

S. HRG. 114-537

**S. 2417, THE TRIBAL VETERANS HEALTH CARE
ENHANCEMENT ACT, AND S. 2842, THE
JOHNSON-O'MALLEY SUPPLEMENTAL INDIAN
EDUCATION PROGRAM MODERNIZATION ACT**

HEARING

BEFORE THE

**COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE**

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

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CARE ENHANCEMENT ACT, AND S. 2842,
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INDIAN EDUCATION PROGRAM
MODERNIZATION ACT**

WEDNESDAY, MAY 11, 2016

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

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

**OPENING STATEMENT OF HON. JOHN BARRASSO,
U.S. SENATOR FROM WYOMING**

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

Today the Committee is going to examine two bills, S. 2417, the Tribal Veterans Health Care Enhancement Act, and S. 2842, the Johnson-O'Malley Supplemental Indian Education Program Modernization Act. These bills address specific concerns regarding health care and education for American Indian and Alaska Native communities.

Last December, Senators Thune and Rounds introduced S. 2417, the Tribal Veterans Health Care Enhancement Act. This bill amends the Indian Health Care Improvement Act. It allows the Indian Health Service, upon referral, to cover the cost of co-payments for an American Indian or Alaska Native veteran receiving medical care or services from the Department of Veterans Affairs.

As many of us know here, American Indians and Alaska Natives have served in the armed forces at a greater number per capita than any other ethnic group. S. 2417 requires the Indian Health Service and the Department of Veterans Affairs to, if feasible, enter into a memorandum of understanding to provide clarity for how this payment system will be executed. Unnecessary agency red tape and bureaucracy should not stand in the way of helping our veterans.

On April 21st, Senator Heitkamp, along with Senators Daines and Lankford, introduced S. 2842, the Johnson-O'Malley Supplemental Indian Education Program Modernization Act. The Johnson-O'Malley Act is authorized by the Johnson-O'Malley program to allow for the Bureau of Indian Education to contract for the education of eligible Indian and Alaska Native students enrolled in

public schools. More than 90 percent of Indian and Alaska Native students attend public schools. The various programs are offered to American Indian and Alaska Native students through the Johnson-O'Malley program relate to academics, culture, dropout prevention and language.

Therefore, this bill will amend the Johnson-O'Malley Act to direct the Secretary of Interior, in coordination with the Bureau of Indian Education, to take measures in ensuring full participation of all eligible Indian and Alaska Native students in the Johnson-O'Malley program. This bill would require the Secretary of Interior to provide a more accurate student count of Indian students, utilizing existing data, considering the last official count that was verified by the Bureau of Indian Education occurred more than 20 years ago. That was 1995. Without an accurate student count, it is difficult to determine the need for these Johnson-O'Malley programs and the benefit this program provides.

Today we have Ms. Carla Mann, from my home State of Wyoming, to give testimony on S. 2842. She is from Fort Washakie, Wyoming, located on the Wind River Indian Reservation and has testified before this Committee on similar issues in the past. Welcome back. I want to thank you, Ms. Mann, for your tireless work on these issues and representing Wyoming proudly.

I would like at this point to turn to Senator Tester for an opening statement.

**STATEMENT OF HON. JON TESTER,
U.S. SENATOR FROM MONTANA**

Senator TESTER. Thank you, Mr. Chairman. If I might, before I get into my opening statement, I want to talk about Kenneth Martin for just a moment. Kenneth Martin is sitting behind me to my left. He has served in the Senate for over 12 years now. He started as research assistant under Senator Tim Johnson in 2004, at the age of 12 years old, isn't that correct?

[Laughter.]

Senator TESTER. And he worked for Chairwoman Cantwell on this Committee, starting at 2013, and worked on my staff since 2014. Today is his last day. He is leaving the good graces of this Committee to work for the Department of Transportation, if you can believe that, where he will be Deputy Assistant Secretary for Tribal Government Affairs.

This is a new office within DOT and he will do a great job. Because he is incredibly dedicated to Indian Country. He has worked on nearly every issue in this Committee's jurisdiction.

He in fact has written many of my opening statements and intentionally misspelled words, just to see if I was paying attention.

[Laughter.]

Senator TESTER. So I appreciate Kenneth's work. He really is one of the good guys. We wish him the best in the Department of Transportation, and just know that we are going to miss you here on the Hill. Thank you, Kenneth, for your dedication and your 12 years of good work here in the Senate. Thank you.

Mr. Chairman, thank you for holding this legislative hearing this afternoon on two bills that touch on some of the most pressing topics our Committee deals with: education, health care and veterans.

I would like to thank our witnesses today for being here, in particularly two tribal witnesses, Chairman Trudell of the Santee Sioux Tribe, Carla Mann from the National Johnson-O'Malley Association and member of the Blackfeet Tribe in Montana.

S. 2842 would direct the BIA to work with the Department of Education and the Census Bureau to update the eligible student count for JOM. The count has been frozen at the 1995 level. This update would allow the growing number of eligible Native students who have been left out of the program to finally be able to participate in the JOM program.

S. 2417, Senator Thune's and Senator Rounds' bill, proposes a way for the IHS and VA to make sure Native veterans are able to fully access the health care promised to them through both their service to this Country and their trust and treaty rights.

Both bills up for discussion here today look at improving and expanding how tribal members access services provided to them based on the unique government-to-government relationship between tribes and the United States. This is another common issue that we hear about in this Committee almost on a weekly basis. Both these bills will look at how agencies work together to fulfill those responsibilities. The trust responsibility of the United States is not limited to the Bureau of Indian Affairs or the Indian Health Services. All departments and agencies and offices of the Federal Government must do their part to uphold the Federal obligations to tribes.

I want to applaud these bills for pointing out the areas where different parts of the Administration can work together and better serve Indian Country. I would like to say again, thank you, Mr. Chairman, for scheduling this hearing, and thank you to our witnesses for being here today. I look forward to hearing about these bills and how they might impact folks on the ground.

The CHAIRMAN. Thank you very much, Vice Chairman Tester.

Senator Thune, would you like to make a comment regarding your bill?

**STATEMENT OF HON. JOHN THUNE,
U.S. SENATOR FROM SOUTH DAKOTA**

Senator THUNE. Yes, thank you, Chairman Barrasso and Vice Chairman Tester, and members of this Committee, for giving me an opportunity to speak at today's hearing regarding one of the bills that you are going to be hearing about today, and that is the Tribal Veterans Health Care Enhancement Act. It provides a legislative fix to an unfair practice that has been impacting tribal veterans who receive care, both at the IHS and the VA.

I would point out that there were efforts made under the Indian Health Care Improvement Act to streamline and coordinate care for tribal veterans. But there is a lot of work that remains to be done.

Currently, if you are a Native American veteran going to your local IHS and then requiring purchase and referred care services, IHS will refer you to the VA. Now, oftentimes what happens is a Native American veteran who accrues a co-payment or co-payments, depending on the medical condition, for services rendered through the VA. Unfortunately, instead of the IHS being respon-

sible for the co-payment, the veteran, who in many cases cannot afford that payment, is left with a bill.

Conversely, had IHS authorized the PRC services through a private provider, there would be no co-payment for the individual. By law, IHS can and does refuse PRC services to tribal veterans. By doing so, IHS places the medical cost responsibility on the VA and ultimately the Native American veteran.

The IHS and the VA in the Great Plains area recognized that this was an unfair practice that conflicted with our Nation's trust obligations. They sought to address this issue through a local memorandum of understanding in which IHS would pay the co-payment costs and the VA accepted the payments. In 2012, this MOU was rescinded. Once again, bureaucrats thousands of miles away intervened with a one size fits all approach that harmed Native American veterans.

For over three years, I have asked the IHS and the VA to reinstate the local MOU and continue to work to improve coordination of care for Native American veterans. I should note that a nationwide MOU exists to provide for veterans services provided at the Indian Health Service. The national MOU states that its purpose is "to establish coordination, collaboration and resource-sharing between the VA and the IHS to improve the health status of American Indian and Alaska Native veterans." However, over the last several years, I have continued to hear from several tribal veterans with limited incomes, who have had their social security and/or income tax returns garnished by the VA for unpaid co-payments. These men and women who have served our Country deserve better than that, Mr. Chairman.

What gets lost in all of this bureaucratic shuffle and red tape are the individuals impacted by this arrangement: Native American veterans. These veterans, like all veterans, deserve our upmost respect and gratitude. These are men and women, Native Americans first, who then chose to serve the United States. Their sacrifices, coupled with the Federal Government's trust responsibilities, require us to remedy this situation.

That is what this bill would do. Simply said, it will ensure the Federal Government upholds its responsibility to provide health care to our Native American veterans. The legislation will remedy conflicting Federal law that is harming veterans and further the goal of providing the best care possible for our Nation's heroes. So that is the bill, Mr. Chairman.

Lastly, I just want to mention, and I would be remiss if I didn't, that the ongoing issues within the Great Plains area IHS, as of today, it has been 158 days since the Rosebud Hospital's emergency department has been open. One hundred fifty-eight days. In that time, there have been six members of the Rosebud Sioux Tribe who have died while being transported to facilities up to 55 miles away. Six. Six families are left wondering whether their loved ones would be alive today if the IHS had not failed in its responsibility to provide safe and quality care.

This is a disgrace. I look forward to continuing my work with you, Mr. Chairman, and with the members of this Committee on the legislative path forward. I thank you, Mr. Chairman. I know you have a couple of witnesses from my home State of South Da-

kota here today that are going to talk about some of these bills. I want to welcome them both here, both Mike Black, Director of the Bureau of Indian Affairs, then also I want to recognize Roger Trudell, who is the Chairman of the Santee Sioux Tribe of Nebraska. Both are great leaders and people that I have worked with, and will add greatly, I think, to the discussions that you have today on these important pieces of legislation.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Thune. The other piece of legislation was introduced by Senators Heitkamp, Daines and Lankford. Would any of you like to make a statement about that?

Senator HEITKAMP. I would.

The CHAIRMAN. Senator Heitkamp.

**STATEMENT OF HON. HEIDI HEITKAMP,
U.S. SENATOR FROM NORTH DAKOTA**

Senator HEITKAMP. Thank you, Chairman Barrasso and Vice Chairman Tester, for holding this hearing on this bill today. I also want to thank Senator Lankford and Senator Daines for joining me in this effort to update student counts that will illustrate the resources needed for Native students by the Johnson-O'Malley or JOM program.

We have heard time and time again in this Committee, data is lacking for Indian Country. The National Congress of American Indians calls Indian Country the asterisk nation because of the invisibility that is perpetuated by Federal and State agencies and policies that leave American Indians and Alaska Natives out of our data collection efforts, data reporting and data analysis and public media campaigns.

While the Bureau of Indian Education has attempted to collect accurate data for Native students being served by this program, failure has persisted for over 20 years. Last month, in a bit of good news, the U.S. Census Bureau announced that it will be testing its data collection work in North and South Dakota at the Standing Rock Sioux Reservation. Hopefully this will help us get a handle on accurately assessing population growth and tribal community needs.

Building on this effort, I introduced this bill, which would utilize census data and other existing information to help the Bureau of Indian Education overcome these obstacles. One of the fastest-growing demographics, certainly in my State, is Native American children. If we are going to be successful into the future, we need to make sure that these children get a great start.

Since the Johnson-O'Malley program was enacted in 1934, funds under the program have provided critical funding to support Native students and their cultures and schools. That is for public schools, which is where over 90 percent of students attend. Unfortunately, the estimated numbers of children eligible under the program has been frozen since 1995, resulting in diminished funding over time.

In 1995, the Bureau conducted its most recent official and verified JOM student count, which is just over 271,000 eligible Native students. Yet according to the U.S. census, nearly 800,000 qualified Native American and Alaska Native students in the JOM-

eligible age group actually were counted. That illustrates a huge gap in the numbers that we use and the numbers that are probably reality.

I don't fault the Bureau for its inability to get accurate information. But we can't keep doing the same thing that we have always done and expect a different result. Now is the time to look at different methods. I think when you look at the critical importance of education as a foundational piece for change, we cannot allow Native American kids to go undercounted and underserved if we expect to have a different future or a different outcome for these children.

So to me, it is a foundational piece in terms of getting the right services available to children. It is absolutely essential, and I want to thank the Chairman and the Vice Chairman for including this in the hearing today.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Daines?

**STATEMENT OF HON. STEVE DAINES,
U.S. SENATOR FROM MONTANA**

Senator DAINES. Thank you, Chairman Barrasso, Vice Chairman Tester. Providing tribal students with a strong education is an essential part of the U.S. trust responsibility. Montana's 12 federally-recognized tribes benefit from the Johnson-O'Malley program. I have heard from educators and school administrators from across Montana how tribal communities need the Department of Interior to have an accurate count of students that should be covered under the program to meet the educational needs of Native American children.

For example, Daniel St. Pierre, President of Stone Child College in the Rocky Boys Reservation, where local Johnson-O'Malley programs are coordinated, has affirmed what we know to be true. That is that there are thousands of Native American children across the Country who are denied resources they have been promised through Johnson-O'Malley, and this program needs to be brought into the 21st century. Yet the Department of Interior is still using data from 1995. It is hard to believe that this is the case more than two decades later.

That is why I was pleased to help introduce the Johnson-O'Malley Supplemental Indian Education Program and Modernization Act. I want to thank Senators Heitkamp and Lankford for their help on this, which will ensure participation of all eligible Indian students under this program. I look forward to hearing testimony on this bill from the witnesses and the greater conversation here today.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator. Senator Lankford?

**STATEMENT OF HON. JAMES LANKFORD,
U.S. SENATOR FROM OKLAHOMA**

Senator LANKFORD. Thank you, Mr. Chairman. I also want to thank Senator Daines and Senator Heitkamp for their work on this. This has been an ongoing project for a long time. When you deal with Johnson-O'Malley, one thing is clear every time you deal

with it, and that is, the count is wrong. So trying to get an update on this count would be extremely helpful.

In Oklahoma, our estimate from the Department of Education is somewhere around 100,000 Native American students. The current estimate by Johnson-O'Malley 11,000. So it is a pretty significant count on that.

I have a letter that I would like to submit for the record, if the Chairman would allow that.

This is from our Secretary of Education, Drew Hoffmeister, affirming not only this conversation but also detailing some of the issues that are within my State in Oklahoma dealing with JM. So I appreciate the work on this.

The CHAIRMAN. Without objection, so ordered.

[The information referred to follows:]

OKLAHOMA STATE DEPARTMENT OF EDUCATION
May 10, 2016

Senator James Lankford,
United States Senator,
Dirksen Senate Office Building,
Washington, DC.

Dear Senator Lankford,

On behalf of the largest population of Native American students in the nation, I am writing to express the Oklahoma State Department of Education's support for the *Johnson-O'Malley Supplemental Indian Education Program Modernization Act*. This update will allow for more accurate counts of Johnson-O'Malley eligible students, ensuring greater access to vital programs and supports for our Native American youth.

Oklahoma's public schools serve over 130,000 Native American students, the largest number of Native students in any state. Oklahoma is home to 39 federally recognized tribes, and there are 400 Title VII Indian Education programs operating in our public schools. While Oklahoma serves more Native American students than any other state, the Bureau of Indian Education operates only one school in Oklahoma, and the vast majority of Native students participate in the public school system. Nowhere is there a greater need for services to support the success of Native American students attending public schools.

As you know, an updated annual count of students eligible for the Johnson-O'Malley Program has not been conducted since fiscal year 1995, and that count—frozen in time over twenty years ago—is still used as a measure of eligible students although it does not reflect two decades of population growth. While we know that the number of eligible students has grown since 1995, funding has held static due in part to the frozen count, and this means that the value of the supports available to each participating student has actually declined. The proposed *Modernization Act* would equip the Johnson-O'Malley Program to better serve Native American students by providing for an up-to-date count of those eligible for the program.

While we remain mindful of the particular challenges that Native American students face in completing an education, Oklahoma's public school graduation rate for Native American students is consistent with the state's overall rate. At nearly 83 percent, our Native American students' graduation rate in 2014 well exceeded the nationwide rate of 67 percent for Native students. Oklahoma school districts work hard to meet the needs of our Native American students, and the Johnson-O'Malley Program provides much-needed support to participating districts and tribal nations.

The Oklahoma State Department of Education is committed to providing a high-quality education to all students, and recognizes our special role in educating the largest Native American student body in the country. We offer our strongest endorsement for the proposed update to the Johnson-O'Malley Act, which will help secure appropriate support for the thousands of eligible Native American students attending Oklahoma's public schools.

JOY HOFMEISTER,
State Superintendent of Public Instruction.

Senator LANKFORD. I unfortunately will not be able to stay through the whole hearing, as all of us have multiple hearings at

multiple times. But I would like to ask for the record on this, in the days ahead, and this would have been a conversation I would have had with Director Black, in February my staff requested a list of all Interior programs that deal with opportunities for tribes. We were told at that time, if we wanted to know that list, and we asked a very specific thing, just a list of all the programs, and if they were evaluated, the metrics for those programs, so we would get a chance to see those.

At that time in February, we were told to go to the catalog of Federal domestic assistance and search for the word Indian, and that would be as close as we could get. Obviously, that is not acceptable to us. We want a basic list of all the programs and a list of their effectiveness. We also submitted this as a question for the record last month. We don't think it is an unreasonable request. I would assume that the BIA has a list of all their programs, and if there is an evaluation of those programs, how they evaluate it. That would be very helpful to us.

One of the passion areas that we have had, in fact, with Senator Tester and I just talking about duplication of programs and how we can help. Sometimes it is in multiple agencies, in fact, most of the time it is in multiple agencies. We want to be able to help in that process, to be able to get it to a more effective spot and make sure the money is heading towards the actual tribal members and what is going on rather than toward the bureaucracy. Most people here want to be able to help with that and the journey as well. We would like to be able to get that list in the days ahead, just so we can be a help in that process as well.

So that would have been a conversation we would have had. Obviously we won't have time to do that today. But I will look forward to being able to get that list in the days ahead. Thank you.

The CHAIRMAN. Thank you, Senator Lankford.

At this time, we are going to hear from our witnesses. We have Mr. Mike Black with us, who is the Director of the Bureau of Indian Affairs from the Department of the Interior. We have the Honorable Roger Trudell, Chairman of the Santee Sioux Nation, from Niobrara, Nebraska. And we have Ms. Carla Mann, President of the National Johnson-O'Malley Association, from Fort Washakie, Wyoming.

I want to remind the witnesses that your full written testimony will be made part of the official record. Please try to keep your statements to within five minutes so there will be plenty of time for questions.

With that, let me start with you, Mr. Black.

STATEMENT OF MICHAEL S. BLACK, DIRECTOR, BUREAU OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. BLACK. Good afternoon, Chairman Barrasso, Vice Chairman Tester and members of the Committee.

Thank you for the opportunity to provide the Department's position on S. 2842, the Johnson-O'Malley Supplemental Indian Education Program Modernization Act.

The Department supports the goals of S. 2842, but does recommend some technical changes. The JM, or JOM program, is authorized by the Johnson-O'Malley Act of 1934. Tribal organizations,

Indian corporations, school districts and States may receive funds once they establish an Indian education committee to approve supplementary support programs.

American Indian and Alaska Native students are eligible if they are members of a federally-recognized tribe or certify that they are at least one-quarter or more degree of Indian blood and descendant of a member of a federally-recognized Indian tribe eligible for services from the BIE. Indian students have unique educational needs, which include learning about their languages, cultures and history. They are often in our public schools, with an academic skills deficit or are in need of more services to overcome the stressors they face, compared to their peers.

The JOM program is one tool to ensure that Indian students thrive in an environment suited to their strengths, which acknowledges their challenges. In fiscal year 2012 and 2014, the BIE performed student counts required by Congress. After formal consultations with representatives from tribes, public schools, tribal organizations and parents, a total of 448 entities submitted student count data. There were approximately 556 total JOM contractors.

The 2012 JOM count identified 321,273 eligible Indian students as compared to the last count in 1995, which identified 271,884 eligible students. The 2014 count resulted in a final student count of 341,495 for the 399 JOM contracts that submitted data. It should be noted that not all current JOM contractors submitted a student count.

The Department supports the goals of the bill to strengthen the JOM program and ensure that more eligible students are receiving the support they need to be successful. However, the Department is concerned that Section 7(A)(3)(a) of S. 2842, by defining eligible Indian student as an individual who attends public schools but unintentionally eliminate the current allowance for previously private schools, which are currently funded under the program. The BIE currently funds 41 previously private schools, with a total count of 5,209 eligible JOM Indian students. We want to ensure that they continue to benefit from this program.

The Department appreciates the legislation's clarification that JOM funds may be used for science, technology, engineering and mathematics, or STEM instruction and counseling services. However, we want to work with the bill's sponsors on a mechanism to ensure that JOM funds supplement, but not replace, standard instruction and services in public schools.

The Department seeks clarification from the bill's sponsor regarding language in Section 7(C)(1)(d) which states activities that were available to Indian students under contracts are entered into under this Act October 1, 2012. While the Department supports the interest to hold entities harmless under this new legislation, we are concerned the provision unduly limits the Secretary's discretion to reduce funding for other reasons, i.e., misuse.

The bill also directs the Department to cross-check student count data with data from the U.S. Bureau of Census, the U.S. National Center for Education Statistics and the U.S. Department of Education's Office of Indian Education, or OIE. We assume the bill is referring to the student count used by the OIE formula grant payments under Title 6 of the ESEA, or formerly Title 7. If that is the

case, it should be noted that Title 6 formula grants are based on student eligibility that is broader than JOM eligibility as OIE's count includes members of State-recognized tribes, and children and grandchildren of federally-recognized tribes without regard to blood.

The Department is concerned that the U.S. Census Bureau data will include self-identified individuals who may not otherwise be eligible for services from the Department's BIE or BIA because our jurisdiction extends only to members of federally-recognized tribes or students who are identified as eligible under the Act. We would be happy to work with the bill's sponsor to clarify and develop a process to ensure accurate identification of Indian students.

The Department is also concerned that S. 2842 will change existing language referring to contracts and the collection of a student count. The BIE currently relies on the Indian Education committee to determine how it will collect and verify student data. Additionally, the Indian Education committee participates in negotiation concerning all contracts under this part.

This concludes my statement, and I am happy to answer any questions you might have. Thank you.

[The prepared statement of Mr. Black follows:]

PREPARED STATEMENT OF MICHAEL S. BLACK, DIRECTOR, BUREAU OF INDIAN
AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Good afternoon Chairman Barrasso, Vice Chairman Tester, and members of the Committee. My name is Mike Black. I am the Director for the Bureau of Indian Affairs at the Department of the Interior (Department). I am here today to provide the Department's position on S. 2842, the Johnson-O'Malley Supplemental Indian Education Program Modernization Act.

The Department supports the goals of S. 2842 but recommends some technical changes.

Background

The Johnson-O'Malley (JOM) Program is authorized by the Johnson-O'Malley Act of 1934, and the implementing regulations are provided in Part 273 of Title 25 of the Code of Federal Regulations. As amended, this Act authorizes contracts for the education of eligible American Indian and Alaska Native students who are not enrolled in Bureau or secretarian operated schools. A local JOM program operates under an educational plan that the Bureau of Indian Education (BIE) approves. These plans contain educational objectives addressing the needs of eligible students, offering various opportunities including cultural enrichment, tribal language, academics, and dropout prevention programs.

Tribal organizations, Indian corporations, school districts, and States may receive funds once they establish an Indian Education Committee to approve supplementary support programs. American Indian and Alaska Native students are eligible if they are members of a federally recognized tribe, or certify that they are at least one-fourth or more degree of Indian blood and descendant of a member of a federally recognized Indian tribe eligible for services from the Bureau. In addition, children must be between age 3 through grade 12.

In Fiscal Years (FYs) 2012 and 2014, the BIE performed a student count as required by Congress. After formal consultations with representatives from Tribes, public schools, tribal organizations, and parents, a total of 448 entities submitted student count data. The FY 2012 JOM count identified 321,273 eligible Indian students as compared to the last count in 1995, which identified 271,884 eligible Indian students. The FY 2014 count resulted in a final student count of 341,495 for the 399 JOM contractors that submitted data. It should be noted that not all current JOM contractors submitted a student count.

S. 2842

The Department supports the goals of the bill to strengthen the JOM program and ensure that more eligible students are receiving the support that they need to be successful. Indian students have unique educational needs, which include learn-

ing about their languages, cultures, and histories. Indian students often enter public schools with an academic skills deficit, or are in need of more services to overcome the stressors they face compared to their peers. The JOM program is one tool to ensure that Indian students thrive in an environment suited to their strengths which acknowledges their challenges.

However, the Department has the following concerns with S. 2842. The Department is concerned that section 7(a)(3)(A) of S. 2842, by defining “eligible Indian student” as an individual who “attends public school,” would unintentionally eliminate the current allowance for “Previously Private Schools,” currently funded under the program. The BIE currently funds 41 Previously Private Schools with a total count of 5,209 eligible JOM Indian students, and we want to ensure that they continue to benefit from this program.

The Department appreciates the legislation’s clarification that JOM funds may be used for Science, Technology, Engineering and Mathematics (STEM) instruction and counseling services. However, we want to work with the bill’s sponsors on a mechanism to ensure that JOM funds supplement, but not replace, standard instruction and services in public schools.

The Department seeks clarification from the bill’s sponsor regarding language in section 7(c)(1)(D), which states, “activities that were available to Indian students under contracts entered into under this Act before October 1, 2012.” While the Department supports the interest to hold entities harmless under this new legislation, we are concerned that this provision unduly limits the Secretary’s discretion to reduce funding for other reasons (i.e. misuse).

The Department understands that there are concerns with how the student count affects how many students are able to benefit from the program. The bill directs the Department to cross-check student count data with data from the U.S. Bureau of Census, the U.S. National Center for Education Statistics and the U.S. Department of Education’s Office of Indian Education (OIE). We assume that the bill is referring to the student count used for OIE formula grant payments under Title VI of the ESEA (formerly Title VII). If that is the case, it should be noted that that the Title VI formula grants are based on student eligibility that is broader than the JOM eligibility, as OIE’s count includes members of State-recognized tribes, and children and grandchildren of members of federally recognized tribes without regard to blood. The Department is concerned that U.S. Census Bureau data will include self-identified individuals who may not be eligible for services from the Department of the Interior’s BIA or BIE, because our jurisdiction extends only to members of federally recognized tribes or students who are identified as eligible in the Act. We will work with the bill’s sponsors to clarify and develop a process to ensure the accurate identification of Indian students.

The Department is also concerned that S. 2842 would change existing language referring to contractors and the collection of a student count. The BIE currently relies on the Indian Education Committee to determine how it will collect and verify student data. Additionally, the Indian Education Committee participates in negotiations concerning all contracts under this part. The Department therefore seeks clarification of the term “significant” as it is used in section 7(d)(2)(C)(ii)(II) and in section 7(e)(2)(A) of S. 2842. Section 7(d)(2)(C)(ii)(II) refers to “eligible entities that may potentially enter into contracts under subsection (b) with a significant number of eligible Indian students but that have not previously entered into a contract under this Act.” The Department also seeks clarification of the term “significant” in section 7(e)(2)(A) of S. 2842, concerning increased participation, in relation to populations.

The Department also notes that one provision of S. 2842 raises constitutional concerns under the Recommendations Clause. We believe this concern could be easily ameliorated, and we will work with the Committee and sponsors to do so.

This concludes my statement. The Department is committed to working with the Committee and the sponsors of S. 2842 to discuss changes to S. 2842.

The CHAIRMAN. Thank you very much, Mr. Black.
Chairman Trudell, please.

STATEMENT OF HON. ROGER TRUDELL, CHAIRMAN, SANTEE SIOUX NATION

Mr. TRUDELL. Thank you, Chairman Barrasso, honorable members of the Committee. Special thanks to Senator Thune, who has attended many of the veteran meetings in our region.

I have submitted written testimony on both proposed amendments. I would like to devote more of my time to generally inform, as a veteran. I am the Commander of Region 1, American Indian Veterans Association, which is supposed to be a nationally-chartered organization. But we have failed to have our charter get federally-recognized.

We have nine active tribes in Region 1, North Dakota, South Dakota, Nebraska, that participate regularly at our meetings. Some of the concerns of our veterans were addressed very strongly by Senator Thune, and that is the co-pay for services that Indian Health Services is referring veterans out to VA for services, and in some cases, refusing to see veterans because they are eligible for veteran's service.

I agree with Senator Thune, there is a treaty obligation with the tribes in the Great Plains that Indian health service would be provide, that health services and social services, et cetera, would be provided to the treaty tribes. Indian Health Service was created basically to provide health services to Indians. That they should ever deny a service to an Indian, whether that Indian person is a member, a veteran eligible for veteran's services or not, is totally wrong. For an organization who should be dedicating all their services to improve health care for all tribal people, regardless if they are veterans or non-veterans, they need to fully realize that they can't separate that category and create a burden on Indian veterans.

As I say in my testimony, for our region, North Dakota, South Dakota, Nebraska, that whenever the Indian veterans have to travel nearly up to 200 miles to receive service from veterans. There are some community-based outpatient clinics that provide limited services. But for treatment beyond what the outpatient service clinics can provide, then they have to go to Omaha, Sioux Falls or Hot Springs, Fort Mead and those areas to get those services.

We have large reservations with many isolated communities. Not only isolated from good roads, but isolated from services. It is very difficult for a lot of those, there is inadequate transportation to get veterans from one service to another. So I think that this amendment that will allow for the co-pay, which many of the veterans, as you have heard, have been charged with. Personally, myself, when I went to VA, I was rated at 10 percent, I had to pay a co-pay on medications and stuff. And believe me, I have enough medications to take care of half of you guys sitting up there.

Again, the co-pay by American Indians that have served this Country, I do not believe that should exist. Indian Health Service, with this amendment, could no longer deny paying those co-payments.

It would also enhance the ability of tribal clinics to further their MOUs or MOAs with VA to create an exchange of services between tribal facilities and VA, which is allowable under the national MOU. So I guess personally, I would like to say that many of our veterans have suffered. There is a particular case in Flandreau, South Dakota, a gentleman named Dave Williams. Indian Health Service and BIA argued over who should pay for his heart operation. He had a bad valve, he has a mechanical valve now.

I happened to be in Flandreau, and his wife asked to see me and another gentleman from Flandreau. She was crying because her

husband was going to die because nobody was going to treat him. We advised him just to go, and if necessary, the Santee Sioux Nation of Nebraska and the Flandreau Santee Sioux would combine and we will take up the task and we will see who will pay. While BIA I guess ended up paying for it, but the point is, why put his family through that type of unnecessary position to have to worry about the loss of her husband and their children's dad? Those things should never be heard of in this day and age.

Many of us as veterans, we grew up as Indian people grew up, in very rural, isolated areas. We never had access to medical doctors, nurses or anything. So we just kind of grew up, not worried about taking care of the medical needs of ourselves. Even while we were in the service, we didn't go to sick call and things like that. So we had no historical medical records while we were in the service outside of the shots and eye tests and dental exam you get when you first go in.

I am sorry, I have run out of time. Thank you for listening to me. Thank you.

[The prepared statement of Mr. Trudell follows:]

PREPARED STATEMENT OF HON. ROGER TRUDELL, CHAIRMAN, SANTEE SIOUX NATION

S. 2417

Good Afternoon Mr. Chairman:

My name is Roger Trudell and I am the Chairman of the Santee Sioux Nation. I am also the Chairman of the Great Plains Tribal Chairman's Health Board. Thank you for holding this hearing, and thank you for your interest in this most important subject.

As I am sure that you are aware, American Indians, especially those from the Great Plains Region, have served, and continue to serve, in the U.S. Military at rates higher than any other ethnic group. I myself am a veteran of Vietnam. I therefore believe that I can speak for all Indian veterans when I say that we are proud of our service to this Country, and prouder yet of those native men and women who gave their lives to protect the United States and our way of life. Native veterans are equally proud of that fact that we fought in defense of our Tribes, our Treaties, our Indian relatives, and our tribal sovereignty.

Unfortunately, all too many of our Indian veterans returned home with physical and emotional scars requiring medical attention. Some of these problems are not immediately evident, so all too many of our native veterans find themselves having to fight, with very little support, to prove that their current problems are in fact service related. This is wrong and something should be done about it!

What is also wrong is requiring native veterans, who are often among the poorest people in the United States, to pay from their own pockets for medical care from the VA or any other federal program. The United States has a trust responsibility, a Treaty responsibility, and sacred duty to our veterans to insure that those men and women who put themselves in harms ways for this country are afforded proper medical care. Yet today, when we go to the VA (and especially when we have to go to a VA referral care provider) we are asked to complete a financial assessment or means test so that the United States can determine how much it is going to "charge us" for providing the medical services we were promised. Thus, I hope that you can understand why Indian veterans believe that their right to adequate health care is rooted in three separate promises, promises which our veterans currently view as unfulfilled.

To make matters worse, today most of our Indian veterans have to travel hundreds of miles to get to a VA facility. Due to the expense of traveling such a distance, many of our Indian veterans actually have to save for months in order to merely make the trip to see a doctor. Adding to this already difficult situation, many then have to pay to stay overnight near the VA facility in order to be available for a morning appointment that they have waited months to get, to await test results, or to be scheduled for a more extensive test like an MRI. This too is wrong!

When you add together the cost of gas, food, and lodging, along with the cost of the deductible or co-pay that VA charges and that the IHS currently does not pay,

it is not unusual for an Indian veteran to spend \$200 or more just to go the VA for the care that they were promised. So I ask you, is this right?

Co-pays of \$15–\$50 for outpatient care may not seem like a lot to people in Washington, but I can assure you that these co-pays can, and often do, represent the difference between being able to pay or not pay the heat bill for an Indian veteran living on my Reservation. This is especially true for older vets.

The situation becomes even worse for veterans requiring inpatient care, or surgery where co-pays and deductibles can run anywhere from \$1,000 up to \$4,000 or more without warning. This amount is hard for a middle class family to pay in this economy and is all but impossible for Indian veterans living at the poverty line in Santee.

No veteran should have to go through a surgery or a serious inpatient illness alone, and given the distance and our lack of public transportation, many Indian veterans cannot even get to a VA hospital without help. To alleviate this situation, many of our Indian veterans are forced to go even further into debt just to allow their spouse or another family member to accompany them to the doctor or the hospital. Securing a driver means a higher food bill while traveling and still another hotel charge, as well as a loss of work for the person providing that assistance. The families of veterans living near urban based VA hospitals can go home a night, but in almost every case for a person from Santee, they cannot. I therefore find it ironic that the VA already has a program which allows veterans living in “high cost urban areas” to qualify for a reduced inpatient copay rate, but those of us living in areas which are miles from the closest VA facility and living at or below the poverty line do not.

Mr. Chairman, as a proud Native Veteran and as the leader of the Santee Sioux Nation, I respectfully say to you today, it’s time to fix this problem by requiring our treaty health provider, the Indian Health Service, to start paying the VA based co-pays that our Indian veterans are entitled to. It’s only right! It’s only fair! And it’s simply the right to do! It is time to do what’s right and fulfill the sacred promises made to those who have sacrificed so much. Please pass S. 2417 as soon as possible.

Thank you again for holding this hearing, and thank you again for caring about the native men and women who put their lives on the line for this Great Country.

S. 2842

On behalf of the Santee Sioux Nation, I would like to thank you for this opportunity to testify on the Johnson-O’Malley Supplemental Indian Education Program Modernization Act. We support this legislation and look forward to the positive impacts that it will have on the lives of so many of our school-age children.

Our Indian students have too-long been neglected, not just in the schools operated directly by the Bureau of Indian Education (BIE), but also in the public school systems that some 93 percent of our Indian children attend. It is all too easy to forget that all of the on-reservation school age children from Santee, and a large percentage of the children residing on our Great Plains Reservations, attend public schools. These children have many of the same problems and the same needs as those who attend BIE operated institutions, but those needs often get lost in the broader public educational system.

Many of our Indian children attending public schools also face the additional obstacles of family income inequality, social and cultural differences, and in some cases racism. This bill represents a small step towards addressing these problems in that it allows an expanded role for tribal government and tribal institutions in decisions that impact our children’s chances for success.

For too many years, JOM funds have been controlled exclusively by the local school systems, and they never seemed to make it down to our Indian students. This is because the voices of our tribal parents and tribal governments, who had, and still have, the strongest vested interest in insuring that all available Indian funds were being used to address the very real problems that our Indian students are facing, were not being heard. S. 2842 will help to change that by allowing tribes and Indian organizations to contract to manage those funds.

While there are many fine and committed educators in our public schools systems, there are not enough, and those educators advocating for our Indian children cannot operate effectively with inadequate resources. Many of our native students need remedial instruction, counseling, and tutoring, but most of all they need to be made to feel that they can achieve. Our Indian students need to be allowed to show their pride in our culture and in their Indian identity, and be made to feel that they have both the tools and the ability to accomplish any goal that they set their minds to. That is largely not the case today.

At the beginning of the 20th century, the disastrous policy of assimilation was designed to kill a student's Indian identity. This laid the foundation for boarding schools and for a policy designed to encourage our youth to abandon their language and culture in order to "fit in." Instead of achieving the full assimilation that was sought, this policy produced lost generations, many of whom are now the parents and grandparents of our school aged children. The effects of this assimilation policy are still felt today by tribal families and by Indian children both on and off the Reservation.

With passage of the Johnson-O'Malley Act in 1934, that policy mercifully started to change. It is hard, though, for an Indian child to feel proud when they are the only one in the room without school supplies, gym clothes, or a book-bag and the only one who cannot join the science club because they have no way to get home once the school bus leaves at the end of classes.

When examining why our Indian student's educational achievement is not higher, it is important to remember that in the Great Plains, up to 60 percent of our children live and study in poverty. This is almost double the national average, which still hovers somewhere around 33 percent. Thus, the JOM funds provided by Congress are critically needed to support a new direction for our children and to start to give them the tools that they need in order to believe in themselves. To accomplish their intended goal, however, those funds need to be managed by entities which understand our students and which have their best interest at heart.

For this reason, we were pleased to see that this legislation allows tribes, tribal organizations, and Indian corporations to contract to manage JOM funds. As I noted above, no one has a higher vested interest in the success of our children than their tribes, and no one is going to listen more carefully to the voices of their parents and advocates than we are.

We were also pleased to see that you are mandating tribal consultation in the establishment of the JOM student count and in managing the proper distribution of the JOM funds authorized by this legislation and this Congress. For years our students have been undercounted and, as a tribal leader, I am tired of hearing the excuses that administration after administration has given for allowing this to continue.

As the leader of the Santee Sioux Nation and as a proud member of the Great Plains Tribal Chairmen's Association, I can state definitively: Give us the resources, and the power to use them, and we will make a difference in the lives of our students!

For all of these reasons, I encourage the passage of S. 2842 as soon as possible.

The CHAIRMAN. Thank you so much, and you will have more time when we get to the questions, Chairman Trudell. Thank you.

Ms. Mann, thank you for joining us today. Please proceed.

**STATEMENT OF CARLA MANN, PRESIDENT, NATIONAL
JOHNSON-O'MALLEY ASSOCIATION (NJOMA)**

Ms. MANN. Good afternoon, Chairman Barrasso, Vice Chairman Tester and members of the Committee.

My name is Carla Mann. I am a member of the Blackfeet Nation, also of Eastern Shoshone descent. I live on the Wind River Indian Reservation, home to the Northern Arapaho and Eastern Shoshone Tribes. I have worked with the Johnson-O'Malley program for 23 years, but today I am here as a member of the National Johnson-O'Malley Association. I am currently serving as the president.

As our honorable Senators have said before, the National Johnson-O'Malley Association has advocated for the release of the student count freeze that has been in place since 1995. At that time, once the numbers were released of that count, it was 272,000 students. Today we know that we have many more students, even in 1994, we knew there were more students than were actually counted.

What we are asking for through this legislation, we support S. 2841, the Johnson-O'Malley Modernization Act of 2016. There is also companion legislation, H.R. 4390. The most important piece of

both of those pieces of legislation is the comprehensive JOM student count across the Nation. It was said earlier the BIE had two counts in 2012 and 2014. We know that those were both flawed counts, and we know that they are not showing the true numbers. We also think that at this point, due to the cutbacks and losing different employees, the BIE is not in the data collection business.

In looking for solutions to find a way of counting our students across the Nation, we discussed using census data. Census shows that we have 798,000 students across the Nation from ages 3 to 18 that claim to be an enrolled member of a federally-recognized tribe. There have been many concerns about self-identification of even the census data. We all know that when we fill out our census forms, we all identify as one race. So everybody has self-identification. There is going to be a reconciliation process, in utilizing census data that we can find the correct amount of students, that we are going to be serving from the census data.

One thing that we have also identified is there is an OMB directive number 15 on race and ethnic standards that shows how you utilize that census data. And it specifically talks about Native Americans and how we would use that data. The census data is also used in other programs in the Bureau, such as tribal roads, and it is also used in Indian housing.

In conclusion, I would like to say that 93 percent of our Nation's Indian students go to public schools. There is a trust responsibility for all students, not just students in Bureau-funded schools or grant schools. Our students deserve to have the very best education. We also want them to be well-educated, as our students are going to be our future. They are our rising stars that will be coming in future to be able to run all of our programs, our tribes. So we want to make sure that all of our students have the very best opportunity at a great education.

In conclusion, I would just like to thank everybody for allowing me to talk about the JOM program and also urge the passage of this JOM Modernization Act of 2016. Thank you.

[The prepared statement of Ms. Mann follows:]

PREPARED STATEMENT OF CARLA MANN, PRESIDENT, NATIONAL JOHNSON-O'MALLEY ASSOCIATION (NJOMA)

Mr. Chairman and Members of the Committee, I am pleased to represent the National Johnson-O'Malley Association (NJOMA) before you today in support of S. 2842, the Johnson-O'Malley Modernization Act of 2016; legislation developed to direct the completion of necessary updates to the Johnson-O'Malley Supplemental Indian Education program (JOM) operated by the Department of Interior, Bureau of Indian Education (BIE).

Mr. Chairman, for nearly 25 years and through several Administrations, the Department of Interior and BIE have exhibited a "determined unwillingness" to complete the necessary work to be able to finalize a count of the numbers of Indian students eligible for JOM services. In 2012, 2014 and again in 2016, Members of Congress approved language in the Interior appropriations bills directing the Department and BIE to update and report to the Congress a count of the eligible Indian students for the JOM program. Given this unacceptable situation, I come here today on behalf of the over 1 million Indian children asking this Committee and the Congress to quickly approve S. 2842 so that these children can rightfully obtain the kinds of supplemental educational services and assistance they need to become productive American citizens.

Today as we sit here, we hope you are as upset as we are that no one in the BIA, BIE or elsewhere in the Federal Government who can tell us, how many Indian children are eligible to participate and receive services or assistance under the Johnson-

O'Malley program. This unacceptable situation exists because for over 20 years, there have been no legitimate efforts made to conduct the kind of research and data collection needed to answer the question. This has been the case even though our organization has been aggressively calling on Congress and the last 3 Administrations to act. In our view, it is long past the time for us to engage in a serious discussion about alternatives or options to correct this problem.

We are extremely pleased and thankful that Senators Heidi Heitkamp, James Lankford, Steve Daines—and we hope all of you will also join—have stepped up to introduce legislation to tell the Secretary of Interior to select and use a widely accepted government data set such as Census Bureau and/or National Center for Education Statistics (NCES) data, to develop a reasonably reliable projection of the current JOM-eligible student population. This bill, along with companion legislation (H.R. 4390, McCullum, Cole, Young and Huffman) introduced in the House will authorize the Secretary to use one these data sets to establish a new baseline count of eligible Indian students for use in instituting a modern, more accurate, and uniform allocation funding formula; establish a data reconciliation process-like the one used by HUD in the Indian Housing Block Grant program to work with Tribes, public school districts and other organizations to refine and on an ongoing basis, keep the count accurate and reported to the Congress on an annual basis.

On January 13, 2016, Representative Betty McCollum introduced H.R. 4390, the Johnson-O'Malley Supplemental Indian Education Program Modernization Act to the 114th Congress with bipartisan support. In addition, on April 21, 2016, Senators Heidi Heitkamp and James Lankford introduced bipartisan legislation to the Senate. Known as S. 2842, the Johnson-O'Malley Supplemental Indian Education Program Modernization Act is the companion bill to the House version. Both bills call for an update to the data used by BIE to account for the JOM program. The bills call for the Department of Interior to update the student count in a timely manner using both Census data and data from the National Center for Education Statistics (NCES) to account for the eligible students that are currently underserved or denied JOM services entirely.

As a result of Congressional advocacy by NJOMA, the BIE was directed to resume the JOM student count. The FY 2012 Congressional Interior Appropriations Act (H. Rpt. 112–151) contained a directive for the Bureau to conduct a student count update. The BIA executed—but failed to report to Congress—a partial attempt to update the JOM student count. While BIE admitted the update was flawed, it has been verbally acknowledged—but never officially reported—that the 2012 count found an increase of over 50,000 JOM-eligible students. Sadly, the update was fundamentally flawed because the FY 2012 directive failed to order the Secretary of the Interior (BIE) to conduct outreach to Tribal organizations, Indian Corporations, school districts or States that are “non-participating” entities in the JOM program today. Rather, because of the general language contained in the directive, BIE only contacted and counted existing enrolled students and JOM contract-holders.

For that reason, the FY 2014 Consolidated Appropriations Act (P.L. 113–76) contained a more specific directive for BIE to conduct a full and accurate student count in fiscal year 2014 and to publish the results before the end of the fiscal year. On July 24, 2014, the BIE began this student count by sending a letter to tribal leaders but did not conduct a broader outreach and did not provide the materials online until August 19, 2014. The student count period was set to end on September 15, 2014, but was extended to the end of the calendar year. The FY 2015 Congressional Interior Appropriations Act (H. Rept. 113–551) contained a directive to BIE to publish the results of the most recent student count; to date, no results have been published nor student count information publicly released. No alternative has been presented by this or the two previous Administrations to address the absence of reliable data for the JOM program. And finally by FY 2016, the Committee

NJOMA has been at the fore front of a drive to educate and organize tribes and other National tribal and educational organizations in a call by all the stakeholders in the JOM program to simply just acknowledge that there has been a significant gap in the collection of the data needed to effectively and fully operate the JOM program. We have also made numerous attempts to reach out to BIA, BIE and the White House to try to develop an administrative fix for the JOM student count situation and develop a funding plan, as evidenced by the letter attached to my statement (See exhibit A). This letter signed by the Presidents of NJOMA, the National Congress of American Indians (NCAI), National Indian Education Association (NIEA) and National Education Association (NEA) presented a request to the Secretary to convene a meeting of the key stakeholders so that we could develop a plan and implementation Plan to bring the JOM program into the 21st century. Regrettably, we have only been given one excuse after another as to why none of the appropriate officials of the Department could or would have a meeting.

For years when members of our Board and others in the JOM family have visited Washington in pursuit of additional program authority and funding for JOM, we have been told by Members of Congress and your staff that until data more accurately reflecting the program is presented there's little that could be done to bring JOM in-line with the numbers of students that school districts and tribes see at the local levels. S. 2842 moves us toward resolution of the student count issue.

What Does the Census Data Tell Us?

The Native American population that has been one of the demographic groups experiencing positive population growth for the last 40 plus years. According to the 2010 census, 5.2 million people, or 1.7 percent of all people in the United States, identified as American Indian and Alaska Native, either alone or in combination with one or more races. This population alone grew by 27 percent from 2000 to 2010. In the 2010 census, those who reported being American Indian and Alaska Native alone totaled 2.9 million, an increase of 18 percent from 2000 to 2010. The multiple race American Indian and Alaska Native population, as well as both the alone and alone-or-in-combination populations, all grew at a faster rate than the total U.S. population, which increased by 9.7 percent from 2000 to 2010. The data also shows us the steady growth that has occurred and is forecast to continue to happen within the ages 3–12 years old demographic, and the forecasts up to and beyond 2020 present this same picture.

On June 30, 2014, the U.S. Census Bureau provided Representative Tom Cole (R-OK) with census data regarding American Indian and Alaska Native child populations. The information provided included data tables that reflect American Indian and Alaska Native population aged 3 to 18 years by selected tribe from the 2000 Census, the 2006–2010 American Community Survey, the 2010 Census, and the 2008–2012 American Community Survey. In addition, the Census Bureau provided population projections of the American Indian and Alaska Native population aged 3 to 18 years for 2010 through 2020. According to the most reliable numbers available from the 2010 Census, there are at least 798,000 Indian and Alaskan Native students who are counted as having been enrolled in a single, federally recognized tribe. That number is over 1.0 million eligible Indian children who, based on meeting the current JOM 1/4th quantum requirement, and attending Public Schools who we believe, should also be receiving JOM services today.

Because of bureaucratic fumbling and Administration neglect, JOM's student count has been frozen at 278,000 students since 1994. The Senate Indian Affairs Committee stated in its 2012 Report accompanying S. 1262 (Senate Report 112–262), “[that] currently, 620,000 or 93 percent of Native students attend public schools and approximately 45,000, or 7 percent, attend BIE schools.” It is clear that there are a large number of JOM-eligible students being denied or deprived of services that they are legally entitled to, amounting to a failure of the Federal Government to meet its trust responsibility.

Current Use of Census Data

NJOMA has been leading an effort—despite BIA's reluctance to embrace our position—to replace the BIE's annual student count process, which it appears unwilling and unable to make perform effectively, with usage of U.S. Census data. Census data is reliable, comprehensive information that is provided without any additional funding or resources for the Bureau. There are many federally funded programs, including ones specifically for Native American populations, which use U.S. Census data for the apportionment of funds. Census information is reliable data upon which Congress and the Administration regularly rely including for the Reading First State Grants (Dept. Ed), Career and Technical Education—Basic Grants to States (Dept. Ed), Tech-Prep Education (Dept. of Ed), Safe and Drug-Free Schools and Communities State Grants (Dept. Ed), Water and Waste Disposal Systems for Rural Communities (USDA), Grant Program to Establish a Fund for Financing Water and Wastewater Projects (USDA), Special Programs for the Aging Title VI, Part A, Grants to Indian Tribes Part B, Grants to Native Hawaiians (HHS), Urban Indian Health Services (HHS), Low-Income Home Energy Assistance (HHS), Head Start (HHS), Family Violence Prevention and Services/Grants for Battered Women's Shelters Grants to States and Indian Tribes (HHS), Preventive Health and Health Services Block Grant (HHS), Violence Against Women Formula Grants (DOJ), State Public Water System Supervision (EPA), Water Pollution Control State, Interstate, and Tribal Program Support (EPA), Nonpoint Source Implementation Grants (EPA), Economic Adjustment Assistance (DOC), National Fire Plan—Wildland Urban Interface Community Fire Assistance (DOI), Americorps (CNCS), Native American Employment and Training (DOL).

The Federal Government, including the Department of Interior and the Bureau of Indian Affairs uses Census data for other Indian programs including tribal housing, tribal roads, law enforcement, and labor force reports. BIA currently uses Census data for its American Indian Population and Labor Force Reports and Congress regularly uses this data to inform policymaking decisions. Census data is also widely used locally for planning and program purposes to identify appropriate economic development approaches and gauge particular community needs and resources. Another critical use of this data is to determine levels of federal funding for tribes under the Workforce Investment Act, the Indian Housing Block Grant program, the BIA Tribal Transportation program, and many other Indian programs. Using Census data would reduce duplicitous spending by BIA to perform a count for which data already exists. Any significant changes to data collection (or lack thereof) and the continued non-collection of data impact the ability of tribal governments to adequately provide for their citizens, and affect the federal government from carrying out its trust responsibility in essential social and economic areas.

In 1997, OMB issued a *Federal Register* notice regarding revisions to the standards for the classification of federal data on race and ethnicity. OMB developed race and ethnic standards in order to provide “consistent data on race and ethnicity throughout the Federal Government. The development of the data standards stem in large measure from new responsibilities to enforce civil rights laws.” Among the changes, OMB issued the instruction to “mark one or more races” after noting evidence of increasing numbers of interracial children and wanting to capture the diversity in a measurable way and having received requests by people who wanted to be able to acknowledge their or their children’s full ancestry rather than identifying with only one group. Prior to this decision, the Census and other government data collections asked people to report only one race.

The OMB states, “many federal programs are put into effect based on the race data obtained from the decennial census (i.e., promoting equal employment opportunities; assessing racial disparities in health and environmental risks). Race data are also critical for the basic research behind many policy decisions. States require these data to meet legislative redistricting requirements. The data are needed to monitor compliance with the Voting Rights Act by local jurisdictions”.

While the Department has traditionally relied on tribes to provide data for the student count, tribes should not bear sole or primary responsibility for providing quality data with little to no resources, training, or other support from the Department to do so. It is also an essential mechanism for monitoring the quality of services that the Department is responsible to provide to American Indian and Alaska Native people. By the Department’s inaction, tribes are being made responsible for a lack of federal agency coordination around the issue of data quality and the measurement of small populations. Specifically, there needs to be greater coordination between the Department, Census, and Office of Management and Budget to address the widespread problems that plague data collection for Indian Country.

BIA/BIE’s 2012 and 2014 counts—as imperfect as they may be—make the clear case that there have been increases in the number of students needing and being serviced by JOM since 1994. The only real issues in dispute are how much of a student increase has actually occurred and what the cost would be of adequately serving this population. As the number of students served by JOM has grown, so too must the funding in order for JOM to continue to operate and offer the much needed services it provides to an already underserved Native American population.

In our view, at this point in time, it is clear that Census data is a more comprehensive compilation of population data and more accurately reports the demographics of the client group that JOM is intended to serve. The BIE has more than proven that is not capable of performing and reporting student counts as mandated by Congress. S. 2848 will direct the use of Census data to bridge the 20 year gap since the last true JOM student count and serve as a replacement for a BIE count altogether.

Indian Country’s View on Census Data

In 2014, both the National Congress of American Indians (NCAI) and the National Indian Education Association (NIEA) passed resolutions (See attached exhibits B and C) calling for greater coordination among Interior, the Census Bureau, and the Office of Management and Budget to ensure that Census data is accurately utilized for the benefit of eligible JOM students. NCAI Resolution ATL–14–039 and NIEA Resolution 2014–19 call for the upholding of the federal trust responsibility though the use of Census data for updating JOM student counts. In addition, the National Education Association (NEA), has signed a joint letter with NJOMA, NCAI, and NIEA supporting the efforts to use Census data in lieu of an accurate student count.

We also have just recently received a resolution of support for our efforts from the Inter-Tribal Council of the Five Civilized Tribes representing the historic Cherokee, Choctaw, Chickasaw, Creek, and Seminole nations (See attached exhibit D).

JOM Funding and Student Count History

For over 60 years, the JOM program constituted a separate appropriation under the Federal budget and appropriations bills. However, in 1995, the Bureau of Indian Affairs moved the JOM program into the Tribal Priority Allocation (TPA) budget category of the BIA. The TPA is a block grant to tribes of a number of program allocations and authorities which originally were separate programs. Theoretically, the TPA system allows tribes flexibility to move funds between activities within the program to meet locally, tribally designated priorities. However, as with most block grant schemes, the TPA has been used as a budget regulatory tool, with amounts for the TPA account limited and not increasing with the needs of various components. In fact, the TPA has allowed the Federal government to flat-line funds for the account for years, while the needs of the constituent programs have increased. The tribes and the JOM Indian community resisted the proposed Bureau addition of the JOM to the TPA. Despite tribal and educator opposition, the BIA added the JOM program to the TPA, creating the current program.

Prior to the 1995 freeze, the BIA had a full time JOM Director in the D.C. office. This director collected the program annual reports, student count information, and provided technical assistance the programs. While there were local JOM managers in the regional BIA offices that oversaw the local JOM programs and provided direct technical assistance, the JOM program administrators had a direct line to the Director in D.C. The Director's primary task was to provide the JOM programs with their annual funding based on the student count received from the local JOM managers. The Director made a funding distribution based on the national budget divided by the student count, taking into consideration the cost of living in each state. For example, Alaska received the highest per student cost based on the high cost of living in that state.

The regional JOM managers would collect the information from the local JOM programs; they would put out notices of deadlines, hold JOM forums, and conduct annual evaluations of each program, including a random student certification verification and financial audit review. These regional managers would provide their findings of non-compliance to the programs and provide them a timeline to comply or funding would be withheld until such time as the individual program was compliant with federal regulations and BIA policies and procedures. Compliance included annual reports, student count certificates, or lack of Local Indian Education Committee (LIEC) involvement.

The LIEC is comprised of parents of eligible Indian students enrolled in the public school district. Choices are made at the local level, with scarce resources going to locally determined needs. The regional JOM managers also reviewed each JOM program application and ensured that there were measurable goals and objectives based on an actual needs assessment that was conducted annually. In addition, the managers reviewed their prospective budgets before forwarding them to the Director in D.C. The managers collected the following from each program and sent them to the Director: annual needs assessment, program application with measurable goals and objectives, budgets, student count verifications, LIEC bylaws, and LIEC election process.

In 1982, the BIA proposed eliminating the JOM, arguing duplication of Indian Education Act. Congress soundly refuted this reasoning, stating the programmatic differences in local Indian control and scope, and difference in student eligibility. In 1983, the Department of Education (DOE) proposed eliminating the Indian Education Act, arguing similar funding was available from DOE and the lack of accountability for how the funding was used.

The Department of Education oversees the Title VII Indian Education Act programs and Title VIII Impact Aid funding which Congress considers duplicate funding sources for Indian Education. The Title VII program is run directly through the school districts and is not subject to tribal control. The tribes have no actual authority over the design or implementation of the Title VII programs.

Under the JOM regulations, parents of eligible JOM Indian students are "vested with authority" to design and implement local JOM programs. 25 Code of Federal Regulations (CFR) INDIANS, Part 273, 16-17, states JOM programs are based on community needs assessments, not the needs of the school district and therefore provide specialized educational services to Indian students. The JOM program is the only Federally-funded educational program that allows for student, parent, and community involvement in meeting their educational needs which are both academic and cultural based.

The eligibility for Title VII students is not based on students being an enrolled member of Federally-recognized tribe; they simply need to identify themselves on a DOE Form #506. Congress reacted so negatively to this proposal that any further debate on these two programs was shelved and put to rest.

However, the effort to eliminate JOM was resurrected in 1995. The effort to eliminate JOM began with the reduction and eventual phasing out of the regional JOM manager positions, and eventually, the Director's position in D.C. The Director went from a full time coordinator, to a quarter time position, and then phased out altogether. At that time, there was an effort by the BIA to put more emphasis and efforts into the Bureau-operated schools and wanted to direct JOM funds to those schools, even though the great majority of Native students attend public schools and not Bureau-operated schools.

JOM funding has been in a state of "suspended animation" since 1995. The funding formula and the movement of JOM into TPA has caused many tribes and other grantee/contractors under JOM to be frozen at the 1995 student count and funding figures, indefinitely. In 1994 the eligible Indian student count was 272,000 and now there is an unmet financial need for the additional JOM students currently being served by public schools throughout the nation. This student count is not an accurate representation of the number of Indian students served today.

Since the freeze in 1994, there has been no correlation of educational services with the lack of an accurate Indian student count. The JOM programs are not able to show an increase of students served due to the freeze and those Indian students attending public schools are being overlooked for services. Without a current JOM student count, there is no way to estimate the current percentage of JOM students being served in comparison to the BIE.

Many in Indian country believe that the Department of Interior and the BIE have mismanaged the JOM count for over two decades, a situation they many contend is a clear violation of the Federal Government's Trust Responsibility to Indian Country. Evidence of this mismanagement by BIA occurred with the FY 2007 Budget submission. Lack of program performance accountability, duplication of other state and federal programs and implementation of management efficiencies were among the reasons given in the budget documents for the reprogramming of twenty-five percent of JOM funds by the BIA Tribal Budget Advisory Council (TBAC). The BIA has not monitored the JOM program properly since 1995, and thus these reasons are invalid and unverifiable. The JOM program is the one remaining Federal program that puts the program under the strict control of a LIEC.

DATE	SOURCE	AMOUNT REQUESTED	# STUDENTS FUNDED	NOTES	CITATION
1992	BIA Budget Justification FY 1993	Base: \$22,817,000 FY 1993 Request: \$22,177,000	228,681 in 32 states	- JOM funds home-school coordinators and academic remediation. - JOM has blood quantum and eligibility requirements. - Although JOM has a base of \$22,817,000, \$644,000 transferred to tribes so as to let them manage their educational needs.	ISBN 0-16-037580-0, pg. 1065 (BIA-184)
	Testimony re: FY 1993			- In oral testimony, Committee asks why BIA did not request more money for education even though it's a priority for the Clinton Administration. - In the "additional questions" section, the BIA answers basic questions about the feasibility of transferring JOM funds to tribes.	ISBN 0-16-036719-1 pgs. 172-76; 211-12
1993	BIA Budget Justification FY 1994	Base: \$22,826,000 FY 1994 Request: \$22,826,000	First reported as 229,728 students in 1993; later revised to 245,102.	- JOM-funded home-school coordinators work with families to motivate students to stay in school. - JOM also helps parents meet school-related expenses.	ISBN 0-16-040785-0 pgs. 954, 1193 (BIA pgs. 83, 319)
	Testimony re: FY 1994			- To justify why its request matched its base, BIA explains that JOM enrollment increased by only .5 percent in the previous year. - BIA expects JOM enrollment to increase to approximately 245,000 students in FY 1994 because private and tribal schools now receive JOM funds.	ISBN 0-16-041023-1 (pg. 228-29)
1994	BIA Budget Justification FY 1995	Base: \$24,326,000 FY 1995 Request: \$24,406,000	259,813	Nothing in green book re: JOM activities.	Pg. 1044 of the FY95 budget justifications (BIA pg. 79)
	Testimony re: FY 1995			- ASIA Ada Deer discusses education at the beginning of her testimony and mentions JOM by name. - Committee notes that the amount requested for JOM is about the same as for FY 1994; BIA explains that it expects JOM to fund only a few more students than the year before.	Part 10, Pgs. 93; 228-29

DATE	SOURCE	AMOUNT REQUESTED	# STUDENTS FUNDED	NOTES	CITATION
1995	BIA Budget Justification FY 1996	Base: \$24,359,000 FY 1996 Request: \$22,752,000	271,857	State-by-state breakdown shows that JOM primarily funding students in Alaska, Arizona, and New Mexico.	Part 2, pgs. 839; 1144-45 (BIA pgs. 61, appendix)
	Testimony re: FY 1996			- ASIA Ada Deer once again mentions education and JOM at the beginning of her testimony. - BIA explains JOM incentivizes non-Indian schools to share in the responsibility of educating Indian students.	Part 11 pg. 955
1996	BIA Budget Justification FY 1997	Estimated Base: \$19,634,000 FY 1997 Request: \$22,570,000	"nearly 272,000 students in 33 states"	- BIA notes that it received 14 percent less than its FY 1996 request. - Some JOM funds were transferred to self-governance compacts.	Part 4, 54-56
	Testimony re: FY 1997			JOM is mentioned nowhere in the testimony.	Part 5
1997	BIA Budget Justification FY 1998	Estimated Base: \$18,177,000 FY 1998 Request: \$17,216,000	"272,000 students in 33 states"	- JOM "is the only Bureau program that provides for the culturally related and supplementary academic needs of Indian children attending public schools." - Explains that JOM transferred to the TPA part of the Tribal Budget System in FY 1996. - BIA used the FY 1995 student count to distribute JOM funds to tribal TPA bases.	Part 2, pg. 692 (BIA pgs. 57-58)
	Testimony re: FY 1998			JOM mentioned once in the oral testimony, but nothing else beyond that.	Part 8, pg. 304
1998	BIA Budget Justification FY 1999	Base: \$18,534,000 FY 1999 Request: \$18,080,000	a "constant population" of 272,000 students in 33 states	Same information as previous year.	Part 2, pg. 878 (BIA 74)
	Testimony re: FY 1999			Although Indian education discussed at length, JOM not mentioned.	
1999	BIA Budget Justification FY 2000	Base: \$18,080,000 FY 2000 Request: \$17,469,000	a "constant population" of 272,000 students in 33 states	Same information as previous year.	Part 2, pg. 924-25 (BIA pg. 60-61)
	Testimony re: FY 2000			JOM mentioned once, but nothing else beyond that.	Part 8, pg. 215

DATE	SOURCE	AMOUNT REQUESTED	# STUDENTS FUNDED	NOTES	CITATION
2000	BIA Budget Justification FY 2001	Base: \$17,387,000 FY 2001 Request: \$17,035,000	a "constant population" of 272,000 students in 33 states	- Essentially the same information as in previous years. - JOM funds "tutoring and counseling and parental involvement programs."	Part 2, pg. 789 (BIA pg. 63)
	BIA Testimony re: FY 2001			- JOM mentioned nowhere in the testimony. - At a couple of points, ASIA Kevin Gover concedes that BIA has struggled to keep up with student counts.	Part 8, pgs. 194, 255
2001	BIA Budget Justification FY 2002	Base: \$16,998,000 FY 2002 Request: \$17,113,000	a "constant population" of 272,000 students in 33 states	- JOM meets "the unique and specialized educational needs of Indian children in public school systems" - JOM for PreK-12 students, excludes "those who are enrolled in Bureau- or sectarian-operated schools"	Pg. 51-52
	BIA Testimony re: FY 2002			JOM designed to meet "specialized and unique educational needs, including programs supplemental to the regular school program and school operational support."	Part 6, pg. 351
2002	BIA Budget Justification FY 2003	Base: \$17,113,000 FY 2003 Request: \$17,019,000	"about of 272,000 students in 33 states"	"The program supports the Bureau's Annual Performance Plan goal of improving the succession of students to each educational level by providing tutoring and counseling and parental involvement programs."	Pg. 56
	BIA Testimony re: FY 2003			JOM is not discussed	
2003	BIA Budget Justification FY 2004	FY 2004 Request: \$16,974,000	"about of 272,000 students in 33 states"	Approximately the same information as previous year.	Pg. 44-45
	BIA Testimony re: FY 2004			JOM is not discussed	
2004	BIA Budget Justification FY 2005	2003 Actual: \$16,908,000 2004 Enacted: \$16,666,000 FY 2005 Request: \$16,743,000	"about of 272,000 students in 33 states"	Explains that "the programs in public schools are often not designed to provide ethnic Indians with the support systems they need to be successful."	Pg. 57-58
	BIA Testimony re: FY 2005			JOM is not discussed	

DATE	SOURCE	AMOUNT REQUESTED	# STUDENTS FUNDED	NOTES	CITATION
2005	BIA Budget Justification FY 2006	FY 2004 Actual: \$16,666,000 FY 2005 Enacted: \$16,510,000 FY 2006 Request: \$7,777,000	Not discussed	To justify cutting JOM funds in half, BIA says its core responsibility is to operate federally funded schools; in light of scarcity, BIA wants to cut down on supplemental education funding.	Pgs. BIA-TPA 21-23
	BIA Testimony re: FY 2006			- BIA explains that JOM "grants for Indian children attending public schools do not currently address a focused goal for academic achievement and duplicate similar funding made available by the Department of Education." - Example of duplicate funding: DOE has \$150 million in funding specifically targeted to Indian students attending public schools. - Remaining JOM funding will go toward "the highest-priority components" of the program	Pgs. 18, 74
2006	BIA Budget Justification FY 2007	FY 2005 Enacted: \$16,510,000 FY 2006 Enacted: \$16,371,000 FY 2007 Request: \$0	Not discussed	"These grants are duplicative of other Federal and State assistance programs and do not address a focused goal for academic achievement. Eliminating the \$16.4 million JOM grants allows the Bureau to realign funds and focus resources on the requirements of the Bureau funded school system, while also reducing redundancy with other Federal programs."	Pgs. BIA-SUM-12, 13; BIA-ED-1
	BIA Testimony re: FY 2007			- Sen. Dorgan (D-ND) asks why JOM is cut, says this is a mistake, points out that BIA does not seem to increase education spending elsewhere so as to "refocus" itself. - BIA explains that it is phasing out JOM because DOE programs can now provide the same types of grants.	Part 5, pg. 74

DATE	SOURCE	AMOUNT REQUESTED	# STUDENTS FUNDED	NOTES	CITATION
	BIA Budget justification for FY 2006	FY 2006 Enacted: \$16,371,000 FY 2007 CR: \$0 FY 2008 Request: \$0	Not discussed	"The FY 2008 request proposes corresponding reductions to Self-Governance Compacts and Consolidated Tribal Government Programs funding related to JOM. This reduction eliminates \$6.7 million from Self-Governance Compacts. Public school districts will continue to receive funding and are eligible for grants similar to JOM under Title VII of the Indian Education Act (Public Law 107-110) through the US Department of Education. Title VII funding addresses the special academic and culturally relevant education needs of Indian children."	Pg. 1A-TG-3; 1A-BDUC-1
2007	BIA Testimony re: FY 2008		• Testimony from Umatilla: Restore JOM to 2004 levels • Umatilla questions BIA's argument that JOM was duplicative of Title VII funding available through DOE, saying that JOM monies go to tribes whereas Title VII monies are managed by non-Indian school districts. • Umatilla attributes underperformance of its students to lack of JOM programs. • Confederated Tribes of the Warm Springs Reservation in Oregon also testifies, asks that BIA restore JOM to \$1.7 million • Warm Springs: "(JOM) is the only tool available to our Tribe to directly participate in the K-12 education of our children." • Fond du Lac Band: JOM not duplicative; unlike other programs, JOM had a cultural enrichment and Native language component unavailable elsewhere. Asks that BIA "restore full funding." • NCAI: JOM not duplicative; valuable because it gave tribes a foothold in the K-12 public school systems. • Nisqually: "While we support the administration's initiative to improve performance at BIA schools, we cannot support balancing these increases with cuts that would harm children attending public schools and our youth who are pursuing a college education." Asks that BIA restore JOM to \$16.3M. • Puyallup: Restore JOM funding to \$16 million. • Shoshone-Bannock Fort Hall: Restore JOM funding to \$16.4 million. • Skokomish: JOM key to the tribe's ability to track students' academic progress.	Pgs. 194, 195-97, 292, 328, 358, 369,	

DATE	SOURCE	AMOUNT REQUESTED	# STUDENTS FUNDED	NOTES	CITATION
2008	BIA Budget Justification for FY 2009	FY 2007 Operating Budget for JOM: \$19,700,000 total - Grants: \$12,000,000 - For Self-Governance Tribes: \$6,689,000 - For Consolidated Tribal Programs: \$1,011,000 FY 2008 Request: \$0 FY 2008 Enacted: \$21,341,000 total - Grants: \$13,782,000 - Self-Gov: \$6,570,000 - Consolidated Tribal Programs: \$995 FY 2009 Request: \$0	Not discussed	- BIA justifies elimination of JOM, points out that DOE's Office of Indian Education provides cultural and educational support akin to JOM's. - Reports that in 2008, DOE's Office of Indian Education administered \$119.6 million in grants for improving Indian student achievement, special programs, and research activity	Pg. 1A-0VW-9; 1A-EDU-2
	BIA Testimony re: FY 2009		- When asked about the elimination of JOM, Secretary Kempthorne said that such funding could be replaced through DOE. - Alamo Navajo School Board: BIA's reasoning for cutting JOM is unsubstantiated; cutting JOM means letting go of a staff member integral to Indian learning. - Umatilla: Same information as previous year. - Fond du Lac: JOM key to helping Indian kids keep up with the achievement goals of No Child Left Behind. - Jamestown S'Kallam: Restore JOM to \$21.4 million. - Lac De Flambeau: JOM funds help tribal kids make the transition from an Indian-majority elementary school into a predominately white high school; points out that DOE has not increased its funding for Indian programs in years. - Lummi: Restore JOM to \$21.4 M. - NCAI: "What is different about JOM is that its "special and unique needs" are determined not by the school boards, but		Pg. 195, 222, 291, 325, 369, 374-75, 384, 403, 443, 445, 453, 460, 464,

			instead through parent committees that each JOM program is required to have ..."; Restore JOM to \$21.4 million. • Puyallup: Restore JOM to \$16M. • Quinalt: Restore JOM to \$21.4M • Skokomish: "remain disappointed" re: cutting JOM. • Squaxin Island: Restore JOM to \$21.4 M. • Standing Rock: Opposes JOM cuts.	
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DATE	SOURCE	AMOUNT REQUESTED	NOTES	CITATION
2009	BIA Budget Justification for 2010	FY 2008 Enacted: \$13,782,000 FY 2009 Enacted: \$13,797,000 FY 2009 Funding: \$21,425,000 total • Education: \$13,589,000 • Self-gov: \$6,862,000 • Consolidated Tribal Programs: \$954,000 FY 2010 Request: \$13,589,000	• Explains that JOM can be used for small expenses such as school supplies. • Priority given to schools on or adjacent to Indian reservations or schools that are Oklahoma- or Alaska-based. • Appendix has a region-by-region breakdown of JOM funds distribution	IA-EDU-25
	BIA Testimony re: FY 2010		• Sen. Dicks (D-Washington) said JOM was "corrected" the previous year through a bipartisan effort. • Lummi: Restore JOM to \$21.4 million • NCAI: Supports \$24.3 million proposed for JOM • National Indian Education Association: calls for population re-count so as to reformulate program dollars; reports that JOM programs help Indian students build self-esteem through various means such as providing eyeglasses, resume review, etc. • Warm Springs: Restore JOM at \$25 million; JOM important because it gives tribes a say in public schools • National Indian Education Association: Program dollars need updating because of growth in Oklahoma. • Navajo Nation: Restore JOM at \$24.3 million to factor in "inflationary costs of additional students;" 50,000 Navajo students covered by JOM. • Cherokee Nation: mentions JOM in passing • National JOM Association (Harold Dustybull): Congress saved JOM; JOM effective because it is so flexible; JOM funds need to be stabilized to avoid mid-	Part 7: 2, 18, 78, 92-93, 96-97, 145, 209, 217, 255-57, 340, 344, 356, 600, 943,

			- year re-adjustment; at least 300,000 students covered by JOM - Sault Ste. Marie Tribe of Chippewa Indians: lift the funding freeze, restore JOM to \$24 million. - Cook Inlet: JOM funds core curriculum, including calculus; direct, positive correlation between JOM participation and GPAs. - Siletz Tribe: restore JOM to \$24.3 million; \$83,000 of JOM funds not enough for tribe's needs, which span 11 counties - Fond du Lac: Continue funding JOM because it addresses unique needs. - Squaxin: \$21.4 million for JOM	
DATE	SOURCE	AMOUNT REQUESTED	NOTES	CITATION
2010	BIA Budget Justification for FY 2011	FY 2009 Enacted: \$13,797,000 (TPA) FY 2010 Enacted: \$13,589,000 (TPA) FY 2011 Request: \$21,273,000 total - Education: \$13,434,000 - Self-Governance: \$7,074,000 - Consolidated Tribal Programs: \$765,000	- Same information as previous year. - Does not mention how many students benefit.	IA-EDU-21,22
	BIA Testimony re: FY 2011		- Committee on Appropriations asks ASIA Larry Echo Hawk about the future of JOM; Echo Hawk says he is "just starting to learn more" about the program's significance; recognizes that program dollars do not match growing student population. - Lummi Nation: \$21.4 million for JOM - Warra Springs: \$25 million for JOM; criticizes \$13.4 million requested for TPA in FY 2011; suggests JOM can counter dropout rates. - Siletz: \$24.4 million for JOM; program helps tribal youth in Oregon's urban centers; numbers growing since 1995; covers scholastic and athletic school fees. - National Indian Education Association: \$24 million for JOM; says tribal involvement is key to students' success. - National John S. O'Malley Association's Harold Dustybutl: Blackfeet dedicates JOM monies to parental instruction classes; seeks \$24 million for JOM. - Tribal Education Departments National Assembly: requested \$2 million to help its members administer JOM and other programs.	Part 6: 20-21; Part 7: 8, 70, 76, 80, 91, 96-97, 209-211, 438-37

DATE	SOURCE	AMOUNT REQUESTED	NOTES	CITATION
2011	BIA Budget Justification for FY 2012	FY 2010 Enacted/ 2011 CR: \$13,599,000 [TPA] FY 2012 Request: \$21,510,000 total - Education: \$13,402,000 - Self-governance: \$7,189,000 - Consolidated Tribal Programs: \$ 919,000	- Same information as in previous years. 88% of JOM funding distributed directly to tribes via base funding through Self-Governance compacts or Consolidated Tribal Programs.	IA-EDU-23, 24
	BIA Testimony re: FY 2012		- JOM not discussed with ASIA Echo Hawk. - Pueblo of Acoma: requests \$24.3 million for JOM; student recount for accuracy purposes - Cherokee: mentions JOM. - National Johnson-O'Malley Association: requests \$24 million for JOM, asks that funding freeze be lifted; asks that Interior dedicate one staff position to JOM. - Standing Rock: \$24.3 million for JOM - Lac Du Flambeau: JOM merits full funding. - Rep. Laura Richardson (D-Calif.): \$24 million for JOM - Warm Springs: requests \$27 million for JOM; notes that 85% of Indian children attend public school; says "doubling JOM to \$27 million is a modest but helpful gesture in recognition of the U.S. treaty and trust obligation to assist all Indian school children." - Stille: \$89,000 in JOM monies not enough; requests \$24.3 million for JOM - Lummi: \$24.3 million for JOM; - Cook Inlet: JOM funds health and wellness classes. - National Indian Education Association: notes that BIA request for FY 2012 less than its FY 1994 request; emphasizes importance of Indian parent committees. - Sac and Fox: requests \$24.3 million for JOM, emphasizes importance of Indian parent committees	Part 8, 274, 278-79, 334, 344-45, 376, 418, 522, 542, 546-47, 569, 616, 621, 784, 951, 1038

DATE	SOURCE	AMOUNT REQUESTED	NOTES	CITATION
2012	BIA Budget justification for FY 2013	FY 2012 (TPA) Enacted: \$13,304,000 FY 2013 Request: \$21,396,000 total • Education: \$13,286,000 • Self-governance: \$7,197,000 • Consolidated tribal programs: \$895,000	• Same information as previous years.	IA-BIE-30-31
	BIA Testimony re: FY 2013		• JOM not discussed with ASIA Echo Hawk • Cluctaw: compacts w/ BIA re: JOM • National Johnson-O'Malley Association: four major concerns include: ◦ Combining JOM with Title VII would take JOM out of tribes' control ◦ Restore JOM funds to \$24 million ◦ Order a new student population count ◦ Reinstate JOM position at BIE • Use: JOM needs to be a permanent fixture on BIA budget. • Siletz: same information as previous year • Pueblo of Acoma: JOM program tailored for pueblo children • Santa Clara Pueblo: \$24.3 million for JOM;	Part B: 429, 445-50, 506, 855, 993-94, 1008,
DATE	SOURCE	AMOUNT REQUESTED	NOTES	CITATION
2013	Budget justification for FY 2014	FY 2012 Enacted: \$13,304,000 FY 2013 GR: \$13,396,000 FY 2014 Request: \$21,484,000 total • Education: \$13,134,000 • Self-governance: \$7,197,000 • Consolidated Tribal Programs: \$1,153,000	• Same information as previous year.	IA-BIE-32, 33
	Testimony re: BIA Budget FY 2014		• JOM student count mentioned in Washburn testimony as a topic discussed between BIE and tribal governments	
2014	Budget justification for FY 2015	FY 2013 Enacted: \$12,615,000	• Increase JOM funds for a JOM Coordination position and to update the 2012 student count	

		FY 2014 Enacted: \$14,338,000 FY 2014 Request: \$14,739,000	• Biennially update student count of all eligible students • Intends to implement the updated 2014 student count in FY 2015	
2015	Budget justification for FY 2015	FY 2014 Enacted: \$14,338,000 FY 2015 Enacted: \$14,739,000 FY 2015 Request: \$14,739,000	• Increase JOM funds \$500,000 for a JOM Coordination position and to update the 2012 student count • Biennially update student count of all eligible students • Intends to implement the updated 2014 student count in FY 2015	
2016	Budget justification for FY 2016	FY 2015 Enacted: \$14,739,000 FY 2016 Enacted: \$14,776,000 FY 2016 Request: \$17,376,000	• Increase JOM funds \$2.6 million to fund increased 2012 student count • Biennially update student count of all eligible students • Intends to implement the updated 2014 student count in FY 2016	
2017	Budget justification for FY 2017	FY 2016 Enacted: \$14,778,000 FY 2017 Enacted: \$ _____ FY 2017 Request: \$18,538,000	• Increase JOM funds \$3.6 million to fund updated 2012 student count • Biennially update student count of all eligible students • Intends to implement the updated 2014 student count in FY 2017	

Federal Trust Responsibility and JOM

The United States has a unique nation-to-nation relationship with and owes a trust responsibility to Indian tribes. The federal government's trust relationship with Indian tribes (which is based on treaties, agreements, statutes, court decisions, and executive orders) charges the United States with moral obligations of the highest responsibility. The federal Indian trust responsibility is a legal obligation under which the United States "has charged itself with moral obligations of the highest responsibility and trust" with respect to Indian tribes (*Seminole Nation v. United States*, 1942).

This duty to tribes was first discussed in 1831 in *Cherokee Nations v. Georgia* and has evolved over the countless Supreme Court cases on the issue, making the trust doctrine one of the most important principles in federal Indian law. The trust responsibility is also a legally enforceable fiduciary obligation that charges the United States with the duty to protect tribal treaty rights, assets, resources, and lands. In addition, there is a duty to implement federal law mandates regarding American Indian and Alaska Native tribes and villages. The Supreme Court has indicated that the doctrine entails legal duties, moral obligations, and the fulfillment of expectations and understandings that have developed from the relationship of the United States and federally recognized tribes. The federal government is charged with acting fairly, justly, and honestly in the utmost good faith and with sound judgment and prudent in dealing with tribes (*Assinibione and Sioux Tribes vs. Board of Oil and Gas Conservation*, 1986). The trust responsibility applies to tribes and individuals.

The Assistant Secretary-Indian Affairs is responsible for carrying out the Interior Department's trust responsibilities and must promote economic well-being and self-determination. The Secretary is charged with maintaining the federal government-to-government relationship between the United States and federally recognized tribes. The BIA's Mission Statement describes their relationship with American Indian and Alaska Native people as:

"The BIA's mission is to enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian tribes and Alaska Natives. We will accomplish this through the delivery of quality services, maintaining government-to-government relationships within the spirit of self-determination."

Within the BIA is the BIE, which is charged with providing quality education opportunities for Native students. The United States government has utterly failed in satisfying the federal trust responsibility owed to tribes by refusing to properly manage, account for, and administer the JOM program. Through inaction, failure to satisfy basic administrative requirements, and complete disregard of Congress-

sional mandates regarding this program, the BIA is denying over ninety percent of Indian students the trust responsibility it is charged with carrying out. There is both a legal and moral component to the trust responsibility, based in specific statutes as well as Supreme Court rulings. Under the Administrative Procedure Act, tribes may bring cases to force action to honor the doctrine of federal trust responsibility.

In June 2014, President Obama made his first visit to Indian Country and announced his administration's plans to focus on Indian education, and reform the BIE. The President's proposals indicate an understanding of the need for reform in the area of Indian education, yet focusing policies on Bureau operated schools misses the mark, as only seven percent of Native students attend these schools. The reform needs to extend to all Native students, no matter what school they attend. Additionally, in August 2014 Interior Secretary Jewell issued a Secretarial Order reaffirming the Department of the Interior's trust responsibilities to federally-recognized tribes and individual beneficiaries.

The federal trust responsibility is one of both moral and legal obligations that the federal government is required to meet. It is the federal government's duty to ensure protection of Indians—from their assets, resources, land, health services, and education. Both the President's visit and the Secretary's order indicate the Administration's understanding of their trust responsibility and that Indian Country is being let down; that the federal government is failing to live up to their trust responsibility. Providing the funds to ninety-three percent of Indian students to which they are entitled is part of that responsibility, but first those students must be counted. The usage of Census data when accounting for the JOM program is the first step in the government fulfilling their responsibility.

Conclusion

As Secretary Jewell noted in the June 2014 Native Youth Report released when President Obama embarked on his first presidential visit to Indian Country: "The future of Indian Country rests on ensuring American Indian children receive a world-class education that honors their cultures, languages and identities as Indian people."

On behalf of the over 1.0 million Indian children eligible for JOM, I would like to thank you again for consideration of S. 2842 so quickly after its introduction. After 25 years of waiting for any action by Congress or the Administration to rectify this shameful situation, we are hopeful this Committee's quick action on the bill is an indication that things may be headed in the right direction. Thank you.

Attachments

December 17, 2014

The Honorable Sally Jewell,
Secretary,
U.S. Department of the Interior,
Washington, DC.

RE: JOHNSON-O'MALLEY SUPPLEMENTAL INDIAN EDUCATION PROGRAM
STUDENT COUNT UPDATE

Dear Secretary Jewell:

On behalf of the National Indian Education Association (NIEA), the National Congress of American Indians (NCAI), the National Education Association (NEA), and the National Johnson O'Malley Association (NJOMA), we urgently request an update to the student count under the Johnson-O'Malley Supplemental Indian Education Program (JOM (25 CFR 273)). As national organizations that advocate on behalf of tribes and Native students across the country, it is important that we call your attention to the continued need to update the student count within the Bureau of Indian Affairs (BIA).

Despite directives by Congress in Fiscal Years 2012 and 2014 in the House Interior, Environment, and Related Agencies Appropriations Bills, the U.S. Department of the Interior (Department) has yet to make updating the student count a priority, which inhibits the intent and integrity of a program that is vital to the success of Native students. Given the lack of progress on securing an adequate student count and the significant undercounting of students who should be eligible to participate in the program, our organizations recommend that the Department utilize existing data, such as that from the U.S. Census, until the Department works with tribal communities to identify their actual student counts.

The Department currently uses Census data for existing Indian programs, including the Workforce Investment Act, the Indian Housing Block Grant program, the Tribal Transportation program, and other programmatic formulas. Similarly, the BIA utilizes Census data for its American Indian Population and Labor Force Re-

ports, which Congress regularly uses to inform policymaking decisions regarding tribal programs.

To facilitate this temporary solution through existing and readily available data, our organizations call for greater coordination among the Department, the U.S. Census Bureau, and the White House Office of Management and Budget to ensure that Census data collection is accurately utilized to benefit Native students eligible for JOM. We steadfastly believe the same justifications for usage of Census data in other tribal programs apply to the JOM program and should be utilized until the Department gathers accurate student count information.

We urge the Department to take immediate action regarding the utilization of Census data in the JOM program in order to alleviate a longstanding problem that was not created by tribes, but whose citizens and students are significantly impacted by inaccurate and incomplete data and extensive bureaucratic delays. As such, our organizations passed resolutions (NIEA Resolution 2014–19 and NCAI Resolution ATL–14–039), which call for the upholding of the federal government's trust responsibility through the use of Census data for updating JOM student counts.

We appreciate the work you have done to emphasize Native students this year and we look forward to your leadership in making the requisite administrative policy changes in order to provide adequate JOM funding to our students. We request that you meet with our organizations and JOM experts prior to year's end in order to discuss the JOM student count, utilizing the Census data as a temporary remedy, and ensuring the BIA ultimately modernizes the JOM program with sustainable future funding levels and greater accuracy through coordination and consultation with tribal communities. By working together we can all ensure that Native students are equipped with adequate resources and opportunities to foster positive academic, social, and economic outcomes for the future generation of leaders across Indian Country.

Sincerely,

MELVIN MONETTE, PRESIDENT LILY ESKELSEN GARCIA, PRESIDENT
NATIONAL INDIAN EDUCATION ASSOCIATION NATIONAL EDUCATION
ASSOCIATION
BRIAN CLADOOSBY, PRESIDENT CARLA MANN, PRESIDENT
NATIONAL CONGRESS OF AMERICAN INDIANS NATIONAL JOHNSON-O'MALLEY
ASSOCIATION

THE NATIONAL CONGRESS OF AMERICAN INDIANS—RESOLUTION #ATL–14–039

TITLE: SUPPORTING THE UTILIZATION OF U.S. CENSUS DATA FOR UPDATING THE
JOHNSON-O'MALLEY STUDENT COUNT

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the National Johnson-O'Malley Association (NJOMA) is the elected advocate representing students, ages 3 through high school, who are enrolled in or eligible for enrollment in Federally-recognized tribes and not attending or served by Bureau of Indian Education (BIE) schools, and currently being served from respective tribal jurisdiction boundaries and service areas; and

WHEREAS, NCAI and NJOMA have established a consensus that the academic, social and economic well-being of our Indian and Johnson-O'Malley (JOM) students are our highest priority; and

WHEREAS, the JOM funding and the certified student count of 278,000 has been frozen at its 1995 level; the current student count of 321,250 was updated by the BIE in 2012; however, according to data collected by the U.S. Census Bureau, in 2010 there were 798,486 American Indian and Alaska Native alone students in the age group eligible to receive JOM assistance, and 1,469,722 American Indian and

Alaska Native alone or in any combination students, 93 percent of whom attend Public Schools, which leaves more than 400,000 students with unmet needs; and

WHEREAS, without continued and appropriately assumed levels of annual Congressional funding, JOM programs that foster specialized, culturally sensitive and unique educational programs that develop leadership skills of future tribal leaders necessary to promote positive academic, social and economic changes in Indian communities will slowly cease to exist; and

WHEREAS, the United States Congress is not being annually informed of positive impacts and outstanding achievements of the supplement education programs provided by JOM funds; nor are sufficient steps being taken to insure the full participation of all eligible Indian students and the public schools they attend.

NOW THEREFORE BE IT RESOLVED, that NCAI joins NJOMA, the National Indian Education Association (NIEA), the United South and Eastern Tribes (USET) and the Tribal Education Departments National Association (TEDNA), in support of efforts to use U.S. Census data for a student count for the JOM program and for funding level determinations; and

BE IT FURTHER RESOLVED, that NCAI calls for the use of a uniform allocation funding formula based on U.S. Census data as it is currently being the most accurate projection of the JOM-eligible student population; and work with tribal communities to identify their actual count; and

BE IT FURTHER RESOLVED, that NCAI welcomes the opportunity to work with NJOMA, NIEA, USET, TEDNA and other stakeholders in developing and enacting federal policy and regulatory measures the modernize and position the Supplemental Indian Education Program (known as the Johnson-O'Malley Program) as a sustainable program whose future funding levels are adequate for assistance of all eligible students to achieve academically so they may become the future leaders of tribal nations and promote positive academic, social and economic changes for future generations; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2014 Annual Session of the National Congress of American Indians, held at the Hyatt Regency Atlanta, October 26–31, 2014 in Atlanta, Georgia, with a quorum present.

NATIONAL INDIAN EDUCATION ASSOCIATION (NIEA)—RESOLUTION 2014–19

TITLE: SUPPORT UTILIZING U.S. CENSUS DATA FOR UPDATING THE JOHNSON O'MALLEY STUDENT COUNT

WHEREAS, we, the members of the National Indian Education Association (NIEA) of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Indian Education Association was incorporated in 1970 and advances comprehensive educational opportunities for American Indians, Alaska Natives, and Native Hawaiians throughout the United States.; and

WHEREAS, the National Johnson-O'Malley Association (NJOMA) is the elected advocate representing students, ages 3 through high school, who are enrolled or eligible for enrollment in federally-recognized tribes, not attending or served by Bureau of Indian Education (BIE) schools, and currently being served from respective tribal jurisdiction boundaries and service areas; and

WHEREAS, NIEA and NJOMA have established a consensus that the academic, social, and economic well-being of our Native students are our highest priority, regardless of where they attend school; and

WHEREAS, according to 25 CFR 273.1, the purpose of the Johnson-O'Malley (JOM) program is to meet the specialized and unique educational needs of Indian children attending public and some tribal schools through the use of supplemental education programs, and

WHEREAS, the BIE completed an inaccurate and unofficial student count in 2012 resulting in the continued use of the outdated certified student count of 278,000 from 1995; and

WHEREAS, according to the U.S. Census Bureau, there were 798,486 American Indian and Alaska Native students (alone) in the JOM-eligible age group, and 1,469,722 American Indian and Alaska Native students (alone or in any combination) in 2010, forcing more than 400,000 Native students to attend school with unmet needs; and Census data is regularly collected, reliable information upon which the federal government regularly relies on for many other programs, including tribal; and

WHEREAS, without continued and accurately assumed levels of annual congressional funding, JOM programs that foster specialized, culturally-sensitive and unique educational programs will decrease in its ability to serve the true number of Native students eligible for JOM assistance; and

WHEREAS, federal agencies continue to forego providing accurate and timely JOM student count information to the United States Congress nor are sufficient steps being taken to guarantee the full participation of all eligible Native students and the public schools in which they attend;

NOW THEREFORE BE IT RESOLVED, that NIEA joins the NJOMA, the National Congress of American Indians (NCAI), the United South and Eastern Tribes (USET), and the Tribal Education Departments National Association (TEDNA) in support of efforts to use U.S. census data for a student count for the JOM program and for funding level determinations; and

BE IT FURTHER RESOLVED, that NIEA calls for the use of a uniform allocation funding formula based on U.S. census data after it has determined the most accurate depiction possible of the JOM-eligible student population; and

BE IT FURTHER RESOLVED, that NIEA welcomes the opportunity to work with NJOMA, NCAI, USET, TEDNA, and other stakeholders in developing and enacting federal policy and regulatory measures to modernize and position the Supplemental Education Program (known as the Johnson-O'Malley program) as a sustainable program whose future funding levels are adequate for assist all eligible students achieve academically so they may become the future leaders of tribal nations and promote positive academic, social, and economic changes for future generations; and

BE IT FINALLY RESOLVED, that NIEA recognizes the immediate nature and timely need to address this issue and therefore will officially request within two weeks immediate action pertaining to this issue within the Department of the Interior, the Bureau of Indian Education, and the United States Congress; and

CERTIFICATION

I do hereby certify that the following resolution was dully considered and passed by the National Indian Education Association on October 18, 2014 at which time a quorum of the membership was present.

Melvin Monette, President

The INTER-TRIBAL COUNCIL of the FIVE CIVILIZED TRIBES

A Resolution Establishing Reform to the National Johnson-O'Malley Student Count

Resolution No. 16-01

WHEREAS, the Inter-Tribal Council of the Five Civilized Tribes (ITC) is an organization that unites the Tribal Governments of the Cherokee, Chickasaw, Choctaw, Muscogee (Creek), and Seminole Nations, representing over 500,000 Indian people throughout the United States; and

WHEREAS, the National Johnson-O'Malley Association (NJOMA) is the elected advocate representing the nation's eligible Indian students, ages 3 to grade 12, from Federally-recognized tribes, not attending or served by Bureau of Indian Education (BIE) schools, and currently being served from respective tribal jurisdiction boundaries; and

WHEREAS, the NJOMA established consensus that the academic, social and economic well-being of our Johnson-O'Malley (JOM) students are our highest priority; and

WHEREAS, the BIE is required to perform an annual count of eligible students for the JOM program; has failed to do so thorough an update and count of eligible students since 1995; and has released the results of their misdirected 2012 and 2014 student count updates as mandated from the FY 2012 Congressional Interior Appropriations Act (H. Rpt. 112-151) and the FY 2014 Congressional Interior Appropriations Act (P.L. 113-76).

WHEREAS, Based on 2010 data from the U.S. Census Bureau, there are 798,877 enrolled American Indian and Alaska Natives, ages 3-18, who are eligible for JOM services. In addition, a 2012 Senate Indian Affairs Committee report accompanying S. 1262 (Sen. Rpt. 113-262), indicated that 93% of Native students attend public schools.

WHEREAS, per a request from Congressman Tom Cole (R-OK), the Census Bureau produced census information regarding Native American population, ages 3 – 18 years, as well as projections through the year 2020. Based on that information, we know that there are over 400,000 JOM-eligible students not being counted and thus not being served.

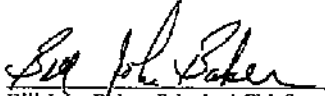
NOW THEREFORE BE IT RESOLVED, the Inter-Tribal Council of the Five Civilized Tribes establishes:

Based upon review of the provided census data, it is the view of Inter-Tribal Council that the following policy changes be made:

- i. Reform or terminate the BIE's student count responsibility;
- ii. Obtain Congressional authorization to use U.S. Census Bureau data for both funding and grant allocation purposes;
- iii. Task the Bureau of Indian Affairs (BIA) with reconciling the census data with the tribal enrollment data in establishing an official JOM eligible student count;
- iv. Authorization of the Johnson-O'Malley Supplemental Indian Education Program Modernization Act of 2015 to formally codify the JOM program and its operations.

CERTIFICATION

The foregoing resolution was adopted by the Inter-Tribal Council of the Five Civilized Tribes meeting in Tulsa, Oklahoma on this 8th day of January, 2016, by a vote of all for 0 against and 0 abstentions.


 Bill John Baker, Principal Chief
 Cherokee Nation


 James R. Floyd, Principal Chief
 Muscogee (Creek) Nation


 Gary Burton, Chief
 Choctaw Nation of Oklahoma


 Leonard M. Harjo, Principal Chief
 Seminole Nation of Oklahoma


 Bill Anoatubby, Governor
 The Chickasaw Nation

The CHAIRMAN. Thank you for your testimony. We will start with rounds of questioning. I would like to start with Senator Daines.

Senator DAINES. Thank you, Mr. Chairman. As I mentioned earlier, the Johnson-O'Malley program benefits thousands of tribal students across the state of Montana. It is critical that the department of Interior gather updated information to ensure that all eligible Native American students have the tools that they need to learn.

Mr. Black, do you know approximately how many tribal students are estimated to qualify for the Johnson-O'Malley program who aren't currently being covered?

Mr. BLACK. I don't have that information, sir.

Senator DAINES. I understand that March of last year, Interior stated that they would consult with tribes who had existing Johnson-O'Malley programs and other educational organizations about the methodology that was being used to allocate JOM funding based on the 2014 student count. I understand these consultations happened in 2015. What were the results of those consultations?

Mr. BLACK. We did approximately seven consultations around the Country over the last year, in 2015. The results of that I don't

have with me right now, but I would be happy to get back to you on that.

Senator DAINES. Would the Department of Interior publish, publicly, the results of those conversations?

Mr. BLACK. If they were official tribal consultations, they would be public record. We record all of that information from the consultation sessions.

Senator DAINES. And has the Department of Interior begun using the 2014 data as a basis to allocate the JOM funding?

Mr. BLACK. Right now, due to a number of factors, there are still spirals, we didn't get all of the JOM contractors that reported. So right now, there are some challenges as to how we would be able to use that data in applying it toward some type of a formula.

Senator DAINES. So the answer is no, and that is because we don't have all the data yet?

Mr. BLACK. Yes, I don't believe we have all the data. As I stated, we had 391 of the JOM contractors respond and provide data, of approximately 556 total contractors. So we are short probably about 30 percent or so of our total contractors.

Senator DAINES. So that gap, I did the quick math here, it is about 72 percent of the contractors, there are 28 percent you have not received the data from.

Mr. BLACK. Just to clarify, in 2012, we had more respond to that. But then in 2014, some of them may not have re-responded again. So some of those numbers, we would have to take a look at together.

Senator DAINES. So does BIA have or is BIA developing a strategy to collect sufficient data to get responses from more than 72 percent of the participating entities?

Mr. BLACK. Yes. They are currently looking at the process that we used previously in 2012 and 2014, and looking for ways we can improve the response rate. The JOM is a voluntary program, so we don't have a mandatory tool that we can use to require reporting at this point in time.

Senator DAINES. If we told the contractor, you don't get funding unless you respond, would that help?

Mr. BLACK. I am sure it probably would. We do not have that ability right now.

Senator DAINES. Why not add some teeth? What can we do to put some teeth in this to ensure we get the data? This is the problem, we have heard a lot of Senators talk about this gap, where there are students being denied these resources because we are not getting accurate data.

Mr. BLACK. I think that would be something we would be happy to work with the Committee on and then get you background information as far as ideas of how we can improve that reporting.

Senator DAINES. There is an old saying in business: you get what you inspect, not what you expect. And to put some teeth in this, some accountability, I know darned well if you said, you don't get any funding unless you respond to the survey with accurate data, I bet you that would fix the problem in about 24 hours.

Mr. BLACK. You are probably right.

Senator DAINES. Just a suggestion. Are you aware the Appropriations conference reports have since 2012 directed the BIE in coordi-

nation with the Department of Education to count the number of students eligible for the Johnson-O'Malley program and recommend a methodology to distribute funds in the future?

Mr. BLACK. Yes, that is my understanding. That is what resulted in the 2012 and 2014 counts.

Senator DAINES. And that by failing to do so, BIE is not compliant with these directives?

Mr. BLACK. I understand that we did conduct the 2012 and 2014 counts and conducted the consultations.

Senator DAINES. Yes, but the data, we all know, is insufficient. A 72 percent score is barely a C. We are talking about 157 contractors here that just didn't respond, which represents thousands and thousands of students. So the last question is, is there currently an estimated time line for the Department to conduct an updated, accurate student count?

Mr. BLACK. That I would have to get back to you on, Senator.

Senator DAINES. I don't sense urgency in correcting this. What do we have to do to get this problem fixed quickly?

Mr. BLACK. I think working together with the Committee on this bill and other things or in different ways. And it is definitely, it is not that there isn't a concern there to address this. Our Bureau of Indian Education staff is working very hard to try and address a number of these issues out there. There are some challenges in collecting data. As I said, it is a voluntary program. There are a number of things we need to work on.

Senator DAINES. I know this Committee would be more than happy, what do we need to break that barrier down? That is what this legislation is for, to try and correct this gap that is happening. We have students who aren't getting the resources they should be getting because we have inaccurate data.

Mr. BLACK. Right.

Senator DAINES. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Daines. Senator Heitkamp?

Senator HEITKAMP. Thank you, Mr. Chairman. First, let me express my gratitude, Chairman Trudell, for your service to our Country. I conduct, every year, a Native American Veterans Summit, and hear some of those same concerns that you expressed today. It is almost tragic that not only do you have a treaty right but also a right that was earned in service to this Country and you have people begging for services.

So my great apologies for that. I know how critically important making sure that our veterans are taken care of is, not only to all of us, but certainly to the Native American population in my State. So thank you for your testimony.

I want to turn to the Johnson-O'Malley student count. Mr. Black, I will tell you that Senator Lankford's comments and then building on that, Senator Daines' comments, and really building on kind of an intent of this bill, is to try and figure out how many people are out there, especially children. And I want to make this point, everybody is talking about cultural services. In North Dakota, these funds are used to buy pens and paper. Foundational kinds of input for children whose families couldn't otherwise afford it.

If we are truly going to do what we need to do in Indian education or in Indian health care, we need to have data. We need to

know how many people are out there, what kinds of services they need, where we are failing in providing services and how we can improve programs by eliminating fraud, waste and abuse and duplication. Streamlining what we need to do but then making sure that we know where we are falling short. We can't do that if we are cavalier about counts. And I know that you know this. And I do appreciate your testimony supporting the bill with some modifications.

But it speaks to a broader issue here, which is that, as I have said in the past, way too often we silo Indian programs, whether it is Indian education, Indian health care, Indian housing. To that one child who is in school, they don't think about, oh, well, that is what BIE is doing for me and this is what Indian Health is doing for me and this is what NAHASDA is supposed to be doing for me. They think about their condition today.

This count is important not only for the Johnson-O'Malley program, but it is important to understand where these children are falling through the gaps. Because we know that Native children, just from what we know, are probably the most challenged ethnic group in the Country in terms of their services.

So I want to thank you for your testimony, but I also want to impress upon you the need to have, I think, a broader commitment to responding to concerns, especially those of us on this Committee who want to help, who want to better understand what are the metrics.

Obviously, getting back to this contractor concern, because it seems to me that your evaluation of your power may come from this program being so-called voluntary. But obviously, sending out something more than, here is the website, fill in the gaps, might be helpful, even if it is voluntary. So what have you done beyond saying, oh, the spreadsheet is up, fill in the gaps, what have you done beyond that to encourage contractors to comply?

Mr. BLACK. I think the Bureau of Indian Education made a fairly broad sweep of letting everybody know that we were doing these counts and the value of it through Federal Register notices, Dear Tribal Leader letters, reaching out to the National Indian education Association and other large national organizations serving Indian students, to try and get the word out that we were trying to collect all this data to get updated information.

Now, I think some of the things that we have come up with as far as what might have happened and what has affected our rate is, some tribes and other organizations felt that they had their 1996 count in and that was good enough, that the 2012 count could potentially cost them funding if their student counts have gone down. So I think there may have been some hesitancy to respond based on some of those factors. I think we really need to work with everybody.

I know the Indian Education folks are working really hard to evaluate what happened and how we can improve on this, and what we can do to try and get better counts moving into the future.

Senator HEITKAMP. I have additional questions, but I will reserve them for the second round.

The CHAIRMAN. Thank you, Senator Heitkamp. Senator Tester?

Senator TESTER. I am just going to follow up on where Senator Heitkamp was. I am assuming that you are going to try to do this student count again in 2016, is that correct?

Mr. BLACK. That I don't know. I will have to get back to you on that, Senator. I am not sure where they are.

Senator TESTER. So let's assume you are. What would you do differently than the last two counts, if in fact you have folk who don't want to report because they are afraid their numbers are going to go down? If we are going to get accurate numbers, which I think is critically important, and I applaud the sponsors of this legislation for doing that, what are you going to do differently to get the info?

Mr. BLACK. I think it would be working really closely with all the different groups that are out there. There again, even a larger effort to get the word out that this is critical to the JOM program to ensure we are providing services to all the eligible students.

Senator TESTER. And the numbers are good, but what is the impact of getting the numbers correct if the funding stays the same?

Mr. BLACK. The impact would be basically that you would get less dollars per student.

Senator TESTER. Right. Okay. Your testimony, Mr. Black, your testimony stated that Department undertook various forms of tribal consultation during the last two count update attempts. The testimony of Ms. Mann says that the outreach was very limited to one letter and one last-minute online announcement posted right before the due date.

I have two questions. Number one is, is here testimony correct? And if it is, is that the way we do consultation?

Mr. BLACK. No, my understanding is these were in-person consultations, the seven that we did. There might have been a couple of telephonic consultations in there. I would have to get back to you on the exact.

Senator TESTER. Okay. There are over 100 Johnson-O'Malley programs out there?

Mr. BLACK. My understanding is we have approximately 556 JOM contractors.

Senator TESTER. And we did how many consultations?

Mr. BLACK. Seven.

Senator TESTER. Is that the kind of ratio we use? That is not much percentage-wise.

Mr. BLACK. Generally, when we do consultations, sir, we try and ensure that we reach out to all the affected areas, there may be 100 contractors within a three-State region. I am just throwing numbers out.

Senator TESTER. Yes. So the seven consultations you did were in different regions of the Country?

Mr. BLACK. Yes, I would have to get you the exact locations, sir.

Senator TESTER. You got a head nod behind you, so I am assuming that is correct.

Mr. BLACK. Yes. They might have been combined with other consultations is what he is telling me, yes.

Senator TESTER. All right. Last hearing, you testified that all BIA schools would be inspected this year. Can you give me a time line on those inspections?

Mr. BLACK. Yes, sir. We have a goal to complete all the inspections by August 31st. I got a report here just last week, we are approximately a little over 50 percent of all of our educational and detention facilities have been inspected to date. We are on target to reach August 31st to have them all inspected.

Senator TESTER. Any of them in Montana that have been inspected? You have three of them.

Mr. BLACK. I don't have the numbers and the exact date in front of me. I think at least one of them has so far. I might have to verify that.

Senator TESTER. All right. I would love to know that.

At one of the last legislative hearings, the Department indicated they were looking to develop a comprehensive long-term construction plan to eliminate the backlog in BIE schools.

Mr. BLACK. Could you repeat that question, sir, I'm sorry?

Senator TESTER. At one of the last legislative hearings, the Department indicated they were working to develop a comprehensive, long-term plan to completely resolve the BIE backlog in construction of schools. Where are you guys at?

Mr. BLACK. That I will have to get back to you on, sir.

Senator TESTER. Okay. Mr. Trudell, currently JOM student eligibility is defined in regulation based on tribal membership or a minimum blood quantum. It appears the bill changes that definition. How do the Santee Sioux contracts define and estimate the eligible student count?

Mr. TRUDELL. Our tribe contracts for Niobrara school district, Santee school district and Sioux City school district. And we have to, we count for, by tribal enrollment, regardless of what tribe they are enrolled in. Because at Sioux City there is a number of tribes and tribal affiliation. So we basically go off their tribal records.

Senator TESTER. Okay, so it is based on tribal membership rather than blood quantum?

Mr. TRUDELL. Yes.

Senator TESTER. Do you know what the blood quantum is required for tribal membership?

Mr. TRUDELL. Not in all tribes, no. I know that our tribe at one time amended our constitution, there was no blood quantum as long as a parent was a member of the tribe at the time of your birth and you were born while that parent was residing on the reservation. I know that a lot of the tribes are basically not blood quantum per se. They are more historical, I guess, in essence to that, I don't know if you are kind of following me. I realize a lot of the tribes in Oklahoma are not blood quantum tribes.

Senator TESTER. So how do you feel about using blood quantum as a criteria?

Mr. TRUDELL. Well, if you want to know your pedigree, it is pretty nice, I guess. But is it mandatory, you are either an Indian or you are not an Indian, I guess. I am married to a Yankton Sioux and I am a Santee Sioux.

Senator TESTER. That is a tough combo.

Mr. TRUDELL. That is a really bad combo.

[Laughter.]

Senator TESTER. Let me go to you, Carla, for a second. Let me preface this a little bit. The House companion bill, 2842, doesn't

make any changes to the definition of eligible Indian student. The Senate version does. What we learned during ESEA reauthorization last year was just how controversial funding formula changes can be. What does National JOM think about changing the eligibility definition as is in this bill?

Ms. MANN. Thank you, Senator. The National Johnson-O'Malley Association is not seeking any change in the Federal regulations regarding the eligibility requirements.

Senator TESTER. Okay. So you want it left the way it is from an eligibility standpoint?

Ms. MANN. Okay. Why do you think the updates 2012 and 2014 didn't work?

Ms. MANN. I think it was, at the times that they sent out the notifications, I think were both bad times of the year. The first notification for 2012 came out in the Federal Register. It came out the end of May, I think it was. The majority of the school districts are starting to shut down, especially in ranching country. They shut down early, usually before Memorial Day.

The second time that they did the, and the one other thing I want to point out, too, a lot of people don't read the Federal Register or get the updates from the Federal Register.

Senator TESTER. Right.

Ms. MANN. In 2014, we inquired as National Johnson-O'Malley what the plan was for the student count for that year. That was in July. They gave us a letter that was set to be sent out to all Dear Tribal Leaders. That was sent out in the middle of July.

On their website, there was no indication of where you go to be able to fill out your members. It was difficult to find. I think that has really contributed to the problems in getting those numbers.

Senator TESTER. So if you were doing it, what is the best time of year to do this?

Ms. MANN. I would do it during the school year. Traditionally, the Johnson-O'Malley student count was done the first full week of October. By that time, it has kind of settled down as far as enrollment.

Senator TESTER. What do you mean by traditionally? I am sorry I am taking so much time, Mr. Chairman.

Ms. MANN. When we did our student counts from before, prior to 1994, we did them the first full week of October.

Senator TESTER. Okay, so can I ask you, Mr. Black, because what she says makes perfect sense to me, being a former educator. End of school is the end of school, people are out the door. Why wasn't it done in the fall? Why wasn't it changed?

Mr. BLACK. I don't have an answer for you, Senator. I am sorry. I will have to check with the education folks and find out a little bit more on that. I would be happy to get back to you.

Senator TESTER. So that brings me to my last question, and it is for you, Ms. Mann. Has the Department utilized resources like your organization, National JOM Association, NCAI, or any of the national Indian education groups, any of those folks? Do you believe they have utilized those resources adequately or at all?

Ms. MANN. The Bureau?

Senator TESTER. Yes.

Ms. MANN. They ask them, they notified NIEA. I am not sure if they notified NCAI and some of the other groups that support the JOM program.

Senator TESTER. We will go to the horse's mouth. Did you?

Mr. BLACK. Somewhere I have a list of the different groups that we have reached out to. I know NIEA was one of them.

Senator TESTER. Okay.

Mr. BLACK. I will get you a list.

Senator TESTER. I think it is critically important to utilize those, I will just tell you from my perspective, they can do a lot of legwork for you. That is part of their job, too, as far as why they were set up to help with communication.

Thank you for holding this hearing, Mr. Chairman, and I want to thank you all for your testimony.

The CHAIRMAN. Thank you, Senator Tester.

Ms. Mann, just a little follow-up. With all this discussion about the consultations, could you kind of clarify some of those things for us, what your experience has been, any thoughts you might have?

Ms. MANN. To be honest, the consultation process is, it is a process where they come out, they ask questions and then we are able to give responses. Personally, I don't like consultation, because if they would have listened to the members during the first consultation in 1994, had they listened to Indian Country, then JOM wouldn't have changed, it wouldn't have had the student count freeze.

So I believe that there are times when consultation may work. But I believe for the majority of the time, the mind is usually made up of how they were going to proceed, and then they proceed. That is mostly my personal opinion. As far as National JOM, we make sure that we have members that testify in the different areas of the Nation to be able to be there at the consultations.

The CHAIRMAN. Thank you.

I want to go to you, Mr. Black. The 2014 student count that was submitted to the Bureau of Indian Education by the tribes, tribal organizations, public schools, State education forums, identified 341,126 Indian students that student counts were mandated by Congress. The BIE never quite makes the accounting official. So I understand that outstanding contracts did not submit the numbers.

But why was the student count never really verified and made official by the Bureau? Is there a reason for that?

Mr. BLACK. I would have to go back to exactly as to why. I think it relates to a lot of the issues I have identified already as not having, ensuring that we have all of the contractors submitted and all of the student data. It is kind of hard to verify and ensure that we are capturing the whole environment.

The CHAIRMAN. Mr. Trudell, in your written testimony you talk about the burdensome process of completing a financial assessment before being seen at the VA, the co-pays that cause an undue financial burden, all the things that you went through.

One of the hardships you mentioned is travel, and the length of time it takes a veteran to travel to the nearest VA hospital. How far does a Santee Sioux veteran have to travel in order to be seen at a VA facility? I know the distances are great in Wyoming as well as where you are in South Dakota.

Mr. TRUDELL. The closest CBOC in Nebraska is, I believe, O'Neill, Nebraska, which is approximately 60 some miles from home. The best one in Nebraska close to us is in Norfolk, which is 77 miles. And then either to Lincoln or Omaha for major services. We also have the option of going to Wagner, South Dakota, which is I think 50 some miles, 53 miles, 55 miles, something of that nature, or to Sioux Falls, South Dakota, which is 125 miles. Omaha is 100 and - well, actually from my driveway to the VA hospital is 200 miles.

The CHAIRMAN. Ms. Mann, in your written testimony you mentioned that the Johnson-O'Malley program is the one remaining Federal program that puts the program under strict control of a local Indian education committee, correct?

Ms. MANN. Correct.

The CHAIRMAN. Can you explain the benefits of a local Indian education committee or local education committees and the involvement in tribal communities compared to a program that is run out of Washington, D.C.?

Ms. MANN. By having, actually due to Federal regulation, the parent committee is the one to plan, implement and evaluate the program. As we said, it is the only program that has those Federal regulations. The parent committees can decide exactly where they want their money to go for their students.

We have across the Nation a number of different programs. It can be like school supplies, like Senator Heitkamp said, it can be school supplies, it can be pay-to-play fees, lab fees, it could be Native language programs, it could be culture programs, programs to increase attendance. It could be any number of things. That is one thing that the parents are able to decide. They can decide where they want that money to go for their school district. No other program allows that and allows the parent committee to decide such an important program.

The CHAIRMAN. I was in Bethel, Alaska, a little earlier, a number of Senators including members of this Committee, Senator Murkowski, Senator Cantwell and others. We visited a school in a place called Oscarville, which is down from Bethel. I took a picture on a wall, there was one piece of brown paper towel that you would use to wipe your hands, and it was scotch taped on the wall. On it somebody had written, remember to use this much paper towel, and a dollar sign. The money that you save is spent on student activities, exclamation point, exclamation point. I keep that with me as a reminder that every dollar counts in those communities. So you are making local decisions, as you just talked about. I think sometimes Washington loses sight of how folks really at the local level are trying to make every penny count and every penny matters to them. What they don't spend on paper towels, they can use for other activities.

Senator Heitkamp made comments about school supplies and other things. This is real, it is serious, it is vital to education. I don't know if you have additional thoughts on that.

Ms. MANN. I agree with everything that you say. With a lot of States having budget cuts and not being able to provide some of the resources that they ordinarily have for their students, it has been really critical. That is where JOM, as long as they are not

supplementing a program in a school district and they can supplant a program, it is very important for them to be able to help with their students' education. The parents are the ones that know best what they want for their kids. I know all parents want the very best for their kids. But I think that with the Federal regulations that are currently in place, with that ability for them to make those decisions, it is really important. By having it in the school district, it can help the school in a number of things, like after-school tutoring, something that the school wouldn't be able to provide otherwise with budget cuts.

The CHAIRMAN. Thank you. Senator Heitkamp, a second round? Additional questions?

Senator HEITKAMP. Thank you, Mr. Chairman. I just want to follow up a little bit on definitional issues, which have been raised here, and just make sure that we are all on the same page. And if we are not, if we have better ideas on how we can do this, that we in fact have a conversation. Because this is going to increasingly become a very difficult issue. It is difficult today. But identifying someone as a Native child is going to become increasingly difficult. As the chairman pointed out, every tribe does it differently.

I know that Mr. Black, you expressed concern about the bill's definition of eligible student, because we used a definition that hasn't been used before, and it was a change from the House bill. We included after local Johnson-O'Malley contractors who mentioned that under current regulations, the contractors provide resources and services to children who are descendants in the first or second degree of tribal members. I don't think there is any intention today to try and not count those students.

Do you think that utilizing the House bill definition from the regulations excludes the children that are already included under JM, as you read this bill?

Mr. BLACK. It is my understanding that that possibility might be there, that we would be excluding some children. I will get you a more specific answer, though.

Senator HEITKAMP. Yes. I think it is important, just because we aren't going to solve this issue here. I think it is important that we have ongoing discussions and dialogue, because as we work through this particular issue, we could be setting down a milestone that we don't want to set down, or be creating yet another definition that would be used in yet another program. But it does demonstrate some of the complexities of what we are probably going to go through on the census in terms of getting folks identified, and certainly what we go through working with children.

Ms. Mann, if you have any comment about that, I would appreciate hearing it now.

Ms. MANN. As I said before, we are not seeking any changes in the Federal regulations regarding eligibility. It was a discussion of our board that each tribe, through their sovereignty, decides who they want as a member of their tribe. If there is a blood degree quantum or not a blood degree quantum, that is their decision. We didn't want to go against a decision that could affect certain tribes.

So I think that we would like to make sure that we continue to use the Federal regulations at this point, because of the sovereignty of the individual tribes.

Senator HEITKAMP. In the school district, especially when we are dealing with a Bismarck school district or a Fargo school district, that it doesn't have those, doesn't understand those nuances, I think it becomes very difficult for contractors to know that this student is Ojibwe, that is a different rule than if they are Mandan, Hidatsa and Arikara. So those is a complicated issue, but one that is only going to get more complicated as time goes on and as we see more and more people migrating on and off the reservations and on and off Indian Country.

We will continue to work through this issue and try not to disturb a whole lot of other stuff in the process while we are looking at getting a count.

The CHAIRMAN. Thank you, Senator Heitkamp. Senator Daines?

Senator DAINES. Thank you, Mr. Chairman. I want to shift gears and talk a little bit about health care for Native American veterans. In my home State of Montana, we have one of the highest per capita veteran populations in the United States. Tribal members enroll in the military at a higher rate than any other minority. We have seen it in Montana, we see it across the Country, that individuals serve as true examples of bravery, of service, of patriotism, there is a reason they are called warriors.

Unfortunately, when it comes to receiving quality, timely health care from Federal agencies, tribal veterans are some of the most disenfranchised, especially those who live in rural communities. I applaud the work of Senators Thune and Rounds in the Tribal Veterans Health Care Enhancement Act, which will improve coordination of care between Indian Health Service and the VA, as well as streamline care for tribal veterans.

Chairman Trudell, I would like first to thank you for your service to our Country. Can you describe some of the challenges you personally have faced in receiving health care as a tribal veteran?

Mr. TRUDELL. My greatest was with VA, because I didn't have a sick call record to speak of, other than shots and stuff. So it was real hard for me to break into VA, even though I served in Vietnam, and Agent Orange almost automatically qualifies you for, well, it does automatically qualify you for VA services.

But I didn't get a rating until, tendonitis, I have had tendonitis. I was rated about 10 percent hearing loss. Then I had some EKGs that showed I had had a heart attack over a period of time, a number of them. And couldn't get a rating on my heart, even though ischemic heart is a by-product of Agent Orange. I actually ended up having a heart attack in the VA, and that is the only reason I got rated, I think.

So that is my experience. Other people have experienced, there are other veterans that are experiencing that. I know the difficulty with both, not only the co-pay that Indian Health Service wasn't paying, but also for VA to serve those Vietnam veterans. I can only speak for the Vietnam veterans, because that is who I mostly deal with.

But if they do not recognize that in our situations, there were no medical people around. If Grandma couldn't fix it, it didn't get fixed. You didn't worry about going to a doctor, you didn't have the money to do that, so you didn't, you just kind of grew up not depending on medical. Even when you get in the Army and it was

available, if it wasn't killing you, there was no sense in going to see a doctor.

Therefore, I don't think I am a unique person, I think that is pretty common among Indian veterans, that they didn't go to sick call. So we don't have a medical record to back up a lot of the things that we are saying. With post-traumatic stress, Indian Health Service is not, I don't even think VA is really capable of handling all the post-traumatic stress that the veterans are encountering. Some of it, I hid mine very well for 40 years. Then all of a sudden, it hits you.

Senator DAINES. You had shared a story with my office about a Native American veteran and the challenges he faced coordinating a heart valve insertion.

Mr. TRUDELL. That is Dave Williams.

Senator DAINES. Between the IHS and the VA. Would you mind sharing that with us?

Mr. TRUDELL. His name is Dave Williams. I got that confirmed yesterday. I had forgotten his name, and I was talking to the office yesterday. So I did call back and confirm that. VA did end up paying for that. But there was an argument going on between VA and Indian Health Service as to who would pay for his valve replacement. Happened to be in Flandreau, where he lived, with another veteran from Flandreau, and his wife, Dave Williams' wife, called us. She asked us if she could visit with us. She was crying because her husband was going to die.

So he came over, and she was just all shook up, because if he didn't get that operation immediately, he would die. The children, grandchildren would have no source of parental care or grandparental care. We advised them just to go and if it became a problem, then Flandreau Santees and the Santee Sioux Nation of Nebraska, we're the same, they just happened to divide some time back in the past, but we would join together and we would take up his cause and see if we couldn't get it resolved if it wasn't paid.

But I understand that VA did pay for it, Indian Health Service continued to refuse to pay for it all the way to the very end.

Senator DAINES. Thank you, Chairman Trudell, and thanks for your advocacy for your people. How these costs are covered shouldn't be a question for these heroes any more, is the bottom line.

I look forward to seeing the Tribal Veterans Health Care Enhancement Act move through the legislative process. Thank you.

The CHAIRMAN. Thank you, Senator Daines.

Thank you to each and every one of you for being here today. I see no more questions. Members may submit written questions for the record. I hope that you will be able to respond to them. The hearing record will remain open for the next two weeks. I want to thank all the witnesses for being here today and for your testimony. Thank you.

This hearing is adjourned.

[Whereupon, at 3:48 p.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF THE SOUTHCENTRAL FOUNDATION (SCF)

Thank you for the opportunity to submit testimony on behalf of the Southcentral Foundation (SCF) and the 150,000 Native American people we serve. SCF is a tribal organization that compacts with the Secretary of Health and Human Services under Title V of the Indian Self-Determination Act (ISDA) to provide primary care services to Alaska Native patients within the Anchorage area and throughout the region. SCF acts pursuant to tribal authority granted by Cook Inlet Region, Inc., an Alaska Native regional corporation designated by Congress as an Indian Tribe for contracting purposes under the ISDA.

For more than 25 years, SCF has carried out Indian Health Service (IHS) programs under ISDA agreements. SCF provides medical, dental, optometry, behavioral health, and substance abuse treatment services to over 52,000 Alaska Native and American Indian beneficiaries living within the Municipality of Anchorage, the Matanuska-Susitna Borough to the north, and nearby villages. SCF also provides services to an additional 13,000 residents of 55 Alaska villages covering an area exceeding 100,000 square miles. Finally, SCF provides statewide tertiary OB/GYN and pediatric services for approximately 150,000 Alaska Native people. To do all this, SCF employs 2,000 people.

S. 2417 proposes to amend the Indian Health Care Improvement Act to allow the Indian Health Service to cover the cost of a copayment of an Alaska Native or American Indian veteran receiving medical care or services from the Department of Veterans Affairs through the IHS purchased and referred care (PRC) program. Although both federal agencies provide health care services to certain qualified individuals, the VA differs from IHS in that some services require a co-payment by the eligible veteran. The IHS does not require a co-payment for services provided at IHS or IHS funded facilities, nor does it require a co-payment for purchased or referred care (PRC) services provided. This bill attempts to address an issue that can arise in instances where IHS cannot provide a service or treatment and the VA or a VA provider is able to provide that service or treatment, and the Alaska Native or American Indian veteran ends up with the responsibility of the co-pay. If the Alaska Native or American Indian veteran had been able to access the service or treatment through the IHS in the first instance, he or she would not have been required to pay that co-pay.

In considering this bill, SCF would like the Committee to be aware of the unique nature of the interactions between SCF and the VA in providing for the healthcare needs of veterans in our service area. Because the VA has not been able to sufficiently provide healthcare services to veterans in rural areas like Alaska, many veterans' healthcare needs are severely underserved. SCF serves over 1,000 non-Native veterans in the Matanuska-Susitna Valley, through a reimbursement MOU with the VA. Since 2012 when SCF entered this MOU, we have been able to make great strides in addressing this gap in healthcare delivery. In addition, we firmly believe—and our patients would affirm, we think—that the quality of our healthcare delivery greatly exceeds that of the VA in our region. We have been extremely successful in growing our system and diversifying our array of available health treatment so that we are able to provide most of the specialty medical needs of our clients. Conversely, the purpose of the IHS purchased and referred care line item is to pay for specialty services or treatment that are not available through IHS facilities or tribally contracted IHS facilities. Therefore, we do not believe that SCF would utilize our PRC program to pay for the co-payments authorized by this proposed bill: the veterans in our area have access to more comprehensive and higher quality services with shorter wait times by receiving services at SCF facilities rather than through the VA.

Although we recognize that the situation in many areas of the country may make it appropriate for IHS to pay for VA services, and for IHS to cover the resulting co-pays for Indian and Alaska Native veterans in those cases, it is important for the Committee to ensure that this bill would not require SCF to use our limited

PRC allocation to pay for services at VA facilities rather than our own. Also, we think that there should be a greater focus on building a stronger tribal health care delivery system for all Alaska Native and American Indian people. While this bill would help the VA system, it would not greatly help the tribal health care delivery system for Alaska Native and American Indian people.

PREPARED STATEMENT OF UNITED SOUTH AND EASTERN TRIBES, INC.

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is pleased to provide the Senate Committee on Indian Affairs (SCIA) with the following testimony for the record of its May 11th legislative hearing on S. 2417 and S. 2842. This testimony concerns S. 2417, the *Tribal Veterans Health Care Enhancement Act*, only. USET SPF fully supports the goal of S. 2417, which is to ensure that American Indian and Alaska Native (AI/AN) veterans receive the care to which they are entitled without incurring debt. However, in light of the federal government's unique trust responsibility to AI/AN people, including veterans, this should be accomplished via the elimination of cost-sharing for AI/AN served at VA facilities.

USET SPF is a non-profit, inter-tribal organization representing 26 federally recognized Tribal Nations from Texas across to Florida and up to Maine.¹ Both individually, as well as collectively through USET SPF, our member Tribal Nations work to improve health care services for American Indians. Our member Tribal Nations operate in the Nashville Area of the Indian Health Service (IHS), which contains 36 IHS and Tribal health care facilities. Our citizens receive health care services both directly at IHS facilities, as well as in Tribally-Operated facilities operated under contracts with IHS pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA), P.L. 93-638.

USET SPF recognizes that S. 2417 seeks to address the harmful financial impacts of unpaid VA balances accrued by AI/AN Veterans who have been referred to the Department of Veterans Affairs (VA) health system by Indian health clinics. Whether delivered through the IHS or the VA, AI/AN veterans have pre-paid for this care, both through the cession of Tribal homelands and the defense of our nation. With some AI/AN veterans facing collection over balances, we agree that there is a critical need to ensure that our AI/AN veterans do not incur debt as a result of accessing care at the VA.

AI/AN veterans, who may suffer from chronic conditions or injuries sustained as a result of their service, often require more specialized care than what underfunded Indian Health clinics are able to provide and are referred to a VA facilities. Additionally, a VA facility may be an AI/AN veteran's provider of choice. Regardless, VA is a vital access point for AI/AN veterans, who continue to serve in the military at higher rates per capita than any other group in this nation. It is an enormous disservice to them to require out-of-pocket payments simply because they receive care outside the IHS. However, IHS and Tribally-operated health clinics, which Congress funds at only 60 percent of demonstrated financial need, should not be compelled to pay the VA for the cost of services delivered to AI/AN veterans. While we are aware that this legislation seeks to correct a situation that occurred the Great Plains Region of the IHS, we are concerned that it would apply to all IHS Areas.

In 2014, IHS' average expenditure per patient was just \$3,107 compared to \$7,036 at the VA. Cost shifting from VA to IHS is not an efficient use of federal resources and could exaggerate this deep disparity, negatively impacting the delivery care within the Indian Health System. Further, the federal government's trust responsibility to AI/AN does not end with the IHS. While we note that the bill contains provisions seeking to ensure that services to all IHS beneficiaries are not diminished under this new authority, USET SPF contends that the Indian Health System and AI/AN veterans are best served through a waiver of cost-sharing entirely.

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

Congress has previously recognized the inconsistencies between the federal trust responsibility to provide health care to AI/AN and the assessment of premiums and cost-sharing via federal health programs. In 2009, Congress passed the American Recovery and Reinvestment Act, which eliminated premiums and cost-sharing for AI/AN patients when accessing services via Medicaid and the Children's Health Insurance Program. This provision avoids the assessment of payments to individual AI/AN without impacting already insufficient IHS funds. And it upholds the federal trust responsibility by ensuring that care provided to AI/AN continues to be delivered at no cost. With this in mind, we call for this policy to be extended to all federal health care programs and facilities, including the VA.

Although USET SPF supports the intent of S. 2417, we cannot support it in its current form. We do support the opportunity for each IHS Area to determine how to best serve its citizens. However, S. 2417 applies to all IHS Areas and merely shifts the cost of care for AI/AN veterans from the VA to a severely underfunded IHS. Although it diminishes individual AI/AN veteran liability for cost-sharing, it remains unclear whether it will have a net positive impact on the Indian health system. In order for the United States government to more effectively meet its sacred responsibility to AI/AN veterans, we recommend the advancement of legislation eliminating cost-sharing for all services provided to AI/AN veterans at VA facilities. We thank the Committee for drawing attention to this important issue and look forward to partnering on a solution that reflects both the federal trust responsibility and the current limitations of the IHS budget.

NATIONAL INDIAN EDUCATION ASSOCIATION
Washington, DC, May 24, 2016

Hon. John Barrasso, Chairman,
 Hon. Jon Tester, Vice Chairman,
 Committee on Indian Affairs,
 United States Senate,
 Washington, DC.

RE: SUPPORT FOR THE JOHNSON-O'MALLEY SUPPLEMENTAL INDIAN EDUCATION
 PROGRAM MODERNIZATION ACT (S. 2842)

Dear Chairman Barrasso and Vice Chairman Tester:

On behalf of the National Indian Education Association (NIEA), the oldest and largest Native organization representing over 2,500 Native educators, students, teachers, parents, and tribal leaders, I am writing to express our support for the reauthorization of the Johnson-O'Malley Supplemental Indian Education Program Modernization Act (S. 2842). This bicameral effort builds upon Congress' focus on supporting Native education in the 21st century. S. 2842 is a step in the right direction to honor the fiduciary trust obligation the federal government has with tribes to provide parity in access and equal resources to Native education.

The Johnson-O'Malley (JOM) program is utilized to meet specialized and unique educational needs of Indian students attending public and some tribal schools through the use of supplemental education programs. Such supplemental programs are designed at the local level under the purview of a local Indian Education Committee. Eligible JOM contract applicants are states, school districts, tribes, and tribal organizations.

In 1995, the BIA conducted a JOM student count for purposes of providing distribution allocation information of JOM programmatic funds. The 1995 JOM student count listed 271,884 students. In 2010, the U.S. Census Bureau reported 798,486 American Indian and Alaska Native students in the JOM-eligible age group, illustrating a substantial portion of unserved students. Moreover, the National Johnson-O'Malley (NJOM) estimates a high of \$125 per students to a FY 2015 value of \$68.08 per student. This is due to the fact that JOM contractors have been forced to provide services for an ever increasing population with the same or less funding. FY 2011–2012 budget sequestration exacerbated the funding levels by reducing overall JOM funding each year.

NIEA membership has shown their support for updating the JOM student count along with funding that reflects this new number. NIEA Resolution 2006–17 highlights the dire need of the JOM program as supplementary aid and strongly opposed the FY 2007 BIA budget request to eliminate JOM grants. Furthermore, NIEA Resolution 2014–19, which requested support for utilizing U.S. Census data for updating the JOM student count, remains a standing request of our organization. As such, NIEA supports the Johnson-O'Malley Supplemental Indian Education Program Modernization Act.

NIEA appreciates your hard work on funding critical educational programs for American Indian, Alaska Native, and Native Hawaiian students. We are asking for your continued support in ensuring that these programs are protected by funding them at the levels already approved by Congress.

Thank you,

PATRICIA WHITEFOOT.

Attachments

NATIONAL INDIAN EDUCATION ASSOCIATION RESOLUTION #06-17

TITLE: TO SUPPORT THE CONTINUATION OF JOHNSON O'MALLEY FUNDING

WHEREAS, the National Indian Education Association (NIEA) was established in 1969 for the purpose of advocating, planning, and promoting the unique and special educational needs of American Indians, Alaska Natives, and Native Hawaiians; and

WHEREAS, NIEA as the largest national Indian organization of American Indians, Alaska Native, and Native Hawaiian educators, administrators, parents, and students in the United States, provides a forum to discuss and act upon issues affecting the education of Indian and Native people; and

WHEREAS, through its unique relationship with Indian nations and tribes, the federal government has established programs and resources to meet the educational needs of American Indians, Alaska Native, and Native Hawaiians, residing on and off their reserved or non-reserved homelands; and

WHEREAS, Native American populations have made significant advances in achieving academic success as demonstrated by a study conducted in 2005 by the National Center on Education Statistics; and

WHEREAS, Native American students have attained high school diplomas, as of March 2003, exceed the total of all other racial and ethnic groups by 3.2 percent except African Americans; and

WHEREAS, the negation of the advancement made by Native American populations through the invalidated references to the effect that the Johnson O'Malley grants under the Tribal Priority Allocations are duplicative of other Federal and state assistance programs and do not address a focused goal for academic achievement; and

WHEREAS, the lack of evidence to prove that the elimination of these grants will allow the BIA to focus its resources on the requirements of the Bureau-funded school system, while also reducing redundancy with other Federal programs; and

WHEREAS, the U.S. House of Representative admonished the Bush Administration in 2006 for justifying its proposed termination of Johnson O'Malley because of duplication of other federally supported programs such as Title VII of No Child Left Behind Act of 2002, hence substantiating that no such duplication exists; and

WHEREAS, the elimination of the Johnson O'Malley programs hold no guarantees that the Indian Self Determination Act of 1975 and will continue to be enforced according to the purpose of the regulations established in Part 273 of Public Law 93-638; and

WHEREAS, Indian Self Determination and Education Assistance Act were set forth to ensure the maximum participation of Indian populations in the development of programs for eligible Indian students; and

WHEREAS, the Snyder Act of 1921 is the primary authority that governs the implementation of Indian education programs; and

WHEREAS, the Johnson O'Malley Act of 1934 program is a supplementary aid program geared to offset the financial deficit of unmet extraordinary and exceptional cases of need and that the federal government will bear the added expense for services to the Indian population in collaboration with state public school districts; and

NOW THEREFORE BE IT RESOLVED, that NIEA does hereby strongly oppose the FY 2007 BIA budget request that proposes the elimination of Johnson O'Malley (JOM) grants; and

BE IT FURTHER RESOLVED, that NIEA call upon Congress and the Administration to restore the national JOM budget to the FY 1994 allocation of \$24 million dollars with the current JOM student count conducted under the Government Accountability Office to reinstate a funding formula that will ensure the equitable distribution of funding to address the specialized and unique educational needs that fall outside the school's responsibilities.

CERTIFICATION

I do hereby certify that the following resolution was duly considered and passed by the NIEA Board of Directors on November 30, 2006 at which a quorum was present.

Dr. Verlie Ann Malina Wright, President (2006–07)

NATIONAL INDIAN EDUCATION ASSOCIATION RESOLUTION 2014–19

TITLE: SUPPORT UTILIZING U.S. CENSUS DATA FOR UPDATING THE JOHNSON O'MALLEY STUDENT COUNT

WHEREAS, we, the members of the National Indian Education Association (NIEA) of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Indian Education Association was incorporated in 1970 and advances comprehensive educational opportunities for American Indians, Alaska Natives, and Native Hawaiians throughout the United States.; and

WHEREAS, the National Johnson-O'Malley Association (NJOMA) is the elected advocate representing students, ages 3 through high school, who are enrolled or eligible for enrollment in federally-recognized tribes, not attending or served by Bureau of Indian Education (BIE) schools, and currently being served from respective tribal jurisdiction boundaries and service areas; and

WHEREAS, NIEA and NJOMA have established a consensus that the academic, social, and economic well-being of our Native students are our highest priority, regardless of where they attend school; and

WHEREAS, according to 25 CFR 273.1, the purpose of the Johnson-O'Malley (JOM) program is to meet the specialized and unique educational needs of Indian children attending public and some tribal schools through the use of supplemental education programs, and

WHEREAS, the BIE completed an inaccurate and unofficial student count in 2012 resulting in the continued use of the outdated certified student count of 278,000 from 1995; and

WHEREAS, according to the U.S. Census Bureau, there were 798,486 American Indian and Alaska Native students (alone) in the JOM-eligible age group, and 1,469,722 American Indian and Alaska Native students (alone or in any combination) in 2010, forcing more than 400,000 Native students to attend school with unmet needs; and Census data is regularly collected, reliable information upon which the federal government regularly relies on for many other programs, including tribal; and

WHEREAS, without continued and accurately assumed levels of annual congressional funding, JOM programs that foster specialized, culturally-sensitive and unique educational programs will decrease in its ability to serve the true number of Native students eligible for JOM assistance; and

WHEREAS, federal agencies continue to forego providing accurate and timely JOM student count information to the United States Congress nor are sufficient steps being taken to guarantee the full participation of all eligible Native students and the public schools in which they attend;

NOW THEREFORE BE IT RESOLVED, that NIEA joins the NJOMA, the National Congress of American Indians (NCAI), the United South and Eastern Tribes (USET), and the Tribal Education Departments National Association (TEDNA) in support of efforts to use U.S. census data for a student count for the JOM program and for funding level determinations; and

BE IT FURTHER RESOLVED, that NIEA calls for the use of a uniform allocation funding formula based on U.S. census data after it has determined the most accurate depiction possible of the JOM-eligible student population; and

BE IT FURTHER RESOLVED, that NIEA welcomes the opportunity to work with NJOMA, NCAI, USET, TEDNA, and other stakeholders in developing and enacting federal policy and regulatory measures to modernize and position the Supplemental Education Program (known as the Johnson-O'Malley program) as a sustainable program whose future funding levels are adequate for assist all eligible students achieve academically so they may become the future leaders of tribal nations and promote positive academic, social, and economic changes for future generations; and

BE IT FINALLY RESOLVED, that NIEA recognizes the immediate nature and timely need to address this issue and therefore will officially request within two

weeks immediate action pertaining to this issue within the Department of the Interior, the Bureau of Indian Education, and the United States Congress; and

CERTIFICATION

I do hereby certify that the following resolution was duly considered and passed by the National Indian Education Association on October 18, 2014 at which time a quorum of the membership was present.

Melvin Monette, President.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JON TESTER TO
MICHAEL S. BLACK

Question 1. Will this Resource Center provide technical assistance and administrative oversight previously provided by the JOM Director?

Answer. Yes, the new Johnson-O'Malley Center will provide support and technical assistance to all tribal Johnson-O'Malley contractors and will share best practices regarding the use of JOM funds.

While the new Johnson-O'Malley Center works directly with JOM contractors, the national JOM coordinator in DC will provide policy direction to the Center, will support the JOM program within the Department and will liaise with Congress.

During the consultations held throughout the country, the Bureau of Indian Education heard from tribal leaders of their continued deep interest in the JOM program. In particular, during the BIE's consultations in Oklahoma, the BIE learned that tribal leaders were mostly concerned about Native youth attending public schools rather than BIE-funded schools (there are only three BIE-funded schools and two dormitories in Oklahoma). Because of these concerns, and the need for increased technical assistance regarding the JOM program, BIE proposes to transform the BIE Education Line Office in Oklahoma City into a national Johnson-O'Malley Center. BIE chose the Oklahoma City ELO because that office already performs a significant amount of evaluation and training for 148 tribal JOM contractors, as a result of the high concentration of JOM contracts in Oklahoma.

Question 2. Is this Johnson-O'Malley Resource center currently in operation and, if not, when will it be?

Answer. The new Johnson-O'Malley Center will replace the existing Oklahoma City ELO early next year.

Question 3. What improvements to the operation of the JOM program should contractors, tribes and Native families expect to see once this Resource Center is operational?

Answer. The improvements contractors, tribes, and Native families can expect to see with the addition of the new Johnson-O'Malley Center are dedicated contracting assistance from staff and timely responses to requests for technical assistance.

Question 4. Is it correct that the eligibility change was made as the result of the *Zarr v. Barlow* decision or is there another reason?

Answer. While *Zarr v. Barlow*, 800 F.2d 1484 (9th Cir. 1986), is instructive, BIE made the student eligibility change in response to a more recent case, *Nevada Urban Indians v. United States*, U.S. Dist. Court for the District of Nevada, CV-N-90-238-BRT, (Sept 12, 1990) (The Sept 12, 1990 Order Granting Preliminary Injunction and the Nov. 1, 1990 Stipulation and Order attached). Since settling that case, BIE has considered that students who are members of a federally recognized tribe or who are $\frac{1}{4}$ or more degree Indian blood can be eligible for JOM services. BIE's intent is to have eligibility requirements for all BIE-funded programs that are consistent with Congressional intent for the program, which is to authorize contracts for the education of eligible Indian students enrolled in public schools and previously private schools.

Question 5. What steps did BIE undertake to inform all JOM contractors of this change? If possible, please provide a copy of the original memorandum where this change was outlined and any additional materials advertising the update to contractors.

Answer. As indicated in the response to the previous question, BIE issued a memorandum explaining the new eligibility requirements and the reason for the change on June 4, 1991. The original memorandum is attached, as are copies of the recent "Dear Tribal Leader" letters, a copy of a memo reiterating the eligibility change, and pages from various handbooks, PowerPoint presentations, and Federal Register notices that reference the eligibility requirement of tribal membership "or" $\frac{1}{4}$ degree. In addition, BIE has plans to update the outdated regulation in the near future as reflected in the Unified Agenda.

Question 6. Is the Department confident that all JOM contractors are currently aware of this change away from the regulatory definition of eligibility, and is the Department aware of any variation in how JOM contractors might interpret student eligibility?

Answer. The Department has announced through multiple communications the student eligibility requirements, including letters, memorandums, emails, handbooks, oral and video presentations, and public announcements. However, it is always a possibility that the appropriate individuals have not have received communications after they have been disseminated.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. HEIDI HEITKAMP TO
MICHAEL S. BLACK

Question 1. According to your testimony, the Department notes that one provision of S. 2842 raises constitutional concerns under the Recommendation Clause. Could you please specify the Department's preference for addressing this concern?

Answer. The Administration's concern is that section 7(d)(4)(A) of the Johnson O'Malley Act, as added by section 2 of S. 2842 would require the Secretary to recommend budget legislation and, furthermore, would constrain the Secretary's discretion in what to recommend, regardless of whether the President wishes to recommend any legislation as part of his legislative program. We would recommend that this be addressed by either changing the word "shall" to "should" in section 7(d)(4)(A)) or otherwise making the requirement discretionary by inserting "as appropriate" after "legislation in section 7(d)(4)(A).

Question 2. I would appreciate the Department elaborating on Mr. Black's verbal testimony from May 11, 2016 hearing in regards to potential for students outside this eligibility criteria being served under JOM. To what extent are contractors providing JOM services to students eligible under Elementary and Secondary Education Act Title VI programmatic funding—such as children who are descendants, in the first or second degree, of tribal members—instead of using the JOM eligibility criteria?

Answer. The number is unknown. 25 CFR Sec. 273.32 allows non-eligible students to participate in a JOM program, but JOM funds must be prorated to cover the participation of only eligible Indian students, except where the participation of non-eligible students is so incidental as to be *de minimis*. Such *de minimis* participation must be approved by the local program's Indian Education Committee.

For comparison, 448 possible JOM contractors submitted a JOM count of 341,126 in 2014. For FY 2016, the Department of Education provided 1,293 Indian Education Formula Grants serving 468,719 students. For Title VI Indian Education formula grants, grantees can count, in addition to members of Federally-recognized tribes, or descendants of such members, in the first or second degree, as well as members of State-recognized tribes.

Question 3. If the bill utilizes language as currently written in 25 Section 273.12 of the Code of Federal Regulations, would this definition exclude students currently served by JOM contractors? How many students could potentially be excluded or face disruption in JOM services?

Answer. Yes, but the number is unknown. The eligibility requirement listed below has been provided contractors since 1991. All students eligible for the current JOM program were born after 1991. Guidance provided to the public when the request for both the 2012 and the 2014 JOM student counts were issued included this language: "Eligible JOM students are Indian students, age 3 through grade 12 enrolled in public schools, except those enrolled in Bureau sectarian or operated schools. Such students must be (1) a member of a Tribe or (2) at least ¼ or more degree of Indian blood and recognized by the Secretary of the Interior as eligible for BIE services."

Response to the following questions was not available at the time this hearing went to print

Questions for the Record to Roger Trudell submitted by Senator Tester:

S. 2417 would make allowances for the IHS to cover the cost of these copays at VA facilities. As a member of both the Veterans Affairs Committee and the Indian Affairs Committee, I have heard how many times how stretched resources can be at VA and IHS facilities. However, the Federal Government's treaty and trust responsibility does not end at the IHS.

Question. Given the limited resources of both health care systems and the trust and treaty responsibilities of the entire Federal Government, would it make more sense to exempt American Indian and Alaska Native veterans from copays at the VA?

