

**A CALL TO ACTION: NATIVE COMMUNITIES'
PRIORITIES IN FOCUS FOR THE 117TH CONGRESS**

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

ONE HUNDRED SEVENTEENTH CONGRESS

FIRST SESSION

—————
FEBRUARY 24, 2021

—————
Printed for the use of the Committee on Indian Affairs



U.S. GOVERNMENT PUBLISHING OFFICE

COMMITTEE ON INDIAN AFFAIRS

BRIAN SCHATZ, Hawaii, *Chairman*

LISA MURKOWSKI, Alaska, *Vice Chairman*

MARIA CANTWELL, Washington

JON TESTER, Montana

CATHERINE CORTEZ MASTO, Nevada

TINA SMITH, Minnesota

BEN RAY LUJÁN, New Mexico

JOHN HOEVEN, North Dakota

JAMES LANKFORD, Oklahoma

STEVE DAINES, Montana

MIKE ROUNDS, South Dakota

JERRY MORAN, Kansas

JENNIFER ROMERO, *Majority Staff Director and Chief Counsel*

T. MICHAEL ANDREWS, *Minority Staff Director and Chief Counsel*

CONTENTS

	Page
Hearing held on February 24, 2021	1
Statement of Senator Cantwell	52
Statement of Senator Cortez Masto	46
Statement of Senator Hoeven	48
Statement of Senator Luján	53
Statement of Senator Murkowski	2
Statement of Senator Schatz	1
Statement of Senator Smith	50

WITNESSES

Forsman, Hon. Leonard, President, Affiliated Tribes of Northwest Indians	26
Prepared statement	28
Kitka, Julie, President, Alaska Federation of Natives	36
Prepared statement	39
Lindsey, Hon. Carmen “Hulu”, Chair, Board of Trustees, Office of Hawaiian Affairs	29
Prepared statement	31
Sharp, Hon. Fawn, President, National Congress of American Indians	4
Prepared statement	5

APPENDIX

Danner, Robin Puanani, Chairwoman, Sovereign Council of Hawaiian Homestead Associations, prepared statement	73
Nuvangyaoma, Hon. Timothy, Chairman, Hopi Tribe, prepared statement	57
Reitmeier, Kim, Executive Director, ANCSA Regional Association, prepared statement	63
Scott, Carol Wild, Esq., Legislative Chair, Veterans and Military Law Section, Federal Bar Association, prepared statement	58
Seattle Indian Health Board, prepared statement	60
Swartz, Jr., Hon. Warren C., President, Keweenaw Bay Indian Community, prepared statement	66
United South and Eastern Tribes Sovereignty Protection Fund, prepared statement	67

A CALL TO ACTION: NATIVE COMMUNITIES' PRIORITIES IN FOCUS FOR THE 117TH CONGRESS

WEDNESDAY, FEBRUARY 24, 2021

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:30 p.m. in room 628, Dirksen Senate Office Building, Hon. Brian Schatz, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. BRIAN SCHATZ, U.S. SENATOR FROM HAWAII

The CHAIRMAN. Good afternoon. I will call this oversight hearing to order.

I am honored to kick off the first oversight hearing as the Chairman of the Committee, Putting Native Communities' Priorities Directly in the Spotlight, as our first order of business. Leaders from across Indian Country, Hawaii, and Alaska, welcome. Thank you for being here.

I would also like to extend a warm aloha to the Office of Hawaiian Affairs Board of Trustees Chair, Carmen "Hulu" Lindsey. Congratulations on your appointment as chair, and thank you for your leadership to support the well-being of the Native Hawaiian people. One of my goals as chairman is to bring Native Hawaiian issues and priorities to the forefront, and I look forward to continuing our partnership on the Committee.

I want to be clear that today's hearing isn't a check-the-box exercise. It is a real opportunity for members of the Committee to chart a path forward by listening to and learning from Native leaders for the next two year and beyond. Now more than ever, Congress must be tuned in and listening. Native communities are experiencing disproportionate impacts from multiple crises, COVID-19, economic insecurity, racial injustice, and climate change.

So as the strongest voice for Native priorities in the Congress, this Committee will act to address these challenges by working together in its bipartisan tradition, and to uphold the Federal treaty and trust responsibilities to tribes and Native communities across the Country, from Hawaii to Alaska and to the continental United States.

The last time this Committee held a priorities meeting, it was to hear from the Trump Administration about its priorities for Indian

Country, a perfectly appropriate thing to do. But today's hearing is different. We are bringing the focus back to Native communities. We want to hear directly from you about your priorities for the 117th Congress, because consultation should not apply just to the Executive Branch, but also to Congress to inform our work, to advance Indian Country and Native communities' priorities.

I look forward to hearing from each of the witnesses joining us today. I thank everybody for participating.

I will now turn to the vice Chair, Senator Murkowski, for any opening statement.

**STATEMENT OF HON. LISA MURKOWSKI,
U.S. SENATOR FROM ALASKA**

Senator MURKOWSKI. Thank you, Mr. Chairman. I am looking forward to our partnership on this Committee. The oversight hearing that we have scheduled here today is a very important one for all of the reasons that you have mentioned. I too want to welcome our witnesses. Your participation and your testimony really will help set the direction for us this Congress.

You have outlined, Mr. Chairman, some of the priorities. I think it is important to recognize and acknowledge that we do, this Committee takes seriously the priorities of our Native communities. They have guided the legislation that we have seen come out of this Committee over the years.

With strong and unified tribal voices laying out the needs of tribes, we have seen passage of significant pieces of legislation. You think about some of the ones in recent years, there was the Tribal Law and Order Act, the Indian Child Welfare Act, the Indian Arts and Crafts Act, the Native American Languages Act, the Native Act, Savanna's Act, just last year. So many others.

I am really proud to have worked to help the shepherd the reauthorization of the Indian Health Care Improvement Act. I have worked on Native youth suicide issues with former chairman, Byron Dorgan. The work that we have been able to do to support Native education and language programs, as we advanced the Alice Spotted Bear and the Walter Soboleff Commission on Native Children. So many great initiatives here.

And I think this Committee, as we mentioned before, is one that has a reputation of being collaborative, of being bipartisan. I think that the work that we do to address the extraordinary diversity of tribes is an important priority, and this Committee will continue to do so. So whether it is targeting pandemic relief or addressing structural barriers to economic recovery, there are varying needs on reservations that face Native Hawaiians or Native people in Alaska. So hearing from leaders such as we have today is critical to our effort.

When we think about diversity, it is a reminder to us all that the blessings that we have with the leadership from our Native people, whether it is in tribes on the east coast, Native Hawaiians or Alaska Natives, there are differences. We recognize the differences. We also recognize the differences in governance structure.

This year marks the 50th anniversary of the passage of ANCSA, the Native Claims Settlement Act. This law changed the treatment of Alaska Natives and their lands, setting up a different model

than the reservation system. Part of that bargain with the passages of that law was that services to Alaska Natives would not be cut off. ANCSA was amended to include a provision that eliminated all doubt as to whether the Federal service obligation to Alaska Natives remained after the passage of ANCSA. Ensuring that the legislation continues to be fully implemented and meets the goals and the intent behind the law has been a commitment of mine while Senator.

I raise that because my hope is that as colleagues come to understand the differences and distinctions, the great diversity among Native American peoples, whether they are in the State of Montana, State of Hawaii, or State of Alaska, we all recognize that this Country, the United States, has a unique fiduciary trust obligation to American Indians, Alaska Natives, Native Hawaiians, wherever they are.

That will be the goal of this Committee, to ensure fulfillment of these trust and treaty obligations. So it is, it is about listening, listening first and foremost.

I am hopeful that we will get to a place, Mr. Chairman, where we have the ability to move about more freely, where we are able to not only see our Native leaders here in person in the Committee, but that we will be able to get out into their communities, out to visit on reservations, to visit with tribes. And again, continue that very, very important dialogue. The issues are profound in so many ways, as we think about the effort to promote economic recovery, through job creation, workforce development, following this pandemic. What we do to address public safety and law enforcement, enhancing health care access, how we deal with infrastructure needs, whether it is broadband or water and sanitation, whether it is dealing with housing issues and overcrowding. There is so, so much to be done. I am looking forward to taking up these efforts.

Today we are going to have an opportunity to receive testimony from our Alaska Native witness, and a leader, and a friend of mine. Julie Kitka is President of the Alaska Federation of Natives. AFN is the largest statewide Native organization in our State, more than 140,000 Native people. Formed back in 1966 to settle land claims, AFN continues to be the significant forum and voice of Alaska Natives in addressing critical issues of public policy and government.

Thank you, Julie, for testifying virtually. Know that we value not only your testimony and your insight today, but really for the leadership that you have provided. I should note that Julie just celebrated 30 years with AFN on New Year's Day. I appreciate all of her work.

I also want to recognize President Sharp for being here with us today, and thank her for the opportunity to speak to the NCAI membership yesterday with you, Senator Schatz. Again, good engagement. I am looking forward to today and to this Congress.

The CHAIRMAN. Thank you very much.

We will now turn to our witnesses. I will introduce the witnesses. We will start with Ms. Sharp. First, we have the Honorable Fawn Sharp, President of the National Congress of American Indians. Then we have the Honorable Leonard Forsman, President of the Affiliated Tribes of Northwest Indians, Portland, Oregon. Then we

have the Honorable Carmen “Hulu” Lindsey, Chai of the Board of Trustees of the Office of Hawaiian Affairs. And Ms. Julie Kitka, President and CEO of the Alaska Federation of Natives, from Anchorage, Alaska.

President Sharp, you may begin.

**STATEMENT OF HON. FAWN SHARP, PRESIDENT, NATIONAL
CONGRESS OF AMERICAN INDIANS**

Ms. SHARP. Thank you very much. [Greeting in Native tongue.]

Good morning, Chairman Schatz and Vice Chairman Murkowski, and members of the Senate Committee on Indian Affairs.

On behalf of the National Congress of American Indians, I thank you for holding this hearing. I am Fawn Sharp, President of the Quinault Indian Nation and President of the National Congress of American Indians, the oldest and largest organization comprised of sovereign tribal nations and their citizens.

As the 117th Congress commences, Indian Country is in a national emergency that while intensified by the COVID–19 pandemic has its roots in the Federal Government’s neglect of its fiduciary obligations to Indian Country. That has led to our vulnerability to the COVID–19 pandemic and resulted in our communities at times having the highest per capita COVID–19 infection rate in the United States.

While COVID–19 has had an impact all across Indian Country, and while it is our foremost priority, Congress must address the structural barriers that impair the lives and livelihoods of our citizens through a public health and an economic recovery plan for Indian Country. This Committee is best situated to provide leadership toward this tribal Marshall Plan, and has an historic opportunity to harness Congress’ plenary power to remove barriers and support Indian Country’s socioeconomic development on a sovereign to sovereign basis.

Today, my testimony will focus on an overview of critical needs in the following areas. First, I would like to address COVID–19 relief. Despite the pandemic’s disproportionate impact to our communities, Indian Country received only .5 percent of the \$2 trillion in aid provided in the CARES Act. Our communities continue to battle this infection while struggling to deliver health care, access to vaccines, and to stabilize our governments.

In recognition of this need, in February of 2021, NCAI and 18 tribal organizations sent a letter to Congressional leadership addressing the urgent tribal priorities that included requests for \$15 billion for tribal health and \$20 billion in direct aid to tribal governments. NCAI is encouraged that many of the asks that were included in the House package were made and we requested these tribal provisions be retained in the final bill, including the \$20 billion in direct aid to tribal governments.

Additionally, we request that Congress commit to include tribal nations in all forthcoming COVID–19 packages to address the significant tribal assistance needs.

Second, I will focus on infrastructure. As documented in the United States Commission on Civil Rights, the 2018 Broken Promises Report, Indian Country has substandard infrastructure in

every sector. The statistics are harrowing. I strongly urge each and every Committee member to carefully examine those findings.

Accordingly, I call upon this Congress to prioritize tribal infrastructure and to reform the chronic and widespread underfunding of the trust relationship. My written testimony highlights specific actions that can improve the living conditions of our citizens through infrastructure investment in detail.

Additionally, Congress must prioritize the timely funding of the trust responsibility. In the 116th Congress, legislation was introduced authorizing advance appropriations with bipartisan and bicameral support. Advance appropriations must be enacted during this Congress in order to achieve the basic stability and certainty that is owed to tribal nations by the Federal Government.

Third, I will address tribal homelands. Tribal homelands are essential to the economies and cultures of tribal nations. Since 1934, Federal policy supported the restoration through the land into trust process under Section 5 of the Indian Reorganization Act. In 2009, the Supreme Court created confusion in this process which resulted in a decade of land into trust delays and lawsuits defended by taxpayer dollars.

Since the 111th Congress, members of this Committee have consistently introduced legislation a clean fix that would include, number one, restoring the Interior Secretary's authority to take land into trust for all federally recognized tribal governments, and two, reaffirm existing trust lands. NCAI requests this Committee prioritize passage of a clean Carcieri fix.

Fourth and finally, I would like to address climate change. Climate change threatens the health, culture and economies of tribal peoples. Due to these impacts, tribal nations are key partners, and we must be at the table at all national and international engagement on this subject. We are disproportionately impacted by climate change, and we certainly deserve a seat at every table.

Finally, I urge this Committee to support the nomination of Representative Haaland as Secretary for Interior to support the tribal priorities described above. Representative Haaland is amply qualified and has demonstrated time and time again expertise and a record of bipartisan support. Accordingly, we ask this Committee's members to support her swift confirmation to expedite Interior's performance of its trust and treaty obligations to tribal nations and peoples.

In conclusion, I thank you for this opportunity to testify. I look forward to your questions. [Phrase in Native tongue.]

[The prepared statement of Ms. Sharp follows:]

PREPARED STATEMENT OF HON. FAWN SHARP, PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS

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 Quinault 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.

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

Despite the pandemic’s disproportionate impact on AI/AN communities, Indian Country received only .5 percent 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 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 wet 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, NCAI strongly supports re-introduction 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 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

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

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 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 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 limitation 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 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 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 improve-

ments 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 governments)⁴³ 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

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 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 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 mak-

ing 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 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

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 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 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
- 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 Oytpamanatityt (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 reintroduce and enact the STOP Act during the 117th Congress.⁷⁰

B. Lands

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 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 decisionmaking 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
- Meaningfully incorporate tribal expertise and Traditional Knowledge, with protections, into the federal decisionmaking process, including deference to tribal decisionmaking 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, ecotourism, 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:

- 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 inter-governmental 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 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 percent 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 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

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 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 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.

ENDNOTES

1 U.S. Commission on Civil Rights, Broken Promises: Continued Federal Funding Shortfall for Native Americans (Broken Promises Report), 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, coronavirus.jhu.edu/us-map.

3 NCAI, Executive Council Winter Session (ECWS) Legislative One-Pager, Upholding the Treaty and Trust Obligations Through Improved Federal Budgets for Indian Country, [ncai.org/conferences-events/ncai-events/FINAL 2021 ECWS Days One Pager-Budget.pdf](https://ncai.org/conferences-events/ncai-events/FINAL%2021%20ECWS%20Days%20One%20Pager-Budget.pdf); NCAI ECWS Legislative One-Pager, Climate Change and Energy, [ncai.org/conferences-events/ncai-events/FINAL 2021 ECWS Days One Pager-Climate Energy-.pdf](https://ncai.org/conferences-events/ncai-events/FINAL%2021%20ECWS%20Days%20One%20Pager-Climate%20Energy-.pdf); NCAI ECWS Legislative One-Pager, Addressing the COVID–19 Pandemic In Indian Country [ncai.org/FINAL 2021 ECWS Days One Pager-DHS.pdf](https://ncai.org/FINAL%2021%20ECWS%20Days%20One%20Pager-DHS.pdf); NCAI ECWS Legislative One-Pager, Investing in Tribal Infrastructure, [ncai.org/conferences-events/ncai-events/FINAL 2021 ECWS Days One Pager-Infrastructure.pdf#](https://ncai.org/conferences-events/ncai-events/FINAL%2021%20ECWS%20Days%20One%20Pager-Infrastructure.pdf#); NCAI ECWS Legislative One-Pager, Addressing Violence Against Women, [ncai.org/FINAL 2021 ECWS Days One Pager-Public Safety and Justice.pdf](https://ncai.org/FINAL%2021%20ECWS%20Days%20One%20Pager-Public%20Safety%20and%20Justice.pdf); NCAI ECWS Legislative One-Pager, Providing Tribal Nations Tax Parity and Access to Capital, [ncai.org/conferences-events/ncai-events/FINAL 2021 ECWS Days One Pager-Tax.pdf](https://ncai.org/conferences-events/ncai-events/FINAL%2021%20ECWS%20Days%20One%20Pager-Tax.pdf); NCAI ECWS Legislative One-Pager, Tribal Cultural Rights and Homelands Protection, [ncai.org/FINAL 2021 ECWS Days One Pager-Tribal Cultural.pdf](https://ncai.org/FINAL%2021%20ECWS%20Days%20One%20Pager-Tribal%20Cultural.pdf)

4 NCAI, Fiscal Year 2022 Indian Country Budget Request: Restoring Promises. Washington, DC. [ncai.org/resources/ncai-publications/NCAI IndianCountry FY2022 BudgetRequest.pdf](https://ncai.org/resources/ncai-publications/NCAI%20IndianCountry%20FY2022%20BudgetRequest.pdf)

5 Coronavirus Cases by IHS Area, Indian Health Services, 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, 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, cdc.gov/nchs/nvss/vsrr/covid-weekly/#Race-Hispanic (in New Mexico, AI/ANs makeup approximately 11 percent of the weighted population, yet represented at least 43.7 percent of the state's deaths 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), ncai.org/Covid-19/resources-for-indian-country/COVID-Letter-2.1.2021-FINALTransmitted.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>.

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, gao.gov/assets/700/691757.pdf

11 Native American Rights Fund, The Importance of Indian Water Rights Settlement Funding, at 2 (2014), eenews.net/assets/2015/05/18/document-daily-02.pdf

12 *Ibid.*

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

14 *Ibid.*

15 NCAI Resolution DEN-07-069, Use of the Reclamation Fund for Indian Water Rights Settlements, ncai.org/attachments/Resolution-ameOMwycvcgUJDjPPXzJXwbYeCnHPqOdczJPzraFmUxNGiHQRbO-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), aipi.cla.su.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 broadbandusa.ntia.doc.gov/sites/default/files/doi-bbusa-federal-funding-fy20-0.pdf

19 *Id.*, at 1.

20 Department of Interior, Indian Affairs, National Tribal Broadband Strategy, at 6, (2021), bia.gov/sites/bia.gov/files/assets/as-ia/doc/2020-December-National-Tribal-Broadband-Strategy-FINAL-cover-change.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, energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Testimony-Sharp-Tribal-Communities-Hearing-070820.pdf

25 Department of Interior, Indian Affairs, National Tribal Broadband Strategy, (2021), bia.gov/sites/bia.gov/files/assets/as-ia/doc/2020-December-National-Tribal-Broadband-Strategy-FINAL-cover-change.pdf

26 U.S. Department of Housing and Urban Development, Fiscal Year 2017 Congressional Justifications, 11-12, (2016), hud.gov/sites/documents/FY-2017-CJS-COMBINED.PDF.

27 Broken Promises Report, at 137, (2018), 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), huduser.gov/portal/sites/default/files/pdf/HNAIHousingNeeds.pdf

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

30 Broken Promises Report, at 138, (2018), 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), hud.gov/sites/documents/FY_2017_CJS_COMBINED.PDF.

33 NCAI Resolution PDX–20–055, NAHASDA Reauthorization, 2020, 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, 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), 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, ncai.org/FY2020PresidentsBudgetAnalysis.pdf

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, ncai.org/attachments/Resolution_rGJmzKMOpmpXCODBFDEimNAVXIDwbXbVyXGHmPeVbMNxlCXSRjF-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), bia.gov/sites/bia.gov/files/assets/as-ia/ocla/MBlackStatementSCIA-TribalTransportationSCIA-4-22-15%28FINAL%29.pdf

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

41 *Ibid.*

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, ncai.org/attachments/Resolution_prDUgaLNPkRTNERWxsSzSdDmDslugRdzKsBSzcoWTwZsAyoZKMJt_PDX-20-027%20SIGNED.pdf

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

44 Broken Promises Report, at 208, usccr.gov/pubs/2018/12-20-Broken-Promises.pdf.

45 ihs.gov/newsroom/factsheets/healthfacilitiesconstruction/

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

47 IHS. The 2016 Indian Health Service and Tribal Health Care Facilities’ Needs Assessment Report to Congress. 2016, at 4 ihs.gov/newsroom/includes/themes/newihs/theme/display/objects/documents/RepCong_2016/IHSRTC_onFacilitiesNeedsAssessmentReport.pdf

48 Broken Promise Report, 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, ncai.org/attachments/Resolution_ziEgUwOewCQXGqVxbDHNGGfKVQSOJsbMFnpLzfHaEWWmZxtgOkM-PDX-20-017%20SIGNED.pdf

50 NCAI Resolution SAC–12–054, Increase Funding for Prevention of Methamphetamine and Suicide in Indian Country, ncai.org/attachments/Resolution_YzBtYXKIYEEkfcSvEfpEqDDbYkwDcjLwXsbhakwzROfRZEHxt_SAC-12-054.pdf

51 85 Fed. Reg. 21864 (April 20, 2020), [govinfo.gov/content/pkg/FR-2020-04-20/pdf/2020-08247.pdf](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, [cms.gov/files/document/se20016.pdf](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.

54 Bureau of Indian Education, FY 2021 Congressional Budget Justification, [bia.gov/sites/bia.gov/files/assets/as-ia/obpm/2021%20BIE%20Greenbook.pdf](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, [doioig.gov/sites/doioig.gov/files/FinalEvalBIESchoolFacilitiesB093016.pdf](https://www.doioig.gov/sites/doioig.gov/files/FinalEvalBIESchoolFacilitiesB093016.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), [congress.gov/116/meeting/house/109835/witnesses/HHRG-116-AP06-Wstate-FreihageJ-20190724.pdf](https://www.congress.gov/116/meeting/house/109835/witnesses/HHRG-116-AP06-Wstate-FreihageJ-20190724.pdf).

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

58 Broken Promises Report, [usccr.gov/pubs/2018/12-20-Broken-Promises.pdf](https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf).

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*, [ncai.org/attachments/Resolution](https://www.ncai.org/attachments/Resolution)

[eSZGOknIxfLFmwOulmyCZfYhLDDfJaXmDIpmHrPLCrZkFiyFFTO](https://www.ncai.org/attachments/Resolution) 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, [ncai.org/attachments/Resolution](https://www.ncai.org/attachments/Resolution)

[pmLuqCrTfDSNTWYJfSoWeGNXLesAZIFoJShRbLnbTsnktQZzdmj-SD-15-045.pdf](https://www.ncai.org/attachments/Resolution); NCAI Resolution DEN-18-018, Urging the Department of the Interior to Restart its Process of Updating the “Licensed Indian Trader” Regulations, [ncai.org/attachments/Resolution](https://www.ncai.org/attachments/Resolution)

[pkSZaduxisqpuxoAYmfZOTYOxIoleoUzWbQFdtmTiqPzIMLEhHy-DEN-18-018%20FINAL.pdf](https://www.ncai.org/attachments/Resolution); and NCAI Resolution ABQ-19-015, Urging the Secretary of the Treasury to Assist in Ending Dual Taxation of Economic Activity in Indian Country, [ncai.org/attachments/Resolution](https://www.ncai.org/attachments/Resolution)

[LkQTZurnehEkDFmoZXhntmxoKQKEROQUbLLtflbXCHaDieVMCQd](https://www.ncai.org/attachments/Resolution) ABQ-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, [azcentral.com/story/news/local/arizona/2020/06/25/how-nagpra-law-helps-return-native-americanremains-tribes/3211191001/](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, [grantsdev.cr.nps.gov/NagpraPublic/Home/Inventory](https://www.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, [ncai.org/attachments/Resolution](https://www.ncai.org/attachments/Resolution)

[XbNGoCknSZuPPVEfngajJaERjsfwmjyGnxVyKIRWwaeDzMXPMXNP](https://www.ncai.org/attachments/Resolution) REN-19-003%20FINAL.pdf.

66 NCAI Resolution PDX-20-070, NCAI Initiative on Sacred Places and Cultural Rights Laws and Developing Legislation, [ncai.org/attachments/Resolution](https://www.ncai.org/attachments/Resolution)

[hlWapXboBodcDdyihesIEDrdoASofspeNKZLSrHIqPUiqkgWgYF-PDX-0920-070%20SIGNED.pdf](https://www.ncai.org/attachments/Resolution).

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

68 Ultimately, Techaminsh Oytpamanatityt was repatriated to claimant Tribal Nations, see e.g., NPR, “A Long, Complicated Battle Over 9,000-Year-Old Bones Is Finally Over,” (2016), 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. & POLY 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, ncai.org/attachments/Resolution_bNGoCknSZuPPVEfngajJaERjsfwmjyGnxVyKIRWwaeDzMXPMXNP_REN-19-003%20FINAL.pdf;

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).

79 Indian Country Today, “Tester Re-Introduces a ‘Clean Carcieri Fix,’” 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*, ncai.org/attachments/Resolution_oiGOSYZkdNCzZHOUkmLuFtLzAGVAKgIErwWMYEkWqiSixNMKwJq_RAP-10-024.pdf.

81 NCAI Resolution PDX-20-003, Calling for the Advancement of Meaningful Tribal Co-Management of Federal Lands, ncai.org/attachments/Resolution_FamhBAHVFLnQfgvKBsgXjzIrdYAbDzKIaVtsEdSjWibSZtJdkFR_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, ncai.org/attachments/Resolution_MEiHQoBUWknVjsqcJUWQNFxIyAjPXEntkmaXbcWTxiBwyqmMuIN_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; ncai.org/attachments/Resolution_IdzEZaLwaLwIqbTUDsdfHioFkTzlokgGkHyUnvNYcTCOVVfUEU_ATL-14-

032.pdf; NCAI Resolution ABQ–10–065, Calling for Legislation to Provide a Right of Action to Protect Native Peoples’ Sacred Places, [ncai.org/attachments/ResolutionVApsecvWsjrwXrcIzXvxzxELsRVlaptSOXGIXgvxqshvXahisOB](https://www.ncai.org/attachments/ResolutionVApsecvWsjrwXrcIzXvxzxELsRVlaptSOXGIXgvxqshvXahisOB) ABQ-10-065 rev.pdf; NCAI Resolution DEN–18–035, Supporting Legislation to Improve Protections and Authorize the Restoration of Native Sacred Places on Federal Lands, [ncai.org/attachments/ResolutionPYCnwKpRbfWPiYzlKHPLmgHJMNoHiIZVffWZqBlifEouNkSdFeS](https://www.ncai.org/attachments/ResolutionPYCnwKpRbfWPiYzlKHPLmgHJMNoHiIZVffWZqBlifEouNkSdFeS) DEN-18-035%20Final.pdf.

83 NCAI Resolution PDX–20–003, Calling for the Advancement of Meaningful Tribal Co-Management of Federal Lands, [ncai.org/attachments/ResolutionFamhBAHVFLnQfjgvKBsgXjzIrdYAbDzKlaVtsEdSjWlBszJdkFR](https://www.ncai.org/attachments/ResolutionFamhBAHVFLnQfjgvKBsgXjzIrdYAbDzKlaVtsEdSjWlBszJdkFR) 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, [ncai.org/attachments/ResolutionopZRYVFLdvUFJrFgQGBcyGXoYIMduwfyOSaRAnursVMQYYNsCN](https://www.ncai.org/attachments/ResolutionopZRYVFLdvUFJrFgQGBcyGXoYIMduwfyOSaRAnursVMQYYNsCN) 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, [ncai.org/ptg/climate](https://www.ncai.org/ptg/climate), (last visited, Feb. 19, 2021).

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, [ncai.org/attachments/ResolutionRQiEdgHAWYpzQLoUKEdwjuxDCxyGCwKeLQhGWLAKzxTUAUAehsK](https://www.ncai.org/attachments/ResolutionRQiEdgHAWYpzQLoUKEdwjuxDCxyGCwKeLQhGWLAKzxTUAUAehsK) 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, [ncai.org/attachments/ResolutionNZdlSoySpGDwyQAPQHLWnPZLOBftqiQXqWoQXOVmdKCaPLkzSqm](https://www.ncai.org/attachments/ResolutionNZdlSoySpGDwyQAPQHLWnPZLOBftqiQXqWoQXOVmdKCaPLkzSqm) 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, [ncai.org/attachments/ResolutionwdmLQlFJtJWBerRSGeAYFkjXqdVikLhFyqxMmWUrhzSQVdFGGjo](https://www.ncai.org/attachments/ResolutionwdmLQlFJtJWBerRSGeAYFkjXqdVikLhFyqxMmWUrhzSQVdFGGjo) ABQ-19-036.pdf.

92 NCAI Resolution PDX–11–036, Traditional Ecological Knowledge and Climate Change, [ncai.org/attachments/ResolutionMZhrscMWUDNfPdJGEJQVODCZZtiNPdZRRWvaNmDdEYtmagYqTat](https://www.ncai.org/attachments/ResolutionMZhrscMWUDNfPdJGEJQVODCZZtiNPdZRRWvaNmDdEYtmagYqTat) PDX-11-036 final.pdf.

93 Supra. Note 30. See also, NCAI Resolution ATL–14–050, Support the Wildfire Disaster Funding Legislation, [ncai.org/attachments/ResolutionQpVTbEqVjmjgrNAPeUJdzfXCaxahfjUDwghlXihJcGGiWidclwo](https://www.ncai.org/attachments/ResolutionQpVTbEqVjmjgrNAPeUJdzfXCaxahfjUDwghlXihJcGGiWidclwo) ATL-14-050.pdf.

94 Bureau of Indian Affairs, Trust Services, Tribal Climate Resilience Program, Solicitation, (2020), bia.gov/sites/bia.gov/files/assets/bia/ots/ocrp/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), perc.org/wpcontent/uploads/old/pdfs/IndianPolicySeries%20HIGH.pdf.

96 National Renewable Energy Laboratory, Techno-Economic Renewable Energy Potential on Tribal Lands, (2018), [nrel.gov/docs/fy18osti/70807.pdf](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. [energy.gov/sites/prod/files/2016/02/f30/FY2017BudgetVolume3.pdf](https://www.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, [ncai.org/attachments/ResolutionQJdbbwFnrWmGvaJqGSHocjqjFSERrkvVBOJzsMmkGfVbtLNwMrp ftl04-110.pdf](https://www.ncai.org/attachments/ResolutionQJdbbwFnrWmGvaJqGSHocjqjFSERrkvVBOJzsMmkGfVbtLNwMrp ftl04-110.pdf) 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, [ncai.org/attachments/Resolution/tpWzJwjtHdUfEAcemlckTRjoAGzZhJvZoAOdLMxjazDEdHsjYQ](https://www.ncai.org/attachments/Resolution/tpWzJwjtHdUfEAcemlckTRjoAGzZhJvZoAOdLMxjazDEdHsjYQ) TUL-13-043%20Final.pdf.

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

103 NCAI Resolution SD-15-038, Indian Country's Priorities for Federal Energy Legislation, [ncai.org/attachments/Resolution/qMHMstHTzqxRxfysZNHLJtQWsJwCTsRfxceShlONcPiSBAVith](https://www.ncai.org/attachments/Resolution/qMHMstHTzqxRxfysZNHLJtQWsJwCTsRfxceShlONcPiSBAVith) 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, [ncai.org/attachments/Resolution/fEBoYKOrTODFcWRgdViPRcbNmdjBuOuhGLIbNztNyaAqDLIALfA](https://www.ncai.org/attachments/Resolution/fEBoYKOrTODFcWRgdViPRcbNmdjBuOuhGLIbNztNyaAqDLIALfA) 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, [ncai.org/attachments/Resolution/AgWCYVGVVVOvVmUHPUmQqpmRGwechoEDblkAfdngPpHJPvAwfICv](https://www.ncai.org/attachments/Resolution/AgWCYVGVVVOvVmUHPUmQqpmRGwechoEDblkAfdngPpHJPvAwfICv) REN-19-024%20FINAL.pdf

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), [ncjrs.gov/pdffiles1/nij/249736.pdf](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, [ncai.org/attachments/Resolution/DKtUnmfhXSxChRmoIHulitfxDPHWNFNWovRcucsoXQKMhhVnsBZ](https://www.ncai.org/attachments/Resolution/DKtUnmfhXSxChRmoIHulitfxDPHWNFNWovRcucsoXQKMhhVnsBZ) ECWS-19-005.pdf.

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, 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, [ncai.org/attachments/Resolution/wgnCWyNGKOayakuupKOVWukzknuljvkrkmHKMMnSHEUaHrtLR](https://www.ncai.org/attachments/Resolution/wgnCWyNGKOayakuupKOVWukzknuljvkrkmHKMMnSHEUaHrtLR) 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.*

The CHAIRMAN. Thank you very much.
Next, we have Mr. Leonard Forsman.

**STATEMENT OF HON. LEONARD FORSMAN, PRESIDENT,
AFFILIATED TRIBES OF NORTHWEST INDIANS**

Mr. FORSMAN. [Greeting in Native tongue]. Welcome, everyone, from Port Madison Indian Reservation here in Suquamish, Washington. I am Leonard Forsman, I am Chairman of the Suquamish Tribe and also President of the Affiliated Tribes of Northwest Indians, which represents many tribes in the northwest, Washington, Oregon, Idaho, Alaska, California, Montana, and beyond. I would like to thank you for the opportunity, Chairman Schatz, and Vice Chair Murkowski, for the opportunity to speak here on behalf of ATNI.

Climate change has had a profound impact on Indian Country, in affecting our sovereign rights, access to our usual customary fishing, hunting and gathering places here in the Pacific Northwest and the Columbia River, on the coast, and here in Puget Sound.

It is affecting our ability to live our traditional way of life and our economic livelihoods.

Chief Seattle, who is buried here on our reservation, and who I descend from, stated in 1854, just before the Treaty of Point Elliott was signed, that every part of the soil is sacred in the estimation of my people. Every hillside, every valley, every plain and grove has been hallowed by some sad or happy event in days long vanished. It is in the spirit of his words that will continue my testimony.

Climate change is causing more and extensive and frequent flooding, causing tribal elders throughout our area to move from homes, especially in Alaska, which you will hear more about later, I am sure, that they have occupied since time immemorial. It is also causing pollution here in the Puget Sound from overflowing sewer plants. More and more extensive wildfires are being caused by climate change, impacting our children's respiratory health, damaging sensitive ecosystems and polluting the water.

Ocean acidification is threatening our traditional first foods, especially clams and crabs, that the Puget Sound and coastal tribes depend upon for commercial, spiritual and cultural purposes. Our spiritual relatives, the Southern Resident Killer Whales of Puget Sound, are endangered by the drastic reduction of salmon runs in the northwest, causing them to starve. The same could be said for the salmon. Fishermen of my tribe and many tribes around me in the Affiliated Tribes of Northwest have minimal, if any, opportunity to harvest salmon.

Climate impacts have also altered fishing conditions and impacted streams and rivers where salmon spawn, while the Snake River Dam and other obstructions continue to prevent the return of salmon runs. Over 500 years, tribes have suffered inequity, injustice and disrespect as our traditional ecosystems have been ravaged by the impacts of development, which are now being amplified by climate change.

The Federal Government has a trust responsibility based on treaties and other agreements to tackle this issue immediately and into the future. After all, what good is a treaty right if our environment and our ecosystems can no longer sustain fish to catch, animals and fish to harvest?

Tribes are leading efforts to tackle climate change. The Swinomish Indian Tribal Community is reviving ancient clam gardens to improve nearshore habitat while addressing ocean acidification. The Blue Lake Rancheria has constructed a microgrid on its 100-acre reservation as part of its plan to transition to a zero-carbon community.

The Navajo Nation is replacing coal with a solar project that supplies energy to 36,000 homes on their reservation. Tribes in Alaska, Louisiana, and Washington are developing plans to relocate to escape rising sea levels.

The Fourth National Climate Assessment, published in 2018, had a chapter on Indian Country. It found that climate change threatens tribal communities in unique ways. The report concluded that the climate change threat to natural resources and the environment would have a profound negative impact on our heritage,

our practices and our identity as tribes and our individual tribal members and families.

A tribal review of the House’s 2020 Congressional Climate Action Plan identified the following priorities for Indian Country: invest in tribal infrastructure to build a just and equitable clean energy economy; restore ecological resilience and maintain tribal access to first foods and other cultural resources; promote environmental justice and health of tribes while upholding tribal sovereignty; and honor the rights of tribes in climate governance.

In conclusion, to fully accomplish our goals to address climate change impacts in the tribal communities, we need to have Congress ensure that front line tribal communities have the resources they need to address the inequitable climate change impacts that we are facing. Congress should increase funding for BIA’s Tribal Resilience Program, so that tribes can plan, create, and implement tribal adaptation strategies.

In addition, more funding should be directed to FEMA, the Corps of Engineers, and NOAA with the express purpose of helping to relocate tribal infrastructure that is threatened by climate change and rising sea levels.

I would like to say that many of these priorities are being developed by NCAI, and I am one of the co-chairs of the Climate Change Task Force. I want to thank you for the opportunity to testify today. Affiliated Tribes of Northwest Indians stands ready to assist the Committee as it works to find solutions to address climate change.

[The prepared statement of Mr. Forsman follows:]

PREPARED STATEMENT OF HON. LEONARD FORSMAN, PRESIDENT, AFFILIATED TRIBES OF NORTHWEST INDIANS

Tribal Nations in the U.S. are among the frontline communities feeling the full force of the climate crisis. We are already experiencing significant climate impacts that affect our rights as sovereign Nations, our access to our usual and accustomed places, our traditional lifeways, and our livelihoods. Our peoples have lived on our traditional lands since time immemorial, but our elders are being forced to move from their homes because they are experiencing more extensive flooding. More of our children have been afflicted with respiratory illness and have difficulty breathing during recent wildfire seasons, which are worse than ever before. And our traditional first foods, including clams, crabs, and fisheries are threatened by our acidifying oceans. The Suquamish Tribe and our ancestors have always had a sacred relationship with the Southern resident killer whale population in the Puget Sound, but they are starving because of the drastic reduction in our salmon runs. These reductions are strongly correlated with climate impacts and with the presence of dams on the Snake River. The inequities and injustices that the citizens of Tribal Nations in the US have experienced in the last 500 years are being amplified by the climate and the US government has a Trust Responsibility to tackle this issue immediately and moving forward.

There are Tribes throughout the United States that are at the forefront of taking action on climate change. For example,

- To adapt to ocean acidification, the *Swinomish Indian Tribal Community* is reviving ancient clam gardens to improve nearshore habitat and give tribal members more opportunities to harvest traditional foods.
- The *Blue Lake Rancheria* has constructed an electrical microgrid on its 100-acre reservation, which is part of the Tribes’ transition to a zero-carbon community.
- The Navajo Nation is working to increase renewable energy—the *Kayenta Solar Plant* now supplies energy to 36,000 homes on the Navajo Nation.
- Numerous Native communities in Alaska, coastal Louisiana, and Washington State are developing plans for relocating and protecting their existing infrastructure in response to rising seas.

The 4th National Climate Assessment, published in 2018, includes a dedicated chapter on *Tribes and Indigenous Peoples*. The Key Messages in the chapter are:

1. Climate change threatens Indigenous peoples' livelihoods and economies.
2. The health of Tribal individuals and communities will be uniquely challenged by climate impacts, which threaten the natural resources that we depend upon, our cultural heritages, identities, and physical and mental health.
3. Institutional barriers limit our access to traditional territory and resources and also preclude us from engaging in Federal policies and programs and accessing adequate funding.

In autumn 2020, in a Tribally led review of the US House's 2020 *Congressional Climate Action Plan* (CAP). The *Tribal Review* identifies key Tribal priorities that include:

- *Invest in Tribal infrastructure to build a just, equitable, and resilient clean energy economy;*
- *Support climate-resilient Tribal communities* by upholding the Federal Trust Responsibility;
- *Promote environmental justice and health of Tribes while upholding Tribal sovereignty;*
- *Restore ecological resilience* and maintain Tribal access to first foods and other cultural resources;
- *Honor the rights of Indigenous Peoples in climate governance and climate science by honoring the Rights of Indigenous Peoples.*

In May 2020, upon request from the U.S. House of Representatives Subcommittee on the Interior, the BIA Tribal Resilience Program *assessed the unmet infrastructure needs of Tribal Nations for addressing climatic threats*. The report identified a significant unmet financial need for existing tribal infrastructure threatened by climate that includes:

- \$3.45 billion over the next 50 years for Alaska which equates to \$90–\$110 million in the first 10 years to address tribal infrastructure threats;
- \$1.9 billion for Tribes in the Contiguous 48 States. This represents a known underestimate of the total Needs (\$462 million for Planning and \$1.45 billion for implementation projects).

In conclusion, to fully accomplish our climate-related goals, the United States must ensure that frontline communities have the resources that they need to address the inequitable climate impacts that we are facing. Federal funding from BIA's Tribal Resilience Program is critical for Tribes seeking to plan and implement climate adaptation strategies. In FY 2022, funding for the BIA Tribal Resilience Program should be increased to \$50 million. In addition, \$150 million should be allocated to agencies such as FEMA, the USACE, and NOAA and committed to protecting or relocating existing tribal infrastructure (including cultural sites) threatened by climate.

I appreciate the opportunity to provide this testimony and ATNI stands prepared to assist the U.S. Senate Indian Affairs Committee in future hearings to address climate impacts and solutions on behalf of Tribal Nations.

The CHAIRMAN. Thank you very much.

Next, we have Chair "Hulu" Lindsey, Office of Hawaiian Affairs.

**STATEMENT OF HON. CARMEN "HULU" LINDSEY, CHAIR,
BOARD OF TRUSTEES, OFFICE OF HAWAIIAN AFFAIRS**

Ms. LINDSEY. Aloha, members of the Senate Committee on Indian Affairs. My name is Carmen "Hulu" Lindsey, and I am the Chairperson of the Board of Trustees of the Office of Hawaiian Affairs. Thank you for inviting me to provide testimony on behalf of the Native Hawaiian community to the Senate Committee on Indian Affairs.

I want to offer my aloha to Committee chairman and Hawaii's Senator, Brian Schatz. Chairman Schatz, you have proven yourself a reliable and respected champion for Native Hawaiians, for Amer-

ican Indians, and for Alaska Natives. Chairman Schatz, I especially want to thank you for the critical relief programs like rental assistance, small business grants, broadband access, tele-health, and education that you created to ease the suffering caused by this pandemic. Those programs were desperately needed.

Vice Chair Murkowski, I send my aloha and congratulations to you as well on your return to this important post. Hawaii and Alaska have enjoyed a long history of working together, due to the cultural ties we have developed over so many years as communities living outside the continental United States.

Mr. Chairman, Madam Vice Chair and members of the Committee, I appreciate the bipartisanship way your Committee has worked over the years to ensure that the Federal Government honors its trust responsibility to all Native Americans: American Indians, Alaska Natives, and Native Hawaiians. I have submitted my lengthy written remarks, along with a copy of OHA's testimony from your December 2020 hearing on self-determination. Together, these statements address the needs and successes of our Native Hawaiian community.

I am one of nine publicly elected OHA trustees, all of whom are Native Hawaiian. OHA is a semi-autonomous agency of the State of Hawaii, mandated to better the conditions of Native Hawaiians. We advocate on behalf of Native Hawaiians. We advise and inform Federal officials about Native Hawaiians. And we coordinate Federal activities relating to Native Hawaiians. To prepare for today's hearing, we met with Native Hawaiian health, housing, and education organizations. In health, Papa Ola Lokahi, in housing, the Department of Hawaiian Home Lands, and in education, the Native Hawaiian Education Council. Their needs and their priorities are reflected in our written testimony.

OHA's policy priority for the Congress is simply this: to further the self-determination of Native Hawaiians. We ask this Senate Committee to honor the Federal Government's trust responsibility to Native Hawaiians. Support Federal programs that benefit Native Hawaiians. And ensure parity by the Federal Government to all Native Americans, Native Hawaiians included.

Congress has consistently recognized Native Hawaiians as the indigenous once-sovereign people of the State of Hawaii, who have never relinquished our right to self-determination. Though the Federal trust responsibility may look different from tribe to tribe and from community to community, that trust responsibility is owed by the Federal Government to all Native Americans.

Unfortunately, for the past two decades, executive orders requiring Federal agencies consult with Native Americans have left Native Hawaiians out. To address this, OHA urges the passage of legislation extending consultation by the Federal Government to Native Hawaiians. To meet its trust responsibility to Native Hawaiians we urge Congress to reauthorize, expand and increase funding for the Native Hawaiian Health Care Improvement Act, the Native Hawaiian Housing Block Grants, the Native Hawaiian Education Act, and the Native American Languages Act.

Mahalo again for allowing me the opportunity to provide remarks.

[The prepared statement of Ms. Lindsey follows:]

PREPARED STATEMENT OF HON. CARMEN “HULU” LINDSEY, CHAIR, BOARD OF TRUSTEES, OFFICE OF HAWAIIAN AFFAIRS

Aloha e Chairman Schatz, Vice Chairman Murkowski, and the Members of the U.S. Senate Committee on Indian Affairs.

Mahalo nui loa (Thank you very much) for inviting me to testify on behalf of the Office of Hawaiian Affairs (OHA) and our beneficiaries—the Native Hawaiian community. I extend my aloha and congratulations to Chairman Brian Schatz and Vice Chairman Lisa Murkowski on your new leadership positions on the U.S. Senate Committee on Indian Affairs. This Committee has a long history of bipartisanship and collegiality among its Members. That spirit is critical to elevating the voices of Native leaders and fulfilling the federal government’s trust responsibility owed to all Native people of the United States. Your work here empowers the Native community to continue exercising true self-determination—our right to chart our own course and maintain our distinct traditions, cultures, and Native ways.

Chairman Schatz, OHA recognizes your work on behalf of our families in Hawai‘i. You have been a champion on stopping the trafficking of Hawaiian women and children, including Native perspectives in federal climate action, and addressing disparities for Native Hawaiians in health, education, broadband access, and food security. We are particularly grateful for your recent efforts to ensure that Native Hawaiians were eligible for federal Coronavirus Disease (COVID- 19) relief, and that you provided us with the information we needed to obtain federal resources. We deeply appreciate your strong support to fund federal programs providing health care, housing, education, and other essential services to Native Hawaiians.

Background on OHA and its standing to represent Native Hawaiians

Established by our state’s Constitution,¹ OHA is a semi-autonomous agency of the State of Hawai‘i mandated to better the conditions of Native Hawaiians. Guided by a board of nine publicly elected trustees, all of whom are Native Hawaiian, OHA fulfills its mandate through advocacy, research, community engagement, land management, and the funding of community programs. Hawai‘i state law recognizes OHA as the principal public agency in the state responsible for the performance, development, and coordination of programs and activities relating to Native Hawaiians.² Furthermore, state law directs OHA to advocate on behalf of Native Hawaiians;³ to advise and inform federal officials about Native Hawaiian programs; and to coordinate federal activities relating to Native Hawaiians.⁴

Priorities for the 117th Congress

Your inclusion of Native leaders in your first oversight hearing is reassuring. Allowing us to share—in our own words—how the Committee and the Congress can best meet the federal government’s continuing trust responsibility to our people is an important part of honoring it.

In preparation for this hearing, OHA met with other Native Hawaiian organizations to ensure that the broad needs of our diverse community are represented. These partners include Papa Ola Lokahi (POL), the Department of Hawaiian Home Lands (DHHL), and the Native Hawaiian Education Council (NHEC). Together, we provide health, housing, economic development, and education, among other services to Native Hawaiians. The priorities OHA presents today align with one guiding principle—furthering self-determination for Native Hawaiians.

To accomplish this, we ask this Committee to: (1) honor the federal government’s trust responsibility to the Native Hawaiian people by ensuring that Native Hawaiians are included in all federal consultation policies; (2) support federal programs for Native Hawaiians, by reauthorizing, strengthening, and expanding federal programs focusing on the health care, housing, economic development, and education of Native Hawaiians; and (3) ensure parity in the treatment for all Native Americans, including American Indians, Alaska Natives, and Native Hawaiians.

(1) Honor the federal government’s trust responsibility owed to Native Hawaiians

Native Hawaiians are owed the same trust responsibility as any other Native American group. To meet this obligation, Congress—oftentimes through the bipartisan work of this Committee and its Members—has created policies to promote education, health, housing, and a variety of other federal programs that support Native Hawaiian self-determination. Similar to American Indians and Alaska Natives, Native Hawaiians have never relinquished our right to self-determination despite the

¹Haw. Const., art. XII, § 5 (1978).

²Haw. Rev. Stat. § 10–3(3).

³Haw. Rev. Stat. § 10–3(4).

⁴Haw. Rev. Stat. § 10–6(a)(4).

United States' involvement in the illegal overthrow of Queen Lili'uokalani in 1893 and the dismantling of our Hawaiian government. In fact, over 150 Acts of Congress consistently and expressly acknowledged or recognized a special political and trust relationship to Native Hawaiians based on our status as the Indigenous, once-sovereign people of Hawai'i. Among these laws are the Hawaiian Homes Commission Act, 1920 (42 Stat. 108) (1921), the Native Hawaiian Education Act (20 U.S.C. § 7511) (1988), the Native Hawaiian Health Care Improvement Act (42 U.S.C. § 11701) (1988), and the Hawaiian Homelands Homeownership Act codified in the Native American Housing Assistance and Self Determination Act, Title VIII (25 U.S.C. § 4221) (2000).

While the federal trust responsibility has many facets, one of the most critical safeguards of effective self-determination is the ability to consult with the federal government. Under President Clinton's Executive Order 13175, and subsequent memoranda from the Bush, Obama, and now Biden Administrations, the U.S. Government recognizes the right to sovereignty and self-determination of this nation's Native people. While this is a step in the right direction, the omission of Native Hawaiians from federal consultation requirements has stifled and limited Native Hawaiian voices from being able to comment upon and inform federal projects and programs for the past two decades. Despite our exclusion from these executive orders, Congress's thoughtful inclusion of Native Hawaiians in key legislation like the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. § 3001) and the National Historic Preservation Act (NHPA) (16 U.S.C. § 470 et seq.) have demonstrated that Native Hawaiians can be effectively included in consultation now, with representation through Native Hawaiian organizations. Indeed, OHA receives and reviews approximately 240 requests for federal consultations each year, including Section 106 NHPA and NAGPRA reviews. The federal government takes many more actions affecting the Native Hawaiian community than are covered by these two statutes without ever giving Native Hawaiians an opportunity to consult. This must change.

Ensuring Native Hawaiians are informed of all proposed federal actions and allowed to voice their comments and perspectives on them will help to correct this country's historic wrongs against Native Hawaiians. Moreover, this will also improve the quality of federal undertakings and projects. Federal consultation with entities that serve Native Hawaiians such as OHA, DHHL, NHEC, POL, and the Native Hawaiian Health Care Systems enables Native Hawaiians to access this basic tenet of self-determination—having a meaningful say in our own governance. We urge this Committee to pass legislation requiring meaningful federal consultation across the entire federal government and to extend these rights to all Native Americans, including Native Hawaiians.

(2) Support federal programs for Native Hawaiians

While consultation is critical to self-determination, so is the provision of the resources and governmental programs to provide for the health, housing, education, and economic well-being of Native Hawaiians. Chairman Schatz and the other members of our congressional delegation have ensured that Congress continues to fund our essential federal programs annually; however, three of these acts must now be reauthorized, strengthened, and expanded by the Congress.

Over the past several decades, the Native Hawaiian Health Care Improvement Act (NHHCIA), the Hawaiian Homelands Homeownership Act (HHHA), and the Native Hawaiian Education Act (NHEA) have enabled Native Hawaiians to receive culturally appropriate services relating to health, housing, and education. These Acts have delivered services to tens of thousands of Native Hawaiians through diverse programs including revitalizing the Native Hawaiian language, building and maintaining homes and infrastructure, and providing telehealth services during a global pandemic. Further, the Native Hawaiian Revolving Loan Fund (NHRLF)—administered by OHA—and the U.S. Treasury's Community Development Financial Institutions Fund's (CDFI Fund's) Native American CDFI Assistance Program have supported the emergence and growth of thousands of Native Hawaiian businesses. We urge this committee to reauthorize, strengthen, and expand all these programs to further support Native Hawaiian self-determination.

Native Hawaiian Health Care Programs

Native Hawaiian self-determination in health care means that Native Hawaiians have the power to choose the health care services most needed in their communities. Similar to our Native relatives on the continent, Native Hawaiians face disproport-

tionate threats to our physical and mental health, including poverty,⁵ suicide and depression,⁶ infant mortality,⁷ alcohol abuse,⁸ homelessness,⁹ and prejudice. Native Hawaiian infants are twice as likely to die (infant mortality rate of 7.9 per 1,000 live births) than their White peers (infant mortality rate of 3.5 per 1,000 live births) in the State of Hawai'i.¹⁰ Native Hawaiians are also more likely to suffer from coronary heart disease, diabetes, and asthma than non-Native Hawaiians in the State.¹¹ Nearly 16,000 Native Hawaiians suffer from diabetes and more than 36,000 suffer from asthma.¹²

To address the major health disparities then apparent, Congress enacted the precursor to NHHCIA in 1988, which was most recently reauthorized in 2009. The NHHCIA established the Native Hawaiian Health Care program, which funds the Native Hawaiian Health Care Systems administered by POL. Together the five Systems on the islands of Kaua'i, O'ahu, Maui, Moloka'i, and Hawai'i provide primary health care, behavioral health, and dental services. They also offer health education to manage disease, health related transportation, and other services. The Systems serve tens of thousands of patients across the State each year. NHHCIA also established the Native Hawaiian Health Scholarships Program for Native Hawaiians pursuing careers in designated health care professions. It supports culturally appropriate training and the placement of scholars in underserved Native Hawaiian communities following the completion of their education. More than 300 scholarships have been awarded through this program and more than 98 percent of program alumni are now licensed and practicing in Hawai'i.

According to POL, the pandemic has highlighted the urgent need for several amendments to the NHHCIA. OHA and POL have advocated for increased funding to the Systems and removing the matching requirements in parity with other Native health care centers; applying 100 percent of the Federal Medical Assistance Percentage (FMAP); expanding Federal Tort Claims Act coverage to POL, the Systems, and their employees in parity with other Native health care centers; allowing federal program funding to be used to collect and analyze health and program data which currently falls under the ten percent administrative cost cap for the program; allowing the Systems to be eligible for supplemental federal funding streams; and providing a tax exemption for the scholarships program. Additionally, POL has established partnerships with other organizations to reach Native Hawaiians living across the country, offering capacity building, technical assistance, and workshops to promote holistic health and well-being as Native Hawaiians. Through POL's partnerships, it can care for all Native Hawaiians, including those unable to access the Systems in Hawai'i. We urge the Committee to support increased funding for, reauthorization of, and expansion of the NHHCIA, including these amendments so that POL and the Systems may be able to expand what they can accomplish.

Native Hawaiian Housing Programs

The HHHA facilitates Native Hawaiian self-determination by supporting part of DHHL's mission—to develop and deliver land and housing to Native Hawaiians. Congress enacted the HHHA in 2000. The HHHA established the Native Hawaiian Housing Block Grant (NHHBG) program and the Section 184A Loan Guarantees for Native Hawaiian Housing. The NHHBG provides much needed funding to DHHL to deliver new construction, rehabilitation, infrastructure, and various support services to beneficiaries living on DHHL lands. The 184A Loan Guarantee program provides eligible beneficiaries with access to construction capital on DHHL lands by fully guaranteeing principal and interest due on loans. The program currently serves owner-occupant single family dwellings on the DHHL lands. Together, these programs help DHHL to carry out the vision of our Prince Jonah Kūhiō Kalaniana'ole, who as the then-Territory of Hawai'i's Congressional Delegate 100

⁵ Anita Hofschneider, Poverty Persists Among Hawaiians Despite Low Unemployment, HONOLULU CIVIL BEAT (Sept. 19, 2018), <https://www.civilbeat.org/2018/09/poverty-persists-among-hawaiians-despite-low-unemployment/>.

⁶ NATIVE HAWAIIAN MENTAL HEALTH AND SUICIDE, OFFICE OF HAWAIIAN AFFAIRS (Feb. 2018), http://www.ohadatabook.com/HTH_Suicide.pdf.

⁷ Ashley H. Hirai et al., Excess Infant Mortality Among Native Hawaiians: Identifying Determinants for Preventive Action, AM. J. OF PUB. HEALTH (Nov. 2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3828695/pdf/AJPH.2013.301294.pdf>.

⁸ NATIVE HAWAIIAN HEALTH STATUS, OFFICE OF HAWAIIAN AFFAIRS 22 (July 2019), <http://www.ohadatabook.com/NHHS.html>.

⁹ ISSUE BRIEF: COVID-19 AND NATIVE HAWAIIAN COMMUNITIES, NATIVE HAWAIIAN OVER-REPRESENTED IN COVID-19 AT-RISK POPULATIONS, OFFICE OF HAWAIIAN AFFAIRS 2 (2020).

¹⁰ Hirai, *supra* note 7.

¹¹ OFFICE OF HAWAIIAN AFFAIRS, *supra* note 9 at 2.

¹² *Id.* at 1–2.

years ago, spearheaded one of the first Acts of Congress implementing the trust responsibility to Native Hawaiians.

Like other Native communities, housing has become even more vital during this pandemic. Prior to the pandemic, Native Hawaiians faced one of the most expensive housing markets in the country. In fact, Native Hawaiians made up nearly half of the homeless population on the island of O‘ahu,¹³ whose population accounts for approximately two thirds of all State residents. To address housing needs, DHHL has used NHHBG funds for emergency rental assistance for eligible Native Hawaiians; rental subsidies for lower income elderly; rehabilitation of homes primarily for elderly or disabled residents; homeownership opportunities for lower income working families; and homeownership and rental counseling to address barriers experienced by Native Hawaiians.

Despite these efforts, DHHL estimates that they would need \$728 million over the next two fiscal years to develop a minimum of 1,700 homestead lots statewide, provide needed loan financing, and carry out rehabilitation projects by which the general welfare and conditions of Native Hawaiians can be improved. Unfortunately, even that sum is not enough to provide every DHHL applicant with a parcel. OHA appreciates Chairman Schatz’s active role in ensuring that DHHL is included in COVID–19 relief for housing and related assistance. We urge this Committee to support increased funding for, reauthorization of, and expansion of the NHHBG and 184A Loan Guarantee programs as well.

Programs Supporting the Economic Well-Being of Native Hawaiians

Economic well-being and opportunity are central to the ability of any community to exercise self-determination. Unfortunately, the pandemic has devastated Hawai‘i’s job market. Unemployment in the State has skyrocketed, and recovery efforts continue to lag. The U.S. Bureau of Labor Statistics reports that as of December 2020, Hawai‘i had the highest unemployment rate in the United States at 9.3 percent.¹⁴ Unemployment is unlikely to decrease significantly in the near future because one of our biggest industries—tourism—continues to be severely impacted. According to preliminary statistics released by the Hawai‘i Tourism Authority’s Tourism Research Division, visitor arrivals were 75.2 percent lower in December 2020 compared to a year ago.¹⁵ Given that nearly one in four Native Hawaiians are employed in the service industry closely tied to tourism,¹⁶ Native Hawaiians will likely continue to be disproportionately affected during the State’s economic recovery.

Fortunately, several economic development and access to capital programs are already in place to serve Native Hawaiian communities. The Native American CDFI Assistance Program and NHRLF are both widely recognized as being effective. Continued support for these and similar programs are critical to minimizing the negative economic impacts of this pandemic. For example, in its nearly three decades in operation under OHA’s administration, NHRLF has closed around 2,700 loans valued at more than \$63 million of lending to Native Hawaiian businesses and individuals. With this in mind, OHA asks the Committee for its support of Native CDFIs and for programmatic fixes to NHRLF, including ending the demonstration status of the program, removing restrictions on outdated unallowable loan activities, and reducing the Native Hawaiian ownership percentage requirement from 100 to 50.

In spite of these successes, more programs to support the economic well-being of Native Hawaiians are needed. OHA asks that the Committee explore opportunities to promote economic development and access to capital in Native communities. For example, OHA supports Chairman Schatz’s PLACE Act, introduced last Congress. OHA also asks that the Native Hawaiian community be included in these kinds of programs now serving Native American communities.

Native Hawaiian Education Programs

The self-determination framework supports the reclamation and revitalization of Native identity through culture-based education and language programs supported through programs like the NHEA. Congress passed the NHEA in 1988 and most recently reauthorized the Act in 2015. The NHEA established the Native Hawaiian Education Program (NHEP). This program offers competitive grants to fund the development of innovative education programs to assist Native Hawaiians and to supplement and expand Native Hawaiian cultural-based education. Evidence shows

¹³ OFFICE OF HAWAIIAN AFFAIRS, *supra* note 9 at 2.

¹⁴ Unemployment Rates for States, U.S. BUREAU OF LABOR STATISTICS (Jan. 26, 2021), <https://www.bls.gov/web/laus/laumstrk.htm>.

¹⁵ Hawai‘i Visitor Statistics Released for December 2020, HAWAII TOURISM AUTHORITY (Jan. 28, 2021), <https://www.hawaiiitourismauthority.org/media/6395/december-2020-visitor-statistics-press-release-final.pdf>.

¹⁶ OFFICE OF HAWAIIAN AFFAIRS, *supra* note 9 at 3.

that educating students through the use of their own culture and language leads to better academic and behavioral outcomes for students.

In 2011, Ms. Nāmaka Rawlins of ‘Aha Pūnana Leo, a renowned ‘Ōlelo Hawai‘i (Hawaiian language) immersion preschool and the oldest Native American language immersion non-profit in the United States, testified before the Committee about the successes of their preschool and the language immersion movement generally. At the time, Ka Haka ‘Ula o Ke‘elikōlani at the University of Hawai‘i at Hilo offered the only Ph.D. in the world that focused solely on Native language and culture revitalization.

This Hawaiian language college provides curriculum for various levels of immersion education, including a laboratory school for Kindergarten through 12th Grade. Their rate of success is stunning. Hawaiian immersion laboratory school had a 100 percent high school graduation rate and an 80 percent college entrance rate. These rates have remained steady for more than ten years, supporting the conclusion that culture-based education and Indigenous language programs are reliably and overwhelmingly successful.

Moreover, Native Hawaiian language advocates like Ms. Rawlins and other pioneers in ‘Ōlelo Hawai‘i education have played critical roles in Native language revitalization efforts. They are ambassadors of aloha throughout Indian Country, even serving in leadership positions at the National Indian Education Association (NIEA) and affiliated tribal organizations intent on revitalizing their Native languages.

The successes of the Native Hawaiian education movement are understood throughout the community. According to conversations with NHEC, in 2017 and 2018 alone, the 38 NHEP grantees served 95,458 individuals, including 74,311 students, 18,429 parents, and 2,718 teachers. They surpassed their target number for participants by approximately 65 percent. Additionally, all 38 grantees targeted serving Native Hawaiian communities and formed almost 700 strategic partnerships with schools, government agencies, or cultural organizations to expand the number served and to increase the overall impact of their programs.

Despite the great work of NHEP grantees in recent years, the effects of the pandemic still threaten the survival of some grantees and widen existing disparities between Native Hawaiian students and their non-Hawaiian counterparts. Even before the pandemic, data collected in 2015 demonstrated that fewer Native Hawaiian students attained proficiency in math and reading than their non-Hawaiian counterparts.¹⁷ Compounding matters, Hawai‘i is considered the state “most prone to academic risks during the coronavirus outbreak” and faces the “widest gap in the amount of teacher interaction with lesser-educated households compared with more-educated ones.”¹⁸

Non-profit education programs, particularly language immersion programs, have faced unique hardships amid the pandemic. With the arrival of new COVID-19 strains in Hawai‘i, Native Hawaiian students face a precarious situation. To further aggravate this risk, nearly ten percent of Native Hawaiian households do not have a computer in their homes, while nearly 20 percent do not have Internet access.¹⁹ During the pandemic, many families have been unable to afford the cost of new equipment and broadband service because formerly working adult parents are now unemployed.

OHA again appreciates Chairman Schatz’s leadership in finding ways to assist Native Hawaiian educators through these difficult times. Unfortunately, despite these efforts, our programs and keiki (children) are still at risk. We urge the Committee to ensure that Native Hawaiian programs and service providers be included in all future federal relief efforts, that the NHEA be reauthorized, that its scope be expanded, and that its annual funding be increased.

(3) Ensure parity in the treatment of all Native Americans, including American Indians, Alaska Natives, and Native Hawaiians

Again, through more than 150 Acts, Congress has established its trust responsibility to Native Hawaiians based on our status as the Indigenous, once-sovereign people of Hawai‘i. As a result of those Acts, this Committee has the duty to ensure that the federal government implements the trust responsibility fully and equally to all Native Americans, including Native Hawaiians. As Chairman Schatz recently stated, the trust responsibility “should be the guiding light” of this Committee’s

¹⁷A NATIVE HAWAIIAN FOCUS ON THE HAWAII PUBLIC SCHOOL SYSTEM, SY2015, OFFICE OF HAWAIIAN AFFAIRS 9 (2017).

¹⁸Alex Harwin & Yukiko Furuya, Coronavirus Learning Loss Risk Index Reveal Big Equity Problems, EDUCATIONWEEK (Sept. 1, 2020), <https://www.edweek.org/policy-politics/coronavirus-learning-loss-risk-index-reveals-big-equity-problems/2020/09>.

¹⁹OFFICE OF HAWAIIAN AFFAIRS, *supra*note 9 at 3.

work. While the federal trust responsibility may be implemented differently to Native Hawaiians because of our unique history with the United States, that trust responsibility nonetheless still exists.

As a Native Hawaiian leader elected to ensure the well-being of the Native Hawaiian community, I urge this Committee and the Congress to ensure that Native Hawaiians have the same opportunities as other Native Americans to engage in self-determination. OHA asks you to empower all Native Americans, including Native Hawaiians, with the same opportunity to choose their own path—understanding that each tribe, band, nation, pueblo, village, or community is best served through their unique, self-determined means. This necessarily includes extending access to federal programs implementing the trust responsibility to Native Hawaiians where appropriate, and where consistent with Native Hawaiians' unique history and evolving political relationship with the United States.

OHA celebrates our involvement with the Alaska Federation of Natives, the National Congress of American Indians, and the NIEA, and we pledge to support and work with our Native cousins across the continent and in Alaska because all of us—American Indians, Alaska Natives, and Native Hawaiians—are strongest when we stand and work together.

In closing, I wish to express my appreciation and gratitude to both the Chairman and the Vice Chairman for taking on this responsibility. It has been an honor to have had this opportunity to address you and your Committee members. I have included OHA's previous testimony from your December 9, 2020 hearing and am incorporating it by reference.*

I stand ready to assist you in accomplishing this most important work, both now and in the future. A hui hou. Until we meet again.

The CHAIRMAN. Thank you.

Next, we have Julie Kitka, President and CEO of Alaska Federation of Natives.

**STATEMENT OF JULIE KITKA, PRESIDENT, ALASKA
FEDERATION OF NATIVES**

Ms. KITKA. Thank you, Mr. Chairman. Thank you for inviting us to testify. I congratulate you and Vice Chair Murkowski in your selection as the leadership of the Committee. I also want to thank Senators Rounds, Cortez Masto and Smith for joining in the hearing today. At least I see them on the screen. Thank you so much for your attention to these issues. They are very important.

First, I want to say the significance of this hearing cannot be overstated. It is critical, and we are not done with the pandemic. We are still in the midst of the pandemic.

At the beginning of our first awareness of the pandemic, we had a briefing by CDC in January of 2020, and at that time, there was about 571 cases of the virus worldwide. The trajectory of the virus was to be an epidemic, not a pandemic. Now, a year later, we see how far it has spread, and no matter how remote and isolated we are in Alaska, we knew that we would be protected for some time by the isolation, but it clearly has hit our communities.

I want to say what our priorities were at the beginning of the pandemic, and they remain our priorities today, is one, to support our tribal health system, secure the resources that they need, for the health professionals that work for them, including the rapid testing, the personal protective equipment, medical supplies and ventilators. We also put as a priority to work whatever way we could to save lives. Third was to focus on vulnerable populations that sometimes are more at risk than others within their population. Fourth was to support the recovery of our economy, because

*The information referred to has been retained in the Committee files.

of the collapse of many sectors of the economy due to the shut-downs and the pandemic. This is a concern nationwide as well as often worldwide.

But also to continue the engagement with different partners during the process of this pandemic, continue to flatten the curve, continue to expand distribution of the vaccine, and now to make sure that as the virus mutates and variants are named, if there is a booster shot that needs to be added to the mix of the vaccinations, that Native Americans and Alaska Natives and Native Hawaiians participate in that as rapidly as the priority of the vaccination that has gone out so far.

And I want to thank you very much for the resources that you have put out to deal with this pandemic, but also respectfully remind you, we are still in the midst of that.

One thing that we took to heart at the beginning of the pandemic is the pandemic required us to call upon our traditional values and our caring for one another, leaving no one behind. I am really pleased to say that that is how we are making it through, and that is how we will continue to make it through.

I want to do a shout-out to one group that there hasn't been really too much knowledge about during this pandemic, and that is to the U.S. military. One of the successes that we can point to at the beginning of the pandemic is a Federal-medical partnership in which we were able to call upon active duty military to reach into their deep supplies.

At a time when we only had 15 swabs in two major hospitals, that is all we had, they were able to reach into their supplies and release 45,000 pieces of personal protective equipment and medical supplies. Undoubtedly, that partnership has saved lives to date, and that partnership extends to the time when we were able to obtain rapid testing equipment on that, where we even loaned some of the rapid testing equipment to the active duty military to help them continue in their mission at the same as they were protecting lives.

So I want you to know that, and when you speak with them in other venues on that, understand our deep appreciation. We know it has saved our peoples' lives. Again, at that time, we only had 15 swabs.

I also wanted to say that we are very grateful for the attention that this Administration and this Committee gives to American Indians, and Alaska Natives and Native Hawaiians. We all have unique forms of self-determination, based on our laws. Rules have been put into place. But we are all brothers and sisters, and we all need to work together. I hope that whatever efforts you put forward incentivize inter-tribal cooperation and collaboration, and inter-regional tribal collaboration and cooperation, so that we can get through this pandemic in better shape than we were when we started.

President Fawn noted that we have much work that needs to be done in infrastructure and many areas of our communities have been left behind on that. I want to thank you that we have made much progress in the last few decades, but we just need to continue to leave no one behind and move forward.

So I want to thank those who have brought us to where we are today, and urge you to continue to focus on that. The Native American people, I know from our perspective, are ready to stand up to the challenge of rebuilding the economies and recovering from this and keeping our people as safe as possible.

I also want to ask that testimony, the time for extending written testimony be extended. We want to supplement our testimony. We didn't have a lot of time to put together our testimony, and we know that other member organizations, both our tribes, our tribal consortiums, and our Native corporations will have specific ideas that they will want to put into the mix. We want to make sure that we can supplement our testimony.

In summary, and I want to close on that, is yesterday, we understand that the House marked up \$1.9 billion in COVID-19 relief that will be considered in the Senate next week. That includes numerous programs that will affect Native Americans, programs for our tribes, for our health departments and hopefully our health corporations as well. Of the \$1 billion that is specifically allocated for tribes, we recommend that be increased to \$2 billion, and the remaining \$18 billion be allocated by the Secretary of Treasury.

We urge that the Committee gives the Secretary of Treasury, because Treasury is not that familiar with dealing with Native Americans, gives some sidebars, some guidance to them as they distribute that. Because we really need to make sure that there is equity and that it is informed distribution as opposed to making mistakes.

We recognize there are huge amounts of resources being put into that, and we want to be able to stretch those resources as far as possible and make as much progress in the recovery that is humanly possible, using the best innovation, using the best logistics, using the best leap forward in technology. But really, use that as seed funds to leap ahead and not only contribute to savings our people's lives and recovering our health systems from the drain on their resources during this, but also make sure that we have the infrastructure that we need to push ahead. We don't want to be left behind as the new economy unfolds and rebuilds in our Country. We want to be contributing both for our people but also to the larger society.

We also want you to think about parameters around those resources to take into account real poverty. It is real. We have districts in our State that are among the 10 top poorest areas in the entire Country. We should make sure that that is one of our goals, is to leave no one behind.

And look at unemployment rates, real unemployment rates, not just people who have stopped looking for jobs or never had jobs. Look at real human needs. We note that in one section of the report, there is quite a bit of resources there in water and resources. But when you look at what goes into the Indian Health Service on water and sanitation needs, we have 30 plus communities that have no water and sanitation. Even during this pandemic, they have to haul up ice and melt it. Can you imagine trying to wash your hands five, six times a day with basically melted ice?

The CHAIRMAN. We will keep the record open for additional testimony. If you could wrap up your remarks, we will be happy to get right into the questions. Thank you very much.

Ms. KITKA. Yes. My wrap-up is, we have a different model of self-determination in Alaska, which is based on our land claims settlement, which was the historic largest land claims settlement in the history of the United States, nearly 50 years ago. In that land claims settlement, Congress directed us to form a for-profit Native corporation, so we would have our land and resources. So we do have a different model of tribal self-determination in Alaska that includes both federally recognized tribes and our Alaska Native corporations and our tribal consortiums.

We would like you to take into account that the way that we deploy our organizations, we view them all as tools for the Native people, for the empowerment of the Native people, for the well-being of the Native people. We urge that you not exclude different segments of our Native community, because of the way that we are structured differently.

In conclusion, I would be glad to answer any questions. Thank you.

[The prepared statement of Ms. Kitka follows:]

PREPARED STATEMENT OF JULIE KITKA, PRESIDENT, ALASKA FEDERATION OF NATIVES

Thank you for this opportunity to testify. Before I begin, I want to congratulate Senator Schatz and Senator Murkowski for being unanimously elected as the Chairman and the Vice-Chairman of the Senate Committee on Indian Affairs for the 117th Congress. I would also like to welcome Senator Ben Ray Lujan to the Committee. On behalf of the Alaska Federation of Natives, we look forward to working with the Committee and thank you for making your first oversight hearing a call to action on the priorities of American Indian, Alaska Native, and Native Hawaiian communities. I would also like to thank Chairman Senator Schatz, Vice-Chair Senator Murkowski, and the Committee for being flexible and allowing me to testify today. I additionally appreciate the hearing record being kept open for the two week period to allow us to supplement our statement for the Congressional record.

Formed almost 55 years ago to achieve a fair and just settlement of Alaska Native aboriginal land claims, AFN is the oldest and largest statewide Native membership organization in Alaska. Our membership includes 168 sovereign Alaska Native tribes, 166 for-profit village Native corporations, 9 for-profit regional Native corporations established pursuant to the Alaska Native Claims Settlement Act, and 12 regional nonprofit tribal consortia that contract and compact to administer federal programs under the Indian Self-Determination and Education Assistance Act. The mission of AFN, among other things, is to advance and enhance the political voice of Alaska Natives on issues of mutual concern. Today, we represent more than 120,000 Alaska Natives through our members, which we interface with year-round and each October during our three-day Annual Convention to set the Alaska Native community's federal, state, local, and tribal priorities for the coming year.

AFN would like to offer testimony today on the need to create equity among indigenous peoples, federal agencies, policies, and programs. AFN was pleased to see President Biden's Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. Ensuring equity in federal programs is critical, because as you will hear from our communities, disparities entrenched in our laws and policies, and in our public and private institutions, have created barriers for individuals and our Native communities to overcome. As such, AFN asks the Committee on Senate Committee on Indian Affairs to seriously consider increasing your time and investment in interagency or "whole of government" initiatives to root out systemic barriers and create holistic cross-cutting solutions for key outcomes for increasing equity among federal programs, services, and policies that affect our American Indian, Alaska Native, and Native Hawaiian Communities. Further, AFN requests the Committee to encourage inter-tribal and inter-regional tribal coordination and collaboration to empower all Native Americans to address

serious needs and come back from this pandemic stronger and able to help our people and continue to contribute to the larger society.

First, I would like to offer an overview of Alaska's unique form of Tribal Self-Governance and Native Self-Determination. Alaska is different. The state and its people, as observed by the U.S. Supreme Court in *Sturgeon v. Frost*, are often the exception, not the rule. This is especially true for Alaska Natives as compared to American Indians. While both Alaska Natives and American Indians are distinct sovereign entities that predate the formation of the United States, they differ in the way they govern their lands and members. American Indians generally operate through a single entity—their respective tribe—which exercises both inherent self-governance powers and self-determination rights over the tribe's lands and members. Alaska Natives, on the other hand, generally operate through three distinct but interrelated entities—the respective tribe, corporation (regional and village), and tribal nonprofit organization—which share self-governance and self-determination responsibilities for Alaska Native lands and peoples. Under Alaska's unique form of tribal self-governance and Native self-determination, Alaska Native tribes retain the inherent sovereign authority to govern their members. ANCs and tribal organizations do not possess self-governance powers. Rather, ANCs manage (and own) Alaska Native lands, and tribal organizations provide social services to Alaska Natives in their respective 'service population' and 'service delivery area,' and through this join Alaska Native tribes in furthering the self-determination of Alaska Natives.

Housing

2021 marks the 25th anniversary of Congress passing the Native American Housing and Self Determination Act (NAHASDA). This legislation was and continues to recognize tribal sovereign rights to develop housing that meets the needs of our communities. Housing conditions in Indian country are well documented as being some of the worst of the worst in our Nation. Alaska Natives suffer from escalating and above national average rates of overcrowding, inadequate housing, and unemployment, in comparison to the general U.S. population, as well within the Native American population. The rate of overcrowding, or severe overcrowding, is such that Alaska needs more than 16,100 housing units to alleviate overcrowding.¹ Having adequate and safe housing is part of the bedrock for our communities, without safe and adequate housing, our communities suffer. Due to stalemates in funding housing in our communities has become less available, and overcrowding and poor housing has shown to not only affect our children performance, but it also puts our way of life at risk. In my ability to address the housing shortage in our Native communities, AFN would like to highlight the first-ever Senate Committee on Indian Affairs field hearing in rural Alaska. The hearing was held in Savoonga Alaska, a small, isolated community on St. Lawrence Island between Russia and mainland Alaska in the Bering Sea. The field hearing addressed overcrowded housing and the impacts on American Indian and Alaska Natives, a panel of witnesses gave testimonials to the issue as well as solutions to overcrowded housing and housing affordability across Alaska. As such, AFN urges the Senate Committee on Indian Affairs to review the recommendations from the witness panel and to host an oversight hearing on the inequities in housing programs and policies in our communities in the 117th Congress.

Another immediate Committee recommendation is to prioritize the reauthorization of the NAHASDA² and to authorize funding for the Indian Housing Block Grant at no less than \$800 million, with subsequent fiscal year increases of \$50 million per year until inflationary reductions have been recovered.³ NAHASDA allocates over \$90 million each year to Alaskan Tribes and communities and is the primary vehicle for meeting critical housing needs. These efforts are driven through Alaska's Tribes and Tribally Designated Housing Entities which are sophisticated in leveraging funds to develop projects with multi-layered funding sources with NAHASDA as the foundation for building these complex funding packages.

AFN also encourages the Committee to review the Bureau of Indian Affairs Housing Improvement Program (BIA HIP) as an opportunity to address the housing needs of our communities. After being funded at \$23.1 million in 2005, the BIA HIP was eliminated from the FY 2008 budget to fund other high priorities. In FY 2020, the BIA HIP program was funded at approximately \$11 million. For additional background, Alaska's demonstrated need in 2019, based on eligible applicants, ex-

¹ Association of Alaska Housing Authorities 2021 Federal Priorities

² AFN Convention Resolution 19–27

³ AFN Convention Resolution 19–26

ceeded \$436 million.⁴ As such, AFN urges Congress to fund the BIA HIP with an appropriation amount of \$23 million.⁵

Public Safety

Many Alaska Native villages have no local law enforcement or police of any kind. For example, in May of 2019, 98 tribal communities in Alaska had no state-funded law enforcement, and about 70 of those communities had no local police of any kind. Jurisdictional and geographic barriers consistently prove too high a burden for traditional law enforcement, and health systems to overcome, resulting in disproportionate rates of health, physical and sexual violence. According to the Indian Law Resource Center, nearly half of all Native women have experienced sexual violence. Alaska Native women continue to suffer the highest rate of forcible sexual assault and have reported rates of domestic violence up to 10 times higher than in the rest of the United States. A new approach with more tribal input, authority, and control is needed to address the inequities in our public safety system.

The public safety crisis in rural Alaska was elevated, on June 28, 2019, when former U.S. Attorney General William Barr took a significant step to remedy the public safety plight of hundreds of thousands of Alaskans, the majority of which are Alaska Natives, by declaring a federal law enforcement emergency in rural Alaska. The historic declaration made more than \$10 million dollars in U.S. Department of Justice (DOJ) funds immediately available to Alaska Native tribes and tribal organizations to address short-term critical law enforcement needs in the state's more than 200 rural Native villages and identified almost \$175 million more than tribes and tribal organizations could utilize to support long-term public safety efforts. U.S. Attorney General William Barr also pledged to support a more efficient funding mechanism within DOJ to include compacting authority. It is critical that we move off grant funded public safety to a more durable path of compacting. In our last meeting with AG Barr, he requested the legal tools to have DOJ be able to compact. Unfortunately this was not accomplished, and should be a Committee priority to authorize.

Following former U.S. Attorney General William Barr emergency declaration, U.S. Senator Lisa Murkowski introduced S. 2616, The Alaska Tribal Public Safety Empowerment Act. S. 2612, alongside Congressman Young's pilot program, was received favorably by the Alaska Native community as an innovative step to address the public safety crisis in our Alaska Native communities. The legislation, which builds on the pilot program U.S. Congressman Don Young inserted into the House-passed version of the Violence Against Women Act of 2013, would allow five federally recognized Alaska Native tribes to prosecute individuals who commit certain offenses within their villages on a pilot basis regardless of tribal citizenship. S. 2616 authorizes the pilot tribes and inter-tribal organizations to exercise civil jurisdiction over all persons in their villages for all civil crimes; and authorizes the tribes and tribal organizations to exercise special criminal jurisdiction over all persons—including non-Natives—for crimes involving domestic violence; dating violence; sexual violence; violation of a protective order; stalking; sex trafficking; obstruction of justice; assault of a law enforcement or corrections officers; any crime against a child; and any crime involving the illegal possession, transportation, or sale of alcohol or drugs. AFN strongly encourages the Senate Committee on Indian Affairs to support the passage of the Alaska Tribal Public Safety Empowerment Act or similar language in the 117th Congress.⁶

AFN commends the passage of Savannas Act and the Not Invisible Act of 2019 in the 116th Congress. AFN urges this Committee to continue its efforts to address the public safety crisis in our Native communities in the 117th Congress. As stated above, AFN does not believe a tribal public safety network can be funded through short term grants, this is not an equitable solution. AFN urges the Senate Committee on Indian Affairs to support the expansion of compacting and contracting authority for Department of Justice programs and funds to tribes to ensure a stable funding source as opposed to grants.

Recovering from the Covid-19 pandemic

The COVID-19 pandemic has underscored the faultiness in Alaska's government services and the weaknesses of Alaska's rural economy, hitting Alaska Natives especially hard. Persistent poverty and severe economic hardship have plagued our communities for generations. In Alaska 23.8 percent of American Indian or Alaska Na-

⁴ Association of Alaska Housing Authorities 2021 Federal Priorities

⁵ AFN Convention Resolution 19-25

⁶ AFN Convention Resolution 20-10

tives lived in poverty in 2017.⁷ As it is nationally, the percentage of American Indian or Alaska Natives is higher than any other group. As of today, I am happy to report that Alaska and specifically, the Alaska Tribal Health system leads the nation in vaccination rates. While this is great news and trend, it does not diminish the damage and trauma that this pandemic has caused.

Alaska tribes, along with their tribal health organizations, corporations, and non-profits, are playing a critical role in responding to Alaska's novel coronavirus challenges, working diligently to stop the spread of, and promote recovery from, the COVID-19 pandemic. Alaska Native communities have historically been disproportionately impacted by pandemics. Because of the health conditions that the Centers for Disease Control and Prevention (CDC) notes increase the risk for a more serious COVID-19 illness, including respiratory illnesses, diabetes, and other health conditions, we are extremely concerned. As a result, Alaska tribes are currently providing essential services to their communities and dedicating resources to the unique circumstances of COVID-19 response that would otherwise be used on economic development opportunities.

AFN is confident that Alaska Natives have the track record, capabilities, and knowledge to help get Alaska back on track. The Biden Administration with oversight and input from the Senate Committee on Indian Affairs can partner with Alaska tribes to identify effective economic stimulus programs that can be tailored to the unique circumstances in our Native communities including Alaska's unique system of self-determination and tribal governance. U.S. financial and tax incentives can increase both local and expanded investment in their villages—which can lead to stronger and more responsive economic performance levels and desperately needed jobs—and overcome the challenges posed by low population and lack of economies of scale.

One immediate solution is to support Native participation in the New Market Tax Credit by creating a 10 percent set aside in the program for tribal communities. The NMTC program was established in 2000 to encourage private investment in impoverished, low-income communities that traditionally lack access to capital for infrastructure projects of the kind needed for broadband buildout. Investors who make qualified equity investments reduce their federal income tax liability by claiming the credit. Unfortunately, NMTC activity has been highly concentrated in just a few states, with the 10 states with the highest activity accounting for over 50 percent of all NMTC activity. The 25 states with the least NMTC activity, including Alaska, account for less than 13 percent of all activity. Furthermore, the current NMTC program has no built-in mechanism to ensure that NMTC investments reach Native American communities.

Additionally, with the support of AFN, the Alaska and Hawaiian Congressional Delegation introduced legislation to create a domestic version of the Millennium Challenge Corporation (MCC) in the 116th Congress. MCC is an independent federal agency established in January 2004 to deliver foreign aid in an innovative way. It provides time-limited grants to developing countries that meet certain standards of governance. The aid is designed to promote economic growth, reduce poverty, and strengthen institutions. MCC's focus areas include health, education, energy and power, and transportation infrastructure. The legislation introduced in the 116th Congress directs the Secretary of the Interior to establish demonstration projects like the MCC to assist remote Alaska Native and Native Hawaiian communities with economic development and poverty reduction in a manner that promotes self-determination and self-sufficiency and authorizes \$8 million in funding for fiscal years 2020 through 2025. Neither the House or Senate bill were heard in Committee and as such, AFN urges the Senate Committee on Indian Affairs to consider this option as an innovative solution to help our Native communities recover from the Covid-19 pandemic.

Broadband

The digital divide among Alaska Native, American Indian, and Native Hawaiian communities is among the worst in the nation. According to a 2019 report by the Federal Communication Commission (FCC), nearly half of all Native American and Alaska Native rural households do not have broadband, leading to poorer health, education, and economic security.⁸ In rural Alaska, where remote villages lie beyond the state's limited road system, Internet connectivity serves as the primary

⁷ Date from the 2017 U.S. Census Bureau American Community Survey

⁸ 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 (May 1, 2019), available at https://www.fcc.gov/sites/default/files/nctf_tribal_broadband_report.pdf (last visited Feb. 12, 2021).

link to the rest of the world, thus supporting that community's economic and social vitality, just as physical roads do elsewhere. If that link is unavailable or too slow, too costly, or too unreliable, entire communities suffer the consequences. This has made COVID-19 prevention and mitigation efforts especially trying. As a direct or indirect result of this digital disparity, Alaska Natives and American Indians have succumbed to the virus at a rate two times higher than non-Natives.

In January 2021, the National Tribal Broadband Strategy (NTBS) was published by the Department of the Interior. The NTSB includes 28 recommended actions that agencies should take to help address the digital divide in American Indian/Alaska Native/Native Hawaiian (AI/AN/NH) communities. The first of these recommendations is to create a new Broadband Development Program (BDP) within the Office of Indian Energy and Economic Development. One of the main purposes of the BDP is to implement the NTBS and coordinate efforts within and beyond the Department of Interior to drive broadband development. As such, AFN requests the Senate Committee on Indian Affairs hold an oversight hearing on broadband deployment in AI/AN/NH communities. Access to broadband is a barrier for your communities to equally participate in the world around us and the Senate Committee on Indian Affairs should seriously consider whether new policies, regulations, or guidance from the federal government may be necessary to advance equity and urgency in the deployment of broadband in our Native communities. We also ask that such a hearing includes a review of the NTBS to gather feedback on the recommendations contained within the strategy. Additionally, AFN respectfully requests that Alaska and Hawaii be equally represented in such hearings.

Conclusion

AFN deeply appreciates the opportunity to present our communities 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, priorities, and to redress inequities in the policies and programs that serve as barriers to equal opportunities of American Indian, Alaska Natives, and Native Hawaiians.

Quyana, Gunalchéesh, Haw'aa, Baasee, Thank you.

The CHAIRMAN. Thank you very much.

We will get right into questions. My first question is very straightforward. We will go in the order of the testifiers. What are your top one or two priorities for the coming COVID-19 relief package? I will start with Fawn Sharp.

Ms. SHARP. Thank you for that excellent question. Thank you so much.

Our main ask is, the provisions that were passed out of the House, and that is a \$20 billion set-aside of the tribal governments, as we as a set aside for tribal health. We want to point out that that should be viewed as a minimum. Our economies are devastated. We are disproportionately impacted by the pandemic. We are still trying to strategically prepare not only a public health care recovery but an economic recovery plan.

We were some of the first in our area to shut down our businesses. In the absence of having the full spectrum of taxing and taxing and powers to raise revenues for tribal governments, we are forced, in our commercial enterprises, to generate corporate profits. And both of those revenue streams are compromised.

So we urge this Committee to look at that \$20 billion set-aside as a floor. That would be our top priority, so that we do have the resources and the United States will fulfill its trust responsibility.

The CHAIRMAN. Thank you very much. We have just over three minutes left. Let's go to Mr. Forsman and see if we can be as brief as possible with the top one or two priorities.

Mr. FORSMAN. I think relief to tribal governments and tribal government economies is the top one. We are a regional economic powerhouse in a lot of ways in this area, by providing a lot of jobs for

our people, and people outside out of our tribes. So that one first, and of course investment in public health, continued investment in public health would be our top two.

The CHAIRMAN. Thank you very much.

Ms. Lindsey?

Ms. LINDSEY. Thank you, Chair. We have many. Very briefly, Native Hawaiians experience disparities in health care and economic well-being. The pandemic made it worse. Hawaii has the highest unemployment rate in the Nation. Tourism, our major economic engine, has been severely impacted. Many Hawaiians work in service jobs in this industry. Our health care systems system, our housing was a major concern for Hawaiians, before the pandemic, and it is even worse right now.

We urge the Committee to include support for all of our programs in this relief package. Thank you.

The CHAIRMAN. Thank you very much.

Ms. Kitka?

Ms. KITKA. Thank you, Mr. Chairman. Our top priorities would be housing, the overcrowding in housing, substandard house. It would greatly improve our people's wellness and standard of living. Also, expansion of broadband for tele-medicine and other things, affordability of broadband. The new markets tax credit extended to give leverage to private sector and economic recovery. Thank you.

The CHAIRMAN. Thank you very much. With my remaining minutes or so, I am going to ask a couple of questions and take them for the record. The first is about vaccine hesitancy. I would like to understand how much vaccine hesitancy there is in Native communities, and what the Committee can do and what society can do.

My own view is that these vaccines are miraculous, and that they are really going to change lives and save lives and give us our lives back. The trajectory right now in terms of people participating is a little bit misleading, because obviously, the people who are getting vaccinated are not the people who need to be persuaded. There is going to be a remaining cohort of all population generally across the United States, but specifically in Native communities, that remains hesitant and suspicious of the Federal Government. So we would love to work with our Native leaders on addressing vaccine hesitancy.

Then one final observation is, perhaps there is something that this Committee can do on tele-health. Certainly, the jurisdictions are complex. The Finance Committee asserts jurisdiction correctly because of Medicare. But our ability to extend health care dollars into rural communities may depend on our ability to deploy tele-health more aggressively.

With that, I will turn it over to Senator Murkowski.

Senator MURKOWSKI. Mr. Chairman, just to your last point, know that you have a trusted partner here as we are working out the broadband and the infrastructure there, and what more we can do.

I appreciate what has been said about the importance of the COVID-19 relief dollars, and the significance when we are talking about State, local and tribal. I guess I will start with a question to you, President Sharp. As Julie Kitka has outlined, the service delivery system within the Alaska Native framework is different than we have in the lower 48 tribes. We have talked about that.

The federally recognized tribes are authorizing tribal non-profits. The ANC is significant, but different, different roles in providing services.

So I guess I would ask as we are looking at these tribal funds, that we are looking at in the House bill, whether or not NCAI would be supportive of ensuring that when tribes in Alaska rely extensively on consortia to provide the government services, which they do, that those consortia should be able to administer the tribal set-asides.

What you have here, and I don't mean to educate you on this, but I will just repeat for colleagues, there are services that are authorized by recognized tribes, but they are administered by their non-profit. So you have a type of governmental function that is supported by a tribal government through the set-asides.

So I guess I want to just hear your assurance or support that you recognize being able to access those tribal set-aside funds for our consortia operated governmental services is something that makes sense, so that we ensure that Alaska Natives who are served under this sort of framework are not disenfranchised.

Ms. SHARP. Thank you, Vice Chairman. I really appreciate that question. Again, I would start by stating that with regard to tribal nations, we need to ensure that every piece of legislation that passes through this Congress that defines tribal governments, that there is a very clear distinction with sovereign tribal nations and our political status.

So to your question about support for a consortium providing badly needed services during the pandemic, we absolutely support that. We give deference to the tribal governments in Alaska who have longstanding relationships between their sovereign tribal governments and the consortia with whom they work.

It is our position at NCAI that under all circumstances, we support sovereign tribal nations in serving their citizens and communities. We defer to their decision-making and their relationships on how and when services are delivered through consortia.

But we do see in these critical times that everyone needs to come together to serve the most vulnerable of our Alaska relatives.

Senator MURKOWSKI. And I think we would agree, that is the goal here, is making sure that these services are provided. As you know, we have within our ANCs, they have the ability to authorize contracts and compacts under the Indian Self-Determination Act. Effectively what this does is allow for coverage for about 40,000 to 60,000 eligible Alaska Natives. So this is not a situation where the ANCs are trying to assert a level of sovereignty, but just that they are built into the self-determination system that we have here.

I want to turn, with my remaining time, to you, Julie. I think you addressed the issue of the unique framework that we have in Alaska. I think we have seen Alaska's tribes do an outstanding job during this pandemic, with vaccine distribution, working with the IHS system. We are leading the Nation in per capital vaccination rates. But I hear what the Chairman is saying about vaccine hesitancy, and that is something that we want to understand.

One of the concerns that I have heard from Alaska Native leaders is the challenge in the State related to delivery of services to Alaska Natives. Can you give a little more context to the unique

nature of the structure and system for the delivery of tribal services in Alaska, recognizing, again, that it is a cooperative, collaborative, multi-layered approach that we have within Alaska?

Ms. KITKA. Thank you, Mr. Chairman and Vice Chairman Murkowski. Yes, we do have a unique system. We describe it as, our form of self-determination includes Native self-governance and tribal sovereignty. Our tribes, our federally sovereign tribes, are sovereign. Our Native entities are not sovereign, but they are part of our self-determination model.

What we have is, we have, for example, in the health system, we have tribal health corporations whose boards are made up of tribal chiefs on that. They have as a matter of law been required to work together to provide health care systems primarily because of the geographic distances, the high costs, the need to pool resources in order to improve the quality of health care. We cannot have a hospital in every village, but we can have a clinic in every village. We can have regional sub-clinics, regional hospitals, and our major hospitals.

So we have tribal consortiums on that, we have tribal housing authorities for the same reason, to be able to handle the logistics and pool the resources to stretch them the furthest. We also have for-profit, our Native corporations under the ISDEAA, that are enabled to pass resolutions to authorize services for those who are not tribal members on that. Many of our people from our tribal communities move into the urban areas for health care. They move there for employment. They move there, maybe they marry or migrate, or there are job opportunities. Without the ability of the corporations to be considered an authorized service on that, they get left behind.

So our goal is to have people working together to take the uniqueness in Alaska, both with our land claims settlement and our different institutions that we have developed, the relationships we have developed, stretch these valuable Federal resources as far as we can to produce results and be accountable. Thank you.

Senator MURKOWSKI. Thank you. I think that was a good explanation, and in a way that is understandable.

So thank you, I appreciate that, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Cortez Masto.

**STATEMENT OF HON. CATHERINE CORTEZ MASTO,
U.S. SENATOR FROM NEVADA**

Senator CORTEZ MASTO. Thank you. First of all, thank you, Mr. Chairman and Ranking Member, for having this great conversation today.

Let me start with Ms. Kitka. There is an area, maybe I will just open it up to the panel, that I have concerns about, and that is health access outside IHS. As you all know well, chronic underfunding of the Indian Health Services put accessible, quality health care out of reach of too many tribal nations and communities. We have fallen fall short of our treaty obligations to provide for the physical, mental, and spiritual health of Native Americans.

I am hopeful that we will be able to put our attention toward moving that funding stream over to the permanent side of the ledg-

er, which is a bipartisan [indiscernible] that has been in the works for years. I am also hopeful that we can put significant new resources into the Indian Health Service to build up a robust provider workforce and establish new points of access to care and upgrade old facilities.

I also want to ensure that we are providing coverage to tribal members are not living in tribal lands. We have huge urban Native populations across the U.S., including in my State of Nevada. We should be leveraging other health programs like Medicaid and Medicare to ensure their needs are met.

So I am going to open it up to the panel. Can you talk a bit about how difficult it can be to access health care outside of the Indian Health Service? How could we help to address these access issues? I hear it in my own State, and I am curious if any of you collaborate.

Ms. KITKA. Through the Chair, Senator Cortez Masto, this is Julie Kitka. We have a tremendous Indian Health service system in Alaska. It is based on a feeder system with local clinics feeding all the way up to regional hospitals to a statewide hospital. It has been deliberately constructed that way to stretch resources and drive up the quality of care that is available to our people.

There are also aspects of contract health care that can do it. There are many lessons we have learned during this pandemic that we would like to share with the Committee. So maybe at some time, there should be a hearing on lessons learned from the pandemic.

But exercising this Federal medical partnership with the government that includes the military, that includes the Veterans Administration and others, is a way to stretch the resources. We share many things with the Veterans Administration to improve veterans health care for even non-Alaska Native veterans. We share many things with the Department of Defense and the military, and this Federal medical partnership really should be explored by the Committee as a way to stretch resources, as well as to expand the contract support costs.

We really need to put more resources into the tribal health care system, because they are being tapped to the limit during this pandemic. They are going in the hole as they close down on any of their non-emergency services, which they use to supplement some of their resources.

I would be glad to drop in some recommendations to supplement the record specifically on your question if that would be helpful.

Senator CORTEZ MASTO. Thank you.

Mr. FORSMAN. Senator Cortez Masto, real quick, we don't have a clinic in Suquamish yet, but we do have a health plan and we are self-insured. So we are able to provide health services to tribal members who live outside the reservation by issuing them a health plan card. They just go the doctor of their choice if they are in our provider network. It seems to be working.

But we are in the process of building a clinic here on our reservation. On the other hand, the urban side, you know about the urban health clinics as well that have been able to meet some of that need. Thank you.

Senator CORTEZ MASTO. Anyone else?

Ms. SHARP. Yes, Senator Cortez Masto, I so appreciate your question.

First of all, it is good to see you, and I always appreciate the time I can work directly with you. I really appreciate the point you made recognizing the cultural and spiritual health of our Native peoples. I would like to respond by saying that accessing health care beyond IHS is so critically important for our tribal nations and our citizens. Because if you look at a western medicine way of making and delivering health care to our citizens, that falls so inadequately short of us meeting the needs of our community. Because our community relies, and has for centuries, on our traditional foods, our traditional medicines, and other ways of making our citizenry whole and healthy and vibrant.

When you consider the impacts of climate change and the devastating impacts that has on actually some of our medicines disappearing, and our access to traditional foods disappearing, those are the sorts of things that I can hear that thought in your question, and I really appreciate that.

So I think we have an opportunity in this period when we are looking at a comprehensive public health care recovering system that when it comes to this Country's indigenous peoples, that we look at the totality of health. Just simply western medicine is not enough. Thank you.

Senator CORTEZ MASTO. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Hoeven.

**STATEMENT OF HON. JOHN HOEVEN,
U.S. SENATOR FROM NORTH DAKOTA**

Senator HOEVEN. Thank you, Mr. Chairman.

My first questions go to public safety. I would like to address them to President Sharp.

One of the things we worked on diligently is the safety for missing indigenous women and children. One of the things I have tried to do is pass the Savanna's Act, which would ensure that the funding is there, and you mentioned that in your opening comments. I appreciate that very much.

Also, you referenced another one of the bills that I have submitted as well, like Savanna's Act, along with the Chairman and Ranking Member. I want to thank you for your support of that legislation, and our continued efforts to build on it.

What I want to turn to for just a minute though is that in during a Senate Indian Affairs Committee field hearing I held in North Dakota, one of the things that became very apparent is that we need more BIA law enforcement officers. We need them pretty much everywhere, but we certainly need them in the upper Midwest part of the State.

So one of the things we did was secure \$5 million to develop another training center that is being provided at Spirit Lake, or very near Spirit Lake Nation, in North Dakota, at Camp Grafton. I think it is really helpful, and will continue to be helpful, both to train BIA law enforcement officers, but also to recruit more. We badly need more. I am hoping to continue to get support for that effort from my colleagues on the Committee.

But I would like to ask, President Sharp, do you believe that a lack of BIA law enforcement officers has a negative effect on crime on the reservations? Talk a little bit about how you think that getting more BIA enforcement officers out there could really make a difference.

Ms. SHARP. Thank you, Senator. I really appreciate your question as well. You are absolutely right. If we had more law enforcement officers, we would have more coverage. I see reports that compare the number of officers per geography and population relative to our counterparts. That is another statistic that is alarming for Indian Country. We do not have parity with other jurisdictions for the number of officers.

You add to that another factor, and that is the pay, the rate of pay of our officers relative to counterparts. When we invest in hiring law enforcement but we are not able to pay them in parity with our counterparts, we become a training ground. And that is all across Indian Country.

So the limited dollars that we do have to invest in law enforcement, to just achieve minimum, baseline number of officers to patrol, they are underpaid. So they go through our system, they are paid to go to the State academies, and they are quickly recruited out. So it becomes a revolving door for Indian Country. Each time there is turnover, that is upwards of \$30,000 from HR standards each time there is turnover.

So you are absolutely right, we need to invest not only in the number of officers, but so as to avoid burnout and morale issues, equity pay. That would be a significant investment in Indian Country and go a long way to providing effective public health and safety for our citizens.

Senator HOEVEN. I agree with you. I think that was extremely well said. I hope that continues to generate more support for our efforts to get more BIA law enforcement officers, to retain them, to train them. I just think it is incredibly important. I think your comments were spot on.

I would ask any of the other witnesses if they would like to weigh in on this as well, and I hope express the importance of this as a real priority for Indian Country.

Ms. KITKA. Mr. Chairman, this is Julie Kitka. I would like to respond when it is appropriate.

The CHAIRMAN. Please do. You are very polite. Go ahead.

Ms. KITKA. Thank you, Mr. Chairman, and thank you, Senator. That is a crucial question on public safety. In the last Administration, we had a visit by U.S. Attorney General Barr to Alaska. It was precipitated by two young people that died that had been incarcerated in the village lockdown facility for disorderly conduct and drinking, locked up for their safety and the community's safety, perished in a fire. It was a really tragic thing for our community.

Attorney General Barr came up on a village trip to see what was going on. As a result of his touring our villages and what public safety capability and facilities we had, he declared a rural public safety emergency in Alaska. As a result of his and the Department's team on that, they were to redirect some resources, a significant amount of resources, to address some of the concerns.

But I will raise one thing that didn't get done as a result of this visit, and further follow-up discussions on public safety. We have almost 70 villages that have zero public safety on the ground at all, State, Federal, anything. One of the things that he asked for was a legal tool to do compacting in Department of Justice. We told him we can't have a public safety system that is based on grants, and how well somebody can apply for a grant in order to do that. We need to have a reliable source, an efficient funding mechanism that can push the Department of Justice out.

He asked for the legal tools to be able to compact, and asked for an ability for his team to get those tools. So if there is some focus that can be done on that as well as Senator Murkowski has introduced a bill that deals with jurisdiction, a pilot project on that, we think that would be really helpful. We are very grateful for Savannah's Act, and the Not Invisible Act. We think that we are making progress. But public safety is a huge issue for us. We would even venture to say, there is a nexus between public safety and national security, at least in Alaska. Thank you.

Senator HOEVEN. Thank you, Ms. Kitka. I think that is very well said and much appreciated.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Smith.

**STATEMENT OF HON. TINA SMITH,
U.S. SENATOR FROM MINNESOTA**

Senator SMITH. Thank you, Mr. Chair and Vice Chair. I am so glad to have a chance to be with all of you today to talk about priorities for Native American and Alaska Native and Native Hawaiian people as we think about this next legislative year. I am filled with optimism for what it is that we can accomplish together. So thank you for taking the time to speak with us.

I want to first associate myself with the comments that Senator Hoeven made about missing and murdered indigenous people. This is an issue of great importance to us in Minnesota. I am really proud of the state-led efforts that we have in Minnesota, and really look forward to being able to make headway on this at the Federal level also.

But I want to dive into a little bit the question about health, particularly mental health. Even before COVID-19, we knew that we had deep struggles everywhere in our Country with the unmet need for people to have access to mental and behavioral health care, regardless of where you live. Of course, this is a particular challenge for everyone.

I have had many conversations with Native people in Minnesota about it, and tribal leaders as well as urban indigenous folks about what we need to do. There are great examples of things that are working in Minnesota that are really rooted in developing strategies focused on helping people deal with historic trauma in their communities and their own mental health, and really rooted in cultural and traditional values.

So we know we have significant needs, we know there is a lot we need to do. One of the big issues, of course, is resources. I would like to hear your advice to us as we are thinking about how to best tackle this need for improved access to mental and behavioral

health both in tribal lands as well as in the urban indigenous communities, and what you would advise us to think about as we tackle this.

Maybe we could start with President Sharp.

Ms. SHARP. That is excellent, thank you, Senator Smith, for that question.

I think probably one of the singular most important things you can do to help us to achieve the goals that you have outlined would be to ensure that tribal nations have the maximum flexibility. One, that we have the resources. As I said in some of my remarks, the \$20 billion government set-aside that we are seeking should be viewed as a floor.

And to your question about mental health and the ability for us to apply our culture, our tradition, our traditional foods as I mentioned, having the ability to determine as we see fit, as we build both a public health care recovery plan and an economic recovery plan, we have very creative thoughts about that all across Indian Country. If just those two things are secure for us, we can achieve many of the goals and objectives that we have outlined.

Senator SMITH. Thank you.

It is exactly getting at that issue of flexibility and funding which is the idea behind my bill to create a special behavioral health program within the Indian Health Service that would create that flexibility. So I thank you for that.

Would anyone else like to comment on this need, and how you see this, what we can do, what we need to do as we think about this?

Ms. KITKA. This is Julie Kitka. I would be glad to answer that one.

Senator SMITH. Thank you, Julie.

Ms. KITKA. We have recognized the need for behavioral health for some time on that. We do trend analysis of causes of death and causes of illness. We saw a shift a number of years ago from contagious disease, and this is all before the pandemic occurred, obviously. Before the pandemic occurred, many of the health needs for our people were behavioral issues. Whether it was suicide, whether it was mental health needs, it was behavioral in nature as opposed to contagions or diseases going through.

We have a model in Alaska, we have a health aid model in our villages on that. But we also set up what is called a behavioral health aid model, which was intended to get exactly at the root causes of this. I would say building off that model or inviting them to share their latest work that they have done, but also realize, as President Sharp said before, a lot of this stuff is viewed holistically from the Native community. We need to have food security. We need to have culture security. We need to have respect. We need to make sure that there is equity among Native Americans in that we have help dealing with the discrimination and some of the racial issues that go with it.

So holistically attacking all those together, using the strength of our culture to heal our own people. As I said, we would be glad to supplement that with written testimony. But we have a behavioral health aid model which is really functioning well.

Senator SMITH. Thank you. That is very helpful. I am thinking about the many conversations I have had with Biden and Harris appointees about the issues around the social determinants of health, both mental health and physical health, and how food security, housing security, addressing issues of systemic racism and historic trauma all feed into overall health as well as education and economic issues also.

I hope that as we think about that here in this Committee we will be able to take that holistic approach. Thank you so much.

The CHAIRMAN. Senator Cantwell.

**STATEMENT OF HON. MARIA CANTWELL,
U.S. SENATOR FROM WASHINGTON**

Senator CANTWELL. Thank you, Mr. Chairman. Thank you for holding this important hearing, and thanks to the Vice Chair. I am so proud of two of the witnesses who are playing national roles for our Country, President of the National Congress of American Indians, Fawn Sharp, and the President of the Affiliated Tribes of the Northwest, the Honorable Leonard Forsman. It is so great to be with them. I think you can already see why they are leading those organizations, because of their advocacy and articulation of the challenges Indian Country.

I wanted to follow up, if I could, it is great to see both of you virtually. I am pretty sure broadband is on the list, because I can hear some latency. I don't know, President Sharp, if you are out at Quinault today, or not. But it as far as you can get, unless you want to get into the Pacific and go out to sea, our Chairman.

But I wanted to ask about Carcieri. We have not made a Carcieri fix. I feel like even though we are here talking about land and talking about the economic challenges of COVID-19, I am pretty sure once we get out of COVID-19, we are going to say, we need a Carcieri fix. So if you could comment on that.

The other issues is, one of the things we do need to do as far as this next COVID-19 package, in my opinion, is fix the inequity between the urban Indian health clinics and the fact that they don't get full FMAP funding. An actual Indian-run institution, Indian hospital does. But not the urban situation where we serve both Alaska population and many Washingtonian members of various tribes as well.

So if you could comment, anybody comment, on those two issues.

Ms. SHARP. Thank you, Senator. I will take the first question, with respect to Carcieri. First of all, it is good to see you, even if it is virtually. I am here at Quinault, and all my kids are off from school right now, so we can have coverage. Thank you for pointing out the broadband challenges.

With respect to Carcieri, I just want to briefly say that when that decision was hot off the press, it hadn't even been a day or two from the time the U.S. Supreme Court issued Carcieri, that a tribal elder in my community who had been on our council for many years, understood just reading the text of what that case would do to all of Indian Country. So we need to move to ensure that we have a clear fix, so that all federally recognized tribes can take land into trust. Until there is a clear fix, it is going to be fer-

tile ground for the types of lawsuits and the delays that we have witnessed.

So we need to ensure two things. One, that every federally recognized tribe has that opportunity, but also that those right now that are designated as trust lands are intact and are not compromised. That would go a long way to stabilize tribal nations, to build their governments, to build their economies, to deliver services.

So that is a critically important part of the Federal trust responsibility. I so appreciate your raising that question. Thank you.

Mr. FORSMAN. Senator Cantwell, as far as the support of Indian health clinics, urban Indian health clinics, it is very important to Affiliated Tribes as well as the Suquamish Tribe. Any way we can support them to do outreach to large Native communities that are in urban areas, especially Seattle, the namesake of our chief. There is a number of American Indians and Alaska Natives that live there and rely on those services as a result of the relocation programs of the 1950s that the government implemented.

Also a lack of economic opportunity potentially at their own reservations makes people move to these other economies. We really believe that is important for the health of those communities, their spiritual and cultural health. It is also important for the cities across the Nation which have Indian populations, so they will be healthy and contributing.

Senator CANTWELL. This is like a head scratcher. I don't know if this is just a technical glitch, but if we are basically saying, the reason why we fully support at 100 percent the funding for tribal members on this health care is because we have a trust responsibility, I don't see a difference in the trust responsibility we have, whether it is delivered at a hospital in Montana or whether it is delivered at the Seattle Indian health port. It is the same to me, it is the same population, it is the same responsibility.

So I think somebody is shortchanging us. I hope we can address this. Thank you.

The CHAIRMAN. Senator Luján.

**STATEMENT OF HON. BEN RAY LUJÁN,
U.S. SENATOR FROM NEW MEXICO**

Senator LUJÁN. Thank you so much, Mr. Chairman. And to our Vice Chair Murkowski, it is an honor to be with both of you and to be a part of this hearing.

It is good to see some leaders that I have had the honor of getting to know throughout the years. To the Honorable President Sharp, it is an honor to see you. To our friend and President Forsman, good to see you, sir. And to the Honorable Chair Carmen "Hulu" Lindsey, I have not had the honor to meet you in person but I look forward to that. And also Julie Kitka, it has been an honor to learn from you throughout the years.

I am Ben Ray Luján, a new member of the Senate from New Mexico, and a proud new member of the Indian Affairs Committee.

Ms. Sharp, I will jump right into some of the questions that I have. This comes with your leadership responsibilities at NCAI. I was visiting with one of the pueblos and tribes that I am so honored to represent. They were sharing with me some of the concerns and barriers that exist when it comes to infrastructure and some

of the challenges that they faced with CARES Act funding, with not being able to secure easements and get approvals with easements through the Bureau of Indian Affairs, and also through the Federal government.

Is this an issue that NCAI is familiar with, with the members that you are honored to represent?

Ms. SHARP. Yes, absolutely. And these are challenges, when we have to engage in broad planning for delivering services or even building our economies, having security in knowing that we have rules that are predictable, that are timely, and regulations that we can rely on. Those are the sorts of questions that impede creating a climate of business certainty, a climate of being able to effectively, to strategically plan. When we have things like the property interests that you raise as a significant question, it provides another layer and another barrier in our inability to engage in commercial relationships, our inability to effectively deliver governmental services.

So yes, we are very keenly aware of those types of barriers on the ground with respect to not just tribes in our region but all across the Country, those are challenges.

Senator LUJÁN. Mr. Chairman, as you are aware, the Indian Health Service has recently identified a \$2.56 billion backlog in projects that would provide tribal communities with access to potable water and wastewater. Looking at some of these barriers that exist with lack of coordination from Federal agencies and approval, I know it is slowing people down.

President Forsman, one of the questions that I have for you, sir, is the importance of access to broadband and making sure that we are connecting communities. Can you speak to the importance of the program now at NTIA which is the Tribal Broadband Connectivity Program, and the importance of making sure that we have an FCC that is functioning and also that we have a strong NTIA program that will deploy broadband to tribal communities?

Mr. FORSMAN. Thank you for that question, Senator Luján, and I appreciate all the work you did in the House on behalf of Indian Country, and I look forward to your work here in the Senate. Hello from Suquamish.

This is crucial, of course, not only for our governments to operate, and for us to be able to participate in this virtual platform, but also, as we all know, for schools, for tele-health and for communication, for homebound elders, et cetera. One thing we find is that there is a lot of variety throughout Indian Country, as you know. There are some places that are severely underserved, and then there are other places that may have partially good service, and poor service in other places.

So we need to really look at existing providers that we have, corporate providers and the public providers. There is a lot of dispute between those two entities sometimes on our reservations, where we want to go ahead and put appropriate infrastructure in, and we run into these issues. There are a lot of anecdotes that I can share with you another time regarding some specific service issues that we have.

Senator LUJÁN. The last question that I have, to President Sharp, is would an extra \$3,000 to \$3,600 a year to the child tax

credit be something significant through your eyes for Native American families who are trying to support their children and families during this pandemic?

Ms. SHARP. Yes, absolutely. And I appreciate your recognizing the vulnerability of our individual citizens. That would absolutely provide, I know, a relief at a time when they need it the most. It would provide immediate relief. Because many of our families are just this far away from falling into further economic demise, but to some of the questions earlier raised, their mental health. Right now, our citizens are on the brink. Many of our citizens have been suffering for a long time. It is exhausting.

And any relief like that would make a significant difference to provide some immediate relief. It would go a long way.

Senator LUJÁN. Thank you so much.

Mr. Chairman, thank you for the time today. And to all of our leaders who are here before us, it is truly an honor to be here with you. I look forward to working with you and learning from you.

Thank you so very much. I yield back.

The CHAIRMAN. I want to thank all of the testifiers. I want to extend a special mahalo to Chair Lindsey for her testimony. I want to thank our Vice Chair and all of the members for participating.

If there are no further questions for our witnesses, members may submit follow-up questions for the record.

The hearing record is normally open for two weeks, but pursuant to Ms. Kitka's request, without objection, we will keep the hearing record open for four weeks. I want to thank all of the witnesses for their time and their testimony today.

This hearing is adjourned.

[Whereupon, at 3:56 p.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. TIMOTHY NUVANGYAOMA, CHAIRMAN, HOPI TRIBE

Greetings Chairman Schatz, Vice Chair Murkowski, and Honorable Members of the Senate Committee on Indian Affairs (“Committee”). My name is Timothy Nuvangyaoma and I have the honor of serving as Chairman of the Hopi Tribe (“Tribe”). I would like to thank you for the opportunity to provide testimony regarding the Tribe’s priorities for the 117th Congress.

My testimony will focus on the urgent need to fully implement the 1996 Navajo-Hopi Land Dispute Settlement Act and the devastating impact that the closure of the Navajo Generating Station has had on the Hopi people. I hope to impress upon you the importance of living up to the promise made to the Hopi Tribe in the 1996 Navajo-Hopi Land Dispute Settlement Act and why fulfilling this promise is the simplest way to help the Tribe mitigate the immense economic harm it is suffering in the wake of the closure of the Navajo Generating Station.

The Hopi Reservation, located in the northeast corner of Arizona, includes more than 1.5 million acres. The Tribe has over 14,000 enrolled tribal citizens, over half of whom reside in the Reservation’s 12 villages. The residents of the Reservation suffer from a 60 percent unemployment rate due, in part, to the lack of economic development opportunities caused by the remote and landlocked nature of the Reservation.

This dire situation was exacerbated by the closure of the Navajo Generating Station (NGS) in November 2019, and the ongoing COVID-19 pandemic. However, the resources already provided by Congress to help Indian Country address the pandemic, if combined with Congressional assistance to implement the 1996 Settlement as well as aid to transition from the NGS’s closure, could drastically improve the lives of the Hopi people.

Implementation of the 1996 Settlement Act

Twenty-five years have passed since the enactment of the Navajo-Hopi Land Dispute Settlement Act of 1996 (“1996 Settlement”), yet the Hopi Tribe has still not received the full value and benefit Office of the Chairman P.O. Box 123, Kykotsmovi, AZ 86039 (928) 734-3000 that we were promised in the settlement. The 1996 Settlement arose from the illegal trespass and possession of Hopi lands by Navajo tribal citizens. The Hopi Tribe later settled its claims against the federal government and granted long-term leases to the Navajo trespassers to relieve the federal government of its obligation to remove them. The Tribe fulfilled its obligation under the 1996 Settlement decades ago, but the federal government has not.

The 1996 Settlement obligates the federal government to accept 500,000 acres of land in trust for the Hopi Tribe, including private land purchased by the Hopi Tribe on the open market and State trust land that is interspersed with such private lands. In the case of the interspersed State trust land, the State of Arizona is required to concur in the United States’ condemnation of the land before it can be taken into federal trust status. Although the State of Arizona supported the 1996 Settlement, that provision has frustrated the Tribe’s attempts to realize the benefit it should have received under the Settlement Act.

Despite our best efforts, the State of Arizona has refused to concur in the condemnation of any lands. To date, there are approximately 144,000 acres of interspersed State trust land awaiting condemnation because of the State’s refusal to concur with the condemnation. The State trust land makes it incredibly difficult for the Hopi Tribe to develop its own trust lands. Nevertheless, the federal government still has a role to play in upholding the commitments it made in the 1996 Settlement. While the Hopi Tribe continues its efforts to engage the State of Arizona, we have worked with our Congressional delegation on potential legislation that would allow us to fully benefit from the 1996 Settlement, as have the Navajo Nation and federal government.

In 2017, Senator McCain acknowledged that “Congress may need to pass legislation that establishes an alternative land acquisition process to the condemnation

method prescribed under the 1996 Act.”¹ A federal land exchange could be the solution that brings the Arizona State Land Commissioner to the negotiating table. If the federal government provided the State with federal land of equal value to the 144,000 acres of State trust land subject to the 1996 Settlement, the State may agree to allow the Hopi Tribe to finally take the settlement land into trust.

As former Principal Deputy Secretary Indian Affairs Lawrence Roberts stated in 2016, “the full implementation of the Settlement Act will benefit the Tribe, the United States, and the State.”² Additionally, it would allow the State, the Northern Arizona Region, Coconino County, and the Hopi Tribe to continue to move forward as friends and neighbors and economic partners so that we can all prosper together. This fact is evidenced by a 2018 joint letter from the Hopi Tribe and the Coconino County Board of Supervisors that states “[i]t isn’t just good policy for the State and federal government to work towards fulfilling the promises in the Settlement Act, it will also help Northern Arizona and its economic development.”³ Implementation of the 1996 Settlement is desperately needed as the Tribe, and Northern Arizona, deals with the closure of the Navajo Generating Station.

Transition from Navajo Generating Station

The Tribe entered the COVID–19 pandemic on the heels of the closure of the Navajo Generating Station (NGS), which was the largest coal-fired power plant in the western United States. While it was partially-owned by the federal government, in November 2019, the other owners of the NGS—Salt River Project, Arizona Public Service Co., Tucson Electric Power Co., and NV Energy—decided to close the plant, citing “rapidly changing economics of the energy industry,” including continued low prices for natural gas.

Construction of the NGS began in 1969 to help provide a reliable power source to the growing Arizona population. The plant was also meant to provide a power source to pump water to the Central Arizona Project (CAP), which delivers water from the Colorado River to southern Arizona. The plant, which began operating in 1974, generated power for major cities, including Phoenix, AZ; Tucson, AZ; Las Vegas, NV; and Los Angeles, CA.

The NGS was powered by coal from the Kayenta Mine through lease agreements with the Hopi Tribe and the Navajo Nation. The NGS was the sole customer for coal from the Kayenta Mine because it was the only place that the mine was linked to by rail. The federal government owned a 24 percent stake in the NGS through the Bureau of Reclamation due to its interest in the delivery of water through the CAP.

The revenues generated from the NGS and Kayenta Mine operations provided approximately 80 percent of the Tribe’s general fund budget. These funds were vital to the Tribe’s ability to supplement insufficient federal funds to be able to provide essential government services to our citizens. While the NGS closure is causing great hardship on the Tribe’s economy, the Hopi Tribe looks forward to working with this Committee on transitioning to a renewable energy economy. We urge this Committee not to leave Indian Country behind as the nation marches forward.

In closing, I would like to thank the Committee once again for the opportunity to share our priorities for the 117th Congress. We look forward to providing updates and working with the Committee on these matters.

PREPARED STATEMENT OF CAROL WILD SCOTT, ESQ., LEGISLATIVE CHAIR, VETERANS AND MILITARY LAW SECTION, FEDERAL BAR ASSOCIATION

Dear Sir and Madam,

The Veterans and Military Law Section of the Federal Bar Association hereby submits a Statement for the Record addressing the need for inclusion of the issue of the need for full accreditation of Tribal Veterans Service Officers (TVSOs) in the list of priorities for the Committee for the 117th Congress. The views herein expressed reflect those of the Veterans & Military Law Section of the Federal Bar Association and not necessarily those of the entire Federal Bar Association.

American Indians, Alaska Natives, Native Hawaiian and Pacific Islanders—Indigenous peoples—serve this country in the armed forces to a far greater degree than any other ethnic group. They have done so since the earliest days of our democracy.

¹ Letter from Senator McCain to the Hopi Tribe re: 1996 Settlement Act (November 28, 2017).

² Letter from Principal Deputy Assistant Secretary-Indian Affairs Roberts to Arizona Land Commissioner Atkins re: 1996 Settlement Act (December 22, 2016).

³ Letter from the Hopi Tribe & Coconino County to Arizona Governor Ducey & Arizona Land Commissioner Atkins re: Support of Hopi Land Settlement & Meeting Request. (June 6, 2018).

Regardless of the extent of their service, they have historically, continuing to the present, received far, far less in benefits than any other ethnic group.

There are several reasons for this. Many tribal communities are located in highly rural areas, far from any urban center. Cultural isolation is also a contributing factor; indigenous people have a high degree of distrust of the federal government in any shape or form. Of over 440 treaties between indigenous people and the federal government, every one has been violated; land and resources taken, whole cultures relocated, and languages and culture suppressed. national Veterans Service Organizations (VSOs), which depend on membership dues and donations for their existence do not reach out to Native veterans, who are largely unable to pay dues. A significant number of Native veterans return to communities with unemployment as high as 90 percent.

Additionally, despite the formation of the Department of Veterans Affairs (VA) Office of Tribal Government Relations (OTGR) under the Obama administration, there has been little or no movement to encourage or allow full accreditation of TVSO advocates. Tribal Veterans Representatives (TVRs) were trained in regulations, how to gather information for claims, etc., but were not taught anything about advocacy (because of the potential for conflicts of interest); only to transmit information to someone at the regional office who held the power of attorney and filed the claim. Several years ago, the TVR training program was introduced in VA. If the claim was denied, it was rarely if ever appealed. The veteran was told that the decision on the claim was what the government chose to grant. There is also a high level of racism in regional offices in whose jurisdiction are located reservations and tribal communities. As one reservation veteran told me, the address made your ethnicity pretty clear.

The list of reasons why there should be accreditation begins with cultural competence and trust in a TVSO, who is almost always a veteran and an integral part of the tribal community. TVSOs, as part of the community understand the needs of the veterans, are acquainted with the veterans' extended families, and are able to incorporate into claims the accurate specifics of each individual veteran's situation, including trying to ensure cultural competence in mental health assessment and treatment. To a far greater extent than with national VSOs, TVSOs are the gateway to health care, housing loans, educational programs, adaptive housing and special needs—virtually every program available to all veterans everywhere.

Full accreditation was discussed in meetings of the National Congress of American Indians (NCAI) Veterans Committee meetings as far back as 2011. Tribal governments began asking for it at about the same time. By 2013, several tribal entities had communicated to VA the need for full accreditation of TVSOs. Senators Tester and Udall wrote the Secretary arguing that accreditation was essential for cultural and accessibility reasons. It was ignored.

Finally, in 2016, after a wholly inadequate tribal consultation, a proposed rule was promulgated by VA Office of General Counsel (OGC) to amend 38 C.F.R. Chapt. 14.626–629 to provide for the recognition of “Tribal Veterans Organizations.” It was abundantly clear that OGC had not consulted with any expert on Indian Sovereignty Law, nor with Bureau of Indian Affairs (BIA), nor with Department of Justice (DOJ) or with VA's OTGR. It was apparent that OGC had no intention other than to require that Tribal communities form themselves into mini-DAVs by forming “Tribal Veterans' Organizations.” This is a term invented by VA OGC and without meaning otherwise. The rule also provided that accreditation could be sought through a state, although not all states have offices of veterans' affairs that prosecute claims before the VA.

The process of issuing a proposed rule for comment prior to the publication of the final rule is to permit input of information and discussion by individuals or entities such as the Veterans & Military Law Section of the Federal Bar Association. There were a number of comments submitted in response to the proposed rule, including one from the Veterans & Military Law Section of the Federal Bar Association. In the commentary for the Final Rule, published in January, 2016, not a single comment or content thereof was found meritorious by OGC. The Final Rule mirrored the Proposed Rule. As far as is known, to date three Tribal Communities have applied for accreditation. None have been approved. The provisions in the Final Rule make it literally impossible for accreditation of individual TVSOs from individual tribal communities to occur. The Confederated Tribes of the Umatilla Reservation (CTUIR) in Oregon have tried three times to no avail. It is clear that the only solution is a legislative fix.

The economic impact of veterans' benefits cannot be understated. A veteran with 100 percent disability, over the course of his/her lifetime, with a full suite of benefits, access to programs and health care brings into the tribal community in excess of \$1 million. In one tribe in Oklahoma the TVSO, who after a lengthy effort was

accredited through the state, brought into his community in excess of \$16M over the course of fourteen years. There are VA programs in education, vocational rehabilitation, housing loans and housing/adaptive housing, health care (including the Caretaker Program which provides a stipend to a family caretaker), life insurance and others, about which many Indigenous veterans remain uninformed. There are considerable funds involved with all of these which, without fully accredited TVSOs to educate the veterans and provide full representation, are being left on the table.

The Veterans & Military Law Section, through its Legislative Committee (now the Veterans Affairs Committee) began this quest years ago. It has taken a long time for the issue to reach fruition and to be recognized by the leadership of SVAC and HVAC. That the ABA has offered significant support through Resolution #110 is highly encouraging. We hope that the Senate Committee on Indian Affairs will add this issue to the list of essential issues for the 117TH Congress.

PREPARED STATEMENT OF THE SEATTLE INDIAN HEALTH BOARD

Dear Chairperson Schatz and Vice Chairperson Murkowski:

Seattle Indian Health Board (SIHB) would like to thank you and the Senate Committee on Indian Affairs for holding this Oversight Hearing. We appreciate the opportunity to provide written comments on our 117th Congressional priorities. These comments and recommendations are based on our experiences as an Urban Indian Health Program (UIHP) and national Tribal Epidemiology Center (TEC) serving urban Indian communities nationwide.

Healthcare Informed by Indigenous Knowledge

SIHB ensures the health and well-being of urban American Indian and Alaska Native communities by providing culturally attuned health and human services, conducting data research through our research division the Urban Indian Health Institute (UIHI), and collaborating with tribal, community, and federal partners on policy and advocacy issues that impact urban Indian communities.

We are one of 41 UIHPs that assist the federal government in fulfilling your trust responsibility to provide healthcare for the American Indian and Alaska Native citizens living in urban areas. UIHPs are a critical component of the Indian healthcare system and offer culturally attuned health services to the 2.2 million American Indians and Alaska Natives who live in 115 counties across 24 states. Alongside our tribal health partners and Indian Health Service (IHS) Direct facilities, we are tasked with offering healthcare services to the 5.2 million American Indian and Alaska Native people nationwide.

We are also home to an IHS designated Tribal Epidemiology Center (TEC) and public health authority—the Urban Indian Health Institute (UIHI). UIHI conducts data, research, and evaluation services for over 62 urban Indian organizations nationwide. These health, social, and cultural service agencies provide culturally attuned health services to urban Indian communities. Of the twelve TECs nationwide, UIHI is the only one with a national purview; the other eleven operate regionally, serving tribal nations.

As an Indigenous organization, we are guided by our traditional beliefs and practices, giving us a unique organizational approach based in Indigenous knowledge that we define as Indigenous Knowledge Informed Systems of Care. This allows us to approach all aspects of our organization through a holistic system of care. By creating a healthcare system that is centered on the patient and driven by Traditional Indian Medicine, we build on our resilience and healthier communities. Our Indigenous Knowledge Informed Systems of Care approach guides our policy advocacy, data research, workforce development, and health and human services to create an environment anchored in tradition, that empowers our community to walk in a culture of wellness.

In response to the Oversight Hearing, we submit the following 117th Congressional priorities to the committee. These requests will begin to address the chronic underfunding of trust and treaty obligations to American Indian and Alaska Native people living in urban areas.

1. Authorize Advance Appropriations for Indian Health Service (IHS)

We request Congress authorize advance appropriations for the IHS to honor the trust and treaty obligations to American Indian and Alaska Native citizens and address the negative impacts of government shutdowns on healthcare delivery. It is well documented that the IHS does not receive funding parity with other discretionary or mandatory federal health care programs such as the Veterans Health Administration, Medicaid, and Medicare. As a result, government shutdowns are

threatening the health and wellness of the American Indian and Alaska Native communities across the Indian healthcare system.

2. Appropriate \$200.5 million for Urban Indian Health Programs

To address the chronic underfunding of the federal trust responsibility, SIHB supports Northwest Portland Area Indian Health Board's (NPAIHB) Budget Formulation FY22 Appropriations request of \$200.5 million for Urban Indian Health Programs. This funding methodology uses a ten-year full funding formula that accounts for and is responsive to the health needs of our entire American Indian and Alaska Native community. This request begins to address the recent expansion of the Urban Indian Health Program to 41 locations, overdue investments in infrastructure, and healthcare inflation. Nearly 2.2 million urban American Indians and Alaska Natives, living in 115 counties, would benefit from this Appropriations request.

3. Appropriate \$24 million to the 12 IHS Tribal Epidemiology Centers

We request a baseline appropriation of \$24 million to the 12 IHS Tribal Epidemiology Centers. Tribal Epidemiology Centers provide epidemiology and public health functions critical to the delivery of healthcare services for the Indian healthcare system and are authorized public health authorities for urban Indian communities and tribal communities within their service areas. Tribal Epidemiology Centers remain woefully underfunded despite marked success and un-replicated services, receiving an average award of \$422,000 a year from IHS.

Increasing funding to \$24 million would allow Tribal Epidemiology Centers to conduct the culturally attuned research needed to identify the root causes of health disparities and to perform their core functions as defined in 25 USC § 1621m. The COVID-19 pandemic has revealed that despite being chronically underfunded, Tribal Epidemiology Centers play a critical role in publishing public health reports, developing public health toolkits for UIHPs, and developing culturally relevant vaccine hesitancy campaigns for Native communities. In addition, they are uniquely positioned to address data challenges surrounding COVID-19 and the Missing and Murdered Indigenous Women and Girls crisis by developing best practices for collecting race, ethnicity, and tribal affiliation and developing guidelines around Indigenous Data Sovereignty practices. There are twelve Tribal Epidemiology Centers nationwide with a service population of 5.5 million American Indians and Alaska Natives.

4. Create an Urban Confer policy across the United States Health and Human Services Department (HHS)

To ensure trust and treaty obligations are upheld to all American Indian and Alaska Native citizens, we request the development of an Urban Confer policy across all agencies and departments within HHS jurisdiction. The federal government has an obligation to consult with Tribal Nations on issues that impact tribal communities. In the Indian healthcare system, UIHPs have an Urban Confer mechanism with the IHS that provides an opportunity for an exchange of information and opinions that lead to mutual understanding and emphasize trust, respect, and shared responsibility between UIHPs and government agencies. Urban Confer policies do not substitute for nor invoke the rights of a Tribe as a sovereign nation. UIHP inclusion is to advocate for the urban Indian community as an Indian Health Care Provider and part of the Indian healthcare system.

The importance of an Urban Confer was made evident in the COVID-19 supplemental resources from Congress. Without an Urban Confer policy, HHS agencies outside of IHS had no formal mechanism for gathering feedback from urban Indian organizations and vice versa. As a result, submitting feedback to Health Resource Service Administration (HRSA), Substance Abuse and Mental Health Services Administration (SAMHSA), and the Centers for Disease Control and Prevention (CDC) was a significant barrier to accessing COVID-19 supplemental resources for urban Indian organizations. The CDC created a funding opportunity for 11 of the 12 Tribal Epidemiology Centers by selecting a grant mechanism that failed to include urban Indian organizations as eligible entities. Errors like these leave urban Indian organizations without access to federal resources, despite Congressional intent.

5. Extend 100 percent Federal Medical Assistance Percentage (FMAP) to Urban Indian Organizations (UIOs)

Amending 1905(b) of the Social Security Act to include UIOs would help fulfill the federal trust and treaty obligations to pay for health services for all American Indians and Alaska Natives regardless of where they reside. UIOs receive less than 1 percent of the IHS budget. Yet over 71 percent of American Indian and Alaska Native people live in urban areas. Seattle Indian Health Board, and many serve a growing number of urban American Indian and Alaska Native people. UIOs are the only part of the Indian healthcare system that are not 100 percent FMAP payment

eligible despite being Indian Health Providers stipulated in Title V in the Indian Health Care Improvement Act (IHCIA), now Subchapter IV of the IHCIA as amended by the Affordable Care Act (ACA) in 2010.

6. Improve Data Access for Tribal Epidemiology Centers

SIHB and UIHI are committed to understanding the impacts of COVID-19 in urban American Indian and Alaska Native communities. As a TEC and public health authority, UIHI supports the epidemiological needs of urban Indian communities in 54 urban areas nationwide. Despite congressional authorization to access HHS data as a public health authority, UIHI was recently denied access to the National Notifiable Disease Surveillance System (NNDSS) by CDC. A failure to grant data access perpetuates systemic health inequities in American Indian and Alaska Native communities. Timely analysis of NNDSS data is critical to supporting tribal and urban Indian organizations as they prevent, prepare, and respond to a second surge of COVID-19. TECs are best positioned to advise and lead the appropriate collection and analysis of American Indian and Alaska Native data. To fully operate as public health authorities alongside local, state, and federal entities, the roles and authorities of TECs must be upheld. We ask for continued oversight of federal agencies to ensure compliance and timely access to HHS public health data and improvements to the collection, analysis, and reporting of American Indian and Alaska Native data.

7. Permanently Reauthorize the Special Diabetes Program for Indians (SDPI)

Type 2 diabetes is more prevalent in American Indian and Alaska Native people than in any other race and is two times higher than that of non-Hispanic White people. Since 1996, the SDPI has proven to be an inexpensive and highly cost-saving measure of diabetes care and prevention. The SDPI program has saved millions of Medicaid dollars through prevention and management of diabetes and associated health problems such as hypertension, cardiovascular disease, retinopathy, neuropathy, and end-stage renal disease. SIHB requests that the SDPI program be permanently reauthorized and fully funded to ensure that all American Indian and Alaska Native people have access to culturally attuned chronic disease prevention and management services.

8. Extending Indian Preference for Housing Assistance

The federal government has a federal trust responsibility to provide affordable housing in partnership with Indian tribes to improve the housing conditions and socioeconomic status of American Indian and Alaska Native citizens. Yet American Indian and Alaska Natives are three to eight times more likely to experience homelessness than other racial and ethnic groups. To address the housing needs of urban American Indian and Alaska Native people, SIHB requests that Tribal Housing Entities be allowed to extend Indian Preference Policy to affordable housing developments administrated by urban Indian organizations through Memorandums of Understanding (MOU), without having to allocate Indian Housing Block Grant program funding to a housing project.

9. Direct Services and Programming Carve Outs for Gender-Based Violence Programs

American Indian and Alaska Native people disproportionately experience violence. For example, more than 4 in 5 American Indian and Alaska Native women (84.3 percent) have experienced violence in their lifetime. These numbers likely underestimate the true extent of violence due to systematic racism, underreporting, misclassification, and ongoing distrust of law enforcement. Despite this ongoing crisis of violence, very little is known about the victimization of American Indian and Alaska Native women living in urban settings outside of the recent research by the UIHI, an IHS funded TEC.

Through the I/T/U system of care, tribal and urban Indian organizations play a critical role in preventing and ending violence against American Indian and Alaska Native people in partnership with government and community partners. SIHB requests that all federally funded gender-based violence programs include a five percent grant carve out of state and local funds to urban Indian organizations that use indigenous approaches to ending gender-based violence through culturally attuned approaches to survivor and family support services, sexual assault prevention, and treatment services.

10. Expanded Community Health Aide Program (CHAP) Eligibility to Urban Indian Organizations

In accordance with 25 U.S.C.1602 to ensure the highest possible health status for Indians and urban Indians and to provide all resources necessary to effect that pol-

icy, we ask that section 111 of the Indian Health Care Improvement Act (IHCA) be amended to include urban Indian organizations as eligible providers for the Community Health Aide Program (CHAP). The recent federal investment in CHAP expansion outside of Alaska is an important milestone in supporting culturally attuned and community-defined health interventions for tribal and urban Indian communities. SIHB participates in the regional CHAP advisory group lead by the Northwest Portland Area Indian Health Board (NPAIHB) to develop a regional CHAP board, yet we are not eligible CHAP providers. We have long partnered with our local tribes on the development and expansion of Dental Health Aide Therapists (DHATs), Behavioral Health Aides (BHAs), and Community Health Aides (CHAs) because we are a critical component of the Indian healthcare system and we know UIHPs are well positioned to support CHAP through workforce development, culturally attuned care, and policy development.

11. Conduct an Urban Indian Health Program (UIHP) Expansion Assessment and Capacity Building Activities

A 2009 Report to Congress, entitled *New Needs Assessment of Urban Indian Health Programs and Communities It Serves*, found unmet health care needs in 17 urban areas with high densities of American Indian and Alaska Native people. The UIHI, has also expanded their service population to over fifteen additional urban areas that have high densities of American Indian and Alaska Native people and urban Indian organizations. Several of these locations have strong community support, local leadership, or on-going activities to develop a health program serving urban American Indian and Alaska Native people. Addition assessment and capacity building activities would advance IHS priorities and outline a clear funding strategy to expand the Urban Indian Health Program.

You can find a full list of our *2021 Federal Legislative Priorities on our website*. We thank you for your consideration of these comments and recommendations and applaud the committee for your work to support the Indian healthcare system. We look forward to working together in the 117th Congress to support the health and well-being of American Indian and Alaska Native people, regardless of where they reside.

PREPARED STATEMENT OF KIM REITMEIER, EXECUTIVE DIRECTOR, ANCSA REGIONAL ASSOCIATION

The ANCSA Regional Association expresses our sincere appreciation to Chairman Schatz and the Senate Committee on Indian Affairs for allowing us this opportunity to submit written testimony for the record for the oversight hearing titled “A call to action: Native communities’ priorities in focus for the 117th Congress.” The ANCSA Regional Association would also like to congratulate Chairman Schatz and Vice-Chairwoman Murkowski for their selection as leadership of the Committee.

About the ANCSA Regional Association

The ANCSA Regional Association (ARA) was founded in 1998 to represent Alaska Native regional corporations created pursuant to the Alaska Native Claims Settlement Act of 1971 (ANCSA). ARA’s membership is comprised of the twelve-land based Alaska Native regional corporations; our members represent over 135,000 Alaska Native shareholders. Our board is composed of the presidents and chief executive officers of our member corporations. ARA’s purpose is to promote and foster the continued growth and economic strength of the Alaska Native regional corporations on behalf of their Alaska Native shareholders.

Background on COVID’s Impacts in Alaska

The state of Alaska and Alaska Native people have been hit hard by the pandemic. Over 200 of our rural villages lack road access, creating a variety of healthcare and logistical challenges. Some of these same villages also lack access to running water and reliable Internet services—two huge hurdles when combatting COVID-19. In addition to these challenges, our state economy has been badly battered by the pandemic. Data collected by the New York Times showed that Alaska’s tax revenue dropped by 42 percent in 2020 -more than 25 percentage points greater than the decline experienced by any other state. Our unemployment claims went from an average of 930 per week to 8,000, and approximately 27,000 jobs were lost as the cruise and visitor industries were decimated. Alaska’s commercial fishing industry was hit by port closures, shipping restrictions and reduced demand, leading to \$500 million in losses. When one considers that the total population of our state is only 730,000, these numbers are startling.

In this time of need, Alaskans are stepping up to provide critical support to elders and other vulnerable populations. Alaska Native corporations (ANCs) are doing our part by partnering with tribes and non-profits in our regions and investing millions of dollars to keep our people safe and help our rural economies recover.

Attacks on Alaska Native corporations and our unique system are only making matters worse. Misunderstandings around ANCs and the vital services we provide have led to costly litigation that has kept tribal funds from Alaska Native people who are in dire need of relief. If Alaska Native people are deemed ineligible to receive these funds that they rightfully deserve as Indigenous people, the outlook for our communities is bleak. The state of Alaska has already told the Supreme Court that it will be unable to make up for the lack of federal government funding if the Court rules against ANCs.

About the Alaska Native Claims Settlement Act of 1971

The Alaska Native Claims Settlement Act of 1971 (ANCSA) was a tailored solution proposed by Congress to meet the unique economic and geographic differences that directly affect Native communities in Alaska. When Congress enacted ANCSA, it afforded Alaska Natives and its consortia a unique legal designation and identity; oversight of indigenous peoples' lands would be designated through regional and village "corporations". Both are led, owned, and provide essential support for Alaska Natives. Congress reserved all abilities to amend ANCSA to itself; in the scenario of state-level conflict with any provision of ANCSA and Federal law, ANCSA is given control.¹

The unique governance structure of Alaska Native people under ANCSA is often mischaracterized. ANCSA divided the state into twelve regions, whose boundaries were drawn by common heritages, shared interests, and geography. The regional boundaries established which regional corporation would serve the Native people in those communities and villages, however ownership of the land remains with the Alaska Native people. In creating regional and village corporations, the Federal government, set up a mechanism to continue serving out the public's interest of providing for, and ensuring the prosperity of Alaska and its Native people. Alaska Native people that are represented by regional and village corporations largely do not identify as "shareholders" or recognize our consortia to be a "corporation." The U.S. Government Accountability Office (GAO) outlined in-detail how Alaska Native corporations carry out many essential services to vulnerable Native communities.

In 2012, GAO completed a comprehensive 40-year review of Alaska Native corporations; the report analyzes the ways in which benefits are provided by the consortia to its respective Alaska Native shareholders. The report outlines the specific ways in which shareholders receive benefits, which include direct employment opportunities, dividends, academic scholarships, cultural preservation programs, land management, economic development, and public advocacy for the Alaska Native people.² Nonmonetary benefits are an essential part of the role Alaska Native corporations occupy in delivering services its Native people. As the GAO's report illustrates, Native and Village corporations provide crucial infrastructure like wind turbines, firewood distribution, flight training, and protection for historical sites.

It is without a question that Congress, in creating Alaska Native corporations under ANCSA, intended to create a new system of self-governance for Tribal communities and economies in Alaska. The passage of ANCSA represented a new era of Alaska Native representation in the state and national economies, all while bringing greater prosperity to the Alaska Native people. By instilling a corporate-based structure into the Alaska Native way of life, Alaska Native people can continue to serve to the best interests of their Native lands and participate in the global economy.

Federal Legislative Priorities

As we hit the one-year mark since the COVID-19 pandemic began, Alaska Native regional corporations are delivering on their commitment to support Alaska Native people. At the onset of the pandemic, Alaska Native corporations focused on providing essential health care services and support for the Alaska Tribal Health System, which services Alaska's most rural communities only accessible by plane or boat. And now, as Congress enters a new legislative session, ARA and its members

¹Report from the House of Representatives, Mr. Udall, Chair, to accompany H.R. 4162, "Amending the Alaska Native Claims Settlement Act to Provide Alaska Natives with Certain Options for the Continued Ownership of Lands and Corporate Shares Received Pursuant to the Act and for Other Purposes," 99th Congress, 2nd Session, Report 99-712, 1986.

²Report from the United States Government Accountability Office, "Regional Alaska Native Corporations—Status 40 Years after Establishment, and Future Considerations," 112th Congress, GAO-13-121, 2013. Retrieved from: <https://www.gao.gov/assets/13/121.pdf>

would like to express our commitment to working with Congress and the Biden Administration on legislative solutions that meet the needs of all Native people in the United States.

In working with the federal government, ARA and its members will continue to at every opportunity to assist the state and federal government in identifying, prioritizing, and distributing care and funding to Alaska Native people and our shareholders. The term 'Indian Tribe', as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (ISDEAA), explicitly calls for the inclusion of Alaska Native village and regional village corporations as designated under ANCSA. By every means possible, we will continue to iterate that, unambiguously, Congress had every intention for relief moneys to be made accessible to Alaska Native regional corporations and village corporations.

Our priorities expand past the crucial relief moneys that Alaska Native people desperately need. As Congress considers many strategies to rebuild all Native communities across the country, ARA supports the creation of an independent consultation process to address and meet the unique needs of Alaska Native corporations. Unlike like the Lower 48 reservation system, a majority of Alaska Native people rely on transportation infrastructure to receive crucial services as 80 percent of Alaska's Native people inaccessible by land. Furthermore, ARA will continue to support Native corporation participation in government contracting, specifically with regards to the Small Business Administration's 8(a) Business Development program, which allows for both monetary and non-monetary returns to benefit tens of thousands of Alaska Native people.

ANC Education and Informing Policy

Alaska Native corporations were founded by Congress five decades ago, but there are still many misconceptions about Alaska Native people and our unique governance structure. These misconceptions impact present ongoing relief policy discussions and in media coverage of our organizations. A continued misunderstanding of Alaska Native corporations could cause Alaska Native people to suffer greatly.

ARA will continue to engage with elected officials, government agencies, the media, and the public at-large to educate them on the relevant history and mission of Alaska Native corporations. ARA is committed to conducting this outreach for as long as it takes to ensure Alaska Native people, and its ecosystem, are better understood.

Alaska's distinct path towards self-determination, as President Kitka testified, should not be excluded simply because it is different:

"We have a different model of self-determination in Alaska which is based on our lands claim settlement, which was a historic, largest land claims settlement in the history of the United States almost 50 years ago. In that land claims settlement, Congress directed us to form for-profit native corporations and have our land and resources in that. So, we do have a different model of tribal self-determination in Alaska that includes both federally recognized tribes and our Alaska Native corporations, and our tribal consortiums and we would like for you to take into account that the way that we deploy our organizations we view them all as tools for the Native people, for the empowerment of the Native people, for the wellbeing of the Native people. We urge you not to exclude different segments of our Native community because we are structured differently."

Closing

The federal government and the statues under ANCSA created a tailored solution to Alaska Natives to ensure that geographic barriers did not pose a threat to the continued prosperity of Alaska Native people.

Alaska Native regional corporations and village corporations continue to serve at the forefront of defense against the COVID-19 pandemic. And as Congress considers its approach towards addressing relief efforts, ARA and its members urge federal legislators to consider the dynamic structure it afforded to Alaska's Native people by means of Alaska Native corporations.

On behalf of the twelve Alaska Native regional corporations, we look forward to working with this and other committees in the 117th Congress. We hope to engage in open dialogue with the Committee on Alaska's Native communities and our shareholders to ensure understanding of the impacts of the COVID-19 pandemic on our communities.

Thank you again for the opportunity to submit testimony to share the story of Alaska Native regional corporations and considering our open invitation to discuss the interests of Alaska Native people in the legislative priorities during the first session of the 117th Congress.

PREPARED STATEMENT OF HON. WARREN C. SWARTZ, JR., PRESIDENT, KEWEENAW
BAY INDIAN COMMUNITY

Chairman Schatz, Vice Chair Murkowski, and Honorable Members of the Senate Committee on Indian Affairs, my name is Chris Swartz and I am the President of the Keweenaw Bay Indian Community. Thank you for the opportunity to provide testimony regarding the Community's priorities for the 117th Congress. My testimony will focus on the need for the United States to fulfill its trust obligation by correcting the injustices stemming from the breach of our treaties and the taking of our property rights.

The Keweenaw Bay Indian Community ("Community") is located on the L'Anse Indian Reservation, which is near the town of Baraga, Michigan on the east side of Lake Superior's Keweenaw Peninsula. The L'Anse Reservation is the oldest and largest reservation within the state of Michigan. Our ancestors dwelt, hunted, fished, and gathered for hundreds of years in the forests, lakes, and wetlands near the Keweenaw Bay in the Upper Peninsula of Michigan.

The expansion of the western frontier and the federal government's growing interest in the mineral resources of the south shore of Lake Superior led the United States to enter into the 1842 Treaty of LaPointe ("1842 Treaty") and the 1854 Treaty of LaPointe ("1854 Treaty"). The 1842 Treaty addressed mineral rights and provided for the cession of lands west and south of Lake Superior, including those in the Keweenaw Bay area. However, the terms of the 1842 Treaty were specific and unequivocal regarding our ancestors' rights to continue to occupy, hunt, and fish in their homelands located within the cession area, including the Keweenaw Bay area.

The 1854 Treaty provided that the signatory bands would transfer extensive and valuable land claims in Michigan and Wisconsin in exchange for permanent reservations in their ancestral homelands. In addition, it described the L'Anse Reservation by its exterior boundaries and both the Community and the United States understood that all land within these boundaries was reserved for the sole use of the Indians.

Unfortunately, this promise wasn't kept and in the latter half of the 19th Century and early in the 20th Century, various lands within the boundaries of the L'Anse Reservation were wrongfully transferred to the State of Michigan. First, the Community was dispossessed of about 1,333 acres of land that was reserved for the L'Anse Reservation and set aside in the 1854 Treaty. Lands were selected from the public domain throughout the State of Michigan for a 750,000-acre land grant to serve as payment for the construction of a canal at Sault Ste. Marie. Through either carelessness or expediency, the Secretary of the Interior approved the Canal Company's land selection on January 24, 1855, fourteen days after the 1854 Treaty set aside the same lands for the L'Anse Reservation. The L'Anse Reservation lands were withdrawn from sale by the order of the President on March 7, 1855, but the title to the "canal lands" selected by Michigan, including those within the L'Anse Reservation, was transferred to the Canal Company in accordance with the orders of the Michigan Attorney General.

Sadly, these were not the only lands within the L'Anse Reservation that were transferred to the state. Shortly after the signing of the 1854 Treaty, the State of Michigan began demanding that the federal government issue it patents to wetlands within the L'Anse Reservation on grounds that an 1850 Federal swamplands statute granted such lands to the states. For many years, the federal government flatly rejected Michigan's contentions and the United States General Land Office (GLO) refused to issue patents to Michigan.

The United States Department of the Interior informed Michigan that its submission of swampland list did not obligate the United States to issue patents for such lands where the land was occupied and appropriated for the Indians. The United States Supreme Court ratified the legal rationale of this position in a 1906 decision, *Wisconsin v. Hitchcock*, holding that the signatory bands to the 1854 Treaty had never abandoned their physical presence or right of occupancy to the lands confirmed as their "permanent reservations" under the 1854 Treaty and this trumped any statute granting any portion of reservation lands to the states.

For unknown reasons, the GLO nonetheless issued Michigan patents to about 2,207 acres of swamplands in the L'Anse Reservation. These patents not only violated federal law, they subverted the established policies of the Department of the Interior and the Indian Affairs Office with respect to the creation of the L'Anse reservation created by the 1854 Treaty. These swampland patents to Michigan were never cancelled or terminated, and the Community has never been compensated for the loss of the lands.

In closing, I would like to thank the Committee once again for the opportunity to discuss these longstanding land claims. While our dire financial situation has

made it difficult to pursue these claims, we know that recovering damages for these lost lands, and the economic opportunities they would have generated over the years, would greatly improve the lives of our tribal citizens. Finally, the Keweenaw Bay Indian Community encourages the Senate Committee on Indian Affairs to conduct oversight on all outstanding tribal land claims.

PREPARED STATEMENT OF UNITED SOUTH AND EASTERN TRIBES SOVEREIGNTY
PROTECTION FUND

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is pleased to provide the Senate Committee on Indian Affairs (SCIA) with the following testimony for the record of the February 24th oversight hearing, “A call to action: Native communities’ priorities in focus for the 117th Congress.” We appreciate SCIA’s focus on hearing directly from Tribal Nations as the Committee considers its agenda for the Congressional term. USET SPF continues to seek foundational and systemic change to our relationship with the United States; change that will lead to a more appropriate, respectful, honorable, and modern diplomatic relationship for the 21st century. From our perspective and given the inflection point in which the United States finds itself, the SCIA has a unique opportunity during this Congress to enact bold, transformative policy that will have lasting impacts on the trust obligation and relationship. With this in mind, we offer the below early items of interest and opportunities for collaboration. This is by no means an exhaustive list of priorities for our member Tribal Nations, who, as governments, have broad and diverse interests across a host of issue areas, including housing, transportation, emergency services, social services, and veteran’s affairs, among others. However, we view the below as the foundation for our initial engagement.

USET Sovereignty Protection Fund (USET SPF) is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

COVID-19 Relief and Recovery

While hope is on the horizon, we expect Congress and SCIA, along with the Biden Administration, to continue to focus on COVID-19 relief and recovery—both for Indian Country and the whole of the United States. We continue to underscore that the United States’ shameful and unjust neglect of its duties, which Indian Country has been facing for generations, has been brought into sharper relief as a result of the global pandemic. COVID-19 is exposing the ever-widening gap between the trust obligation owed to Tribal Nations and the execution of that obligation. USET SPF demands accountability for the persistent, chronic failure to uphold legal and moral promises to Tribal Nations. Though these failures have persisted throughout changes in Administration and Congress, it is time that both the legislative and executive branches confront and correct them.

We celebrate and extend our gratitude for the historic level of relief directed Tribal Nations in the American Rescue Plan. In particular, the \$20 billion in the Fiscal Recovery Fund has the potential to have lasting impacts on Tribal Nation infrastructure. This is critical, as the disproportionately high rates of COVID-19 in Indian Country are caused and exacerbated by the chronic underfunding of the federal trust obligation, including for healthcare, education, housing, and critical infrastructure, leaving Tribal Nations unable to appropriately respond to and mitigate this pandemic.

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe-Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

As SCIA considers further relief and recovery measures, it should continue to prioritize Indian Country, in accordance with trust and treaty obligations. In the short-term, federal COVID relief, response, and recovery measures must be focused on rapid, equitable deployment to Tribal Nations in a manner that reflects our unique circumstances and the federal trust obligation. The federal government must support and uphold our sovereign right to determine how best to use relief funding and resources to the benefit of our citizens and communities. And it must ensure that funding is delivered via the most expedient mechanisms while providing sufficient opportunity for Tribal Nations to expend these resources.

In the long-term, the United States must confront and correct its ongoing and shameful failures to honor its sacred promises to Tribal Nations, many of which have been outlined in detail by the U.S. Commission on Civil Rights in its 2018 *Broken Promises* report. As the Commission states in *Broken Promises*, “the United States expects all nations to live up to their treaty obligations; it should live up to its own.” The time is long overdue for a comprehensive overhaul of the trust relationship and obligations, one that results in the United States finally keeping the promises made to us as sovereign nations in accordance with our special and unique relationship. This change is urgently needed, as the global pandemic exposes for the whole world to see the extent to which generations of federal neglect and inaction have created the unjust and untenable circumstances facing Tribal Nations in the fight against COVID-19.

Recognition of Inherent Tribal Sovereignty

Tribal Nations are political, sovereign entities whose status stems from the inherent sovereignty we have as self-governing peoples, which pre-dates the founding of the Republic. The Constitution, treaties, statutes, Executive Orders, and judicial decisions all recognize that the federal government has a fundamental trust relationship to Tribal Nations, including the obligation uphold the right to self-government. Our federal partners must fully recognize the inherent right of Tribal Nations to fully engage in self-governance, so we may exercise full decisionmaking in the management of our own affairs and governmental services, including jurisdiction over our lands and people.

However, the full extent of our inherent sovereignty continues to go unacknowledged and, in some cases, is actively restricted by other units of government, including the federal, as well as state and local governments. This serves to undermine the provision of essential services to our people, including such vital services as public safety, as well as the continuity and exercise of our cultures. This has created a crisis in Indian Country, as our people go missing and are murdered, and are denied the opportunity for safe, healthy, vibrant communities and traditions enjoyed by other Americans. As members of SCIA, with a heightened interest in and deeper understanding of these issues, we expect that you will exercise leadership in this space, including in circumstances where supporting Tribal sovereignty may be at odds with other interests or political positions.

Criminal and Civil Jurisdiction over our Homelands

One important reason for higher rates of crime in Indian Country is the gap in jurisdiction stemming from the United States’ failure to recognize our inherent criminal jurisdiction, allowing those who seek to do harm to hide in the darkness away from justice. When Tribal Nations are barred from prosecuting offenders and the federal government fails in the execution of its obligations, criminals are free to offend over and over again.

The United States has slowly chipped away at Tribal Nations’ jurisdiction. At first, it found ways to put restrictions on the exercise of our inherent rights and authorities. And eventually, as its power grew, the United States shifted from acknowledging Tribal Nations’ inherent rights and authorities to treating these rights and authorities as grants from the United States. With this shift in mindset, recognition of our inherent sovereignty diminished, including our jurisdictional authorities.

For example, in the 1978 decision of *Oliphant v. Suquamish Indian Tribe*, the Supreme Court struck what may be the biggest and most harmful blow to Tribal Nations’ criminal jurisdiction. In that case, it held Tribal Nations lacked criminal jurisdiction over non-Native people, even for crimes committed within Indian Country. Without this critical aspect of sovereignty, which is exercised by units of government across the United States, Tribal Nations are unable achieve justice for our communities. While the United States has stripped Tribal Nations of our own jurisdiction and the resources we need to protect our people, it has not invested in the infrastructure necessary to fulfill its obligation to assume this responsibility. As a result, Indian Country currently faces some of the highest rates of crime, with Trib-

al citizens 2.5 times more likely to become victims of violent crime and Native women, in particular, subject to higher rates of domestic violence and abuse. Many of the perpetrators of these crimes are non-Native people.

More recently, the federal government failed to recognize a Tribal Nation's sovereign right to protect its community from COVID-19. When it became clear that the state of South Dakota was not going to institute the public health measures necessary to control the spread of COVID-19 within its borders, the Cheyenne River Sioux Tribe (CRST) acted to protect its citizens by installing checkpoints on the highways leading to its homelands. These checkpoints have been immensely successful in identifying COVID and mitigating its spread in CRST's community. However, when the Tribal Nation refused to remove the checkpoints, the governor of South Dakota wrote to the White House and Department of Interior (DOI) to request intervention. Despite its legal obligation to uphold and defend Tribal sovereignty and self-governance, DOI threatened to withdraw CRST's law enforcement funding if it did not comply with the governor's request.

It is important to note that over the last decade, the federal government has made some effort to better recognize Tribal Nation jurisdiction over our own lands. USET SPF is appreciative of the efforts of this body in strengthening and improving public safety across Indian Country. Though many Tribal Nations remain unable to take advantage of its provisions, the 2013 reauthorization of VAWA was a major victory for Tribal jurisdiction, self-determination, and the fight against crime in Indian Country. This law provides crucial opportunities for Tribal Nations to reassume responsibilities for protecting their homelands by restoring criminal jurisdiction over non-Indian individuals in cases of domestic violence against Tribal citizens.

However, Tribal Nations, the Department of Justice, and others are reporting oversights in the drafting of the law that prevent the use of special domestic violence criminal jurisdiction (SDVCJ) and the law from functioning as intended. USET SPF remains strongly supportive of several bills aimed at addressing these gaps, including the Justice for Native Survivors of Sexual Violence Act and the Native Youth and Tribal Officer Protection Act. Though their provisions were incorporated into 2019 and 2021 VAWA reauthorization proposals, they, along with VAWA, await further action in the Senate.

As sovereign governments, Tribal Nations have a duty to protect our citizens, and provide for safe and productive communities. This cannot truly be accomplished without the full restoration of criminal jurisdiction to our governments through a fix to the Supreme Court decision in *Oliphant*. While we call upon the 117th Congress to take up and pass the aforementioned legislation, we strongly urge this Committee to consider how it might take action to fully recognize Tribal criminal jurisdiction over all persons and activities in our homelands for all Tribal Nations. Only then will we have the ability to truly protect our people.

Restrictive Settlement Acts

As we work to ensure that Tribal sovereignty is fully upheld, we again remind this body that some Tribal Nations, including some USET SPF member Tribal Nations, are living under restrictive settlement acts that further limit the ability to exercise criminal jurisdiction over their lands. These restrictive settlement acts flow from difficult circumstances in which states demanded unfair restrictions on Tribal Nations' rights in order for the Tribal Nations to have recognized rights to their lands or federal recognition. When Congress enacted these demands by the states into law, it incorrectly allowed for diminishment of certain sovereign authorities exercised by other Tribal Nations across the United States.

Some restrictive settlement acts purport to limit Tribal Nations' jurisdiction over their land or to give states jurisdiction over Tribal Nations' land, which is itself a problem. But, to make matters worse, there have been situations where a state has wrongly argued the existence of the restrictive settlement act prohibits application of later-enacted federal statutes that would restore to Tribal Nations aspects of our jurisdictional authority, including VAWA and the Tribal Law and Order Act (TLOA). In fact, some USET SPF member Tribal Nations report being threatened with lawsuits should they attempt to implement TLOA's enhanced sentencing provisions. Congress is often unaware of these arguments when enacting new legislation. USET SPF asserts that Congress did not intend these land claim settlements to forever prevent a handful of Tribal Nations from taking advantage of beneficial laws meant to improve the health, general welfare, and safety of Tribal citizens. We continue request the opportunity to explore short- and long-term solutions to this problem with this Committee.

Cultural Sovereignty

While the practice of spiritual and ceremonial traditions and beliefs varies significantly among USET SPF Tribal Nations, our spirituality is overwhelmingly place-based. From the Mississippi Band of Choctaw Indians' Nanih Waiyah mounds to the ceremonial stone landscapes of New England, each member Tribal Nation has specific places and locations that we consider sacred. These places are often the sites of our origin stories, our places of creation. As such, we believe that we have been in these places since time immemorial. Through these sites, we are inextricably linked to our spirituality, the practice of our religions, and to the foundations of our cultural beliefs and values. Our sacred sites are of greatest importance as they hold the bones and spirit of our ancestors and we must ensure their protection, as that is our sacred duty. As our federal partner in this unique government-to-government relationship, it is also incumbent upon all branches of the U.S. government to ensure the protection of these sites, including by upholding our own sovereign action. As Congress and the Administration consider a massive infrastructure package as a part of COVID-19 recovery, this includes seeking the consent of Tribal Nations for federal actions that impact our sacred sites, lands, cultural resources, public health, or governance.

Economic Sovereignty

As it is for any other sovereign, economic sovereignty is essential to Indian Country's ability to be self-determining and self-sufficient. Rebuilding of our Tribal Nations involves the rebuilding of our Tribal economies as a core foundation of healthy and productive communities. We celebrate and acknowledge the recent passage of the Native American Business Incubators Act and the Indian Community Economic Enhancement Act, but there is more work to be done here, as well. Building strong, vibrant, and mature economies is more than just business development. It requires comprehensive planning to ensure that our economies have the necessary infrastructure, services, and opportunities for our citizens to thrive; thus resulting in stronger Tribal Nations and a stronger America. In order to achieve economic success, revenues and profits generated on Tribal lands must stay within Indian Country in order to benefit from the economic multiplier effect, allowing for each dollar to turn over multiple times within a given Tribal economy. It is critical that inequities and the lack of parity in policy and federal funding be addressed for Tribal Nations in order to fully exercise our inherent self-governance to conduct economic development activities for the benefit of our Tribal citizens.

Further, the U.S. government has a responsibility to ensure that federal tax law treats Tribal Nations in a manner consistent with our governmental status, as reflected under the U.S. Constitution and numerous federal laws, treaties and federal court decisions. With this in mind, we remain focused on the advancement of tax reform that would address inequities in the tax code and eliminate state dual taxation. Revenue generated within Indian Country continues to be taken outside its borders or otherwise falls victim to a lack of parity. Similarly, Tribal governments continue to lack many of the same benefits and flexibility offered to other units of government under the tax code. Passage of comprehensive tax reform in 2017 without Tribal provisions was unacceptable, and our exclusion was inconsistent with expressed Congressional support to strengthen Tribal Nations. USET SPF continues to press for changes to the U.S. tax code that would provide governmental parity and economic development to Tribal Nations.

Restoration of Tribal Homelands

Possession of a land base is a core aspect of sovereignty, cultural identity, and represents the foundation of a government's economy. That is no different for Tribal Nations. USET SPF Tribal Nations continue to work to reacquire our homelands, which are fundamental to our existence as sovereign governments and our ability to thrive as vibrant, healthy, self-sufficient communities. And as our partner in the trust relationship, it is incumbent upon the federal government to prioritize the restoration of our land bases. The federal government's objective in the trust responsibility and obligations to our Nations must be to support healthy and sustainable self-determining Tribal governments, which fundamentally includes the restoration of lands to all federally-recognized Tribal Nations, as well as the legal defense of these land acquisitions. With this in mind, USET SPF continues to call for the immediate passage of a fix to the Supreme Court decision in *Carcieri v. Salazar*.

Consultation Reform

As you are likely aware, the Biden Administration has directed all federal agencies, via Executive Memorandum, to prepare and periodically update plans to implement E.O. 13175. As a result, Indian Country is currently engaged in an extremely

high level of consultation activity with the Administration. There is value in the spirit of the January 26th Executive Memorandum, which is to recommit and refocus federal agencies to engaging in meaningful Tribal consultation. However, these actions alone are not sufficient to address systemic failures in the various consultation processes across the federal government. Broadly, the U.S. must work to reform the Tribal consultation process as conducted by agencies across the federal government. There must be a reconciliation to provide certainty, consistency, and accountability in Tribal consultation. The federal government must work to standardize and provide a uniform foundation to its Tribal Consultation methods.

Accountability is required to ensure Tribal consultation is meaningful and results in corresponding federal efforts to honor Tribal input and mitigate any concerns. All federal agencies, including independent federal agencies, such as the Federal Energy Regulatory Commission and the Federal Communications Commission, as well as the Office of Management and Budget, must be statutorily required to adhere to consultation policies with additional oversight from the White House and Congress. USET SPF strongly supports the codification of consultation requirements for all federal agencies and departments, including a right of action to seek judicial review of consultation when the federal government has failed to engage, communicate, and consult appropriately. We ask that SCIA work with us to make this a reality.

It is time for a Tribal Nation-defined consultation model, with dual consent as the basis for strong and respectful diplomatic relations between two equally sovereign nations. In the short term, we must move beyond the requirement for Tribal consultation via Executive Order to a strengthened model achieved via statute. In the long term, we must return to the achievement of Tribal Nation consent for federal action as a recognition of sovereign equality and as set out by the principles of the United Nations Declaration on the Rights of Indigenous Peoples.

Expansion and Evolution of Tribal Self-Governance

Despite the success of Tribal Nations in exercising authority under the Indian Self-Determination and Education Assistance Act (ISDEAA), as well as the recently enacted Practical Reforms and Other Goals to Reinforce the Effectiveness of Self-Governance and Self-Determination (PROGRESS) for Indian Tribes Act, the goals of self-governance have not been fully realized. Many opportunities still remain to improve and expand upon its principles. An expansion of Tribal self-governance to all federal programs under ISDEAA would be the next evolutionary step in the federal government's recognition of Tribal sovereignty and reflective of its full commitment to Tribal Nation sovereignty and self-determination. In the case of COVID-19 response, it would provide for a streamlined and expeditious approach to the receipt and expenditures of funding from across the federal government, and ensure these resources can be utilized in ways that reflect the diversity of Tribal governments.

USET SPF, along with many Tribal Nations and organizations, has consistently urged that all federal programs and dollars be eligible for inclusion in self-governance contracts and compacts. We must move beyond piecemeal approaches directed at specific functions or programs and start ensuring Tribal Nations have real decisionmaking in the management of our own affairs and assets. It is imperative that Tribal Nations have the expanded authority to redesign additional federal programs to serve best our communities as well as have the authority to redistribute funds to administer services among different programs as necessary. To accomplish this requires a new framework and understanding that moves us further away from paternalism.

Examinations into expanding Tribal self-governance administratively have encountered barriers due to the limiting language under current law, as well as the misperceptions of federal officials. USET SPF stresses to the Committee that if true expansion of self-governance is only possible through legislative action, the Committee and Congress must prioritize legislative action on the comprehensive expansion of Tribal self-governance. This will modernize the federal fiduciary responsibility in a manner that is consistent with our sovereign status and capabilities. As an example, in 2013, the Self-Governance Tribal Federal Workgroup (SGTFW), established within the Department of Health and Human Services (HHS), completed a study exploring the feasibility of expanding Tribal self-governance into HHS programs beyond those of IHS and concluded that the expansion of self-governance to non-IHS programs was feasible, but would require Congressional action. However, despite efforts on the part of Tribal representatives to the SGTFW to attempt to move forward in good faith with consensus positions on expansion legislation, these efforts were stymied by the lack of cooperation by federal representatives. USET SPF urges the Committee and Congress to use its authority to work to legislatively

expand Tribal self-governance to all federal programs where Tribal Nations are eligible for funding, in fulfillment of the unique federal trust responsibility to Tribal Nations.

Further, Congress and the Administration should consider modifications to reporting requirements under ISDEAA and other methods of funding distribution. The administrative burden of current reporting requirements under ISDEAA including site visits, “means testing,” or other standards developed unilaterally by Congress or federal officials are barriers to efficient self-governance and do not reflect our government-to-government relationship. While obtaining data around Tribal programs is critical to measuring how well we as Tribal governments are serving our citizens and how well the federal government is delivering upon its obligations, Tribal Nations find themselves expected to report data in order to justify further investment in Indian Country. This runs counter to the trust obligation, which exists in perpetuity. The data collected by Tribal Nations must be understood as a tool to be utilized in sovereign decisionmaking, not to validate the federal government’s fulfillment of its own promises.

Because funding for Tribal Nations is provided in fulfillment of clear legal and historic obligations, those federal dollars should not be subject to an inappropriate, grant-based mentality that does not properly reflect our diplomatic relationship. USET SPF notes that federal funding directed to foreign aid and other federal programs are not subject to the same scrutiny. Grant funding fails to reflect the unique nature of the federal trust obligation and Tribal Nations’ sovereignty by treating Tribal Nations as non-profits rather than governments. We reiterate the need for the federal government to treat and respect Tribal Nations as sovereigns as it delivers upon the fiduciary trust obligation, as opposed to grantees.

Full Funding for Federal Fiduciary Obligations

The chronic underfunding of federal Indian programs continues to have disastrous impacts upon Tribal governments and Native peoples. Native peoples experience some of the greatest disparities among all populations in this country—including those in health, economic status, education, and housing. Indeed, in December 2018, the U.S. Commission on Civil Rights issued the “Broken Promises” Report, which found deep failures in the delivery of federal fiduciary trust and treaty obligations. The Commission concluded that the funding of the federal trust responsibility and obligations remains “grossly inadequate” and a “barely perceptible and decreasing percentage of agency budgets.”

Above all, the COVID-19 crisis is highlighting the urgent need to provide full and guaranteed federal funding to Tribal Nations in fulfillment of the trust obligation. While we unequivocally support budget stabilization mechanisms, such as Advance Appropriations, in the long-term, USET SPF is calling for a comprehensive reexamination of federal funding delivered to Indian Country across the federal government. Because of our history and unique relationship with the United States, the trust obligation of the federal government to Native peoples, as reflected in the federal budget, is fundamentally different from ordinary discretionary spending and should be considered mandatory in nature. Payments on debt to Indian Country should not be vulnerable to year to year “discretionary” decisions by appropriators. Recently, some in Congress, as well as the Biden Administration, have called for mandatory funding for specific agencies serving Indian Country. USET SPF strongly supports this proposal, which is more consistent with the federal trust obligation, and urges that this be realized via an entirely new budget component—one that contains all of the funding dedicated to Indian Country. Not only would this streamline access to these dollars, this mechanism would reflect true prioritization of and reverence for America’s trust obligation to and special relationship with Tribal Nations. While some will quickly dismiss this as unrealistic and untenable, when compared against the value of the land and natural resources the United States gained as part of the exchange, both voluntarily and involuntarily, it becomes evident that it is really only a matter of will and desire.

Marshall Plan for Indian Country—Rebuild and Restore Tribal Infrastructure

For generations, the federal government—despite abiding trust and treaty obligations—has substantially under-invested in Indian Country’s infrastructure. While the United States faces crumbling infrastructure nationally, there are many in Indian Country who lack even basic infrastructure, such as running water and passable roads. Now, the nation and world are witnessing the deadly consequences of this neglect, as COVID-19 spreads through Tribal communities that are unable to implement such simple public health measures as frequent hand washing. The United States must commit to supporting the rebuilding of the sovereign Tribal Nations that exist within its domestic borders. Much like the U.S. investment in the

rebuilding European nations following World War II via the Marshall Plan, the legislative and executive branches should commit to the same level of responsibility to assisting in the rebuilding of Tribal Nations, as our current circumstances are, in large part, directly attributable to the shameful acts and policies of the United States. In the same way the Marshall Plan acknowledged America's debt to European sovereigns and was utilized to strengthen our relationships and security abroad, the United States should make this strategic investment domestically. Strong Tribal Nations will result in a strengthened United States. At the same time, any infrastructure build-out, in Indian Country and beyond, must not occur at the expense of Tribal consultation, sovereignty, sacred sites, or public health.

Address Climate Change with Tribal Nations at the Table

Because of where we are located, our members are facing an increasing number of climate change-related events, including heavy precipitation leading to subsequent flooding, erosion, and decreases in water quality. In addition, Tribal Nations located in coastal areas, including many USET SPF member Tribal Nations, are most at risk to impacts from sea level rise. In fulfillment of the trust obligation, the federal government has an inherent responsibility to ensure the protection of the environmental and cultural resources that support the health and wellness of Tribal communities, as well as to support Tribal sovereignty and self-determination. Therefore, it is critical that Tribal Nations have access to the necessary resources to address the effects of climate change within our communities. In addition, Tribal Nations must be included as full partners in broader plans, dialogue, and legislation in addressing the climate crisis, especially with regard to establishing policies supporting economic development with renewable energy.

Conclusion

USET SPF calls upon SCIA and the 117th Congress to join us in working toward a legacy of change for Tribal Nations, Native people, and the sacred trust relationship. The COVID-19 pandemic has underscored the urgent need for radical transformation in the recognition of our governmental status and the delivery of federal obligations our people. We can no longer accept the status quo of incremental change that continues to feed a broken system. The federal government must enact policies that uphold our status as sovereign governments, our right to self-determination and self-governance, and honor the federal trust obligation in full. We look forward to partnering with this Committee in an effort to advance these policies in the coming months and years.

PREPARED STATEMENT OF ROBIN PUANANI DANNER, CHAIRWOMAN, SOVEREIGN
COUNCIL OF HAWAIIAN HOMESTEAD ASSOCIATIONS

Chairman Schatz, Ranking Member Murkowski, Members of the Committee,
Mahalo for the opportunity to offer priorities as described by your Committee hearing purpose of February 24, 2021.

For the hearing record, my name is Robin Puanani Danner, a native Hawaiian with lived experiences among American Indians, Alaska Natives and of course, here in my homeland of Hawaii. My background is in banking and finance, business and community development, almost exclusively on reservations and trust lands.

Today, I submit testimony in my capacity as the elected chairwoman of the Sovereign Council of Hawaiian Homestead Associations (SCHHA), serving a second term from 2019–2023. SCHHA is 34 years old this year, a federally defined Hawaiian Homestead Association under 43 CFR Part 47 & 48, and as a coalition of other selfgoverning homestead associations, SCHHA is most similar to the *National Congress of American Indians* and the *Alaska Federation of Natives*. SCHHA is governed by a constitution wholly dedicated to 203,000 acres of trust lands established by the U.S. Congress in 1920, during the same policy era of other Indian Allotment Acts.

Homestead Associations also known as Homestead Beneficiary Associations (HBA's) on our trust lands are defined and codified in federal regulations as self-governing, with a transparent registration process with the Secretary of Interior. We mahalo tribal leaders and Indian Country for the support during the federal rule-making process, to ensure that our native people, most impacted and most knowledgeable about our land trust, have a firm seat at the table with our federal government as it relates to the Hawaiian Homes Commission Act of 1920 (HHCA).

As native people, and due to the geographic distance and isolation of our trust lands, the federal government delegated day-to-day administration of our lands, to first the Territory of Hawaii, and then in 1959 at Statehood, to the State of Hawaii government. Our equivalent of the Bureau of Indian Affairs within the DoI, is the

Office of Native Hawaiian Relations (ONHR). While this arrangement with a State government has added additional challenges to the goals of native and homestead association self-determination, and efficient management of our lands, there are absolute solutions that we will offer to further advance the federal promise in 1920 through the HHCA, 100 years ago this year.

My testimony is organized to address the hearing topic and focus in 2 priority areas for SCIA consideration over the next 2 years with a particular focus on challenges and solutions of Native American trust lands, including ours known as Hawaiian Home Lands—access to capital investment priorities and self-determination & capacity priorities.

I. Access to Capital Investment Priorities

SCHHA offers 6 relevant areas to increase access to capital, providing outstanding returns on the federal trust relationship with native Hawaiians.

1. Enactment of the INVEST Act

New Market Tax Credit programming managed by the U.S. Treasury CDFI Fund, is an incredible source of capital in developing economic prosperity in underserved areas of the country. NMTC is a successful and proven public private sector partnership with an opportunity to invest in the capacity of tribes and tribal/native led organizations to further increase the deployment in culturally relevant ways on trust lands across the country.

Recommendation: The INVEST Act drafted in 2019 and 2020 is truly an excellent piece of legislation that establishes a 10 percent set-aside of NMTC for Native and Tribal CDFIs and CDE's. We urge the committee to bring the INVEST Act to the forefront for enactment over the next 2 years.

2. National Intermediary Sole Source Funding for Capacity Building

Annually, federal funds and HUD Section 4 capacity building program, are sole sourced to four specific national intermediary nonprofits—NeighborWorks, Enterprise, LISC and Habitat for Humanity. These organizations have worked across the country delivering powerful resources and technical support to underserved communities in the areas of affordable housing and economic development.

However, our trust land areas, whether allotment lands or reservation lands across the country have struggled to be included at adequate levels. Engagement with any of the 4 intermediaries is responsible for countless communities of color and underserved communities to build strong sustainable community development nonprofits addressing affordable housing and job creation on the ground.

Recommendation: To ensure that the oldest citizens of our country and the trust lands established by our federal government are included in a greater way, we recommend a focus by members of the SCIA to advance increased funding levels for the intermediaries, with a 10 percent set-aside directing resources in a systematic and consistent way to trust land areas and organizations.

3. Reauthorization of NAHASDA

Our Hawaiian Home Lands are a provision of NAHASDA, dedicated to the unique federal land trust status under the HHCA. Mahalo to SCIA for shepherding the enactment of NAHASDA for American Indians and Alaska Natives in 1996 and for native Hawaiians in 2002. Our priorities for NAHASDA are to improve and ensure greater reach and community development for our trust lands, the 10,000 homestead allottees or lessees (homes, farms and ranches), and the 28,000 on the waitlist.

Recommendations: State government has struggled with the ability to spend down NAHASDA dollars, that at one time for 15 years, were funded at \$10M to \$13M annually. Over the last 5 years, due to a severe backlog by State government, the appropriation was reduced to \$2M annually, and indeed during a time where homelessness and lack of housing inventory is at crisis levels, especially for our native people. The solutions we offer are as follows:

a. Sub Granting

Reauthorize NAHASDA to require that the annual allocation to State government is sub granted to eligible and defined Homestead Beneficiary Associations or their designated housing authorities or nonprofit community development corporations, very much in line with the “self-determination” intent in the name of NAHASDA. And in line with our American Indian and Alaska Native counterparts, where allocations flow to tribes or their tribally designated housing entities. Our self-governing homestead associations have been made to be invisible, with State government indifference to the essence of NAHASDA as it was intended by the Congress.

This reauthorization improvement would better implement the intent of NAHASDA, build capacity in our people, our organizations, and resolve the difficul-

ties of State government. Moreover, this revision would position native Hawaiians to leverage NAHASDA dollars like tribally designated housing entities are doing in the private and philanthropic worlds, whereas it is near impossible to convince any social or economic investor to issue leveraged capital to a State government.

We believe it is time for native Hawaiians to join the rest of Indian Country by replacing the NAHASDA recipient of State government to our Homestead Beneficiary Associations. It would be untenable for Indian people to have their NAHASDA allocations directed to the State of New Mexico or the State of Montana, and so on. Our beloved Senator Inouye and Senator Akaka envisioned a time when native Hawaiian homestead associations, like our tribal counterparts, have the capacity to manage and deploy our NAHASDA dollars. We believe that time has come, but offer the sub granting revision as a first step toward this ultimate goal.

b. HUD 184a On or Near

Reauthorize NAHASDA to end, a perhaps unintended consequence of excluding the words “on or near” trust lands for the HUD 184a mortgage program. Under the Indian NAHASDA, those words are explicit, and enable American Indians and Alaska Natives to access mobility, currently denied native Hawaiians. Mobility is indeed a key component to economic prosperity, for example being able to take jobs in urban areas or providing housing options to the more than 28,000 on the waitlist for a trust land allotment, off homesteads.

This small change will also contribute to the economic recovery of the State of Hawaii, particularly for lenders, realtors, builders and other homeownership related businesses. We request that under the section for our Hawaiian Home Lands HUD 184a program, the words “on or near” be added to this section of our NAHASDA law.

c. Annual Funding. Reauthorize NAHASDA with a return to the original appropriation levels, of at least \$13M annually, but we sincerely request a more adequate level of at least \$20M-\$30M to address the reality that the average age of an individual on the 28,000-person wait list, is 58 years of age. As a country, we simply must push for the fulfillment of a 100-year-old promise under the HHCA. Too many of our elders have died waiting.

Increasing the annual investment of NAHASDA will engage the economic recovery of our people and the overall State of Hawaii by funding infrastructure and thousands of housing units, including multi-family rental units.

d. Technical Assistance to Guard Against Redlining Like Practices. Reauthorize NAHASDA to provide \$500K annually directed at an HBA designated nonprofit housing authority controlled by HHCA eligible Hawaiians and accountable to our self-governing homestead associations, to deliver technical assistance to trust land borrowers and homeowners to access common loan loss mitigations and financial literacy, to educate and assist lenders and servicers to prevent foreclosure, and to directly engage in assisting waitlist Hawaiians to access relevant building industry professions for new construction.

4. *Native Farmers and Ranchers*

One of the areas of greatest revelation from the 2020 Pandemic, is the severe food insecurity of our island State in Hawaii. There are more than 1,000 homestead lessees/allotees of agricultural and pastoral lots on our HHCA trust lands, and we find that the excellent programs at the USDA Farm Service Agency can help address our food insecurity. For example, the FSA existing programs have some of the lowest cost capital and outstanding 40-year amortized repayment terms, wherein our trust land families are under-represented.

Recommendation: We recommend consideration of requiring USDA and FSA to designate a deployment goal for FSA loans to be issued to Native farmers and ranchers on trust lands anywhere in the country including our trust lands in Hawaii. Similar to how SBA designates internal goals to deploy section 8(a) business contracts.

We would further recommend consideration of SCIA to create strong pathways for USDA 502 mortgage loans for rural low to moderate income families on trust lands and water/waste water programming to also have a priority of trust lands across the country.

5. *Infrastructure & Roads on Trust Lands*

Our island state, where our trust lands are located on 6 islands in 4 counties, transportation and energy are two of the most significant costs of Native organizations, businesses and families. Recommendation: We recommend the deliberation of SCIA in addressing the inclusion of our trust lands in road development, upgrades

and maintenance programs at the Department of Transportation similar to programs for other trust land areas around the country. 6. Trust Land Safe Communities. One of the areas important to Homestead Associations across our land trust, is empowering and implementing homestead community-based neighborhood watch programming, not just to deter crime, but also to be a consistent presence for families with troubled youth or young adults. The most successful neighborhood watch programs today on our trust lands, are organized and led by our kupuna (elders), and religious leaders, however only a handful exist, and are greatly needed across the pae aina.

Recommendation: We recommend the deliberation of SCIA in including our trust land areas and federally defined Homestead Associations in programming at the Department of Justice, Office of Tribal Justice, to access technical assistance and support of homestead community-based solutions.

II. Self Determination & Capacity Priorities

Honorable Committee members, there is a body of research from prestigious organizations, including the Harvard Project on Indian Economic Development, that confirms the policy era of self-determination, robustly initiated over several Presidential administrations. With the leadership and plenary powers of Congress, this policy era remains largely in place making great strides in addressing the needs of Alaska Natives, American Indians and Native Hawaiians whenever it has been applied.

The prior policy eras of assimilation and termination, where paternalistic approaches in Washington DC and various State governments are a dark and difficult history. For us, as native Hawaiians, under 43 CFR Part 47 and 48, it clearly states that the Congress recognizes 3 parties to successfully implement the HHCA—the federal government, state government and native Hawaiians, which further codified a definition of representative Homestead Associations. As a native people, with a federally established land trust in our homeland, we know that greater efforts to embrace self-determination of our people will position us to be very much a part of the economic recovery of Hawaii, but also the prosperity of the tens of thousands on the land and those awaiting a homestead land award.

SCHHA offers 5 priorities to advance the long-held solution of all native peoples, the policy of selfdetermination:

1. *Self Determination of Homestead Associations*

HBA's, similar to tribal organizations and tribal consortiums, we have outstanding elected homestead leaders that include farmers and ranchers like Chairman Mike Hodson of Hawaii Island or Kupuna Kammy Purdy of Molokai. Others include experienced first responders like SCHHA Councilman Richard Soo of Oahu, and housing advocates like the SCHHA administrator, Faisha Solomon of Kauai.

Recommendations: A commitment by the SCIA to engage with federally defined Homestead Associations in its committee work, in maximizing opportunities in legislative initiatives of the committee to include the federally defined language of our Homestead Associations, and to include required consultation language with these HBAs for federal agencies to adopt as a best practice.

2. *Act 302*

This amendment to the HHCA adopted by the State of Hawaii Legislature more than a decade ago, requires the consent of Congress. Enactment would in effect, bring to bear for native Hawaiians and our HBAs, the success enjoyed in Indian Country commonly known as “638 contracting”.

Recommendation: We urge the committee to take up consent of Act 302.

3. *Capacity Building Capital*

Practically zero resource investment has been made in the capacity building work of Homestead Associations by the federal government to advance the self-determination tenets of the HHCA or NAHASDA.

Recommendation: We request the committee to support the establishment and funding for a Homestead Association Self Determination Capacity Building program at the DOI, Office of Native Hawaiian Relations with an appropriation of \$5M annually to issue equity funds to HBAs to continue organizational capacity building efforts as well as seed funding for projects led by HBAs on trust lands.

4. *Federal Regulations for the HHCA*

The HHCA was enacted in 1920 by the U.S. Congress. The congressional champion at that time, was the Hawaii Territorial delegate, Prince Jonah Kūhiō Kalanianaʻole. A year after passage, our native Hawaiian champion that mirrored our land trust law after similar federal Indian policies of that era, passed away in

1922. As a result, the next step, federal rulemaking never occurred, creating an environment of instability in how our land trust has been administered by administration to administration both at the federal level and state government level.

Mahalo Chairman Schatz for your work in 2013–2016 to establish the very first two rules by DOI and DOJ on land transfers and amendments to the HHCA. These rules have improved the process to engage native Hawaiians and now federally defined HBA's. We believe both Representative Jonah Kuhio Kalaniana'ole (R-Territory of Hawai'i) and Senator Akaka (D-Hawai'i), avid advocates of our HHCA land trust law would agree that federal rule making provides common sense stability for generations of Hawaiians to fulfill the promise of the HHCA.

Recommendation. We request the inclusion in an SCIA committee report, calling for the continued promulgation of federal regulations on our 100-year-old HHCA land trust law. Our request for rulemaking is to begin with HHCA section 204, 207, 213/214 and 219 to create stability and transparent processes for native Hawaiians that we have largely lived without for too long.

5. Act 80

In 2017, the State of Hawaii legislature enacted an amendment to lower the Blood Quantum of our successors (family members) on trust lands, from 1/4 to 1/32, which requires Congressional consent.

Recommendation. We urge the committee to take up consent of Act 80 to provide familial stability for generations.

Mahalo for the opportunity to answer the call from the SCIA committee on relevant native priorities, especially from Chairman Schatz, Hawaii's Senator. Malama Pono.

