional Research Service. Retrieved from http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=2327&context=key_workplace

^{iv} NCAI Resolution MKE-17-011, Reclassification of IHS Budget to Mandatory Spending Program, accessible at <http://www.ncai.org/resources/resolutions/reclassification-of-ihs-budget-to-mandatory-spending-program>

^v U.S. Department of Health and Human Services FY 2019 Budget in Brief