

**National Congress of
American Indians**

Policy Update



**2020
Executive Council
Winter Session**

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POLICY OVERVIEW

There have been several significant developments since NCAI's Annual Convention in October. The first session of the 116th Congress closed with the enactment of spending legislation that funds the federal government through the end of FY 2020, the acknowledgment of the Little Shell Tribe of Chippewa Indians, and the reauthorization of the Esther Martinez Native American Languages Preservation Act. Although passage of these bills was welcome news, in 2019, Indian Country witnessed the longest partial federal government shutdown in U.S. history and the passage of several short-term continuing resolutions to avert another budget impasse. Uncertainty has become a hallmark of the federal budget process, which reinforces the need for Congress to authorize advance appropriations for federal programs serving Indian Country. NCAI will continue to work with tribal nations and partners to secure passage of legislation that will protect the Indian Health Service and Bureau of Indian Affairs from a broken federal budget process.

Although the window for passing legislation will be shorter because it is an election year, there are many tribal priorities for Congress to accomplish before the end of the second session. The Special Diabetes Program for Indians was included in the end of the year spending package, but its authorization was only extended through May 22, 2020. Congress must reauthorize and increase funding for this vital program before its authorization expires. Legislation reauthorizing the Violence Against Women Act (VAWA) passed the House in April 2019, and has stalled in the Senate. Several bills addressing the crisis of Missing and Murdered Indian Women (MMIW), including Savanna's Act and the Not Invisible Act, are poised for passage. NCAI will continue to advocate for passage of VAWA and other legislation that supports tribal sovereign rights to protect tribal citizens and communities. NCAI will also be working closely with partners across Indian Country to again secure direct access to funding from the Crime Victims Fund for tribal nations; enact legislation that will promote tribal economic development, alleviate homelessness among Native veterans, and improve the Self-Governance program at the Department of the Interior; and secure inclusion of tribal priorities in the next surface transportation reauthorization.

In the Executive Branch, there have been several developments that have tribal impacts, including a Rural Tribal Priority Window for licensing 2.5 GHz spectrum to bring connectivity to tribal communities, two initiatives to address the crisis of MMIW, and a proposed rule amending the National Environmental Policy Act. NCAI and tribal nations also continue to engage with the Administration to improve administration of the tribal VOCA set-aside funds and to secure an amendment to the memorandum of agreement that implements the Indian Employment, Training and Related Services Consolidation Act of 2017. Additionally, the Administration nominated Rear Admiral Michael Weahkee to be the Director of the Indian Health Service in October 2019.

The federal government will be conducting the decennial census this year, which will have significant tribal implications related to political representation, the fair distribution of federal funding, and population data used for tribal governance decisions. NCAI is working with tribal nations and partners to ensure the federal government conducts a complete and accurate count of Indian Country in 2020. Likewise, the 2020 elections will have broad implications for tribal policy. Through our Native Vote initiative, NCAI is working with tribal nations and stakeholders to address barriers to voting for Native voters and to ensure all eligible Native voters are registered to vote and able to participate.

At NCAI, we are committed to advocating on behalf of Indian Country to ensure tribal voices are heard at the national level, and we look forward to continuing to serve tribal nations in the new decade.

BUDGET AND APPROPRIATIONS

Like all other governments, tribal nations strive to build strong economies and ensure the health and wellbeing of their citizens and all those who reside in their communities. Tribal nations provide a range of governmental services that include education, law enforcement, judicial systems, healthcare, environmental protection, natural resource management, and basic infrastructure such as housing, roads, bridges, sewers, public buildings, telecommunications, broadband and electrical services, and solid waste treatment and disposal. Tribal nations are assuming ever greater levels of governmental responsibility to meet their citizens' needs in culturally appropriate ways, but receive inadequate federal funding for roads, schools, police, and other public services.

NCAI continues to call on Congress and the Administration to uphold the federal government's solemn responsibilities to Indian Country by: (1) protecting tribal nations from uncertainty in the federal budget process by authorizing advance appropriations for Indian Country; and (2) enacting appropriations bills with spending levels that fulfill the treaty and trust obligations. The sections below provide an update on legislative and administrative actions related to budget and appropriations.

Advance Appropriations for Budget Certainty and Security: Tribal nations face significant challenges due to uncertainty in the federal budget process. Although government shutdowns are prominent examples of the negative effects of breakdowns in the federal budget process, tribal nations also must regularly contend with uncertainty when planning and delivering services to their citizens because of short-term continuing resolutions. For instance, since FY 1998, there has been only one year (FY 2006) in which the Interior-Environment appropriations bill has been enacted before the beginning of the new fiscal year. As a result, healthcare provided by the Indian Health Service (IHS) and services provided by the Bureau of Indian Affairs (BIA) are regularly impacted. These impacts are made worse by the fact that Indian Country programs already face significant underfunding.

Like annual appropriations, advance appropriations are decisions Congress makes about how much funding to provide for programs in a given fiscal year. However, advance appropriations become available for obligation one or more fiscal years after the budget year covered by the appropriations act. For example, the FY 2021 Interior-Environment appropriations bill would set IHS and BIA spending levels for FY 2022. As such, if Congress reached an impasse during FY 2022 appropriations discussions, IHS and BIA would be protected because their FY 2022 funding levels would have already been set during the previous appropriations cycle.

NCAI testified on budget issues at several hearings during 2019 and emphasized that federal budget uncertainty has significant impacts across Indian Country and that Congress must pass legislation authorizing advance appropriations to protect tribal communities from a broken federal budget process.

Legislative Update

Full-Year FY 2020 Funding Enacted: On December 20, 2019, the President signed into law two FY 2020 spending packages, which fund the federal government through September 30, 2020 (the federal government's fiscal year is measured from October 1 to September 30 of the following calendar year). The two funding packages are a bipartisan, bicameral agreement representing approximately \$1.4 trillion in total federal spending.

For the first time in an appropriations bill, the Bureau of Indian Education (BIE) has its own budget distinct from the BIA. When combined, BIA and BIE received a 4.6 percent increase over FY 2019 funding levels. IHS received a 4.2 percent increase over FY 2019 funding levels; however, about half of this increase is to cover Section 105(l) lease agreements with the Department of Health and Human Services (HHS). The bill also includes a five month extension of the Special Diabetes Program for Indians (SDPI), and extensions for several Indian Country tax incentives.

On December 20, 2019, NCAI released an analysis of FY 2020 funding for tribal programs. The following tables reflect funding levels for IHS and BIA/BIE tribal programs.

(Dollars in Thousands)	FY 2019 Enacted	FY 2020 Enacted	FY 2020 vs FY 2019	% 2020 vs 2019
IHS Total	5,804,223	6,047,094	+242,871	+4.2%
BIA/BIE Total	3,081,132	3,223,458	+142,326	+4.6%
BIA Total	3,081,132	2,032,124	+1,049,008	*
BIE Total	0	1,191,334	+1,191,334	*

*FY 2020 is the first year for BIE to have its own budget separate from BIA. Additionally, BIE has its own dedicated construction funding lines. Due to these changes, comparisons to prior year funding result in a comparison value that would indicate large reductions in BIA funding that are actually the result of transfers of existing funds from BIA to BIE.

Indian Health Service (Dollars in Thousands)	FY 2019 Enacted	FY 2020 Enacted	FY 2020 vs FY 2019	% 2020 vs 2019
Clinical Services	3,739,961	3,934,831	+198,870	+5.2%
Preventive Health	174,742	177,567	+2,825	+1.6%
Other services	188,487	202,807	+14,320	+7.6%
Total, Indian Health Services	4,103,190	4,315,205	+212,015	+5.2%
Contract Support Costs	822,227	820,000*	-227	-0.3%
Indian Health Facilities	878,606	911,889	+33,083	+3.8%
Total, Indian Health Service	5,804,223	6,047,094	+242,871	+4.2%

*This amount is an estimate of Contract Support Costs (CSCs) need. CSCs are appropriated at such sums as may be necessary, meaning they will be fully funded.

Bureau of Indian Affairs (Dollars in Thousands)	FY 2019 Enacted	FY 2020 Enacted	FY 2020 vs FY 2019	% 2020 vs 2019
Tribal Government	320,973	334,179	+13,206	+4.1%
Human Services	161,416	155,685	-5,731	-3.6%
Trust - Natural Resources Mgmt.	206,870	226,819	+19,949	+9.6%
Trust - Real Estate Services	130,680	138,097	+7,417	+5.7%
Public Safety and Justice	411,517	434,326	+22,809	+5.5%
Community and Economic Dev.	47,579	52,529	+4,950	+10.4%
Executive Dir. & Admin. Services	230,985	235,475	+4,490	+1.9%

Bureau of Indian Affairs (Cont.) (Dollars in Thousands)	FY 2019 Enacted	FY 2020 Enacted	FY 2020 vs FY 2019	% 2020 vs 2019
(Amounts available until expended, account-wide)	55,174	0	*	*
Total Operation of Indian Programs	2,414,577	1,577,110	-837,467	-34.7%
Contract Support Costs	247,000	271,000	+24,000	+9.7%
Construction	358,719	126,591	-232,128	-64.7%
Settlements and Misc. Payments	50,057	45,644	-4,413	-8.8%
Total Bureau of Indian Affairs	3,081,132	2,032,124	-1,049,008**	-34.0%**

*These amounts are carryover funds. Congress does not appropriate to this category.

**See comment above regarding BIE funds.

Bureau of Indian Education (Dollars in Thousands)	FY 2019 Enacted	FY 2020 Enacted	FY 2020 vs FY 2019	% 2020 vs 2019
Elem., Secondary Prog. (Fwd Funded)	582,580	596,893	+14,313	+2.5%
Post Secondary Prog. (Fwd Funded)	100,992	105,944	+4,952	+4.9%
Elementary & Sec. Prog.	143,972	156,638	+12,666	+8.8%
Post-secondary Programs	41,658	40,995	-663	-1.6%
Education Management	35,355	42,607	+7,252	+20.5%
Total Operation of Indian Education Prog.	0	943,077	+943,077	*
Education Construction	0	248,257	+248,257	*
Total Bureau of Indian Education	0	1,191,334	+1,191,334	*

*See comment above regarding BIE.

Bipartisan Budget Act of 2019 – H.R. 3877 (P.L. 116-37): On July 23, 2019, Representative John Yarmuth (D-KY) introduced H.R. 3877, the Bipartisan Budget Act of 2019. H.R. 3877 passed the House on July 25, 2019, and passed the Senate on August 1, 2019. The next day, the President signed H.R. 3877, which became Public Law 116-37. The Bipartisan Budget Act of 2019 is a two-year budget deal that eliminated \$126 million in spending cuts and suspends the debt ceiling through July 2021. The federal government debt ceiling is the limit on the amount of debt the federal government can accrue. The Bipartisan Budget Act of 2019 increases federal government spending by \$320 billion, as compared to the budget caps that were in effect for FY 2020 prior to the budget deal's passage.

Indian Programs Advance Appropriations Act – S. 229 & H.R. 1128: On January 25, 2019, Senator Tom Udall (D-NM) introduced S. 229, the Indian Programs Advance Appropriations Act. On February 8, 2019, Representative Betty McCollum (D-MN) introduced a companion bill, H.R. 1128. These bills would provide advance appropriations authority for certain accounts at IHS and the BIA. S. 229 was referred to the Senate Committee on the Budget. H.R. 1128 was referred to the House Committee on the Budget; the Committee on Natural Resources; and the Committee on Energy and Commerce.

On September 25, 2019, NCAI 1st Vice President, Dr. Aaron Payment, Chairperson of the Sault Sainte Marie Tribe of Chippewa Indians, provided testimony to the House Natural Resources Committee, Subcommittee for Indigenous Peoples of the United States on this legislation. Following the 2019 government shutdown, NCAI adopted Resolution #ECWS-19-001, “Support for Advance Appropriations for Bureau of Indian Affairs and Indian Health Service,” during its 2019 Executive Council Winter Session. This resolution expands on NCAI Resolution ANC-14-007, “Advance Appropriations for the Indian Health Service,” which calls for advance appropriations for IHS.

Indian Health Service Advance Appropriations Act of 2019 – S. 2541 & H.R. 1135: On February 8, 2019, Representative Don Young (R-AK) introduced H.R. 1135, the Indian Health Service Advance Appropriations Act of 2019. H.R. 1135 would provide advance appropriations for IHS and Indian Health Facilities accounts. On September 24, 2019, Senator Lisa Murkowski (R-AK) introduced a companion bill, S. 2541. S. 2541 would authorize advance appropriations for the same accounts and include contract support costs. H.R. 1135 was referred to the House Committee on the Budget; Committee on Natural Resources; and Committee on Energy and Commerce. S. 2541 was referred to the Senate Committee on Indian Affairs. On September 25, 2019, the House Committee on Natural Resources, Subcommittee for Indigenous Peoples of the United States held a hearing on H.R. 1135. NCAI has standing resolutions supporting this legislation, Resolution #ECWS-19-001, “Support for Advance Appropriations for the Bureau of Indian Affairs and Indian Health Service,” and Resolution #ANC-14-007, “Advance Appropriations for the Indian Health Service.”

Pay Our Doctors Act of 2019 – H.R. 195: On January 3, 2019, Congressman Markwayne Mullin (R-OK) introduced the Pay Our Doctors Act of 2019. H.R. 195 would provide funding at the FY 2018 level for IHS in the absence of a continuing resolution from Congress funding the government. This would ensure IHS’s ability to provide care, pay contracts for Self-Governance tribal nations, offer technical assistance, and conduct normal activities for the duration of a shutdown. H.R. 195 was referred to the House Committee on Appropriations.

NCAI Provides Testimony on Immediate Solutions to the Federal Funding Shortfall Cited in the Broken Promises Report: On November 19, 2019, NCAI President Fawn Sharp, President of the Quinault Indian Nation, provided testimony to the House Natural Resources Committee, Subcommittee for Indigenous Peoples of the United States. Her testimony included recommendations on how the federal government can immediately begin addressing the findings of the U.S. Commission on Civil Rights’ *Broken Promises* report. President Sharp’s recommendations for immediate action include strong and steady funding for tribal programs, elimination of budget uncertainty through advance appropriations for BIA and IHS, permanent reauthorization of SDPI, reauthorization of the Native American Housing Assistance and Self-Determination Act (NAHASDA), and reauthorization of the Violence Against Women Act (VAWA). President Sharp also testified that “it is imperative that federal policy treats tribal nations equitably when compared with other governments by providing the same access to federal resources, affirming the same authority to prosecute crimes and regulate commerce, and ensuring the same availability of federal incentives to spur investment and economic growth. The United States also must ensure that tribal nations are able to protect their communities from threats like climate change and manage their own resources without external interference and undue burdens.”

Administrative Update

Tribal/Interior Budget Council to meet March 9-13, 2020 in Washington, D.C. for TIBC FY 2022 Tribal Budget Submission: The Tribal/Interior Budget Council (TIBC) was created to provide a forum and process, consistent with Section 450(a)(1) of the Indian Self-Determination and Education Assistance Act (ISDEAA), Executive Order 13175, and the Department of the Interior's (DOI's) government to government policy. As part of its roles and responsibilities, TIBC tribal representatives develop an annual budget submission to DOI based on funding scenario parameters provided by DOI federal partners. On March 9-13, 2020, TIBC will be meeting at the Washington Plaza in Washington, D.C. to develop its FY 2022 tribal budget submission to DOI. DOI uses this budget submission, along with the results of its tribal program priority ranking tool, as guidance during formulation of the BIA's annual budget request known as the Greenbook. Deliberations and review of the TIBC tribal budget submission are open to voting members and non-voting attendees during the meeting; however, the final decision is made by official action of the TIBC tribal representatives with a quorum present.

President's FY 2021 Budget Request to Congress: As of the date of this publication, the President's FY 2021 Budget Request to Congress is expected to be released on February 10, 2020. Each year immediately following the President's Budget Request, NCAI completes an analysis of the President's Budget Request and sends it to its members. The President's Budget Request is significant because it triggers two key activities within the federal government that are of interest to tribal nations and tribal organizations. First, submission of the President's Budget Request to Congress is the traditional signal of the beginning of Congress' role in the federal budget and appropriations process. Appropriations Committees in both chambers will begin to hold hearings and receive testimony as each subcommittee drafts its FY 2021 appropriations bill. During this time, tribal nations can share their funding priorities with their members of Congress and submit written testimony to the appropriations committees. Second, publication of the President's FY 2021 Budget Request means that budget offices throughout government can begin their preparation for the FY 2022 President's Budget Request. Early and frequent engagement in cyclical budget formulation processes at key federal departments can maximize tribal advocacy efforts.

DOI and HHS Must Consult Tribal Nations on Section 105(l) Lease Agreement Costs under ISDEAA: ISDEAA, as amended, (P.L. 93-638) was enacted to enhance tribal self-determination and self-governance. As a result of this highly effective law, many tribal nations now administer programs that were previously administered by the federal government, which has resulted in the need for tribal facilities to house these programs. Section 105(l) of ISDEAA provides that the Secretary of the Interior and the Secretary of Health and Human Services (HHS) shall enter into leases with an Indian tribe or tribal organization for the administration and delivery of services under ISDEAA. Under Section 105(l), the Secretary of the Interior or HHS must compensate each Indian tribe or tribal organization that enters into a 105(l) lease. Compensation may include rent, depreciation based on the useful life of the facility, principal and interest paid or accrued, operation and maintenance expenses, and such other reasonable expenses that the Secretary determines, by regulation, to be allowable. The *Maniilaq Ass 'n v. Burwell* decisions, in both 2014 (72 F. Supp. 3d 227 (D.D.C. 2014)) and 2016 (70 F. Supp. 3d 243 (D.D.C. 2016)), upheld this federal responsibility and tribal nations are now entering into leases at both DOI and HHS to compensate for use of allowable facilities.

In the past several appropriations cycles, appropriators have reaffirmed the mandatory nature of the funding. However, the inability to forecast the number of lease requests during a fiscal year has led to major shortfalls at IHS, which further results in the reprogramming of funding from other critical programs

and the need for appropriators to make up the shortfalls. This has resulted in large injections of much-needed funding for the 105(l) lease program, but ultimately at the expense of crucial funding in other areas.

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

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

Broken Promises Report: In December 2018, the U.S. Commission on Civil Rights released a report entitled, “*Broken Promises: Continuing Federal Funding Shortfall for Native Americans.*” The *Broken Promises* report was an update to a 2003 USCCR report entitled “*A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country.*” The *Broken Promises* report found that in the past 15 years, efforts undertaken by the federal government have resulted in only minor improvements across Indian Country. Additionally, the report noted that federal programs serving Indian Country continue to be underfunded and, in some ways, federal initiatives for Native Americans have gotten worse. The *Broken Promises* report provides a series of recommendations to make good on the federal government’s promises to Indian Country. A key recommendation in the report is that Congress should pass a spending package to address all unmet needs, focusing immediately on the most critical items like core infrastructure.

AGRICULTURE AND NUTRITION

Food production and access to nutrition are vital to sustaining American Indian and Alaska Native (AI/AN) communities. Based on data from the 2017 Census of Agriculture, at least 79,198 American Indian farms and ranches operating on more than 58.7 million acres of land across Indian Country are already engaged in some type of food and/or agricultural production. These farms and ranches sold an estimated \$3.5 billion of agricultural products, including more than \$1.4 billion of crops, and \$2.1 billion of livestock and poultry. U.S. Department of Agriculture (USDA) programs play an important role in Indian Country.

To support tribal nations' efforts to build and protect the food systems that have long sustained tribal citizens, communities, and cultures, NCAI established a Tribal Food Sovereignty Advancement Initiative (TFSAI) in 2019. In late February 2020, TFSAI will host an "Agriculture Policy and Food Sovereignty Symposium" on the nexus between food sovereignty and agriculture policies – and how the federal government can strengthen those policies to empower the food production efforts of tribal nations, organizations, and individual Native food producers. Cultivation, protection, and preservation of agricultural products and practices continue to be a priority for Indian Country.

The sections below provide an update on legislative and administrative actions that critically impact Indian Country within the agriculture and nutrition sectors, including implementation of the 2018 Farm Bill.

Legislative Update

Tribal Nutrition Improvement Act of 2019 – S. 1307 & H.R. 2494: On May 2, 2019, Senators Tom Udall (D-NM), Catherine Cortez Masto (D-NV), and Tina Smith (D-MN) introduced S. 1307, the Tribal Nutrition Improvement Act of 2019. This legislation would amend the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 to allow tribal nations to assume responsibility for administration of school breakfast programs, school lunch programs, child and adult care food programs, and summer food service programs for children in lieu of a state or nearby local education agency. A companion bill, H.R. 2494, was introduced the same day by Representatives Deb Haaland (D-NM) and eleven original co-sponsors. S. 1307 was referred to the Senate Committee on Agriculture, Nutrition and Forestry. H.R. 2494 was referred to the House Committee on Education and Labor.

Administrative Update

USDA Establishes Domestic Hemp Production Program: On October 31, 2019, the USDA, as directed by the 2018 Farm bill, released an interim final rule for the establishment of the U.S. Domestic Hemp Production Program (DHPP), a national regulatory framework for hemp production in the United States. The legalization of industrial hemp production presents an opportunity for tribal nations and producers to expand their economic footprint in terms of both production and value-added agriculture. The DHPP enables tribal nations and states to develop and establish federally approved hemp production plans with specific requirements, such as testing to ensure that crops do not qualify as marijuana under federal laws and regulations, disposal of plants, and laboratory and other requirements.

The USDA held its only tribal consultation on the Interim Final Rule on December 11, 2019. The session was heavily attended and provided significant input from Indian Country on hemp production. NCAI and the Native Farm Bill Coalition developed a draft comment letter template utilizing input received from Indian Country. As requested in the letter, the USDA comment period on the Interim Final Rule was

extended thirty days to January 29, 2020. In addition to the extension request, NCAI has also formally submitted comments on this rule.

Food Distribution Program on Indian Reservations (FDPIR): On December 10, 2019, the USDA requested comments to develop the additional criteria, as authorized in the 2018 Farm Bill, for a Self-Determination Demonstration Project related to the purchase of agricultural commodities for the Food Distribution Program on Indian Reservations (FDPIR). The objective of this Request for Information is to receive feedback to assist USDA in developing the process and criteria for determining if a FDPIR tribal organization is eligible for a Self-Determination Demonstration Project contract. The comment deadline is February 10, 2020.

That same day, USDA officials held a tribal consultation to discuss topics related to FDPIR. As part of the consultation, USDA provided an update and received feedback on FDPIR provisions included in the 2018 Farm Bill; held a discussion on USDA foods, including traditional foods and fresh produce included in the food package; provided technology updates impacting food ordering and management at the local tribal level; and gave a status update on the USDA-FNS regional realignment. USDA will host a tribal consultation at NCAI's 2020 Executive Council Winter Session (ECWS) meeting on February 13, 2020.

In addition to the Self-Determination Demonstration Project, on September 3, 2019, USDA released the FDPIR Revisions to the Administrative Match Requirement Final Rule. The final rule implemented 2018 Farm Bill requirements revising the minimum federal share of the FDPIR administrative costs from 75 percent to 80 percent and the administrative match waiver requirements to allow state agencies and Indian Tribal Organizations (ITOs) to qualify for a waiver if the required match would be a substantial burden. The final rule also limits the reduction of any FDPIR benefits or services to state agencies and ITOs that are granted a full or partial match waiver and allows for some federal funds to be used to meet the administrative match requirement.

USDA Supplemental Nutrition Assistance Program Requirements and Eligibility Revisions: On December 5, 2019, the USDA's Food and Nutrition Service (FNS) published a final rule that revises the conditions under which USDA would waive, when requested by states, the able-bodied adult without dependents (ABAWD) time limit in areas that have an unemployment rate of over 10 percent or a lack of sufficient jobs. The new rule makes six percent the minimum unemployment rate for a county to receive a waiver. The final rule includes Indian reservation areas and U.S. territories in the strict definition of waiver area. This means that though other individual jurisdictions (e.g., counties or county-equivalents within a larger Labor Market Area) are not allowable waiver areas, reservation areas and U.S. territories are allowable waiver areas, consistent with longstanding policy. This does not provide assurance for tribal citizens who live off reservation. NCAI has submitted comments in opposition to these rules as they will have far-reaching impacts on tribal communities.

In addition to ABAWD, on July 25, 2019, FNS published a proposed rule to revise SNAP categorical eligibility. The proposed rule aims to restrict SNAP enrollment by reviewing the income and assets of all Temporary Assistance for Needy Families (TANF) recipients and removes those that do not meet general SNAP eligibility parameters. NCAI, the National Indian Health Board, and the National Council of Urban Indian Health submitted comments in opposition to the proposed rule.

C E N S U S

The 2020 decennial Census is a powerful information source that will significantly impact political representation, federal policy, and funding over the next decade. It is a foundational tenet of American democracy, mandated in Article 1, Section 2 of the U.S. Constitution, and is central to our representative form of government. Census data plays a key role in the allocation of more than \$800 billion in federal funding. This includes funding for tribal schools, education programs, healthcare programs, housing programs, water and sewage projects, roads construction and maintenance, and economic development projects, which are distributed on the basis of data collected by the Census Bureau. Failure to fully enumerate the American Indian and Alaska Native (AI/AN) population could result in devastating consequences, including reductions in access to federal and state services and resources.

House Hearing on Hard-To-Count Communities: On January 9, 2020, NCAI CEO Kevin Allis testified at the U.S. House of Representatives Committee on Oversight and Reform hearing on “Reaching Hard-to-Count Communities in the 2020 Census.” The hearing focused on certain population groups that are at higher risk of being missed in the decennial Census and are considered “hard-to-count” (HTC). NCAI’s testimony urged Congress to exercise oversight over the Census Bureau during the 2020 Census to avoid another undercount of AI/AN people.

AI/ANs at Risk for Undercounts: AI/AN people, especially on reservations and in Alaska Native villages, have been historically underrepresented in the Census. In the 2010 Census, the Census Bureau estimates that AI/ANs living on reservations or in Native villages were undercounted by approximately 4.9 percent, more than double the undercount rate of the next closest population group. The net undercount for American Indians living on reservations was also very high in 1990, with an estimated 12.2 percent missed. The Census Bureau identifies twelve characteristics that are associated with census undercounts, including linguistic isolation, poverty, low educational attainment, lacking a telephone, unemployment, and others. AI/AN communities are a HTC community and about one in three Native people live in HTC census tracts. For example, in New Mexico, the percent of AI/AN people living in HTC tracts is 78.6 percent, with high percentages of HTC tracts found in the following other states: 68.1 percent in Arizona, 65.6 percent in Alaska, 52.4 percent in South Dakota, and 49.9 percent in Montana.

Critical Funding Impact: Indian Country cannot afford an undercount, as it could result in the loss and/or inefficient distribution of millions of dollars in federal funding that could improve the lives of tribal citizens. Many programs serving tribal nations are funded based entirely or in part on Census or Census-derived data, including the IHS, Indian Housing Block Grant Program, and the Native American Employment and Training Program, which use Census data for planning and implementation of programs.

Redistricting and Voter Representation Impact: 2020 Census data will be used for allocation of seats in the House of Representatives and will be used in political redistricting efforts on the state and local levels. AI/AN people deserve to have fair and accurate voting representation, especially since the Native vote has increasingly been a swing vote in several recent elections. An accurate count is also necessary to ensure that jurisdictions use census data to comply with the Voting Rights Act, such as making sure that AI/AN voters have access to language assistance when they cast their votes in an election.

Tribal Sovereignty Impact: Undercounts of the AI/AN population hamper the ability of tribal nations to provide for the needs of their citizens. Tribal nations use census data to understand their community needs,

for programmatic and resource decision-making, and to justify requests for grant funding and other resources.

Census Educational Concerns: The Census Bureau conducted testing through the Census Barriers, Attitudes, and Motivators Survey (CBAMS) to inform work on the 2020 Census Integrated Partnership and Communications Plan. While attitudes and the political climate may have changed since the 2010 CBAMS, the results of the last study are informative as baseline data to understand the critical need for effective education and outreach activities in 2020. Some relevant findings include the following:

- Concerns of privacy proved to be the most cited barrier with most ethnic groups, including AI/ANs, and participants agreed about “not feeling comfortable divulging personal information to an unknown enumerator” and “explicitly called for enumerators to come from their own ethnic group;”
- Native people reported that “trusted voices” are important in messaging about the importance of Census and participation in the survey;
- AI/AN participants expressed concern around filling out the form and cited the fear of repercussions based on ethnicity;
- Many participants voiced concerns regarding older generations and language translation, expressing that assistance was necessary or some, “may forgo the Census all together;” and
- Like the 2010 CBAMS results, AI/ANs still do not tend to consider it a “civic responsibility” to answer the Census, but answering the Census reflects pride in oneself.

Overall, AI/AN people expressed a heightened concern around confidentiality and privacy. The NCAI Policy Research Center conducted its own message testing in a series of focus groups in 2018, and the AI/AN participants noted the following challenges to participation in the 2020 Census: a general distrust of government, low awareness of the purpose of the Census, prior claims of benefits not being delivered, concerns over the accuracy of the data that would be collected, and literacy issues such as language accessibility. Participants also indicated the importance of trusted sources to help with the count in their communities. NCAI incorporated the results of the research into the Indian Country Counts initiative.

Census Bureau’s New Data Methodologies: In the 2020 Census, new methodologies for enumerating the U.S. population could further put HTC populations at risk. The 2020 Census began its in-person count in Alaska in January 2020 and will begin mailing information to households in March 2020 to encourage them to complete the census questionnaire online, by phone, or in person. The online questionnaire is a new option for the 2020 Census, and the Census Bureau planned its operations with the assumption that most households will complete the questionnaire online. The resources and staff dedicated to in person enumeration is far less than utilized in past decennial censuses. While some tribal nations in rural and remote communities have chosen to have an actual enumeration instead of the mail option, most AI/AN households in urban and rural areas are included in the plan to encourage taking the Census online, by mail, or by phone. This decision by the Census Bureau to focus efforts on online enumeration is a significant risk for a greater undercount of the AI/AN population since many communities and individual households do not have access to broadband or other internet coverage.

Differential Privacy and AI/AN Populations: The Census Bureau is required by law to protect the confidentiality of data collected from the decennial census. Technological advances have made previous privacy protection methods obsolete. To address this privacy threat, the Census Bureau will implement a privacy strategy called “Differential Privacy.” While this method protects confidentiality, it also alters

data, especially for small, rural, and remote populations. Depending on the level of privacy protection, some census data tables and products that were available in the past will not be made available to the public, including AI/AN summary tables, and data for small, rural, and remote tribal nations. This lack of access and potentially inaccurate data may sharply impact tribal nations, as federal funding is sometimes distributed by formulas that rely on census data. NCAI has been regularly engaging the Census Bureau urging the agency to ensure that Differential Privacy does not negatively impact tribal nations and tribal citizens.

ECONOMIC AND WORKFORCE DEVELOPMENT

Across Indian Country, tribal nations are achieving economic progress. From creating tribally-owned enterprises to cultivating tribal citizen-owned businesses to preparing their people to take full advantage of expanding economic opportunities, tribal nations are building sustainable economies and revitalizing their communities. However, while many tribal nations are building strong economies, many other tribal nations still need the tools and resources necessary to follow suit. The policy overview below demonstrates how focused attention and targeted actions by the federal government – in consultation and collaboration with tribal nations and key national Native organizations – can greatly enhance the ability of tribal nations to achieve economic prosperity and provide their citizens with job opportunities and a good quality of life.

TAXATION AND FINANCE

In December 2017, the Tax Cuts and Jobs Act was signed into law and did not include any tribal tax priorities. Congress and the Administration missed an important opportunity to recognize tribal nations' rightful place alongside other governments and to incentivize increased investment in tribal economies and infrastructure.

Despite the passage of tax reform legislation, tribal governments are still left without many of the benefits, incentives, and protections provided by the Internal Revenue Code (Tax Code) to state and local governments. This inequity significantly handicaps tribal sovereign authority to generate and allocate government revenue for tribal programs independent of federal appropriations and does not encourage economic growth on tribal lands. For these reasons, Congress and the Administration must actively engage with tribal nations to develop federal tax policies that ensure tribal nations have the same opportunities as state and local governments to provide services to their own citizens.

Tribal Tax Priorities

Provide Tax Parity to Tribal Governments: Members of Congress and tribal nations have worked together to identify provisions in the Tax Code that treat tribal nations differently than state and local governments. Congress should fix these disparities in the following areas:

- *Adoption Tax Credit:* Families that adopt special needs children in tribal court are ineligible for tax benefits available to families that adopt special needs children in state court. Native adoptive children and their families should have the same access to tax benefits that reduce the costs of adoption and support family permanency.
- *Tribal Foundations and Charities:* Charities funded or formed by tribal nations do not receive the same tax treatment as those funded or formed by state and local governments. This disparity makes it difficult for tribal nations to leverage resources to raise charitable donations from outside donors.
- *Tax-Exempt Bonds:* State and local governments can issue tax-exempt bond debt for commercial activity to raise revenue. In contrast, tribal governments are permitted to issue bonds only for essential government functions and not economic development activities. This restricts economic stimulus and limits bond market access for tribal governments.

Amend the Tribal General Welfare Exclusion Act (TGWEA): The TGWEA excludes from gross income, for income tax purposes, the value of a tribal general welfare benefit. An amendment is needed to clarify that these benefits are excluded from income for a social security eligibility determination.

Provide Tax Incentive Parity for Indian Health Service Health Professionals: IHS health professionals are ineligible for recruitment and retention tax incentives available to other public sector health professionals. IHS should have the same recruitment and retention tax incentives as other public sector health systems.

Exempt Tribal Distributions for Tribal Youth: Due to a flaw in the Tax Code, distributions from minors' trust funds established by tribal governments are subject to taxation at the rate of a minor's parents, resulting in an unintended disincentive to attend college. Correcting this will provide fairness to tribal youth and families receiving benefits from tribal funds.

Simplify, Expand, and Make Permanent the Indian Employment Tax Credit: Simplifying, expanding, and making permanent the Indian Employment Tax Credit will increase its deployment, thereby promoting economic growth and job creation in Indian Country.

Increase New Markets Tax Credits (NMTC) Deployment in Indian Country: Increasing deployment of NMTCs for projects in Indian Country through a set-aside or other incentives will spur investment in infrastructure, promote economic development, and create jobs in tribal communities.

Increase Low-Income Housing Tax Credits (LIHTC) Deployment in Indian Country: Congress should treat tribal nations as states for LIHTC allocations, establish a tribal set-aside, and amend the Tax Code to increase deployment of the tax credits in Indian Country. The LIHTC program could provide much-needed private investment in affordable housing in tribal communities.

Legislative Update

2020 Appropriations Package – H.R. 1865: In December 2019, two 2020 appropriations packages, H.R. 1158 and H.R. 1865, were signed into law. This 2020 package contained the following critical tax provisions for Indian Country.

H.R. 1865, Division O, contains the Setting Every Community Up for Retirement (SECURE) Act which provides a partial “kiddie tax” fix. The kiddie tax penalty, first enacted in 1986, was created to discourage wealthy taxpayers from shifting income-producing family wealth to their children with lower tax rates. As a result of this act, tribal distributions to children were taxed at their parent's tax rate. This issue worsened as a result of the Tax Cuts and Jobs Act of 2017 (TCJA) which subjected these transfers to an estate tax rate. H.R. 1865 provides a partial fix by reverting the kiddie tax to a parent's tax rate. Tribal advocates will continue to push for transfers from tax immune tribal nations to tribal youth to be exempt from the kiddie tax penalty provision so that youth are subject only to an individual income tax rate.

In addition to the partial kiddie tax fix, H.R. 1865 contains the following tax extenders for Indian Country:

- *Production Credit for Indian Coal Facilities:* A production tax credit for coal produced on land owned by a tribal nation was extended through 2021.
- *Indian Employment Tax Credit:* A tax credit for qualifying employers to increase employment on tribal reservations was extended until December 31, 2020.
- *Accelerated Depreciation for Business Property on an Indian Reservation:* Accelerated depreciation for qualified tribal reservation property was extended until December 31, 2020.
- *New Markets Tax Credits:* Tax credits for investments in low-income communities was increased from \$3.5 billion to \$5 billion and extended through 2020.

Promoting Sustainable Energy Projects for Tribal Communities Act – H.R. 5158: On November 19, 2019, Representative Gwen Moore (D-WI) introduced H.R. 5158, the Promoting Sustainable Energy Projects for Tribal Communities Act. The bill allows tribal nations to receive cash in an amount equivalent to the full value of certain federal tax credits available to offset the cost of electricity generated using energy resources or investments in renewable energy property. H.R. 5158 was referred to the House Committee on Ways and Means.

Inspiring Nationally Vibrant Economies Sustaining Tribes (INVEST) Act of 2020 – S. 3181: On January 9, 2020, Senator Lisa Murkowski (R-AK) introduced S. 3181, the INVEST Act of 2020. This bill would create a ten percent tribal NMTC set aside and increase the deployment of NMTCs by Indian community development entities. S. 3181 has been referred to the Committee on Finance.

Aiding Development of Vital Assets in Native Communities and Environments (ADVANCE) Act – H.R. 3664: On July, 10, 2019, Representative Denny Heck (D-WA) introduced H.R. 3664, the ADVANCE Act of 2019. The ADVANCE Act would direct the Treasury’s Community Development Financial Institutions Fund (CDFI Fund) to provide outreach and training to tribal communities. It would also codify an incentive currently in the New Market Tax Credit (NMTC) application to receive an allocation for those applicants that commit to making investments in Indian Country. H.R. 3664 has been referred to the Committee on Ways and Means and the Committee on Financial Services.

Tribal Tax and Investment Reform Act – H.R. 2484: On May 2, 2019, Representative Ron Kind (D-WI) introduced H.R. 2484, the Tribal Tax and Investment Reform Act. This bill would amend the Tax Code to address many disparities. The bill would repeal the essential government functions test and allow tribal nations to issue tax-exempt bonds on the same basis as states, allow tribal governments to operate a single pension plan for all their employees, enhance tax parity for tribal foundations and charities, provide tribal governments access to the Federal Parent Locator Service, and recognize tribal court determinations of “special needs” status for purposes of Adoption Tax Credits. H.R. 2484 has been referred to the House Committee on Ways and Means, and the House Committee on Education and Labor.

Making Permanent the Accelerated Depreciation Tax Credit – S. 1216: On April 11, 2019, Senator James Inhofe (R-OK) introduced S. 1216, a bill to amend the Tax Code to permanently extend the depreciation rules for property used predominantly within an Indian reservation. S. 1216 has been referred to the Senate Committee on Finance.

Making Permanent the Indian Employment Credit – H.R. 2017: On April 1, 2019, Representative Tom O’Halloran (D-AZ) introduced H.R. 2017 to amend the Tax Code to make the Indian employment credit permanent. H.R. 2017 was referred to the House Committee on Ways and Means.

Tribal Adoption Parity Act – S. 305 & H.R. 2497: On January 31, 2019, Senator Amy Klobuchar (D-MN) introduced S. 305, the Tribal Adoption Parity Act. This bill would allow tribal nations to determine whether a child has special needs for the purposes of the adoption tax credit, enhancing parity between tribal governments and state governments. On May 2, 2019, Representative Derek Kilmer (D-WA) introduced a companion bill, H.R. 2497. S. 305 was referred to the Senate Committee on Finance, and H.R. 2497 was referred to the House Committee on Ways and Means.

Tribal Tax Priorities on Capitol Hill Post Tax Reform: NCAI membership has emphasized the importance of reforming federal tax policy for Indian Country by passing NCAI Resolution #MOH-17-011, “Equitable Treatment for Tribal Nations in Congressional Tax Reform,” at the 2017 Mid Year Conference in Connecticut. Despite ongoing efforts by tribal nations, NCAI, and partner organizations, Congress did not include these tribal tax priorities in the tax reform legislation that passed in December 2017. NCAI continues to work with tribal leaders, tribal organizations, and members of Congress to advocate for tribal tax parity, increased deployment of NMTCs and LIHTCs in Indian Country, reauthorization and enhancement of tribal tax extenders, and the inclusion of tribal nations in new programs. In the summer of 2019, former NCAI President Jefferson Keel created the NCAI Task Force on Tax and Finance to: (1) facilitate Indian Country’s input on issues within the Treasury Tribal Advisory Committee’s purview; (2) organize tribal priorities on legislative tax policy; (3) facilitate solutions to dual taxation; and (4) share information regarding tribal-state tax agreements.

Administrative Update

TTAC Convening: In 2019, the U.S. Department of the Treasury (Treasury) held three meetings for the Treasury Tribal Advisory Committee (TTAC). TTAC was created by the Tribal General Welfare Exclusion Act of 2014 (P.L. 113-168) (TGWE). During these meetings, TTAC appointed co-chairs, adopted bylaws, discussed various tax issues relating to tribal nations, and created three subcommittees to address: (1) implementation of the TGWE; (2) dual taxation; and (3) pensions. Initial subcommittee members were selected and work will commence on the development of solutions in a report to address these priority issues impacting tribal economic self-determination.

Opportunity Zones: Opportunity Zones were created through the TCJA to encourage long-term investments in low-income communities across the United States. An Opportunity Zone is an economically-distressed area where new investments, under certain conditions, may be eligible for preferential tax treatment. On April 17, 2019, Treasury issued a notice of proposed rulemaking that clarified proposed regulations and published guidance, as well as supported greater tribal inclusion for purposes of the tax incentive. On December 19, 2019, Treasury issued final regulations on Opportunity Zones.

Internal Revenue Service (IRS) Reporting Requirements for Tribal Fines: Treasury has announced a tribal consultation on the potential impacts of new reporting requirements imposed by Section 6050X of the TCJA. Section 6050X requires governments to file an information return with the IRS that contains information about any court orders or agreements between the governmental entity and a taxpayer, regarding a fine, penalty, or other violation of law where the total amount paid or incurred by a taxpayer is \$600 or more. Treasury held a tribal consultation on September 12, 2019, to solicit feedback on the impact of this reporting requirement on tribal nations and to assess whether tribal nations are impliedly included within Section 6050X. To date, Treasury has not promulgated any regulation or guidance related to this consultation.

Tribally Chartered Entities: While not codified in law, the IRS recognizes that tribal nations are not subject to federal income taxation. Based on this recognition, IRS applies a test to assess whether a tribally chartered entity is an “integral part” of a tribal nation and therefore eligible for the same federal income tax immunity. In September 2019, Treasury announced that it was holding one in-person and one telephonic consultation in October 2019 regarding the income tax treatment of corporations chartered under tribal law. According to Treasury, the need for this consultation arose because tribal nations have

requested that Treasury issue guidance to specifically address the income tax status of corporations wholly-owned by a tribal government and chartered under tribal law. In the 2013 National Taxpayer Advocate's Annual Report to Congress, the lack of published guidance on this issue was cited as creating a burden for tribal nations in pursuing economic opportunities. NCAI intends to submit comments, monitor any proposed action, and stay engaged on this critical issue impacting tribal economic development. To date, Treasury has not promulgated any regulation or guidance related to this consultation.

Address the Harms of Dual Taxation in Indian Country: NCAI continues to urge swift action to address dual taxation in Indian Country. State taxation of economic activities in Indian Country reduces tribal revenues necessary for tribal government services and infrastructure development, creates uncertainty for businesses on tribal lands, and suppresses economic activity that benefits tribal nations and surrounding communities. Statutory authority for the Indian Trader Regulations (25 U.S.C. § 262) is broad and authorizes flexibility for the Department of the Interior (DOI) to adopt new regulations that would meet the economic development and tax revenue needs of tribal governments in the 21st Century. We urge DOI to replace the current regulations in accordance with NCAI Resolution #DEN-18-018, "Urging the Department of the Interior to Restart its Process of Updating the 'Licensed Indian Trader' Regulations and to Seek Congressional Legislation Preventing State Dual Taxation of Indian Commerce and Energy Development." Further, at NCAI's 2019 Annual Convention, NCAI membership passed #ABQ-19-015, "Urging the Secretary of the Treasury to Assist in Ending Dual Taxation of Economic Activity in Indian Country."

TRIBAL LABOR SOVEREIGNTY ACT

The National Labor Relations Act (NLRA) was enacted in 1935 to address growing upheavals in private industry. The NLRA regulates labor relations between employees and private employers. The Act was never designed to regulate government employment, and all governments were exempted from the Act, although the NLRA did not specifically delineate every type of exempted government (e.g., the District of Columbia or tribal nations). Over many years, the National Labor Relations Board (NLRB) consistently interpreted the government exemption to include the District of Columbia and tribal nations. But in 2004, the NLRB did an about-face and, without consulting tribal nations or writing new regulations, the NLRB declared that Congress intended the Act to apply to tribal governments. This interpretation of the law is diametrically opposed to Congress' stated intention to exempt all governments. Overnight, tribal governments became the only governments to be subject to the NLRA. More than 90,000 other units of government, which employ over 21 million Americans, are not subject to the NLRA.

Tribal nations are sovereign governments and should be treated the same as other governments under the NLRA. Federal law should ensure tribal government employers have the same opportunities as all other governmental employers to regulate labor with their government workforces.

Legislative Update

Tribal Labor Sovereignty Act of 2019 – S. 226 & H.R. 779: Despite years of advocacy and education by tribal leaders and NCAI, Congress failed during the 115th Congress to pass the Tribal Labor Sovereignty Act (TLSA), which provides tribal government employers the same exemption from the NLRA held by all other government employers. While a majority of the Senate voted in favor of TLSA, the tally fell short of the 60 votes needed to end debate. Although this result is very disappointing, on January 24, 2019, Senator Jerry Moran (R-KS) and Representative John Moolenaar (R-MI) reintroduced TLSA (S. 226 &

H.R. 779) in the Senate and House of Representatives. The Senate Committee on Indian Affairs passed S. 226 at a business meeting on January 29, 2019, and the bill awaits further consideration by the full Senate. H.R. 779 has been referred to the House Committee on Education and Labor.

On November 20, 2019, Senator Ernst (R-IA) introduced S. 2920, to reauthorize the Violence Against Women Reauthorization Act. S. 2920 recognizes the need to expand tribal jurisdiction to cover additional crimes committed by non-Indians against Indians and to improve the response to cases of missing and murdered Indians. However, S. 2920 also includes provisions that would undermine the independence of tribal courts, destabilize the protections offered to defendants under the Indian Civil Rights Act (ICRA), and hold tribal courts to standards higher than any federal, state, or territorial court in the country while also subjecting them to oversight and review that no other courts experience. Unrelated to VAWA, S. 2920 includes a host of other tribal bills including TLSA. Because S. 2920 clearly undermines tribal sovereignty and tribal courts, NCAI has opposed S. 2920 as currently drafted.

ENTREPRENEURSHIP AND ECONOMIC DEVELOPMENT

Tribal nations are building strong economies and investing in their communities by supporting the development of Native-owned businesses, providing tools and resources their citizens need to pursue economic opportunities, and implementing innovative approaches that are tailored to their communities' unique needs. However, many barriers continue to undermine tribal nations' abilities to improve their economies and promote tribal entrepreneurship. Inter-agency cooperation, enhanced tribal consultation, regulatory changes that incorporate tribal priorities, and increased access to capital and entrepreneurial support resources are crucial to ensuring such barriers are addressed in Indian Country.

Legislative Update

In the 115th Congress, there were several tribal economic development bills that provided opportunities for tribal nations and Native entrepreneurs to invest in their communities. Unfortunately, these bills did not pass the House despite passing the Senate. So far, these bills have been re-introduced in both chambers and again passed the Senate. In accordance with NCAI Resolutions #MOH-17-049, "Calling for Enactment of the Indian Community Economic Enhancement Act," and #MKE-17-023, "Calling for Enactment of the Native American Business Incubators Program Act," NCAI continues to urge Congress to pass the Indian Community Economic Enhancement Act and the Native American Business Incubators Program Act, which would increase opportunities for tribal nations to grow their economies.

The Indian Community Economic Enhancement Act – S. 212 & H.R. 1937: On January 24, 2019, Senator John Hoeven (R-ND) introduced S. 212, the Indian Community Economic Enhancement Act, which promotes tribal economic development by amending the Buy Indian Act; the Native American Programs Act of 1974; and the Native American Business Development, Trade Promotion, and Tourism Act of 2000. These long-sought programmatic changes would elevate the Office of Native American Business Development to the Office of the Secretary of Commerce, expand the Buy Indian Act, and reauthorize and expand economic development initiatives. The bill also would require interagency cooperation to promote private investment in Indian Country and update securities regulations to provide tribal nations market access for debt and equity securities. On June 27, 2019, the Senate passed S. 212 with an amendment and the bill was referred to the House Natural Resources Subcommittee for Indigenous Peoples of the United States. On March 27, 2019, Representative Norma Torres (D-CA) introduced a companion bill, H.R. 1937. H.R. 1937 was referred to the Subcommittee for Indigenous Peoples of the United States for consideration.

The Native American Business Incubators Program – S. 294 & H.R. 1900: On January 31, 2019, Senator Tom Udall (D-NM) introduced S. 294, the Native American Business Incubators Program. The bill would establish a grant program in the DOI Office of Indian Energy and Economic Development to create sustainable business incubators that provide collaborative workspace, skills training, and support resources designed to meet the unique needs of Native entrepreneurs developing businesses in Indian Country. The bill also leverages existing resources by requiring interagency coordination and partnerships between business incubators and academic institutions. On June 27, 2019, the Senate passed S. 294 without amendment and the bill was referred to the House Natural Resources Subcommittee for Indigenous Peoples of the United States.

On March 27, 2019, Representative Deb Haaland (D-NM) introduced H.R. 1900, the Native American Business Incubators Program Act, which is a companion bill to S. 294. H.R. 1900 was referred to the Subcommittee for Indigenous Peoples of the United States for consideration.

Removing Federal Barriers to Offering of Mobile Sports Wagers on Indian Lands Act - H.R. 5502: On December 19, 2019, Representative Anthony Brindisi (D-NY) introduced H.R. 5502, the Removing Federal Barriers to Offering of Mobile Sports Wagers on Indian Lands Act. The bill amends the Indian Gaming Regulatory Act and provides that in order for an online sports wager to be considered to occur exclusively on Indian lands: (1) the person placing the wager and the server or other computer equipment through which the sports wager is accepted must be in the same state; and (2) the applicable state and Indian tribe must have entered into a Tribal-State compact under IGRA authorizing the placing of sports wagers through interactive sports wagering platforms. H.R. 5502 was referred to the House Natural Resources Committee.

Administrative Update

Proposed Revisions to Community Reinvestment Act Regulations: On December 12, 2019, the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC) released a joint proposed rule to modernize the regulations implementing the Community Reinvestment Act (CRA). The third agency overseeing the CRA, the Federal Reserve, did not join in this proposed rule and on January 8, 2020 outlined a potential alternative rule. This alternative has not been released as of the date of this publication.

Amongst many changes, the FDIC and OCC proposed rule would: (1) clarify which activities qualify for CRA credit; (2) update where activities count for CRA credit; and (3) revise the method for measuring CRA performance. The proposed rule's tribal provisions provide banks with CRA credit for serving tribal communities even when Indian Country falls outside their CRA assessment areas. The proposed rule also creates CRA scoring incentives for banks that do business in Indian Country.

On January 14, 2020, the Subcommittee on Consumer Protection and Financial Institutions held a hearing titled, "The Community Reinvestment Act: Reviewing Who Wins and Who Loses with Comptroller Otting's Proposal." On January 29, 2020, the full House Financial Services Committee held a second hearing on the CRA titled "The Community Reinvestment Act: Is the OCC Undermining the Law's Purpose and Intent?" Presently, the comment period for this proposed rule ends on March 9, 2020. NCAI has submitted comments on the advanced notice of proposed rulemaking and intends to submit comments on the proposed rule.

WORKFORCE DEVELOPMENT

Workforce development success in Indian Country depends on the ability of tribal nations, Native organizations, and Tribal Colleges and Universities (TCUs) to craft innovative, customized solutions designed for the particular capacity building needs of their tribal communities. To that end, the appropriate role of the federal government is to support programmatic flexibility, training and technical assistance, and resources that Indian Country needs to design and implement bold strategies to advance each community's workforce development priorities. The federal government must endow its systems, programs, and funding protocols with the ease and adaptability that tribal nations need to effectively build their human capacity in accordance with their cultural values and in furtherance of their community and economic development goals.

In early 2020, NCAI will be releasing the brief "Empowering Tribal Workforce Development: Indian Country's Policy Recommendations for the Federal Government 2.0." The brief presents a list of key policy recommendations for Congress and the Administration to support tribal nations, Native organizations, and TCUs as they design, refine, and strengthen their workforce development efforts.

Legislative Update

Elevate Act of 2019 – S. 136 & H.R. 556: On January 15, 2019, Senator Ron Wyden (D-OR) introduced S. 136, the Elevate Act of 2019, and Representative Danny Davis (D-IL) introduced a companion bill, H.R. 556. These bills would amend the Social Security Act to establish a new employment, training, and supportive service program for the long-term unemployed and individuals with barriers to employment. Tribal nations (or intertribal consortiums with a tribal family assistance plan approved under section 412) would be eligible for grant funds and technical assistance for programming. S. 136 was referred to the Senate Committee on Finance for consideration, and H.R. 556 was referred to the Committee on Ways and Means.

Drastically Increase Funding for Tribal Workforce Development in the FY 2021 Federal Budget and Beyond: Federal funding for the Comprehensive Services Program (CSP) and the Supplemental Youth Services Program (SYS) under Section 166 has utterly failed to keep pace with the increase in the Native population needing these services and the rising costs of education, training, and related services. Since its peak of \$225 million in 1979, federal funding has experienced a precipitous decline to just under \$68 million today, even though tribal communities still contend with the most acute and persistent workforce disadvantages of any population in the country.

This decline has come despite the fact that the Native population is among the fastest-growing in the country, increasing by 30 percent between 2000 and 2017 (compared to 15.7 percent for the overall U.S. population). In addition, Native people's need for training and employment services still far exceeds that of the general population. In 2017, Census data showed a 6.6 percent unemployment rate for the U.S. population overall. In stark contrast, the AI/AN (single race) population's national unemployment rate was twice as high (12.3 percent), and three times as high (19.6 percent) on tribal lands. These staggering unemployment rates stem in part from a lack of educational opportunities, evidenced by a college degree attainment rate for the AI/AN population of 14.3 percent nationally (compared to 30.9 percent for the overall U.S. population).

Moreover, the costs of education, workforce training, and related services have increased dramatically over the past 15 years. For example, tuition, fees, and room and board have increased by almost 45 percent

at two-year higher education institutions, and more than 55 percent at four-year institutions. Given these dynamics, it is imperative that the Administration requests, and Congress approves, increased annual appropriations for tribal workforce development – notably the WIOA Section 166 Program – commensurate with the rapidly growing size of the service population and the increasing costs of workforce development-related services such as tuition for post-secondary educational institutions.

Prevent the Abolishment of WIOA Section 166 Programs or Their Transfer to the State Adult Formula Grant Program: As part of its renewed commitment to fully fund tribal workforce development, Congress must rebuff unjustified attempts by the Administration or individual members of Congress to transfer WIOA Section 166 programs to the State Adult formula grant program, which would amount to an effective decrease of nearly \$50 million in the already inadequate level of funding support for tribal populations served by 166 grantees. The consequences of eliminating this dedicated funding stream for Indian and Native American Programs under WIOA would be immediate and severe – including increased crime, drop-out, and unemployment rates – and would threaten long-term sustainable employment opportunities, economic growth, and community stability for Section 166-reliant tribal populations. Congress also must reject the President’s recent proposal to eliminate the Department of Labor’s Division of Indian and Native American Programs altogether as this would violate the federal government’s trust responsibility to – and obligation to consult with – tribal nations.

Administrative Update

DOI releases Interagency MOA on 477 Workforce Development Law: On December 20, 2018, the Department of the Interior (DOI) announced the completion and signing of an interagency memorandum of agreement (MOA) between 12 federal agencies governing their administration of the federal government’s 477 program supporting tribal workforce development efforts. The MOA implements the Indian Employment, Training, and Related Service Consolidation Act of 2017 (P.L. 115-93), which expands and makes permanent the highly successful 477 program that was established in 1992.

Unfortunately, the MOA contains several grave flaws that prevent the federal government’s full and proper implementation of the 2017 law, notably: (1) restricting the types of agency programs eligible for inclusion in a 477 plan by limiting program purposes and funding types beyond the limitations set by P.L. 115-93; (2) transferring decision-making authority over program eligibility from the Secretary of the Interior to other agencies; (3) giving individual agencies the authority to delay 477 plan reviews through multiple time extensions; and (4) allowing agencies to deny waiver requests for reasons not authorized by P.L. 115-93. In July 2019, NCAI wrote to the Secretary of the Interior requesting that DOI and the other federal agencies adopt all amendments proposed by the 477 Tribal Workgroup, including: (1) striking language that impermissibly limits the Act’s scope; (2) changing language that unlawfully cedes DOI secretarial decision making authority to other agencies; (3) removing the provision that unlawfully limits the MOA’s applicability to only certain competitive grant programs; (4) striking provisions that encourage delays in reviewing 477 Plans; and (5) explicitly declaring that waiver requests may only be denied if they are inconsistent with either the Act or the authorizing statute of the specific program.

On September 20, 2019, NCAI participated in the first Annual Meeting of Tribes and Federal Agencies Affected by P.L. 115-93 at DOI. On November 6, 2019, the Senate Committee on Indian Affairs held an Oversight Hearing titled, “Examining the 477 Program: Reducing Red Tape While Promoting Employment and Training Opportunities in Indian Country.” NCAI continues to work with the 477 Tribal Work Group, congressional offices, and tribal nations to urge the 12 agencies and the White House

Domestic Policy Council to develop and ratify technical amendments needed to bring the interagency MOA into full compliance with P.L. 115-93.

Department of Labor (DOL) Indian and Native American Section 166 Programs: The Administration's FY 2020 budget proposed to eliminate funding for DOL's Indian and Native American (INA) Section 166 programs and in its place create Native adult set-aside funds within WIOA's State Adult formula grant program, which will undoubtedly cause a drastic reduction in funding available to Section 166 tribal grantees. This change was proposed without regard to existing statutory language or consultation with tribal nations or coordination with the Native American Employment and Training Council (NAETC). NCAI and NAETC request that:

1. INA Programs continue to be administered and funded as required by existing law; and
2. DOL honor the government-to-government relationship between tribal nations and the U.S. by engaging tribal nations and tribal experts before developing new policy proposals that would affect workforce development initiatives in tribal communities.

NCAI further calls on DOL to significantly increase the staff of its Division of Indian and Native American Programs (DINAP). Increasing DINAP's staff size from six to no less than 15 positions (13 professional positions and two administrative support staff positions) will ensure adequate technical assistance and support for WIOA Section 166 grantees.

Additionally, NCAI calls on DOL to set WIOA section 166 performance standards in accordance with grantees' needs and priorities. DOL must work with each individual grantee reporting directly to DINAP, using the waiver authority in WIOA Section 166(i)(3) as appropriate, to ensure that the performance metrics for each grantee are appropriate for the economic and human environments in which the grantee implements its programs.

Lastly, NCAI calls on DOL to fully empower NAETC. To accomplish this, DOL should: (1) immediately confirm those selected for appointment to the NAETC; (2) recommit to holding regular NAETC meetings; and (3) actively consult with the NAETC on an ongoing basis.

Produce the American Indian Population and Labor Force Report: The 2017 Indian Employment, Training and Related Services Consolidation Act transferred the responsibility for producing the American Indian Population and Labor Force Report from DOI to DOL. DOL staff in the Bureau of Labor Statistics, DINAP, and other federal units reportedly have been meeting to discuss how to carry out DOL's new responsibility. However, to date, they have not taken any action to involve tribal leaders, WIOA Section 166 grantees, practitioners, or researchers in this effort. DOL and specifically Employment and Training Administration (ETA) officials must immediately inform NAETC, the Section 166 grantee community, tribal leaders, and other key tribal stakeholders about the internal discussions to date on this report. Further, they should develop and implement a plan that fully involves NAETC and tribal leaders in the design, implementation, and publication of the report.

HUMAN RESOURCES AND SOCIAL SERVICES

The survival and prosperity of tribal communities depends on the education, health, and welfare of their citizens. The Administration and Congress must work with tribal nations to meet the educational needs of Native youth, provide adequate healthcare via the Indian Health Service (IHS) for both direct service and self-governance tribal nations, provide safe and secure tribal communities, and support tribal social services to ensure every American Indian and Alaska Native (AI/AN) enjoys a good quality of life and has ample opportunities to thrive. Education drives personal advancement and wellness, which in turn improves social welfare and empowers communities. These elements are essential to protecting and advancing tribal sovereignty and maintaining tribal nations' cultural vitality.

EDUCATION AND LANGUAGE

It is imperative that AI/AN students receive a quality education. However, in Indian Country, daunting challenges are preventing this from becoming a reality for all AI/AN students. These challenges include aging school facilities, limited access to broadband, rural geography and remoteness impacting school attendance, difficulty recruiting and retaining teachers, and a lack of culturally appropriate educational opportunities. These challenges have led to a graduation rate of 72 percent for AI/AN students compared to an 85 percent graduation rate for the rest of the country.

There are approximately 620,000 (93 percent) Native students enrolled in public schools in both urban and rural areas, while 45,000 (seven percent) attend schools within the Bureau of Indian Education (BIE) system. There are 184 BIE-funded schools (including 14 peripheral dormitories) located on 63 reservations in 23 states. Today, 37 Tribal Colleges and Universities (TCUs) operate more than 75 sites in 17 states and serve 130,000 AI/ANs in academic and community-based programs each year. Effectively reaching all Native students requires a concentrated and sustained effort from multiple partners: tribal nations, the federal government, state and local education agencies, Native parents and families, and communities.

In October 2019, NCAI launched its report, “Becoming Visible: A Landscape Analysis of State Efforts to Provide Native American Education for All.” This report is an analysis of the landscape of current state efforts to bring high-quality educational content about Native peoples and communities into all kindergarten to 12th grade (K-12) classrooms across the United States.

Legislative Update

Tribal School Federal Insurance Parity Act – S. 279 & H.R. 895: On January 30, 2019, Senator John Thune (R-SD) introduced S. 279, the Tribal School Federal Insurance Parity Act, and Representative Dusty Johnson (R-SD) introduced a companion bill, H.R. 895. The Tribal School Federal Insurance Parity Act would allow tribal grant schools to participate in the Federal Employees Health Benefits (FEHB) and Federal Employees Group Life Insurance (FEGLI) programs by amending the Indian Health Care Improvement Act. On May 15, 2019, S. 279 was reported favorably out of the Senate Committee on Indian Affairs and awaits action on the Senate floor. H.R. 895 has been referred to the House Committee on Natural Resources; Committee on Oversight and Reform; and the Committee on Energy and Commerce for consideration. On July 16, 2019, the House Committee on Natural Resources, Subcommittee for Indigenous Peoples of the United States held a legislative hearing and heard testimony in support of H.R. 895. On January 15, 2020, H.R. 895 was reported favorably by unanimous consent by the Committee on Natural Resources. During its 2013 Annual Convention, NCAI passed Resolution #TUL-13-063, “Support

Tribal Grant Schools to participate in the Federal Health Employees Benefit Program in the Affordable Care Act.”

Esther Martinez Native American Languages Preservation Act – S. 256 & H.R. 912: On January 29, 2019, Senator Tom Udall (D-NM) introduced the reauthorization of the Esther Martinez Native American Language Preservation Act, and on January 30, 2019, Representative Ben Ray Lujan (D-NM) introduced a companion bill, H.R. 912. The Esther Martinez Native American Languages Preservation Act authorizes Native language programs that provide funding to tribal nations for preserving and increasing fluency through language immersion schools and language restoration programs. S. 256 passed the Senate on June 27, 2019, and passed the House on December 9, 2019. On December 20, 2019, the Esther Martinez Native American Languages Preservation Act was signed by the President and became Public Law 116-101. NCAI has a standing resolution supporting this legislation, Resolution #SAC-12-013, “Support for the Reauthorization of the Esther Martinez Native American Languages Preservation Act.”

Fostering Undergraduate Talent by Unlocking Resources for Education Act (FUTURE) – S. 1279 & H.R. 5363: On May 2, 2019, Senator Doug Jones (D-AL) introduced S. 1279, the Fostering Undergraduate Talent by Unlocking Resources for Education Act, and Representative Adam Alma (D-NC) introduced a companion bill, H.R. 5363. The FUTURE Act permanently extends mandatory funding at current levels for the following types of higher education institutions: TCUs at \$30 million, Alaska Native-Serving Institutions and Native Hawaiian-Serving Institutions at \$15 million, and Native American-Serving Non-tribal Institutions at \$5 million. Additionally, the FUTURE Act streamlines the Free Application for Federal Student Aid (FAFSA) verification process. S. 1279 was referred to the Senate Committee on Health, Education, Labor, and Pensions. H.R. 5363 passed the House on December 10, 2019, and passed the Senate the same day. On December 19, 2019, the FUTURE Act was signed by the President and became Public Law 116-91. NCAI has a standing resolution supporting this legislation, Resolution #SAC-19-038, “Calling on Congress for Permanent Mandatory Support for the U.S. Department of Education’s Strengthening Institutions Program for Tribal Colleges and Universities.”

Native American Language Vitalization Act – H.R. 4188: On August 16, 2019, Representative Gregorio Sablan (D-MP) introduced H.R. 4188, a bill to amend the Higher Education Act of 1965 to establish a Native American Language Vitalization and Training Program. H.R. 4188 would establish grants for eligible institutions, including TCUs and Alaska Native-Serving Institutions to promote the preservation, revitalization, relevancy, and use of Native languages. H.R. 4188 was referred to the House Committee on Education and Labor for consideration.

Building Indigenous STEM Professionals Act – S. 2037 & H.R. 4222: On June 27, 2019, Senator Lisa Murkowski (R-AK) introduced S. 2037, a bill to amend the STEM education program for American Indian, Alaska Native, and Native Hawaiian students under the Higher Education Act of 1965. On August 30, 2019, Representative Gregorio Sablan (D-MP) introduced a companion bill, H.R. 4222. This legislation would reauthorize and amend a grant designed to help create or expand programs that produce Alaska Native and Native Hawaiian graduates in science, technology, engineering, and math fields. S. 2037 was referred to the Committee on Health, Education, Labor, and Pensions for consideration. H.R. 4222 was referred to the House Committee on Education and Labor for consideration.

Tribal Nutrition Improvement Act – S. 1307 & H.R. 2494: On May 2, 2019, Senator Tom Udall (D-NM) introduced S. 1307, the Tribal Nutrition Improvement Act of 2019, and Representative Deb Haaland (D-

NM) introduced a companion bill, H.R. 2494. This legislation amends the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 to improve nutrition in tribal areas. Significantly, this legislation would allow tribal nations to administer child nutrition programs, increasing opportunities for the incorporation of traditional foods. S. 1307 was referred to the Senate Committee on Agriculture, Nutrition, and Forestry. H.R. 2494 was referred to the House Committee on Education and Labor. During its 2018 Annual Convention, NCAI passed Resolution #DEN-18-011, “In Support of Improved Child Nutrition Programs and Services for Native Students.”

Native Educator Support and Training Act – S. 1161: On April 11, 2019, Senator Jon Tester (D-MT) introduced S. 1161, the Native Educator Support and Training Act. S. 1161 would create scholarships for students pursuing bachelors or graduate degrees in education or school administration. This bill would also create student loan forgiveness plans that waive federal student loans for educators who commit to at least five years of service at a Bureau of Indian Affairs-funded school or a K-12 school or facility that provides early childhood education and teaches a high population of Native American students. S. 1161 was referred to the Senate Committee on Indian Affairs and awaits further action.

Native American Indian Education Act – S. 759 & H.R. 1688: On March 12, 2019, Senator Cory Gardner (R-CO) introduced S. 759, the Native American Indian Education Act, and Representative Diana DeGette (D-CO) introduced a companion bill, H.R. 1688. The Native American Indian Education Act would support and sustain the federal mandate of requiring certain colleges and states to waive tuition for Native students in undergraduate college programs. S. 759 was referred to the Senate Committee on Health, Education, Labor, and Pensions, and H.R. 1688 was referred to the House Committee on Education and Labor. During its 2015 Mid Year Conference, NCAI passed Resolution #MSP-15-009, “In Support of Full and Consistent Federal Funding for American Indian Higher Education Programs and Strengthened Federal Policies to Improve American Indian Higher Education Success.”

Rebuild America’s Schools Act – H.R. 865 & S. 266: On January 29, 2019, Senator Jack Reed (D-RI) introduced S. 266, the Rebuild America’s Schools Act and on January 30, 2019, Representative Robert Scott (D-VA) introduced a companion bill, H.R. 865. The Rebuild America’s Schools Act would allocate \$50 million for each calendar year from 2020 through 2022 in school bond tax credits for construction, renovation, modernization, and major repair projects for schools funded by the Bureau of Indian Affairs. S. 266 was referred to the Senate Committee on Finance, and H.R. 865 was referred to the House Committee on Education and Labor and the Committee on Ways and Means. On February 26, 2019, H.R. 865 was voted favorably out of the Committee on Education and Labor. In 2009, Congress enacted a similar program in the American Recovery and Reinvestment Act (ARRA) that tribal nations unfortunately were unable to utilize due to the lack of an escrow account to support the issuance of the bonds. During its 2019 Mid Year Conference, NCAI passed Resolution #REN-19-40, “Supporting Bureau of Indian Education School Construction Funding Increases and Innovation.”

NCAI Submits Comments to House Education and Labor Subcommittee: On Wednesday, February 27, 2019, the House Subcommittee on Early Childhood, Elementary and Secondary Education held a hearing on the Inappropriate Use of Seclusion and Restraint Practices within K-12 schools titled “Classrooms in Crisis: Examining the Inappropriate Use of Seclusion and Restraint Practices.” NCAI submitted comments focusing on the importance of protecting AI/AN students and students receiving special education services, who are disproportionately affected by current discipline policies.

Administrative Update

Bureau of Indian Education (BIE) ESSA Plan: On September 14, 2017, BIE announced the establishment of a Standards, Assessments, and Accountability System (SAAS) Negotiated Rulemaking Committee. The Committee is tasked with advising the Secretary of the Interior and developing proposed regulations for defining standards, assessments, and an accountability system under the Every Student Succeeds Act (ESSA). On April 17, 2018, the U.S. Department of the Interior (DOI) published a list of proposed committee members and requested comments and additional nominees. Thirteen primary committee members and two alternates were selected. DOI further proposed appointing federal representatives to the Committee. Four federal representatives were appointed as primary team members and three as alternates. The committee meetings were held in Billings, Montana, Albuquerque, NM, and Arlington, VA. The last in-person meeting took place in March 2019, in Phoenix, AZ, after being postponed because of the government shutdown. Six consultation sessions regarding the ESSA plan were held in July 2019. BIE is currently working with the Department of the Interior's Assistant Secretary's Office and the Department of Education to review comments provided through consultation to prepare post-consultation amendments to a final rule.

On June 10, 2019, the Bureau of Indian Affairs (BIA) published the proposed rule in the Federal Register. NCAI submitted official comments on August 9, 2019, requesting that the proposed rule: (1) avoid unintended impacts on the rights of tribal nations or the federal treaty and trust responsibilities; (2) include a definite timeline for the Interior Secretary to review and approve proposals for alternative requirements; (3) recognize the use of Native languages within the assessments and accountability system; (4) be consistent with BIE's Strategic Direction; and (5) ensure the BIE engages in consultation with tribal nations and stakeholders when creating any new standard, assessment or accountability plan, in addition to any definition change, or programmatic change that effects BIE funded schools.

The National Indian Education Study (NIES) 2015: A Closer Look: On May 7, 2019, the National Center for Education Statistics (NCES), at the request of the U.S. Department of Education, Office of Indian Education (OIE), released NIES 2015: A Closer Look. NIES is designed to describe the condition of education for fourth- and eighth-grade AI/AN students in the United States. The study provides educators, policymakers, and the public with information about the academic performance in reading and mathematics of AI/AN fourth- and eighth-graders, as well as their exposure to Native American culture. This follow-up report to NIES: 2015 focuses on two major concerns that have been raised throughout the first decade of NIES:

1. What contextual factors are associated with higher and lower performing AI/AN students on the National Assessment of Educational Progress for mathematics and reading assessments; and
2. How do AI/AN students see themselves in terms of their Native languages, cultures, and aspirations for the future?

Office of Indian Education's Demonstration Grants for Indian Children Program Consultation: On May 7, 2019, the Department of Education's Office of Elementary and Secondary Education and the White House Initiative on American Indian and Alaska Native Education conducted a Tribal Consultation regarding the Demonstration Grants for Indian Children program. The Department of Education considered adding a priority to this program that would create an online portal that would allow for opportunities for grantees to give students and their family's choice in deciding which educational services would better help their children become ready to succeed in college and careers. On June 7, 2019, NCAI

submitted comments that addressed many concerns including a request that grant funds should help build tribal nations' education capacity instead of funding private service providers.

Department of Education NPRM on Title IX: On November 29, 2018, the U.S. Department of Education issued a notice of proposed rulemaking (NPRM) to amend regulations implementing Title IX of the Education Amendments of 1972 (Title IX). The proposed regulations would clarify and modify Title IX regulatory requirements about the availability of remedies for violations, the effect of Constitutional protections, the designation of a coordinator to address sex discrimination issues, the dissemination of a non-discrimination policy, the adoption of grievance procedures, and the process to claim a religious exemption. The proposed regulations would also specify how schools and institutions covered by Title IX must respond to incidents of sexual harassment consistent with Title IX's prohibition against sex discrimination. NCAI and the National Indian Education Association submitted comments expressing strong opposition to the Department's proposal to amend rules implementing Title IX because they would limit protections under Title IX available to students, including Native students. To date, a final rule has not been issued.

Bureau of Indian Education Strategic Plan: On October 17, 2017, BIE published a notice in the Federal Register for five consultation sessions regarding its Draft Strategic Plan Proposal. The BIE completed all five tribal consultation sessions across Indian Country and hosted three listening sessions throughout the fall of 2017 to gather substantive input from tribal nations and Indian education stakeholders. After analyzing feedback, BIE published its new Strategic Direction (Direction) for 2018-2023 on August 23, 2018. The Direction is designed to improve BIE's ability to increase its services to Native students by organizing management activities, setting priorities, and ensuring efficient and effective utilization of staff and resources. The Direction emphasizes the importance of fostering collaborative relationships among BIE, tribal nations, school boards, employees, and other stakeholders. NCAI will work with its partners to monitor BIE's adherence to its Strategic Direction.

National Advisory Council on Indian Education (NACIE) Annual Report to Congress: NACIE is authorized by Section 6141 of the Elementary and Secondary Education Act of 1965 (ESEA), to advise the Secretary of Education and the Secretary of the Interior concerning the funding and administration (including the development of regulations and administrative policies and practices) of any program, including any program established under Title VI, Part A of the ESEA, with respect to which the Secretary of Education has jurisdiction and that includes Indian children or adults as participants or that may benefit Indian children or adults. NACIE also submits an annual report to Congress on its activities and may include any recommendations that the NACIE considers appropriate for the improvement of federal education programs that serve AI/AN children or adults. In 2019, NACIE met on April 25-26 for a face-to-face meeting in Washington, D.C. A second face-to-face meeting occurred in September 2019 in Washington, D.C., where the NACIE presented their 2018-2019 Annual report to the Secretary Education, Betsy DeVos.

ELDERS AND DISABILITIES

Native elders are the keepers of our heritage, culture, and language. The life expectancy of American Indians is now nearly 74 years, and the rate of the American Indian and Alaska Native (AI/AN) elder population is increasing at double the rate of the overall aging population. The Centers of Medicare and Medicaid Services released a report that between 2000 and 2010, the number of American Indians and Alaska Natives age 65 or older increased by 40.5 percent. Even though the population is increasing, Native

elders comprise the most economically disadvantaged older adult minority group in the nation. Tribal governments have little or no access to the agencies, services, long-term care ombudsman programs, or other programs that are available to states for care of their elders. In addition, state programs seldom meet the needs of Native elders due to cultural and geographic barriers.

AI/ANs with disabilities are from all ages and backgrounds. A 2007–2010 Behavioral Risk Factor Surveillance System reported that 31 percent of AI/ANs have a disability, and the Department of Veterans Affairs (VA) reported in 2015 that 30 percent of AI/AN veterans had a service-connected disability compared with 21 percent of veterans of all other groups. Tribal nations, the federal government, and local governments must work together to develop programs and resources that meet the unique needs and promote the wellbeing of AI/AN elders and people with disabilities.

Legislative Update

Tribal Elder Care Improvement Act of 2019 – H.R. 5323: On December 5, 2019, Representative Tom O'Halleran (D-AZ) introduced H.R. 5323, the Tribal Elder Care Improvement Act. This bill would expand supportive services for aging Native American populations including: reauthorizing and increasing funding for existing key nutrition and caregiver services grant programs for through FY 2024, establishing a funding set aside, and requiring the Assistant Secretary of Aging within the Department of Health and Human Services to carry out a competitive demonstration program. H.R. 5323 has been referred to the House Committee on Education and Labor.

Dignity in Aging Act – H.R. 4334: On September 16, 2019, Representative Suzanne Bonamici (D-OR) introduced H.R. 4334, the Dignity in Aging Act. H.R. 4334 reauthorizes the Older Americans Act (OAA) of 1965 and increases funding for its programs by seven percent in fiscal year 2020 and by six percent in each year from 2021–2024, and includes language supportive of strengthening services for Native American aging programs. H.R. 4334 passed the House on October 28, 2019 and was placed on Senate Legislative Calendar under General Orders.

The OAA is the major federal statute that authorizes social and nutritional services to Native elders. Title VI of the OAA states that the “purpose of this title is to promote the delivery of supportive services, including nutrition services, to American Indians, Alaska Natives, and Native Hawaiians that are comparable to services provided under Title III (services provided to states).” These programs and services include: congregate and home-delivered nutrition services; community centers; community service employment; long-term care ombudsman programs; information and referral services; and services to prevent the abuse, neglect, and exploitation of elders. The OAA authorization expired at the end of FY 2019 and must be reauthorized to ensure continued availability of Native American aging programs.

Strengthening Services for Native Elders Act – S. 2696: On October 24, 2019, Senators Tina Smith (D-MN) and Lisa Murkowski (R-AK) introduced S. 2696, the Strengthening Services for Native Elders Act. This bill would amend the Older Americans Act (OAA) of 1965 to expand supportive services for Native American aging programs. This bill would reauthorize OAA program funding, create competitive demonstration programs, enhance capacity to support Native American aging programs, and expand supportive services such as in-home assistance, transportation, case management, health and wellness programs, legal services, family caregiver support, and other services. S. 2696 was referred to the Senate Committee on Health, Education, Labor, and Pensions.

A bill to amend the Alaska Native Claims Settlement Act to exclude certain payments to Alaska Native elders for determining eligibility for certain programs – S. 2534: On September, 24, 2019, Senator Lisa Murkowski (R-AK) introduced S. 2534, a bill to amend the Alaska Native Claims Settlement Act (ANCSA) to exclude certain payments to Alaska Native elders for determining certain program eligibility. S. 2534 would amend Section 39(c) of the Alaska Native Claims Settlement Act (43 U.S.C. § 1629e(c)) to exclude benefits awarded from a Settlement Trust to an Alaska Native or descendant who is 65 years of age or older for determining eligibility for programs in Section 29c of ANCSA. S. 2534 was referred to the Senate Committee on Energy and Natural Resources.

Elder Pride Act – H.R. 212: On April 12, 2019, Representative Deb Haaland (D-NM) introduced H.R. 2312, the Elder Pride Act. This bill would amend the OAA to establish the Office of Inclusivity and Sexual Health and a rural outreach grant program carried out by that office in order to improve services for LGBT older individuals. Tribal nations would be an eligible entity for the rural outreach grant program. H.R. 212 was referred to the House Committee on Education and Labor.

Disability Integration Act of 2019 – S. 117 & H.R. 555: On January 15, 2019, Minority Leader Chuck Schumer (D-NY) and twenty-three original cosponsors introduced S. 117, the Disability Integration Act of 2019 (DIA). This legislation would prohibit discrimination against individuals with disabilities who need long-term services and supports (LTSS), ensure that people living with disabilities have the federally protected right to choose how and where they receive services, and require public entities to address the need for affordable and accessible service delivery and housing. A house companion bill, H.R. 555, was introduced by Representative Jim Sensenbrenner (R-WI) and forty original cosponsors. S. 117 was referred to the Committee on Health, Education, Labor, and Pensions and H.R. 555 was referred to the Committee on Judiciary, Subcommittee on the Constitution, Civil Rights, and Civil Liberties. S.117 and H.R. 555 do not contain express tribal provisions but its content would impact tribal citizens living with disabilities.

Accessible Voting Act of 2020 – S. 3206: On January 16, 2020, Senators Robert Casey (D-PA) and Amy Klobuchar (D-MN) introduced S. 3206, the Accessible Voting Act of 2020. The bill aims to improve voting accessibility for older individuals, individuals with disabilities, American Indian, Alaska Natives, and individuals with limited English proficiency. The bill would amend the Help America Vote Act to create an Office of Accessibility at the Election Assistance Commission and authorizes the creation of a National Resource Center on Accessible Voting and a National Voter Accessibility Website. Also, S. 3206 includes language that is also included in H.R. 5510, which addresses the exclusion of an American Indian consortium serving the Four Corners region from a program that provides funding to Protection and Advocacy Systems across the U.S. in order to help ensure access to the voting process for voters with disabilities. S. 3206 has been referred to the Senate Committee on Rules and Administration.

HEALTH

The health and wellness of tribal communities depends on a network of healthcare, education, wellness service providers, prevention coordination, and tribally-driven initiatives. Despite the federal government's trust responsibility to provide healthcare, American Indians and Alaska Natives (AI/ANs) continue to experience the greatest health disparities in the U.S. when compared to other Americans. Shorter life expectancy and the disease burdens carried by AI/ANs exist because of inadequate education, disproportionate poverty, and discrimination in the delivery of healthcare services.

Legislative Update

Special Diabetes Program for Indians: The Special Diabetes Program for Indians (SDPI), enacted in 1997, provides assistance for developing local initiatives to treat and prevent diabetes and serves as a comprehensive source of funding to address diabetes issues in tribal communities. SDPI provides grants for diabetes prevention and treatment services to approximately 300 IHS, Tribal, and Urban Indian Health (I/T/U) programs across 35 states. SDPI has led to remarkable outcomes, including reductions in average blood sugar levels, reduction in the incidence of diabetes, a significant increase in the promotion of healthy lifestyle behaviors, and a 54 percent decline in the incidence rate of end-stage renal disease (ESRD) in AI/AN people. During its 2019 Annual Convention, NCAI passed Resolution #ABQ-19-042, “Support for Permanent Reauthorization of the Special Diabetes Program for Indians and Changes to the Indian Self-Determination Education Assistance Act (ISDEAA) to Support SDPI Funding through Title I and Title V Funding Agreements.”

On January 18, 2019, Senator Lamar Alexander (R-TN) introduced S. 192, the Community and Public Health Programs Extension Act. This bill includes reauthorizing language for SDPI at current funding levels through 2024 in addition to providing extensions for community health centers, the National Health Service Corps, and teaching health centers that operate Graduate Medical Education programs. S. 192 was referred to the Senate Committee on Health, Education, Labor and Pensions, where it awaits further action.

On May 13, 2019, Representative Tom O’Halloran (D-AZ) introduced H.R. 2680, the Special Diabetes Programs for Indians Reauthorization Act of 2019. This bill includes reauthorizing language for SDPI at \$200 million per year through 2024. H.R. 2680 was referred to the House Committee on Energy and Commerce, Subcommittee on Health. On July 17, 2019, H.R. 2680 was included in a broader bill and voted favorably out of Committee, but during mark-up, funding was reduced to \$150 million per year through 2023. On September 19, 2019, the House passed H.R. 4378, Continuing Appropriations Act, 2020, and Health Extenders Act of 2019, which included level funding for SDPI until November 21, 2019. On September 26, 2019, the Senate passed H.R. 4378, and on September 27, it was signed by the President, becoming Public Law 116-59. On December 20, 2019, the President signed into law H.R. 1865, the Further Consolidated Appropriations Act of 2020 (Public Law 116-94), which included level funding for SDPI until May 22, 2020.

Native Behavioral Health Access Improvement Act of 2019 – S. 3126 & H.R. 4533: On December 19, 2019, Senator Tina Smith (D-MN) introduced S. 3126, a bill to amend the Public Health Service Act to authorize a Special Behavioral Health Program for Indians. On September 26, 2019, Representative Frank Pallone (D-NJ) introduced a companion bill, H.R. 4533. These bills would establish a Special Behavioral Health Program for Indians (SBHPI) grant program for the prevention and treatment of mental health and substance abuse disorders. Modeled after the Special Diabetes Program for Indians, the SBHPI program would be administered by the Indian Health Service. The bills authorize \$150 million for each of fiscal years 2021 through 2025. S. 3126 was been referred to the Senate Committee on Indian Affairs. H.R. 4533 was referred to the House Committee on Energy and Commerce; the Committees on Ways and Means; and the Committee on Natural Resources, Subcommittee for Indigenous Peoples of the United States.

Indian Health Service Health Professions Tax Fairness Act of 2019 – S. 2871: On November 14, 2019, Senators Tom Udall (D-NM) and Lisa Murkowski (R-AK) introduced S. 2871, a bill to provide specific tax benefits such as exclusion from income for the forgiveness of student loan debt to individuals employed by the Indian Health Service or tribal healthcare systems. S. 2871 was referred to the Committee

on Finance where it awaits consideration. During its 2017 Mid Year Conference, NCAI passed Resolution #MOH-17-011, “Equitable Treatment for Tribal Nations in Congressional Tax Reform,” which includes support for this tax benefit.

Safer Communities Act of 2019 – H.R. 4199: On August 20, 2019, Representative Mike Thompson (D-CA) introduced H.R. 4199, a bill to strengthen the nation’s mental health infrastructure, improve the understanding of violence, strengthen firearm prohibitions and protections for at-risk individuals, and improve and expand the reporting of mental health records to the National Instant Criminal Background Check System. H.R. 4199 would provide grants to tribal governments to: (1) expand early intervention and treatment services to improve access to mental health crisis assistance and address unmet mental health care needs; (2) improve the automation and transmittal of tribal government record reporting to the National Instant Criminal Background Check System; and (3) assess a tribal government’s capability for the automation and transmission of arrest and conviction records, court orders, and mental health adjudications or commitments to federal and state record repositories. H.R. 4199 was referred to the House Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security; and the House Committee on Energy and Commerce.

Emergency Access to Insulin Act – S. 2004 & H.R. 4010: On June 29, 2019, Senator Tina Smith (D-MN) introduced S. 2004, a bill to amend the Public Health Service Act to establish insulin assistance programs. On July 25, 2019, Representative Angie Craig (D-MN) introduced a companion bill, H.R. 4010. This legislation would create a matching grant program for tribal nations and tribal organizations to set up State Insulin Assistance Programs, which would provide a short-term insulin supply for uninsured and under-insured patients and help patients identify state, federal, and private options to improve insulin affordability long-term. S. 2004 was referred to the Senate Committee on Finance for consideration. H.R. 4010 was referred to the House Committee on Energy and Commerce and the House Committee on Ways and Means.

RISE from Trauma Act – S. 1770 & H.R. 3180: On June 10, 2019, Senator Richard Durbin (D-IL) introduced S. 1770, a bill to identify and support children and families who experience trauma. On the same day, Representative Danny Davis (D-IL) introduced a companion bill, H.R. 3180. This legislation would create grants for demonstration projects for tribal nations to enable coordinating bodies to address community trauma. Additionally, this legislation would establish grants to identify and support children exposed to violence and substance use, as well as establish law enforcement Child and Youth Trauma Coordinating Centers in partnership with tribal nations. S. 1770 was referred to the Senate Committee on Health, Education, Labor, and Pensions.

State Opioid Response Grant Authorization Act – H.R. 2466: On May 1, 2019, Congressman David Trone (D-MD) introduced H.R. 2466, the State Opioid Response Grant Authorization Act. H.R. 2466 continues to award State Opioid Response Grants at an annual amount of \$1 billion for each of fiscal years 2020 through 2024. Of this total amount, tribal nations would receive a \$50 million set-aside each fiscal year. H.R. 2466 was referred to the House Committee on Energy and Commerce, Subcommittee on Health.

Opioid Package and Indian Country: Communities across the U.S. have been devastated by the opioid epidemic, and this is especially true in Indian Country. A 2017 Centers for Disease Control (CDC) report found that AI/ANs saw the highest drug overdose rates from 2008 to 2015, and the highest percentage increase in overdose deaths from 1999 to 2015 at 519 percent. AI/ANs also saw the second-highest opioid-

related overdose death rate in 2016, at 13.9 deaths per 100,000, as well as the second-highest heroin-related overdose death rate at five deaths per 100,000. In addition to these stark findings, AI/AN overdose deaths are consistently undercounted. In the same 2017 report, the CDC indicated the rate for AI/ANs could be underestimated by up to 35 percent. These statistics illuminate the critical need for more concerted attention on curbing the opioid epidemic in tribal communities.

National opioid legislation, entitled the SUPPORT for Patients and Communities Act, was enacted in late October 2018 (Public Law 115-271). The law includes several significant provisions that would help address the opioid crisis in Indian Country. This legislation:

- reauthorizes the 21st Century Cures Act, State Opioid Response Grant program at \$500 million through 2021 with a five (5) percent set-aside for tribal nations;
- reauthorizes the Child Abuse Prevention and Treatment Act at \$60 million through 2023 with a three (3) percent set-aside for tribal nations to address the needs of infants born with, and identified as being affected by, substance abuse or withdrawal symptoms resulting from prenatal drug exposure or fetal alcohol spectrum disorder;
- includes eligibility for tribal nations to establish or operate comprehensive opioid recovery centers;
- makes tribal nations eligible to receive funding for support services for children, adolescents, and young adults in the prevention of, treatment of, and recovery from, substance use disorders;
- includes tribal nations as eligible for funding related to improving enhanced controlled substance overdose data collection, analysis and dissemination efforts, as well as preventing overdoses; and
- includes tribal nations as eligible to receive funds for the purpose of increasing student access to evidence-based trauma support services and mental health care programs including those under IHS.

Urban Indian Health Parity – S. 1180 & H.R. 2316: On April 11, 2019, Senator Tom Udall (D-NM) introduced the Urban Indian Health Parity Act. On April 12, Representative Ben Ray Lujan (D-NM) introduced a companion bill, H.R. 2316. These bills extend the full federal medical assistance percentage (FMAP) to urban Indian organizations. S. 1180 was referred to the Senate Committee on Finance. H.R. 2316 was referred to the House Committee on Energy and Commerce. During its 2015 Annual Convention, NCAI passed Resolution #SD-15-070, “Request CMS to Extend 100% FMAP to All Services Received through the IHS or Tribal Health Facilities and Urban Indian Health Programs and to Include Services Provided through the Purchased & Referred Care Program.”

Assessment of the Indian Health Service Act of 2019 – S. 498: On February 14, 2019, Senator Mike Rounds (R-SD) introduced S. 498, the Assessment of the Indian Health Service Act of 2019. This bill would initiate an independent assessment of the healthcare delivery systems and financial management processes of IHS. S. 498 was referred to the Senate Committee on Indian Affairs.

Native American Suicide Prevention Act of 2019 – S. 467 & H.R. 1191: On February 13, 2019, Representative Raúl Grijalva (D-AZ) introduced H.R. 1191, the Native American Suicide Prevention Act of 2019, and Senator Elizabeth Warren (D-MA) introduced a companion bill, S. 467. These bills would amend section 520E of the Public Health Service Act to require states and their designees receiving grants for the development and implementation of statewide suicide early intervention and prevention strategies to collaborate with federally recognized tribal nations, tribal organizations, urban Indian organizations,

and Native Hawaiian healthcare systems in their states. S. 467 was referred to the Senate Committee on Health, Education, Labor, and Pensions. H.R. 1191 was referred to the House Committee on Energy and Commerce, Subcommittee on Health for further consideration.

Administrative Update

Revision of Categorical Eligibility in the Supplemental Nutrition Assistance Program (SNAP) Proposed Rule: On July 24, 2019, the Food and Nutrition Service agency within the Department of Health and Human Services (HHS) proposed revisions to the categorical eligibility in the SNAP. NCAI, along with our national partners at the National Indian Health Board (NIHB) and National Council of Urban Indian Health submitted comments on September 23, 2019. NCAI's letter included, but was not limited to, comments explaining the Proposed Rule's negative impacts on the Food Distribution Program on Indian Reservations, the Tribal Assistance for Needy Families Program, and Urban AI/ANs.

Office of Management and Budget (OMB) Notice of Solicitation of Comments on Consumer Inflation Measures Produced by Federal Statistical Agencies: On May 7, 2019, OMB requested comments on using a different measure of inflation for calculating the poverty threshold each year. Specifically, OMB proposes to potentially revise the current method for adjusting the poverty threshold for the production of official statistics. NCAI submitted joint comments with NIHB opposing any new method of calculation that would make it more difficult for AI/AN people to access these programs and services. The open comment period ended June 21, 2019.

Department of Health and Human Services Annual Tribal Budget Consultation: On March 5, 2019, the U.S. Department of Health and Human Services (HHS) sent a Dear Tribal Leader Letter (DTLL) announcing dates for its Annual Tribal Budget Consultation. The annual consultation provides a forum for tribal nations and tribal organizations to collectively engage with HHS officials to share their views, priorities, and recommendations with HHS officials on national health and human services funding priorities for the Department's FY 2021 budget request. NCAI provided comments and recommendations that:

- support the permanent inclusion of non-pharmacologic practitioners as health professions within IHS;
- urge IHS to allow tribal nations to contract or compact the Substance Abuse and Suicide Prevention Program and the Domestic Violence Prevention Initiative; and
- advocate for restoring funding for Tribal Technical Assistance Centers at the Substance Abuse and Mental Health Services Administration.

IHS Strategic Plan (2019-2023): On February 28, 2019, IHS updated its Strategic Plan. The plan focuses on the following three goals centered on access, quality, and management and operations:

- ensure that comprehensive, culturally appropriate personal and public health services are available and accessible to AI/ANs;
- promote excellence and quality through innovation of the Indian health system into an optimally performing organization; and
- strengthen IHS program management and operations.

Beginning in September 2017, IHS initiated tribal consultation on the IHS Strategic Plan initial framework and formed an IHS Federal-Tribal Strategic Planning Workgroup to review all comments and recommend a list of final goals and objectives for IHS leadership review and approval of the plan. Public comments

were also solicited through the Federal Register. Development of the FY 2019-2023 IHS Strategic Plan included gathering stakeholder feedback on an ongoing basis.

Department of Health and Human Services (HHS) Tribal Consultation Policy: On October 22, 2018, HHS issued a letter requesting feedback from tribal representatives on the HHS Tribal Consultation Policy. NCAI and NIHB provided joint comments and made recommendations, including:

- HHS should be specific about the response to the comments received and the timelines for accomplishing tasks or achieving objectives that are identified through tribal consultations;
- HHS Tribal Consultation Policy must emphasize the federal government’s trust responsibility to AI/ANs;
- HHS should revise the policy to include evaluation and accountability measures in the position description for the agency contact person who will liaise with tribal nations;
- HHS must uphold existing law regarding the political status of tribal nations; and
- NCAI and NIHB strongly discourage HHS from consolidating three or more regional consultations for the purpose of completing the process more quickly.

Center for Medicaid and Medicare Services (CMS) Medicaid Work Requirements and Political Status: In early 2018, CMS issued a letter to State Medicaid Directors inviting states to create Medicaid work requirements. CMS also issued a letter to tribal leaders, stating that CMS could not approve a tribal exemption from state Medicaid work requirements because of civil rights concerns. This policy would negatively impact tribal communities unless AI/ANs receive an exemption from state requirements. On April 11, 2018, a small tribal delegation met with CMS Senior Advisor to the Administrator, Calder Lynch, and representatives from the DHHS Office of General Counsel, including a representative from the Civil Rights Division, to get more information on CMS’ “civil rights concerns.” At that meeting, DHHS officials refused to provide further information, citing unspecified ongoing litigation and privileged communication. In addition, CMS indicated that it likely would not approve any waivers that had exemptions for AI/ANs due to the civil rights concerns.

After engaging CMS did not produce a positive outcome, NCAI, NIHB, tribal leaders, and other tribal organizations engaged members of Congress and other departments to weigh in with CMS on the settled state of the law regarding tribal political status. Elevating the issue led members of Congress to contact DHHS and CMS, ultimately causing CMS to adjust its stance and indicate it could provide flexibility to states working with tribal nations to provide accommodations. However, CMS later readopted its original position.

On January 18, 2019, CMS approved Arizona’s 1115 Medicaid Demonstration Waiver, which includes an exemption for members of federally recognized tribal nations from work requirements as a condition of eligibility in the state of Arizona. The approval of this work requirement exemption for tribal members under the Arizona Medicaid plan is a step in the right direction. However, NCAI continues to work in partnership with other national and regional tribal organizations to remind the Department that it has the authority to provide a broader exemption for IHS-eligible beneficiaries.

Community Health Aide Program Draft Interim Policy: In 2016, IHS announced that it was expanding the Community Health Aide Program (CHAP) to tribal nations outside of Alaska. The Indian Health Care Improvement Act (IHCIA) gave IHS the authority to expand the CHAP program, and based off the success in providing frontline medical, behavioral, and dental health services to Alaska Native communities, IHS

elected to do so after tribal consultation. On May 8, 2019, IHS published its Interim Policy on CHAP expansion, which establishes the infrastructure for CHAP certification and academic review at the IHS-area level. The Interim Policy will be the program's guiding document while the agency works with tribal nations to develop a permanent policy. NCAI adopted Resolution #REN-19-039, "Continued Support for the Community Health Representatives (CHR) Program and Support for the Community Health Aide Program (CHAP) Expansion," and submitted comments regarding the Interim Policy to make clear that the Interim Policy only applies to the CHAP described in 25 U.S.C. § 1616l(d) and that it does not apply to the Alaska CHAP organized under 25 U.S.C. § 1616l(a) and (b). In addition, NCAI requested that IHS clarify that the CHAP Interim Policy is separate and distinct from the Community Health Representative (CHR) Program.

VETERANS

AI/ANs serve at a higher per capita rate in the Armed Forces than any other group of Americans, and have served in all of the nation's wars since the Revolutionary War. AI/AN veterans served in several wars before they were even recognized as American citizens. Despite their valiant service, AI/AN veterans have lower personal incomes, higher unemployment rates, and are more likely to lack health insurance compared to veterans of other races. NCAI has been monitoring the Department of Veterans Affairs (VA) initiatives, administrative actions, and proposed legislation impacting AI/AN veterans to ensure they receive the proper benefits and compensation for their military service.

Legislative Update

Native American Veteran Parity in Access to Care Today (PACT) Act – H.R. 4908: On September 29, 2019, Representative Ruben Gallego (D-AZ) introduced H.R. 4908, a bill to end the practice of charging American Indian and Alaska Native veterans a copayment for receiving care at the Veterans Health Administration. H.R. 4908 was referred to the House Committee on Veterans' Affairs, Subcommittee on Health for further consideration.

Nursing Home Care for Native American Veterans Act – S. 2558 & H.R. 4532: On September 26, 2019, Senator Kyrsten Sinema (D-AZ) introduced S. 2558, the Nursing Home Care for Native American Veterans Act, and Representative Tom O'Halleran (D-AZ) introduced a companion bill, H.R. 4532. These bills would support the construction of veteran nursing homes on tribal lands by allowing tribal nations to access federal grant money to reimburse tribal veteran nursing home construction. H.R. 4532 was referred to the House Committee on Veterans' Affairs, Subcommittee on Health. S. 2558 was referred to the Senate Committee on Veterans' Affairs.

Health Care Access for Urban Native Veterans Act – H.R. 4153 & S. 2365: On July 31, 2019, Senator Tom Udall (D-NM) introduced S. 2365, the Health Care Access for Urban Native Veterans Act. On August 2, 2019, Representative Ro Khanna (D-CA) introduced a companion bill, H.R. 4153. These bills would amend the Indian Health Care Improvement Act to provide Native veterans coverage by the VA for services at urban Indian health centers. S. 2365 was referred to the Committee on Indian Affairs. H.R. 4153 was referred to the Committee on Natural Resources and the Committee on Energy and Commerce. On September 19, 2019, the House Natural Resources Committee, Subcommittee for Indigenous Peoples of the United States held a legislative hearing where it considered H.R. 4153. On November 20, 2019, the Senate Committee on Indian Affairs held a legislative hearing considering two bills, including S. 2365. During its 2019 Mid Year Conference, NCAI passed Resolution #REN-19-034, "Calling on Congress to

Enact Legislation Ensuring the Provision of Health Care to American Indian and Alaska Native Veterans Living in Urban Centers.”

Remove the Stain Act – H.R. 3467 & S. 3164: On June 25, 2019, Representative Denny Heck (D-WA) introduced H.R. 3467, a bill to rescind each of the 20 Congressional Medals of Honor awarded for acts at Wounded Knee Creek, Lakota Pine Ridge Indian Reservation, South Dakota, on December 29, 1890. On January 8, 2020, Senator Elizabeth Warren (D-MA) introduced companion bill, S. 3164. H.R. 3467 was referred to the House Armed Services Committee. S. 3164 was referred to the Senate Committee on Armed Services. NCAI and its membership have called upon Congress to revoke these medals since at least 1997.

Tribal Veterans Health Care Enhancement Act – S. 1001: On April 3, 2019, Senator John Thune (R-SD) introduced S. 1001, the Tribal Veterans Health Care Enhancement Act. This bill would amend the Indian Health Care Improvement Act to allow IHS to cover the cost of a copayment of an AI/AN veteran receiving medical care or services from VA. Covered medical care includes any medical care administered at a facility of VA, including any services rendered under a contract with a non-VA health care provider. S. 1001 was referred to the Senate Committee on Indian Affairs. On November 20, 2019, the Senate Committee on Indian Affairs held a legislative hearing considering two bills, including S. 1001.

Department of Veterans Affairs Tribal Advisory Committee Act – S. 524 & H.R. 2791: On February 14, 2019, Senator Jon Tester (D-MT) introduced S. 524, the Department of Veterans Affairs Tribal Advisory Committee Act. S. 524 establishes a Tribal Advisory Committee (TAC) to provide advice and guidance to the Secretary of Veterans Affairs on matters relating to AI/AN veterans, tribal nations, and tribal organizations. The 15-member committee would be composed of individuals representing each of the 12 service areas of IHS with no less than half being veterans. On May 16, 2019, Representative Deb Haaland (D-NM) introduced a companion bill, H.R. 2791, and this bill was referred to the House Committee on Veterans’ Affairs. On May 22, 2019, the Senate Committee on Veterans’ Affairs held a legislative hearing considering several bills, including S. 524. NCAI provided written testimony supporting this bill, writing that a TAC would provide vital opportunities for collaboration, communication, and coordination between VA and tribal nations. During its 2019 Mid Year Conference, NCAI passed Resolution #REN-19-033, “Supporting the Department of Veterans Affairs Tribal Advisory Committee Act.”

Veterans Medical Marijuana Safe Harbor Act – S. 445 & H.R. 1151: On February 12, 2019, Senator Brian Schatz (D-HI) introduced S. 445, the Veterans Medical Marijuana Safe Harbor Act, and Representative Barbara Lee (D-CA) introduced a companion bill, H.R. 1151. S. 445 allows veterans to use, possess, or transport medical marijuana and to discuss the use of medical marijuana with a physician of the VA as authorized by a state or tribal nation. S. 445 was referred to the Senate Committee on the Judiciary. H.R. 1151 was referred to the House Committee on Energy and Commerce, the Committee on the Judiciary, and the Committee on Veterans’ Affairs.

NCAI Provides Testimony for the U.S. House Committee on Veterans’ Affairs, Subcommittee on Health, Oversight Hearing: Native Veterans’ Access to Healthcare: On October 30, 2019, the House Committee on Veterans’ Affairs, Subcommittee on Health held an oversight hearing titled, “Native Veterans Access to Healthcare.” Witnesses included members of the Administration and tribal leaders and organizations. NCAI CEO Kevin Allis testified on cultural competency at the VA, the VA-IHS Memorandum of Understanding, data collection on suicide among AI/AN veterans, and pending legislation.

NCAI Submits VA Contracted Exams Testimony to House Committee on Veterans' Affairs: On September 19, 2019, NCAI submitted written testimony to the House Committee on Veterans' Affairs, Subcommittee on Disability Assistance and Memorial Affairs for a hearing titled "Update on VA Contracted Exams, Quality Review Process, and Service to Rural Veterans." The comments highlighted some barriers rural AI/AN veterans face when completing a compensation and pension exam. These challenges include issues associated with transportation infrastructure and options, cultural competency, and the often-confusing VA system. NCAI recommended the following solutions: (1) address issues with Tribal Veteran Service Officer Accreditation by amending 38 C.F.R. 14.628(b) to recognize tribal nations as accredited organizations; (2) pass legislation to establish a Veterans Affairs Tribal Advisory Committee (VATAC); and (3) invest in tribal infrastructure, road systems, and tribal transit systems.

Administrative Update

NMAI's National Native American Veterans' Memorial Design Competition: On July 4, 2018, Harvey Pratt (Cheyenne/Arapaho) was selected unanimously as the winner of the National Museum of the American Indian's (NMAI) National Native American Veterans' Memorial Design Competition. The Memorial is to be located prominently on the grounds on the National Mall between the Smithsonian's National Air and Space Museum and the U.S. Capitol. On September 21, 2019, NCAI participated in the groundbreaking ceremony for the National Native American Veterans Memorial in Washington, D.C. The anticipated dedication is planned for Veterans Day 2020. The Memorial is a collaborative effort by NCAI and NMAI to honor the distinguished military service of AI/ANs and is authorized by the Native American Veterans' Memorial Establishment Act of 1994 and advanced by the Native American Veterans' Memorial Amendments Act of 2013.

TRIBAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

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

Under Section 412 of the Social Security Act, federally recognized tribal nations can apply for funding to administer and operate their own TANF programs and then are required to submit a three-year Tribal TANF plan to the HHS Secretary through the Administration for Children and Families (ACF) for review and approval. If approved, Tribal TANF programs receive a portion of the state TANF block grant from the state in which the tribal nation is located. Since 1997, TANF grants have served nearly 300 federally recognized tribal nations through 70 approved tribal TANF programs. TANF gives federally recognized tribal nations flexibility in the design of welfare programs to fit the needs of their communities.

The NCAI Tribal TANF Task Force was created in 2008 and consists of tribal leaders and Tribal TANF program staff. The goal of NCAI's Tribal TANF Task Force is to ensure tribal nations have a national voice in TANF and related human services program policies, administration, and legislation. In 2015, NCAI passed Resolution #SD-15-064, "Support for NCAI Tribal TANF Task Force Legislative and Administrative Priorities." These priorities include: promoting tribal consultation within the ACF;

establishing standard TANF training programs; providing full federal and state funding to Tribal TANF programs; and providing incentives for states to fund Tribal TANF programs.

Legislative Update

Tribal TANF Fairness Act of 2019 – H.R. 2128: On April 8, 2019, Congressman Paul Cook (R-CA) introduced H.R. 2128, the Tribal TANF Fairness Act of 2019. H.R. 2128 amends Part A of Title IV of the Social Security Act to clarify that a tribal government (including a tribal government participating in an intertribal consortium) may lease land held in trust or in fee, at a fair market rate, for the administration of a tribal family assistance grant. H.R. 2128 was referred to the House Committee on Ways and Means.

Reauthorization of TANF: Since 2010, TANF has received short-term extensions to maintain funding instead of a multi-year extension. On January 24, 2019, Representative Richard Neal's (D-MA) bill, H.R. 430, was signed into law and reauthorized TANF until June 30, 2019. On July 5, 2019, H.R. 2940, a bipartisan bill from Representatives Danny Davis (D-IL) and Jackie Walorski (R-IN), was signed into law, reauthorizing TANF at the current funding level of \$16.5 billion through September 30, 2019. On September 27, 2019, H.R. 4378, the Continuing Appropriations Act, 2020, and Health Extenders Act of 2019, was signed into law. This continuing resolution introduced by Representative Nita Lowey (D-NY) reauthorized TANF at current levels through November 21, 2019. On December 20, 2019, the President signed into law H.R. 1865, the Further Consolidated Appropriations Act of 2020, which included level funding for TANF until May 22, 2020.

Administrative Update

12th TANF Report Submitted to Congress: In January 2018, the Office of Family Assistance published the TANF 12th Report to Congress. The report provides data for FY 2014 and FY 2015 and presents information regarding TANF expenditures and caseloads, work participation and earnings, the characteristics and financial circumstances of TANF recipients, TANF performance measures, interactions between TANF and child support, and specific provisions of state TANF programs. Chapter 7 of the report covers Tribal TANF and Native Employment Works (NEW). The report found that by the close of FY 2015, 70 Tribal TANF plans were approved to operate on behalf of 298 tribal nations and Alaska Native villages and to serve the non-reservation area of 122 counties. The grants allocated to approved programs totaled \$192,103,592 in federal funds. AI/AN families not served by Tribal TANF programs are eligible to be served by state TANF programs. The report found that in FY 2015, state TANF programs served approximately 25,600 AI/AN children and 7,500 AI/AN adults. With regard to the NEW program, as of June 30, 2015, there were 78 NEW grantees, 32 of which also operated Tribal TANF programs, with \$7,558,020 awarded in funding. NEW programs provide work activities, supportive services, and job retention services to help clients prepare for and obtain permanent, unsubsidized employment.

INFRASTRUCTURE

Like all other governments in the United States, tribal nations strive to provide services and grow their economies to ensure the health and wellbeing of their citizens. This common responsibility means that tribal nations have the same types of infrastructure needs as other governments. However, tribal nations do not receive federal resources proportional to other governments, and thus the unmet need is often significantly greater in Indian Country. The chronic underinvestment and the growing backlog of critical infrastructure projects impacts the social, physical, and mental wellbeing of tribal communities; hampers the ability of tribal nations to fully leverage their economic potential; and frustrates the ability of tribal citizens to fully participate in the American economy.

TELECOMMUNICATIONS

The U.S. continues to be a global leader in the technology and wireless industries. However, access to telecommunications infrastructure and services in rural and tribal communities continues to lag behind the nation overall. In a September 2018 U.S. Government Accountability Office (GAO) report titled “FCC’s Data Overstate Access on Tribal Lands,” GAO found that residents of tribal lands have lower levels of broadband internet access relative to the U.S. as a whole, and that Federal Communications Commission (FCC) data overstated tribal nations’ access to broadband service. GAO reports that these overstatements limit FCC and tribal users’ ability to target broadband funding to tribal lands and bridge the digital divide in Indian Country. The FCC has begun to take action in response to findings by GAO on broadband deployment and access in Indian Country, but official responses from the FCC do not indicate a specific timeline for completion of actions such as updating the FCC’s broadband data collection form. Better broadband deployment data is needed along with direct, targeted, and long-term investment in broadband infrastructure throughout Indian Country.

The 1996 Telecommunications Act was the last major authorizing bill to pass Congress that directs the FCC’s work. Because a comprehensive telecommunications bill has not been passed in over 20 years, Congress has recently approached the changing technological landscape through smaller pieces of legislation. Regardless of whether federal telecommunications policy is established through major legislation or smaller bills, Congress should promote broadband access in Indian Country, provide adequate funding and equal access to capital for tribal nations to build telecommunications infrastructure, require data collection on broadband access in Indian Country, improve telecommunications training opportunities and program guidance for tribal nations, and ensure federal permitting and other decision-making includes tribal nations from the outset and through project completion.

Legislative Update

Tribal Internet Expansion Act of 2019 – H.R. 4449: On September 20, 2019, Representative Raul Ruiz (D-CA) introduced H.R. 4449, the Tribal Internet Expansion Act of 2019. H.R. 4449 would amend the Universal Service principles for access in rural and high cost areas found in the Communications Act of 1934 (47 U.S.C. § 254(b)(3)) to include Indian Country and areas with high populations of tribal communities. H.R. 4449 was referred to the House Committee on Energy and Commerce.

Broadband Deployment Accuracy and Technological Availability Act – H.R. 4229: On September 6, 2019, Representative David Loebsack (D-IA) introduced H.R. 4229, the Broadband Deployment Accuracy and Technological Availability Act. H.R. 4229 would require the FCC to issue rules relating to the collection of data with respect to the availability of broadband services including within tribal areas. H.R. 4229 was

referred to the House Committee on Energy and Commerce and a hearing and mark-up were subsequently held. On December 16, 2019, H.R. 4229 passed the House. It has since been referred to the Senate and placed on the Senate Legislative Calendar under General Orders where it awaits floor consideration.

Broadband Infrastructure Finance and Innovation Act of 2019 – S. 2344 & H.R. 4127: On July 30, 2019, Senator Gary Peters (D-MI) introduced S. 2344, the Broadband Infrastructure Finance and Innovation Act of 2019. On July 25, 2019, Representative Ben Ray Lujan (D-NM) introduced H.R. 4127, an identical companion bill. These bills would establish a broadband infrastructure finance and innovation program to make available loans, loan guarantees, and lines of credit for the construction and deployment of broadband infrastructure to tribal nations and other eligible governmental entities or public authorities. S. 2344 was referred to the Senate Committee on Commerce, Science, and Transportation. H.R. 4127 was referred to the House Committee on Energy and Commerce.

Map Improvement Act of 2019 – S. 1485 & H.R. 4128: On May 15, 2019, Senator Joe Manchin (D-WV) introduced S. 1485, the Map Improvement Act of 2019. On July 30, 2019, Representative Ben Ray Lujan (D-NM) introduced H.R. 4128, an identical companion bill. This legislation would require the FCC to promulgate a final rule to standardize the methodology for mapping accurate fixed and mobile broadband internet service, require the FCC to establish an Office of Broadband Data Collection and Mapping, and establish a technical assistance program for grants to various entities, including tribal nations, to assist with mapping, assessing current broadband internet service adoption rates, and advertising broadband internet service pricing in the community. S. 1485 was referred to the Senate Committee on Commerce, Science, and Transportation. H.R. 4128 was referred to the House Committee on Energy and Commerce.

Rural Broadband Network Advancement Act of 2019 – H.R. 2929: On May 22, 2019, Representative Markwayne Mullin (R-OK) introduced H.R. 2929, the Rural Broadband Network Advancement Act of 2019. This bill would require the FCC to establish a program to promote the availability and sustainability of robust rural broadband networks in high-cost rural areas through network user fees collected by edge providers. Edge providers use a customer's internet service provider to deliver content that requires a subscription or an account in order to use the services (e.g., Facebook). Under this bill, tribal nations that also qualify as edge providers would be exempt from any network user fees. H.R. 2929 was referred to the House Committee on Energy and Commerce.

Community Broadband Act of 2019 – H.R. 2785: On May 16, 2019, Representative Anna Eshoo (D-CA) introduced H.R. 2785, the Community Broadband Act of 2019. This bill would bar any state statute, regulation, or other state legal requirement from prohibiting or having the effect of prohibiting any public provider or public/private partnership provider from providing advanced telecommunications capability or related services. While this bill would protect tribal public providers from state interference, it also would require tribal public providers to apply tribal ordinances and rules that regulate private providers without discrimination in favor of itself or any provider that it owns. H.R. 2785 was referred to the House Committee on Energy and Commerce.

Leading Infrastructure for Tomorrow's (LIFT) America Act – H.R. 2741: On May 15, 2019, Representative Frank Pallone, Jr. (D-NJ) introduced H.R. 2741, the LIFT America Act. This bill would include investments in certain infrastructure projects that address climate change and reduce carbon emissions, promote clean drinking water, address America's health infrastructure, and expand access to broadband internet. Tribal nations would be eligible for funds for the deployment of secure and resilient

high-speed broadband internet service, implementation of Next Generation 9-1-1 services, and low-interest financing of broadband infrastructure through secured loans, lines of credit, or loan guarantees to finance broadband infrastructure build out projects. H.R. 2741 was referred to the Committee on Energy and Commerce; Committee on Natural Resources; Committee on Ways and Means; Committee on Transportation and Infrastructure; and Committee on Education and Labor. On May 22, 2019, a hearing was held on H.R. 2741 in the Committee on Energy and Commerce.

Measuring the Economic Impact of Broadband Act of 2019 – S. 1289 & H.R. 3676: On May 2, 2019, Senator Amy Klobuchar (D-MN) introduced S. 1289, the Measuring the Economic Impact of Broadband Act of 2019. On July 10, 2019, Representative Ro Khanna (D-CA) introduced a companion bill, H.R. 3676. These bills would require an in-depth assessment of the impact of the digital economy on the overall economy of the United States and require a new assessment and analysis every two years. They also would require tribal consultation as part of each assessment and analysis required in this Act. On June 5, 2019, S. 1289 passed the Senate without amendment by Unanimous Consent. Both H.R. 3676 and S. 1289 are referred to the House Committee on Energy and Commerce.

Improving Broadband Mapping Act of 2019 – S. 842: On March 14, 2019, Senator Amy Klobuchar (D-MN) introduced S. 842, the Improving Broadband Mapping Act of 2019. S. 842 would require the FCC to establish a process to use coverage data reported by consumers and tribal, state, and local government entities to verify coverage data reported by wireless carriers. This bill also would require the FCC to consider including a process for incorporation of coverage data obtained from tribal nations. S. 842 was referred to the Committee on Commerce, Science, and Transportation.

Save the Internet Act of 2019 – H.R. 1644: On March 8, 2019, Representative Michael Doyle (D-PA) introduced H.R. 1644, the Save the Internet Act of 2019. This bill would restore net neutrality by codifying the FCC's Open Internet Order; require various reports on net neutrality and its effects on the internet, high-speed internet infrastructure, and the accuracy of broadband access mapping; and require FCC engagement and outreach to address the unique broadband internet access service challenges in Indian Country. This bill also would require the FCC to engage and obtain feedback from tribal stakeholders on the effectiveness of the FCC's obligation to consult with tribal nations in order to determine whether the FCC needs to clarify its tribal engagement statement and ensure accessible and affordable broadband internet access across Indian Country. On April 10, 2019, H.R. 1644 passed the House and has been referred to the Senate. On April 29, 2019, the Senate placed H.R. 1644 on the Senate Legislative Calendar under General Orders where it awaits floor action.

Rural Broadband Permitting Efficiency Act of 2019 – H.R. 292: On January 8, 2019, Representative John Curtis (R-UT) introduced H.R. 292, the Rural Broadband Permitting Efficiency Act of 2019. This bill would allow tribal nations to enter into Memoranda of Understanding (MOU) enabling them to prepare environmental analyses required under the National Environmental Policy Act (NEPA) for the permitting of broadband projects within an operational right-of-way on national forest system land, land managed by the Department of the Interior, or tribal lands. MOUs would not be granted to a state on tribal lands without the consent of the relevant tribal nation, and the MOUs would not permit a tribal nation or state to assume any federal responsibilities for government-to-government consultation with tribal nations. H.R. 292 was referred to the House Natural Resources and Agriculture Committees.

Senate Committee on Indian Affairs Holds Oversight Hearing on Broadband in Indian Country: On September 18, 2019, the Senate Committee on Indian Affairs held an oversight hearing on Broadband in Indian Country. The Committee received testimony from Belinda Nelson, Chairperson, Gila River Telecommunications, Inc.; Kimball Sekawaptewa, Chief Technology Director, Santa Fe Indian School; Don Stockdale, Chief, Wireless Telecommunications Bureau, FCC; and Andrew Von Ah, Director of Physical Infrastructure Issues, U.S. Government Accountability Office (GAO). Questions examined the FCC's response to GAO's report GAO-19-75, "Tribal Broadband: FCC Should Undertake Efforts to Better Promote Tribal Access to Spectrum", which identifies ways the FCC can remove regulatory obstacles to streamline telecommunications buildout in Indian Country.

Administrative Update

Native Nations Communications Task Force Tribal Members Release Report on Improving and Increasing Broadband Deployment on Tribal Lands: On December 4, 2019, the FCC Native Nations Communications Task Force released a report titled "Improving and Increasing Broadband Deployment on Tribal Lands." This task force's mission is to provide guidance, expertise, and recommendations to specific requests from the FCC on a range of telecommunications issues that directly or indirectly affect tribal nations and their citizens. The primary objective of the report is to inform policymakers about continuing obstacles to broadband deployment on tribal lands, highlight tribal success stories, and provide potential solutions that could benefit residents of Indian Country. Key recommendations include statutory changes to remove or loosen single-use support restrictions; opening the role of tribal nations in the designation of eligible telecommunications carrier (ETC) status and removing the outdated requirement that ETCs provide voice services; regulatory changes to ensure build-out on tribal lands earlier in the build-out period; linking tribal auction bidding credits to meeting deployment obligations on tribal lands; and giving serious consideration to adjusting legacy-rate-of-return carrier support levels to better reflect the unique and higher costs of serving tribal lands.

In addition, the report makes recommendations for addressing the lack of tribal access to essential broadband building blocks, including middle-mile connections and spectrum; for fostering partnerships between commercial providers and tribal nations; for addressing continued consultation on matters of significant tribal interest; and for streamlining and improving the tribal government-carrier engagement process. Finally, based on the experiences of tribal nations who have successfully deployed networks to serve their communities, the report concludes that grant rather than loan funding is the optimal form of support for tribal nations.

FCC Rural Tribal Priority Window to Obtain Unassigned Spectrum over Tribal Lands: The FCC has established a rural tribal priority filing window for unlicensed portions of the 2.5 GHz band to be obtained free of auction bidding costs. The 2.5 GHz band is suitable for both mobile covered and fixed point-to-point broadband internet. On December 2, 2019, the FCC announced the application window for the upcoming 2.5GHz Rural Tribal Priority Window will take place from February 3, 2020, to August 3, 2020. Previously, the FCC released its 2.5GHz Rural Tribal Window mapping tool of available spectrum licenses, which is available on the FCC Office of Native Affairs and Policy website.

Any federally recognized tribal nation may apply during the window, as well as consortia of federally recognized tribal nations, that have a local presence in the tribal lands an entity seeks a license over. Tribal nations may designate their own desired license areas, so long as the entire area is rural tribal land, and the applicant has a local presence in the area. "Rural" means an area with a population of 50,000 or less,

as determined using Census Bureau data. “Tribal land” for this purpose means any federally recognized reservation of a tribal nation, including former reservations in Oklahoma and Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act or Indian Allotments. “Local presence” is a case-by-case measure that may be defined in different ways, depending on the entity applying during the priority window. Tribal nations will be deemed to automatically have a local presence in their eligible tribal lands.

Additional information and technical workshop opportunities are updated and posted to the FCC’s 2.5 GHz Rural Tribal Window information page on a rolling basis. Interested parties may email the FCC regarding the priority filing window directly at RuralTribalWindow@fcc.gov.

NCAI submits Petition for Reconsideration of the Rules regarding the FCC 2.5GHz Rural Tribal Priority Window: On November 25, 2019, NCAI submitted a petition for reconsideration of the rules associated with the 2.5 GHz Rural Tribal Priority Window. NCAI argued that the FCC should reconsider its decision to limit off-reservation lands, including trust lands, from tribal priority window eligibility and to reconsider the requirement that, in addition to being designated as tribal lands, an area must also be “rural” in order to qualify for the tribal priority window. NCAI also urged the FCC to extend the timeframe for the Tribal Priority Window to a full 180 days, and adjust the opening of the window to April 1, 2020, so that eligible entities have the appropriate time and opportunity to adequately prepare for and obtain a Tribal Priority license. While the FCC extended the length of the window to six months, it has proceeded with its Rural Tribal Priority Window without amending the definitions of “tribal lands” or “rural” used in the Rural Tribal Priority Window.

U.S. Senators and Representatives Request that the FCC expand length of the Rural Tribal Priority Window and Improve Tribal Outreach: On November 19, 2020, Senators Brian Schatz (D-HI), Tom Udall (D-NM), and Lisa Murkowski (R-AK) sent a letter to FCC Chairman Ajit Pai expressing their concerns with the implementation of the Tribal Priority Window for the 2.5GHz band. On November 25, 2019, Representative Deb Haaland (D-NM), along with 12 bipartisan co-signers including members of the Congressional Native American Caucus and the House Task Force on Rural Broadband, also sent a letter to Chairman Pai regarding the Rural Tribal Priority Window. Each letter expressed concerns with the rules adopted regarding the timeline of the window and the amount of training and outreach that is being provided by the FCC to tribal nations and other eligible tribal applicants. In the letter from Senators Schatz, Udall, and Murkowski, NCAI Resolution ABQ-19-086C, “providing for the Success of Tribal Nations in the 2.5 Gigahertz Broadband Tribal Priority for Wireless Networks,” is expressly mentioned. NCAI advocacy from its membership and staff, along with the letters from both Congressional chambers led the FCC to announce a six month application window (which exceeds the increased application window requested in NCAI Resolution ABQ-19-086C) and additional FCC workshop opportunities.

FCC Proposed Rule on Rural Digital Opportunity Fund, Connect America Fund – 84 FR 43543: On August 21, 2019, FCC issued a notice of proposed rulemaking (NPRM) requesting input for the establishment of the Rural Digital Opportunity Fund, which would commit at least \$20.4 billion over the next 10 years to high-speed broadband networks in rural America. The FCC proposed to implement a Tribal Broadband Factor for the Rural Digital Opportunity Fund that would better direct funds to census blocks on tribal lands. Specifically, the FCC sought comment on the use of a 25-percent bidding credit for rural tribal areas to incentivize carriers to bid on and serve Indian Country. As of the date of this publication, a final rule has not been published by the FCC. NCAI continues to monitor this rulemaking.

FCC Announces Broadcast Radio Incubator Program: In 2018, the FCC adopted a Report and Order creating an incubator program with the goal of promoting ownership opportunities for new entrants and small businesses, including tribally owned broadcast radio stations. The FCC expects the incubator program to support the entry of new voices in the broadcasting industry.

FCC releases NPRM on Creation of a \$100 million Connected Care Pilot Telehealth Program: On July 11, 2019, FCC released a Notice of Proposed Rulemaking seeking comment on the creation of a \$100 million Connected Care Pilot Telehealth program within the Universal Service Fund (USF) to support connected care for low-income Americans and veterans. The Connected Care Pilot Telehealth program would operate as a new program within the USF that would provide funding to eligible health care providers, including tribal nations, to defray the qualifying costs of providing connected care services. As of the date of this publication, a final rule has not been published by the FCC. NCAI continues to monitor this rulemaking for developments of tribal interest.

FCC releases NPRM on Capping Contributions to the Universal Service Fund: On May 31, 2019, FCC released a Notice of Proposed Rulemaking seeking comment on capping the entire Universal Service Fund (USF) through a cap on contributions from telecommunications providers. The USF is comprised of four programs: the Connect America Fund (formerly the High Cost Program); the low-income (Lifeline/Link-Up) program; the Schools & Libraries (E-rate) program; and the Rural Health Care Program. USF is funded through service fees collected from wireline and wireless phone companies and voice over Internet protocol (VoIP) providers. As of the date of this publication, a final rule has not been published by the FCC. NCAI continues to monitor this rulemaking for developments of tribal interest.

HOUSING

Housing needs remain critical for Native families on tribal lands where shortages and overcrowding conditions persist. In 2017, the U.S. Department of Housing and Urban Development (HUD) sponsored a report titled *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*. The report highlights the issue of overcrowding, determining that it would take approximately 33,000 new units to alleviate overcrowding in Indian Country with an additional 35,000 housing units needed to replace existing homes considered in dire condition. The report also indicated that a total of 68,000 new and/or replacement homes are needed in Indian Country.

Households in Indian Country are more than twice as likely to be overcrowded, compared with the nation as a whole. According to the U.S. Department of Housing and Urban Development, between 2003 and 2015, the number of overcrowded households, or households without adequate kitchens or plumbing, grew by 21 percent. During that same period, the number of families in Indian Country with severe housing costs grew by 55 percent. As part of HUD's 2017 Congressional Justification, it explained that "the lack of housing and infrastructure in Indian Country is severe and widespread, and far exceeds the funding currently provided to [tribal nations]." Fifteen years after the U.S. Commission on Civil Rights' initial 2003 report on federal funding and unmet need in Indian Country, the Commission found in 2018 that the housing crisis in Indian Country has deteriorated even further. These findings underscore the need for substantial and meaningful funding increases offered through flexible programs that allow tribal nations to exercise their sovereignty and address the diverse and extensive housing infrastructure and financing needs of their communities.

Legislative Update

Native American Housing Assistance and Self-Determination Reauthorization Act of 2019 – H.R. 5319: On December 5, 2019, Representative Denny Heck (D-WA) introduced H.R. 5319, the Native American Housing Assistance and Self-Determination Reauthorization Act of 2019. H.R. 5319 would reauthorize the Native American Housing Assistance and Self-Determination Act (NAHASDA) Indian Housing Block Grant (IHBG) at \$680 million in formula-based funding in FY 2020, with increases each year thereafter for five years at an average rate of \$28 million per year; authorize IHBG competitive grant funding at \$100 million in FY 2020, with increases of \$5 million each year for five years; establish an Assistant Secretary for Indian Housing at HUD; provide set-aside amounts for tribal housing from U.S. Department of Agriculture housing programs; make tribal nations eligible to receive housing counseling grants; and provide tribal nations parity in treatment under the National Flood Insurance Program. H.R. 5319 was referred to the House Committee on Financial Services.

On September 19, 2019, Senator Tom Udall (D-NM) offered an amendment to reauthorize NAHASDA during a markup of the Fiscal Year 2020 Transportation, Housing, and Urban Development Appropriations Bill. This amendment was defeated by a margin of 15-16 along party lines. As of the date of this publication, the Senate has not introduced a NAHASDA reauthorization bill.

Native American Housing Affordability Act of 2019 – S. 2725: On October 29, 2019, Senator Mike Rounds (R-SD) introduced S. 2725, the Native American Housing Affordability Act of 2019. The Native American Housing Affordability Act of 2019 would allow the Secretary of HUD to issue a certificate of guarantee for a loan involving a security interest in Indian trust land before the Secretary receives the required trailing documents if the originating lender agrees to indemnify the Secretary for any losses that may result when a claim payment is presented to the Secretary due to the default of the borrower on the loan and the required trailing documents are outstanding. S. 2725 would also require the Secretary of HUD to submit to Congress on a semi-annual basis a report on the progress made to accelerate the processing of lender applications under Section 184 of the Housing and Community Development Act of 1992. S. 2725 was referred to the Senate Committee on Banking, Housing, and Urban Affairs.

Tribal Access to Homeless Assistance Act – S. 2282 & H.R. 4029: On July 25, 2019, Representative Denny Heck introduced H.R. 4029, the Tribal Access to Homeless Assistance Act. Also on July 25, 2019, Senator Tina Smith (D-NM) introduced S. 2282, an identical companion bill. These bills would amend the McKinney-Vento Homeless Assistance Act (Title V, 42 U.S.C. § 11360 et seq.) to enable tribal nations and tribally designated housing entities to apply for, receive, and administer grants and sub-grants under the Continuum of Care program at HUD. S. 2282 was referred to the Senate Committee on Banking, Housing, and Urban Affairs. On November 18, 2019, the House passed H.R. 4029 by a voice vote under suspension of the rules. H.R. 4029 has been referred to the Senate Committee on Banking, Housing, and Urban Affairs.

Tribal HUD-Veterans Affairs Supportive Housing (Tribal HUD-VASH) Act – S. 257 & H.R. 2999: On January 29, 2019, Senator Jon Tester (D-MT) introduced S. 257, the Tribal HUD-VASH Act. On May 23, 2019, Representative Ben Ray Lujan (D-NM) introduced a companion bill, H.R. 2999. This legislation would make the Tribal HUD-VASH program permanent. The Tribal HUD-VASH program, which is intended to address housing needs for at-risk and homeless Native veterans residing on tribal lands, is jointly operated by HUD and the Department of Veterans Affairs (VA). In the 115th Congress, a bill permanently authorizing the Tribal HUD-VASH program passed the Senate and nearly passed the House

in the final days of the session. H.R. 2999 was referred to the House Committee on Financial Services. On June 27, 2019, S. 257 passed the Senate and was referred to the House Committee on Financial Services. NCAI will continue to work with its partners to enact this legislation.

Landlord Accountability Act of 2019 – H.R. 232: On January 3, 2019, Representative Nydia Velazquez (D-NY) introduced H.R. 232, the Landlord Accountability Act of 2019. This bill would authorize \$25 million for each fiscal year between 2020 and 2024 for a new tenant harassment prevention program, of which tribal nations are eligible to receive a portion. This bill would also prohibit discrimination based on use of rental assistance vouchers, set penalties for violation of these new provisions, and have certain public notice and HUD reporting requirements associated with the prohibition on discrimination based on use of rental assistance vouchers. As part of this bill, tax incentives would be established for maintenance of multi-family housing with rental assistance voucher user tenants. H.R. 232 was referred to the Committee on Financial Services and the Committee on Ways and Means and the Committee on the Judiciary.

Improving Access to Homes for Heroes Act of 2019 – H.R. 165: On January 3, 2019, Representative Al Green (D-TX) introduced H.R. 165, the Improving Access to Homes for Heroes Act of 2019. This bill would amend the U.S. Housing Act of 1937 and the National Affordable Housing Act to include veterans in housing planning and expressly includes the Tribal HUD-VASH program. H.R. 165 would also require the Secretary of HUD to submit a report to Congress on the activities of the VA during each year, including the number of homeless veterans provided assistance under the Tribal HUD-VASH program. H.R. 165 was referred to the Committee on Financial Services.

House Committee on Veterans' Affairs Holds Oversight Hearing on Making HUD-VASH Work for All Communities: On January 14, 2020, National American Indian Housing Council (NAIHC) Chairman Gary Cooper, Chair of the NCAI Housing Subcommittee and Executive Director of the Cherokee Nation Housing Authority, provided testimony to the House Veterans' Affairs Committee on the Tribal HUD-VASH program. The Tribal HUD-VASH program addresses housing needs for at-risk and homeless Native veterans residing on tribal lands. In his testimony, Chairman Cooper expressed NAIHC's support for bills that have been introduced this Congress to improve and expand the Tribal HUD-VASH program. Chairman Cooper testified that "the flexibility provided to the agencies by the bill would allow the VA and HUD to address the two primary concerns that NAIHC has heard regarding HUD-VASH implementation: the lack of case managers the VA can identify willing or able to work in tribal areas, and the restrictions placed on certain tribal housing units by HUD that make them ineligible for VASH vouchers. Many communities have housing shortages and limiting the housing stock that can be used in the tribal HUD-VASH program forces some of the participating tribes to house their tribal veterans in nearby urban areas, rather than the tribal community as intended by the program."

Senate Committee on Indian Affairs Holds Oversight Hearing on Homeownership in Indian Country: On October 16, 2019, the Senate Committee on Indian Affairs held an oversight hearing on Homeownership in Indian Country. Witnesses included Governor Max Zuni, Pueblo of Isleta; Nathaniel Mount, Councilmember of the Ft. Belknap Indian Community; Patrice Kunesh, then-Director for the Center for Indian Country Development and Assistant Vice President of the Federal Reserve Bank of Minneapolis; Hunter Kurtz, Assistant Secretary for Public and Indian Housing; and Darryl LaCounte, BIA Director.

Administrative Update

HUD Office of Native American Programs (ONAP) Publishes Program Guidance 2019-03-A on Micro-Purchase and Simplified Acquisition Thresholds for Programs Involving Federal Funds: On November 26, 2019, HUD ONAP released Program Guidance 2019-03-A, “Recent Changes to the Federal Micro-Purchase and Simplified Acquisition Thresholds.” On December 12, 2017, the National Defense Authorization Act for FY 2018 (P.L. 115-91) raised the Federal micro-purchase threshold from \$3,500 to \$10,000 and the simplified acquisition threshold to \$250,000. In addition to these two updated procurement thresholds, the newly-issued guidance states that under the Indian Housing Block Grant (IHBG) program, program recipients may continue to operate under the existing statutory *de minimus* procurement exemption in section 203(g) of NAHASDA for goods and services valued less than \$5,000. HUD recommends that recipients of IHBG funds should update their procurement policies and procedures to reflect these changes.

HUD Proposed Rule Changing the Section 8 Definition of “Annual income” – 84 FR 48820: On September 17, 2019, HUD published a proposed rule revising HUD regulations to put section 102, 103, and 104 of the Housing Opportunity Through Modernization Act of 2016 (HOTMA) into effect. HOTMA was enacted in July 2016 and made various changes to the United States Housing Act of 1937. To implement these changes, HUD is proposing changes to the definition of “Annual income” found at 24 C.F.R. 5.609. The proposed rule does not propose to make any changes to regulations governing the Office of Native American Programs. However, under the IHBG Program, tribal nations and Tribally-Designated Housing Entities (TDHEs) have the option to adopt the Section 8 definition of “Annual income.” For this reason, the proposed rule could impact IHBG recipients. As of the date of this publication, HUD has not published a final rule regarding the proposed changes.

HUD Section 184 Proposed Rule Changes: Beginning in 2018, and throughout 2019, HUD ONAP held consultation sessions on updates to regulations for the Section 184 Indian Home Loan Guarantee Program, its most recent session taking place during NCAI’s 2019 Mid Year Conference & Marketplace in Reno, NV. HUD conducted 17 consultation sessions over 16 months prior to announcement of a proposed rule. All comments received by HUD through this consultation have been summarized and published on HUD’s Section 184 consultation home page, which is available to the public. Additionally, the draft regulations are available for download and review on HUD’s Section 184 consultation home page. In a May 30, 2019 Dear Tribal Leader (DTL) Letter, HUD stated that it anticipated publication of the proposed rule in January 2020, with a 60-day comment period. Those who still wish to provide comment on the draft proposed rule may do so once the proposed rule is published in the Federal Register. As of the date of this publication, no final rule on the Section 184 program has been published.

TRANSPORTATION

Safe and adequate roads, bridges, and other modes of transportation are integral to ensuring the safety of tribal citizens, providing economic, educational, and housing opportunities and other community services.

Surface transportation in Indian Country involves thousands of miles of roads, bridges, and highways. According to the latest National Tribal Transportation Facility Inventory (NTTFI), there are approximately 160,000 miles of roads and trails in Indian Country owned and maintained by tribal nations, the Bureau of Indian Affairs (BIA), states, and counties. Of those, tribal nations own and maintain 13,650 miles of roads and trails, of which only about 1,000 miles (7.3 percent) are paved, with the remaining 12,650 miles consisting of gravel, earth, or primitive materials. The BIA is responsible for maintaining

approximately 29,500 miles of roads in Indian Country, including 900 bridges. When combined, the roads owned and maintained by tribal nations and the BIA are among the most underdeveloped and unsafe road networks in the nation, even though they are the primary means of access to AI/AN communities.

Legislative Update

America's Transportation Infrastructure Act of 2019 – S. 2302: On July 29, 2019, Senators John Barrasso (R-WY), Tom Carper (D-DE), Shelley Moore Capito (R-WV), and Ben Cardin (D-MD) introduced America's Transportation Infrastructure Act of 2019 (ATIA), which would reauthorize the Fixing America's Surface Transportation Act (FAST Act). S. 2302 would provide \$2.9 billion dollars for the Tribal Transportation program over five years; authorize \$270 million in funding for the Bureau of Indian Affairs Road Maintenance Program over five years; provide \$100 million for the Tribal Transportation Bridge program over five years; provide enhancements to certain competitive grant programs, safety incentive programs, and climate resiliency programs to improve tribal access; and streamline and unify certain surface transportation construction and improvement review processes that benefit tribal nations. Additionally, S. 2302 would establish an Office of Tribal Government Affairs at the Department of Transportation (DOT) and create an Assistant Secretary for Tribal Government Affairs at DOT to oversee the Tribal Transportation Self-Governance Program. A hearing was held and on July 30, 2019, a mark-up was held thereafter. S. 2302 was voted out of the Committee on Environment and Public Works with an amendment in the nature of a substitute. NCAI's membership passed Resolution #ABQ-19-076, "Supporting [ATIA], Its Tribal Title (Title IV), and Increased Federal Funding." ATIA embodies strong improvements to programs and authorized funding amounts for Indian Country; however, additional funding is critically needed to ensure public safety and promote economic development in tribal communities. S. 2302 awaits action on the Senate floor.

The Senate Committee on Banking, Housing, and Urban Affairs has jurisdiction over the public transit title, which includes the Public Transportation on Indian Reservations (49 U.S.C. § 5311(c)) Tribal Transit Program. As of the date of this publication, the Senate Committee on Banking, Housing, and Urban Affairs has not introduced a Tribal Transit Program reauthorization bill.

Addressing Underdeveloped and Tribally Operated Streets (AUTOS) Act – S. 1211: On April 11, 2019, Chairman John Hoeven (R-ND) introduced S. 1211, the AUTOS Act. S. 1211 would permit certain tribal transportation safety projects to be eligible for categorical exclusion from certain Department of the Interior (DOI) environmental review processes; authorize specific funding levels for the BIA Road Maintenance Program with increases of \$2 million per year over five years; allow U.S. Customs and Border Protection (CBP) to transfer funds to the BIA to repair roads that CBP uses; reinstate the Tribal Transportation Bridge Program as a stand-alone program; increase the amount set aside in the Tribal Transportation Program for safety initiatives on tribal land from two to four percent; and authorize agency coordination to address the lack of consistent vehicle crash data in Indian Country. A hearing was held and on June 19, 2019, a mark-up was held. S. 1211 was voted out of the Committee on Indian Affairs with an amendment in the nature of a substitute. S. 2302 awaits action on the Senate floor; however, the entirety of S. 1211 was incorporated into S. 2302, America's Transportation Infrastructure Act.

A Bill to Enhance Tribal Road Safety, and for Other Purposes – S. 207: On January 24, 2019, Senator John Barrasso (R-WY) introduced S. 207, a bill to enhance tribal road safety and for other purposes. This bill would incentivize tribal transportation projects that improve safety in tribal communities by creating a categorical exclusion from environmental reviews. Safety projects covered under this bill include roads,

pedestrian and bicycle lanes, railway and highway crossings, highway signage and pavement markings, and transportation safety planning. Under this bill, the Secretary of the Interior will identify which transportation safety projects would be eligible for categorical exclusions and those recommendations would be the subject of a proposed rulemaking. In addition, the Secretary would enter into a programmatic agreement with tribal nations able to demonstrate sufficient administrative procedures and capacity to determine on their own behalf which projects could be excluded from environmental reviews. On January 29, 2019, the Senate Committee on Indian Affairs passed S. 207. The bill now awaits consideration by the full Senate.

House Subcommittee for Indigenous Peoples of the United States Oversight Hearing on Tribal Infrastructure: On July 11, 2019, the House Natural Resources Committee, Subcommittee for Indigenous Peoples of the United States held a hearing titled “Tribal Infrastructure: Roads, Bridges, and Buildings.” Testimony and questions from subcommittee members emphasized underfunding of construction projects needed in Indian Country and the growing backlog of maintenance on roads. The hearing also highlighted how increasing adverse weather conditions leave underdeveloped tribal roads and facilities more susceptible to danger and in need of even greater construction or maintenance funding.

Senate Committee on Indian Affairs Oversight Hearing on Tribal Transportation: On April 3, 2019, the Senate Committee on Indian Affairs held a hearing titled “Enhancing Tribal Self-Governance and Safety of Indian Roads.” Testimony and questions from committee members focused primarily on the current condition of surface transportation facilities throughout Indian Country, ways to improve the safety and condition of these facilities, and the status of the current Tribal Transportation Self-Governance Program (TTSGP) Negotiated Rulemaking.

Administrative Update

DOT Publishes Proposed Rule for the Tribal Transportation Self-Governance Program (TTSGP) – 84 FR 52706: The FAST Act included the expansion of tribal self-governance throughout DOT. In 2016, the Department formulated a Tribal Transportation Self-Governance Negotiated Rulemaking Committee to implement the self-governance requirements. On October 2, 2019, DOT requested comments on a proposed rule to establish and implement the TTSGP as authorized by Section 1121 of the FAST Act. The proposed rule was negotiated between representatives of tribal nations and the federal government. The program would provide participating tribal nations greater decision-making authority over their use of certain DOT funding for which they are eligible recipients while reducing associated administrative burdens. The proposed regulations include eligibility criteria; describe the contents of and process for negotiating self-governance compacts and funding agreements with DOT; and set forth the roles, responsibilities, and limitations on DOT and tribal nations that participate in the TTSGP. The comment period closed December 2, 2019. A final rule is expected to be published in March 2020 and will go into effect by June 1, 2020. NCAI supports the expansion of self-governance programs throughout DOT and will continue to advocate for the work of the Committee.

DOT Announces \$871.2 Million in Emergency Relief for Road and Bridge Repairs, Awarding Less Than One Percent to Tribal Nations: On September 10, 2019, the Federal Highway Administration (FHWA), DOT announced \$871.2 million in “Emergency Relief funds” to help tribal nations, states, and other U.S. territories make repairs to roads and bridges damaged by storms, floods, and other unexpected events. FHWA Emergency Relief funds are provided for eligible expenses associated with damage from natural disasters or other emergency situations to help pay for the reconstruction or replacement of damaged

highways and bridges, as well as the arrangement of detours and replacement of guardrails or other damaged safety devices. Of the \$871.2 million announced by DOT, approximately 0.75 percent was awarded to tribal governments to respond to events in California, Michigan, Nebraska, South Dakota, and Wisconsin.

U.S. Department of Transportation Announces FY 2018 and FY 2019 Program Recipients for the Nationally Significant Federal Lands and Tribal Projects Program: On June 5, 2019, DOT's Federal Highway Administration (FHWA) announced the grant recipients for the Nationally Significant Federal Lands and Tribal Projects Program (NSFLTP). Of the pool of applicants, only one tribal applicant was awarded funding through the NSFLTP. The FAST Act established NSFLTP to provide financial assistance for the construction, reconstruction, or rehabilitation of transportation projects providing access to or located on federal or tribal lands. Under NSFLTP, the federal share of a project can be up to 90 percent and can be used to improve the condition of a critical transportation facility. Large-scale projects with estimated construction costs of \$50 million or more are given priority consideration for selection, but the program will accept projects with estimated construction costs of at least \$25 million. On October 5, 2018, a Notice of Funding Opportunity (NOFO) announced \$300 million in funding for the NSFLTP.

Senate Confirms Nicole Nason as Administrator of FHWA: On March 28, 2019, the Senate confirmed Nicole Nason as Administrator of FHWA in a 95-1 vote. FHWA is the agency that oversees the Office of Federal Lands Highway and the Tribal Transportation Program. Nason served as the Assistant Secretary for Governmental Affairs from 2003 to 2006. In 2006, Nason also was confirmed as Administrator of the National Highway Traffic Safety Administration. Beginning in June 2017, Nason served as Senior Advisor to Secretary of State Rex Tillerson and later served as Assistant Secretary of State for Administration at Department of State.

INTERNATIONAL ISSUES

Numerous NCAI resolutions recognize the importance of participating in international policy discussions that impact the rights of Indigenous peoples. NCAI works in close partnership with the Native American Rights Fund (NARF), which represents NCAI on many international legal and policy issues.

In recent years, NCAI has prioritized certain negotiations at the United Nations (UN) and the Organization of American States (OAS) that have been building the structural framework for the advancement of Indigenous rights, including the negotiation and adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007 and the American Declaration on the Rights of Indigenous Peoples (ADRIP) in 2016. In addition to this foundational work, NCAI has engaged in a number of substantive policy discussions of particular concern to Indigenous peoples, including climate change and the protection of Indigenous traditional knowledge and genetic resources.

UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

NCAI Resolution #ATL-14-067 recognizes that in order to ensure implementation of the UNDRIP, Indigenous peoples must be represented by their own governments and able to participate fully and permanently in the work of the UN. Currently Indigenous governments can only access UN meetings if they are credentialed as non-governmental organizations or through ad hoc processes developed for particular meetings. This undermines their status as governments and their rights acknowledged in the UNDRIP.

Since 2015, the UN has been engaged in consultations on the issue of Indigenous government participation at the UN. Multiple consultation sessions were held with the goal of developing a resolution for adoption by the UN General Assembly (GA) in 2017 that would enhance the participation of Indigenous governments at the UN. After several months of difficult negotiations among UN member states, the GA adopted a compromise resolution on September 8, 2017. This outcome was disappointing to the Indigenous peoples who had been engaged in the process, and reflected the failure of the UN member states to achieve consensus on a resolution that would allow greater participation of Indigenous governments in the UN.

The resolution did, however, encourage existing UN bodies including the UN Permanent Forum on Indigenous Issues (UNPFII), Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), and the Special Rapporteur on the Rights of Indigenous Peoples (SRRIP) to enhance the participation of Indigenous governments at the UN. The resolution also encourages the UN system as a whole, in accordance with existing rules of procedure, to facilitate the participation of Indigenous governments in relevant conferences, summits, and other meetings. The resolution also agreed to extend consideration of the issue of enabling the participation of Indigenous governments through the 75th session in 2020-2021.

The resolution established a multi-year calendar of consultations, meetings, and production of a report and includes:

1. annual interactive hearings with Indigenous peoples by the President of the GA during the UNPFII annual sessions (April 2018, April 2019, and April 2020);
2. regional consultations with Indigenous peoples by the UN Secretary-General (with the support of member states) before the UNPFII's 19th Session (April 2020);

3. Secretary-General's Report before the end of the GA's 74th Session (September 2020); and
4. continued consideration of measures to enhance participation during the GA's 75th Session (September 2020 – September 2021).

NCAI and NARF made a joint statement at the 2018 and 2019 Annual Interactive Hearings held in conjunction with the UNPFII reiterating the need to develop an appropriate status to enable the participation of Indigenous governments at the UN. NCAI also joined with Indigenous peoples from across the world to encourage supportive member states to host a convening with Indigenous peoples and member states focused on developing concrete proposals to move negotiations forward. This session took place January 26-30, 2020 in Ecuador and provided an opportunity for Indigenous peoples from across the world to prepare for negotiations during the 74th Session of the UN GA.

NCAI also joined with the Indian Law Resource Center, the Ewiiapaayp Band of Kumeyaay Indians, and NARF in making comments to the UN Human Rights Council (HRC) urging the HRC to adopt rules to accommodate the participation of Indigenous governments and to consider the topic during its annual panel discussion in 2018, which it did. In its 2018 annual resolution on Indigenous peoples, the HRC decided to hold a half-day interactive dialogue on ways to enhance the participation of Indigenous peoples' representatives and institutions in meetings of the HRC, which took place on July 15, 2019 in Geneva, Switzerland. A report from this roundtable is forthcoming.

In its 2019 annual resolution on Indigenous peoples, adopted in September, the HRC included strong language aimed at furthering the discussion of enhancing the participation of Indigenous governments at the UN. Through the resolution, the HRC decided to hold an intercessional roundtable to "discuss possible steps to be taken to enhance the participation of indigenous peoples' representatives and institutions in meetings of the Human Rights Council on issues affecting them." The resolution calls for the roundtable to be co-chaired by a representative of the President of the HRC and a representative of Indigenous peoples.

NCAI will continue to advocate strongly for tribal nations to have an appropriate, dignified place at the UN.

INTELLECTUAL PROPERTY AND TRADITIONAL KNOWLEDGE

The World Intellectual Property Organization (WIPO) is currently negotiating international instruments that, if adopted, could create new binding international law relating to intellectual property and the protection of Indigenous peoples' traditional knowledge, genetic resources, and traditional cultural expressions. In 2016, NCAI adopted Resolution #PHX-16-054 calling on the United States to consult with Indigenous peoples on the formal negotiating positions and textual recommendations of the U.S. regarding traditional knowledge and traditional cultural expressions. NARF has attended the WIPO negotiations on behalf of NCAI since 2016.

In 2017 and 2018, NARF and the University of Colorado Law School hosted drafting sessions to propose text for the WIPO negotiations. The first drafting session, held in May 2017, resulted in recommendations on traditional cultural expressions focused on the problem of theft and misuse. The recommendations also addressed false marketing suggesting affiliation, approval, or endorsement by Indigenous peoples. In negotiations in June 2017, three WIPO member nation states introduced portions of the proposed text for consideration into the draft WIPO instrument on traditional cultural expressions.

The second drafting session in May 2018 resulted in draft text and recommendations for the genetic resources text. Unfortunately, due to objections from the U.S. and Japan, none of the modifications to the genetic resources text negotiated by member states at the June 2018 session were maintained in the text, and the text reverted to the version that existed at the end of the March 2018 session.

Negotiations at the September 2018, December 2018, March 2019, and June 2019 WIPO sessions focused on cross-cutting issues in the traditional knowledge and traditional cultural expressions texts. In October 2019, the WIPO General Assembly adopted the mandate and work plan for the negotiations in 2020-2021 as follows:

February/March 2020	Undertake negotiations on Genetic Resources with a focus on addressing unresolved issues and considering options for a draft legal instrument.
May/June 2020	Undertake negotiations on Genetic Resources with a focus on addressing unresolved issues and considering options for a draft legal instrument.
September 2020	Undertake negotiations on traditional knowledge and/or traditional cultural expressions with a focus on addressing unresolved and cross-cutting issues and considering options for a draft legal instrument(s).
October 2020	WIPO General Assembly. Factual report and consider recommendations.
November/December 2020	Undertake negotiations on traditional knowledge and/or traditional cultural expressions with a focus on addressing unresolved and cross-cutting issues and considering options for a draft legal instrument(s).
March/April 2021	Undertake negotiations on traditional knowledge and/or traditional cultural expressions with a focus on addressing unresolved and cross-cutting issues and considering options for a draft legal instrument(s).
June/July 2021	Undertake negotiations on traditional knowledge and/or traditional cultural expressions with a focus on addressing unresolved and cross-cutting issues and considering options for a draft legal instrument(s). Stocktaking and making a recommendation.
October 2021	WIPO General Assembly will take stock of the progress made, consider the text(s), and make the necessary decision(s).

On the domestic front over the past few years, NCAI has hosted several listening sessions on the WIPO negotiations with the U.S. Patent & Trademark Office, the lead WIPO negotiating federal agency, as well

as the U.S. Copyright Office, State Department, and Interior Department. A listening session will take place on Feb. 13, 2020, from 9:00 p.m. – 12:00 p.m. in conjunction with the NCAI ECWS meeting.

CLIMATE CHANGE

Indigenous peoples are among those most affected by climate change. Recognizing that Indigenous homelands and ways of life are threatened by climate change, NCAI and NARF have joined Indigenous nations and State parties in climate change negotiations at the United Nations Framework Convention on Climate Change (UNFCCC).

In December 2018, negotiations under the UNFCCC took place in Katowice, Poland at the 24th Conference of the Parties (COP 24). The Paris Decision, which adopted the Paris Agreement at COP 21, also established a Local Communities and Indigenous Peoples Platform to provide a mechanism for traditional knowledge to influence climate policy at local, regional, and international levels. While the platform was established at COP 21, the implementation has been incremental. A historic step forward in implementing the platform was taken at COP 24. Working closely with the International Indigenous Forum on Climate Change, the Subsidiary Body for Scientific and Technical Advice (SBSTA) established a Facilitative Working Group (FWG) that is responsible for developing a work plan for the platform.

The working group has 14 representatives – seven country representatives, and seven Indigenous representatives appointed by Indigenous peoples – with one from each of the seven regions of the world. This representation of Indigenous peoples is unprecedented, marking the first time that Indigenous representatives will participate on an equal basis with states within a United Nations body with representatives of their own choice. The platform will institutionalize dialogue between states and Indigenous peoples, foster Indigenous peoples' participation in the discussions on environmental policy, and encourage a holistic response to climate change. The first meeting of the Facilitative Working Group took place June 14-16, 2019. A proposed two-year work plan was developed. The FWG met again immediately preceding COP 25 in Madrid, Spain. The FWG work plan was presented at COP 25 and received approval. As a part of the work plan, a regional convening of traditional knowledge holders is tentatively being planned for May. This will be an opportunity for traditional knowledge holders from across North America to share knowledge and climate change strategies.

The platform provides the opportunity for Indigenous peoples to contribute greatly to solving the climate change crisis, but it poses potential dangers to their traditional knowledge as well. The input of tribal leaders and traditional knowledge holders is crucial in this process to ensure that the traditional knowledge is respected, protected, and properly used. NCAI will continue to work with the International Indigenous Peoples' Forum on Climate Change (IIPFCC) and the FWG to achieve a platform that honors the rights set out in the UNDRIP, especially the right to self-determination, the right to manage their traditional knowledge, their rights to their lands, territories, and natural resources, and the right to free, prior, and informed consent.

In addition to the ongoing work under the UNFCCC, the UN Secretary-General convened a Special Summit on Climate Change on September 23, 2019 in New York City in recognition of the urgency of the climate problem. NCAI and NARF engaged with the IIPFCC at an indigenous preparatory meeting in Mexico City. We worked with the Caucus to develop a statement of commitments of Indigenous peoples to increased ambition. The statement was read on September 23 by a member chosen by the Caucus.

PROTECTION OF MARINE BIODIVERSITY

The UN has convened an Intergovernmental Conference to develop the text of an international, legally-binding instrument under the UN Convention on the Law of Sea that will govern the conservation and sustainable use of marine biological diversity in ocean waters beyond national jurisdiction. The text will address marine genetic resources, including questions on the sharing of benefits, measures such as area-based management tools, including marine protected areas, environmental impact assessments, and capacity-building and the transfer of marine technology.

NCAI adopted Resolution #KAN-18-008 calling on the members of the UN to uphold the rights of Indigenous peoples in any instrument that is developed and to meaningfully include Indigenous peoples in the negotiations. The next negotiation session will take place March 23-April 3, 2020 in New York City, and NCAI encourages tribal nations who are interested in this topic to consider attending.

JUSTICE AND CIVIL RIGHTS

JURISDICTION, COURTS, LAW ENFORCEMENT, AND VICTIM SERVICES

The crime rate on reservations is an urgent public safety issue. A 2016 Department of Justice (DOJ) study found that more than four in five American Indian and Alaska Native (AI/AN) adults have experienced some form of violence in their lifetime. DOJ also found that Native victims are more likely to be injured as a result of their violent victimization, more likely to need services, and are significantly less likely to have access to services compared to their non-Native counterparts. The current public safety crisis in many tribal communities is the result of decades of gross underfunding of tribal criminal justice systems, a uniquely complex jurisdictional scheme that keeps tribal governments from being able to fully police their lands, and a centuries-old failure by the federal government to fulfill its public safety obligations on tribal lands.

Legislative Update

Violence Against Women Act (VAWA) Reauthorization: Congress has been actively considering VAWA reauthorization legislation. During its 2019 Executive Council Winter Session, NCAI passed 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”, which sets forth five priorities for VAWA reauthorization:

- Include provisions that address jurisdictional gaps including: child abuse and endangerment; assaults against law enforcement officers; sexual violence; stalking; trafficking; and the exclusion of certain tribal nations from exercising jurisdiction under current law.
- Create a permanent authorization for DOJ’s Tribal Access to National Crime Information Program (TAP) and ensure that TAP is available to all tribal nations.
- Improve the response to cases of missing and murdered AI/AN women.
- Identify and address the unique barriers to safety for Alaska Native women and provide access to all programs.
- Reauthorize VAWA’s tribal grant programs and ensure that funding is available to cover costs incurred by tribal nations who are exercising jurisdiction over non-Indians.

Importantly, NCAI’s resolution states that NCAI will oppose any legislation that undermines tribal sovereignty or diminishes tribal inherent authority to address crimes of violence against women.

Consistent with Resolution #ECWS 19-005, NCAI supported H.R. 1585, the bi-partisan House version of VAWA 2019. H.R. 1585 was referred to the Committee on the Judiciary; Energy and Commerce; Financial Services; Ways and Means; Education and Labor; Natural Resources; and Veterans' Affairs, and a hearing and mark-up were subsequently held. On April 4, 2019, H.R. 1585 passed the House and has been placed on the Senate Legislative Calendar. NCAI also currently supports S. 2843, which is the Senate companion to H.R. 1585. S. 2843 was referred to the Committee on the Judiciary. H.R. 1585 and S. 2843 include provisions addressing all of NCAI’s identified priorities.

A competing bill, S. 2920, was introduced in the Senate by Senator Ernst (R-IA) on November 20, 2019 and placed on the Senate Legislative Calendar the next day. Like H.R. 1585/S. 2843, the Ernst bill recognizes the need to expand tribal jurisdiction to cover additional crimes committed by non-Indians against Indians and to improve the response to cases of missing and murdered Indians. However, S. 2920

also includes provisions that would undermine the independence of tribal courts, destabilize the protections offered to defendants under the Indian Civil Rights Act (ICRA), and hold tribal courts to standards higher than any federal, state, or territorial court in the country while also subjecting them to oversight and review that no other courts experience. The Ernst bill also includes a host of other tribal bills including Savanna's Act, the SURVIVE Act, the Tribal Law and Order Act (all of which are discussed below) and the Tribal Labor Sovereignty Act. Because the bill undermines tribal sovereignty, NCAI has opposed S. 2920 as currently drafted. The provisions raising the most significant concerns in S. 2920 include:

- A provision altering existing law so that federal habeas petitioners do not need to exhaust tribal remedies (in contrast, defendants in state custody must exhaust all state remedies before petitioning for federal habeas review) and that federal courts cannot apply any of the limits or procedural requirements imposed on habeas petitions from state and federal courts.
- A provision replacing existing ICRA protections for defendants with a requirement that tribal nations “provide all rights under the U.S. Constitution afforded criminal defendants by the courts of the United States, as interpreted by the courts of the United States.” ICRA has been interpreted by tribal courts and upheld by federal courts for decades. In its place will be a regime that imposes on tribal nations largely the same rights ICRA already provides. The two new rights that would be guaranteed by the new language are both requirements that have never been extended to the states—the right to indictment by a grand jury and a requirement that the jury pool be drawn from the federal district where the crime occurred.
- A provision waiving tribal sovereign immunity to create a civil action in federal court for deprivation of rights by tribal officials while providing no judgment fund, or other resource to draw from, to help protect the tribal government funds.
- A provision that would prohibit tribal nations from including elders and traditional knowledge holders on tribal appellate courts or from relying on judges barred by the tribal nation. Instead, all tribal judges would have to be barred by a state or territory.
- A provision imposing strict timelines for tribal appellate decisions that do not apply to state or federal courts.
- A provision giving the U.S. Attorney General the authority to “audit or review a participating tribe to determine if the tribe is in compliance with all requirements,” and directing DOJ to ensure “appropriate action” is taken if a tribal nation is not in compliance.

Unfortunately the debate over the reauthorization of VAWA has become politicized and partisan. At this time, VAWA reauthorization negotiations appear to be stalled in the Senate.

SURVIVE Act – S. 211 & H.R. 1351: On January 24, 2019, Senator John Hoeven (R-ND) introduced S. 211, the Securing Urgent Resources Vital to Indian Victim Empowerment (SURVIVE) Act. Representative Tom O'Halleran (D-AZ) introduced a companion bill, H.R. 1351. The SURVIVE Act, will create a legislative authorization for a tribal grant program within DOJ's Office for Victims of Crime (OVC) to improve crime victim services. The bill directs that five percent of the total annual outlays from the Crime Victims Fund (CVF) be provided to tribal nations for the next 10 years. S. 211 was referred to the Committee on Indian Affairs. S. 211 was reported favorably on May 6, 2019, and was placed on the Senate legislative calendar for further consideration. As noted above, it was also included in S. 2920, one of the VAWA reauthorization bills currently pending in the Senate that NCAI opposes for other reasons. H.R. 1351 was referred to the House Committee on the Judiciary which referred the bill to the Subcommittee on Crime, Terrorism, and Homeland Security.

Relatedly, for the past three years, the primary policy objective of the SURVIVE Act has been achieved through the appropriations process. Starting in FY 2018, Congress has directed 5 percent of overall outlays from the CVF to tribal governments through the Commerce, Justice, Science Appropriations bill. For FY 2020, Congress directed \$132 million for tribal crime victims services from the CVF. DOJ has been engaged in consultation with tribal governments about the administration of this funding and is considering a formula for distribution of the funds for FY 2020. This is discussed further below.

Tribal Law and Order Reauthorization and Amendments Act of 2019 – S. 210: On January 24, 2019, Senator John Hoeven (R-ND) introduced S. 210, the Tribal Law and Order Reauthorization and Amendments Act of 2019. This bill would reauthorize the grant programs included in the Tribal Law & Order Act of 2010. It also includes other reforms to improve public safety in tribal communities, including an extension of the Bureau of Prisons (BOP) Pilot Project that allowed tribal nations to house certain offenders in BOP facilities; the creation of a federal penalty for violations of a tribal exclusion order; and reforms aimed at improving juvenile justice, data sharing, provision of indigent defense in tribal courts, and the response to substance abuse and human trafficking. S. 210 was referred to the Senate Committee on Indian Affairs. On May 6, 2019, the bill was reported favorably and was placed on the Senate legislative calendar for further consideration. As noted above, it was also included in S. 2920, one of the VAWA reauthorization bills currently pending in the Senate, which NCAI opposes for other reasons.

The Native Youth and Tribal Officer Protection Act – S. 290 & H.R. 958: In the 115th Congress, identical bills (S. 2233/H.R. 6728) were introduced in the Senate and House to amend 25 U.S.C. § 1304 to reaffirm tribal inherent authority over child abuse and crimes that are committed against police officers and other justice officials exercising special domestic violence criminal jurisdiction. On January 31, 2019, Senators Tom Udall (D-NM), Lisa Murkowski (R-AK), and Tina Smith (D-MN) reintroduced the Native Youth and Tribal Officer Protection Act, S. 290. On February 4, 2019, Representatives Tom O'Halleran (D-AZ) and Tom Cole (R-OK) reintroduced a house companion bill, H.R. 958. S. 290 was referred to the Senate Committee on Indian Affairs. A hearing was held on June 19, 2019. H.R. 958 was referred to the Subcommittee for Indigenous People of the United States. The substance of the bill has also been incorporated into H.R. 1585, the VAWA reauthorization bill that passed the House on April 4, 2019, and S. 2843, a VAWA reauthorization bill pending in the Senate that NCAI supports.

Justice for Native Survivors of Sexual Violence Act – S. 288 & H.R. 3977: In the 115th Congress, Senators Lisa Murkowski (R-AK), Tina Smith (D-MN), and Tom Udall (D-NM) introduced a bill, S. 3216, to amend 25 U.S.C. § 1304 to reaffirm tribal inherent authority over sexual assault, trafficking, and stalking crimes committed by non-Indians against Indians in Indian Country. On January 31, 2019, Senators Murkowski, Smith, and Udall reintroduced the Justice for Native Survivors of Sexual Violence Act, S. 288. On July 25, 2019, Representatives Deb Haaland (D-NM) and Tom Cole (R-OK) introduced a companion bill, H.R. 3977. H.R. 3977 was referred to the Subcommittee for Indigenous Peoples of the United States and discharged to the Committee on Natural Resources. A hearing was held and on December 5, 2019, a mark-up was held. H.R. 3977 awaits action on the house floor. S. 288 was referred to the Senate Committee on Indian Affairs and a hearing was held on the bill on June 19, 2019. The substance of the bill has also been incorporated into H.R. 1585, the VAWA reauthorization bill that passed the House in April 2019, and S. 2843, a VAWA reauthorization bill pending in the Senate that NCAI supports.

Savanna's Act – S. 227 & H.R. 2733: On January 25, 2019, Senators Lisa Murkowski (R-AK) and Catherine Cortez Masto (D-NV) reintroduced Savanna's Act, S. 227, along with a number of other original co-sponsors. The bill, which has bipartisan support, is named in honor of Savanna LaFontaine-Greywind, a young Native woman who was tragically killed in North Dakota in August 2017. On May 14, 2019, Representatives Norma Torres (D-CA) and Dan Newhouse (R-WA) introduced a companion bill, H.R. 2733. The bills aim to improve the response to missing and murdered Native women by: improving tribal access to the federal criminal information databases; requiring data collection on missing and murdered Native people; and directing U.S. Attorneys to review, revise, and develop law enforcement and justice protocols to address missing and murdered AI/ANs. S. 227 has been reported favorably by the Senate Committee on Indian Affairs with amendments. H.R. 2733 was referred to the Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security; and the Committee on Natural Resources, Subcommittee for Indigenous Peoples of the United States.

Not Invisible Act – S. 982 & H.R. 2438: On April 2, 2019, Senators Catherine Cortez Masto (D-NV), Jon Tester (D-MT), and Lisa Murkowski (R-AK) introduced S. 982, the Not Invisible Act. On May 1, 2019, Representatives Deb Haaland (D-NM), Tom Cole (R-OK), Sharice Davids (D-KS), and Markwayne Mullin (R-OK), introduced a companion bill, H.R. 2438. This bill seeks to improve the response to missing and murdered Indians and violent crime by: directing DOI to designate an official to coordinate across agencies on efforts to address missing, trafficked, and murdered Indians; establishing an advisory committee on violent crime within Indian lands and of Indians; tasking the advisory committee with making recommendations and developing best practices; and requiring the Secretary of the Interior and Attorney General to respond to the recommendations of the committee in writing. S. 982 was referred to the Senate Committee on Indian Affairs. A hearing was held on June 19, 2019, and the bill was reported favorably on November 20, 2019. H.R. 2438 was referred to the Committee on the Judiciary and Committee on Natural Resources.

"BADGES" for Native Communities Act – S. 1853 & H.R. 4289: On June 13, 2019, Senator Tom Udall (D-NM) and five cosponsors introduced S. 1853, the Bridging Agency Data Gaps and Ensuring Safety (BADGES) for Native Communities Act. On September 11, 2019, Representative Deb Haaland (D-NM) and ten cosponsors introduced a companion bill, H.R. 4289. This legislation, which has broad bipartisan support in both the House and the Senate, addresses public safety needs in Indian Country by addressing federal inefficiencies that hurt Bureau of Indian Affairs law enforcement recruitment and retention, increasing the effectiveness of federal missing persons resources, and giving tribal nations and states resources to coordinate responses to the Missing and Murdered Indigenous Women (MMIW) crisis. S. 1853 was referred to the Senate Committee on Indian Affairs. A hearing was held on June 19, 2019, and the bill was reported favorably with an amendment on December 11, 2019. H.R. 4289 was referred to the Committee on the Judiciary and Committee on Natural Resources.

Alaska Tribal Public Safety Empowerment Act – S. 2616: On October 16, 2019, Senator Lisa Murkowski (R-AK) introduced S. 2616, the Alaska Tribal Public Safety Empowerment Act, to expand the jurisdiction provided in the Violence Against Women Act of 2013 (VAWA 2013) to apply to Alaska Native villages on a pilot basis. This bill would also expand covered crimes to include crimes of sexual violence, sex trafficking, stalking, and assault of law enforcement or corrections officers. S. 2616 was referred to the Senate Committee on Indian Affairs.

Finding and Investigating Native Disappearance (FIND) Act – S. 1893: On June 19, 2019, Senator Steve Daines (R-MT) introduced S. 1893, the FIND Act, to require the Comptroller General of the United States to conduct a study on ways to increase reporting of missing Indians and the effects of the use of methamphetamine and other illegal drugs on violent crime in tribal communities. S. 1893 was referred to the Senate Committee on Indian Affairs.

Tribal Reporting and Accountability to Congress (TRAC) Act – S. 1892: On June 19, 2019, Senator Steve Daines (R-MT) introduced S. 1892, the TRAC Act, to amend the Indian Law Enforcement Reform Act to require each tribal liaison within the U.S. Attorneys’ Offices to submit to Congress an annual report on missing and murdered Indians. S. 1892 was referred to the Senate Committee on Indian Affairs.

Administrative Update

VOCA Tribal Set-Aside Funding: For the past three years, Congress has set aside hundreds of millions of dollars for tribal nations to meet the needs of crime victims in tribal communities. Unfortunately, DOJ’s administration of this funding to date has raised significant concerns. Of the \$133.1 million appropriated for tribal crime victim services in FY 2018, less than \$100 million of it was disbursed to tribal nations as directed by Congress. Over \$24 million – 20 percent of the funds appropriated for tribal nations – was not obligated and ultimately was returned to the Crime Victims Fund. At the same time, only 154 of the 195 tribal nations who applied for funding received it. Many of the tribal nations that were funded saw their requested budgets slashed with little or no explanation. DOJ did obligate all of the appropriated funding in FY 2019, but many tribal nations again raised concerns that their budgets were cut or proposals denied without adequate explanation.

At every opportunity over the past several years, tribal nations have urged DOJ to administer this funding on a non-competitive, streamlined basis to ensure these funds are disbursed efficiently and equitably in a way that works for the tribal communities they are intended to serve. DOJ instead decided to continue administering this program through a discretionary grant solicitation to distribute the \$168 million appropriated for FY 2019.

DOJ has recently announced a consultation to consider a formula distribution model for the \$132 million appropriated for FY 2020. DOJ released a framing paper with a proposed formula and is seeking tribal input. A consultation will take place on February 13, 2020, from 1:30 p.m. - 5:00 p.m. in conjunction with the NCAI ECWS meeting. Additional telephonic consultation sessions will take place on February 14, 2020.

Executive Order Establishing the Task Force on Missing and Murdered American Indians and Alaska Natives: On November 26, 2019, President Trump signed an Executive Order creating a White House Task Force on missing and murdered AI/ANs called “Operation Lady Justice.” The Task Force will be chaired by the Attorney General and Secretary of Interior and is tasked with developing a government-wide strategy for addressing the crisis of missing and murdered Indian women and girls. Operation Lady Justice will raise public awareness, promote greater cooperation among jurisdictions, and create a team to review unsolved cases. The Department of the Interior is hosting a listening session to provide updates on Operation Lady Justice in conjunction with the NCAI ECWS meeting on February 13, 2020.

DOJ Missing and Murdered Indigenous Persons Initiative: On November 22, 2019, Attorney General William Barr announced The Missing and Murdered Indigenous Persons (MMIP) Initiative. The Initiative

has three parts:

- DOJ will place 11 MMIP coordinators in U.S. Attorney's offices in Alaska, Arizona, Montana, Oklahoma, Michigan, Utah, Nevada, Minnesota, Oregon, New Mexico, and Washington state who will help develop protocols and procedures for responding to missing persons cases.
- DOJ will develop and deploy specialized FBI rapid deployment teams who can assist with investigations upon request by state, tribal, or local law enforcement.
- DOJ will conduct in-depth data analysis to identify opportunities to improve missing persons data collection and sharing.

VOTING RIGHTS

Native people were the last to obtain the right to vote in the U.S. and Native voters continue to face persistent barriers in exercising that right. Some jurisdictions continue to implement schemes that impair the ability of Native people to fully participate in the electoral process. Native voters often live far from established polling places and voter registration sites are in remote, isolated areas, with high rates of poverty, and in some areas, limited English proficiency.

Since 2015, NCAI has partnered with other interested organizations in the Native American Voting Rights Coalition (NAVRC) to ensure that our work to protect and advance the voting rights of AI/ANs is as coordinated and effective as possible. NAVRC's main goal is to remove barriers to Native voter registration and voting, increase Native civic engagement, and foster a more informed and active Native electorate. In light of mounting evidence of voter suppression and violations of voting rights laws, NAVRC has accelerated its work. This work includes: (1) planning for redistricting related to the 2020 Census; (2) addressing violations observed in the 2016 elections; (3) overseeing the largest survey of Native voters ever conducted to discover the extent of voting problems in Indian Country; and (4) holding regional field hearings to hear from Native voters about the challenges they experience.

Legislative Update

Native American Voting Rights Act of 2019 – S. 739 & H.R. 1694: On March 12, 2019, Senator Tom Udall (D-NM) and fifteen cosponsors introduced S. 739, the Native American Voting Rights Act of 2019 (NAVRA). The same day, Representative Ben Ray Lujan (D-NM), one Republican cosponsor and ninety-three Democratic cosponsors, introduced a companion bill, H.R. 1694. Both bills are aimed at improving access to voting for Native people. Specifically, the bill would:

- establish a Native American Voting Rights Task Force grant program, which would provide funds to tribal and state consortiums for purposes of boosting Native voter registration, education, and election participation in tribal communities;
- improve access to voter registration and polling sites on tribal lands;
- restore pre-clearance review for certain state actions that have been used to restrict access to the polls on tribal lands;
- require states to treat tribal IDs as identification for purposes of state voter ID laws;
- direct states to consult with tribal nations on the appropriate method for furnishing instructions, assistance, or other information related to registration and voting in Indigenous languages; and
- require DOJ to conduct annual consultation with tribal nations on voting issues.

S. 739 was referred to the Committee on the Judiciary. H.R. 1694 was referred to the Committee on House Administration; and Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and

Civil Liberties. The House has been holding a series of hearings on voting rights in both the Judiciary Committee and the House Administration Committee, Subcommittee on Elections that have included testimony from Native witnesses about the challenges many Native voters encounter when attempting to register to vote, cast a ballot, and elect the candidate of their choice.

NAVRC Field Hearings: From September 2017 to 2018, the NAVRC completed a series of nine field hearings in seven states. The hearings focused on identifying instances of voter suppression and documenting all the barriers Native voters face. Information from the hearings will help promote public education, identify policy solutions, and advance other legal remedies to expand Native access to voting. A final report is anticipated soon.

JUVENILE JUSTICE

Tribal youth are at a greater risk of entering the juvenile justice system than their non-tribal peers, and are over-represented in federal and state detention facilities when compared to other youth. In response, tribal nations across the U.S. have focused on addressing tribal youth delinquency through innovative, culturally-appropriate prevention and diversion programs. However, tribal nations are unable to provide services to their youth when federal and state justice systems fail to consistently track and report their numbers and locations. To assist tribal nations and allies in the effort to support tribal youth, NCAI has launched the Tribal Juvenile Justice webpage on its website. The website includes various tribal juvenile justice resources such as the *2019 NCAI Tribal Juvenile Justice: Background and Recommendations* policy brief, various reports on tribal youth in juvenile justice systems, and the NCAI tribal juvenile justice podcast series.

Legislative Update

Justice for Juveniles Act – H.R. 5053: On November 12, 2019, Representative Mary Gay Scanlon (D-PA) introduced H.R. 5053, the Justice for Juveniles Act. H.R. 5053 would amend the Prison Litigation Reform Act to allow youth to skip the onerous internal prison appeals process before filing federal suit when they suffer abuse inside juvenile and correctional facilities. Tribal youth who are abused in state juvenile and criminal facilities would benefit from the elimination of these administrative barriers that prevent many from seeking justice. H.R. 5053 was referred to the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security.

Prohibiting Punishment of Acquitted Conduct Act of 2019 – S. 2566: On September 26, 2019, Senator Richard J. Durbin (D-IL) introduced S. 2566, Prohibiting Punishment of Acquitted Conduct Act of 2019. The bill would prohibit judges from considering information about a crime that a person was acquitted of in federal, state, or tribal court when deciding an appropriate sentence for a different conviction. Judges would also be prohibited from considering any past charges against a juvenile where they were found not responsible or the juvenile information was dismissed in federal, state, or tribal court. The bill would allow the judge to only consider the prohibited information as a mitigating factor during their sentence deliberation. S. 2566 was referred to the Senate Committee on the Judiciary.

Creating Pathways for Youth Employment Act – S. 1551 & H.R. 2844: On May 20, 2019, Senator Dick Durbin (D-IL) introduced the Creating Pathways for Youth Employment Act. S. 1551 would provide funding for states, tribal nations, and tribal organizations to create summer youth employment programs and subsidize year-round youth employment opportunities. S. 1511 was referred to the Senate Committee

on Education, Labor, and Pensions. The same day, Representative Robin Kelly (D-IL) introduced a companion bill, H.R. 2844, which was referred to the House Committee on Education and Labor.

Eliminating Debtor's Prison For Kids Act of 2019 – H.R. 2300: On April 12, 2019, Representative Tony Cardenas (D-CA) introduced H.R. 2300. H.R. 2300 authorizes the Attorney General to provide grants to states to provide evidence-based and trauma-informed mental and behavioral health services to at risk youth. The bill also would require the Attorney General to appoint an independent criminal justice organization to draft and submit a report to the House and Senate Committees on the Judiciary. The report would focus on national fines and fees imposed on adults and juveniles in the criminal justice system. The report would include the race, ethnicity, tribal affiliation and other demographic data of individuals who incur such fines and fees and who are reincarcerated within one year. This report would provide new insight into the circumstances of tribal citizens and youth who are impacted by fines and fees in federal and state criminal justice systems. H.R. 2300 has been referred to the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security.

Authorizing Departures from the Mandatory Minimum Sentences for Juvenile Offenders – H.R. 1949: On March 28, 2019, Representative Bruce Westerman (R-AR) introduced H.R. 1949, which would give federal judges the authority to consider a juvenile's age and prospect for rehabilitation and then impose a sentence that is 35 percent below the federal statutory minimum sentence. This is important as many tribal youth end up in the federal justice system if they commit crimes in Indian country. Permitting a departure from the mandatory minimum sentences for federal crimes would have a positive impact on tribal youth, allowing them to focus on rehabilitation rather than being incarcerated. H.R. 1949 has been referred to the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security.

Sara's Law – H.R. 1950: On March 28, 2019, Representative Bruce Westerman (R-AR) introduced H.R. 1950. The bill would permit federal judges to depart from mandatory minimum sentences or suspend any portion of an imposed sentence where the youth committed a violent offense against a person who had sex trafficked or sexually abused them within the past year. H.R. 1950 has been referred to the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security.

The Reduction of Life Without Parole for Certain Juvenile Offenders – H.R. 1951: On March 28, 2019, Representative Bruce Westerman (R-AR) introduced H.R. 1951. The bill would allow federal judges to modify the prison sentence of juveniles whose crimes were committed prior to the age of 18. The judge would weigh a list of factors and relevant information before ordering a reduction in sentence. H.R. 1951 has been referred to the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security.

Administrative Update

Office of Juvenile Justice and Delinquency Prevention (OJJDP) Lowers State Reporting Requirements: OJJDP announced in 2018 that it would lower the number of Disproportionate Minority Contacts (DMC) that states must report from nine to five. DMC reporting requirements focus on juveniles located in state justice systems. The OJJDP has also permitted states to report on only four of the five listed DMCs throughout its FY 2019 grants, allowing for inconsistent data collection. This is concerning because a September 2018 GAO report revealed that states often do not report the number of tribal youth in their juvenile justice systems. GAO revealed in the same report that the federal government also does not consistently report on tribal youth in the federal justice system. The lack of reliable data on tribal youth prevents tribal nations from adequately assessing and addressing the needs of their youth in state and

federal justice systems. OJJDP will likely continue using its lower DMC reporting requirements during the FY 2020 grant cycle. NCAI has recommended that all states be required to identify tribal youth in their justice systems by requesting their tribal affiliation and reporting the data to the OJJDP as part of the DMC requirements.

CHILD WELFARE

In 1978, Congress passed the Indian Child Welfare Act (ICWA) in response to a crisis sweeping across American Indian and Alaska Native (AI/AN) communities. Congress found that AI/AN children were being removed in alarming numbers from their homes by state child welfare and private adoption agencies. For example, 25-35 percent of all AI/AN children were taken from their homes, 85 percent of those same children were adopted outside of their families and tribal communities, even though able and willing family members often were available to raise them. The consequences of these decades-old practices left AI/AN families and communities devastated across the country, and residual effects still impact the overall wellbeing of AI/AN families and communities generations later. In light of these findings, Congress through its unique trust relationship with tribal nations and its plenary power over Indian affairs, passed ICWA to protect the best interests of AI/AN children and their families. While ICWA has improved the state of child welfare for AI/AN children, its protections and programs as well as other Congressional programs for AI/AN children are still greatly needed today to ensure all Indian children grow up protected, loved, and rooted in their tribal cultures and communities.

Legislative Update

CAPTA Reauthorization Legislation – H.R. 2480 & S. 2971: On May 2, 2019, Representative Kim Schrier (D-WA) introduced H.R. 2480, the Stronger Child Abuse Prevention and Treatment Act, to reauthorize the Child Abuse Prevention and Treatment Act (CAPTA). On December 3, 2019, Senator Johnny Isakson (R-GA) introduced S. 2971, the CAPTA Reauthorization Act of 2019, to accomplish the same goal. While both bills aim to reauthorize CAPTA, their tribal provisions vary in strength. H.R. 2480 would set a mandatory increase for CAPTA funding to tribal nations and tribal organizations and require the GAO to issue a report on child abuse and prevention efforts in Indian Country. Conversely, S. 2971 would authorize a tribal funding increase subject to the discretion of the Secretary of Health and Human Services. S. 2971 also includes a similar GAO report to H.R. 2480. On May, 20, 2019, H.R. 2480 passed the House with bipartisan support and was referred to the Senate Committee on Health, Education, Labor, and Pensions. On December 12, 2019, S. 2971 was reported favorably by the Senate Committee on Health, Education, Labor and Pensions. It now awaits consideration by the full Senate.

Native American Child Protection Act – H.R. 4957: On October 31, 2019, Representative Raúl Grijalva (D-AZ) introduced H.R. 4957, which would amend and reauthorize funding levels for the Indian Child Protection and Family Violence Prevention Act (ICP). Since enacted in 1991, ICP has never been fully funded by Congress and the authorization levels for its programs and centers have long since lapsed. H.R. 4957 would reauthorize and increase the funding levels for the Indian Child Abuse Treatment Grant Program and the Indian Child Protection and Family Violence Prevention Program. The bill would transition the Indian Child Resource and Family Services Centers from 12 centers in each BIA region (which have never been established) to one national center. Additionally, the bill would update the scope of child abuse to include both physical and non-physical abuse and would provide funding for culturally appropriate treatment and programs. H.R. 4957 was referred to the House Subcommittee for Indigenous Peoples of the United States on November 11, 2019. A hearing was held on November 13, 2019, and NCAI submitted written testimony on the bill.

National Adoption and Foster Care Home Study Act – S. 1912 & H.R. 3359: On June 19, 2019, Senator Kirsten Gillibrand (D-NY) introduced S. 1912, the National Adoption and Foster Care Home Study Act. At the same time Representative Jared Huffman (D-CA) introduced H.R. 3359, a companion bill in the House. The bill would establish a national research-based home study assessment process to evaluate prospective foster and adoptive parents. It would also provide funding to tribal nations and states who adopt and implement the process. S. 1912 was referred to the Senate Committee on Health, Education, Labor and Pensions. H.R. 3359 was referred to the House Committee on Education and Labor.

Family First Transition and Support Act of 2019 – S. 1376 & H.R. 2702: On May 9, 2019, Senator Sherrod Brown (D-OH) introduced S. 1376, the Family First Transition and Support Act of 2019. On May 14, 2019, Representative Karen Bass (D-CA) introduced H.R. 2702, a companion bill. These bills would increase funding for tribal nations, increase funding to the child welfare Tribal Court Improvement Program, and remove barriers for smaller tribal nations to access federal Title IV-B funding. S. 1376 was referred to the Senate Committee on Finance. H.R. 2702 was referred to the House Committee on Ways and Means.

American Indian and Alaska Native Child Abuse Prevention and Treatment Act – S. 1329 & H.R. 2549: On May 6, 2019, Senator Elizabeth Warren (D-MA) introduced S. 1329, the American Indian and Alaska Native Child Abuse Prevention and Treatment Act (AI/AN CAPTA). Soon after, Representative Raúl Grijalva (D-AZ) introduced H.R. 2549, as a companion bill. AI/AN CAPTA would amend CAPTA to increase funding for tribal nations and tribal organizations to support AI/AN youth, require that tribal nations are considered in the geographic distribution of CAPTA funds, and require that GAO issue a report on child abuse and prevention efforts in Indian Country. S. 1329 was referred to the Senate Committee on Indian Affairs. H.R. 2549 was referred to the House Committees on Education and Labor and Natural Resources.

Administrative Update

Notice of Proposed Rulemaking to Cut 90 Percent of AI/AN and ICWA AFCARS Data Elements: On April 19, 2019, the U.S. Department of Health and Human Services, Administration on Children, Youth, and Families (ACYF) issued a notice of proposed rulemaking on the adoption and foster care analysis and reporting systems (AFCARS) regulations. The current AFCARS regulations require Title IV-E agencies to collect and report data to the ACYF on children in out-of-home care, children who exit out-of-home care to adoption or legal guardianship, and children who are covered by Title IV-E adoption or guardianship assistance agreements. In 2016, ACYF adopted regulations requiring Title IV-E agencies to report information regarding AI/AN children, ICWA, and ICWA compliance. The proposed regulation would eliminate 90 percent of the AI/AN children and ICWA AFCARS data elements. Comments for the rulemaking were due on June 18, 2019, and NCAI submitted written comments to the ACYF. The final rule has not yet been issued.

Presidential Task Force on Protecting Native American Children in the Indian Health Services System: On March 26, 2019, President Donald Trump established the Presidential Task Force on Protecting Native American Children in the Indian Health Services System. The Task Force is charged with investigating systematic roadblocks that enable the predatory practices of healthcare providers toward Native children. The Task Force has held three meetings to date but has not issued any finding or recommendations.

EMERGENCY RESPONSE AND HOMELAND SECURITY

Tribal leaders and NCAI continue to advocate for parity in protecting tribal homelands. Since 2003, 98.75 percent of total Department of Homeland Security (DHS) funding has gone to state and local governments, leaving little for tribal nations (\$55 billion for state and local governments vs. \$70 million for tribal nations). DHS and its component departments, such as Customs and Border Protection, the Federal Emergency Management Agency, and the Transportation Security Administration have garnered mixed reviews from tribal officials in recent years regarding meaningful consultation and collaboration, upholding the federal trust responsibility in program service delivery, and approaches to federal grants via pass-through funding from states to tribal nations. Additionally, there is need for positive change to tribal homeland security and emergency response matters regarding border crossings, tribal IDs, disaster declaration authority, emergency management capacity building, and equitable yet realistic levels of grant access and funding.

Legislative Update

DHS FY 2020 Appropriations: Congress has appropriated less than half a million for the Tribal Homeland Security Grant Program (THSGP) for the past several years. The THSGP is the primary source of funding for tribal nations to address their homeland security needs. DHS has continued to use a little over \$9 million in discretionary funding each year to increase the THSGP to \$10 million. NCAI continues to advocate for Congress to increase the funding for the THSGP and submitted testimony to the House and Senate appropriations committees in spring 2019. In December 2019, Congress passed the appropriations package for DHS, which included increasing the THSGP to \$15 million for the first time since the grant was established. The substantial increase in appropriations will provide more certainty for tribal nations as they plan for their tribal homeland security programs and needs. NCAI will continue to advocate for Congress to increase the funding for the THSGP to meet the federal government's treaty and trust obligations to all tribal nations. During its 2019 Annual Convention, NCAI passed #ABQ-19-027, "Calling on Congress and the Department of Homeland Security to Allow All Federally Recognized Tribes to Access the Tribal Homeland Security Grant Program."

Smoke-Ready Communities Act of 2019 – S. 1813: On June 6, 2019, Senator Jeff Merkley (D-OR) introduced S. 1813, the Smoke-Ready Communities Act of 2019. S. 1813 enables the President to provide assistance, including grants, equipment, supplies and personnel to states, tribal nations, and local governments for the mitigation, management, and control of smoke caused by wildfires. The bill also establishes the smoke-resilient housing grant program for states, tribal nations, homeowners, and renters. S. 1813 was referred to the Senate Committee on Homeland Security and Governmental Affairs.

Nuclear Waste Administration Act of 2019 – S. 1234: On May 30, 2019, Senator Lisa Murkowski (R-AK) introduced S. 1234, the Nuclear Waste Administration Act of 2019. S. 1234 would establish the Nuclear Waste Administration (NWA) to provide for the permanent disposal of nuclear waste, including the construction and operation of new storage and test facilities. The bill would also allow the NWA to transport nuclear waste. However, prior to any transportation, the NWS would be required to provide advance notice to any tribal nation whose jurisdiction the nuclear waste will travel through. In addition, the Administrator of the NWS would be required to work with tribal nations when reviewing potential nuclear waste sites near tribal lands. S. 1234 was referred to the Senate Committee on Energy and Natural Resources.

Nuclear Waste Policy Amendments Act of 2019 – H.R. 2699 & S. 2917: On May 14, 2019, Representative Jerry McNerney (D-CA) introduced H.R. 2699. H.R. 2699 would amend the Nuclear Waste Policy Act of 1982 to authorize the Secretary of Energy to enter into Monitored Retrievable Storage (MRS) agreements with non-federal entities to store civilian waste. However, the entity must receive approval from states, local governments, and affected tribal nations to store the waste before the MRS agreement will be granted. The bill would withdraw the Yucca Mountain lands from all forms of entry, appropriation, and disposal, including mineral leasing, geothermal leasing, and mining laws. The Secretary would then manage the lands and develop a management plan. H.R. 2699 authorizes the Secretary to build appropriate support construction for the operation of a repository at Yucca Mountain or the transportation of waste to the site. The Secretary could begin construction before a final decision from the Nuclear Regulatory Commission on whether or not to approve the site. H.R. 2699 was referred to the Energy and Commerce Committee, Subcommittee on Environment and Climate Change, where a hearing was held. A full-committee mark-up occurred on November 20, 2019. On the same day, Senators John Barasso (R-WY) and Kevin Cramer (R-ND) introduced a Senate companion bill, S. 2917, which was referred to the Committee on Environment and Public Works.

Tribal Border Crossing Parity Act – H.R. 2496: On May 2, 2019, Representative Derek Kilmer (D-WA) introduced H.R. 2496, the Tribal Border Crossing Parity Act. The bill amends the Immigration and Nationality Act (INA) to allow tribal citizens to exercise their Jay Treaty rights to cross the U.S. and Canada border without proving they meet an arbitrary 50 percent blood quantum threshold. When Congress passed the INA in 1952 it included termination era language requiring that tribal citizens prove their blood quantum to border officials to exercise their treaty rights. Tribal nations have inherent sovereign authority to decide qualifications for tribal citizenship. The language of the 1952 statute imposing a blood quantum requirement is inconsistent with this inherent tribal authority and current federal policy, which supports tribal self-determination. Additionally, the Jay Treaty does not include any blood quantum language. H.R. 2496 would make it easier for tribal citizens to exercise their crossing rights without being harassed by customs and border patrol agents. H.R. 2496 was referred to the House Subcommittee on Immigration and Citizenship.

National Landslide Preparedness Act – H.R. 1261 & S. 529: On May 2, 2019, Representative Suzan DelBene (D-WA) introduced H.R. 1261. On the same day, Senator Maria Cantwell (D-WA) introduced a companion bill, S. 529. The bills would establish a National Landslide Hazards Reduction Program requiring various federal agencies to coordinate with states, tribal nations, local governments, and territories to identify, map, and assess landslide hazards, and develop hazard guidelines. The program would require the Secretary of the Interior to develop a national strategy for landslide hazards, risk reduction, and response. The bills would require the Secretary of the Interior to coordinate with the Secretary of DHS, the Secretary of Commerce, states, tribal nations, local governments, and territories to establish rapid deployment procedures for federal scientists, equipment, and services to a significant landside site. Finally, the bills would establish a Cooperative Landslide Hazard Mapping and Assessment Program to provide grants to states, tribal nations, local governments, and territories. H.R. 1261 was referred to the Committee on Natural Resources and the Committee on Science, Space, and Technology. A hearing and mark-up were subsequently held. On June 3, 2019, H.R. 1261 passed the House and has been received by the Senate.

Legislation Concerning Construction of a Southern Border Wall: When the border was drawn between the United States and Mexico, it cut through several tribal nations' territories and resulted in the separation

of Native families and placement of tribal religious and cultural sites on both sides of the international boundary. Tribal nations who do live on or near the southern border have significant interests that will be adversely affected by a border wall. A number of bills have been introduced related to construction of a southern border wall, none of which are expected to be enacted in the current Congress. NCAI will continue to monitor this and similar legislation to ensure tribal interests are protected.

NCAI has the following standing resolutions addressing this topic: Resolution #ECWS-08-001, “Supporting Amending Secure Fence Act and Requiring DHS Secretary to Consult and Coordinate with Tribes in Jointly Developing a Border Strategy for Tribal Lands along the United States’ International Borders,” and Resolution #REN-08-002, “Supporting H.R. 5530, the Tribal Government Homeland Security Coordination and Integration Act.” Consistent with these resolutions, NCAI opposes waivers of federal, state, and other laws under Section 102(c) of the Illegal Immigration Reform and Immigrant Responsibilities Act of 1996 for the construction of border fencing and roads. Such waivers are unnecessary, potentially destructive, and in violation of the federal obligation to consult with tribal nations on a government-to-government basis and respect tribal sovereignty and self-determination.

Administrative Update

DHS Non-Disaster Grants: On April 12, 2019, the Secretary of DHS announced the FY 2019 Notice of Funding Opportunity for twelve DHS preparedness grants to state, local, tribal, and territorial governments. The grants are for immediate security needs and community public safety. Funding for all homeland security grants to states and local governments normally totals over \$1.6 billion, yet the amount available for all 574 federally recognized tribal nations has been stagnant at \$10 million for the past several years. Tribal nations have appreciated DHS increasing the funding for the THSGP above the congressional minimum, but the funding falls short of the U.S. trust responsibility. During NCAI’s 2019 Mid Year Conference, tribal leaders passed Resolution #REN-19-047 “Providing Resiliency Continuity Funding for Homeland Security and Emergency Services to Tribal Governments.” This resolution called on Congress and DHS to establish a Resiliency Continuity Fund that would provide \$330,000 to each tribal nation, roughly the funding needed for 1.5 full time equivalents (FTEs) to meet basic core capabilities outlined in national policy.

Executive Order 13767: Border Security and Immigration Enforcement Improvements: On January 25, 2017, President Donald Trump signed Executive Order 13767 directing the Secretary of DHS to plan, design, and construct a physical wall along the southern border; construct detention facilities to detain undocumented immigrants at or near the border; hire 5,000 border patrol agents and assign them to duty stations; and set up federal-state agreements for state and local law enforcement officers to perform functions of immigration officers. E.O. 13767 does not state what the border wall will look like, the timeline for construction, how much will be paid for the wall’s construction, or who will bear the costs. Tribal nations on or near the southern border have raised concerns that their cultures, lands, and citizens will be impacted, sovereignty disregarded, and treaty rights infringed upon. All impacted tribal nations, many members of Congress, and several border state officials object to the border wall proposal.

LAND, NATURAL RESOURCES, CULTURAL RESOURCES, AND ENVIRONMENT

American Indians and Alaska Natives (AI/ANs) are place-based peoples with a direct connection to their surrounding environments, which includes traditional homelands, natural resources, and wildlife. Tribal nations' cultures, economies, and well-being all depend upon natural resources, many of which are disappearing faster than they can be restored.

For these reasons, the U.S. responsibility to tribal nations must be fully and actively honored when it comes to tribal lands and natural resources. The federal government must enable full tribal participation when developing policies and discussing the management of tribal resources by federal agencies or when contemplating proposed legislation. Such discussions must also consider tribal management of natural resources using traditional and culturally appropriate methods as a viable option. Tribal nations must have access to federal programs and funding opportunities to address their land and natural resource needs.

TRIBAL HOMELANDS

The Department of the Interior (DOI) has commenced actions that altered, and proposed to alter, the fee-into-trust process over the past two years. Broadly, these actions concerned proposed amendments to the fee-into-trust process under 25 C.F.R. Part 151; review of DOI's trust acquisition authority within Alaska; and centralization of the trust acquisition process. With respect to individual tribal nations, DOI has acted to reverse a prior trust acquisition for the Mashpee Wampanoag Tribe (Mashpee). These actions affect all tribal nations as they seek restoration of their homelands for the health, safety, and welfare of their communities and cultures.

These land issues come a decade after the 2009 U.S. Supreme Court decision in *Carcieri v. Salazar*, which limited the Secretary's authority to acquire land for only those tribal nations that were "under federal jurisdiction" as of 1934. This decision effectively created two classes of tribal nations under the Indian Reorganization Act (IRA) – those tribal nations "under federal jurisdiction" in 1934 and those who were not. To date, lawsuits based on the *Carcieri* decision have resulted in costly, protracted litigation on a broad range of issues and will likely spawn further litigation across the country if not addressed by Congress.

Legislative Update

A Bill to Reaffirm the Secretary of the Interior's Authority to Take Land into Trust for All Tribes – H.R. 375 & S. 2808: On January 9, 2019, Representatives Tom Cole (R-OK) and Betty McCollum (D-MN) introduced H.R. 375, a bill to amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian Tribes, and for other purposes. This bill, which has broad bipartisan support, addresses the *Carcieri* decision by reaffirming existing tribal trust lands and the Secretary of the Interior's authority under the IRA to acquire land in trust for all tribal nations. NCAI submitted testimony and has educated Congress on this bill in accordance with NCAI Resolutions #RAP-10-024, "To Support Legislation to Address the Supreme Court Decision in *Carcieri v. Salazar*"; #MSP-15-044, "Reaffirmation of Tribal Government Trust Lands"; and #REN-19-017 "Support for Federal Legislation to Address Supreme Court's Misguided *Carcieri* Decision and Protect Existing Tribal Trust Lands." H.R. 375 passed the House and was referred to the Senate Committee on Indian Affairs. On November 7, 2019, S. 2808 was introduced, as a Senate companion, by Senator Jon Tester (D-MT) and co-sponsored by Senator Jerry Moran (R-KS). S. 2808 was referred to the Committee on Indian Affairs.

Administrative Update

Department of the Interior's Proposed Amendments to its Off-Reservation Acquisition Authority: In 2017, DOI proposed amending the 25 C.F.R. Part 151 regulations to create a two-step review process for all off-reservation trust acquisitions and to distinguish between gaming and non-gaming fee-into-trust acquisitions. NCAI membership opposed this action in Resolution #MKE-17-059, "Opposing the Department of the Interior's Efforts to Amend the BIA's Land into Trust Regulations," and NCAI submitted comments in opposition to the proposed amendments. On February 13, 2019, then Acting DOI Secretary David Bernhardt announced at NCAI's Executive Council Winter Session (ECWS) that in response to tribal opposition, DOI would not move forward with its proposed fee-into-trust changes. On March 27, 2019, NCAI submitted a letter to Secretary Bernhardt requesting confirmation that this announcement would include withdrawing DOI's non-Part 151 land-into-trust changes.

Department of the Interior Review of its Authority to Take Land into Trust in Alaska: On June 29, 2018, DOI's Office of the Solicitor withdrew opinion M-37043, which was a legal analysis that supported the Secretary's authority to take land into trust in Alaska (Alaska M-Opinion). DOI also initiated consultations in Alaska on the Secretary's authority to take land into trust in Alaska and what effects, if any, various statutes may have on that authority. On January 25, 2019, NCAI submitted comments to DOI's consultations on both its authority to acquire lands in trust in Alaska and on the authority of Alaska Native tribal nations to organize under the Alaska Indian Reorganization Act of 1936. On March 27, 2019, NCAI submitted a letter to DOI that requested that DOI Secretary David Bernhardt's land-into-trust announcement at NCAI's 2019 ECWS conference include an end to DOI's review of its fee-into-trust authority for trust acquisitions in Alaska and the re-instatement of the Solicitor's Alaska M-Opinion.

Department of the Interior Centralization of the Trust Acquisition Process: Since 2017, the decision-making authority for off-reservation land acquisitions has been centralized with the Assistant Secretary of Indian Affairs (AS-IA). On May 31, 2018, Counselor to the Secretary of the Interior, John Tahsuda, then the Acting AS-IA, issued National Policy Memorandum NPM-TRUS-36 that established that the AS-IA had delegated authority for all land-into-trust acquisitions. This memorandum was issued despite widespread tribal opposition to this centralization which occurred without tribal consultation and effectively suspended off-reservation trust acquisitions. In accordance with Resolution #MKE-17-059, "Opposing the Department of the Interior's Efforts to Amend the BIA's Land into Trust Regulations," NCAI submitted a letter to Secretary Bernhardt on March 27, 2019 that requested confirmation that DOI would end the interim centralization of off-reservation fee-into-trust land acquisitions.

Department of the Interior's Mashpee Lands Decision: On September 7, 2018, DOI issued a decision to the Mashpee Wampanoag Tribe that underscored the need for Congress to take action and address the *Carcieri* decision head-on. The DOI decision failed to consider the totality of Mashpee's evidence in determining whether it was "under the jurisdiction" of the federal government in 1934. In doing so, DOI determined that Mashpee was not under federal jurisdiction despite strong evidence indicating otherwise. This decision places Mashpee's current reservation in danger of losing its status as tribal trust land and could potentially frustrate critical tribal self-governance plans. NCAI has asked leadership at DOI to re-docket this negative decision in a manner consistent with DOI's prior *Carcieri* determinations in matters with similar fact patterns.

TRUST MODERNIZATION

The U.S. promised to protect and preserve the right of tribal nations to exist as distinct nations on their own lands. As a result, the federal government maintains the responsibility to protect tribal trust assets (e.g., timber, land, water, and other resources). Currently, this management process must be modernized to align with and support principles of tribal self-determination and self-governance.

The Indian Trust Asset Reform Act (ITARA) was signed into law in 2016. ITARA recognizes that tribal nations are best positioned to make long-lasting decisions for their communities and represents an important step in trust modernization. However, ITARA implementation largely depends on DOI's commitment to the law. For instance, ITARA authorizes the establishment of an Under Secretary for Indian Affairs (US-IA), a Secretarial level position that would report directly to the Secretary and supervise and coordinate activities between the Bureau of Indian Affairs (BIA) and non-BIA agencies within DOI. The US-IA is critically important to bolster DOI's mission to uphold the trust responsibility and fulfill treaty obligations.

More broadly, NCAI urges Congress to support legislative reforms that provide greater efficiencies in trust resource management, enable better economic returns on trust resources, and foster an increased role for tribal nations in how trust resources are managed.

Administrative Update

DOI Reorganization: DOI concluded its initial consultation and comment period on its reorganization plans. NCAI submitted comprehensive comments to DOI stating that tribal nations generally oppose the inclusion of BIA regions within the proposed Unified Region Structure and oppose suggesting changes to the framework of the BIA and DOI generally. NCAI's comments also asked for continued consultation on DOI reorganization and made suggestions for how DOI can better include BIA functions within the reorganization process. In response to this advocacy by tribal nations and NCAI, DOI Secretary David Bernhardt confirmed to the House Natural Resources Committee on May 15, 2019 that DOI would not incorporate BIA and the Bureau of Indian Education in any reorganization of DOI. NCAI continues to monitor developments in the broader DOI proposed reorganization and reiterate the opposition of tribal nations.

Indian Trust Asset Reform Act Implementation: Title II of ITARA authorizes the DOI Secretary to establish and carry out an Indian trust management demonstration project for tribal forestry and surface leasing programs. NCAI has advocated for allowing demonstration project tribal nations to enter into Indian Trust Asset Management Plans (ITAMPs) for all trust assets as that term is defined in 25 C.F.R. § 115.002. Further, NCAI has requested that tribal nations be able to determine the degree of management they wish to exercise and that BIA manage a tribal nation's trust assets in accordance with their ITAMPs. Similarly, NCAI has urged DOI to develop internal coordination to enable implementation of ITAMPs that crosses Department bureaus. Additionally, NCAI has submitted technical comments in response to the draft ITAMPs developed by DOI.

With regard to overall ITARA implementation, NCAI continues to urge DOI to establish the US-IA position and to complete a review of the functions provided by OST with particular attention to which functions and resources could be transferred to BIA land and natural resource programs.

Cobell Land Buy-Back Program: The Cobell Settlement established a \$1.9 billion Land Consolidation Fund and tasked DOI to expend the Fund within 10 years to acquire fractional interests in trust or restricted fee land. The Land Buy-Back Program was established by DOI to implement this task. In July 2017, DOI announced its revised strategy for reducing fractional interests, thus changing how the Land Buy-Back Program is implemented. In addition, DOI also published a new list of reservations based on the revised strategy, which primarily includes tribal nations in the Great Plains, Rocky Mountains, and Northwest regions, and excludes some tribal nations on DOI's original, pre-2017 implementation schedule.

In response, NCAI's membership passed Resolution #MKE-17-002, "Request to Restore the Department of Interior Land Buy-Back Program to Pre-2017 Schedule." The resolution urges Congress to expand the funding for the Program and to fulfill the promises of the original implementation schedule. The resolution also urges consultation with tribal nations and a hearing in the Senate Committee on Indian Affairs to further the goals of land consolidation and restoration of tribal homelands. NCAI has requested that DOI restore the Pre-2017 Buyback Schedule and that Congress continue to fund the successful Buy-Back program.

ENERGY

Tribal energy resources are extensive, underutilized, and critical to tribal nations securing their economic futures. These same tribal energy resources can play a key role in America's efforts toward achieving energy security and independence, reducing greenhouse gases, and promoting economic development. To make significant energy-based contributions to Indian Country and the United States, tribal nations need the help of Congress to remove regulatory and other impediments. Tribal nations know best how to scale projects that make sense for them and how to balance economic, cultural, and environmental issues associated with energy development.

Despite this potential, developing energy resources in Indian Country continues to be a challenge. Tribal nations face barriers to energy development that do not exist elsewhere. For example, there are approximately 49 steps and four federal agencies involved in Indian Country energy development, while there are as few as four steps required for energy development in certain state processes. Additionally, lack of grid access, access to funding, and exclusion from federal programs hamper tribal energy production and inclusion.

NCAI urges Congress and the Administration to work with tribal nations to find pathways to greater tribal control over the development of their energy resources and ways to ensure tribal nations are meaningfully consulted early when off-reservation development projects affect tribal resources. Such actions bolster tribal self-determination and create careers and capital in Indian Country.

Legislative Update

Tribal Power Act – H.R. 5541: On January 7, 2020, Representative Tom O'Halleran (R-AZ) introduced H.R. 5541, the Tribal Power Act. H.R. 5541 amends the Energy Policy Act of 1992 to reauthorize funding to the Department of Energy's Indian Education Planning and Management Assistance program at \$30 million for fiscal years FY 2021 to FY 2025. This represents an increase of \$10 million and an extension of the program past its original authorization date of FY 2016. The bill also directs the Secretary of Energy, in consultation with tribal nations, to conduct an assessment study of access to electricity by residents on Indian land and the reliability of that electricity as compared to neighboring states or within the state in

which Indian land is located. H.R. 551 was referred to the House Natural Resources Committee and the Committee on Energy and Commerce.

Tribal Energy Reauthorization Act – S. 2610: On October 16, 2019, Senator Lisa Murkowski (R-AK) introduced S. 2610, the Tribal Energy Reauthorization Act. S. 2610 funds the Department of Energy Indian Energy Education Planning and Management Assistance Program at \$50 million from FY 2020 - FY 2030. The bill also authorizes the appropriation of \$30 million for the Tribal Energy Loan Guarantee Program for FY 2020-2030 and expands the definition of “tribal land.” The bill would also amend the definition of tribal energy development organization to include tribally designated housing entities. S. 2610 was referred to the Senate Committee on Indian Affairs.

Surface Mining Control and Reclamation Act Amendments of 2019 – H.R. 4248: On September 9, 2019, Representative Matt Cartwright (D-PA) introduced H.R. 4248. This bill would amend the Surface Mining Control and Reclamation Act of 1977 to allow the Secretary of the Interior to delegate certain emergency reclamation activities to states and tribal nations. H.R. 4248 was referred to the Committee on Natural Resources and the Committee on Budget. The Subcommittee on Energy and Mineral Resources held a hearing on November 14, 2019 and the Committee on Natural Resources held a markup on January 15, 2020. During its 2019 Annual Convention, NCAI passed related Resolution #ABQ-19-049, “Support for the Reform of the 1872 Mining Law, and other Similar Statutes Regulating the Extraction or Harvest of Minerals and Other Resources to Protect Sacred Sites and Water Resources.”

Wood Heaters Emissions Act – S. 2274 & H.R. 5391: On July 25, 2019, Senators Tom Carper (D-DE) and Lisa Murkowski (R-AK) reintroduced S. 2274, the Wood Heaters Emissions Reduction Act (WHERA). On December 11, 2019, Representative Peter Welch (D-VT) introduced a companion bill, H.R. 5391. The legislation would establish a grant program for wood heater emissions reductions that would provide financial incentives to home owners to replace old wood heaters with more efficient models and support retailers, installers, and manufacturers that make certified clean heaters. The bill would provide a total of \$75 million annually for FY 2019 - FY 2025. The bill would make at least four percent of the total funding available to tribal nations. S. 2274 was referred to the Senate Committee on Environment and Public Works. H.R. 5391 was referred to the House Committee on Energy and Commerce.

Buffalo Tract Protection Act – H.R. 2640 & S. 526: On February 14, 2019 Senator Martin Heinrich (D-NM) introduced S. 526, the Buffalo Tract Protection Act. On May 9, 2019, Representative Deb Haaland (D-NM) introduced a companion bill, H.R. 2640. The bill would remove from mineral development certain Bureau of Land Management (BLM) Lands in Placitas, New Mexico. H.R. 2640 was referred to the House Committee on Natural Resources. A hearing was held on September 19, 2019, and a markup was held on January 15, 2020. H.R. 2640 awaits action on the House floor. S. 526 was referred to the Senate Committee on Energy and Natural Resources where the Subcommittee on Public Lands, Forests, and Mining held a hearing on May 14, 2019.

Hardrock Leasing and Reclamation Act of 2019 – H.R. 2579 & S. 1386: On May 8, 2019, Representative Raúl Grijalva (D-NM) introduced H.R. 2579, the Hardrock Leasing Reclamation Act of 2019. On May 9, 2019, Senator Tom Udall (D-NM) introduced a companion bill, S. 1386. These bills modify the requirements applicable to locatable minerals on public domain lands. Importantly, Title II of the bill provides for a consultation procedure and protection of tribal sacred sites. This includes a protocol for initial contact with a tribal nation, making arrangements for a consultation meeting, and termination of

the scoping stage of consultation. H.R. 2579 was referred to the House Natural Resources Committee Subcommittee on Energy and Mineral Resources. A subcommittee hearing was held on May 9, 2019, and on October 23, 2019 a mark-up was held. The bill awaits action on the House floor. S. 1386 was referred to the Senate Committee on Energy and Natural Resources.

Clean Energy for America Act of 2019 – S. 1288: On May 2, 2019, Senator Ron Wyden (D-OR) introduced S. 1288, the Clean Energy for America Act. The bill proposes to make several changes to the United States Tax Code to support a low-carbon economy. Specifically, the bill would incentivize clean electricity by providing a production tax credit (PTC) to facilities that are 35 percent cleaner than average with a maximum of 2.4 c/kwh or an investment tax credit (ITC) of 30 percent to facilities with zero-carbon emissions. The bill would also incentivize clean transportation fuel by providing a tax credit for fuels that are 25 percent cleaner than average with a maximum credit of \$1 per gallon for fuels with zero emissions. Lastly, the bill would incentivize energy conservation by providing a performance-based tax credit for energy-efficient homes and tax deduction for energy efficient commercial buildings. In this bill, tribal nations and Alaska Native Corporations would be considered “eligible entities” for the tax benefit. S. 1288 was referred to the Committee on Finance.

American Mineral Security Act – S. 1317: On May 2, 2019, Senator Lisa Murkowski (R-AK) introduced S. 1317, the American Mineral Security Act. This bill would assist in making available domestic resources that meet national critical mineral or material needs. Specifically, the bill would provide, at the request of a tribal nation, technical assistance in conducting critical mineral resource assessments on non-federal land. The bill was referred to the Committee on Energy and Natural Resources. On May 14, 2019, a committee hearing was held, and on October 22, 2019, a markup was held. S. 1288 awaits action on the Senate floor.

RECLAIM Act of 2019 – H.R. 2156: On April 9, 2019, Representative Matt Cartwright (D-PA) introduced H.R. 2156, the Revitalizing the Economy of Coal Communities by Leveraging Local Activities and Investing More (RECLAIM) Act. The bill would amend the Surface Mining Control and Reclamation Act of 1977 to provide funds to states and tribal nations to promote economic revitalization, diversification, and development in economically distressed communities. The bill would do this through the reclamation and restoration of land and water resources adversely affected by coal mining carried out before August 3, 1977. H.R. 2156 was referred to the House Committee on Natural Resources. A markup was held on May 1, 2019. H.R. 2156 awaits action on the House floor.

Arctic Cultural and Coastal Plain Protection Act – H.R. 1146: On February 11, 2019, Representative Jared Huffman (D-CA) introduced H.R. 1146, the Arctic Cultural and Coastal Plain Protection Act. The bill would repeal the Arctic National Wildlife Refuge Oil and Gas Program and declare that it is the policy of the United States to protect the Arctic coastal plain and honor and respect the human rights of the Gwich’in people. H.R. 1146 was referred to the House Natural Resources Committee and a hearing and mark-up were subsequently held. On September 12, 2019, H.R. 1146 passed the House and has been referred to the Senate Committee on Energy and Natural Resources.

Administrative Update

Tribal Energy Resource Agreements – Final Rule: On December 18, 2019, the BIA published a final rule amending the regulations governing Tribal Energy Resource Agreements (TERAs). This final rule addressed the Indian Tribal Energy Development and Self-Determination Act Amendments of 2017. The

final rule makes the following seven substantive changes to the previous regulations: (1) reduces the information tribal nations must provide in their TERA applications; (2) imposes timelines on the Secretary for review and approval; (3) limits the grounds on which the Secretary may disapprove a TERA and requires an explanation of each of the grounds; (4) establishes a process for amending a TERA; (5) narrows who may be considered an interested party and establishes procedures for petitioning and handling of interested party petitions; (6) addresses how the BIA will provide unexpended funds to tribal nations; and (7) establishes a process and criteria for certifying Tribal Energy Development Organizations.

During the public comment period, NCAI submitted comments that were generally supportive of the proposed changes but pointed out that additional regulations regarding TERA funding were needed, and that the regulations should be considered in concert with recent changes in law with respect to trust asset management. NCAI also provided several technical edits and suggestions to further improve the proposed regulations.

Revised Federal Energy Regulatory Commission (FERC) Policy Statement on Consultation with Indian Tribes: On October 24, 2019, the Federal Energy Regulatory Commission revised its “Policy Statement on Consultation with Indian Tribes in Commission Proceedings.” The changes included specific reference to treaty rights, a statement on how FERC will address tribal input in National Environmental Policy Act (NEPA) documents and orders, and policies that would direct FERC to consult with Alaska Native Corporations on the same basis as tribal nations.

WATER

Tribal homelands require sufficient water to provide for their existing and future uses in order to provide for the health, safety, welfare, and development of tribal communities. Tribal nations with quantified water rights have certainty into the future. However, tribal nations with unquantified water rights still have options. These rights were usually reserved when land was acquired for a tribal nation, which often gives tribal nations priority over newer water users (e.g., municipalities, federal agencies, and individuals). As a result, tribal legal challenges to other water users are quite strong and often lead to effective water rights settlement processes. NCAI encourages Congress and the Administration to support tribal efforts to quantify and confirm their rights to water and adequately fund these settlements.

In addition to water quantity, tribal nations have a right to protect the quality of their waters – which include aquifers, ephemeral streams, and groundwater basins – from environmental degradation. Further, the United States has an obligation to safeguard tribal waters in accordance with its trust responsibility and specific treaty obligations to tribal nations. For this reason, federal agencies must engage in tribal consultation any time a federal action could have an effect on a tribal nation’s water resources.

Legislative Update

Western Tribal Water Infrastructure Act of 2019 – S. 3044: On December 12, 2019, S. 3044, the Western Tribal Water Infrastructure Act of 2019 was introduced. This bill is sponsored by Senator Ron Wyden (D-OR) and would better fund water systems in tribal communities. Specifically, the bill would increase annual funding for tribal drinking water systems by 50 percent, from about \$20 million a year to \$30 million, and would authorize the Environmental Protection Agency to fund more water projects on tribal lands within Oregon. S. 3044 was referred to the Senate Committee on Indian Affairs.

Montana Tribal Water Settlement Bills – S. 3019 & S. 3113: On December 11, 2019, S. 3019, the Montana Water Rights Protection Act was introduced. This bill is sponsored by Senator Steve Daines (R-MT) and co-sponsored by Senator Jon Tester (D-MT) and would approve a water settlement for the Confederated Salish and Kootenai Tribes (CSKT) and transfer operation of the National Bison Range to CSKT. On December 19, 2019, S. 3113, a bill to provide for the settlement of the water rights claims of the Fort Belknap Indian Community, and for other purposes, was introduced. This bill is sponsored by Senator Steve Daines (R-MT). Both S. 3019 and S. 3113 have been referred to the Senate Committee on Indian Affairs. On January 23, 2020, Representative Ruben Gallego (D-AZ) introduced H.R. 5673, a companion bill to S. 3113. H.R. 5673 has been referred to House Committee on Natural Resources.

Indian Water Rights Settlement Extension Act – S. 886 & H.R. 1904: On March 27, 2019, Senator Tom Udall (D-NM) introduced S. 886, the Indian Water Rights Settlement Extension Act, and Representative Raúl Grijalva (D-AZ) introduced a companion bill, H.R. 1904. Originally these bills proposed a permanent extension of the Reclamation Water Settlement Fund (RWSF) at 43 U.S.C. § 407 to ensure that tribal water rights settlements will receive continued and stable funding. Presently, the funds in the RWSF are largely committed to existing water settlements. As a result, funding for future tribal water rights settlements is uncertain and state, private, and other stakeholders are directly affected if tribal nations are forced to litigate their water rights claims. H.R. 1904 was referred to the House Committee on Natural Resources. A hearing was held on April 4, 2019, and the bill now awaits mark-up. S. 886 was referred to the Senate Committee on Energy and Natural Resources and on May 23, 2019, discharged to the Committee on Indian Affairs. On July 17, 2019, S. 886 was ordered to be reported favorably with an amendment. This bill awaits further consideration by the full Senate. NCAI will continue to advocate with Congress to uphold its trust responsibility and secure stable funding for tribal water rights settlements.

Water Resources Development Act (WRDA): During its 2019 Annual Convention, NCAI passed Resolution #ABQ-19-048, “Prioritizing Water Resources Development Act Projects that Improve Natural and Cultural Resource Protections.” This resolution calls upon the U.S. Army Corps of Engineers to prioritize restoration projects authorized under the Water Resources Development Act that directly and immediately improve natural and cultural resource protection throughout its jurisdictional waterways, including the Columbia River basin. Proposed projects under the Water Resources Development Act, such as the Tryon Creek Highway 43 Culvert, in the Willamette River in the Portland metro region, are necessary to restore salmon, steelhead and lamprey to their historical abundances. The federal government, including the U.S. Army Corps of Engineers, has a trust responsibility to protect salmon, lamprey, steelhead, southern resident orcas, other aquatic and wildlife species, for future generations. NCAI is concerned that current federal restoration priorities and appropriations do not fully protect and restore cultural, natural, and treaty reserved resources and will continue to advocate for these priorities. Presently, the process has begun for development of a WRDA bill for the 116th Congress. NCAI is monitoring for inclusion of tribal interests.

Administrative Update

EPA Revisions to Section 401 Implementation under the Clean Water Act: On August 22, 2019, the U.S. Environmental Protection Agency (EPA) published revised regulations governing the EPA’s exercise of its authority under Clean Water Act Section 401 (40 CFR Part 121). Under CWA Section 401, tribal nations with “treatment as a state” status are authorized to review certain federal projects for compliance with approved tribal water quality standards. The proposed regulations affect the exercise of tribal authority by restricting certification time frames and the scope of review. NCAI submitted comments on

the proposed rule on October 21, 2019, which followed up on NCAI's May 24, 2019 comments on the EPA's then proposed clarification to the 401 process in Docket ID No. EPA-HQ-OW-20180855.

EPA and USACE Issue Final Rule Changing the Definition of "Waters of the United States": On February 14, 2019, the EPA and the United States Army Corps of Engineers (USACE) published their proposed revised definition of "Waters of the United States" in 84 Fed. Reg. 4154 (Revised Rule). Excluded from protection under the Revised Rule are numerous previously covered waters, including groundwater that is hydrologically interconnected with surface water, ephemeral streams that flow after precipitation, and non-navigable interstate waters. On April 15, 2019, NCAI submitted comments opposing the proposed Revised Rule because available data shows that the rule will overburden tribal nations and likely violate the federal trust responsibility and treaties, and impair tribal nations' exercise of reserved water and water-dependent rights. NCAI also requested that prior to the issuance of a final rule, full and meaningful tribal consultation occur on the rule and that the comment period be extended to accomplish this requirement. Despite this request, on January 23, 2020, the EPA released its pre-publication of the final rule entitled "Navigable Waters Protection Rule" which incorporates its proposed reductions in CWA coverage. To date, the final rule has not been published in the federal register. NCAI will continue to monitor any legislation that addresses these rollbacks.

FISH AND WILDLIFE

Through the Constitution, federal laws, treaties, and other binding agreements with tribal nations, the federal government has a trust responsibility to protect, help manage, and ensure continued access for tribal nations and their citizens to their natural resources. The restoration, preservation, protection, and promotion of tribal fish and wildlife resources must be driven by the needs of tribal nations and their values, knowledge, and time-honored stewardship practices. Tribal nations must be included as meaningful and full participants in federal programs and funding opportunities that address their resource management needs and responsibilities.

Legislative Update

Tribal Wildlife Corridors Act of 2019 – H.R. 5179 & S. 2891: On November 19, 2019, Representative Ruben Gallego (D-AZ) introduced H.R. 5179, the Tribal Wildlife Corridors Act of 2019, and on the same day, Senator Tom Udall (D-NM) introduced a companion bill, S. 2891. The bill would provide tribal nations with a mechanism to nominate and manage specific landscapes or seascapes as wildlife corridors facilitating the movement of native species. The bill would also create a Wildlife Movements Grant Program to encourage wildlife movement through designated corridors. S. 2891 was referred to the Senate Committee on Indian Affairs. H.R. 5179 was referred to the House Natural Resource Committee and the Committee on Agriculture. No hearings have been held on this bill during the 116th Congress. A mark-up was held in the Natural Resources Committee on January 29, 2020.

Outdoors for All Act – H.R. 4512: On September 26, 2019, Representative Nanette Diaz Barragan (D-CA) introduced H.R. 4512, the Outdoors for All Act. The Outdoors for All Act would provide grant funding for eligibility entities, including tribal nations as defined in section 4 of the Indian Self-Determination and Education Assistance Act, to acquire land or water to provide outdoor recreation opportunities to the public and to develop or renovate outdoor recreational facilities that, among other things, provide opportunities for youth employment and empowerment in urban neighborhoods and to underserved communities. H.R. 4512 was referred to the House Natural Resources Committee, Subcommittee on National Parks, Forests, and Public Lands.

Protect America's Wildlife and Fish In Need (PAW and FIN) Act of 2019 – H.R. 4348 & S. 2491: On September 17, 2019, Representative Raúl Grijalva (D-AZ) introduced H.R. 4348, the PAW and FIN Act of 2019. On the same day, Senator Tom Udall (D-NM) introduced S. 2491, Protect America's Wildlife and Fish in Need Conservation Act of 2019. The House bill voids final rules, 84 Fed. Reg. 44753, 84 Fed. Reg. 44976, and 84 Fed. Reg. 45020, promulgated by the Secretary of the Interior in 2019 that make substantial changes to the Endangered Species Act. Specifically, these bills would void changes that remove the prohibition on consideration of economic impacts in a listing consideration, affect how a critical habitat is assessed, and address what kinds of protections threatened species receive. S. 2491 was referred to the Senate Committee on Environment and Public Works. H.R. 4348 was referred to the House Natural Resources Committee, Subcommittee on Water, Oceans, and Wildlife. A subcommittee hearing was held on September 24, 2019, and a full committee markup was held on January 29, 2020. H.R. 4348 awaits action on the House floor.

Recovering America's Wildlife Act – H.R. 3742: On July 12, 2019, Representative Debbie Dingell (D-MI) introduced H.R. 3742, the Recovering America's Wildlife Act. This bill amends the Pittman-Robertson Wildlife Restoration Act to create a sub-account called the "Wildlife Conservation and Restoration Subaccount." The bill proposes that each year, beginning in FY 2020, the Secretary of the Treasury would transfer \$1.3 billion dollars from the general fund into the sub-account. Title II of the bill creates a separate account entitled the "Tribal Wildlife Conservation and Restoration Account." The bill would direct the Secretary of the Treasury to deposit \$97 million each year into the tribal account. This money would not be subject to annual appropriations and could be used in tribal efforts to recover species listed as endangered or threatened; manage tribal species of greatest conservation need, including their habitat, for law enforcement needs; and for developing, revising, and implementing comprehensive wildlife conservation strategies. H.R. 3742 was referred to the House Natural Resources Committee and the Committee on the Budget. On October 17, 2019, a hearing was held in the Natural Resources Committee, Subcommittee on Water, Oceans, and Wildlife. On December 5, 2019, a Natural Resources Committee mark-up was held. During its 2019 Annual Convention, NCAI passed 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."

Wildlife Corridors Conservation Act of 2019 – H.R. 2795 & S. 1499: On May 16, 2019, Representative Donald Beyer (D-VA) introduced H.R. 2795, the Wildlife Corridors Conservation Act of 2019. On the same day, Senator Tom Udall (D-NM) introduced a companion bill, S. 1499. This bill would create a "National Wildlife Corridors Database" and assist in conservation planning efforts. It would also create "Tribal Wildlife Corridors" on tribal lands. In relation to Tribal Wildlife Corridors, the bill provides an exemption for information pertaining to tribal cultural resources and the Native American Graves Protection and Repatriation Act. This bill was referred to the House Natural Resources Committee; Agriculture; Armed Services; and Transportation and Infrastructure. On October 17, 2019, the House Natural Resources Committee, Subcommittee on Water, Oceans, and Wildlife held a hearing.

Tribal Heritage and Grizzly Bear Protection Act – H.R. 2532: On May 5, 2019, Representative Raúl Grijalva (D-AZ) introduced H.R. 2532, the Tribal Heritage and Grizzly Bear Protection Act. This bill would make it unlawful for individuals to take, possess, or transport a grizzly bear or grizzly bear parts; violate the terms of a permit issued for the permitted taking of a grizzly bear; or violate any regulation issued by the Secretary of the Interior pursuant to the bill. H.R. 2532 also would create a Grizzly Bear Scientific Committee. Half of the committee would be composed of tribal representatives and would be

charged with carrying out expert consultations and scientific studies specific to the bill. Additionally, the bill contains specific provisions for the reintroduction of grizzly bears onto tribal lands. H.R. 2532 was referred to the House Natural Resources Committee, Subcommittee on Oceans, Water, and Wildlife; and the Committee on Agriculture, Subcommittee on Livestock and Foreign Agriculture. On May 15, 2019, the Subcommittee on Water, Oceans, and Wildlife held a hearing on H.R. 2532.

Empowering Rural Economies Through Alaska Native Sustainable Arts and Handicrafts Act – S. 804 & H.R. 1806: On March 14, 2019, Senator Dan Sullivan (R-AK) introduced S. 804, the Empowering Rural Economies Through Alaska Native Sustainable Arts and Handicrafts Act. On the same day, Representative Don Young (R-AK) introduced a companion bill, H.R. 1806. This legislation amends the Marine Mammal Protection Act of 1972 to protect the cultural practices and livelihoods of makers of Alaska Native fossilized ivory products and allows for the interstate sale of eligible items. S. 804 was referred to the Senate Committee on Commerce, Science, and Transportation. H.R. 1806 was referred to the House Natural Resources Committee.

America’s Conservation Enhancement Act – H.R. 925 & S. 3051: On January 30, 2019, Representative Mike Thompson (D-CA) introduced H.R. 925, the America’s Conservation Enhancement Act. On December 12, 2019, Senator John Barrasso (R-WY) introduced a companion bill, S. 3051. H.R. 925, would provide grant opportunities to tribal nations to address loss of livestock due to predation by federally protected species such as grizzly bears. The bill would also create a Chronic Wasting Disease Task Force that would include up to two tribal representatives. H.R. 925 was referred to the House Committee on Natural Resources. On November 20, 2019, H.R. 925 passed the House and on January 9, 2020, H.R. 925 passed the Senate with amendments. On January 13, 2020, a message on the Senate action was sent to the House where it awaits further consideration. S. 3051 was referred to the Committee on Environment and Public Works.

Coastal and Great Lakes Communities Enhancement Act – H.R. 729: Originally introduced as the Tribal Coastal Resiliency Act by Representative Derek Kilmer (D-WA) on January 23, 2019, the current version of H.R. 729 includes a range of national and tribal programs that benefit coastal areas and fish habitats. This bill would establish a “National Fish Habitat Board” whose duties would include, establishment of national goals and priorities for fish habitat conservation, and reviewing and making recommendations regarding fish habitat conservation projects. Importantly, two members shall be representatives of either Alaska Native villages or tribal nations from the lower 48 states. Additionally, this bill would amend the Coastal Zone Management Act of 1972 and provide competitive grants to tribal nations carrying out restoration, protection, or preservation activities in tribal coastal zone areas that hold ecological, cultural, sacred significance or traditional, historic, and esthetic value to the tribal nation. Importantly, for grants of less than \$200,000, the federal government would fund the entire amount. For grant requests greater than \$200,000, the federal government would fund 95 percent of the cost unless the Secretary determines that the tribal nation does not have sufficient funds. H.R. 729 was referred to the House Natural Resources Committee. On July 25, 2019, a hearing was held in the Subcommittee on Water, Oceans, and Wildlife, and on September 25, 2019, a full committee mark-up was held. On December 12, 2020, H.R. 729 passed the House and has been referred to the Senate Committee on Commerce, Science, and Transportation.

Columbia River In-Lieu and Treaty Fishing Access Sites Improvement Act – H.R. 91 & S. 50: On January 3, 2019, Representative Earl Blumenauer (D-OR) introduced H.R. 91, the Columbia River In-Lieu and

Treaty Fishing Access Sites Improvement Act, and on January 8, 2019, Senator Jeff Merkley (D-OR) introduced S. 50, a companion bill. On December 20, 2019, S. 50 was signed by the President and enacted as Public Law 116-99. The Act authorizes the Secretary of the Interior to assess sanitation and safety conditions at BIA facilities constructed to provide Columbia River Treaty tribes access to traditional fishing grounds. The Act also authorizes the BIA to enter into contracts with tribal nations or tribal organizations to improve sanitation, safety conditions, and access to electricity, sewer, and water infrastructure. Additionally, the Act authorizes appropriations of \$11 million for FY 2020 through FY 2025, to remain available until expended.

Administrative Update

Council on Environmental Quality Notice of Proposed Rule Making: On January 10, 2020, the Council on Environmental Quality (CEQ) published in the Federal Register, 85 F.R. 1684, a Notice of Proposed Rulemaking (NPRM) regarding the regulations implementing the National Environmental Policy Act (NEPA). The rule proposes to place a two year time limit for completing an Environmental Impact Statement (EIS) as well as place a page limit on an EIS. Additionally, the rule would no longer require consideration of the cumulative effects of an action, and clarify that “major Federal action” would not include a non-discretionary decision and a non-federal project as well as clarify that “reasonable alternatives” would have to be technically and economically feasible. Specific to tribal nations, CEQ proposes to add “tribal” to the phrase “state and local” throughout the regulations; amend the definition of “Federal Agency” to include states, tribes, and local governments; eliminate provisions that limit tribal interests to reservations; and eliminate duplicative documents between state, tribal, and local agencies complying with NEPA.

Reapportionment of Tribal Pacific Whiting Allocation: On November 27, 2019, the National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce issued a final rule to establish an interim 2019 tribal whiting allocation, and protect ESA-listed Chinook Salmon pursuant to the Terms and Conditions of a December 11, 2017 Biological Opinion. This interim allocation would reapportion 40,000 metric tons of Pacific whiting from tribal allocations to non-tribal commercial fishery sectors. The Federal Register announcement noted the change was effective as of September 13, 2019. NMFS noted it was acting within its authority pursuant to 50 C.F.R. 660.13(h).

USDA Draft Environmental Impact Statement Regarding 2001 Alaska Roadless Rule: On October 17, 2019, the USDA announced in the Federal Register that it sought public comment on a draft environmental impact statement offering six alternatives to the 2001 Alaska Roadless Rule. If the USDA’s preferred alternative were adopted, the proposed rule would exempt the Tongass National Forest from the 2001 Roadless Rule. During the public comment period, NCAI submitted a letter opposing the federal government’s preferred alternative that would exempt the Tongass National Forest from the Roadless Rule because of issues associated with the adequacy of tribal consultation. To date, a final rule has not been published. During its 2019 Annual Convention, NCAI passed Resolution #ABQ-19-029, “Oppose Rulemaking that Weakens or Eliminates Protections of the Roadless Rule within Tribal Traditional Territories and Support the ‘no action alternative’ in the Alaska-specific Roadless Rulemaking.”

Fish and Wildlife Service Publishes New Tribal Eagle Retention Policy: Beginning in 2017, the U.S. Fish and Wildlife Service (FWS) held consultations regarding tribal access to eagles. On August 13, 2019, in response to the comments received, the FWS revised its policy regarding tribal retention of eagles. The

revision allows for a tribal citizen to retain a deceased eagle or eagle remains found on his or her tribal nation's land. This is a separate announcement from the FWS publication of a petition for rulemaking in response to a settlement agreement in the matter of *McAllen Grace Brethren Church, et. al. v. S.M.R. Jewell*, 764 F.3d 465 (5th Cir. 2014).

Fish and Wildlife Service Publication of Petition Requesting Change in Who May Access Eagle Feathers: On April 30, 2019, the U.S. Fish & Wildlife Service (FWS) published a petition for rulemaking in 84 F.R. 18230, which “asks [FWS] to revise the existing rules pertaining to the religious use of federally protected bird feathers.” Pursuant to a settlement agreement in *McAllen Grace Brethren Church, et. al. v. S.M.R. Jewell*, 764 F.3d 465 (5th Cir. 2014), DOI agreed to consider a petition filed by plaintiffs to modify existing regulations or issue new regulations concerning the possession of eagle feathers by persons who are not members of federally recognized tribal nations. As a result of the filed petition, on April 30, 2019, FWS issued a request for public comments.

The petition suggested DOI develop a process that would allow every person that uses eagle feathers in a sincere exercise of religion to have access to eagle feathers and eagle parts. The public comment period in response to the publication of the petition for rulemaking closed on July 1, 2019. As of January 2020, a final rule has not been published.

CLIMATE CHANGE

Tribal nations are disproportionately affected by the consequences of climate change. Currently, as many as 184 Alaska Native Villages are threatened with removal due to climate-based changes. Additionally, climate change impacts cultural, religious, subsistence, and scientific practices, as well as opportunities for economic development that are closely tied to the natural resources found within reservations and traditional territories.

NCAI is committed to assisting tribal nations in addressing the impacts of climate change for their citizens and homelands. The first convening of NCAI's Climate Action Task Force took place during the NCAI 2019 Mid Year Convention in Reno, Nevada. Additionally, members of the Climate Action Task Force's Technical Committee met for the first time during NCAI's 76th Annual Convention in Albuquerque, New Mexico. NCAI also has launched the Climate Action Resource Center, an online portal designed to inform and support tribal climate action efforts and facilitate intertribal climate action partnerships.

Legislative Update

A Resolution in Support of Achieving the Goals of the Paris Agreement – S. Res. 449: On December 10, 2019, Senator Edward Markey (D-MA) introduced S. Res. 449, titled, “A resolution expressing the sense of the Senate that the Nation, States, and Tribal nations, and businesses, institutions of higher education, and other institutions in the United States should work toward achieving the goals of the Paris Agreement.” The Senate Resolution declares that the United States should remain a party to the Paris Agreement; support policies at the federal, state, and local level to promote the reduction of pollutants contributing to global warming; aim to meet the objectives of the Paris Agreement; and support the efforts of businesses and investors to take action on climate change.

Climate Stewardship Act of 2019 – H.R. 4269: On September 10, 2019, Representative Deb Haaland (D-NM) introduced H.R. 4269, the Climate Stewardship Act of 2019. The bill is intended to create incentives for agricultural producers to engage in climate stewardship practices, to facilitate reforestation across the

United States, and to establish a Coastal and Estuary Resilience Grant Program. Tribal nations are considered entities eligible for funding for both grant programs. H.R. 4269 was referred to the House Natural Resources Committee.

Environmental Justice Act of 2019 – H.R. 3923 & S. 2236: On July 23, 2019, Representative Raul Ruiz (D-CA) introduced a H.R. 3923, the Environmental Justice Act of 2019, and Senator Corey Booker (D-NJ) introduced a companion bill, S. 2236. These bills would require federal agencies to address environmental justice issues by eliminating disproportionate environmental and health impacts on populations of color, communities of color, low-income communities and indigenous communities. The bill defines “indigenous community” as a federally recognized tribe, a state recognized tribe, an Alaska Native or Native Hawaiian community or organization, and other communities of indigenous peoples, including communities in other countries. H.R. 3923 was referred to several committees including the House Committees on Energy and Commerce; Natural Resources; Transportation and Infrastructure; and the Judiciary Committee. S. 2236 was referred to the Senate Committee on Environment and Public Works.

Safeguarding America’s Future and Environment (SAFE) Act – H.R. 2748 & S. 1482: On May 15, 2019, Representative Matt Cartwright (D-PA) introduced H.R. 2748, the SAFE Act, and Senator Sheldon Whitehouse (D-RI) introduced a companion bill, S. 1482. The bill seeks to create an integrated approach to respond to ongoing climate change and extreme weather events. The bill would also create a national Fish, Wildlife, and Plants Climate Adaptation Strategy Joint Implementation Working Group, and include tribal representation. In addition, the bill would create an Advisory Committee on Climate Change and Natural Resource Sciences, and include tribal representation. Finally, the bill would create a National Climate Change and Wildlife Science Center and would authorize tribal nations to contract with the Department of the Interior to carry out the purposes of the Center. S. 1482 was referred to the Senate Committee on Environment and Public Works. H.R. 2748 was referred to the House Natural Resources Committee. On September 24, 2019, the Subcommittee on Water, Oceans, and Wildlife held a hearing on this bill and a full committee mark-up was held on January 29, 2020.

Coastal Communities Ocean Acidification Act of 2019 – S. 778: On March 13, 2019, Senator Lisa Murkowski (R-AK) introduced S. 778, the Coastal Communities Ocean Acidification Act of 2019. This bill would require the National Oceanic and Atmospheric Administration (NOAA) to conduct an ocean acidification coastal community vulnerability assessment every seven years. As part of the reporting process, NOAA would be required to “collaborate” with state, local, and tribal governments that are, or have completed, vulnerability assessments. S. 778 was referred to the Senate Committee on Commerce, Science, and Transportation.

Climate Change Resiliency Fund for America Act – H.R. 1689: On March 12, 2019, Representative Theodore Deutch (D-FL) introduced H.R. 1689, the Climate Change Resiliency Fund for America Act. This bill would establish a Climate Change Advisory Commission to develop recommendations, frameworks, and guidelines for projects responding to climate change. The Climate Change Resiliency Fund would assist projects that aid in climate adaptation, including programs carried out by tribal governments and consortia of tribal governments. H.R. 1689 was referred to the following House committees: Committee on Energy and Commerce; Committee on Transportation and Infrastructure; and Ways and Means Committee.

Administrative Update

Senate Requests Information on the Effects of Climate Change in Indian Country: On July 10, 2019, members of the Senate Committee on Indian Affairs and Special Committee on the Climate Crisis requested input about the effects of climate change in Indian Country. Specifically, the Senators asked about policies and regulations that were useful in assisting in mitigating and responding to climate change impacts; local-level policies and strategies that could be scaled to the federal level; what actions the federal government could take within existing authorities to improve climate change mitigation and resilience efforts; and what new policies Congress should consider. The NCAI Climate Action Task Force (CATF) Co-chairs submitted a letter on behalf of CATF. The letter noted the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA) are useful statutes for mitigating the impacts of climate change, highlighted tribal climate mitigation projects, and recommended Congress develop interest-free loan programs to support climate-based programs, among other recommendations.

House Select Committee on the Climate Crisis Requests Comment on Global Warming: Similar to the Senate, the House Select Committee on the Climate Crisis solicited comments regarding ways to limit global warming to no more than 1.5° Celsius above pre-industrial levels. NCAI's comments addressed a range of technical points, including: investing in critical telecommunications infrastructure to bridge the digital divide and improve access to telemedicine, telework opportunities; increasing funding to research more water-efficient and drought-tolerant crop variety development; encouraging partnerships with Tribal Colleges and Universities to enable development of relevant curriculum, degrees, and research centers; enacting legislation that provides tribal nations greater co-management opportunities on federal lands; and establishing requirements that not only consider traditional tribal ecological knowledge but acknowledge its status on an equal footing to western science. During its 2019 Mid Year Convention, NCAI passed Resolution #REN-19-005, "Response to IPCC 1.5° C Report on Climate Change."

Fourth National Climate Assessment: In November 2018, the United States Global Change Research Program (Program) submitted its quadrennial report on climate mandated by the Global Change Research Act of 1990. Every four years, the Program reviews and integrates its recent findings; analyzes the effects of global change on the environment, agriculture, energy production and use, land and water resources, transportation, human health and welfare, human social systems, and biological diversity; and analyzes current trends in global change, both human-induced and natural. The Program also projects major trends 25 years into the future.

The Program noted that Native peoples can be affected by climate change in ways that are unique and disproportionate from the overall population. The Program highlighted three key findings from their analysis. First, climate change threatens Native peoples' livelihoods and economies, including hunting, fishing, forestry, energy, recreation, and tourism, and that there are institutional barriers to their self-determined management of water, land, and natural resources. Second, Native peoples' health is based on an interconnection of social and ecological systems, which is being disrupted by climate change. Third, an increasing number of tribal nations are developing climate adaptation plans based on traditional knowledge and science. Development of these plans is hampered by restricted access to traditional territories and resources as well as existing policies and funding mechanisms that fail to account for the unique social, political, economic, and legal circumstances of tribal nations.

CULTURAL PROTECTION

Securing, protecting, and preserving tribal traditional laws and cultural and religious practices for future generations is one of the founding principles of NCAI. The protection of all forms of tangible and intangible cultural and spiritual expressions is essential to the futures of tribal societies. Many laws protect tribal cultural resources including the National Historic Preservation Act (NHPA), the Native American Graves Protection and Repatriation Act (NAGPRA), the American Indian Religious Freedom Act (AIRFA), the Antiquities Act, and the Archaeological Resources Protection Act (ARPA). This complex system of laws and associated regulations provide a foothold for tribal nations to protect ancestral remains, homes, homelands, and objects. These laws also provide some protections from harms presented by off-reservation infrastructure development projects and looting. NCAI continues to prioritize its advocacy and education efforts to protect, promote, and preserve the religious freedoms and cultural preservation efforts of tribal nations and their citizens.

Legislative Update

Desert National Wildlife Refuge and Nevada Test and Training Range Withdrawal and Management Act – H.R. 5606: On January 15, 2020, Representative Steven Horsford (D-NV) introduced H.R. 5606, the Desert National Wildlife Refuge and Nevada Test and Training Range Withdrawal and Management Act. Among other things, the bill directs the Secretary of the Air Force and the Secretary of the Interior not to implement certain public lands withdrawals at Naval Air Station Fallon and the Nevada Test and Training Range until a Tribal Resource Officer completes a cultural resources investigation. The bill was referred to the House Committee on Natural Resources and the Committee on Armed Services. During its 2019 Annual Convention, NCAI passed Resolution #ABQ-19-006, “Opposing Renewal and Expansion of United States Military Installations without Tribal Consent and Calling on the United States Military to Meaningfully Consult with Affected Tribal Nations Regarding Impacts to Sacred Sites.”

Chaco Cultural Heritage Area Protection Act – H.R. 2181 & S. 1079: On April 9, 2019, Representative Ben Ray Lujan (D-NM) introduced H.R. 2181, the Chaco Cultural Heritage Area Protection Act, and Senator Tom Udall (D-NM) introduced a companion bill, S. 1079. These bills would provide a permanent mineral withdrawal within the “Chaco Cultural Heritage Withdrawal Area,” a 10-mile radius surrounding Chaco Cultural National Historical Park and World Heritage Site. The bill would also prevent new energy development immediately surrounding Chaco Canyon. Existing leases and non-federal mineral rights owned by the state, tribal entities, or private owners would not be impacted by the legislation. S. 1079 was referred to the Committee on Energy and Natural Resources. On October 30, 2019, H.R. 2181 passed the House of Representatives. On October 31, 2019, the bill was received in the Senate and referred to the Senate Committee on Energy and Natural Resources. NCAI submitted letters of support when this bill was introduced during the 115th Congress. NCAI also submitted a letter to Secretary of the Interior opposing the proposed oil and gas leases near Chaco Cultural National Park.

Yucca House National Monument Boundary Revision Act – H.R. 1492 & S. 641: On March 4, 2019, Representative Scott Tipton (R-CO) introduced H.R. 1492, the Yucca House National Monument Boundary Revision Act, and Senator Cory Gardner (R-CO) introduced a companion bill, S. 641. H.R. 1492 would expand the Yucca House National Monument to include 160 acres known as the “Proposed Boundary Tract.” H.R. 1492 was referred to the House Committee on Natural Resources, Subcommittee on National Parks, Forests, and Public Lands which held a hearing on July 18, 2019. A full committee markup was held on September 25, 2019. S. 641 was referred to the Senate Committee on Energy and Natural Resources, Subcommittee on National Parks where a hearing was held on June 10, 2019. On

December 18, 2019, the bill was reported out of the full committee with additional amendments. S. 641 awaits action on the Senate floor.

Grand Canyon Centennial Protection Act – H.R. 1373: On February 26, 2019, Representative Raúl Grijalva introduced H.R. 1373, the Grand Canyon Centennial Protection Act. The bill would withdraw 1,006,545 acres of federal lands surrounding the Grand Canyon from mining and mineral leasing. On October 30, 2019, H.R. 1373 passed the House and was referred to the Senate Committee on Energy and Natural Resources. In early 2019, NCAI joined several other organizations and sent a letter of support for H.R. 1373. During its 2019 Mid Year Convention, NCAI passed Resolution #REN-19-001, “Opposing Mining on Public Lands and Around the Grand Canyon without Tribal Nations’ Free Prior and Informed Consent.”

America’s Natural Treasures of Immeasurable Quality Unite, Inspire, and Together Improve the Economies of States (ANTIQUITIES) Act – H.R. 1050 & S. 367: On February 7, 2019, Representative Deb Haaland (D-NM) introduced H.R. 1050, the ANTIQUITIES Act, and Senator Tom Udall (D-NM) introduced a companion bill, S. 367. These bills would support the administration of National Monuments as instructed prior to December 4, 2017; create a “National Monument Enhancement Fund” to fund management plans, enhance recreational infrastructure, and acquire certain lands; establish that Presidentially designated national monuments be surveyed in the same time frame as a Congressionally nominated national monuments; and establish that national monuments may only be reduced, diminished, or revoked by an act of Congress. H.R. 1050 was referred to the House Natural Resources Committee, Subcommittee on National Parks, Forests, and Public Lands. S. 367 was referred to the Senate Committee on Energy and Natural Resources.

Bears Ears Expansion and Respect for Sovereignty Act – H.R. 871: On January 30, 2019, Representative Ruben Gallego (D-AZ) introduced H.R. 871, the Bears Ears Expansion and Respect for Sovereignty Act. Among other things, the bill would expand the Bears Ears National Monument to 1,931,997 acres and require the Secretary of the Interior to meaningfully engage the Bears Ears Commission. H.R. 871 was referred to the House Natural Resources Committee.

Save Oak Flat Act – H.R. 665 & S. 173: On January 17, 2019, Representative Raúl Grijalva (D-AZ) introduced legislation H.R. 665, the Save Oak Flat Act, and Senator Bernie Sanders (D-VT) introduced a companion bill, S. 173. These bills seek to repeal section 3003 of the National Defense Authorization Act of 2015. Repealing this section would prevent the transfer of 2,422 acres of Forest Service land in the Tonto National Forest, also known as Oak Flat, to Resolution Copper Mining LLC. H.R. 665 was referred to the House Natural Resources Committee. S.173 was referred to the Senate Committee on Energy and Natural Resources. During its 2019 Annual Convention, NCAI passed Resolution #ABQ-19-062, “Support for the Protection of Oak Flat and Other Native American Sacred Sites from Harm.”

To Designate the Mountain at Devils Tower National Monument, Wyoming, as Devils Tower – H.R. 564 & S. 144: On January 15, 2019, Representative Elizabeth Cheney (R-WY) reintroduced a bill to permanently designate Bear Lodge as Devils Tower, H.R. 564. Senator Michael Enzi (R-WY) introduced a companion bill, S. 144. H.R. 564 was referred to the House Natural Resources Committee. S. 144 was referred to the Senate Committee on Energy and Natural Resources. NCAI has written letters to past Congresses opposing this designation and will continue to work to secure respect for tribal sacred places.

Safeguard Tribal Objects of Patrimony (STOP) Act – H.R. 3846 & S. 2165: On July 18, 2019, Representatives Ben Ray Lujan (D-NM), Deb Haaland (D-NM), Don Young (R-AK), and Tom Cole (R-OK) introduced H.R. 3846, the STOP Act. On the same day, Senators Martin Heinrich (D-NM) and Lisa Murkowski (R-AK) introduced a companion bill, S. 2165. Among other things, the STOP Act would prohibit the export of sacred items to foreign countries, increase penalties for the illegal trafficking of sacred items, and create a framework for the voluntary return of items to appropriate tribal nations. H.R. 3846 was referred to the House Natural Resources Committee, Subcommittee for Indigenous Peoples of the United States, which held a hearing on September 19, 2019. S. 2165 was referred to the Senate Committee on Indian Affairs. During its 2019 Mid Year Convention, NCAI passed Resolution #REN-19-003, “Supporting Legislation to Facilitate International Repatriation of Tribal Nations’ Tangible Cultural Heritage and Coordination among Federal Agencies.”

Administrative Update

National Park Service Proposed Changes to the National Historic Preservation Act: On March 1, 2019, the National Park Service (NPS) published a notice of proposed rulemaking, 84 F.R. 6996, titled “National Register of Historic Places.” The proposed changes would affect the way in which federal agencies nominate properties to the National Register of Historic Places. In 84 F.R. 6996, NPS claimed that government-to-government consultation pursuant to Executive Order 13175 was unnecessary because the proposed rule would have no substantial direct effect on tribal nations. On April 30, 2019, NCAI submitted a letter during the public comment period that focused on the inaccuracy of NPS’s claim.

As a result of NCAI’s letter and several other letters submitted by tribal nations, NPS hosted a consultation at NCAI’s Mid Year Conference in Reno, Nevada, on Monday, June 24, 2019, and a telephonic consultation on July 1, 2019. In a June 3, 2019 House appropriations bill report (H. Rept. 116-100), the House Committee on Appropriations expressed concerns over the proposed rule and NPS’s lack of consultation with tribal, state, and federal historic preservation officers and federal land management agencies. The Committee noted, “it remains unclear...what problems the Service is trying to solve with this proposal.” On July 8, 2019, NCAI submitted substantive comments regarding the effects of the proposed rule. NCAI conducted additional outreach to both the House and the Senate regarding the proposed rule. On September 13, 2019, Representatives Deb Haaland (D-NM) and Tom Cole (R-OK) submitted a letter to Secretary of the Interior David Bernhardt expressing their concern over the lack of consultation with tribal nations as well as the substance of the proposed changes.

Federal Communications Commission Rule Change – “Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment”: On May 3, 2018, the Federal Communications Commission (FCC) issued a final rule, 83 F.R. 19440, titled, “Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment.” As stated in the final rule, the purpose for this federal action was to “streamline the wireless infrastructure siting review process to facilitate the deployment of next-generation wireless facilities...Specifically...small wireless facilities deployed on non-tribal lands [are excluded] from National Historic Preservation Act and National Environmental Policy Act review.” In a March 2018 statement to the FCC, NCAI partnered with the United South and Eastern Tribes Sovereignty Protection Fund to formally oppose the proposed rule, stating, “We believe [the proposed rule] strikes the wrong balance between the trust responsibility and historic and environmental concerns on the one hand and the economic interests of the telecommunications industry on the other, and we believe it in critical part is unlawful.”

In August 2018, the United Keetoowah Band of Cherokee Indian in Oklahoma, joined by several other tribal nations, filed suit against the FCC in the U.S. Court of Appeals for the District of Columbia. The tribal plaintiffs raised three questions before the court: (1) whether the FCC failed to complete environmental analysis required by the National Environmental Policy Act (NEPA); (2) whether the FCC could lawfully avoid the NEPA analysis for the use of electromagnetic spectrum it licensed; and (3) whether the FCC's determination that it met the public interest standard of the Communications Act was arbitrary and capricious.

On August 9, 2019, the United States Court of Appeals for the District of Columbia published its decision in *United Keetoowah Band of Cherokee Indians v. FCC*. The court agreed that the elimination of NEPA and NHPA review of small-cell 5G construction was unsupported and did not respect laws protecting tribal cultural and natural resources. Unfortunately, the court allowed the FCC to limit tribal participation in the review process. Although this part of the decision is disheartening, the court was correct in its assessment that the FCC “failed to justify its confidence that small cell deployments pose little to no cognizable religious, cultural, or environmental risk.”

TRIBAL GOVERNANCE

SELF-GOVERNANCE

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

Over the past 40 years, the Indian Self-Determination and Education Assistance Act (ISDEAA) has been one of the most successful mechanisms empowering tribal nations to develop the capacity for government-building activities. Leaders and representatives of Self-Governance tribal nations and organizations have held ongoing meetings with the Administration and Congress for more than 25 years regarding ways to improve and advance tribal Self-Governance. Leaders of Self-Governance tribal nations and organizations continue to advance the vision of the ISDEAA by working to amend Title IV of the ISDEAA to create consistency and administrative efficiency for Self-Governance tribal nations and organizations between Title IV Self-Governance in the Department of the Interior (DOI) and Title V Self-Governance in the Department of Health and Human Services (HHS).

Legislative Update

Practical Reforms and Other Goals to Reinforce the Effectiveness of Self-Governance and Self-Determination (PROGRESS) for Indian Tribes Act – S. 209 & H.R. 2031: On January 24, 2019, Senator John Hoeven (R-ND) introduced S. 209, the PROGRESS for Indian Tribes Act. On April 2, 2019, Representative Deb Haaland (D-NM) introduced a companion bill, H.R. 2031. These bills aim to streamline DOI's process for approving Self-Governance compacts and annual funding agreements and ultimately align the process used by DOI with the process used by IHS. On June 27, 2019, S. 209 passed the Senate and has been referred to the House Committee on Natural Resources. On July 16, 2019, the Subcommittee for Indigenous Peoples of the United States held a legislative hearing on H.R. 2031, where then NCAI Treasurer and Jamestown S'Klallam Tribe Chairman W. Ron Allen, in his capacity as the Chairman of the Board for the Self-Governance Communication & Education Tribal Consortium (SGCE), provided testimony on the PROGRESS Act. On December 5, 2019, H.R. 2031 was ordered reported by the House Natural Resources Committee and now awaits consideration on the House floor. NCAI will continue to work with its members and partners to pass this legislation during the 116th Congress.

Preserving Access to Cost Effective Drugs Acts – S. 440: On February 12, 2019, Senator Tom Cotton (R-AR) introduced S. 440, the Preserving Access to Cost Effective Drugs (PACED) Act, which (1) abrogates tribal sovereign immunity in administrative and judicial proceedings involving all patents; and (2) applies this abrogation to patent proceedings involving the International Trade Commission and biosimilar products under the Public Health Service Act.

Originally, this bill equally abrogated state sovereign immunity, but on June 28, 2019, Senator Lindsey Graham's (R-SC) amendment was passed in the Senate Judiciary Committee which created an exemption

for states and their universities. This broad exemption creates disparities between tribal nations and states and disregards recent Federal Circuit case law which held that state sovereign immunity is waived in certain patent board actions (see *Regents of the Univ. of Minnesota v. LSI Corp.*, No. 2018-1559, --- F.3d ---, 2019 WL 2479596 (Fed. Cir. June 14, 2019)).

Protection of tribal inventions is an inherent right of tribal nations and necessary to self-governance and community and economic development. This bill has been opposed by NCAI and has bipartisan opposition from the Senate Committee on Indian Affairs. NCAI has made multiple visits to educate Hill staff on this bill's dangerous precedent and will continue to oppose its advancement.

Administrative Update

DOI Self-Governance Advisory Committee/IHS Tribal Self-Governance Advisory Committee: On January 21 through January 24, 2020, the DOI Self-Governance Advisory Committee (SGAC) and the IHS Tribal Self-Governance Advisory Committee (TSGAC) held their first in-person committee meetings of the calendar year. SGAC and TSGAC are federal advisory committees that provide critical input and collaboration with the federal government on self-governance policy and budget. Tribal leaders or their official designee from each committee meet with administration appointees and other key decision-makers and stakeholders throughout the federal government on a quarterly basis. SGAC and TSGAC continue to emphasize the importance of addressing the budgetary needs for the Section 105(l) leasing authority under ISDEAA. For a more detailed report on the need for mandatory Section 105(l) leasing costs funding, see the Budget/Appropriations section of this Policy Update.

Mandatory Federal Advisory Committee Reductions: On June 14, 2019, President Donald Trump issued Executive Order (E.O.) 13875 titled "Evaluating and Improving the Utility of Federal Advisory Committees." This order requires federal agencies to review existing federal advisory committees formed under the Federal Advisory Committee Act and then make recommendations to the Office of Management and Budget (OMB) regarding continuing or terminating these advisory committees. This order applies to committees formed by statute, by the President, and those formed by agencies.

E.O. 13875 further requires the elimination of one-third of all agency formed federal advisory committees and sets a cap of three hundred and fifty federal advisory committees. Because numerous federal advisory committees advise on issues related to tribal rights and resources, NCAI's membership passed Resolution #REN-19-043, "Requesting the Trump Administration Provide an Exemption from the Federal Advisory Committee Reduction Executive Order Requirements and Engage in Meaningful Tribal Consultation." In response, NCAI sent 17 letters to all federal departments and the EPA requesting that the following be exempted from FACA reductions: (1) all tribal advisory committees; (2) all advisory committees that contain a tribal seat; and (3) all advisory committees containing a tribal representative. In accordance with Resolution #REN-19-043, NCAI will continue to assess educational and advocacy opportunities on this issue.



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