



NATIONAL CONGRESS OF AMERICAN INDIANS

U.S. Senate Committee on Indian Affairs A Call to Action: Native communities' priorities in focus for the 117th Congress Written Testimony of President Fawn Sharp National Congress of American Indians February 24, 2021

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On behalf of the National Congress of American Indians (NCAI), thank you for holding this hearing to address tribal priorities for the 117th Congress. I am Fawn Sharp, President of the Quinalt Indian Nation and President of NCAI.

Founded in 1944, NCAI is the oldest and largest representative organization serving the broad interests of Tribal Nations and communities. Tribal leaders created NCAI in response to federal policies that threatened the existence of Tribal Nations. Since then, NCAI has fought to preserve the treaty and sovereign rights of Tribal Nations, advance the government-to-government relationship, and remove structural impediments to tribal self-determination.

These three principles are derived from the “Declaration of Indian Rights,” passed by 183,000 American Indians and Alaska Natives (AI/ANs) who convened in 1954 to address the termination crisis, and remain the solutions to our present crises.

As the 117th Congress commences, Indian Country is in a national emergency that—while intensified by the coronavirus-19 (COVID) pandemic—has its roots in the federal government’s neglect of its fiduciary obligations to Tribal Nations and citizens. This situation was foreshadowed in 2018 by the United States Commission on Civil Rights’ (USCCR) *Broken Promises Report* which found that:

Federal programs designed to support the social and economic well-being of Native Americans remain chronically underfunded and sometimes inefficiently structured, which leaves many basic needs in the Native American community unmet and contributes to the inequities observed in Native American communities.¹

This existing crisis created disparities that led to American Indian and Alaska Native (AI/AN) vulnerability to the pandemic and resulted in our communities having at times the highest per-capita COVID-19 infection rate in the U.S.² This lethal breach of trust led to deaths of over 5,307 and the number continues to grow. We have lost our language keepers, youth, leaders, and loved ones to the viral socio-economic conditions that have spread this scourge and impaired our response.

¹ U.S. Commission on Civil Rights, *Broken Promises: Continued Federal Funding Shortfall for Native Americans (Broken Promises Report)*, <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

² Coronavirus Resource Center, COVID-19 United States Cases by County, Johns Hopkins University of Medicine, <https://coronavirus.jhu.edu/us-map>.

While Indian Country's foremost priority for the 117th Congress is relief to battle the pandemic, Congress must address the structural barriers that impair the lives and livelihoods of AI/ANs through a public health and economic recovery plan for Indian Country. The Senate Committee on Indian Affairs (SCIA) is best situated to lead this "Tribal Marshall Plan" and has a historic opportunity to harness Congress' plenary power to support Indian Country's development out of the imposed third-world conditions that existed pre-pandemic.

In support of these efforts, I incorporate for the record NCAI's 2021 tribal priorities for all committees of jurisdiction³ and our FY 2022 Budget Request which contains a historic analysis of the chronic underfunding of programs administered by the U.S. Department of the Interior (Interior).⁴ To that end, my testimony today will address needs in the following areas: COVID-19 relief; infrastructure; advanced appropriations and data; health, economic development; lands and cultural heritage; energy and climate change; public safety and justice; and child and family welfare.

I. COVID- Relief

Presently, the rate of AI/AN infection and deaths from COVID-19 continues to remain high. As of February 18, 2021, the Indian Health Service (IHS) reports nearly 184,585 cases within the IHS, tribal, and urban Indian health care system (known commonly together as "I/T/U").⁵ According to the Centers for Disease Control and Prevention (CDC), AI/AN communities have lost at least 5,307 lives to COVID-19, the majority of whom are over the age of 55.⁶ Today, despite being only 0.4 percent of the weighted distribution of the U.S. population, AI/AN COVID-19 deaths represent 1.2 percent of all U.S. deaths related to this virus. This disparity is even greater in some parts of Indian Country.⁷

³NCAI, Executive Council Winter Session (ECWS) Legislative One-Pager, Upholding the Treaty and Trust Obligations Through Improved Federal Budgets for Indian Country, https://www.ncai.org/conferences-events/ncai-events/FINAL_2021_ECWS_Days_One_Pager_-_Budget_.pdf; NCAI ECWS Legislative One-Pager, Climate Change and Energy, https://www.ncai.org/conferences-events/ncai-events/FINAL_2021_ECWS_Days_One_Pager_-_Climate_Energy_.pdf; NCAI ECWS Legislative One-Pager, Addressing the COVID-19 Pandemic In Indian Country https://www.ncai.org/FINAL_2021_ECWS_Days_One_Pager_-_DHS_.pdf; NCAI ECWS Legislative One-Pager, Investing in Tribal Infrastructure, https://www.ncai.org/conferences-events/ncai-events/FINAL_2021_ECWS_Days_One_Pager_-_Infrastructure_.pdf; NCAI ECWS Legislative One-Pager, Addressing Violence Against Women, https://www.ncai.org/FINAL_2021_ECWS_Days_One_Pager_-_Public_Safety_and_Justice_.pdf; NCAI ECWS Legislative One-Pager, Providing Tribal Nations Tax Parity and Access to Capital, https://www.ncai.org/conferences-events/ncai-events/FINAL_2021_ECWS_Days_One_Pager_-_Tax_.pdf; NCAI ECWS Legislative One-Pager, Tribal Cultural Rights and Homelands Protection, https://www.ncai.org/FINAL_2021_ECWS_Days_One_Pager_-_Tribal_Cultural_.pdf

⁴ NCAI, Fiscal Year 2022 Indian Country Budget Request: Restoring Promises. Washington, DC. https://www.ncai.org/resources/ncai-publications/NCAI_IndianCountry_FY2022_BudgetRequest.pdf

⁵ Coronavirus Cases by IHS Area, Indian Health Services, <https://www.ihs.gov/coronavirus/>

⁶ Deaths involving coronavirus disease 2019 (COVID-19) by race and Hispanic origin group and age, by state, February 17, 2021, National Center for Health Statistics, <https://data.cdc.gov/NCHS/Deaths-involving-coronavirus-disease-2019-COVID-19/ks3g-spdg>

⁷ Weekly Updates by Select Demographic and Geographic Characteristics, Provisional Death Counts for Coronavirus Diseases, Centers for Disease Control and Prevention, https://www.cdc.gov/nchs/nvss/vsrr/covid_weekly/#Race_Hispanic (in New Mexico, AI/ANs make up approximately 11 percent of the weighted population, yet represented at least 43.7 percent of the state's deaths)

Despite the pandemic's disproportionate impact on AI/AN communities, Indian Country received only .5% of the \$2 trillion in aid provided in the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

In recognition of this unmet need, on February 2, 2021 NCAI and 18 tribal organizational partners sent a letter to Congressional leadership and the White House addressing urgent tribal priorities in the following categories: tribal government and economic relief; health, education, and nutrition aid; transportation, housing, broadband needs; and emergency management assistance.⁸ This letter requested \$15 billion for tribal health and \$20 billion in direct relief to tribal governments and flexible use of funds.

The House Budget Reconciliation included many of these urgent tribal priorities. As the Senate continues negotiations on the next relief package, NCAI requests that the Senate prioritize all tribal provisions that were included in the House package, including retention of the \$20 billion provided for direct relief to Tribal governments. This aid is critical for addressing the economic devastation our governments face due to declining revenues which fund services in our communities for both tribal and non-tribal citizens.

Additionally, as the United States continues its coordinated vaccination distribution plan, we urge members of SCIA to support Tribal Nations in receiving a minimum of five percent of the statutory set-aside in funds to support the entire I/T/U system for COVID-19 vaccine distribution. Tribal Nations should also be able to receive vaccines from both their state or directly from IHS and not be forced to choose between the two. Tribal Nations are integral to the national vaccine strategy and access to vaccines is essential to this intergovernmental public health partnership. In addition to retaining tribal provisions in the present relief package, we request that SCIA uphold its trust responsibility and commit to including Tribal Nations in all forthcoming COVID-19 packages to address significant tribal assistance needs.

II. Infrastructure

A. Water

Current water infrastructure in Indian Country is severely underfunded and inadequate to meet the health and safety needs of tribal communities. Nearly 48 percent of Native homes do not have access to reliable water sources, clean drinking water, or basic sanitation.⁹ A 2018 GAO Report found that an estimated \$3.2 billion in funding was needed for water infrastructure projects to address existing sanitation deficiencies in Indian homes, and an additional \$2.4 billion in funding

caused by COVID-19. In Arizona, the weighted distribution of the AI/AN population is 2 percent; however, the distribution of COVID-19 deaths has been at least 21.6 percent).

⁸ Letter from NCAI, et al. to Charles Schumer, Senator, et al. *COVID-19 Recovery Legislative Proposal*, (Feb. 2, 2021), https://www.ncai.org/Covid-19/resources-for-indian-country/COVID_Letter_2.1.2021_FINAL--Transmitted-.pdf.

⁹ House Committee on Natural Resources, Democratic staff, *Water Delayed is Water Denied: How Congress Has Blocked Access to Water for Native Families*, (2016), at 2, http://democratsnaturalresources.house.gov/imo/media/doc/House%20Water%20Report_FINAL.pdf.

was estimated for future tribal drinking water infrastructure needs over the next 20 years.¹⁰ The absence of adequate and reliable potable water supplies has contributed to unemployment and mortality rates on tribal lands that are much higher than those of adjacent non-Indian communities.¹¹

i. Support Tribal Water Settlements and Permanently Extend the Reclamation Water Settlement Fund (RWSF)

Given these needs, tribal water settlements are vitally important to securing access to water on tribal lands. These settlements often represent decades of negotiations between tribal, federal, state, and local stakeholders and seek to improve water systems throughout the country.¹² It is essential for Indian water rights settlements to be resolved and fully funded to fulfill the federal government's obligation to manage water resources held in trust on behalf of Tribal Nations. One tool that can be used to adequately fund the implementation of tribal water settlements is the Reclamation Water Settlement Fund (RWSF).

The RWSF represents a critical resource for funding infrastructure projects, such as irrigation canals, dams and storage reservoirs, treatment facilities, and distribution facilities, tied to Indian water rights settlements. These infrastructure projects ensure that water reaches tribal lands. Presently, many tribes that have gone through the arduous process of obtaining these settlements experience chronic and substantial shortfalls in appropriations from Congressional authorizations. These shortfalls result in the partial construction of water infrastructure that in some instances becomes operationally useless.¹³ The lack of development of tribal water infrastructure, exacerbated by federal underfunding, essentially eliminates the possibility of economic, agricultural or energy development on the tribal lands awaiting that needed infrastructure.¹⁴

In the 116th Congress, Senator Tom Udall introduced S.886, the Indian Water Rights Settlement Extension Act which proposed to permanently extend the RWSF. Currently the RWSF, codified at 43 U.S.C. § 407, is only authorized to receive deposits beginning in FY 2020 and ending FY 2029, yet this fund is already deemed critical and will be heavily relied upon by enacted and future Indian water rights settlements. Future Indian water rights settlements are currently authorized only to tap into the RWSF for infrastructure needs until FY 2034 when this fund expires. Having a secure funding mechanism is critical to streamlining the Indian water rights settlement process, and—in turn—ensuring access to clean drinking water for tribal citizens, and water certainty for states and the surrounding non-Indian communities. In accordance with Resolution [#DEN-07-069](#),

¹⁰ Government Accountability Office (GAO), *Drinking Water and Wastewater Infrastructure: Opportunities Exist to Enhance Federal Agency Needs Assessment and Coordination on Tribal Projects*, (2018), at 2, <https://www.gao.gov/assets/700/691757.pdf>

¹¹ Native American Rights Fund, *The Importance of Indian Water Rights Settlement Funding*, at 2 (2014), https://www.eenews.net/assets/2015/05/18/document_daily_02.pdf

¹² *Ibid.*

¹³ NCAI, *Natural Resource Conservation Policy: Incorporating Tribal Perspectives*, 11 (2011), https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1045669.pdf

¹⁴ *Ibid.*

NCAI strongly supports reintroduction and passage of legislation to permanently extend the RWSF.¹⁵

B. Broadband

Funding is needed throughout Indian Country for rapid deployment, adoption, affordability, and access to high-speed internet (broadband). According to a 2019 Federal Communications Commission (FCC) report, individuals residing on tribal lands are nearly 4.5 times as likely to lack any terrestrial broadband internet access as those on non-tribal lands.¹⁶ Even when examining fixed broadband deployment at speeds lower than “broadband,” only 6 percent of homes on non-tribal lands lack coverage by any wired provider, while 25 percent of homes on tribal lands have no wired option for 10/1 Mbps service.¹⁷ Societal and market behaviors are changing rapidly and everyday tasks and activities are being driven more online. An immediate robust investment into tribal communities is critical to ensure that tribal communities are not entirely left behind as our education, healthcare, government services, and commerce undergo years of changes in a short time.

i. Expand DOI National Tribal Broadband Grant (NTBG) Program and Hold Oversight Hearing on Interior’s Role in Broadband Deployment in Indian Country

The National Tribal Broadband Grant Program (NTBG) established within Interior is administered by the Office of Indian Energy and Economic Development (IEED). It is a competitive, discretionary grant program that awards approximately twenty-five to thirty grants ranging from approximately \$40,000 to \$50,000.¹⁸ Currently, the program only provides a few tribal governments with grant funding to hire consultants to perform feasibility studies for deployment or expansion of broadband transmitted, variously, through digital subscriber line, cable modem, fiber, wireless, satellite and over power lines.¹⁹ The NTBG program should be expanded beyond its current capacity to provide for the implementation of these feasibility studies and increased funding should be appropriated for the build-out and deployment of broadband networks in Indian Country.

Further, competitive grant models are cost prohibitive for certain Tribal Nations to apply for and introduce uncertainty into any long-term planning that relies on such funds. The result is that those communities that need access the most are effectively barred from competitive grant programs. The NTBG program should be expanded and operate on a non-competitive funding model in order to improve access for Tribal Nations applying to the program. Expansion of the NTBG could also

¹⁵ NCAI Resolution DEN-07-069, *Use of the Reclamation Fund for Indian Water Rights Settlements*, https://www.ncai.org/attachments/Resolution_ameOMwycvcgUJDjPPXzJXwbYeCnHPqOdcJPzraFmUxNGiHQRB0_DEN-07-069.pdf

¹⁶ Federal Communications Commission, *Report on Broadband Deployment in Indian Country, Pursuant to the Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018*, at 5, (2019), https://aipj.clas.asu.edu/sites/default/files/05011019fccreport_on_broadband_deployment_in_indian_country_pursuant_to_the_repack_airwaves_yielding_better_access_for_users_of_modern_services_act_of_2018.pdf

¹⁷ *Id.*, at 5.

¹⁸ National Telecommunications and Information Administration, *Broadband USA, Broadband Funding Guide: Department of Interior*, 2 https://broadbandusa.ntia.doc.gov/sites/default/files/doi_bbusa_federal_funding_fy20_0.pdf

¹⁹ *Id.*, at 1.

entail incorporation of some of the recommendations in the National Tribal Broadband Strategy (NTBS).

The NTBS was published in January 2021 by Interior as a proposed roadmap for action and investment by the federal government in broadband access and adoption for AI/AN communities. This strategy outlines 28 recommended actions that agencies should take to help address the digital divide.²⁰ The first of these recommendations is to create a new Broadband Development Program (BDP) within IEED to implement the NTBS and coordinate efforts within and beyond Indian Affairs (IA) to drive tribal broadband development. Under this proposed recommendation, the BDP would administer the NTBG program, provide technical assistance to tribes, and build partnerships between various tribal broadband stakeholders.²¹ In accordance with our NTBG related asks above, the creation of the BDP could help to foster improvements to the NTBG and improve access to the program.

In addition to the creation of the BDP, the NTBS also details various administrative and legislative recommendations that should be considered by Congress. SCIA should conduct an oversight hearing on Interior's role in broadband deployment in Indian Country that includes a review of the NTBS in order to gather expert and tribal leader feedback on the recommendations contained within the strategy. While many of the recommendations have consensus-based support, others may conflict with the needs and requests of Tribal Nations. For example, the NTBS proposes to establish a program for federal match and seed funding within BDP to provide initial investment for tribal broadband infrastructure projects.²² The strategy also proposes the creation of Critical Infrastructure Corridors (CICs) to identify zones for incentivized investment in critical infrastructure to unserved and underserved tribal communities. These CICs would be identified by overlaying Opportunity Zones, NEPA exemption areas, and existing infrastructure networks with underdeveloped and underserved tribal communities.²³ Various Tribal Nations and leaders have voiced their opposition to federal match requirements and the use of opportunity zones to determine priority and eligibility for tribal broadband funding programs.

In summary, NCAI urges Congress to pass legislation that invests in broadband infrastructure development and deployment and increases access to affordable telecommunications services on Indian lands.²⁴ We further recommend that Congress conduct an oversight hearing on Interior's role in broadband infrastructure build-out in Indian Country.²⁵

²⁰ Department of Interior, Indian Affairs, *National Tribal Broadband Strategy*, at 6, (2021),

<https://www.bia.gov/sites/bia.gov/files/assets/as-ia/doc/2020.%20December.%20National%20Tribal%20Broadband%20Strategy%20FINAL-cover%20change.pdf>

²¹ *Id.* at 7.

²² *Id.* at 13.

²³ *Ibid.*

²⁴ *See*, NCAI, *U.S. House Committee on Energy and Commerce Hearing on Addressing the Urgent Needs of Our Tribal Communities Written Testimony of President Fawn Sharp National Congress of American Indians*, 6-8, July 8, 2020,

https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Testimony-Sharp-Tribal%20Communities%20Hearing_070820.pdf

²⁵ Department of Interior, Indian Affairs, *National Tribal Broadband Strategy*, (2021),

<https://www.bia.gov/sites/bia.gov/files/assets/as-ia/doc/2020.%20December.%20National%20Tribal%20Broadband%20Strategy%20FINAL-cover%20change.pdf>

C. Housing

Housing infrastructure in Indian Country continues to lag behind the rest of the United States. Over 70 percent of existing housing stock in tribal communities is in need of upgrades and repairs, many of them extensive.²⁶ In 2017, The U.S. Department of Housing and Urban Development (HUD) reported that, “the lack of housing and infrastructure in Indian Country is severe and widespread, and far exceeds the funding currently provided to tribes.”²⁷ The lack of affordable housing contributes to homelessness and overcrowding. Tribal communities experience overcrowded homes at a rate of 16 percent, roughly eight times the national average.²⁸ HUD research also shows that such overcrowding has a negative effect on family health and contributes to the ongoing problems of domestic violence and poor school performance in Indian Country.²⁹ Funding new construction across the board will help alleviate issues of overcrowding.

In addition to the historic funding shortfalls, the location of many tribal communities increases the material and labor costs of home construction and impose additional housing development costs upon communities already confronting enormous economic challenges.³⁰ Building materials must often be brought into tribal communities from miles away over substandard roads or even by air, and the availability of “qualified and affordable contractors” is limited.³¹ Given these extensive funding needs, it is critical that Congress support (1) reauthorization of NAHASDA; (2) increase funding for the Bureau of Indian Affairs’ (BIA) Housing Improvement Program (HIP); and (3) permanently reauthorize the Tribal HUD-VASH Program.

i. Reauthorize NAHASDA and Increase Funding for IHBG Formula Grants (FA Reviewed)

The Native American Housing Assistance and Self-Determination Act (P.L. 104-330) (NAHASDA), first enacted in 1996, authorized Tribal Nations to self-determine their housing programs. It gave flexibility for Tribal Nations to develop, construct and maintain housing for their members, transforming how federal housing programs addressed housing needs in tribal communities. NAHASDA consolidated existing housing funds into a single block grant – the Indian Housing Block Grant (IHBG) – resulting in tens of thousands of additional housing units being constructed, as well as increased tribal capacity to address related infrastructure and economic development challenges. The IHBG is a formula-based grant that provides certainty and security for long-term housing and community development. Unfortunately, IHBG has been mostly level-funded for the past 20 years, failing to even keep pace with inflation while housing needs continue to increase.³²

²⁶ U.S. Department of Housing and Urban Development, *Fiscal Year 2017 Congressional Justifications*, 11-12, (2016), https://www.hud.gov/sites/documents/FY_2017_CJS_COMBINED.PDF.

²⁷ *Broken Promises Report*, at 137, (2018), <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

²⁸ U.S. Department of Housing and Urban Development, *Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report From the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs*, (2017), <https://www.huduser.gov/portal/sites/default/files/pdf/HNAIHousingNeeds.pdf>

²⁹ Department of Housing and Urban Development (HUD), *Fiscal Year 2017 Congressional Justifications*, 11-4, https://www.hud.gov/sites/documents/FY_2017_CJS_COMBINED.PDF

³⁰ *Broken Promises Report*, at 138, (2018), <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

³¹ *Ibid.*

³² U.S. Department of Housing and Urban Development, *Fiscal Year 2017 Congressional Justifications*, 11-12, (2016), https://www.hud.gov/sites/documents/FY_2017_CJS_COMBINED.PDF.

In the 116th Congress, Senator John Hoeven introduced S. 4090: The NAHASDA Reauthorization Act. S. 4090 proposed to reauthorize NAHASDA programs through 2031, create an Assistant Secretary for Indian Housing at HUD, and update several key provisions including: re-establishing a Drug Elimination program for tribal communities; streamlining environmental review requirements; allowing housing assistance for students; recognizing tribal sovereignty to govern maximum rent requirements; allowing tribal housing programs to access IHS sanitation funding; tribal eligibility for HUD Housing Counseling and Homelessness Assistance grants; and reauthorizing Native Hawaiian housing programs. NCAI strongly urges Congress to reintroduce and pass legislation that reauthorizes NAHASDA through 2031³³ and provides increased funding appropriations for IHBG formula grants of at least \$1 billion to help address the ongoing housing crisis in Indian Country.

ii. Increase funding for the BIA Housing Improvement Program (HIP)

HIP is a home repair, renovation, replacement, and new housing grant program administered by the BIA and federally recognized Tribal Nations for low-income AI/ANs. In 2015, the BIA updated its regulations and expanded the eligible use of HIP funds to include down payment assistance for low-income working families seeking to become private homeowners.³⁴ This new activity expands homeownership opportunities for Native families and allows leveraging of federal housing funds to increase the number of families served and projects funded. Additionally, HIP recipients receive BIA funding priority for water and sewer infrastructure.³⁵

Despite the need, the HIP program has undergone funding fluctuations. It was funded at \$23.1 million in 2005³⁶ and then eliminated from the 2008 budget and not funded again until 2016 at \$8 million. The prior Administration proposed the elimination of this program and it has been funded at a flat rate of \$9.7 million in subsequent years.³⁷ For a decade, NCAI has strongly advocated for restoration of this funding to at least \$23 million to address the substantial unmet housing needs in Indian Country. Accordingly, we strongly urge the 117th Congress to increase funding for this program which serves some of the neediest in Indian Country.

iii. Permanently Reauthorize the Tribal HUD-VASH Program

³³ NCAI Resolution PDX-20-055, *NAHASDA Reauthorization*, 2020,

https://www.ncai.org/attachments/Resolution_zLcDLBJjazSdLkmeWKIMhDmfuqZKQgveoNYpUaKaMUwGZFkNYzw_PDX-20-055%20SIGNED.pdf

³⁴ Federal Register, *Department of the Interior, Bureau of Indian Affairs, 25 CFR Part 256, Housing Improvement Program, final rule*, Vol. 80, No. 217, 69590, 2015, <https://www.govinfo.gov/content/pkg/FR-2015-11-10/pdf/2015-28547.pdf>.

³⁵ Department of Health and Human Services, *Indian Health Service Fiscal Year 2019 Congressional Justifications*, (2019), https://www.ihs.gov/sites/budgetformulation/themes/responsive2017/display_objects/documents/FY2019CongressionalJustification.pdf

³⁶ National American Indian Housing Association, *Recommended Fiscal Year 2019 Funding Levels for Tribal Housing Programs*, (2019), at 2, <http://naihc.net/wp-content/uploads/2018/03/NAIHC-Budget-Recommendations-FY2019-FINAL-2.pdf>

³⁷ NCAI, *Analysis of FY 2020 President's Budget*, (2019), at 13, https://www.ncai.org/FY2020_Presidents_Budget_Analysis.pdf

Native veterans have a long history of distinguished service to this country. Per capita, they serve at a higher rate in the Armed Forces than any other group of Americans and have served in all the nation's wars since the Revolutionary War. Native veterans have even served in several wars before they were even recognized as U.S. citizens or eligible to vote. Despite this esteemed service, homelessness is a concern for our Native veterans. To combat this issue, Congress created the HUD-Veterans Affairs Supportive Housing (HUD-VASH) program. The program has been a nationwide success because it combines rental assistance, case management, and clinical services for at-risk and homeless veterans. Unfortunately, this program is not fully available to Native veterans living on tribal lands.

In the 116th Congress, Senator Jon Tester introduced S.257, the Tribal HUD-VASH Act of 2019. S. 257 would codify and make permanent the Tribal HUD-VASH program within the larger HUD-VASH program and ensure adequate funding for the program. In addition, the bill would make all Tribal Nations and their tribal housing programs eligible for the HUD-VASH program, which to date has remained limited to the original 26 recipients. The bill would also call on IHS to assist the program as requested by HUD or the Department of Veterans Affairs (VA).

NCAI has a standing resolution supporting this legislation.³⁸ Accordingly, NCAI urges this Committee to pass similar legislation early in the 117th Congress.

D. Roads and Transportation

The economy and wellbeing of Indian Country are dependent upon transportation infrastructure. Without safe and well-maintained roads, bridges, and public transportation, Tribal Nations are unable to adequately provide essential services to their citizens. Tribal Nations construct, improve, and maintain transportation facilities that are used by tribal citizens and surrounding communities alike and require funding to promote public safety, economic development, and community wellbeing.

There are approximately 160,000 miles of public roads in the National Tribal Transportation Facilities Inventory,³⁹ placing sole or shared jurisdictional control over the construction and maintenance of these facilities with tribal governments. These roads are often the primary means of access to Native and non-Native residents and visitors alike. The lack of sufficient transportation infrastructure throughout Indian Country hampers economic development opportunities for Tribal Nations and their citizens and increases risks for all motorists who traverse these roads.

The integrity of the transportation infrastructure systems in Indian Country includes BIA-owned roads and facilities that have a direct impact on tribal and surrounding non-tribal communities. In 2018, in coordination with the Tribal- Interior Budget Council, the BIA developed and conducted

³⁸ NCAI Resolution ECWS-14-001, *Support for Indian Veterans Housing Rental Assistance Demonstration Program in the Native American Housing and Self-Determination Act Reauthorization* https://www.ncai.org/attachments/Resolution_rGJmzKMOpmPXCODBFDEimNAVXIDwbXbVyXGHmPeVbMNxICXSRjF_ECWS-14-001%20resolution.pdf

³⁹ U.S. Department of the Interior, *Statement of Michael Black, Director, Bureau of Indian Affairs, before the Senate Committee on Indian Affairs, Oversight Hearing on Tribal Transportation: Pathways to Safer Roads in Indian Country*, at 2, (2015), <https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ocla/MBlackStatementSCIA-TribalTransportationSCIA-4-22-15%28FINAL%29.pdf>

a road maintenance survey intended to develop data on road maintenance budget needs.⁴⁰ The road maintenance survey included both tribal and BIA respondents. The survey found, in part, that the estimated value of deferred road maintenance for all respondents was \$498 million.⁴¹ This finding begins to quantify the chronic underfunding of tribal transportation programs that led to such a staggering maintenance backlog statistic, and demonstrates the need for a robust funding solution. It is imperative that federal funding levels for the Tribal Transportation Program (TTP), Tribal Technical Assistance Program (TTAP), Tribal Transit Program, and BIA Road Maintenance Program are increased. For many tribal governments, this federal funding is the only funding source to improve or maintain road systems.

i. Address the backlog of BIA Indian Reservation Roads and Bridge Maintenance

The BIA is responsible for maintaining approximately 29,400 miles of roads in Indian Country, including 900 bridges. However, funding for BIA Road Maintenance has remained stagnant for several appropriations cycles, while deferred maintenance has risen to over \$300 million. The condition of BIA System roads and bridges is increasingly concerning for tribal citizens and members of surrounding communities.

For FY 2020, \$36.06 million was appropriated for BIA Road Maintenance, and has remained steadily around this amount for prior fiscal years; meanwhile, the road maintenance need continues to increase. Additional funding for the BIA Road Maintenance program is needed to begin to address public safety and commercial activity concerns that affect tribal communities and surrounding areas.

Congress must increase annual appropriations for the BIA Road Maintenance Program to address the unacceptable backlog of unmet road maintenance needs for fair, poor, and failing routes, and structurally deficient BIA System bridges, especially for school bus routes. NCAI requests Congress increase the annual funding for the BIA Road Maintenance Program to \$75 million.

ii. Support Elimination of the Obligation Limitation Deduction on TTP Funds

A limitation is placed on Federal-aid highway and highway safety construction program obligations to act as a ceiling on the obligation of contract authority that can be made within a specified time period. Prior to enactment of the Moving Ahead for Progress in the 21st Century Act, the TTP program, formerly the Indian Reservation Roads, was exempt from the obligation limitation and its subsequent deduction. Currently, the TTP program is subject to the Federal Obligation Limitation and shares in a rescission of funding each year, while other programs remain exempt. Federal obligation imitation deductions on TTP funds can be in excess of \$50 million in a single year. Even with the \$10 million annual increases in funding under the Fixing America's Surface Transportation Act, after the federal obligation limitation deduction, it was one step forward and five steps back in funding each year, against a tribal infrastructure landscape that is crumbling in places and non-existent in others. These rescinded funds due the Federal Obligation Limitation are desperately needed to maintain the safety and condition of transportation facilities

⁴⁰ U.S. Department of the Interior, Tribal Interior Budget Council, *Transportation Subcommittee Report Out*, <http://www.ncai.org/TIBC-RM-Subcommittee-Nov9-2017-Final.pptx>.

⁴¹ Ibid.

used by Native and non-Native citizens alike. During the 116th Congress, surface transportation reauthorization in the Senate included many desperately needed reauthorization solutions for tribal transportation, including the entirety of S. 1211, the Addressing Underdeveloped and Tribally Operated Streets Act that was voted out of this Committee during the 116th Congress. However, only the House included a solution to eliminate the Federal Obligation Limitation on TTP funds as part of its surface transportation reauthorization effort during the 116th Congress.⁴² SCIA must advocate with the Senate Committee on Environment and Public Works and the rest of the Senate to include a solution to the devastating recessionary effects of the obligation limitation deduction on TTP funds.

III. Appropriations and Data

A. Support Advance appropriations for IHS and DOI Indian Affairs

Delays in federal funding have an outsized impact on the daily lives of tribal citizens who already face underfunding of healthcare and education, and backlogs in physical infrastructure — all of which fall under the federal government’s treaty and trust obligations to Tribal Nations. Authorizing advance appropriations for BIA, the Bureau of Indian Education (BIE), and IHS is a solution to the issue of delayed funding. Advance appropriations are an agreement to fund certain programs at a set amount in advance of when that funding is made available. These advance appropriations do not become available until the fiscal year they are designated to fund and can be modified to reflect changing conditions that may need revised appropriations at a later date. Advance appropriations are budget neutral and potentially flexible funds that help entities and programs manage specific planning concerns while insulating against the outsized effects of federal funding uncertainty on tribal governments and communities. In the 116th Congress, legislation was introduced authorizing advance appropriations for certain BIA, BIE, and IHS accounts with bipartisan and bicameral support. This common sense solution to an outsized problem for Indian Country must be introduced and enacted during the 117th Congress, and it must include all Indian Affairs and IHS accounts in order to achieve the basic stability and certainty that is owed to Tribal Nations by the federal government.

B. Federal Data Deficiencies for Tribal Programs

The federal government does not collect the data necessary to measure unmet programmatic obligations across tribal programs. As a result, any measure of progress for tribal programs is arbitrarily compared to historical budgets that are documented as underfunded and insufficient to meet the trust and treaty obligations of the federal government to Tribal Nations and their citizens. Failure to collect this data and put forward a needs-based budget directly harmed Tribal Nations during legislative COVID-19 relief negotiations because Tribal Nations were often asked to supply data that documented the extent of unmet needs, and tribal relief asks were compared against chronically underfunded annual appropriations. Certain unmet obligations assessments have been completed, such as the annual BIA report to Congress required under the Tribal Law and Order

⁴² NCAI Resolution PDX-20-027, *Support Funding Increases to and the Expansion of Federal Transportation Infrastructure, Tribal Transit, and Highway Safety Programs Important to Tribal Nations*, https://www.ncai.org/attachments/Resolution_prDUgaLNPkRTNERWxsZsDdDMdSlugRdzKsBSzcoWTwZsAvozKMJt_PDX-20-027%20SIGNED.pdf

Act. However, these efforts are limited in scope and fundamentally affected by the quality of data that goes into such estimates. This Committee must work with Congress to require all federal departments or agencies with tribal programs to include an annual estimate of the cost to fully fund the responsibilities of each tribal program within the department or agency. Each program estimate should include a detailed explanation of the methodology and underlying data relied on to provide such estimates. Each methodology must be developed in consultation and collaboration with Tribal Nations. The estimates must also identify data deficiencies that limit accuracy and provide a plan for remedying those deficiencies.

C. Empower Tribal Governments to Collect and Certify Their Own Data for use by the Federal Government

More than four and a half decades of self-determination and self-governance in federal Indian policy have clearly and repeatedly demonstrated that empowering Tribal Nations is a fiscally responsible and effective use of funds providing government services to AI/ANs. The federal government has tribal data deficiencies, and the solution must be collaboratively developed and maintained by tribal and federal partners working together. Tribal governments enter into annual funding agreements to operate federal programs and are good financial stewards of the funds they receive. Providing resources to tribal governments to collect and certify certain data consistent with any negotiated funding agreements in place could allow for improvements in federal data and tribal program outcomes, as well as certain mutual assurances that the data, once received by the federal government, will not be misused.

D. Enact Strict and Consistent Confidentiality Requirements on all Tribal Data Collected by the Federal Government, Including Restrictions on Internal use and Transfer of Tribal Data Between Agencies and Penalties for Misuse.

Government actions are often data-driven and certain information is critical to allocate spending for tribal programs. Unfortunately, the unauthorized public release of tribal data during the Coronavirus Relief Fund (CRF) implementation renewed tribal distrust and skepticism in the federal government's collection and use of tribal data. Even without a data leak, datasets taken out of context (such as NAHASDA-certified Census Bureau data used by the Department of the Treasury for CRF allocations to tribal governments⁴³) confuse specific jurisdictions for federal programs and can substantially distort real conditions in tribal communities. Administrative guardrails and protections must be developed in consultation and collaboration with Tribal Nations to restore faith in the federal government as partner and as trustee. These measures would provide express assurances to tribal governments that the United States has a fiduciary obligation to safeguard and properly use tribal data that is collected for fulfillment of its federal trust and treaty responsibilities. Simply put, it is a fundamental matter of government-to-government trust.

E. Move Contract Support Costs and Payments for Tribal Leases from Discretionary to Mandatory Spending.

⁴³ U.S. Department of the Treasury, Coronavirus Relief Fund Allocations to Tribal Governments (May 5, 2020), <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Tribal-Allocation-Methodology.pdf>.

The Indian Self-Determination and Education Assistance Act (ISDEAA) requires the Secretary of the Interior and the Secretary of Health and Human Services (HHS) to pay Tribal Nations the funding associated with federal programs and Contract Support Costs (CSC), which are the administrative and overhead costs of running the programs. The Secretaries of Interior and HHS must also enter into leases with Tribal Nations or eligible tribal organization for facilities used to administer and deliver services under the ISDEAA. Appropriations Committees have repeatedly stated in explanatory statements that obligations of this nature are typically addressed through mandatory spending, but since they fall under discretionary spending, they impact other discretionary programs. Appropriating CSC and Payments for Tribal Leases on a mandatory basis would solve this problem once and for all by bringing the appropriations process into line with the clear legal requirements of the authorizing statute. A simple amendment to a permanent appropriations statute could solve these decades-long funding dilemmas. At no net cost, the government would avoid liability, protect Indian programs, and honor tribal contracts.

IV. Health and Education

A. Health

The federal government's obligation to provide healthcare was prepaid by Tribal Nations. The United States assumed this responsibility through a series of treaties with Tribal Nations, exchanging compensation and benefits for Tribal Nations' land and resources, and to obtain peace. Despite these obligations, AI/ANs have long experienced significant health disparities when compared to other Americans. To minimize these disparities NCAI calls on the Senate to ensure the following priorities are addressed during the 117th congress.

i. Address Tribal Health Infrastructure

The public health infrastructure crisis across Indian Country has its roots in the historic underfunding of the federal government's fiduciary responsibility to Tribal Nations. The most recent IHS report submitted to Congress on IHS and tribal health care facilities reported that the unmet need for IHS facilities is over \$10 billion. Underfunded facilities coupled with inadequate water and sanitation systems, and outdated electronic health record systems creates a less than ideal health environment and negatively impacts the social, physical, and mental wellbeing of tribal and neighboring communities.

The *Broken Promises Report* found that inadequate health facilities is one correlating factor in AI/ANs having "life expectancies that are 5.5 years shorter than the national average."⁴⁴ Currently, the average age of an IHS hospital is greater than 37 years compared to 10 years for mainstream hospitals.⁴⁵ Further, the federal government spends just \$35 per capita on IHS facilities, compared to \$374 per capita for the nation as a whole.⁴⁶ This disparate funding has resulted in the square

⁴⁴ *Broken Promises Report*, at 208, <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

⁴⁵ <https://www.ihs.gov/newsroom/factsheets/healthfacilitiesconstruction/>

⁴⁶ Centers for Medicare and Medicaid Services. National Health Expenditure data. Accessed on September 21, 2015, at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NHE-Fact-Sheet.html>

footage of IHS health care facilities being at only 52 percent for the populations it is intended for.⁴⁷ Given that AI/AN populations are rapidly growing, Congress must have the courage to address this issue head on by appropriating large amounts of funding to address the backlog of need and build for the future.

In addition to physical infrastructure, updating IHS's current Electronic Health Records (EHR) systems is an urgent priority. Currently, in various tribal communities patients are forced to hand carry their medical records with them when seeing a clinician so they can guarantee their service provider has the resources needed to make informed medical decisions. Implementing a well thought out EHR system can address many issues and results in health professionals being able to make better informed decisions about their patients, reduce medical errors, and coordinate closer with other medical sites. NCAI is grateful for the emergency funding provided within COVID-19 emergency legislation to improve tribal EHR; however, in order to make substantial upgrades to the current system, Congress must commit to providing dedicated and sustainable funding. That said, NCAI urges members of this committee to introduce and pass legislation for dedicated funding to ensure tribal health systems are not left further behind in the nation's transition to electronic health systems.

Additionally, the *Broken Promises Report* highlighted the underfunding of water sanitation programs within tribal communities, citing the estimated need of \$2.8 billion to provide safe drinking water and adequate sewage systems for all Native homes.⁴⁸ Lack of safe drinking water and inadequate sanitation systems has made it nearly impossible for many AI/AN communities to abide by CDC's sanitation and hygiene standards during the current COVID-19 health emergency. In the 116th Congress, S. 4168 was introduced by Senator Kristen Sinema. S. 4168 would have dedicated funding in the amount of \$1.335 billion each year for the period of fiscal years 2020 to 2024. Last year, NCAI passed #PDX-20-017, "Calling for Increased Funding for Health Care and Sanitation Infrastructure for American Indian and Alaska Native Tribal Nations."⁴⁹ Accordingly, NCAI supports efforts like S. 4168 and requests that Congress enact legislation to address tribal sanitation needs.

ii. Address Mental and Behavioral Health and Addiction in Indian Country

The high rates of behavioral health challenges among AI/AN people creates an urgency for Tribal Nations, Congress, and federal agencies to partner in a manner that seeks to improve the health and well-being of all AI/AN people. Currently, Tribal Nations struggle to address challenges like mental health, due to an inability to implement federal programs in a flexible manner that ensures such programs reflect community values and use proven methods for addressing complex issues. When Tribal Nations can fully adjust programs and incorporate their individual community values

⁴⁷ IHS. *The 2016 Indian Health Service and Tribal Health Care Facilities' Needs Assessment Report to Congress*. 2016, at 4 (https://www.ihs.gov/newsroom/includes/themes/newihstheme/display_objects/documents/RepCong_2016/IHSRTC_on_FacilitiesNeedsAssessmentReport.pdf)

⁴⁸ *Broken Promise Report*, <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>

⁴⁹ NCAI Resolution PDX-20-017, *Calling for Increased Funding for Health Care and Sanitation Infrastructure for American Indian/Alaska Native Tribal Nations*, https://www.ncai.org/attachments/Resolution_ziEgUwOewCQXGqVxbdHNGGfKVQSOJsbMFnpLzfHaEWWmZxtgOkM_PDX-20-017%20SIGNED.pdf

there has been success in increased participatory engagement and behavioral health challenges have decreased.

NCAI supports the re-introduction and passage of this legislation and in 2012 passed Resolution SAC-12-054, “Increase Funding for Prevention of Methamphetamine and Suicide in Indian Country.”⁵⁰ Accordingly, NCAI requests Congress include Tribal Nations in additional mental health legislation to support effective and culturally appropriate tribal responses to the opiate epidemic and addiction crisis in tribal communities.

iii. Expanding Telehealth Services

In addition to reducing risk from COVID-19, telehealth expands care to those who may live far away from an IHS or tribal facility. During the COVID-19 pandemic, the Centers for Medicare and Medicaid in partnership with Congress enacted waivers to, among other things, support the expansion of telehealth to protect public health and deliver care to distant populations. This has been instrumental in ensuring the safety and wellbeing of our tribal communities and should be extended and expanded upon once the pandemic is over.

Additionally, while Indian Country is grateful for the waivers that have been given, the disparity between the rates that CMS pays for in-person and telehealth service have still yet to be addressed and will not encourage the use of telehealth in the future. Currently, in-person medical services are paid at the OMB/IHS All Inclusive Rate, which is \$479 per visit in the lower 48 states and \$710 in the State of Alaska.⁵¹ Unfair to tribal Federal Qualified Health Centers using telehealth services, CMS’s reimbursement rate for the same medical appointment via telehealth is only \$92.03 per visit.⁵² NCAI supports the Tribal Technical Advisory Group to the Center for CMS that, “Given their unique history and reimbursement methodology, that directive should not apply to Tribal FQHCs, which should instead be reimbursed for the service at the same All Inclusive Rate that applies for patients seen on site.”⁵³ Accordingly, NCAI urges this committee to support the expansion of the existing telehealth waivers, allow payment disparities to be retroactive to the start of the Public Health Emergency and to make sure Tribal Nations are receiving the resources needed to provide care to their patients. In addition, NCAI supports making these expanded waivers permanent so that our tribal health systems can develop this method of care to increase services to AI/ANs after the pandemic ends.

B. Education

Native students have faced and continue to face obstacles both inside and outside the classroom. We know that the challenges Native students face are significant, but we also know that Native

⁵⁰ NCAI Resolution SAC-12-054, *Increase Funding for Prevention of Methamphetamine and Suicide in Indian Country*, https://www.ncai.org/attachments/Resolution_YzBtYXKIYEEkfscSvEfPEqDDbYykwDcjLwXsbhakwzROfRZEHxt_SAC-12-054.pdf

⁵¹ 85 Fed. Reg. 21864 (April 20, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-04-20/pdf/2020-08247.pdf>.

⁵² See CMS “MLN Matters” SE 20016, updated April 30, 2020, <https://www.cms.gov/files/document/se20016.pdf>.

⁵³ Tribal Technical Advisory Group to the Centers for Medicare & Medicaid Services, Letter to the Honorable Seema Verma, Administrator, June 1, 2020, RE: Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency (CMS-1744-IFC) – Tribal Recommendations and Requests.

students can succeed, and Native education can improve. Tribal Nations across the country have partnered with state and local jurisdictions to establish innovative programs that recognize the unique cultural and educational needs of Native students. In these areas, Native students are thriving, graduating, and are ready to lead in their communities and beyond. In order to provide Tribal Nations and our Native students the education they deserve, NCAI calls on Congress to address the following:

i. Address Crumbling School Infrastructure with Innovative Solutions

Schools operating within the BIE system are woefully outdated and, in some cases, dangerous for students and staff. At the end of FY 2019, BIE reported 71 schools in poor condition,⁵⁴ which puts Native students at a significant, unfair learning disadvantage. The current cost as estimated by Interior's Office of Inspector General for replacing or rehabilitating BIE school facilities exceeded \$4.6 billion.⁵⁵ Further, Interior identified \$629 million in deferred maintenance for BIE-funded education facilities and \$86 million in deferred maintenance for BIE educational quarters.⁵⁶ To begin to address this issue, Congress passed H.R. 1, the American Recovery and Reinvestment Act (ARRA) of 2009, allocating \$200,000,000 for calendar year 2009 and \$200,000,000 for calendar year 2010 in tax credit bonds for purpose of construction, rehabilitation, and repair of schools funded by the BIA.

While this funding was appreciated, no Tribal Nations were able to use the ARRA tax credit bonds due to a lack of capital outlay and an escrow account to support the issuance of school modernization bonds. Tribal Nations recognize the need for adequate school facilities for students in their communities and have been working with the Administration and Congress to come to solutions for alternative school construction funding options under existing statutory authority. Some Tribal Nations have discussed and even developed a school construction/lease-back proposal whereby the community takes over the school design and construction function, and, when completed, leases the facility back to Interior. While this is a great solution for Tribal Nations that have the resources and capital to complete school design and construction, additional innovative solutions must be made. Therefore, NCAI urges this committee work with Tribal Nations to develop additional innovative models of funding for BIE school construction and related infrastructure, provided that new funding sources or methods must supplement and not supplant existing funding methods. Further, NCAI calls on members of this Committee to support increased funding levels as requested in NCAI's FY 2022 Budget Book to address this critical need.

ii. Support Native Languages

⁵⁴ Bureau of Indian Education, *FY 2021 Congressional Budget Justification*, <https://www.bia.gov/sites/bia.gov/files/assets/as-ia/obpm/2021%20BIE%20Greenbook.pdf>

⁵⁵ U.S. Department of the Interior, Office of Inspector General, *Condition of Indian School Facilities*, C-EV-BIE-0023-2014, 2016, https://www.doioig.gov/sites/doioig.gov/files/FinalEval_BIESchoolFacilitiesB_093016.pdf

⁵⁶ Statement of Jason Freihage, Deputy Assistant Secretary For Management Office Of The Assistant Secretary For Indian Affairs Department of The Interior Before The Subcommittee on Interior, Environment, and Related Agencies, House Committee on Appropriations on Education Facilities And Construction (July 24, 2019), <https://www.congress.gov/116/meeting/house/109835/witnesses/HHRG-116-AP06-Wstate-FreihageJ-20190724.pdf>.

The survival of our Native languages is essential to the success of tribal communities and way of life. However, without urgent and sustained intervention, far too many Native languages risk extinction. According to the United Nations Educational, Scientific and Cultural Organization, 74 Native languages will disappear within the next decade if we don't take significant action.⁵⁷ This has been exacerbated by COVID-19, which has had a devastating toll on the lives of our Native elders who are often our communities' last fluent speakers.

In the 116th Congress, S. 4510, the Native American Language Resource Center Act was introduced by Senator Brian Schatz. This legislation would create grants for our institutions of higher education to establish, operate, and staff a Native American language resource and training center, which would improve the capacity to teach and learn Native American languages. NCAI urges this Committee to pass similar legislation early in the 117th Congress to help provide the resources needed to protect our Native languages for the next generation.

iii. Support for the Creation of Native Community-Based Curricula Development

Native Americans are unfortunately invisible to many. Most Americans likely have attended or currently attend a school where information about Native Americans is either completely absent from the classroom or relegated to brief mentions, negative information, or inaccurate stereotypes. This results in an enduring and damaging narrative regarding Native peoples, Tribal Nations, and their citizens.

Even though some exceptional efforts are happening around the country to bring accurate, culturally responsive, tribally specific, and contemporary content about Native Americans into mainstream education systems, much work remains to be done. Therefore, NCAI urges Congress to introduce legislation to support community-based curricula development. Giving Tribal Nations and tribal organizations the resources they need to create culturally responsive curriculum will make it more likely that states implement and require our history, told accurately, be included in public school systems.

V. *Economic Development*

In 2018, the USCCR documented the dire socio-economic conditions in Indian Country with its *Broken Promises Report*, which found that:

Indian Country faces many economic development challenges. Over 25 percent of Native Americans live in poverty, which is higher than the poverty rate of any other racial group in the U.S. For Native Americans living on reservations, the unemployment rate is around 50 percent and for certain reservations, the average unemployment rate is much higher, hovering around 80 percent and up.⁵⁸

The current COVID-19 pandemic has especially highlighted Indian Country's need for increased investments in infrastructure, housing, education, healthcare and broadband. Despite these unmet

⁵⁷ Moseley, Christopher (ed.). 2010. *Atlas of the World's Languages in Danger*, 3rd ed.. Paris, UNESCO Publishing, <http://www.unesco.org/languages-atlas/>

⁵⁸ *Broken Promises Report*, <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

needs, few federal programs exist that provide stable funding to fulfill this trust responsibility and Tribal Nations encounter difficulty accessing credit to fund these development needs through lending institutions which currently have very little incentive to extend credit and capital services onto tribal lands. Capital barriers particularly impact tribal governments because dual taxation leads Tribal Nations to rely more heavily on tribal enterprises that require access to credit services to support these enterprises. Addressing dual taxation and access to capital are essential to federal trust responsibility to support the development of tribal economies.

A. Addressing the Effects of Dual Taxation on Tribal Economies

Congress has trust and treaty responsibilities to ensure federal tax policy affords Tribal Nations the same opportunities as other governments to provide for their citizens. The ISDEAA formally committed the United States to supporting tribal self-determination and self-governance, as embodied in the following passage:

*The Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian tribes and to the Indian people as a whole...In accordance with this policy, the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities.*⁵⁹

Like all sovereigns, Tribal Nations need revenues to fund governmental services and public goods. The Supreme Court, in *Merrion v. Jicarilla Apache Tribe*, held that “the power to tax is an essential attribute of Indian sovereignty because it is a necessary instrument of self-government and territorial management.”⁶⁰ Despite the Supreme Court’s recognition of tribal taxation authority, taxation of economic activities on tribal lands is often subject to attempts by state and local governments to tax the same economic activity, which results in complex, confusing, and unpredictable rules. This dual taxation creates disincentives to invest in businesses on tribal lands and results in Tribal Nations often foregoing their inherent right to tax in order to retain private investment on their lands. This forfeiture of critical revenue contributes to the distressed economic conditions that exist on many tribal lands. Indian Country has long pursued solutions⁶¹ to dual

⁵⁹ Indian Self-Determination and Education Assistance Act of 1975, 25 U.S.C. § 5301 et seq. (1975) (emphasis added)

⁶⁰ *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 137 (1982).

⁶¹ NCAI Resolution SAC-12-042, *Supporting Solutions, Including Federal Legislation if Necessary, that Will Reverse or Mitigate the Effects of the 1989 Decision of the U.S. Supreme Court in the Case of Cotton Petroleum v. New Mexico*, https://www.ncai.org/attachments/Resolution_eSZGOknIxfLFmwOulmyCZfYhlDDfJaXmDIpmHrPLCrZkFiyFFT_O_SAC-12-042.pdf; NCAI Resolution SD-15-045, *Urging the Department of Interior to Address the Harms of State Taxation in Indian Country and Prevent Dual Taxation of Indian Communities*, https://www.ncai.org/attachments/Resolution_pmLuqCrTfDSNTWYJfSoWeGNXLesAZIFoJShRbLnbTsnktQZzdm_j_SD-15-045.pdf; NCAI Resolution DEN-18-018, *Urging the Department of the Interior to Restart its Process of Updating the “Licensed Indian Trader” Regulations*, https://www.ncai.org/attachments/Resolution_pkSZaduxisqpxuoAYmfZOTYoxIoleoUzWbQFdmTiqPzIMLEhHy_DEN-18-018%20Final.pdf; and NCAI Resolution ABQ-19-015, *Urging the Secretary of the Treasury to Assist in Ending Dual Taxation of Economic Activity in Indian Country*,

taxation and in November 2020 passed NCAI Resolution [#PDX-20-013](#), entitled *Calling Upon Congress to Support the Modernization of Federal Indian Traders License Statute and Regulations in Keeping with the Indian Self Determination Policy*. Accordingly, NCAI urges Congress to consider legislative action to address dual taxation on tribal lands.

VI. Cultural Heritage and Lands

A. Cultural Heritage

The protection and preservation of Native American religious practices, customs, sacred and cultural places, and items of patrimony is a priority for Tribal Nations. Existing federal law has resulted in the limited repatriation of ancestral remains, cultural items, and some safeguards for sacred places.⁶² Legislation, however, is needed to increase protections of tribal cultural and religious practices, sacred places, and items of patrimony and to prevent the export and sale of sacred items in foreign auctions.⁶³

i. Improve Domestic Legislation to Better Protect Native American Cultural Patrimony and Ancestral Remains

In the 30 years since the passage of the Native American Graves Protection and Repatriation Act (NAGPRA), many ancestors and sacred items have been returned to their homelands. For all the success of NAGPRA, more needs to be done. For example, approximately 117,000 ancestral remains have yet to be repatriated and Tribal Nations have little recourse when the statute is violated despite the existence of civil penalties.⁶⁴ Congress can address these continuing issues by improving NAGPRA with the following amendments.

- Creating mechanisms that support private citizen efforts to return items of Native American cultural heritage,⁶⁵

https://www.ncai.org/attachments/Resolution_LkQTZurnehEkDFmoZXhntmxoKQKEROQUbLLtflbXCHaDieVMCOd_ABO-19-015.pdf.

⁶² See e.g., *Arizona Republic, Tribes' human remains and cultural items have been scattered across the U.S. Here's how they get returned*, <https://www.azcentral.com/story/news/local/arizona/2020/06/25/how-nagpra-law-helps-return-native-americanremains-tribes/3211191001/>.

⁶³ See e.g., Senate Committee on Indian Affairs, Field Hearing, "The Theft, Illegal Possession, Sale, Transfer, and Export of Tribal Cultural Items," (S. Hrg. 114-535) (Oct. 18, 2016); GAO Report, "Native American Cultural Property: Additional Agency Actions Needed to Assist Tribes with Repatriating Items from Overseas Auctions," (GAO-18-537) (2018).

⁶⁴ National Native American Graves Protection and Repatriation Act Program Inventory, <https://grantsdev.cr.nps.gov/NagpraPublic/Home/Inventory> (last visited, Feb. 18, 2021); see e.g., GAO Report, "Native American Graves Protection and Repatriation Act: After Almost Twenty Years, Key Federal Agencies Have Still Not Complied with the Act," (GAO 10-768) (2010)

⁶⁵ NCAI Resolution REN-19-003, *Supporting Legislation to Facilitate International Repatriation of Tribal Nations' Tangible Cultural Heritage and Coordination among Federal Agencies*, https://www.ncai.org/attachments/Resolution_bNGoCknSZuPPVEfngajJaERjsfwmjyGnxVvyKIRWwaeDzMXPMXNP_REN-19-003%20FINAL.pdf.

- Increasing the penalties for violations and non-compliance by institutions in possession of Native American ancestral remains and ensure adequate enforcement mechanisms;⁶⁶
- Amend NAGPRA to ensure the definition of “Native American” matches the intent of the law.⁶⁷

With respect to the last bullet, in *Bonnichsen v. United States*, 367 F.3d 864, at 879-882 (9th Cir. 2004), the Ninth Circuit found that the remains of Techaminsh Oypamanatityt (Ancient One), or Kennewick Man, were not “Native American” within the meaning of NAGPRA and therefore could not be repatriated.⁶⁸ In doing so, the court inappropriately narrowed the definition of “Native American.” Congress should amend the definition of Native American in NAGPRA to read as follows: “‘Native American’ means of, or relating to, a tribe, people, or culture that is or was indigenous to any geographic area that is now located within the boundaries of the United States.”

ii. Prevent the Export of Tribal Objects of Cultural Patrimony

NAGPRA was a monumental piece of a legislation⁶⁹ that resulted in the return of many ancestral remains and sacred items and items of cultural patrimony. However, Tribal Nations cannot prevent the export of these items to foreign countries or take advantage of international treaties, to which the United States is a party, to facilitate their return from foreign countries. Congress can address this issue by passing the Safeguard Objects of Tribal Patrimony (STOP) Act. Originally introduced in the 115th Congress (S. 1400), and again in the 116th (S. 2165), this bill would prohibit the export of Native American items of cultural patrimony obtained in violation of current federal law, increase the penalties for such acts, and facilitate inter-governmental coordination to expedite the return of already exported items from foreign countries to their tribal homelands. NCAI requests that Congress re-introduce and enact the STOP Act during the 117th Congress.⁷⁰

B. Lands

⁶⁶ NCAI Resolution PDX-20-070, *NCAI Initiative on Sacred Places and Cultural Rights Laws and Developing Legislation*, https://www.ncai.org/attachments/Resolution_hlWapXboBodcDdyihesIEdrdoASofspeNKZLSrHIqPUiqkgWgYF_PDX-20-070%20SIGNED.pdf.

⁶⁷ NCAI Resolution TUL-05-029, *Supporting Amending NAGPRA Definition of “Native American;”* https://www.ncai.org/attachments/Resolution_ktlzvLFbGsHkHWrkqFagelqjLPcXMUXrBvvXrAjBTBkDFeKYXvk_TUL-05-029.pdf; *Supra*, note 5.

⁶⁸ Ultimately, Techaminsh Oypamanatityt was repatriated to claimant Tribal Nations, *see e.g.*, NPR, “A Long, Complicated Battle Over 9,000-Year-Old Bones Is Finally Over,” (2016), <https://www.npr.org/sections/codeswitch/2016/05/05/476631934/a-long-complicated-battle-over-9-000-year-old-bones-is-finally-over>.

⁶⁹ *See e.g.*, U.S. Senate, Committee on Indian Affairs, *Report to the Senate on Providing for the Protection of Native American Graves and the Repatriation of Native American Remains and Cultural Patrimony*, (101 S. Rpt. 473); Jack F. Trope & Walter R. Echo-Hawk, *The Native American Graves Protection and Repatriation Act: Background and Legislative History*, 24 ARIZ. ST. L.J. 35, (1992); C. Timothy McKeown & Sherry Hutt, *In the Smaller Scope of Conscience: The Native American Graves Protection & Repatriation Act Twelve Years After*, 21 UCLA J. ENVTL. L. & POL’Y 153, (2002).

⁷⁰ NCAI Resolution REN-19-003, *Supporting Legislation to Facilitate International Repatriation of Tribal Nations’ Tangible Cultural Heritage and Coordination among Federal Agencies*, https://www.ncai.org/attachments/Resolution_bNGoCknSZuPPVEfngajJaERjsfwmjyGnxVyKIRWwaeDzMXPMXNP_REN-19-003%20FINAL.pdf;

Federal, state, and private lands are carved from the ancestral territories of Tribal Nations. Between 1776 and 1887, Tribal Nations lost approximately 1.5 billion acres of their homelands;⁷¹ between 1887 and 1934 Tribal Nations lost another 90 million acres as a result of federal policies.⁷² Through its acquisition of tribal lands and resources, the United States formed a unique political relationship with Tribal Nations. This relationship is enshrined in the U.S. Constitution,⁷³ treaties, statutes,⁷⁴ Supreme Court decisions,⁷⁵ and executive orders⁷⁶ and recognizes the United States' fiduciary obligation to safeguard tribal lands.⁷⁷

Through passage of the Indian Reorganization Act of 1934 (P.L. 73-383) (IRA), Congress repudiated the devastating policy of allotment, which impoverished tribal communities by causing the loss of 90 million acres of tribal homelands.⁷⁸ Importantly, the IRA provides for the recovery of tribal homelands and imposes a duty on the Secretary of the Interior, as trustee for Tribal Nations, to take land into trust for the benefit of these nations. The IRA also prohibits the creation of classes of Tribal Nations.

The IRA was a recognition that tribal homelands – whether within or outside current reservation boundaries – remain the heart of tribal governance, economies, healthcare, education, public safety and justice services, employment, and the protection of cultural and natural resources. Presently, Tribal Nations encounter significant barriers in the restoration of their homelands administratively and the management of resources within their ancestral territories which impact tribal treaty, trust, subsistence, and cultural rights and needs. To address these impediments, Tribal Nations have the below priorities.

i. Support the Restoration of Tribal Homelands and Pass a Clean Carcieri Fix

On February 24, 2009 the Supreme Court held in *Carcieri v. Salazar*, 129 S.C. 1058 (2009) that the Secretary of the Interior lacked authority to take land into trust under Section 5 of the IRA for

⁷¹ Claudio Saunt, *West of the Revolution* (2014); see also, accompanying interactive map at, <http://usg.maps.arcgis.com/apps/webappviewer/index.html?id=eb6ca76e008543a89349ff2517db47e6> (last visited, Feb. 18, 2021).

⁷² General Allotment Act of Feb. 8, 1887, 25 U.S.C. § 331 (repealed 1934); Dawes Act Amendment of 1906, 25 U.S.C. §349 (repealed 1934); *see generally*, Cohen's Handbook of Federal Indian Law §§1.04, 1.05 (Nell Jessup Newton et. al. eds., 2012). *See also*, *Brendale v. Confederated Tribes & Bands of Yakima Indian Nation*, 492 U.S. 408, 436 n.1 (1989); *Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 650 n.1 (2001); *County of Yakima v. Confederated Tribes & Bands of Yakima Indian Nation*, 502 U.S. 251, 253-257 (1992).

⁷³ U.S. Const., Art. I, § 8, cl. 3, ("Commerce Clause") and Art. II, § 2, cl. 2 ("Treaty Clause").

⁷⁴ *See e.g.*, National Historic Preservation Act (NHPA), Pub. L. No. 89-665, as amended by Pub. L. No. 96-515; Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. §§ 3001 et seq.

⁷⁵ *Johnson v. McIntosh*, 21 U.S. (8 Wheat.) 543 (1823); *Cherokee Nation v. Georgia*, 20 U.S. 1 (1831); *Worcester v. Georgia*, 31 U.S. 515 (1832); *United States v. Winans*, 198 U.S. 371 (1905).

⁷⁶ *See e.g.*, Presidential Memorandum of January 26, 2021, "Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships".

⁷⁷ *Cherokee Nation v. Georgia*, 20 U.S. 1 (1831). *See also*, Indian Tribal Justice Support Act of 1993, 25 U.S.C. §§ 3601-31 (stating, "The United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government"); *United States v. Mitchell*, 463 U.S. 206, 225 (1983), (reiterating, "the undisputed existence of a general trust relationship between the United States and the Indian People"); *United States v. Navajo Nation*, 537 U.S. 488 (2003).

⁷⁸ General Allotment Act of Feb. 8, 1887, 25 U.S.C. § 331 (repealed 1934); Dawes Act Amendment of 1906, 25 U.S.C. §349 (repealed 1934).

Indian tribes that were not under federal jurisdiction at the time of the Act’s passage in 1934. Since the 111th Congress,⁷⁹ Members of SCIA have either co-sponsored or introduced legislation to “fix” the Supreme Court’s flawed decision. Most recently, during the 116th Congress, Senator Jon Tester (D-MT) introduced, S. 2808, a simple bipartisan amendment to the IRA that would undo the damage *Carcieri v. Salazar* has inflicted on Indian country. The amendment would (1) restore the Interior Secretary’s authority to take land into trust for all federally recognized Tribal Nations; and (2) re-affirm existing trust lands. NCAI strongly supports passage of a clean *Carcieri* fix in the 117th Congress.⁸⁰

ii. Protect Tribal Homelands and Sacred Places including View Sheds and Soundscapes

Congress must continue to support tribal management and co-management of their traditional homelands. Last Congress, S. 3019, the Montana Water Rights Protection Act was passed as part of H.R. 133, the Consolidated Appropriations Act of 2021, and restored the National Bison Range to the Confederated Salish and Kootenai Tribes (CSKT) and returned management of the range to the CSKT. Importantly, the bill recognized that CSKT like many Tribal Nations have an extensive history of successful partnerships with Federal agencies with respect to the management of lands and resources. When Tribal Nations have the ability to make culturally appropriate management decisions about their homelands and natural resources they bring health, cultural, and economic benefits to their citizens and surrounding communities. Accordingly, we request that Congress support legislation that:

- Meaningfully integrates Tribal Nations into federal land management planning, practices, and decision-making and provides consultation enforcement mechanisms;⁸¹
- Supports tribal co-management of federal lands by expanding existing authorities such as tribal assumption of federal responsibilities through self-governance compacts and self-determination contracts and enhance protections and tribal management for their sacred places;⁸²

⁷⁹ Indian Country Today, “Tester Re-Introduces a ‘Clean Carcieri Fix,’”

<https://indiancountrytoday.com/archive/tester-re-introduces-clean-carcieri-fix-4hr-jxvB-E6Z8EU3sZkZOw>.

⁸⁰ NCAI Resolution RAP-10-024, *To Support Legislation to Address the Supreme Court Decision in Carcieri v. Salazar*,

https://www.ncai.org/attachments/Resolution_oIGOSYZkdNCzZHOUkmLuFtLzAGVAKgIErwWMYEKWqiSixN MKwJq_RAP-10-024.pdf.

⁸¹ NCAI Resolution PDX-20-003, *Calling for the Advancement of Meaningful Tribal Co-Management of Federal Lands*,

https://www.ncai.org/attachments/Resolution_FamhBAHVFLnOfgvKBsgXjzIrdYAbDzKIaVtsEdSjWibSZJDkFR_PDX-20-003%20SIGNED.pdf.

⁸² *Id.* Note 20; NCAI Resolution BIS-02-043, *Sacred Lands*; National Congress of American Indians Resolution, #PHX-08-069C: *NCAI Policy Statement on Sacred Places; The National Congress of American Indians*,

https://www.ncai.org/attachments/Resolution_MeIHQoBUWknVjsqcJUWQNFxIyAjPXEntkmaXbcWTxiBwyqm MuIN_PHX-08-069cFINAL.pdf; NCAI Resolution ATL-14-032, *Calling for Protection of Native Peoples’ Sacred Places, Sacred Objects and Ancestors under United States, Native Nations and International Law, Policy and Practice*;

https://www.ncai.org/attachments/Resolution_IdzEzALwaLwIqbTUdSdFHioFkTzlokgGkHyUnvNYcTCOVVFIUE_U_ATL-14-032.pdf; NCAI Resolution ABQ-10-065, *Calling for Legislation to Provide a Right of Action to Protect Native Peoples’ Sacred Places*,

https://www.ncai.org/attachments/Resolution_VApsecvWsjrwXrclzXvxzxELsRVlaptSOXGIXgvxqshvXahisOB_A BQ-10-065_rev.pdf; NCAI Resolution DEN-18-035, *Supporting Legislation to Improve Protections and Authorize*

- Meaningfully incorporate tribal expertise and Traditional Knowledge, with protections, into the federal decision-making process, including deference to tribal decision-making regarding trust and treaty resources.⁸³

Tribal homelands remain the foundation to tribal governance. Management of tribal traditional homelands, including those within federal public lands, must be holistic, inclusive and incorporate the fundamental principles and practices of tribal co-management. This approach will unite the expertise of diverse perspectives to build a participatory framework that will benefit everyone. Congress must uphold its fiduciary obligations to work in partnership with Tribal Nations to protect and preserve their homelands.

VII. Climate Change and Energy

A. Climate Change

The cultures, traditions, lifestyles, communities, foods, and economies of Tribal Nations are often dependent upon natural resources that are disappearing faster than they can be restored because of dramatic shifts in weather and climate.⁸⁴ As such, they are disproportionately affected by even incremental environmental changes.⁸⁵ Tribal Nations are at the front lines of the climate crisis responding to sea level rise, coastal erosion, ocean acidification, increased frequency and intensity of wildfires, extended drought, and altered seasonal duration.⁸⁶ These weather events have dramatic impacts on traditional cultural and subsistence practices and sacred places, tribal fisheries, timber harvesting and agricultural operations, eco-tourism, and infrastructure.⁸⁷ Despite these challenges, Tribal Nations are leading the way in climate action mitigation, adaptation, and resiliency responses for their communities and are integral to the global and national responses to the climate crisis.⁸⁸

Tribal Nations have the following, non-exhaustive list of priorities and goals for Congressional climate responses:

the Restoration of Native Sacred Places on Federal Lands,
https://www.ncai.org/attachments/Resolution_PYCNwKpRbfWPiYzIKHPLmgHJMNoHiIZVffWZqBIfEouNkSdFeS_DEN-18-035%20Final.pdf.

⁸³ NCAI Resolution PDX-20-003, *Calling for the Advancement of Meaningful Tribal Co-Management of Federal Lands*,

https://www.ncai.org/attachments/Resolution_FamhBAHVFLnOfgvKBsgXjzIrdYAbDzKIaVtsEdSjWibSZtJDkFR_PDX-20-003%20SIGNED.pdf; see also, NCAI Resolution REN-13-035, *Request for Federal Government to Develop Guidance on Recognizing Tribal Sovereign Jurisdiction over Traditional Knowledge*,
https://www.ncai.org/attachments/Resolution_opZRYVFLdvvUFJrFgQGBcyGXoYIMduwfYOSaRAnursVMQYYNsCN_REN-13-035%20final.pdf.

⁸⁴ *Broken Promises Report*, at 193 (2018).

⁸⁵ Fourth National Climate Assessment, Vol. II: Impacts, Risks, and Adaptation in the United States, Chapter 15 (2018).

⁸⁶ *Broken Promises Report*, 193-194 (2018); Fourth National Climate Assessment, Vol. II: Impacts, Risks, and Adaptation in the United States, Chapter 15 (2018).

⁸⁷ Fourth National Climate Assessment, Vol. II: Impacts, Risks, and Adaptation in the United States, Chapter 15 (2018).

⁸⁸ NCAI, Climate Action Resource Center, <https://www.ncai.org/ptg/climate>, (last visited, Feb. 19, 2021).

- Legislation must include full and meaningful consultation with decision makers that requires Tribal Nations' free, prior, and informed consent and includes enforcement mechanisms;⁸⁹
- Tribal Nations must be integrated into Congressional and Executive Branch climate planning, including on federal climate committees and working groups;⁹⁰
- Restoring tribal land, water, wildlife and fisheries resources is critical to tribal climate responses. This includes identification and assessment of the full cost of climate impacts on Tribal Nations;⁹¹
- Co-management opportunities should be created and furthered to support intergovernmental partnerships and integrate tribal traditional knowledge in climate responses.
- Any inclusion of Traditional Ecological Knowledge must be conditioned on Tribal Nations' free, prior, and informed consent;⁹²
- Tribal Nations must be included in climate financing action through increased appropriations, grants, public-private financing opportunities, and removal of barriers to tribal climate responses, including competitive grants and matching fund requirements.
- Financing climate mitigation and adaptation measures must be comprehensive and support a wide range of climate-related activities, including wildfire management, coastal restoration, drought resiliency, and for the development and repair of tribal infrastructure.
- Financing must also be flexible and responsive to tribal needs and decision making, and national efforts towards a carbon-neutral economy must ensure that the socio-economic needs of tribal energy producers are addressed.⁹³
- Any federal assistance provided to state and local governments should also be provided to tribal governments through tribal-specific funding mechanisms.

Interior's Tribal Resilience Program is an important mechanism providing funding for projects that support tribal climate resilience and incorporate science, including Traditional Knowledge, into our climate approaches. Appropriations for this program fall short of the need. Congress

⁸⁹ NCAI Resolution PHX-16-058, *United States Federal Agency Consultation, Consent, Funding, and Actions to Address Climate Change Impacts to Tribal Treaty and Trust Resources*, https://www.ncai.org/attachments/Resolution_RQIEDgHAWYpzQLoUKEdwjuxDCxyGCwKeLQhGWLAKzxTUA AUehsK_PHX-16-058%20final.pdf.

⁹⁰ NCAI Indians Resolution SD-15-024, *Support for the Tribal Climate Change Principles: Responding to Federal Policies and Actions to Address Climate Change document and its Swift Implementation by the Federal Government*, https://www.ncai.org/attachments/Resolution_NZdlSoySpGDwyOAPQHLWnPZLOBFtqiQXqWoQXOVmdKCaPLkzSqm_SD-15-024.pdf.

⁹¹ See e.g., NCAI Resolution ABQ-19-036, *Calling on Congress to Support and Pass Recovering America's Wildlife Act, or Similar Legislation with a Tribal Wildlife Conservation and Restoration Account*, https://www.ncai.org/attachments/Resolution_wdmLQIFJtJWBerRSGeAYFkjXqdVikLhFyqxMmWUrHzSQVdFG Gjo_ABQ-19-036.pdf.

⁹² NCAI Resolution PDX-11-036, *Traditional Ecological Knowledge and Climate Change*, https://www.ncai.org/attachments/Resolution_MZlrscMWUDNfPdJGEJQVODCZZtiNPdZrRwVaNmDdEYtmqg YqTat_PDX-11-036_final.pdf.

⁹³ *Supra*. Note 30. See also, NCAI Resolution ATL-14-050, *Support the Wildfire Disaster Funding Legislation*, https://www.ncai.org/attachments/Resolution_QpVTbEqVjmjgrNAPeUJdzfXCaxahfjUDwgkIXihJcGGiWidclwo ATL-14-050.pdf.

should support doubling the current funding levels, increasing funding caps across all application categories, and expand the project funding beyond the current 2-year limitation.⁹⁴

Tribal Nations have the solutions to the climate crisis and we request that SCIA support legislation in the 117th Congress that incorporates the above tribal principles.

B. 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 for both Indian Country and the United States as a whole. These resources include: one quarter of the nation's on-shore oil and gas reserves, one-third of the nation's western low-sulfur coal,⁹⁵ almost 3.5 percent of the nation's wind energy, and approximately five percent of the nation's total solar energy potential.⁹⁶

Despite the energy potential in Indian Country, Tribal Nations face many challenges, including that approximately 14% of homes on reservations lack access to electricity⁹⁷ and unique federal laws, regulations, and policies create additional burdens for energy development on tribal lands.⁹⁸ Given the historic, social, and economic impediments Tribal Nations and citizens face, and the relatively short time in which they have been involved in energy development, the successes of Indian Country are clear indicators of future potential. Tribal Nations have several energy related priorities for the 117th Congress.

First, Tribal Nations need assistance financing energy development through use of tools such as loans, grants, and technical assistance.⁹⁹ For example, Interior's IEED Indian Loan Guarantee Program (ILGP) promotes tribal renewable and conventional energy development and mineral resource development for the purposes of economic development. IEED is responsible for many creative and successful initiatives that encourage energy resource development on tribal lands, spur economic and business development assistance and training, expand job and skills training opportunities, and leverage limited federal funding to provide access to capital for business development. However, there is a strong need for additional appropriations. With additional funding, the program could develop additional tribal capacity in managerial and technical capabilities, develop resource integration projects, and establish and maintain environmental

⁹⁴ Bureau of Indian Affairs, Trust Services, Tribal Climate Resilience Program, Solicitation, (2020), <https://www.bia.gov/sites/bia.gov/files/assets/bia/ots/tcrp/FY21NOFO%20for%20TCRP.pdf>.

⁹⁵ See e.g., Property and Environment Research Center, PERC Policy Perspective: Unlocking the Wealth of Indian Nations: Overcoming Obstacles to Tribal Energy Development, (2014), <https://www.perc.org/wpcontent/uploads/old/pdfs/IndianPolicySeries%20HIGH.pdf>.

⁹⁶ National Renewable Energy Laboratory, Techno-Economic Renewable Energy Potential on Tribal Lands, (2018), <https://www.nrel.gov/docs/fy18osti/70807.pdf>.

⁹⁷ Department of Energy Department of Energy FY 2017 Congressional Budget Request – Volume 3. (Feb. 2016), p. 755. <https://energy.gov/sites/prod/files/2016/02/f30/FY2017BudgetVolume3.pdf>.

⁹⁸ *Broken Promises Report*, at 182, (2018).

⁹⁹ NCAI Resolution FTL-04-110, *Support for Legislation to Enhance the Development of Indian Tribes' Energy Resources*, https://www.ncai.org/attachments/Resolution_QJdbbwFnrWmGVaJqGSHocjqgFSERrkvVBOJzsMmkGfVBtLNwMrp_ftl04-110.pdf.

programs in support of economic development. This program should be funded at a minimum of \$25 million.

Relatedly, Interior needs additional resources to enter into and help implement Tribal Energy Resource Agreements (TERAs). Tribal Nations can, and should, play a role in regulating the energy services industry on their lands and TERAs would assist in that endeavor. Without this authority, Tribal Nations, tribal citizens, and tribal enterprise utility customers located on tribal lands are, in effect, subject to state regulatory practices and decisions that have substantial impacts on energy development on tribal lands.¹⁰⁰ To this end, Tribal Nations should not be subject to non-statutory funding eligibility requirements. These demands are a barrier to tribal participation in energy development funding programs and stifle Indian country's energy potential.¹⁰¹

Finally, any energy-related legislation must include principles of parity and meaningful tribal consultation. This is critical since Tribal Nations must have the opportunity to provide their energy resources in an open market. Doing so will assist Tribal Nations and America in addressing critical energy needs.¹⁰²

With respect to consultation, Tribal Nations are best suited to make culturally and economically relevant decisions about the development and use of their energy resources. As such, Tribal Nations must be fully and meaningfully consulted with respect to the development of their energy resources. This includes both on and off-reservation development of energy resources that impact tribal interests.¹⁰³

Despite the energy potential in Indian Country, Tribal Nations face many challenges, including underfunding, and unique federal laws, regulations, and policies that apply to energy development on tribal lands. Investing in and empowering Tribal Nations provides strong returns and outcomes for tribal and rural communities.

VIII. Public Safety

¹⁰⁰ *Id.*

¹⁰¹ NCAI Resolution TUL-13-043, *Support for Removal by Congress and the President of Barriers to Full Control by Tribal Nations of the Development of Their Renewable and Non-renewable Energy Resources*, https://www.ncai.org/attachments/Resolution_ttpWzJwjHdUfEAcemlckTRjoAGzZhJvZoAOdLMxjazDEdHsjYQ_TUL-13-043%20Final.pdf.

¹⁰² NCAI Resolution RAP-10-050, *In Support of the Indian Energy Promotion and Parity Act of 2010*, https://www.ncai.org/attachments/Resolution_qIVBoCiVrzspHsvbVtxDGRaKCIWuwPTgnRpGrZyiFMpCrCwqBga_RAP-10-050.pdf.

¹⁰³ NCAI Resolution SD-15-038, *Indian Country's Priorities for Federal Energy Legislation*, https://www.ncai.org/attachments/Resolution_qMHMstHTzqxRxfyszNHIJtQWsjwCTsRfxceShlONcPiSBAVith_SD-15-038.pdf; see also, NCAI Resolution, REN-19-001, *Opposing Mining on Public Lands and Around the Grand Canyon without Tribal Nations' Free Prior and Informed Consent*, https://www.ncai.org/attachments/Resolution_fEBoYKQrTODFcWRgdViPRcbNmdjBuOuhGLIbNztNyaAqDLIALfA_REN-19-001%20FINAL.pdf; NCAI Resolution REN-19-024, *Staying Mineral Leasing and Paleontological Use Permitting in Areas of Tribal Interest, such as the Buffalo Strip and Ball Ranch Area of Critical Environmental Concern, Where Tribal Nations Do Not Consent*, https://www.ncai.org/attachments/Resolution_AgWCYVGVVOfVmUHPUmQqpmRGwechoEDblkAfdngPpHJPvAwfICv_REN-19-024%20FINAL.pdf

Tribal communities continue to be plagued by the highest crime victimization rates in the country. A recent study by the National Institute of Justice found that more than four in five AI/AN adults have experienced some form of violence in their lifetime.¹⁰⁴ Among AI/AN women, 55.5 percent have experienced physical violence by intimate partners in their lifetime, and 56.1 percent have experienced sexual violence.¹⁰⁵ The study also found that 90 percent of these victims were victimized by a non-Indian perpetrator.¹⁰⁶ The complicated jurisdictional framework at play in Indian Country, which limits tribal authority to prosecute non-Indians, continues to undermine safety for victims of violence in tribal communities. Tribal Nations are the only governments in America whose authority to protect their communities from domestic and sexual violence, child abuse, stalking, and trafficking is limited by federal law based on the political status/race of the defendant.

Seven years ago, when Congress passed VAWA 2013, it included a provision that reaffirmed the inherent sovereign authority of Tribal Nations to exercise criminal jurisdiction over certain non-Indians who violate qualifying protection orders or commit domestic violence against AI/AN victims on tribal lands. However, victims of sexual violence, stalking, and trafficking, and AI/AN children and elders were left out. The limited scope of the federal law also leaves Tribal Nations unable to prosecute when a non-Indian domestic violence offender assaults a tribal law enforcement or corrections officer. These victims need the same protections that were extended to adult domestic violence victims in VAWA 2013.

NCAI calls on Congress to reauthorize VAWA in the 117th Congress with key provisions addressing tribal jurisdictional issues such as those included in the Justice for Native Survivors of Sexual Violence Act and the Native Youth and Tribal Officer Protection Act, both of which have received bi-partisan support in this Committee in the past. These bills aim to reaffirm tribal jurisdiction over non-Indians for certain crimes involving children and elders, sexual violence, stalking, sex trafficking, obstruction of justice, and assaults against law enforcement and corrections personnel. VAWA reauthorization legislation must also include provisions aimed at improving the response to cases of missing and murdered AI/AN women; create a pilot project for Alaska Tribal Nations to exercise criminal jurisdiction; and clarify that Tribal Nations in Maine are able to implement the VAWA 2013 jurisdiction provisions. NCAI through resolution ECWS-19-005 strongly supports these provisions,¹⁰⁷ which passed the House with bipartisan support in the 116th Congress.

In addition to addressing the jurisdictional gaps left open by VAWA 2013, we urge the Committee to prioritize reauthorization of the Tribal Law & Order Act (TLOA), which expired in 2015. TLOA is a comprehensive law designed to improve numerous facets of the public safety system in Indian

¹⁰⁴ U.S. Department of Justice, *Violence Against American Indian and Alaska Native Women and Men: 2010 Findings from the National Intimate Partner and Sexual Violence Survey*, 2, (2016), <https://www.ncjrs.gov/pdffiles1/nij/249736.pdf>.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ NCAI Resolution ECWS-19-005, *Urging Congress to Pass a Long-term Reauthorization of the Violence Against Women Act that Includes Key Protections for Native Women*, https://www.ncai.org/attachments/Resolution_DKtUnmfhXSxCKRmoIHulitfxDPHWNFNWovRcwcoXQKMhhVnsBZ_ECWS-19-005.pdf.

Country. Tribal Nations have identified a number of areas where the law needs to be strengthened, and past reauthorization legislation has enjoyed bi-partisan support from this Committee.

A. Emergency Response

Since the COVID-19 pandemic began, only 15 percent of Tribal Nations (91 Tribal Nations) have been able to access the billions of COVID-19 disaster funds through the Federal Emergency Management Agency (FEMA).¹⁰⁸

On July 1, 2020 this Committee hosted an oversight hearing with the FEMA Region IX Administrator to address these issues, yet the roadblocks continue to persist.¹⁰⁹ In 2020, NCAI passed resolution PDX-20-066 calling on Congress to hold oversight hearings on FEMA's response to Tribal Nations during the COVID-19 pandemic and ensure that Tribal Nation perspectives are included in all FEMA COVID-19 after action reports.¹¹⁰ NCAI now also calls on SCIA to hold oversight hearings to highlight and identify the roadblocks that Tribal Nations face when trying to access lifesaving resources through FEMA. We then ask this Committee to advance legislation that removes those roadblocks and ensures that disaster resources actually reach tribal citizens in Indian Country.

IX. Strengthen Services for Indian Children by Reauthorizing the Indian Child and Family Violence Protection Act

The Indian Child Protection and Family Violence Prevention Act (P.L. 101-630) (ICPFVPA) was enacted to fill funding gaps in tribal child welfare services – specifically child abuse prevention, child protection, and child abuse treatment – and to ensure better coordination between child welfare and domestic violence programs. Child abuse prevention funding is vital to the wellbeing and stability of AI/AN communities. Beyond the emotional trauma that maltreatment inflicts, victims of child abuse are more likely to require special education services, enter the juvenile and criminal justice systems, have long-term mental health needs, and have lower earning potential than their peers.¹¹¹ Financially, child maltreatment costs tribal communities and the United States \$210,012 per victim.¹¹²

Tribal Nations, like states, need adequate resources to effectively prevent and respond to child abuse and neglect in their communities. However, unlike states, Tribal Nations do not have meaningful access to Health and Human Services Child Abuse Prevention and Treatment Act

¹⁰⁸ Federal Emergency Management Agency, *By the Number: Coronavirus Pandemic Whole-of-America Response*, pg. 2, February 16, 2021.

¹⁰⁹ Senate Committee on Indian Affairs, *Oversight Hearing on “Evaluating the Response and Mitigation to the COVID-19 Pandemic in Native Communities” and Legislative Hearing to Receive Testimony on S.3650*, <https://www.indian.senate.gov/hearing/oversight-hearing-evaluating-response-and-mitigation-covid-19-pandemic-native-communities>, July 1, 2020.

¹¹⁰ NCAI Resolution PDX-20-006, *Holding the Department of Homeland Security Accountable to Tribal Nations*, https://www.ncai.org/attachments/Resolution_wgnCWyNGKOayyakuupKOVWukzknuIjvkrkrkmHKMMnSHEUaHRiLR_PDX-20-066%20SIGNED.pdf.

¹¹¹ Fang, X., Brown, D. S., Florence, C. S., & Mercy, J. A., *The Economic Burden of Child Maltreatment in the United States and Implications for Prevention*, *Child Abuse & Neglect*, 36, 156-65, (2012).

¹¹² *Ibid.*

Program (CAPTA) grant programs. The programs authorized under ICPFVPA were created to fill this gap, however without reauthorization and appropriations, Tribal Nations are left without funding for child protection and child abuse prevention services. In the 116th Congress, Representatives Reuben Gallego and Paul Cook introduced the Native American Child Protection Act (H.R. 4957) to reauthorize and fully fund the ICPFVPA. The bill passed the House with bipartisan support. NCAI supports re-introduction of this legislation and requests that SCIA members support the swift passage of this legislation to strengthen lifesaving services for Indian children.

X. Conclusion

NCAI appreciates the opportunity to present Indian Country's priorities for the 117th Congress to the Committee. We look forward to working with the Indian Affairs Committee and its members during this Congress to advance the interests of Tribal Nations in accordance with the federal trust responsibility.