



National Congress of  
American Indians

# Policy Update

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Convention*

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## POLICY OVERVIEW

January of 2017 marked the beginning of the Trump Administration and the first session of the 115<sup>th</sup> Congress. During the first ten months of this year both Congress and the Administration undertook an aggressive agenda to achieve the President's priorities and to fill key cabinet posts.

The effort to repeal the Affordable Care Act gained momentum early on but reached a pivotal point in September when the effort failed because of key votes by Senators McCain (AZ), Murkowski (AK), Collins (ME), and Paul (KY) opposing the proposed Graham-Cassidy legislation. While legislative repeal efforts may continue, it is expected that health care reform will now take a backseat to tax reform initiatives.

In September, the President released the Administration's framework for tax reform, which sets the basic structure for an eventual tax package. Now, Congress is drafting legislation with the goal of passing tax reform by the end of the year. In addition, the President issued an Executive Order in August, "Presidential Executive Order on Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure." This Executive Order sets out the Administration's focus on bringing increased opportunities for infrastructure development while making the process more efficient and transparent.

With respect nominations, the majority of Cabinet positions are now filled, but a large number of vacancies remain across the federal government. On October 6, 2017, the President announced his intent to nominate Robert Weaver, a member of the Quapaw Tribe of Oklahoma to serve as Director of the Indian Health Service for a four-year term. Indian Country still awaits the nomination of an Assistant Secretary – Indian Affairs at the Department of the Interior. However, in August 2017, John Tahsuda, a citizen of the Kiowa Nation of Oklahoma, was appointed to serve as Principal Deputy Assistant Secretary – Indian Affairs and is now Acting Assistant Secretary pending an official nomination for that position.

NCAI's advocacy efforts have centered on protecting the Indian Health Care Improvement Act, and ensuring that any eventual legislation provides parity to tribal governments, promotes economic development, and creates job growth in tribal communities.

This year has shown how important it is for Indian Country to have a strong voice and advocacy strategy on those issues that impact our tribal communities. It takes all of us – Tribal Nations, NCAI, our regional partners, issue organizations, and members to ensure that tribal priorities are advanced at the tribal, federal, state and local level.

At NCAI, we are humbled for the continued partnership and support as we conduct our advocacy on behalf of Indian Country.

## LAND AND NATURAL RESOURCES

Tribal Nations and Tribal citizens are place-based peoples with a direct connection to surrounding environments, homelands, waters, natural resources, and wildlife. Tribes' cultures, traditions, lifestyles, communities, foods, and economies are all dependent upon natural resources.

Many natural resources are disappearing faster than they can be restored based on the realities of climate change impacts on tribal lands. Tribes are disproportionately impacted by climate change due to our geographical locations and our direct connection to our surrounding environments. Native peoples who rely heavily on the cultural and subsistence practices of their ancestors to survive are particularly hard hit.

The United States' responsibility toward tribes goes beyond simply supporting prior agreements, it must allow for full tribal participation during discussions on the management of Native resources at the federal-level and the tribal management of natural resources in traditional and culturally appropriate methods. Tribes, as proven effective managers of their own resources, must be included in federal programs as well as funding opportunities available to state and local governments.

### **RESTORE TRIBAL HOMELANDS – THE INDIAN REORGANIZATION ACT**

Since 1934, the Department of the Interior (DOI) has exercised its authority under the Indian Reorganization Act (IRA) to place land into trust for all federally recognized tribes. Over the following 75 years, DOI restored lands to enable tribal governments to promote economic development and protect cultural resources and sacred sites, and to build schools, health clinics, hospitals, housing, and community centers to serve their people. To date, the Secretary of the Interior has approved trust acquisitions that make up less than 5 percent of the more than 100 million acres of lands lost through the failed federal policies of removal, allotment, and assimilation.

In February 2009, the U.S. Supreme Court decided *Carcieri v. Salazar*, which overturned the long-standing interpretation described above and construed the IRA to limit the Secretary's authority to place land into trust for only those tribes that were "under federal jurisdiction" as of 1934. This interpretation effectively created two classes of tribes—tribes "under federal jurisdiction" in 1934 and tribes that were not.

The IRA is a comprehensive federal law intended to provide tools for all tribes to establish strong vibrant tribal governments and economies. Along with the authority to acquire land, the IRA acknowledges tribes' authority to establish tribal constitutions and tribal business structures to help further facilitate strong tribal governance and economic development. By separating tribes into two classes, the *Carcieri* decision has created jurisdictional uncertainty that hinders economic development opportunities, business financing, contracts, and loans. The decision also further complicates the uncertainties of criminal jurisdiction in Indian Country and, in some instances, draws into question the validity of past federal and tribal court convictions. The decision also threatens to block or delay important land acquisitions for schools, housing, health clinics, essential tribal government infrastructure projects, and the protection of sacred sites. This unequal treatment of federally recognized tribes runs counter to congressional intent and modern federal Indian policy. Legislation is needed to prevent irrevocable damage to tribal sovereignty, tribal culture, and the federal trust responsibility.

Lawsuits based on the *Carciere* decision have already resulted in costly, protracted litigation on a broad range of issues and will likely spawn further litigation across the country. These cases are affecting all tribes, even those that were clearly recognized by the United States prior to 1934. The United States, at taxpayer expense, is a defendant in more than a half dozen of these lawsuits. A legislative fix to *Carciere* comes at no cost to taxpayers all while boosting economic development and self-determination in Indian Country.

### **Legislative Update**

Legislation Addressing the Indian Reorganization Act - H.R. 130 and H.R. 131. In the House of Representatives, Representatives Tom Cole (R-OK) and Betty McCollum (D-MI), have re-introduced two pieces of legislation intended to address the impacts of the *Carciere* decision. H.R. 130 was introduced on January 3, 2017, and would reaffirm the Secretary of the Interior's authority to acquire lands in trust for all federally recognized tribes. H.R. 131 would reaffirm the status of lands already in trust.

Congressional Hearings on the Indian Reorganization Act. The Indian Reorganization Act was the topic of a May 24, 2017, hearing in the House Natural Resources Subcommittee on Oversight and Investigations entitled, "Examining Impacts of Federal Natural Resources Laws Gone Astray."

In addition, on July 13, 2017 the House Natural Resources Subcommittee on Indian, Insular and Alaska Native Affairs held an oversight hearing entitled "Comparing 21<sup>st</sup> Century Trust Land Acquisition with the Intent of the 73<sup>rd</sup> Congress in Section 5 of the Indian Reorganization Act." This hearing explored, in the Committee's words, "(1) whether the Secretary has implemented the original intent of Congress in its enactment of Section 5 of the IRA and in accordance with *Carciere v. Salazar*, and (2) whether Congress should require the Secretary to apply any standards or criteria in the acquisition of land in trust, or leave all discretion to the Secretary." Congressman LaMalfa, Chairman, House Natural Resources Subcommittee on Indian and Insular Affairs, Hearing Memorandum (July 11, 2017). The House Subcommittee has signaled that it is increasingly concerned with the fact that, in its view, "the Secretary has acquired land in trust regardless of the impact on the other tribes, states and local governments, and landowners, and regardless of the capacity of the government to manage the trust lands." *Id.*

### **Administrative Update**

On October 4, 2017, the Department of the Interior (DOI) issued a Dear Tribal Leader Letter to all tribes which included a Consultation Draft of proposed changes to DOI's land acquisition regulations at 25 C.F.R. Part 151 (Attach DTTL and Consultation Draft PDFs).

The Consultation Draft proposes changes to the Part 151 regulations which would affect off-reservation land acquisitions and the decision making process for all land into trust acquisitions. Notably, the proposed changes increase the application requirements significantly for off-reservation fee to trust requests in general and separate off-reservation acquisitions into two groups: gaming acquisitions and non-gaming acquisitions. In addition, the Consultation Draft includes two tiers of review by DOI of all off-reservation acquisitions. In its Dear Tribal Leader Letter, DOI asserts "[t]his two-step process would provide tribes with more certainty as to the possibility of an approval before expending significant resources."

In addition, the Consultation Draft changes the notice to state and local governments to request comments on an additional factor, “potential conflicts of land use,” along with the other items currently included in Part 151.

Finally, the decision process re-institutes a 30 day stay after a final agency decision is made, and prior to the United States taking title to approved requests.

DOI will host a listening session on Monday, October 16 from 9-noon at the NCAI Annual Conference in Milwaukee, WI (Room 202C of the Wisconsin Center). Additional consultations are scheduled in Seattle, Sacramento, and Phoenix.

NCAI will continue to advocate for the restoration of tribal homelands, both in Congress and the Administration.

### **LAND & NATURAL RESOURCES**

American Indians and Alaska Natives, as first stewards of this land, have nurtured, lived, and thrived off their homelands since time immemorial. Native peoples continue to rely on their natural resources to sustain themselves. Through the Constitution, federal laws, and various agreements with tribal nations, the federal government has treaty and trust responsibilities to tribes to protect, manage, and allow access to tribes’ natural resources. The restoration, protection, and use of tribal lands and natural resources must be done in a tribally driven fashion to ensure that the needs of Tribal citizens and Nations are met, while respecting traditional and. Tribes, as proven effective managers of their own resources, must be included in federal programs as well as funding opportunities available to state and local governments.

#### **Legislative Update**

Public Land Transfers to State and Private Ownership. One major issue which has come up early in the 115th Congress is the transfer of federal lands to state and private ownership. An early bill that was introduced by Representative Jason Chaffetz (R-UT), H.R. 621 – Disposal of Excess Federal Lands Act of 2017, aimed to sell over 3.3 million acres of federal lands currently managed by the Bureau of Land Management (BLM) in 10 states: Arizona, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, and Wyoming. With strong opposition to the bill from sportsmen groups, Rep. Chaffetz stated that he would withdraw the legislation. Protecting federal lands is important for tribes as many contain ancestral lands, hunting, fishing, and gathering rights, cultural resources, or sacred places. While this particular legislation may not be acted on, there is a likelihood that this issue will continue to arise throughout the 115th Congress. NCAI is monitoring legislation and working with tribal leaders to identify any potentially harmful legislation and also looking to see what opportunities may be available to tribes to have lands returned.

H.R. 200 – Magnuson-Stevens Fishery Conservation and Management Act Reauthorization. In the 114th Congress, the House of Representatives passed a reauthorization of the Magnuson-Stevens Fisheries Conservation Act (MSA) along party lines, and it was never taken up in the Senate. The bill was a \$1.5 billion, 5 year reauthorization that included many changes to MSA, such as: loosening the 10 year time frame for rebuilding overfished/depleted fisheries and the standards used to determine the time frame; changes to the Annual Catch Limits allowing more flexibility in raising the limits; allowing the North Pacific Council to change the harvest limitation under the

American Fisheries Act; and requiring the Governor of each applicable state to consult with subsistence fishing representatives before submitting a list of potential Fisheries Councils nominees to the Secretary of Commerce.

Representative Don Young (R-AK) has again introduced the Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act (H.R. 200) this Congress. The House Natural Resources Committee held a hearing on the bill on September 26, 2017. It has not yet received a vote in Committee. H.R. 200 is similar to the bill introduced in the 114th Congress.

There are many needed changes and amendments to incorporate American Indians and Alaska Natives in the decision making processes, as well as a need for improved practices to protect the health of our fish resources. Despite being charged with upholding fishing treaty rights of Northwest tribes and the right to fish of Alaska tribes, the management of the North Pacific Fishery Management Council fails to consider the needs of American Indian and Alaska Native people. The structure of the Council prevents tribes from participating as part of the decision making process and engages in a flawed single-species based management system which does not consider the food web dynamics, fishing gear impacts, and non-target species taken as bycatch which has resulted in the overfishing of one-third of the nation's fish stocks.

Without appropriate reform of the MSA, natural fish populations and the Alaska Native inhabitants' well-being along with the treaty-protected rights of Pacific Northwest tribal nations will continue to be at risk.

NCAI is requesting that in any reauthorization of the MSA, Congress must amend the purpose of the Act to include promotion of Alaska Native subsistence rights and tribal fisheries based on treaty rights, including a mandate to be responsive to the needs of federally recognized tribes, and require that tribes and Native subsistence users be represented on the North Pacific Fishery Management Council. Further, it must utilize ecosystem-based management rather than species specific management and additional methods to better protect fish stocks and health. The management council's, as well as all fishery, plans must not only include input from tribes, but must also reflect treaty rights and subsistence rights of American Indians and Alaska Natives while limiting states' ability to interfere with treaty and subsistence rights. Finally, the MSA must provide resources for mitigation efforts when needed to protect tribal treaty rights including: increased hatchery production, habitat protection and restoration, development of alternative fisheries when primary fisheries have been reduced, and the development of value added programs to increase the value of treaty fisheries.

Wildfire Disaster Funding Legislation. Wildfire funding remains an important issue for Indian Country. Last Congress, Senator Wyden (D-OR) and Representative Simpson (R-ID) introduced companion bills to address many issues with funding wildfire suppression. Specifically they address the problematic way in which appropriated sums are often insufficient to cover the large and unpredictable costs of wildfires. As a result fire suppression funds must often be "borrowed" from regular federal forest management programs. Repayment is always late and often partial, disrupting and diminishing those programs' effectiveness. Many times, this comes at the expense of tribal forestry programs and tribal forests. This Congress, Representative Simpson and Senator Wyden have again introduced House and Senate versions of the Wildfire Disaster Funding Act, H.R. 2862 and S. 1842. Each bill awaits action in the committees of jurisdiction.

NCAI supports legislation to have federal wildland fire costs that exceed 70 percent of the ten-year average paid from federal disaster assistance accounts. Such authority would allow the large, unpredictable, and often unbudgeted costs of fighting wildland fires to be treated the same as other natural disasters, and would provide more budgetary stability to regular on-going federal forest management programs. This approach garnered substantial bipartisan support in the 114th Congress and the previous Administration.

Also last Congress, Senators Lisa Murkowski (R-AK), Maria Cantwell (D-WA), Ron Wyden (D-OR), Mike Crapo (R-ID), and Jim Risch (R-ID) released a draft bill entitled Wildfire Budgeting, Response, and Forest Management Act. The draft bill includes a similar cap adjustment to end borrowing fire suppression funds from other programs, but includes additional measures. Among other things, the draft bill will: end fire borrowing by Forest Service and the Department of the Interior by enabling a transfer of limited funds through a budget cap adjustment when all appropriated suppression funding (100% of the 10-year average) has been exhausted; reduce wildfire suppression costs over time; build on existing Healthy Forests Restoration Act authorities; accelerate needed hazardous fuel reduction work in forest types most susceptible to megafires by providing alternative arrangements for project approvals; require the Forest Service inventory of young growth in the Tongass National Forest before finalizing any forest management plan amendment; and authorize \$500 million over seven years to provide assistance to at-risk communities to invest in proven programs that reduce wildfire risk, property loss, and suppression costs. This legislation has yet to be introduced.

## **Administrative Update**

Paris Climate Agreement. Many natural resources are disappearing faster than they can be restored based on the realities of climate change impacts on tribal lands. Tribes are disproportionately impacted by climate change due to our geographical locations and our direct connection to our surrounding environments. Native peoples who rely heavily on the cultural and subsistence practices of their ancestors to survive are particularly hard hit.

Climate change poses threats not only to the health and food supply of Native peoples, but also to their traditional ways of life. The natural ecosystems, biodiversity, traditional plant gathering times, and animal migration patterns we have relied on since time immemorial are all fluctuating. Many Alaska Native villages are experiencing accelerated sea level rise, erosion, permafrost thaw, and intense weather events making the relocation of entire villages inevitable. In the West and Southwest, many Tribes are experiencing prolonged drought reducing their water resources and increasing the severity and costs of wildfires. Milder winters in the Northeast have sparked a surge in Lyme disease-carrying deer ticks, while lobster and clams are suffering shell disease linked to the acidification of coastal waters.

The U.S. became a signatory of the Paris Climate Agreement in April 2016, ratified the agreement in September 2016, and the agreement took effect with respect to the U.S. in November 2016. The goal of the Paris Climate Agreement as stated in Article 2 is “to strengthen the global response to the threat of climate change . . . .” On June 1, 2017, the Administration announced its plan to withdraw from the Paris Climate Agreement. In recognition of the importance of this issue for Indian Country and the Earth, the NCAI membership passed Resolution MOH-17-053, Continued Support for the Paris Climate Agreement and Action to Address Climate Change. In accordance with this resolution, NCAI will continue to support and advocate for initiatives intended to reduce greenhouse gas emissions and promote climate resiliency.

Clean Power Plan. On October 10, 2017, the Administration issued a proposed rule intended to rescind the Clean Power Plan. The Clean Power Plan was promulgated during the previous Administration and aimed at preventing global climate change by reducing greenhouse gas emissions from power plants by 32 percent by 2030 (based on 2005 levels). Consistent with Resolution MOH-17-053, NCAI will continue to work with its partners to combat climate change and mitigate impacts in tribal communities.

## **TRUST MODERNIZATION**

In return for Indian tribes ceding millions of acres of land making the United States what it is today, the United States has recognized the Native right to self-government, to exist as distinct peoples on their own lands, as well as the federal responsibility to protect Indian trust assets. However, the trust relationship has not kept up with the current realities facing tribal governments and tribes have been urging the federal government for over a century to modernize outdated regulations and statutes to provide them with more flexibility, the option of greater control over decision making and self-governance, the ability to be more responsive to the needs of their citizens, and bolster economic development in Indian Country. The trust relationship and responsibility must be modernized to stay consistent with self-determination as well as be rooted in inherent sovereign authority to create a 21st Century trust for 21st Century tribes.

While the trust responsibility includes all facets of the relationship, such as funding, health care, housing, and public safety, some of the most glaring examples of outdated statutes involve the management of tribal lands and development of trust resources. Indian lands and natural resources are a primary source of economic activity for tribal communities, but the antiquated and inefficient federal trust resource management system contributes to the anemic condition of many reservation economies. NCAI urges Congress to support legislative reforms that will provide for greater efficiencies in the trust resource management system, better economic returns on trust resources, and, above all, an increased tribal voice in how the trust is administered. For example, nearly every trust transaction requires an appraisal from the Office of the Special Trustee, and this is the most significant bottleneck in the trust system. Congress must eliminate unnecessary appraisals and permit tribes to rely on independent certified appraisals.

Tribes have been making progress on trust reform and, to keep that momentum going, NCAI is working with our tribal organization partners on improving trust land management systems and to modernizing the trust to better serve today's Indian Country.

### **Administrative Update**

Indian Trust Asset Reform Act Implementation – Public Law 114-178. On June 22, 2016, the Indian Trust Asset Reform Act (ITARA) was signed into law, representing an important step in the effort to modernize the trust management system into a process that recognizes that tribes are in the best position to make long lasting decisions for their communities. The trust asset demonstration project created by the law provides tribes the ability to manage and develop their lands and natural resources without the encumbrances of the federal approval process, which typically delay these endeavors by years or even decades. It authorizes tribes to engage in surface leasing or forest management activities, under certain conditions, without the approval of the Bureau of Indian Affairs—mirroring the framework of the highly successful HEARTH Act of 2012, which puts tribes in the position to make decisions about their lands and resources.

Further, ITARA addresses one of the most significant bottlenecks in the trust system: the Office of the Special Trustee (OST). OST, which was intended to be a temporary oversight office when it was created by Congress over twenty years ago, is required to review appraisals for nearly every trust transaction, adding an additional layer of bureaucracy outside the purview of the BIA. The Secretary of the Department of the Interior is required to submit a report that will include a transition plan and timetable for the termination of OST within two years of the report, or why a transition cannot be completed in that timeframe and an alternate date. Additionally, the Secretary, through tribal consultation, will consolidate the appraisals and valuations processes under a single administrative entity under DOI as well as establish minimum qualifications to prepare appraisals and valuations of Indian trust property.

Finally, ITARA allows the Secretary of the Interior to appoint an Under Secretary for Indian Affairs at the Department of the Interior. Under the existing structure, there is no single executive within the Office of the Secretary that is focused on Indian affairs *and* that possesses authority over the non-Indian agencies and bureaus in the Department. The Under Secretary is intended to fill this void. Among other duties, the Under Secretary would “to the maximum extent practicable, supervise and coordinate activities and policies” of the Bureau of Indian Affairs (BIA) with activities and policies of non-BIA agencies and bureaus within the Department. The Under Secretary is intended to serve as a cross-agency advocate for Indian Country within the Department and ensure that non-Indian agencies and bureaus within the Department do not implement policies that negatively affect tribes and beneficiaries.

In October 2016, NCAI submitted joint comments with the Affiliated Tribes of Northwest Indians regarding implementation of ITARA. These comments focused on ensuring the legitimacy of the consultation processes related to the OST transition plan, providing recommendations on establishing the Under Secretary for Indian Affairs, creating an appraisals process that is consistent with the goals of ITARA, and proposing recommendations for the ITARA-required report to Congress and OST transition plan.

In July 2017, NCAI submitted recommendations to the Administration on how to reduce barriers that prevent tribes from utilizing their resources. The top suggestion was implementing ITARA—specifically, ITARA’s trust asset management plans and the Under Secretary for Indian Affairs. With respect to trust asset management plans, NCAI urged the Administration to form a tribal workgroup. This approach would ensure the creation of a straightforward certification process of tribal plans, avoid imposing any unnecessary regulatory burdens, and account for issues that may arise in the field.

NCAI will continue urging and working with the Administration to implement ITARA, as it would reduce burdens on tribal governments and help tribes manage their trust resources, especially in the area of renewable energy.

*Land Buy-Back Program.* The *Cobell* Settlement provides for a \$1.9 billion Trust Land Consolidation Fund and charges the Department of the Interior with the responsibility to expend the Fund within a 10-year period to acquire fractional interests in trust or restricted fee land that individuals are willing to sell. Those interests will be transferred in trust to the tribal government with jurisdiction over the land. The Land Buy-Back Program has been established by the Department of Interior to implement this aspect of the Settlement. The

overall goal of the Land Buy-Back Program is to reduce the number of those fractional interests through voluntary land purchases, which will produce more consolidated tribal trust land bases.

At the end of the 114th Congress, the Senate Committee on Indian Affairs held an oversight hearing on “Examining the Department of the Interior's Land Buy-Back Program for Tribal Nations, Four Years Later” to review progress and future of the program. Department of the Interior Deputy Secretary Mike Connor testified that while the program is making a substantial difference in Indian Country, the Program will run out of money in 2022. This will leave more than 4 million purchasable fractionated acres. Deputy Secretary Connor, and the two Tribal leaders on the panel, recommended that the program be extended and even made permanent.

On Tuesday, May 23<sup>rd</sup>, 2017, the House Natural Resources Committee, Subcommittee on Indian, Insular and Alaska Native Affairs, held an Oversight Hearing on the Status and Future of the Cobell Land Consolidation Program. The hearing had only one witness, Mr. James Cason, Acting Deputy Secretary for the Department of Interior. The purpose of the hearing was to examine the progress to date on the \$1.9 billion Buy-Back Program established under the Cobell settlement for consolidation of fractional interests in Indian lands.

Mr. Cason’s testimony indicated his concerns that land continues to fractionate even as the federal government has spent nearly \$1 billion attempting to reduce fractionation through the program. His testimony urged Congress to consider placing the remainder of the Buy-Back funds into a revolving account where the land would not go back to Indian tribes but would be held by the United States to produce income for the purchase of further fractionated lands. Although his testimony noted the enormous collective advantages of the settlement across Indian Country, including the restoration of land productivity, it also raised the prospect of focusing land buy back on only a few reservations with the lowest land values, to maximize the purchasing power.

On July 31, 2017, the Department of the Interior announced its revised strategy on reducing fractional interests—changing how the Land Buy-Back Program is implemented. The revised process for determining which ownership interests to purchase looks at factors including: severity of fractionation; appraisal complexity; degree of ownership overlap between locations or geographic proximity; tribal readiness; past response rate; and cost and efficiency (including land value). Interior also published its new list of reservations based on those factors, which primarily includes tribes in the Great Plains, Rocky Mountains, and Northwest.

NCAI will continue to work with the Administration and Congress to ensure the *Cobell* settlement and Land Buy-Back Program are being implemented fairly and in accordance with the approved settlement, and to continue land consolidation programs at the Department of the Interior.

## **ENERGY**

Tribal energy resources are vast, largely untapped, and critical to America’s efforts to achieve energy security and independence, reduce greenhouse gases, and promote economic development. Energy infrastructure is also integral to many Tribes’ efforts to create jobs, infrastructure, and improve lives of their citizens. Empowering Tribal energy development can yield strong results not only for Tribes, but also for rural America. The Department of the Interior estimates that undeveloped traditional energy reserves on Indian lands could generate up to \$1 trillion for Tribes and surrounding communities. Further, the Department of Energy

estimates that tribal wind resources could provide 32 percent of the total U.S. electricity demand, and tribal solar resources could generate twice the total amount of energy needed to power the country.

However, developing energy resources in Indian Country continues to be a challenge. Tribes face barriers to energy development which do not exist elsewhere, and often are excluded from the commercial-scale project development. Cumbersome bureaucratic processes, disincentives for Tribal financing, lack of access to transmission and the energy grid, fees, inequitable exclusion from federal programs, and the requirement that Tribes and Tribal businesses obtain approval from the Department of the Interior for almost every step of energy development continue to hold Tribal energy production back.

Since the last major update to Indian energy policy was more than 10 years ago, NCAI urges Congress and the Administration to work with tribes to put tribes in control of developing their energy resources, to bolster tribal self-determination, and to help create careers and capital in Indian Country.

### **Legislative Update**

*S. 245 – Indian Tribal Energy Development and Self-Determination Act Amendments.* On January 30, 2017, Senator Hoeven (R-ND) reintroduced longstanding legislation to provide tribes with greater control and flexibility to develop their traditional and renewable energy resources and streamline many of the burdensome processes tribes persistently face. The current bill is identical to the version that passed the Senate twice in the 114th Congress—once by itself and once in the broader Senate energy bill. The bill includes additional consultation requirements for the Department of the Interior; improves the Tribal Energy Resource Agreements process in the Energy Policy Act of 2005 by recognizing tribal self-determination over energy resources; creates a process for approving Tribal Energy Development Organizations; expands direct access to the Department of Energy’s Weatherization Program; supports American Indian and Alaska Native biomass demonstration projects; and amends the appraisal and right-of-way approval processes.

S. 245 was voted out of Committee on February 8, 2017, and the bill report was filed on May 5, 2017. It now awaits consideration by the Senate. Additionally, it has been included in the broader energy bill that is being considered in the Senate Energy and Natural Resources Committee.

*H.R. 210 – The Native American Energy Act of 2017.* In the House of Representatives, Congressman Young (R-AK) again introduced the Native American Energy Act of 2017. This legislation maintains the major focus of removing regulatory hurdles to tribal energy development. A version of the Native American Energy Act passed the House of Representatives in the 114th Congress as part of their large-scale energy legislation. The bill will: reform and streamline the federal appraisal process and include the option for tribes to waive the appraisal requirement; create uniform systems of reference and tracking numbers for all Department of the Interior oil and gas wells on Indian lands; restructure the environmental review process, except for federal actions related to the Indian Gaming Regulatory Act; support tribal biomass demonstration projects; consider all tribal resource management plans as sustainable management practices; and create a Tribal Forest Management Demonstration Project under the Tribal Forest Protection Act at the U.S. Forest Service.

H.R. 210 was voted out of the House Natural Resources Committee favorably with an amendment on October 4, 2017. It is now one step closer to consideration on the House floor.

NCAI Support for Indian Energy Bills. NCAI submitted letters of support for S. 245 and H.R. 210. However, each support letter also focused on ensuring that new Indian energy legislation passes in the 115th Congress, as variations of these bills have been introduced for several years, and Congress has still not passed significant Indian energy legislation for more than a decade.

### **Administrative Update**

The Administration has made energy one of its top priorities, and it has expressed interest in assisting tribes by helping remove regulatory barriers that inhibit deployment of tribal traditional and renewable energy projects. The White House has held meetings with tribal governments to discuss this purpose. As part of those meetings, the White House requested recommendations from Indian Country on how to remove barriers to tribal energy deployment. To ensure a comprehensive approach, NCAI compiled a list of recommendations from Indian Country and submitted it to the Administration in July. NCAI will continue to work with the Administration on initiatives that will provide tribal governments greater flexibility and control over their traditional and renewable energy resources.

### **AGRICULTURE & NUTRITION**

Agriculture is a major economic, employment, and nutrition sector in Indian Country. In 2012, there were at least 56,092 American Indian-operated farms and ranches on more than 57 million acres of land. These farms and ranches sold \$3.3 billion of agricultural products, including more than \$1.4 billion of crops and \$1.8 billion of livestock and poultry. Additionally, the 2007 Census of Agriculture Fact Sheet notes that, “American Indian farm operators are more likely than their counterparts nationwide to report farming as their primary occupation . . . to derive a larger portion of their overall income from farming . . . [and] to own all of the land that they operate.” As a result of the huge agricultural footprint across Indian Country and the fact that more than 35 percent of American Indian and Alaska Native peoples live in rural communities, tribal governments and farmers look to active partnerships throughout the U.S. Department of Agriculture to sustain and advance common interests across the broad array of services that this federal agency provides to tribal governments.

With 24 percent of American Indian and Alaska Native households receiving Supplemental Nutrition Assistance Program (SNAP) benefits, 276 tribes administering the Food Distribution Program on Indian Reservations (FDPIR), 68 percent of American Indian and Alaska Native children qualifying for free and reduced price lunches, and American Indians and Alaska Natives making up more than 12 percent of the participants in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) the importance of food assistance in Indian Country cannot be overstated. Any cuts to SNAP, FDPIR, WIC, or school lunch programs directly diminish the food, and in some cases the only meals, available to Native children, pregnant women, elders, and veterans. No one, especially our tribal citizens most in need, should ever have to go without food. Additionally, food assistance programs like FDPIR must be provided the means and support to purchase traditional, locally-grown food in their food packages. Traditional and locally-grow foods from Native American farmers, ranchers, and producers encourages healthy living,

cultural sustainability, and a return to traditional practices all while supporting economic development. Below is a look at the agriculture and nutrition policies that will be a focal point with the new 115th Congress, including the reauthorization of the Farm Bill which expires in September 2018.

### **Legislative Update**

2018 Farm Bill – Gearing Up for the Next Reauthorization. In February 2014, Congress passed the Agriculture Act of 2014 (H.R. 2642; Pub. L. 113–79) reauthorizing the U.S. Department of Agriculture’s programs through 2018. This law brought forth many new changes and improvements for Tribal Nations and Native farmers and ranchers. The 115th Congress will begin looking at the Farm Bill programs for the 2018 reauthorization, providing Indian Country has an important opportunity to review the past requests and successes, and develop its priorities early for the upcoming reauthorization. It is imperative that Tribal Nations and Native agriculture producers have a seat at the table during these early discussions to improve the efficiency and effectiveness of agriculture and nutrition programs in Indian Country, while supporting Tribal food and agriculture businesses.

The source of a majority of the issues in the 2014 Farm Bill steamed from the Nutrition Title, which accounts for 79 percent of the total funding for the entire law. Despite cutting funding in Title IV by \$8.6 billion, some Members of Congress were looking to cut as much as \$20 billion dollars and were even looking at removing the Nutrition Title from the bill entirely. Federal food assistance programs have been included in the Farm Bill since 1973 as a means to get the support of both rural and urban Members of Congress, since both were difficult to pass on their own. With as nearly 24 percent of American Indian and Alaska Native households receive Supplemental Nutrition Assistance Program (SNAP) benefits, and 276 tribes administer the Food Distribution Program on Indian Reservations (FDPIR) commodity food program, protecting and improving Title IV will be incredibly important in the 2018 Farm Bill.

Tribal Farm Bill Coalition Meeting at NCAI Annual. On Monday October 16, 2017, NCAI will host a Farm Bill Coalition Pre Meeting at the NCAI Annual Convention in Milwaukee, Wisconsin. In this meeting, we will discuss Indian Country’s coordinated advocacy effort for the 2018 Farm Bill. NCAI has been actively working to ensure that Tribal priorities are included in the next Farm Bill reauthorization. At NCAI’s Mid-Year Conference in June, 2017, a growing Farm Bill Coalition met to coordinate efforts on the upcoming legislative opportunity. This meeting is a continuation of the prior meeting aimed at determining Tribal priorities in the areas of nutrition, conservation, forestry and rural development. The Native Farm Bill Coalition will work to organize Indian Country’s priorities for the next Farm Bill.

Reauthorization of the Healthy Hunger-Free Kids Act of 2010 (Child Nutrition Reauthorization). The Healthy Hunger-Free Kids Act of 2010 is a 5-year bill that governs several food programs that impact Native children and parents: the National School Lunch and School Breakfast Programs; the Child and Adult Care Food Program; the Summer Food Service Program; the Afterschool Snack and Meal Program; the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC); the WIC Farmers Market Nutrition Program; the Fresh Fruit and Vegetable Program; and the Special Milk Program. As was seen in the Farm Bill debate, nutrition standards, costs, and program eligibility will continue to be at the forefront of the Child Nutrition Reauthorization. Since the 114th Congress was not able to pass a reauthorization—the

programs still continue on without reauthorization—the Senate Committee on Agriculture and House Committee on Education and the Workforce, the two Committees with jurisdiction, will look to continue the work from last Congress to make changes to the law. NCAI is working with many major nutrition policy groups and our tribal organization partners to make sure Indian Country’s priorities are included in the Reauthorization.

### **Administrative Update**

USDA Announces Intent to Relocate Office of Tribal Relations. On September 7<sup>th</sup>, 2017, the US Department of Agriculture announced its reorganization plans which includes moving the Office of Tribal Relations out of the Office of the Secretary and into a new office called “Office of Partnerships and Public Engagement.” This new office is said to house the Office of Advocacy and Outreach; the Faith-Based and Neighborhood Partnerships staff; and the Military Veterans Liaison. However, in the 2014 Farm Bill, Congress specifically located the Office of Tribal Relations within the Office of the Secretary in order to faithfully uphold the Trust Responsibility to Tribal Nations. This effort is part of an Administration-wide effort to reorganize the entire Federal government started by Executive Order 13781 “Comprehensive Plan for Reorganizing the Executive Branch” which requires each federal agency to submit a reorganization plan in an effort to streamline the government.

NCAI filed comments with the US Department of Agriculture on October 6<sup>th</sup> urging the department to maintain the Office of Tribal Relations within the Office of the Secretary.

Keepseagle Settlement. The *Keepseagle* litigation with the U.S. Department of Agriculture for discrimination in the USDA Farm Loan Program was settled on December 27, 2011, for \$760 million. Payments were made in August and September 2012 to 3,600 individuals with claimants receiving from \$50,000 to \$250,000 depending on their type of claim. The settlement also includes payment of the taxes on settlement proceeds and payment/reduction of outstanding debt.

The final action is the disposition of the remaining \$380 million from the original \$760 million settlement after all payments to successful claimants. To assure that the remaining funds would continue to benefit American Indian agriculture into the future, Class Counsel—after their request for another round of payments to successful claimants was not accepted—submitted proposals to the U.S. Departments of Agriculture and the Department of Justice to establish an independent foundation with the \$380 million that would serve Native American farmers and ranchers. In September 2013, a group of over 300 *Keepseagle* claimants from the Great Plains region filed a motion to intervene in the negotiations but have not been involved so far. In July 2014, the *Keepseagle* Class Counsel announced a series of meetings between July 30<sup>th</sup> and August 26<sup>th</sup> to discuss the disposition of the remaining \$380 million dollars.

At the conclusion of the in-person meetings, Class Counsel filed its proposal with the court outlining in detail the creation of a *cy pres* fund called the Native American Agriculture Fund (Fund) for the remaining \$380 million, governed by a proposed Board of Directors, and guidelines for what entities are eligible to receive funding from the new Fund. The Fund would be a 501(c)3 non-profit entity and would be able to distribute funds to: 501(c)3 non-profits; 170(b)(1)(A)(ii) educational organization; Community Development Financial Institutions (CDFI), including Certified Native CDFIs and Emerging Native CDFIs if they are 501(c)3

entities; and the instrumentality of a state or federally recognized tribe, including a non-profit organization chartered under the tribal law of a state or federally recognized tribe, that furnishes assistance designed to further Native American farming or ranching activities.

On December 2, 2014, the court held a status conference and Ms. Keepseagle was allowed to voice her concerns about the creation of a trust. The Judge saw this as a brief for relief and informed Ms. Keepseagle that she could retain counsel and submit a motion making the legal argument to reopen the settlement for an additional round of payments. In May 2015, the Court requested briefs regarding the claims of Ms. Keepseagle's motion for relief asking for the remaining funds to be dispersed among the claimants. On July 24, 2015, the Court denied both motions to modify the settlement agree proposed. The first motion filed by Ms. Keepseagle would have allowed for the distribution of additional funds to prevailing claimants or re-open the claims process. USDA objected to this motion and the Court decided there was no legal basis for going against the Agency's objection. The Court then denied the Plaintiff's motion to create a Trust to supervise the distribution of the *cy pres* funds to non-profits, ruling that all class representatives, including Ms. Keepseagle, would have to agree on any changes to the settlement agreement.

All parties with standing in the case reached an agreement on changes to the existing settlement agreement. Under the new proposal, each prevailing claimant will receive a supplemental payment of \$18,500 (a separate sum of \$2,775 will be paid to the IRS on their behalf). The remainder of the *cy pres* funds would go to non-profit organizations as described above. The Court held a hearing on this new agreement to modify the settlement on February 4, 2016. The Court approved the new agreement on April 20, 2016. An appeal of the modified settlement was filed on June 20, 2016, and class counsel hopes that the appeal will be ruled on by June 2017. On May 17, 2016, the class counsel in *Keepseagle* case announced a one-time distribution of \$38 million from the remaining settlement funds through the Native American Agricultural Fast Track Fund (NAAF TF). This will be the first distribution of \$380 million left in the Keepseagle *cy pres* fund for the benefit of Native American farming and ranching.

## PUBLIC SAFETY

Despite federal and tribal government attempts to reduce violence on Indian lands, reservations continue to face staggering rates of violent crime and victimization. A recent DOJ study found that more than four in five American Indian and Alaska Native 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 for 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.

There are several interrelated challenges related to funding for tribal public safety and justice systems: 1) available funding is profoundly inadequate; 2) available funding is spread across multiple federal agencies with different programmatic and administrative requirements; and 3) a significant portion of the available funding is distributed via short-term, competitive grants that undermine program stability and hamper strategic planning. BIA recently released an “unmet obligations” report that concluded that there is more than a \$2 billion unmet need for tribal law enforcement and courts funding.

### Legislative Update

FY18 Commerce, Justice, Science Appropriations Activity. To better meet the federal obligation to provide funding for public safety and justice on tribal lands, the President’s FY18 Budget proposed a flexible 7% set-aside for Indian tribes from all Office of Justice Programs (OJP), Office of Juvenile Justice and Delinquency Prevention (OJJDP), and COPS programs at DOJ, which would result in \$90.4M for tribal programs at DOJ, a significant increase over FY17 funding of \$65M. The President’s budget also included a 5% tribal set-aside from the Crime Victims Fund for crime victim services, which would result in \$150M for tribal governments—the first time tribes would receive direct funding from the Crime Victims Fund outlays. Both the House and Senate CJS appropriations Committees have approved bills for FY18 that include a 7% allocation for Indian tribes from across most OJP and COPS programs. This amounts to approximately \$80M in the House bill and \$110M in the Senate bill. The Senate bill also includes the 5% tribal set-aside from the Crime Victims Fund, which would provide \$182M for tribal crime victim services. Unfortunately, similar language in the House bill was stripped from the bill on the floor of the House by Congressman Goodlatte immediately before the bill was passed. Congress will be working to finalize the CJS appropriations bill in the coming months.

SURVIVE Act Introduced – S. 1870. On September 27, 2017, Senator Hoeven (R-ND) introduced S. 1870, the Securing Urgent Resources Vital to Indian Victim Empowerment (SURVIVE) Act of 2017. The legislation, which is cosponsored by Senators McCain (R-AZ), Heitkamp (D-ND), Cortez-Masto (D-NV), Franken (D-MN), Daines (R-MT), Tester (D-MT), and Barrasso (R-WY), will increase needed tribal victim assistance by creating a tribal grant program within the Department of Justice’s Office for Victims of Crime. The bill directs that five percent of the total annual outlays from the Crime Victims Fund (CVF) be provided to Indian tribes. In addition to ensuring that tribal governments are able to access CVF resources on a footing equal to state and territorial governments, the bill empowers tribes and Indian victims of crime by: expanding the types of victim assistance, services and infrastructure for which the funds may be used, including domestic violence shelters,

medical care, counseling, legal assistance and services, and child and elder abuse programs. The legislation also provides for significant confidentiality and privacy protections for crime victims to feel safe when receiving services; enables tribes to deliver critical, culturally tailored victim services; and increases the resources available to Indian crime victims from the CVF without increasing overall spending.

The bill was referred to the Senate Committee on Indian Affairs for further action. Similar legislation was approved by the Committee in the last Congress with bipartisan support.

*Tribal Law and Order Reauthorization and Amendments Act of 2017 – S. 1953.* On October 5, 2017, Senator Hoeven (R-ND) introduced S. 1953, Tribal Law and Order Reauthorization and Amendments Act of 2017. The legislation, which is co-sponsored by Senators McCain (R-AZ) and Barrasso (R-WY), would reauthorize the grant programs included in the Tribal Law & Order Act of 2010 and includes other reforms to improve public safety in tribal communities by extending the Bureau of Prisons pilot program, which allows tribally convicted defendants of violent crimes to be housed in federal facilities; making permanent the Shadow Wolves program within the Department of Homeland Security; directing the Federal Public Defender to designate a tribal liaison for each district that includes Indian Country; improving Department of Justice data collection related to trafficking of Native Americans; improving justice for Indian youth by requiring the Interior Secretary, Attorney General, and Administrator of the Office of Juvenile Justice and Delinquency Prevention to coordinate and assist tribes in addressing juvenile offenses; to consult with tribes on delinquency prevention; to develop a means for collecting data on Indian youth and notifying tribes when a tribal member youth comes in contact with federal, state, and other local juvenile justice systems.

The bill was referred to the Senate Committee on Indian Affairs for further action. Similar legislation was approved by the Committee in the last Congress with bipartisan support.

*“Savanna’s Act” – S. 1942.* On October 5, 2017, Senator Heitkamp (D-ND) introduced S. 1942, a bill to direct the Attorney General to review, revise, and develop law enforcement and justice protocols appropriate to address missing and murdered Indians, and for other purposes, known as “Savanna’s Act”. The legislation, which is co-sponsored by Senators Tester (D-MT), Franken (D-MN), Merkel (D-OR), Warren (D-MA), and Heinrich (D-NM), is named in honor of Savanna LaFontaine-Greywind, a young Native woman who was tragically killed in North Dakota in August. The bill aims 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 by directing the Attorney General to review, revise, and develop law enforcement and justice protocols to address missing and murdered American Indians and Alaska Natives. The bill was referred to the Senate Committee on Indian Affairs for further action.

*The Juvenile Justice and Delinquency Prevention Act (JJDP A)* is currently up for reauthorization. One bill, H.R. 1809 (the Juvenile Justice Reform Act of 2017), was recently approved by the House. A companion bill, S. 860 (Juvenile Justice and Delinquency Prevention and Reauthorization Act of 2017), has passed the Senate. Although the bills would both reauthorize JJDP A, they are not identical. So, the House and Senate are working toward a compromise that would merge provisions from each bill into one piece of legislation to send to the President’s desk.

Both of these bills include significant reforms aimed at reducing the reliance on incarceration and improving outcomes for youth in the justice system. NCAI has expressed concerns that several of our priorities relating to Native youth that are included in the TLOA reauthorization bill discussed above have not been included in the JJDPa reauthorization bills.

Specifically, NCAI has prioritized the inclusion of a provision that would let the tribes know when Native youth come into contact with, or leave, state or local justice systems, and allow access for tribes to school attendance and disciplinary records for their members. State courts are currently required to notify tribes of proceedings involving tribal juveniles who have committed status offenses, but not delinquency proceedings. NCAI has also asked for language to ensure that culturally relevant, trauma-informed assessments and care are incorporated as a standard in juvenile justice systems. Additional recommendations would require states to engage in meaningful consultation with tribes on shaping juvenile justice and would allow federal authorities to defer to tribal jurisdiction in matters involving tribal youth, as they are currently authorized to do with respect to states and territories.

### **Administrative Update**

DOJ Holding Consultation on Tribal Funding. The Department of Justice recently announced that it will be holding a series of listening sessions and consultations on the funding available to tribes at DOJ. In particular, DOJ is seeking input on how to implement the flexible 7% set-aside from across OJP and COPS programs that was enacted for FY2017 and gives DOJ considerable flexibility to reform the way it provides support for tribal justice systems and victim services. The first listening session will take place on Wednesday, Oct. 18, from 1:30-4pm in conjunction with the NCAI annual conference. DOJ will be developing a framing paper to provide additional information to tribal leaders.

DOJ Expands Tribal Access Program. On October 3, 2017, the Department of Justice announced the selection of 15 additional Indian tribes to participate in the expansion of the Tribal Access Program for National Crime Information (TAP), a program aimed at improving tribal access to the national crime information databases for both civil and criminal purposes. TAP is currently deployed to 32 tribes with over 160 tribal criminal justice and civil agencies participating. The service provides software to enable tribes to access national crime information databases and/or a kiosk-workstation that provides the ability to submit and query fingerprint-based transactions via FBI's Next Generation Identification (NGI) for both criminal and civil purposes.

### **VIOLENCE AGAINST WOMEN ACT IMPLEMENTATION**

The Violence Against Women Reauthorization Act (VAWA) of 2013 included historic provisions that reaffirm tribal criminal jurisdiction over non-Indians in certain domestic violence cases. This provision took effect nationwide on March 7, 2015. As of that date, any Indian tribe who meets the statutory requirements is able to prosecute non-Indians who abuse Indian women on tribal lands for the first time since the *Oliphant v. Suquamish* decision. Importantly, there are a number of due process requirements that must first be met. NCAI has developed a website to assist tribes as they implement the new law: <http://www.ncai.org/tribal-vawa>.

In the nearly five years since VAWA 2013 was enacted, a group of 45 tribes have been participating in the Inter-Tribal Technical Assistance Working Group (ITWG) established by DOJ, which is a collaboration of

tribes sharing information and advice on how to best implement VAWA, combat domestic violence, recognize victims' rights and safety needs, and safeguard defendants' rights. As of October 2017 we are aware of 16 tribes who have implemented VAWA. They are: the Tulalip Tribes, the Pascua Yaqui Tribe, the Confederated Tribes of the Umatilla Reservation, the Assiniboine & Sioux Tribes of the Ft. Peck Reservation, the Sisseton Wahpeton Oyate, the Seminole Nation of OK, the Eastern Band of Cherokee Indians, the Nottawaseppi Huron Band of Potawatomi, the Kickapoo Tribe of OK, the Sac and Fox Nation of OK, the Little Traverse Bay Band of Odawa Indians, the Standing Rock Sioux Tribe, the Sault Sainte Marie Tribe of Chippewa Indians, the Muscogee (Creek) Nation, the Chitimacha Tribe of Louisiana, and the Alabama-Coushatta Tribe of Texas. The implementing tribes report that the majority of the cases they have seen so far involve children as witnesses or victims and that the offenders frequently have a history of frequent prior police contacts. Materials from the implementing tribes are available on NCAI's website and offer useful examples of how individual tribes have modified tribal code language and constructed jury pools for VAWA cases.

In September of 2017, the Department of Justice awarded nearly \$3.5 million in grants to 7 tribes to support implementation of Special Domestic Violence Criminal Jurisdiction. This was the second time funding was made available since the law was enacted in 2013.

All tribes seeking to implement special domestic violence criminal jurisdiction (SDVCJ) are encouraged to join the Intertribal Technical-Assistance Working Group (ITWG) and contact [tribal-vawa@ncai.org](mailto:tribal-vawa@ncai.org) for more information or with any questions.

### **EMERGENCY RESPONSE/HOMELAND SECURITY**

Tribal leaders and the NCAI continue to advocate for parity in protecting the homeland. Since 2003, 98.75% of total Department of Homeland Security (DHS) funding has gone to state and local governments (\$40 billion vs. \$50 million). The Department of Homeland Security and its component departments, such as Customs and Border Protection, the Federal Emergency Management Agency (FEMA), and Transportation Security Administration have had mixed reviews from tribal officials in the past year regarding meaningful consultation and collaboration, upholding the federal trust responsibility in program service delivery with tribal nations, and approaches to federal grant funding through states that has been detrimental to tribal-federal government relations and tribal sovereignty. Considering DHS was only established in 2003, and in this final year before transition to a new administration, there is needed positive change to address tribal homeland security and emergency management matters regarding border crossing and tribal IDs, disaster declaration authority, emergency management capacity building, and equitable yet realistic levels of grant access and funding.

### **Administrative Update**

*Executive Order 13767: Border Security and Immigration Enforcement Improvements.* Directs the Secretary of Homeland Security (DHS) to plan, design, and construct a physical wall along the southern border; construct detention facilities to detain unlawful aliens 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. EO 13767 does not state what the wall will look like, the timeline for construction, or who will bear the costs and how much will be paid for the wall's construction. The glaring fact for tribes on and near the manufactured border is their culture, lands, and people will be impacted, sovereignty disregarded and treaty

rights infringed upon. To date, no administration or congressional representatives have engaged tribal officials in discussions about the proposed project. All impacted Tribal officials, many members of congress, and several border state officials object to the proposal as does the president of Mexico. The FY 2017 budget does not provide funding for the border wall but does provide additional funding for increased monitoring and undocumented immigration detention. The administration issued a request for proposal for construction and received designs and options including cost estimates.

DHS FY 2017 Preparedness Grants. On June 2, DHS Secretary John Kelly announced FY 2017 Notices of Funding Opportunity for 10 DHS preparedness grants to state, local, tribal and territorial governments. The grants are for immediate security needs and community public safety. DHS continues to ignore tribal government responsibilities and needs for homeland security risks by failing to increase the funding level for the Tribal Homeland Security Grant Program (THSGP). Funding for all homeland security grants components to states and local governments totals over \$1 billion but the amount available for all 567 federally recognized tribal governments stays flat at \$10 million. Tribal officials have discussed going to DHS and to congress for creation of a tribal homeland security general assistance grant program which would be similar to the Environmental Protection Agency's Tribal General Assistance Program (GAP) that is more flexible in addressing tribal capacity-building and tribal direct funding.

FEMA Tribal Consultation Policy Revision. The Federal Emergency Management Agency (FEMA) is seeking input from tribal governments, officials and other interested partners during the tribal consultation period for the update of the [FEMA Tribal Consultation Policy](#). The FEMA Tribal Consultation Policy (signed in August 2014) guides how FEMA engages tribal governments in regular and meaningful consultation and collaboration on policy and actions that have tribal implications. Comments must be submitted no later than August 29, 2017. Visit the [Tribal Consultation Policy Update Page](#) for more information.

## **Legislative Update**

Support More Assets, Resources, and Technology on the Border Act of 2017 (SMART Act of 2017) - H.R. 22. Sponsored by Rep. Poe (R-TX-02), the bill directs the Secretary of Homeland Security (DHS) to take actions to achieve and maintain operational control of the U.S.-Mexico border (defined as a condition in which all illegal border crossers are apprehended and narcotics and other contraband are seized); and (2) report to the Government Accountability Office (GAO) on such actions, achievement, and maintenance. Also authorizes a governor to deploy the national guard in concert with Secretary of Defense. Consultation required with state and local officials along the Mexican border, but not tribes. This legislation has been referred to the Committee on Homeland Security and will subsequently be referred to additional committees.

Tsunami Warning, Education and Research Act of 2017 - S. 53. This legislation, sponsored by Sen. Cantwell (D-WA), authorizes strengthening tsunami detection, forecast, warning, research, and mitigation programs under the National Oceanic and Atmospheric Administration. Coastal tribes and villages are potentially impacted by tsunamis and the legislation would provide a community-based hazard mitigation program to improve preparedness and resiliency. S. 53 has been referred to the Commerce, Science and Transportation Committee.

## HUMAN RESOURCES/SOCIAL SERVICES

The survival and prosperity of tribal communities depends on the education, health, and welfare of our youth and elders. The Administration and Congress must work with tribes to meet the educational needs of Indian youth; provide adequate health care via the Indian Health Service, for both direct and self-governance tribes; provide safe and secure tribal communities; and supply the social services required to ensure every American Indian and Alaska Native enjoys a decent quality of life and has an opportunity to succeed. Education drives personal advancement and wellness, which in turn improves social welfare and empowers communities—elements that are essential to protecting and advancing tribal sovereignty and maintaining tribes’ cultural vitality. Human and social services are a critical part of the continued wellbeing of tribal communities.

### **EDUCATION**

Investing in education is necessary for tribes to succeed in tribal and global economies, It is imperative that American Indian and Alaskan Native students receive quality education. However, there are still challenges facing education in Indian Country, including aging school facilities, limited access to broadband, rural locations which impacts school attendance, difficulty recruiting and retaining teachers and incorporation of native language and culture in the classroom. These challenges and others have led to a graduation rate for Native American students and Alaskan Natives of 69% compared with and an 82% graduation rate for the country as a whole.

There are approximately 620,000, or 93 percent, of Native students currently enrolled in public schools both in urban and rural areas, while 45,000, or 7 percent, attend schools within the Bureau of Indian Education (BIE) federal system. There are 184 BIE-funded schools (including 14 peripheral dormitories) located on 63 reservations in 23 states. In addition, there are currently 34 accredited Tribal Colleges and Universities (TCUs) in the United States serving more than 30,000 Native students. Effectively reaching all Native students requires a concentrated and sustained effort from multiple partners: tribes, the federal government, and State Education Agencies and Local Education Agencies., Native parents and families, and communities.

### **Legislative Update**

Esther Martinez Native American Languages Preservation Act. S. 254 and H.R. 1169. On February 1, 2017, Senator Tom Udall (D-NM) introduced the reauthorization of the Esther Martinez Native American Languages Preservation Act. The legislation would authorize Native language programs by providing funding to tribes for preserving and increasing fluency through language immersion schools, and language restoration programs. S. 254 was referred to the Senate Committee on Indian Affairs and passed by the Committee in April. On February 16, 2017, Congressman Ben Ray Lujan (D-NM) introduced companion legislation H.R. 1169, in the U.S. House of Representatives, which was referred to the House Committee on Education and the Workforce.

Native American Indian Education Act- H.R. 1528. On March 15, 2017, Congressman Scott Tipton (R-CO) introduced H.R. 1528, “Native American Indian Education Act”, which would amend the Higher Education Act of 1965. This legislation would ensure the federal mandate of requiring certain colleges and States to waive tuition for Native American students in undergraduate college programs. H.R. 1528 was referred to House Committee on Education and Workforce. On March 15th, Senator Cory Gardner (R-CO) introduced the Senate companion bill S. 660, which was referred to the Senate Committee on Health, Education, Labor, and Pensions.

NCAI has a standing resolution in support of this legislation, # 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”.

Johnson-O'Malley Supplemental Indian Education Program Modernization Act. On April 26, 2017, Senator Heidi Heitkamp (D-ND) introduced S. 943, “Johnson-O'Malley Supplemental Indian Education Program Modernization Act.” This legislation would direct the Secretary of the Interior to conduct an accurate comprehensive student count which impacts the formula allocation for the Johnson-O'Malley Program. The current student count has been frozen at 1995 levels, even though 93 percent of Native students attend public schools. On July 12, 2017, the Senate Committee on Indian Affairs held a legislative hearing on S. 943, and the legislation was favorably voted out of Committee at a Business Meeting held on October 4, 2017. NCAI has a standing resolution to update the student count, #REN-13-013, Supporting Use of Accurate Student Numbers to Create a Sustainable Johnson O'Malley Supplemental Indian Education Program.:

Native American Education Opportunity Act S.1294. On June 6, 2017, Senator John McCain (R-AZ) introduced S. 1294, the Native American Education Opportunity Act. This bill would establish a Tribally-Based Education Savings Account Program to be used for educational purposes by parents of children at Bureau of Indian Education (BIE) schools for private school tuition, textbooks, tutoring, and other educational services. S. 1294 is similar to legislation introduced in the 114th Congress. S. 1294 was referred to the Senate Committee on Indian Affairs.

Native Educator Support and Training Act or NEST Act- S. 458. On February 27, 2017, Senator Jon Tester (D-MT) introduced S. 458, the Native Educator Support and Training Act. This bill would create scholarships, loan forgiveness, and training programs for educators who are committed to working at Bureau of Indian Affairs or public schools, where the majority of students are Native. In addition, the bill would establish grants for elementary and secondary schools who serve majority Native students, and establishes a Native American Language Teacher Training Program for higher education institutions. On May 17, 2017, the Senate Committee on Indian Affairs voted S. 458 favorably out of the Committee. On May 25, 2017, Congressman Raul Ruiz (D-CA) introduced a companion bill H.R. 2727, in the House of Representatives. The bill was referred to the House Committee on Education and the Workforce.

## **Administrative Update**

School Choice Initiative. The President's budget for FY 2018, included a \$1.4 billion proposal to increase funding for school choice programs. Although the current funding measures in Congress do not include this increase, it is an indication of the priority that the Administration is placing on school choice programs. In anticipation of further initiatives, NCAI has begun having discussions with tribal leaders and educators, and partner organizations about the opportunities and challenges that exist in Indian Country around charter schools and school choice programs.

State Accountability Plans. On March 13, 2017, U.S. Department of Education Secretary Betsy DeVos announced an updated Every Student Succeeds Act (ESSA) implementation guidance plan regarding state accountability plans. These new state plan templates differ from the previous state plan requirements under the Obama Administration in that the new implementation plan would no longer require states to consult with tribes and other stakeholders regarding state plans. On September 20, 2017, 30 states submitted their state plans to the

Department of Education for review. The plans would provide for accountability and assessment systems that cover the 2017-2018 academic year. It is unclear whether voluntary consultation with Tribes occurred in the development of these plans.

*Bureau of Indian Education ESSA Plans.* On September 14, 2017, the Bureau of Indian Education announced the establishment of a Standards, Assessments, and Accountability System Negotiated Rulemaking Committee. This Committee would advise the Secretary of Interior on a proposed rule to revise the Adequate Yearly Progress regulation. This rulemaking is in accordance with ESSA Section 8007 which directs the Secretary of the Interior, in consultation with the Secretary of Education, to use a negotiated rulemaking process to develop regulations to define standards, assessments, and an accountability system. The proposed rule will be implemented for the 2018-2019 school year. BIE is requesting comments and nominations from tribes who have grant or contract schools or who would be considerably affected by this proposed rule. The deadline to submit comments and nominations is October 16, 2017.

## **HEALTH**

The health and wellness of tribal communities depends on a network of health, education, and wellness service providers, prevention coordination, and tribally-driven initiatives. Despite the federal government’s trust responsibility to provide health care to American Indians and Alaska Natives, American Indians and Alaska Natives continue to experience the greatest health disparities in the United States when compared to other Americans. Shorter life expectancy and the disease burdens carried by American Indians and Alaska Natives exist because of inadequate education, disproportionate poverty, discrimination in the delivery of health services, and cultural differences. These are broad quality of life issues rooted in economic adversity, poor social conditions, and decades of historical trauma.

### **Legislative Update**

*Indian Health Improvement Act and Indian-specific provisions in the Affordable Care Act.* The Indian Health Care Improvement Act (IHCIA) was enacted in 2010 as part of the Patient Protection and Affordable Care Act (Affordable Care Act or ACA). The IHCIA provided new resources and opportunities for Tribal governments, tribal health care institutions, families, providers and patients. There are also Indian-specific provisions in the ACA other than the IHCIA that provide important protections and funding opportunities for Indian Health Service/Tribal/ and Urban Indian (collectively known as the I/T/U) health system. The IHCIA states that any I/T/U should remain the payer of last resort the payer of last resort for services provided by such notwithstanding any Federal, State, or local law to the contrary and granted I/T/U providers permanent authority to collect reimbursements for all Medicare Part B services. It also ensures that any health benefits provided by a tribe to its members are not included as taxable income. IHCIA has proven to be one of the more successful parts of the ACA.

*Congress Attempts to Repeal the Affordable Care Act.* In January 2017, Congress took the first step to repealing the Affordable Care Act by approving a budget resolution that sets up the repeal of the health care law through the budget reconciliation process. Reconciliation—a parliamentary process requiring only 50 votes instead of the usual 60 to pass a bill through the Senate—allows for expedited consideration of certain tax, spending, and debt limit legislation. It is important to note that because the Indian Healthcare Improvement Act does not contain

tax or budget provisions and is not subject to Reconciliation. Nevertheless, Indian Country worked diligently to obtain assurances from key Members of Congress to ensure that IHCIA would not be repealed in the larger effort.

After the Senate's attempt to pass the "skinny repeal" bill failed in late-July 2017, due largely to opposition from Senators Lisa Murkowski (AK), John McCain (AZ), and Susan Collins (ME), most thought that the effort to repeal and replace the ACA had come to an end. However, less than two weeks before the September 30, 2017 deadline to use the budget reconciliation process, Senators Lindsey Graham (R-SC), Bill Cassidy (R-LA), Dean Heller (R-NV) and Ron Johnson (R-WI) introduced legislation that would repeal the structure and architecture of the ACA and replace it with a block grant given annually to states. The grant dollars would replace the federal money currently being spent on Medicaid Expansion, ACA tax credits and cost-sharing reduction subsidies. In addition, the bill would get rid of the ACA's individual and employer mandates and a tax on medical devices.

NCAI and NIHB sent a joint letter to Majority Leader Mitch McConnell (R-KY) on September 20, 2017, outlining Indian Country's opposition to the bill due to its violation of the federal trust responsibility and its drastic cuts to Medicaid, which would negatively impact Tribal Nations. The letter also encouraged Congress to focus on reauthorizing the Special Diabetes Program for Indians (SDPI) before the September 30, 2017 deadline and to pursue a bipartisan approach through regular order when it comes to reforming the health care system. With all Democrats opposing the bill, Republicans could only afford to lose 2 votes. Senator Rand Paul (KY) was the first to announce his opposition, followed by Senators John McCain (AZ) and Susan Collins (ME). Unable to secure the 50 necessary votes, Senate leadership decided against bringing the bill to the floor.

*Special Diabetes Program for Indians.* The Special Diabetes Programs for Indians (SDPI), enacted in 1997, provides assistance for developing local initiatives to treat and prevent the disease and has served as a comprehensive source of funding to address diabetes issues in tribal communities by providing grants for diabetes prevention and treatment services to more than 400 Indian Health Service, tribal, and urban Indian health programs in 35 states. In 2015, Congress reauthorized SDPI for 2 years at \$150 million annually. On September 29, 2017, the day before SDPI was set to expire, Congress enacted H.R. 3823, the Disaster Tax Relief and Airway and Airport Extension Act, which contained a provision extending SDPI through the first quarter of Fiscal Year 2018 (December 31, 2017) at the current funding level.

Most recently, Representatives Markwayne Mullin (R-OK) and Raul Ruiz (D-CA) introduced legislation to reauthorize SDPI at \$112.5 million for the remainder of fiscal year 2018, which would equate to \$150 million for FY 2018, and \$150 million for FY 2019. This same language is included in H.R. 3922, the CHAMPION Act, which was approved by the House Energy and Commerce Committee on October 4, 2017. There are also two stand-alone bills which would reauthorize the SDPI through FY 2024 and include increases in funding due to inflation adjustments: H.R. 2545, Torres, (D-CA) and S. 747, Udall, (D-NM). The House bill is pending before the Energy and Commerce Committee, while the Senate version is pending before the Health, Education, Labor and Pensions (HELP) Committee.

NCAI passed a resolution (ATL-14-003) requesting Congress to permanently reauthorize the Special Diabetes Program for Indians and to provide full funding for permanent continuation of this program. Although NCAI will continue to advocate for permanent reauthorization of the Special Diabetes Program for Indians as a long-term solution to protect this program, immediate advocacy efforts will focus on ensuring the program is reauthorized past the December 31, 2017 authorization expiration.

Restoring Accountability in the Indian Health Service Act (H.R. 2662, Noem, R-SD and S. 1250 Barrasso, R-WY. This legislation seeks to improve IHS by providing incentives for recruitment and retention, establishing standards to measure the timeliness of health care services, requiring a cultural training program, and increasing congressional oversight. The Senate Committee on Indian Affairs held a hearing on S. 1250 on June 13, 2017 and the House Natural Resources–Subcommittee on Indian, Insular and Alaska Native Affairs held a hearing on H.R. 2662 on June 21, 2017. The IHS representative at these hearings, RADM Chris Buchanan (in his capacity as Acting IHS Director, then Deputy IHS Director, respectively), testified that IHS shares the “urgency of addressing longstanding systemic problems that hamper our ability to fully carry out the IHS mission.” He concluded his testimony in both hearings by expressing IHS’s willingness to work with congressional staff as the legislation moves through the legislative process. Since these hearings, no additional actions have been taken on either bill.

House Bills to Address Health Care Disparities in Indian Country. On September 7, 2017, Representatives Frank Pallone (D-NJ) and Raul Ruiz (D-CA) introduced two bills which seek to address health care disparities in Indian Country: H.R. 3704, Native Health Access Improvement Act (Pallone) and H.R. 3706, Native Health and Wellness Act (Ruiz). H.R. 3704 seeks to improve behavioral health outcomes for American Indians and Alaska Natives by providing \$150 million in grants for the prevention and treatment of mental health and substance abuse disorders. In addition, this bill amends the ACA to clarify the definition of "Indian" and to provide "Indians" with an exemption from penalty for not maintaining minimum essential coverage. This bill has been referred to the following Committees: Natural Resources; Energy and Commerce; and Ways and Means. H.R. 3706 would provide grants to Indian tribes or tribal organizations to improve the public health system in tribal communities and increase the number of American Indians and Alaska Natives pursuing health careers. This bill has been referred to the Energy and Commerce Committee.

H.R. 235 Indian Health Service Advance Appropriations Act of 2017 (H.R. 235, Young, R-AK. This legislation would amend the IHCA to authorize advance appropriations for the Indian Health Service by providing 2-fiscal-year budget authority. The bill has been referred to the following House committees: Budget; Natural Resources; and Energy and Commerce.

Independent Outside Audit of the Indian Health Service Act of 2017 (S. 465, Rounds, R-SD. This bill would require the Secretary of the Department of Health and Human Services to enter into contract(s) with a private entity to conduct an independent assessment of the health care delivery systems and financial management processes of the Indian Health Service. It is currently pending before the Senate Committee on Indian Affairs.

House IHS Task Force Created. On May 18, 2017, House Energy and Commerce Committee Chairman Greg Walden (R-OR) and Ranking Member Frank Pallone, Jr. (D-NJ) announced the creation of the Indian Health Service (IHS) Task Force. Reps. Markwayne Mullin (R-OK) and Raul Ruiz (D-CA) will co-chair the bipartisan task force, which is composed of 14 members both on and off the committee. The working group will review the health care delivery system for American Indians and Alaska Natives (AI/AN), inform policy makers on the current state of IHS and public health programs that serve the AI/AN population, and identify ways to ensure IHS is best serving the needs of those who rely on it.

## **Administrative Update**

HHS Secretary Tom Price Resigns. On September 29, 2017, Health and Human Services Secretary Tom Price resigned after reports surfaced that he took more than two dozen private flights since May, costing the taxpayers hundreds of thousands of dollars. This prompted the Health and Human Services inspector general to launch an investigation to determine whether the means of travel was appropriate. In his resignation letter to President Trump, Price expressed his regrets of “recent events” that “created a distraction” from important health care priorities.

During his short tenure as HHS Secretary, Price did a fair amount of outreach to Indian Country. He visited Alaska where he participated in a roundtable with the Alaska Native Tribal Health Consortium and toured the Alaska Native Medical Center. Most recently, he visited tribal health facilities at the Pawnee and Cherokee Nations of Oklahoma. While at the Cherokee Nation, he convened a meeting of the Secretary’s Tribal Advisory Committee (STAC), which marked the first time the group met in Indian Country.

The President has not yet named a replacement to fill the vacancy created by Secretary Price’s resignation. Once a selection is made, that individual will need to be confirmed by the Senate.

President Trump Nominates Robert M. Weaver to Serve as IHS Director. On Friday, October 6, 2017, President Trump announced his intent to nominate Robert M. Weaver to serve as the Director of the Indian Health Service for a term of four years. According to the White House announcement, Mr. Weaver, an enrolled member of the Quapaw Tribe of Oklahoma, is “the founder and owner of four companies that provide healthcare consulting services to tribal governments, their enterprises, and their members.” One of those companies, RWI Benefits LLC, was awarded the 2017 American Indian Business of the Year by the National Center for American Indian Enterprise Development. According to the company’s website, Mr. Weaver’s motivation to improve access and affordability to quality healthcare for American Indians and Alaska Natives comes from “his own family’s devastating experiences with the death and destruction caused by substance abuse, mental health issues, addiction and preventable diseases.”

Mr. Weaver is expected to receive a nomination hearing before the Senate Committee on Indian Affairs. If his nomination is approved by the Committee, it will go to the full Senate for consideration. If confirmed by the Senate, he will be responsible for overseeing an agency that provides comprehensive health care delivery to approximately 2.2 million American Indian and Alaska Natives through 26 hospitals, 59 health centers, 32 health stations, and nine school health centers.

*Addressing the Opioid Crisis in Indian Country.* While the opioid crisis is plaguing communities across the country, studies indicate that American Indians and Alaska Natives (AI/ANs) are impacted more than other groups. For opioid overdose fatalities, a 2013 report found that AI/AN communities had the highest death rate related to pharmaceutical opioids. Further, a national study using 2008-2009 data indicated that death rates involving opioid pain relievers were three times higher in AI/ANs and non-Hispanic whites compared to rates in African Americans and Hispanic whites. This epidemic has also impacted AI/AN youth—the CDC reported in 2012 that 1 in 10 AI/ANs, ages 12 or older, used opioids for nonmedical reasons, which is double the rate for Whites and triple the rate for African Americans. These statistics illuminate the critical need for more concerted attention on curbing the opioid epidemic in Tribal communities.

President Trump’s actions to directly confront this epidemic, including his issuance of an Executive Order establishing the President’s Commission on Combating Drug Addiction and the Opioid Crisis (President’s Commission), and his intentions to declare the opioid crisis a national emergency, were encouraging. However, Indian Country was not represented on the President’s Commission and the status of the declaration, as well as the resources linked to it remains unclear. NCAI has been working with former Congressman Patrick Kennedy’s staff to ensure that Indian Country’s concerns are included in the Commission’s final report to the President. In addition, we are working to ensure that any resources stemming from the national emergency declaration are made available directly to Indian tribes and tribal organizations in order to implement culturally appropriate treatment and prevention programs.

On September 12, 2017, NCAI and the National Indian Health Board (NIHB) sent a letter to former Health and Human Services Secretary Tom Price requesting that the Pain Management Best Practices Inter-Agency Task Force (Task Force) include a tribal representative. The Task Force was authorized by the Comprehensive Addiction and Recovery Act of 2016 (CARA), a bill signed into law in 2016 to address the growing heroin and opioid epidemic. It will provide advice and recommendations for development of best practices for pain management and prescribing pain medication and a strategy for disseminating such best practices to relevant Federal agencies and the general public.

NCAI has re-established its Substance Abuse Prevention Taskforce to address opioid and other substance abuse issues in tribal communities and to ensure that advocacy efforts around prevention and treatment are prioritized in the Administration and Congress.

### **CULTURAL PROTECTIONS**

Securing traditional laws, cultures and ways of life for future generations is one of the founding principles of the National Congress of American Indians. The protection of culture, religion and ancient remains is important to the future of Native cultures. Many laws protect Indian cultural resources including the National Historic Preservation Act, the Native American Graves and Repatriation Act, the American Indian Religious Freedom Act and the Antiquities Act. This complex system of laws and regulations can allow for Tribes to protect ancient remains and settlements, repatriate objects and human remains and also prevent off reservation

infrastructure from desecrating sacred places. NCAI continues to prioritize its advocacy and education efforts to protect the religious freedoms of Native peoples while supporting cultural preservation efforts.

## **Legislative Update**

House Natural Resources Committee Marks up Antiquities Act Reform Bill. On October 11, 2017, The House Natural Resources Committee marked up H.R. 3990 “The National Monument Creation and Protection Act.” With the President’s review of National Monuments bringing attention to the issue, Congress has taken up the Monument discussion in the House Natural Resources Committee. H.R. 3990 amends the Antiquities Act of 1906 by only recognizing objects of antiquity and removing eligibility for historic landmarks and prehistoric structures. The bill also limits the size of future monuments to 640 acres and considers the proximity to other monuments. The bill would also require approvals from the US Department of the Interior, or US Department of Agriculture before going to county and state governments for approval. The bill would also limit emergency declarations. The bill was passed out of the Natural Resources Committee and is up for consideration by the full House of Representatives. NCAI strongly opposes efforts to weaken Monument protections and has multiple resolutions in favor of protecting Tribal historical land marks and prehistoric structures. NCAI will continue to advocate in strong support of protecting all National Monuments and the cultural resources within them, especially those targeted in H.R. 3990.

Safeguard Tribal Objects of Patrimony (STOP) Act. On June 21, 2017, Senator Martin Heinrich (D-NM) introduced the Safeguard Tribal Objects of Patrimony (STOP) Act (S. 1400). On August 3, 2017, Congressman Ben Ray Lujan (D-NM-3) introduced a companion bill in the House of Representatives (H.R. 3211). This legislation enhances penalties under the Native American Graves Protection and Repatriation Act (NAGPRA) from 5 years to 10 years and prohibits the exporting of Native American cultural objects. It also requires the Government Accountability Office to submit a report to Congress detailing the number of cultural objects illegally trafficked in the US and in foreign markets as well as detailing the extent to which the US Attorney General has prosecuted past violations. The report would also include recommendations for actions by the Attorney General, the Secretary of State and the Secretary of the Interior to eliminate illegal commerce of cultural objects as well as securing repatriation of those objects. The legislation sets up a Tribal Working Group made up of tribes and government agencies to collaborate on writing the report as well as giving tribes the opportunity to advise government agencies on implementation recommendations. NCAI supports the bills and has submitted letters and testimony on past versions of the bill.

House Natural Resources Committee holds Hearing on National Historic Preservation Act. On July 18, 2017, the House Natural Resources Subcommittee on Oversight and Investigations held an oversight hearing entitled "Examining Impacts of Federal Natural Resources Laws Gone Astray, Part II" that focused on the Marine Mammal Protection Act and the National Historic Preservation Act. This hearing is the second in a series of hearings by the House Natural Resources Subcommittee on Oversight and Investigations to address Natural Resources Laws that some believe have extended past their original congressional intents. The hearing focused on the "determined eligible criteria" that has been implemented with the National Historic Preservation Act that would allow a site to be eligible for the Federal Register of Historic Places, and therefore eligible for protections under the NHPA . Much of the hearing highlighted issues with the Marine Mammal Protection Act and off

shore seismic activity. Members of Congress and the invited witnesses discussed what "multiple use" means for federal lands as well as taking a balanced approach to federal land management.

Senate Committee on Indian Affairs hosts Roundtable on Infrastructure Permitting. On September 28, 2017, the Senate Committee on Indian Affairs hosted a round table on "Best Practices in Tribal Consultation and Stakeholder Engagement: Federal Permitting and Infrastructure Project Review in Indian Country." The Roundtable was hosted by Senate Committee on Indian Affairs Chairman Hoeven and Vice Chairman Udall, and was attended by Senators Heitkamp (ND), and Franken. Senator Carper, the Ranking Member on the Senate Environment and Public Works Committee was also in attendance. The Roundtable brought together tribal organizations, tribal industries, federal officials, and industry to discuss topics such as Section 106 Historic Preservation permitting in projects that impact tribal land, early engagement of tribal nations, and consistent treatment of permitting processes throughout the federal government. NCAI participated in the roundtable and emphasized the need for early notification and partnering with tribal nations to ensure that any on or off-reservation impacts can be mitigated.

### **Administrative Update**

Department of Interior Review of Certain National Monuments Established since 1996. On April 26, 2017, President Trump signed Executive Order 13792 to direct the Department of the Interior to conduct a review of certain National Monuments designated or expanded since 1996. Of the 27 Monuments under review, The Department of the Interior has announced that there will be no changes made to Hanford Reach (WA), Upper Missouri River Breaks (MT), Craters of the Moon (ID), Canyon of the Ancients (CO), Grand Canyon Parashant (AZ) and Sand to Snow (CA) National Monuments.

On August 24, 2017, Secretary Zinke delivered the Department of the Interior's report to the President, as outlined by the Executive Order for the President to determine which Monuments to shrink or remain the same. Neither the White House nor the Department of the Interior have made official statements about the fate of the other 21 National Monuments and whether their original designations will remain the same or will be diminished in size. The Antiquities Act of 1906 grants the President the authority to designate National Monuments and was passed with the intent of protecting Tribal cultural and historic properties from looters. There is no legal precedent or explicit statutory authority for the President to rescind National Monument designations. NCAI has filed public comments with the Department of the Interior twice on this issue, one comment specifically on the Bears Ears National Monument and the other on all other Monument under review urging no changes in any Monument designations and encouraging Tribal Co-management of monuments. In addition, NCAI has written the President twice to urge him to protect Monument designations and work to protect Tribal historic and cultural resources that reside in the Monuments.

US Department of the Interior announces \$5.7 million in Tribal Historic Preservation grants. On April 27, 2017, the US Department of the Interior announced \$5.7 million in Tribal historic preservation grants. Funds are collected through fees from oil drilling on the Outer Continental Shelf. With the same announcement, DOI announced \$26.9 million in grants to States and US territories, of which some of the highlighted State projects address Tribal Cultural historic preservation.

Section 106 Streamlining Proposed Rule at the Federal Communications Commission. On April 24<sup>th</sup>, the Federal Communications Commission issued a proposed rulemaking intended to streamline Tribal review of wireless infrastructures' impacts on Tribal historic and cultural properties. (FCC Notice of Proposed Rulemaking, Docket 17-79 "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment). Through this rulemaking the FCC looks to find exclusions to Tribal Historic Preservation Officer review like pole replacements and Rights of Way and also looks to place limits on a Tribe's ability to define their area of interest. This proposed rulemaking seeks to streamline the Tribal Section 106 Review of Wireless Infrastructure deployment through the FCC's Tower Construction Notification System. Currently, Tribes review applications for most wireless infrastructure deployment in an area of interest defined by the tribe. NCAI has serious concerns in the Notice of Proposed Rulemaking that would limit Tribes ability to protect sacred sites like certifying areas of interest, applicant self-certification, exclusions for Rights of Way and lack of consultation.

NCAI hosted a webinar on this issue which can be viewed on the NCAI website. On June 15, 2017, NCAI, United South and Eastern Tribes Sovereignty Protection Fund, National Association of Tribal Historic Preservation Officers, Affiliated Tribes of Northwest Indians, Alaska Federation of Natives, All Pueblo Council of Governors, California Association of Tribal Governments, Great Lakes Inter-Tribal Council, Great Plains Tribal Chairman's Association, Inter-Tribal Council of Arizona, Inter-Tribal Council of the Five Civilized Tribes, Midwest Alliance of Sovereign Tribes, Southern California Tribal Chairmen's Association, United Tribes of Michigan submitted joint comments to the FCC on this docket.

US Army Corps of Engineers Return Ancient One to Columbia River Tribes, Finally Put to Rest. The Ancient One, also known as the Kennewick Man, was returned to the Umatilla, Yakama, Nez Perce and Colville Tribes by the US Army Corps of Engineers in February, 2017. In 1996, the Ancient One was found near Kennewick, Washington. The Tribes fought in court for the right to have the Ancient One returned for a proper burial. In December, 2016, the Water Infrastructure Improvements for the Nation Act passed both Houses of the US Congress, authorizing the US Army Corps to return the Ancient One's remains to the Tribes. The Ancient One was put to rest in February, 2017.

United Nations Ad Hoc International Repatriation Working Group. U.S. Tribal representatives and leaders participated in a consultation during the 15th session of the UN Permanent Forum on Indigenous Issues on May 13, 2016 to discuss recommendations and next steps for the development of the new UN mechanism for international repatriation. In addition to U.S. Tribal leaders, presenters included representatives of the UNPFII, the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), UNESCO and Indigenous Peoples from other regions. U.S. Tribal leaders also participated in a follow up side event on May 2, 2017 at the UNPFII 16th session, which also include participation by UN bodies, to present updates, progress, continued challenges and next steps.

No New International Repatriation Consultations Announced. The Department of Interior conducted consultations jointly with the State Department, Department of Justice and the Department of Homeland Security on

international repatriation of tribal cultural heritage and properties between October 2016 and December 2016. There have been no further consultations noticed since December 2016. NCAI will continue to track this issue and advocate for the Federal Government to consult with Tribes on the issue of International Repatriation.

### **NATIVE VETERANS**

Per capita, American Indians and Alaska Natives (AI/ANs) serve at a higher 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. In fact, AI/AN Veterans served in several wars before they were even recognized as American citizens. Despite their esteemed service, AI/AN Veterans had lower personal incomes, higher unemployment rates and were more likely to lack health insurance compared to Veterans of other races. NCAI has been monitoring VA initiatives, administrative actions, and proposed legislation impacting Native veterans to ensure they receive the proper benefits and compensation for their military service.

#### **Administrative Update**

*Final Rule on Recognition of Tribal Organizations.* On January 19, 2017, VA issued a final rule—Recognition of Tribal Organizations for Representation of VA Claimants, 82 FR 6265—recognizing tribal authority to establish a tribal VA benefit claims office through an accredited Tribal Veteran Service Officer (TVSO). Specifically, this rule allows the Secretary to recognize tribal organizations in a similar manner as the Secretary recognizes State organizations. It also allows a tribal organization that is established and funded by one or more tribal governments to be recognized for the purpose of providing assistance on VA benefit claims. In addition, the final rule allows an employee of a tribal government to become accredited through a recognized State organization in a similar manner as a County Veterans' Service Officer (CVSO) may become accredited through a recognized State organization. During the rulemaking process, NCAI provided comments to ensure VA provides the opportunity to ensure fair and timely examinations, assessments and the preparation of a claim, and most importantly, the advocacy of the claim on behalf of native veterans is accomplished in a culturally competent manner. NCAI will continue to track the implementation of this rule and advocate for support for Tribal Veteran Service Officers Training Programs, as outlined in NCAI Resolution #SAC-12-002.

*VHA-IHS Memorandum of Understanding.* On January 6, the Indian Health Service issued a Dear Tribal Leader Letter to announce that the IHS recently signed an Interagency Agreement with the U.S. Department of Veterans Affairs (VA) authorizing the IHS to use the VA Veterans Health Administration's Consolidated Mail Outpatient Pharmacy (CMOP). With this development, Tribes and Tribal organizations with Indian Self-Determination and Education Assistance Act (ISDEAA) agreements will now be able to access the CMOP through the National Supply Service Center (NSSC).

*NMAI National Native American Veterans Memorial Design Competition.* The National Museum of the American Indian (NMAI) design competition for the National Native American Veterans Memorial initiates a call for entries beginning on November 11, 2017. The finalists for the open juried, two-phase design competition will be announced on January 25, 2018. The Memorial is a collaborative effort by NCAI and NMAI to honor the distinguished military service of American Indians and Alaska Natives, and the permanent location will be on the grounds of the NMAI on the mall.

## **Legislative Update**

Tribal Veterans Health Care Enhancement Act (S. 304, Thune, R-SD). This legislation amends the Indian Health Care Improve Act to allow the Indian Health Service (IHS) to cover the cost of a copayment of an American Indian or Alaska Native Veteran receiving medical care or services from the Department of Veterans Affairs (VA). On March 29, 2017, the Senate Committee on Indian Affairs ordered that the bill be reported without amendment. The Committee report, which was filed on June, 15, 2017, included Minority views from Vice Chair Tom Udall (D-NM) who called upon the Senate to oppose this legislation and any legislation that would exclude Indian veterans from financial liability protections afforded by Congress.

Alaska Native Veterans Land Allotment Equity Act (S. 785, Sullivan, R-AK and H.R. 1867, Young, R-AK). These bills would amend the Alaska Native Claims Settlement Act to provide equitable treatment of Alaska Native Vietnam Veterans in their acquisition of land under the Native Allotment Act of 1906. Approximately 2,800 Alaska Natives who were out of the country serving during the Vietnam War missed an opportunity to apply for a land allotment under the 1906 Alaska Native Allotment Act. This legislation seeks to remedy this situation by making these Veterans eligible for 160 acre allotments. On July 26, 2017, the Senate Energy and Natural Resources—Subcommittee on Public Lands, Forests, and Mining held a hearing on S. 785. The Administration testified that it “supports the goals of S. 785 and looks forward to working with the sponsor and the Committee to provide technical edits to further enhance this legislation and offer timely and efficient resolution of longstanding Native allotment processes.” No major action has been taken on the House bill, which is pending before the Natural Resources Committee. In 2015, NCAI passed a resolution, #SD-15-016, urging Congress to amend Alaska Native Vietnam Veterans Allotment Act to obtain allotments within the State of Alaska.

Tribal HUD-VASH Act (S. 1333, Tester, D-MT). This bill would formally authorize a joint tribal housing initiative between the U.S. Department of Housing and Urban Development and the Veterans Affairs Supportive Housing (HUD-VASH) program, which provides housing vouchers to tribes and tribal housing authorities to construct affordable housing, provide rental assistance, and assist homeless veterans with services that aid recovery from physical and mental health conditions resulting from homelessness. In January 2015, HUD and the VA announced a demonstration program to offer a permanent home and supportive services to Native American Veterans who are experiencing or at risk of experiencing homelessness. Under the current pilot program, only 26 tribes have received HUD-VASH vouchers. S. 1333 seeks to improve and expand upon this program. The bill is cosponsored by Committee on Indian Affairs Chairman John Hoeven (R-ND) and Vice Chair Tom Udall (D-NM), as well as Committee on Veterans Affairs Chairman Johnny Isakson (R-GA). It was ordered reported with an amendment in the nature of a substitute by the Senate Committee on Indian Affairs on September 13, 2017. A Committee report has not yet been filed.

## TRIBAL GOVERNANCE

### **VOTING RIGHTS**

Native Americans were the last to obtain the right to vote in the United States, 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 in remote, isolated areas, with high rates of poverty, and in some areas, limited English proficiency. As a result, turnout in the 2012 elections among American Indians and Alaska Natives nationwide was 17 percentage points below that of other racial and ethnic groups.

Since 2015, NCAI has actively participated along with other interested organizations in the Native American Voting Rights Coalition to ensure that our work to protect and advance the voting rights of American Indians and Alaska Natives is coordinated and as effective as possible. The project's main goal is to remove barriers to Native American voter registration and voting, increase Native civic engagement, and foster a more informed and active Native electorate. With 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; and (3) overseeing the largest survey of Native voters ever conducted to discover the extent of voting problems in Indian Country.

#### **Legislative Update**

*Voting Rights Advancement Act of 2017 Introduced.* S. 1419 and HR 2978, companion measures entitled The Voting Rights Advancement Act of 2017, were introduced in June of 2017. The Senate bill was introduced by Sen. Patrick Leahy (D-VT) and has 46 Democratic and Independent co-sponsors. The House bill was introduced by Rep. Terri Sewell (D-AL) and has 188 Democratic co-sponsors. Both bills contain provisions aimed at improving access to registration and voting for voters on tribal lands. Both bills were referred to the respective Judiciary Committees and await further action.

*Election Assistance Commission Termination Act.* On February 7, the Committee on House Administration approved HR 634, which would dismantle the federal Election Assistance Commission (EAC). The EAC has played a critical role in helping to improve the integrity of elections in the United States. Through its work with state and local election officials and voting advocacy organizations, the EAC has canvassed the nation to identify the best practices for effective election administration. The EAC's efforts have helped state and local governments to modernize the election system and take steps to dismantle barriers to registration and voting that Native Americans continue to face. H.R. 634 would roll back that progress and impede the efforts of Native voters to exercise their fundamental right of citizenship. NCAI joined the Native American Voting Rights Coalition in a letter of opposition to HR 634.

#### **Administration Update**

In May of 2017, President Trump created a "Presidential Commission on Election Integrity." Vice President Mike Pence chairs the Commission, and Kansas Secretary of State Kris Kobach serves as the vice chair. The stated purpose of the Commission is to "study vulnerabilities in voting systems used for federal elections that

could lead to improper voter registrations, improper voting, fraudulent voter registrations, and fraudulent voting.” The Commission has been heavily criticized, however, as a sham commission with an unspoken mission of trying to restrict access to voting, particularly for marginalized voters. Critics point out that there is no evidence of widespread fraud in American elections. It is expected that the Commission will ultimately make policy recommendations that may have a damaging impact on the right to vote..

### **Other Updates**

In September 2017, NAVRC began holding field hearings across the country to collect information from Native American voters. The hearings focus 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. NCAI will be hosting the 2<sup>nd</sup> regional field hearing on Oct. 16<sup>th</sup> from 8:15-1pm in conjunction with the NCAI Annual Conference.

### **SELF-GOVERNANCE**

Self-Governance enables tribes, as sovereign nations, to exercise their right to be self-governing and to take program funds and manage them 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 governments and their institutions, all while reducing the federal bureaucracy. As a tribally-driven initiative created through Congressional legislation, it allows tribal governments to negotiate annual appropriated funding and to assume management and control of programs, services, functions, and activities—or portions thereof—that were previously managed by the federal government.

There are currently 254 Self-Governance tribes within the Department of the Interior-Bureau of Indian Affairs (DOI-BIA) and 341 Self-Governance Tribes within the Department of Health and Human Services-Indian Health Service (DHHS-IHS). Over the past 35 years, the ISDEAA has been one of the most successful mechanisms empowering tribes to develop the capacity for government-building activities. Self-Governance tribal leadership and representatives have held ongoing meetings with the Administration and Congress for more than 25 years regarding ways to improve and advance tribal self-governance.

Amending Title IV of the Indian Self-Determination and Education Assistance Act (ISDEAA) has been a top legislative priority for Self-Governance tribes for more than a decade. However, Title IV of the ISDEAA, the Self-Governance program within DOI, has serious gaps and problems. Therefore, leaders of Self-Governance tribes 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 tribes between Title IV Self-Governance in the DOI and Title V Self-Governance in the DHHS.

### **Legislative Update**

*Consistency between DOI and HHS Self-Governance Programs.* Tribes have been seeking legislation to amend Title IV of the Indian Self-Determination and Education Assistance Act to create consistency between self-governance programs in the Department of the Interior and the Department of Health and Human Services. This legislation has been introduced and considered in the past several Congresses and has wide-spread support among tribes. However, no such legislation has been introduced yet in the 115<sup>th</sup> Congress.

In the 114<sup>th</sup> Congress, the Department of the Interior Tribal Self-Governance Act (Barrasso, R-WY) passed the Senate by Unanimous Consent on July 7, 2015. With well over a year left in the 114<sup>th</sup> Congress, there was still no House activity on the bill. Concerns related to the bill's purported impact on non-BIA programs have persisted and need to be addressed before legislation can be passed by both Chambers.

NCAI continues to work with the Self-Governance group to address concerns with the goal of passing legislation in the 115<sup>th</sup> Congress.

## **ECONOMIC DEVELOPMENT AND INFRASTRUCTURE**

Across Indian Country, a growing number of tribal nations are writing self-authored stories of economic progress. From creating successful nation-owned enterprises to cultivating tribal citizen-owned businesses to preparing their people to take full advantage of expanding economic and job opportunities, they are slowly but surely building the sustainable tribal economies they require in order to revitalize their communities and achieve the futures they seek for themselves. Driving this remarkable yet uneven economic renaissance is tribal self-determination, specifically the responsibility and wherewithal of each tribal nation to create a robust economy based on its own enduring cultural values, distinct challenges, particular circumstances, and short-and long-term community development priorities.

Featured in this section are policy overviews of several main components of Indian Country economic development. For example, tribal governments need and deserve to be at the decision-making table when it comes to policy conversations and formulation around infrastructure development, which is a critical foundation for building sustainable economies. They deserve to be at the table because they have the capacity, experience, and know-how to craft, inform, and execute solutions to the infrastructure challenges facing their communities and those of their neighbors.

The policy overviews below demonstrate how focused attention and targeted action by the federal government – in consultation and collaboration with tribal governments and key national Native organizations – can greatly enhance the ability of tribal nations to achieve economic prosperity, prosperity capable of providing their citizens with job opportunities and a good quality of life.

### **TRIBAL TAX PRIORITIES**

As national tax reform gains momentum in this new Administration, the inclusion and recognition of Native American governments as sovereign entities, retaining the inherent authority to regulate and tax commerce on tribal lands, must be included. At its core, issues of taxation should reliably provide sufficient governmental revenues free from overlapping state taxation. This creates incentives for business development, infrastructure, job creation, and access to financing tools while providing certainty of jurisdiction, certainty to capital markets, and certainty of tax policy all designed to enhance economic growth directly benefitting the health and welfare of not only tribal communities but also local communities as well. This is simply not the case in Indian Country.

The last national tax reform occurred thirty years ago with the passage of the Tax Reform Act of 1986. Under the current Tax Code, tribal governments are left without many of the benefits, incentives, and protections provided by the Code to state and local governments. This inequity significantly handicaps tribal sovereign authority to provide government revenue for tribal programs independent of federal appropriations and encourage economic growth on tribal lands. Tribal governments face a losing proposition when forced to collect state taxes: either impose a dual tax or drive business away, or collect no taxes and suffer inadequate roads, schools, police, courts and health care. To add insult to injury, reservation economies are funneling millions of dollars into state treasuries who spend the funds outside of Indian Country. This dilemma undermines the Constitution's promise of respect for tribal sovereignty, and keeps Indian reservations the most underserved communities in the nation.

Reliable funding sources have been few and far between for every tribal government service for decades and in many respects, the inclusion of tribal governments in national tax policy reform represents a very real opportunity to protect and enhance the many governmental functions and services provided by Indian tribes. Both Congress and the Administration must actively engage with Native nations to achieve comprehensive tribal tax reform.

### **Tribal Tax Priorities**

Provide Tax Parity to Tribal Governments. Members of Congress and Indian tribes have worked together to identify provisions in the tax code that treat tribes differently than state and local governments. Congress should fix the disparity in the following areas:

- *Tax-Exempt Bonds.* Unlike other governments, tribes can only use tax-exempt bond financing for “essential government functions.” The IRS has interpreted this standard to exclude tribal economic development activities even though state and local governments routinely use tax-exempt financing for development projects. This limitation on tribes greatly inhibits infrastructure deployment and economic growth.
- *Government Pension Plans.* Unlike other governments, the Tax Code requires tribes to have separate types of pension plans (government and private) based on an employee’s job activities. Consequently, only tribes incur the monetary and compliance costs of maintaining two separate pension plans. Tribal governments must be able to operate a single, comprehensive, government pension plan for all their employees.
- *Tribal Foundations and Charities.* Charities funded or formed by tribal governments do not enjoy the same tax treatment as those funded or formed by state and local governments. This disparity makes it difficult for tribes to form charities and leverage tribal resources to raise charitable donations from outside donors.
- *Tribal Child Support Enforcement Agencies.* Like state agencies, tribal child support enforcement agencies should have access to federal parent locator services and the ability to garnish federal tax returns to enforce past due child support obligations.
- *Indian Adoption Tax Credit.* Currently, 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. Federal tax policy should treat tribal court orders the same as state court orders for purposes of classifying an adoptive child as “special needs”.
- *Excise Taxes.* Tribal governments are not treated the same as state and local governments for a variety of excise tax exemptions, which diverts resources from government services for tribal citizens. Tribes should be treated the same as states for purposes of exemption from federal excise taxes.

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

Exempt Tribal Distributions from the “Kiddie Tax”. 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 would provide fairness to Indian youth and families receiving benefits from tribal funds.

Provide Tribal Leader Social Security Parity. Currently, tribal leaders do not even have the option to participate in the Social Security program, making retirement planning after a lifetime of public service significantly more difficult. Authorizing tribes to enter Section 218 agreements would ensure tribal leaders have the same opportunities to plan for retirement as state and local government officials.

Simplify, Expand, and Make Permanent the Indian Employment Tax Credit. Congress passed the Indian Employment Tax Credit to create jobs in tribal communities. Simplifying, expanding, and making permanent the Indian Employment Tax Credit would increase its deployment, thereby promoting economic growth and job creation on Indian reservations.

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

Increase Low-Income Housing Tax Credits Deployment in Indian Country. Congress should treat tribes as states for LIHTC allocations, establish a tribal set-aside, and adjust 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.

## **Congressional Update**

Tax Reform on Capitol Hill. Congress and the Administration have named tax reform as a priority for the 115th Congress. The NCAI membership also emphasized the importance of tax reform for Indian Country by passing Resolution MOH-17-011, Equitable Treatment for Tribal Nations in Congressional Tax Reform, at the Mid Year Conference in Connecticut in June.

Also in June, Senator Hatch, Chairman of the Senate Finance Committee, issued a call for tax reform proposals for possible inclusion in an eventual Senate tax package. Consistent with Resolution MOH-17-011, NCAI submitted tribal tax reform recommendations to Chairman Hatch. The recommendations included Resolution MOH-17-011 and twelve supporting memoranda describing NCAI’s tribal tax priorities in greater detail. NCAI has shared these recommendations widely on the Hill, including with other members of the Senate Finance Committee and House Ways and Means Committee.

A central part of the tribal tax reform push is tribal parity with state governments. Representative Ron Kind (D-WI) again introduced H.R. 3138, the Tribal Tax and Investment Reform Act (TTIRA), which would provide parity in the areas of tax-exempt bonds; pension plans; foundations and charities; child support enforcement and parent locator services; the Adoption Tax Credit; and excise taxes. The bill enjoys bipartisan cosponsorship.

NCAI has also been working with partner organizations and representatives of individual tribes to secure for the first time introduction of TTIRA in the Senate. On October 5, 2017, Senator Moran introduced TTIRA. NCAI will continue build support for this legislation in the House and Senate, as well as push for the inclusion of tribal tax priorities in federal tax reform.

Action to Appoint Remaining Vacancy and Implementation of the Department of Treasury's Tribal Advisory Committee. NCAI will continue to urge Congress to fill the remaining vacancy and urge implementation of the 7 member Advisory Committee. Established under the Tribal General Welfare Exclusion Act of 2014, The U.S. Department of Treasury's Tribal Advisory Committee will advise the Secretary on matters related to the taxation of Indians, the training of Internal Revenue Service field agents, and the provision of training and technical assistance to Native American financial officers. In 2015, the Secretary of Treasury appointed three members of the committee of seven. Those three appointments include: W. Ron Allen, Chairman and Chief Executive Officer of the Jamestown S'Klallam Tribe; Lacey Horn, Treasurer of the Cherokee Nation; and Marilyn "Lynn" Malerba, Lifetime Chief of the Mohegan Tribe. To date, there have been three Congressional appointments to the Committee: Eugene Magnuson, Tribal Treasurer of the Pokagon Tribe; Shannon Edenfield, a Tribal Council member for the Confederated Tribes of the Siletz Indians of Oregon who serves as its Tribal Administrative Officer; and Patricia King, Treasurer for the Oneida Nation. One vacancy to be filled by Congress remains.

## **Administrative Update**

Administration's Tax Reform Framework. On September 27, 2017, the President released the "Unified Framework for Fixing Our Broken Tax Code". The framework was developed by the Administration and top Republicans on the House Committee on Ways and Means and the Senate Committee on Finance. The framework provides the basic terms of the tax legislation that will be developed in Congress.

Address the Harms of Dual Taxation in Indian Country through Modernizing the Indian Trader Regulations. NCAI urges swift action to address dual taxation in Indian Country. The Indian Trader Regulations at 25 C.F.R §140 are an anachronism in the era of Tribal Self-Determination. They have not been updated since 1957. It is no longer necessary for the Department of Interior to license traders on Indian reservations, and the regulations are an unnecessary burden on economic development. However, the underlying law at 25 USC §262 is broad and flexible authority for the Department of Interior to adopt new regulations that would meet the economic development and tax revenue needs of Indian tribal governments in the 21<sup>st</sup> Century. We urge the Department of Interior to replace the current regulations, in accordance with recent NCAI Resolution SD-15-045: *Urging the Department of Interior to Address the Harms of State Taxation in Indian Country and Prevent Dual Taxation of Indian Communities.*

On April 10, 2017, NCAI submitted comments to the Department of the Interior urging the Department to update the Indian Trader Regulations for the purpose of addressing dual taxation. In July, NCAI again urged the Administration to act on this issue when it submitted its energy recommendations to the White House. The Administration has expressed interest in exploring regulatory changes and has been seeking input from tribal

governments. The Department of the Interior will be holding a consultation at the NCAI Annual Conference that will include discussion on updating the Indian Trader Regulations.

### **TRIBAL LABOR SOVEREIGNTY ACT**

Indian tribes are sovereign governments, recognized in the U.S. Constitution. The National Labor Relations Act (NLRA) regulates labor relations between employees and private employers. Congress has recognized that it is most appropriate for each government to determine their own governmental labor policies by providing governmental exemptions for federal, state, county and city governments from the Act. Tribal governments must also be included.

The NLRA was enacted in 1935 to address growing upheavals in private industry. The Act was never designed to regulate government employment, and all governments were expressly exempted from the Act. Although the NLRA did not specifically list out every type of exempted government (e.g., the District of Columbia or Indian tribes), the NLRB consistently interpreted the government exemption to include the District of Columbia and tribal governments. But in 2004 the NLRB did an about-face and, without either consulting tribes or writing new regulations, the NLRB declared that Congress intended the Act to apply to tribal governments after all. This interpretation of the law is diametrically opposed to Congress's stated intention to exempt governments. Overnight, tribal governments became the only governments to be subject to the NLRA. Over 90,000 other units of government, who employ over 21 million Americans, are not subject to the NLRA.

Congress's wisdom in exempting governments from the Act is plain. Applying a private sector model of forced collective bargaining over all conditions of employment, under the threat of protected strikes, is a formula for interruption of governmental services. A government would have to choose between surrendering its right to enact laws, or to permit government itself be shut down by work stoppages. This is particularly problematic for tribal governments who lack any type of effective tax base. Tribal economic activities are as critical to the delivery of essential government services as is a tax base to any other government. Unlike private businesses, no government can safely shut down operations because of labor disputes. Tribal police and fire departments, schools and hospitals, courts, and tribal legislatures must stay open. Likewise, it is a basic aspect of tribal sovereignty for Indian Nations to control relations with our governmental employees on our tribal lands. A tribal exemption from the NLRA is crucial to our existence as sovereign tribal governments.

The Tribal Labor Sovereignty Act builds upon a principle that has been long established by Indian tribes across the country: when tribal sovereignty is respected and acknowledged, successful, accountable and responsible governments follow. This is not merely a legal issue but a moral imperative of protecting and defending the sovereignty of America's Indian Tribes, and guarding against any discrimination against those Tribes.

#### **Legislative Update**

*Tribal Labor Sovereignty Act of 2017, S. 63 – H.R. 986.* The Tribal Labor Sovereignty Act, S. 63 was introduced by Senator Moran (R-KS) on January 9, 2017, and referred to the Senate Indian Affairs Committee. The legislation was subsequently reported out of the Committee and is ready for action by the full Senate. This bill would add tribes to the definition of government entities exempt from the National Labor Relations Act, thereby ensuring tribal parity with state and other governments. On February 8, 2017, S. 63 was voted out of the Committee and is now ready for consideration by the full Senate.

On February 9, 2017, Congressman Rokita introduced companion legislation in the House of Representatives, H.R. 986. This bill is identical to the TLISA legislation that passed the House in the 114<sup>th</sup> Congress and has 32 bipartisan co-sponsors. On March 29, 2017, NCAI President Brian Cladoosby testified in support of H.R. 986 at a hearing of the House Subcommittee on Health, Employment, Labor, and Pensions. On September 25, 2017, this legislation was reported out of the Committee and is now ready for action by the full House of Representatives.

NCAI strongly supports passage of this legislation and will work with Congress to enact this legislation in the 115<sup>th</sup> Congress.

### **TRIBAL 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 lands continues to lag behind the nation overall. The Federal Communications Commission's (FCC) *2016 Broadband Progress Report* found that 41 percent of residents on tribal lands, with 68 percent of residents on rural tribal lands, lack access to high-speed Internet services. There are still significant barriers to tribal lands receiving this vital infrastructure and residents accessing it at affordable rates.

The primary law governing our telecommunications sector is the 1934 Communications Act, which was last amended in 1996 due to rapid advances in wireless and cable technologies. While the recognition of tribal sovereignty and requirements for tribal consultation were excluded from the original Act—and subsequent amendments in the 1996 Telecommunications Act—the Federal Communications Commission has exercised administrative flexibility to ensure tribal matters are addressed in its rulemakings. The 1996 amendments created six universal service principles to meet the goals of providing affordable and quality telecom services across the country.

To meet these mandated goals, the 1996 Telecommunications Act created the Universal Service Fund (USF) to provide financial subsidies and offset costs for the deployment of telecommunications services, especially in rural areas and for low-income individuals. 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. The USF is not funded through the collection of taxes but instead through service fees collected from wireline and wireless phone companies and voice over Internet protocol (VoIP) providers. While the Federal Communications Commission regulates the telecom industry and manages the USF, the USDA Rural Utilities Service predominantly funds deployment of the nation's telecommunications infrastructure.

### **Legislative Update**

The 1996 Telecommunications Act was the last major authorizing bill to pass Congress that directs the Federal Communications Commission's work. Because a comprehensive telecommunications bill has not been passed in over 20 years, Congress has elected to approach the changing technological landscape through smaller pieces of legislation.

*New Deal Rural Broadband Act of 2017 - H.R. 800.* On February 1, 2017, Congressman Jared Huffman (D-CA-2) introduced H.R. 800, the “New Deal Rural Broadband Act of 2017” that establishes an Office of Rural Broadband Initiatives within the US Department of Agriculture. The bill also has a Tribal Broadband Assistance title that authorizes \$25 million per year for 5 years to provide broadband services on Tribal Lands.

*Measuring Economic Impact of Broadband Act of 2017 - S. 645.* On March 15, 2017, Senator Amy Klobuchar (D-MN) introduced S. 645 “Measuring Economic Impact of Broadband Act of 2017.” The data collection bill directs the Department of Commerce through the Bureau of Economic Analysis to assess and analyze the effects of broadband deployment and adoption on the economy of the United States in consultation with Tribal Governments.

*Tribal Digital Access Act - H.R. 1581.* On March 16, 2017, Congressman Raul Ruiz (D-CA-36) introduced the H.R. 1581, the “Tribal Digital Access Act of 2017.” The Tribal Digital Access Act amends the Communications Act of 1934 to extend Universal Service principles to Indian Reservations, Indian Communities, allotments and areas with high populations of Indian people. The Universal Service program’s mission is to create accessible telecommunications rates and access to high cost rural and insular areas. This legislation would extend that mission to Indian Country.

*CONNECT for Health Act of 2017 - H.R. 2556.* On May 19, 2017, Representative Diane Black (R-TN) introduced the Connect for Health Act of 2017 which provides for Accountable Care Organizations to expand telehealth services. The bill would also authorize the Indian Health Service facilities, whether operated by IHS, the Tribe or Tribal Organization, to be eligible for services under this bill.

*16 Members of Congress ask the FCC to move on the Operating Expense Limitation Rule.* On July 31, 2017, a bipartisan group of 16 Members of Congress wrote the FCC to ask for swift action on the Operating Expense Limitation Rule. The Operating Expense Limitation Rule would exempt telecommunications providers from expense limitations when they are serving Tribal Lands. Led by Congresswoman Torres (D-CA) and Congressman Young (R-AK), the letter urges the FCC to vote on this item as soon as possible.

*NCAI and NIHB Submit Telehealth Testimony to House Small Business Committee.* On July 27, 2017, NCAI and the National Indian Health Board submitted joint testimony for the record to the House Small Business Committee for the hearing entitled “21st Century Medicine: How Telehealth Can Help Rural Communities.” The joint comments highlighted the great potential for telehealth in Indian Country and recommended better coordination between FCC, USDA and IHS, requested a Tribal set-aside for 5% of Rural Health Care funds and requested increased data collection on Tribal Telehealth.

*Senate Committee on Indian Affairs hosts Roundtable on Infrastructure Permitting.* On Thursday, September 28, 2017, the Senate Committee on Indian Affairs hosted a round table on "Best Practices in Tribal Consultation and Stakeholder Engagement: Federal Permitting and Infrastructure Project Review in Indian Country." The Roundtable was hosted by Senate Committee on Indian Affairs Chairman Hoeven and Vice Chairman Udall,

and was attended by Senators Heitkamp (ND), and Franken. Senator Carper, the Ranking Member on the Senate Environment and Public Works Committee was also in attendance. The Roundtable brought together tribal organizations, tribal industries, federal officials, and industry to discuss topics such as Section 106 Historic Preservation permitting in projects that impact tribal land, early engagement of tribal nations, and consistent treatment of permitting processes throughout the federal government. NCAI participated in the roundtable and reinforced the effectiveness of the Section 106 process as it currently exists and reminded the FCC that its trust responsibility is to Tribal Nations and not to industry partners.

### **Administrative Update**

Section 106 Streamlining Proposed Rule at the Federal Communications Commission. On April 24 2017, the Federal Communications Commission issued a proposed rulemaking intended to streamline Tribal review of wireless infrastructures' impacts on Tribal historic and cultural properties. (FCC Notice of Proposed Rulemaking, Docket 17-79 "Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment). Through this rulemaking the FCC looks to find exclusions to Tribal Historic Preservation Officer review like pole replacements and Rights of Way and also looks to place limits on a Tribe's ability to define their area of interest. This proposed rulemaking seeks to streamline the Tribal Section 106 Review of Wireless Infrastructure deployment through the FCC's Tower Construction Notification System. Currently, Tribes review applications for most wireless infrastructure deployment in an area of interest defined by the tribe. NCAI has serious concerns in the Notice of Proposed Rulemaking that would limit Tribes ability to protect sacred sites like certifying areas of interest, applicant self-certification, exclusions for Rights of Way and lack of consultation.

NCAI hosted a webinar on this issue which can be viewed on the NCAI website. On June 15, 2017, NCAI, United South and Eastern Tribes Sovereignty Protection Fund, National Association of Tribal Historic Preservation Officers, Affiliated Tribes of Northwest Indians, Alaska Federation of Natives, All Pueblo Council of Governors, California Association of Tribal Governments, Great Lakes Inter-Tribal Council, Great Plains Tribal Chairman's Association, Inter-Tribal Council of Arizona, Inter-Tribal Council of the Five Civilized Tribes, Midwest Alliance of Sovereign Tribes, Southern California Tribal Chairmen's Association, United Tribes of Michigan submitted joint comments to the FCC on this docket. The FCC will host a listening session at NCAI's Annual Convention on Monday October 16<sup>th</sup> at 9am.

Telemedicine Notice of Inquiry. On May 24, 2017, NCAI and the National Indian Health Board filed comments on docket 16-46 "Actions to Accelerate Adoption and Accessibility of Broadband-Enabled Health Care Solutions and Advanced Technologies." NCAI and NIHB commented on the lack of broadband in Indian Country and the potential for success of telemedicine in the Indian Health Service. While the Indian Health Service does have existing Telehealth programs related to behavioral health, NCAI urged the FCC to collaborate with IHS on accelerating telemedicine in Indian Country. Tribes are encouraged to submit comments for the record on this notice. The FCC held four listening sessions on telehealth throughout August and September. The different sessions focused on healthcare providers, rural and consumer issues, technology and broadband, and policymakers. NCAI will host a panel discussion on telemedicine in the Wednesday Breakout Session titled "Healing Tribal Communities."

FCC Order Surrenders Radio Stations for Possible Tribal Acquisition. On May 26, 2017, the FCC adopted a consent decree (FCC Order DA 17-458) ordering a renewal of 12 radio station licenses while surrendering 9 other stations for donation to Tribal entities or other non-profit groups. The Surrendered Stations include: KXWY, Hudson, WY; KTWY, Shoshoni, WY; KWWY, Shoshoni, WY; KFMR, Ballard, UT; KZLM, Lewiston, MT; KZNM, Milan, NM; KHSK, Allen, NE; KDNM, Reserve, NM; and KSFQ, Thatcher, AZ. Qualified Tribal Nations will have the opportunity to relocate stations pursuant to Tribal Priority requirements.

NCAI Submits Comment in favor of Tribal Telco's Petition for Waiver of High Cost Loop Support. On October 9, 2017, NCAI submitted a filing with the Federal Communications Commission in support of the Gila River Telecommunication Inc.'s petition for a waiver of the National Average Cost Per Loop Freeze. The FCC elected to freeze the national average cost per loop, thereby cutting substantial Universal Service funding to high cost providers, including Tribally owned telecommunications companies. NCAI filed comments in 2014 urging the Commission to not take this action. These across the board cuts have harmed Tribal businesses and have made deploying broadband on Tribal Lands more costly.

## **NATIVE AMERICAN HOUSING**

Housing needs are critical for Native families on tribal lands where housing shortages and overcrowding conditions persist. Earlier this year, the U.S. Department of Housing and Urban Development (HUD) released a report, "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 highlighted the issue of overcrowding and determined 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 HUD report also indicated, that a total of 68,000 new and/or replacement homes are needed in Indian Country.

U.S. Census Bureau data from the 2006-2010 American Community Survey shows that of the approximately 142,000 housing units in Indian Country, many lack utilities and basic infrastructure. The survey shows that approximately 8.6% lack complete plumbing facilities, 7.5% lack kitchen facilities, and 18.9% lack telephone service. Close to 30% of Indian homes rely on wood for their source of heat. These staggering statistics represent longstanding challenges facing Indian tribes, and the need for sustained investments to address these chronic challenges.

### **Legislative Update**

The Native American Housing Assistance and Self-Determination Act Reauthorization S. 1895 and H.R. 3864. On September 28, 2017, Senator Tom Udall (D-NM) and Congressman Stevan Pearce (R-NM) introduced legislation to reauthorize NAHASDA, which expired in September of 2013. The companion bills, titled, "Native American Housing Assistance and Self-Determination Reauthorization Act of 2017", would reauthorize NAHASDA for five years. The legislation also reauthorizes the Indian Housing Block Grant and Section 184 Home Loan Guarantee Program and consolidates the environmental review requirements.

NCAI has advocated for the reauthorization of the Native American Housing and Self-Determination Act (NAHASDA), since 2013 when the authorization expired. The NAHASDA authorizes and administers Indian

housing programs within the U.S. Department of Housing and Urban Development for American Indian and Alaskan Natives to provide safe and decent housing. NAHASDA effectively replaced the various Indian housing programs under the 1937 Housing Act and consolidated federal housing funds through direct block grants to the tribes and their housing authorities. NAHASDA allows tribes to design and implement their own housing and other community development infrastructure programs. In this way, NAHASDA has been one of the most successful self-governance programs for Tribal Nations.

If enacted, the legislation would make the HUD-Veterans Affairs Supportive Housing Program (HUD-VASH) permanent and would statutorily enable tribes to be eligible to participate in this program. The HUD-VASH program is jointly administered by the U.S. Department of Housing and Urban Development and U.S. Department of Veterans Affairs and is intended to address housing needs for at-risk and homeless Native Veterans residing on tribal lands.

In addition, the legislation includes a provision for a private investment demonstration program for tribes to construct and develop affordable housing. The bills also include the reauthorization of the Native Hawaiian Homeownership Act and the housing loan guarantees for Native Hawaiian housing.

S. 1895 was referred to the Senate Committee on Indian Affairs, and H.R. 3864 was referred to the House Committee on Financial Services. NCAI has standing resolution in support of the reauthorization of NAHASDA (#REN-13-070) and the Title VIII of NAHASDA, which is the Native Hawaiian housing programs (#REN-13-071).

### **Administrative Update**

General Deputy Assistant Secretary for Public and Indian Housing. On October 3, 2017, HUD announced the appointment of Ms. Dominique Blom as the new General Deputy Assistant Secretary for Public and Indian Housing within the U.S. Department of Housing and Urban Development. Ms. Blom would be working with tribal leaders and Tribally Housing Designated Entities on Indian housing for the Public and Indian Housing.

Indian Community Development Block Grant. On September 14, 2017, U.S. Department of Housing and Urban Development awarded \$55 million for FY 2017 Indian Community Development Block Grants. The awards went to 77 tribal communities in Alaska, Arizona, California, Idaho, Kansas, Maine, Michigan, Minnesota, Montana, Nevada, New Mexico, New York, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.

### **TRANSPORTATION**

Transportation infrastructure is an important component of tribal governance and economic development for tribal communities. Safe and adequate roads, bridges, and other modes of transportation are integral to ensure the safety of tribal citizens, provide economic opportunities and tribal infrastructure for public safety, housing, education 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 tribes, the Bureau of Indian

Affairs (BIA), states and counties. Of those, Indian tribes own and maintain 13,650 miles of roads and trails, of which only 1,000 (or 7.3 percent) are paved, with another 12,650 miles consisting of gravel, earth, or primitive materials. Of the 29,400 miles owned and maintained by the Bureau of Indian Affairs, 75 percent of them are graveled, earth, or primitive. When combined, the roads owned and maintained by Indian tribes 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 American Indian and Alaska Native communities by Native and non-Native residents and visitors alike.

### **Legislative Update**

John P. Smith Act- S. 302. Senator John Barrasso (R-WY) introduced S. 302 on February 3, 2017. This bill would incentivize tribal transportation projects that improve safety in tribal communities by creating a categorical exclusion from environmental review or assessments. Safety projects covered under this Act include roads, pedestrian and bicycle lanes, railway and highway crossings, highway signage and payment 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 tribes who can show sufficient administrative procedures and other requirements to determine on their own behalf which projects could be excluded from environmental review or environmental assessments.

### **Administrative Update**

Deputy Assistant Secretary for Intergovernmental Affairs Appointed at Department of Transportation. In July, the Anthony Bedell was appointed to the position of Deputy Assistant Secretary for Intergovernmental Affairs and Tribal Government Affairs. Deputy Assistant Secretary Bedell is responsible for the tribal affairs issues for the U.S. Department of Transportation.

Tribal Transportation Self-Governance Negotiated Rule Committee. The FAST Act (P.L. 114-94) included the expansion of tribal self-governance throughout the U.S. Department of Transportation (DOT). Last year, the Department formulated a Tribal Transportation Self-Governance Negotiated Rulemaking Committee, to implement the self-governance requirements. The rulemaking began its work in 2016, however the Committee has been stalled since January of this year. NCAI continues to support the expansion of self-governance programs throughout the Department of Transportation and will continue to advocate for the work of the Committee to resume.

Tribal Interior Budget Council BIA Road Maintenance Subcommittee. On March 23, 2016, the Tribal Interior Budget Council created a subcommittee to address the budgetary needs in the Bureau of Indian Affairs Road Maintenance Program. This program, one of the largest at the BIA, plays a critical role in meeting the infrastructure need in tribal communities. The BIA is responsible for maintaining approximately 29,500 miles of roads in Indian Country including 900 bridges. However funding for the BIA Road Maintenance program has remained stagnant at approximately \$26 million for over a decade, while deferred maintenance continues to grow and is now over \$289 million. NCAI continues to work with this subcommittee to ensure the funding for this vital program is increased.

## **NORTH AMERICAN FREE TRADE AGREEMENT**

The United States, Mexico and Canada have initiated negotiations aimed at modernizing the North American Free Trade Agreement (NAFTA). NAFTA created the world's largest free trade zone, with a combined population of almost 400 million people within the U.S., Mexico and Canada and more than \$600 trillion in combined gross domestic product. However, the initial agreement did not include concerns of Indigenous Peoples. With negotiations picking back up to modernize NAFTA, Indigenous Peoples have an opportunity to make their voices heard and advocate for the inclusion of an Indigenous Chapter within any modernized NAFTA. Indigenous Peoples from Canada are working closely with Canada's Global Affairs Unit on including such a chapter and NCAI has an opportunity to add Tribal Leaders' concerns to the discussions.

Negotiations have been on a fast track, with the 4<sup>th</sup> round taking place Oct. 11-15 in Washington, DC and the 5<sup>th</sup> round expected to take place shortly thereafter. Mexico and the U.S. have both indicated that they would like negotiations to be concluded by the end of the first quarter of 2018.

During this Annual Conference, NCAI members will discuss this in more detail to identify areas of concern and opportunity, such as the protection of tribal economic development opportunities, tribal homelands, Indigenous Peoples and natural resources, and the protection of objects of cultural significance and/or Indian arts and crafts.

## **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. Four primary purposes of the TANF program are to: 1) provide assistance to needy families so that children of those families may be cared for inside the home; 2) to reduce dependency by promoting job preparation, work, and marriage; 3) to prevent and reduce the incidence of out-of-wedlock pregnancies; and 4) to encourage the formation and maintenance of two-parent families.

Under section 412 of the Social Security Act, federally-recognized Native American tribes can apply for funding to administer and operate their own TANF programs—in which case the tribe will be required to submit a three-year Tribal TANF plan to the Secretary of the Department of Health and Human Services (HHS) through the Administration for Children and Families (ACF) for review and approval. If approved, Tribal TANF programs will receive a portion of the state TANF block grant from the state where the tribe is located.

Since 1997, TANF grants have served 284 federally recognized tribes and Alaska Native villages through 70 approved tribal TANF programs. TANF gives federally-recognized Indian tribes flexibility in the design of welfare programs to fit the needs of their communities which promotes tribally relevant programs to assist in strengthening families.

The NCAI Tribal TANF Task Force was created in 2008 and consists of tribal leaders and Tribal TANF program staff with the goal of ensuring that Tribes have a national voice in TANF and related human services programs' policies, administration and legislation.

## **Legislative Update**

Reauthorization of TANF. TANF was originally up for reauthorization in 2010. Since then, TANF has received short-term extensions to maintain funding instead of a multi-year extension. The most recent extension of funding was in the FY2017 Consolidated Appropriations Act which extended TANF funding for the remainder of FY2017 and for FY2018 at \$16.5 million dollars for tribes, states and territories.

Although the legislation has not yet been introduced in the 115<sup>th</sup> Congress, NCAI supports the multi-year reauthorization of TANF.

## **WORKFORCE DEVELOPMENT**

Workforce development success in and for Indian Country is demonstrated to hinge above all else on the ability of tribal nations, Native organizations, and tribal colleges and universities (TCUs) to craft innovative, customized solutions to the particular capacity building needs of tribal nations and communities. In that vein, the appropriate role of the federal government is *not* to impose a uniform set of answers to tribal workforce development challenges nationwide. Its job instead is to provide tribal nations, Native organizations, and TCUs with the governance freedom, programmatic flexibility, training and technical assistance, and resources that they need to design and implement bold strategies capable of advancing the distinct workforce development priorities of the specific tribal communities that they serve.

This means working closely with tribal nations and communities to identify and remove the obstacles that currently obstruct tribal innovation, and create new opportunities for tribal ingenuity to take root and flourish. The federal government’s task is to endow its systems, processes, programs, and funding protocols with the ease and adaptability that tribal nations and communities have shown that they need to effectively build their human capacity in accordance with their cultural values and in furtherance of their community and economic development goals. As one longtime tribal workforce development expert explains, “It’s about letting tribes be tribes, and doing things in a tribal way.”

Fulfilling these obligations will take time, focused attention, and sustained effort. It is important to acknowledge the progress that the federal government already has made in providing tribal nations and communities with greater latitude to devise their own tailored workforce development solutions, with Public Law 102-477 and Section 166 of the Workforce Innovation and Opportunity Act (WIOA) among the most notable examples. But additional measures can be taken to more effectively bolster Native-led workforce development efforts.

In October 2016, NCAI released a policy brief “Empowering Tribal Workforce Development,” that presents a comprehensive set of policy recommendations for Congress and the Administration to consider as they engage with tribal nations, leaders, and workforce development practitioners about the best paths forward.

## **Legislative Update**

Indian Employment, Training and Related Services Consolidation Act of 2017 (S. 91, Murkowski, R-AK and H.R. 228, Young, R-AK). These companion bills amend Public Law 102-477 – titled the “Indian Employment, Training and Related Services Demonstration Act of 1992” – to provide for further tribal integration of employment,

training, and related services programs using federal funds. In addition, the legislation revises and expands the types of programs that may be included within an approved tribal 477 integration plan, enables tribes to use available funds to place participants in training positions with employers, and imposes on the Bureau of Indian Affairs a 45-day deadline to disburse funds to recipient tribes. It also treats any funds transferred to a tribe under the legislation as non-federal funds for the purposes of meeting matching requirements under any other federal law.

H.R 228 was passed by the House of Representatives on February 27, 2017. Meanwhile, S. 91 was approved by the Senate Committee on Indian Affairs on February 8, 2017, and is awaiting a vote by the full Senate. On October 6, 2017, NCAI sent a letter to Senate Majority Leader Mitch McConnell and Minority Leader Charles Schumer requesting the expeditious consideration of either bill by the Senate. In addition to passage of this legislation, NCAI recommends the following legislative initiatives in the 115<sup>th</sup> Congress:

Amend Section 166 of WIOA. Congress should pass three amendments to the current language in Section 166 of WIOA to enhance Native-led workforce development efforts: The amendments – which the Administration should champion – are as follows:

- (1) Revise the language in Section 166(h)(1) to ensure that the performance indicators and standards applicable to Section 166 programs are standards specifically appropriate to that program.; (2) Remove the application of the performance accountability provisions in the current Section 116 from all funds provided to implement the Native American programs in Section 166 and use the metrics and standards developed specifically for these programs in consultation with the Native American Employment and Training Council in accordance with Section 166(h); and (3) Expand Subsection 166(i)(6) to enable tribal nations or other grantees receiving formula funds from any state under the adult, youth and/or dislocated worker programs to negotiate an agreement with the state and the Secretary providing for the utilization of the funds involved under the terms applicable to Section 166 programs. This amendment would foster state-tribe collaboration on the provision of services to Native people.

## **Administrative Update**

NCAI's Partnership for Tribal Governance (PTG) Prepares to Release Additional Resources on Tribal Workforce Development. In addition to its “Empowering Tribal Workforce Development” federal policy brief, NCAI’s PTG is producing a set of five case studies documenting innovative tribal approaches to workforce development. The first three case studies – Coeur d’Alene Tribe, Confederated Salish and Kootenai Tribes, and Ysleta del Sur Pueblo – have been released, and the remaining two (Gila River Indian Community and Quinault Indian Nation) will be released in October and November 2017, respectively. PTG also will release a tribal leaders toolkit on workforce development in early 2018. To learn more, please visit: <http://www.ncai.org/ptg/work-force-development>.

NAETC Recommendations to DOL Leadership. NCAI supports the recommendations of DOL’s Native American Employment and Training Council (NAETC) to the Secretary of Labor, including: (1) strengthening Indian Country’s voice within DOL by elevating the authority of the NAETC to have direct consultation with the Office of the Secretary, and elevate the Division of Indian and Native American Programs within the ETA organizational structure in order to have a direct relationship to the Office of the Assistant Secretary and the

Secretary; and (2) that the DOL work with NAETC and WIOA Section 166 and Public Law (P.L.) 102-477 grantees to convene a tribal workforce summit “to plan a path forward that will be in the best interest of our communities and the Nation as a whole.”

*Foster Closer Collaboration between Tribal Workforce and Economic Development Initiatives.* The Administration should launch a joint examination by tribal leaders, tribal workforce development practitioners, and federal agency managers to examine the regulations and policies of programs in Commerce, ED, HHS, HUD, DOI, DOL, Treasury, and the Small Business Administration that support tribal economic development and tribal workforce development to ensure that these programs work in tandem to stimulate the development of tribal economies and build the human capacity needed to sustain that development. The federal government also should exempt activities and funds spent on integrated economic and workforce development planning and operations from restrictions on expenditures, program reporting, and accountability requirements that are focused primarily on the skill development of individual participants. It also should explore statutory changes similar to the one in P.L. 102-477 that enables tribal nations participating in that initiative to spend a portion of their funds on economic development, broadly defined by the nations themselves.

*The American Indian Population and Labor Force Report is Long Overdue.* The report, which the Department of the Interior is required by statute to produce every two years, was last produced for the year 2013, making the next report long overdue. This report can be an important tool for assessing the current state of the Native workforce and crafting solutions to expand/strengthen it. For the next report to provide substantive value to tribal nations, Native organizations, and TCUs, its development must involve tribal leaders and data experts, and it should be informed by workforce and occupational data generated by tribal researchers, to which the federal government should provide technical expertise and financial resources in order to perform the work. This data should be geared towards measuring the distinct job market needs in Indian Country and illustrating the particular socio-economic conditions that impact Native people specifically.

## BUDGET & APPROPRIATIONS

Budget Resolutions. The House adopted its fiscal year (FY) 2018 budget resolution on Thursday, October 5th, five days after the start of the fiscal year 1. The [House FY 2018 Budget Resolution](#) would advance the most comprehensive tax overhaul in three decades and would require Congress to cut entitlement programs by at least [\\$203 billion over ten years](#).

Before a conference of the budget resolution can begin, the Senate must hold a floor vote later this month. The Senate Budget Committee reported out its version of the Budget Resolution on October 5<sup>th</sup>. The House budget plan shares some similarities with the Senate budget plan, which are outlined below as well as the impacts to tribal programs.

Non-Defense Discretionary Spending. As a part of the federal budget, discretionary appropriations comprise one-third of spending. Part of the federal trust responsibility includes basic governmental services in Indian Country, funding for which is appropriated in the discretionary portion of the federal budget. As governments, tribes must deliver a wide range of critical services, such as education, workforce development, and first-responder and public safety services, to their citizens.

The House Budget Resolution would reduce spending for non-defense discretionary spending by \$1.4 trillion over the decade through 2027. The Senate Budget Resolution would cut this category of spending by \$800 billion over the next decade. These reductions are below the caps imposed by the Budget Control Act of 2011, which were already very low.

Health Care Program Cuts. The House Budget Resolution would cut Medicaid, Medicare, and the Affordable Care Act's subsidies for health insurance and other health programs by \$2 trillion over the next decade. The Senate's budget plan would cut these health programs by \$1.8 trillion.

Medicaid provides critical supplemental revenue for the chronically under-funded Indian Health Service (IHS). The Medicaid program pays for comprehensive health care primarily for low-income individuals. Eligibility varies by state, but many American Indians/Alaska Natives qualify for coverage in this program, in addition to access to care and eligibility through IHS. Medicaid recipients can use health providers outside of the Indian health system without depleting scarce referral dollars at IHS. Since almost 40 percent of all IHS users are covered by Medicaid, it is an important source of funding for IHS, representing 13 percent of total IHS funding.

Income Security Cuts. The House and Senate Budget Resolutions both would cut Income Security programs over the next decade, a category of spending which benefits Indian Country. Income Security includes SNAP (formerly food stamps), Supplemental Security Income (SSI) for poor seniors and people with disabilities, the refundable portions of the Earned Income Tax Credit and Child Tax Credit, unemployment insurance, TANF, and others. The House budget plan would cut Income Security by \$900 billion. The Senate plan would cut this category by \$700 billion over ten years. The cuts deepen as each year passes in both plans.

These reductions would impact American Indian households on reservations, a third of which [benefit from SNAP](#) compared to 13 percent of all U.S. households. Similarly, [13 percent of AI/AN](#) households on reservations receive SSI compared to 5 percent of all households.

FY 2018 Appropriations. The Senate budget resolution assumes topline discretionary spending in fiscal 2018 that align with the spending caps of the 2011 Budget Control Act (BCA) (PL 112-25), \$516 billion for non-defense discretionary. The BCA caps differ from the \$511 billion for nondefense discretionary spending assumed in the House budget resolution (H Con Res 71). The House of Representatives passed a \$1.23 trillion omnibus spending package on September 14, 2017 that would fund the government for the fiscal 2018 year. The omnibus violates the Budget Control Act statutory cap on defense spending by \$72 billion. If the House omnibus were to become law, it would trigger across-the-board cuts to defense programs, known as a sequester, of about 13 percent. Democrats in the Senate oppose the bill's funding for a proposed border wall. The bill as it stands is unlikely to pass the Senate however. The federal government is currently operating under a stopgap continuing resolution (PL 115-56), which extends current funding through December 8.

Key Ask on Budget Resolutions. Policymakers should consider the distributional impacts to households as well as American Indians/Alaska Natives if the federal budget is cut in the future to reduce deficits caused by tax cuts; the cuts to federal treaty and trust obligations coupled with cuts to mandatory programs such as Medicaid and SNAP could leave AI/AN households worse off, even with some tax reductions.

### **Interior Appropriations in the Omnibus**

Overall, the House Omnibus spending bill restores cuts to the [Bureau of Indian Affairs](#) and Indian Health Service that were proposed in the Administration's budget request, but provides funding level with FY 2017 amounts.

BIA/BIE. For the Bureau of Indian Affairs/Bureau of Indian Education, the House Omnibus bill would provide an increase of \$10.9 million above the FY2017 enacted level for a total of \$2.87 billion in FY 2018. The total amount the bill would provide is \$382.7 million more than requested in the President's budget.

The Omnibus bill restores most of the cuts proposed for tribal programs in the Interior spending bill that were put forward in the Administration's FY 2018 budget request. For instance, the House bill restores all of the cuts that were proposed for the Tiwahe initiative. Cuts were restored for social services, housing improvement, ICWA. Similarly, many natural resource programs that were proposed to be cut in the President's budget were restored, such as Rights Protection Implementation, Tribal Climate Resilience, Forestry, Water Resources, and Fish-Wildlife-Parks. In Trust Real Estate services, all proposed cuts are restored except for central oversight. Same with Public Safety and Justice, all cuts were restored, including law enforcement and Tribal Courts.

Overall, the House Omnibus bill increases Operation of Indian Programs by about 1% (\$21.5 million) above the FY 2017 enacted levels and 13.4% (\$278.4 million) above what the President proposed. The House bill also provides \$10.2 million more than enacted in FY 2017 for construction, about a 5% increase, and provides \$58.9 million more than the President's budget (41.1% more).

IHS. The House bill provides an increase of \$397.5 million over the FY 2017 enacted amount for total budget authority for IHS, about a 2% increase. The bill provides \$397.6 million more than requested in the FY 2018 Administration's budget.

Key Ask on Appropriations. NCAI urges Congress to reject the proposed cuts to the Bureau of Indian Affairs and Bureau of Indian Education, which violate the federal treaty and trust obligations to Indian tribes and to instead provide for increases to BIA in the Senate version of the FY 2018 Interior-Environment spending bill.

## INTERNATIONAL ISSUES

For many years NCAI has engaged at the international level when important policy decisions are under discussion that impact tribal interests, including at the United Nations (UN) and the Organization of American States (OAS). NCAI holds ECOSOC consultative status with the UN, which allows us to participate in many UN meetings. NCAI works in close partnership with the Native American Rights Fund (NARF), who represents NCAI on many international policy issues. Given the time and expense of international advocacy, NCAI and NARF are selective about when we engage on international issues. In recent years, we have prioritized certain negotiations at the UN and the OAS that have been creating the structural framework for the advancement of indigenous rights, including the negotiation and adoption of the UN Declaration on the Rights of Indigenous Peoples in 2007 and the American Declaration on the Rights of Indigenous Peoples in 2016.

### **FOLLOW-UP to the 2014 WORLD CONFERENCE ON INDIGENOUS PEOPLES**

On September 22-23, 2014, the United Nations (UN) hosted the World Conference on Indigenous Peoples (WCIP). The WCIP included over 1,000 indigenous representatives from all over the world, as well as all 193 UN member countries. The purpose of the WCIP was for members of the UN and indigenous peoples to discuss implementation of the Declaration on the Rights of Indigenous Peoples.

Leading up to the World Conference, NCAI joined with a large group of American Indian and Alaska Native tribes, inter-tribal associations, and non-profit organizations to advocate for four priorities at the World Conference. These priorities were:

1. establishing an appropriate status for Indigenous governments at the UN;
2. creating a UN mechanism to monitor and promote implementation of the Declaration;
3. adopting measures to prevent violence against Indigenous women and children; and
4. protecting sacred places and objects.

During the opening session of the WCIP, the UN General Assembly adopted an Outcome Document that provides for concrete and action-oriented measures to implement and achieve the objectives of the United Nations Declaration on the Rights of Indigenous Peoples. While we did not get everything we were asking for, the Outcome Document does address all 4 of our priorities in one form or another. Over the past two years, there has been a great deal of follow-up work to the WCIP and NCAI, in partnership with the Native American Rights Fund, has been fully engaged in continuing to advocate with various UN bodies for meaningful action on our four priorities. We anticipate further engagement on our four priorities as follows.

*Creating an Implementing and Monitoring Body for the UN Declaration.* The UN Human Rights Council adopted a resolution at its Sept. 2016 session to reform the mandate of the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) to give it greater capacity, autonomy, and resources to press for implementation of the UNDRIP. The reformed mandate will significantly change the way that EMRIP will function. Its main tasks will be to assist states to meet the standards of the UNDRIP, facilitate dialogue between states and Indigenous Peoples, take in information about violations of indigenous rights, and provide technical advice to

states and Indigenous Peoples. The membership of the EMRIP was expanded from 5 to 7 persons to make it a more representative body. Professor Kristen Carpenter from the University of Colorado Law School was appointed to serve as the expert from North America. The annual meeting time for the EMRIP was expanded with an additional 5 working days to allow it to better achieve its mandate. At its July 2017 session, the EMRIP adopted new methods of work consistent with its reformed mandate.

Enabling Indigenous Governments to take their Rightful Place in the UN. Since 2015, the UN has been engaged in consultations on the issue of indigenous government participation in the UN. Multiple consultation sessions were held with indigenous peoples and member states with the goal of developing a resolution that the UN General Assembly could adopt this year that would enhance the participation of indigenous governments at the UN. After several months of difficult negotiations among UN member states, the General Assembly adopted a compromise resolution on September 8, 2017. The resolution agreed to extend consideration of the issue of enabling the participation of indigenous governments at the United Nations through the 75<sup>th</sup> session in 2020-2021. The resolution establishes a multi-year calendar of consultations, meetings, and production of a report including:

1. Annual interactive hearings with indigenous peoples by the President of the General Assembly during the PFII's annual sessions **(April 2018, April 2019, and April 2020)**
2. Regional consultations with indigenous peoples by the Secretary-General (with the support of member states) before the Permanent Forum's 19<sup>th</sup> Session **(April 2020)**
3. Secretary-General's Report before the end of the GA's 74<sup>th</sup> Session **(September 2020)**
4. Continued consideration of measures to enhance participation during the GA's 75<sup>th</sup> Session **(September 2020-September 2021)**

This outcome was very disappointing to the indigenous peoples who had been engaged in the process and reflects the failure of the UN member states to achieve consensus at this time on a resolution that would allow greater participation of indigenous governments in the UN. The resolution does, however, encourage existing UN bodies including the Permanent Forum on Indigenous Issues (PFII), Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), and the Special on the rights of indigenous peoples (SRRIP) to enhance the participation of indigenous governments. 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. NCAI recently joined with the Indian Law Resource Center, with the Ewiiapaayp Band of Kumeyaay Indians, and the Native American Rights Fund in making comments to the Human Rights Council urging the Council to adopt rules to accommodate the participation of indigenous governments and to consider the topic during its annual panel discussion in 2018. NCAI will continue to advocate strongly for tribal nations to have an appropriate, dignified place at the United Nations.

Climate Change. Despite having a negligible carbon footprint, indigenous peoples often are the most severely impacted by the effect of climate change because of their close relation with the land and reliance on natural resources. Right now, as many as 184 Alaska Native villages are threatened with removal due to climate-based changes. And the effects are only getting worse. Communities are losing homes, hunting and fishing landscapes

are changing drastically, and changes in weather patterns are adversely affecting the harvesting of plant-based foods and medicines.

Indigenous peoples from around the world, including NCAI, NARF, and many tribal leaders from the U.S., participated in the negotiations and preparations leading up to the historic Paris Agreement, which was finalized in December of 2015. Following President Trump's announcement of his intention to withdraw from the agreement, NCAI and NARF released a statement recommitting to work towards implementation of the agreement. A number of tribal nations have released similar statements. NCAI is committed to working to ensure that all parties respect, promote, and consider indigenous peoples' rights in all climate change actions, as is required by the Paris Agreement. Indigenous peoples often can offer unique knowledge on how to respond to climate changes. It is essential that this place-based knowledge is included in any discussion of climate change. Based on years of hard work, the International Indigenous Peoples Forum on Climate Change (IIPFCC), achieved some notable success in the Paris Agreement and Paris Decision on climate change. The preamble acknowledges the need to take the rights of Indigenous Peoples into account in all climate change action. Operative Article 7, paragraph 5 acknowledges the need to take the traditional knowledge of Indigenous Peoples into account in adopting adaptation measures. Paragraph 135 of the Paris Decision calls for strengthening traditional knowledge and establishes a local community and Indigenous Peoples traditional knowledge platform. The purpose, function and structure of the platform are yet to be decided. The Subsidiary Body for Scientific and Technical Advice (SBSTA) will consider this issue in Bonn, Germany in November, 2017 and will make a recommendation to the Conference of the Parties (COP) for implementing the platform. The full and effective participation of Indigenous Peoples in this process is crucial. The platform provided the opportunity, for Indigenous Peoples to contribute greatly to solving the climate change crisis, but it poses acute dangers to the traditional knowledge as well. It is crucial to have the input of tribal leaders and traditional knowledge holders into this process to ensure that the traditional knowledge is respected, protected and properly used.

We will continue to work with the International Indigenous Peoples Forum on Climate Change to ensure a platform that best serves indigenous peoples and preserves and shares traditional knowledge in a way that is respectful of indigenous peoples' right to self-determination and that their rights to their lands, territories, and natural resources are honored.

*Intellectual property and traditional knowledge.* The World Intellectual Property Organization (WIPO) is currently negotiating an international instrument that, if adopted, would create new binding international law relating to intellectual property and the protection of traditional knowledge, genetic resources, and traditional cultural expressions, including those of Indigenous Peoples. On May 4-5, 2017, the Native American Rights Fund and the University of Colorado Law School hosted a drafting session to propose text for the WIPO negotiations session in Geneva, Switzerland on June 12-16, 2017. The draft proposed text focuses on the problem of theft and illegal possession of tribal cultural expressions. It also addresses false marketing suggesting affiliation, approval or endorsement by indigenous peoples. Three WIPO member nation states chose to introduce the proposed text for consideration into the draft WIPO instrument on traditional cultural expression. At the NCAI Midyear Conference at Mohegan, Connecticut, on June 12, 2017, NCAI hosted a Listening Session on WIPO work 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 similar Listening Session will be held in Milwaukee, Wisconsin on October 16, 2017 in conjunction with NCAI's Annual Convention. The WIPO General Assembly also is meeting in October, 2017 in Geneva to determine the future course of WIPO negotiations and NARF and a tribal representative from Tulalip are attending to advocate for robust mechanisms for indigenous participation.



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