

**NATIVE COMMUNITIES' PRIORITIES FOR THE  
118TH CONGRESS**

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**HEARING**

BEFORE THE

**COMMITTEE ON INDIAN AFFAIRS  
UNITED STATES SENATE**

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

—————  
MARCH 8, 2023  
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Printed for the use of the Committee on Indian Affairs



U.S. GOVERNMENT PUBLISHING OFFICE

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## **NATIVE COMMUNITIES' PRIORITIES FOR THE 118TH CONGRESS**

**WEDNESDAY, MARCH 8, 2023**

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

The Committee met, pursuant to notice, at 2:34 p.m. in room 628, Dirksen Senate Office Building, Hon. Brian Schatz, Chairman of the Committee, presiding.

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

The CHAIRMAN. Good afternoon. I call this oversight meeting to order.

Leaders from across Indian Country, Hawaii, and Alaska, welcome. Thank you for joining us today. I would also like to extend a warm Aloha to the Office of Hawaiian Affairs Board of Trustees Chair, Carmen Hulu Lindsey. Thank you for your continued leadership to support the well-being of the Native Hawaiian people.

Because we can only do our best work when we hear directly from the Native communities that we serve, today we kick off the 118th Congress by putting Native communities' priorities directly in the spotlight as our first order of business. As the strongest voice for Native priorities in Congress, this Committee has a responsibility to engage with and represent your interests, not just in Congress, but across the Federal Government. I always say, nothing about me without me. That rings especially true for the work that we do on this Committee.

Our goal today is to listen and to learn from you as Native leaders, to hear about what is working, what is not, and how to pursue potential solutions. From housing to education to farming to finance, Indian Affairs matters are wide-ranging and diverse.

Our hearing today is a real opportunity to align our efforts in Congress with the hard work that you are all doing on the ground. This Committee made historic bipartisan progress over the last two years to advance Federal support for Native communities. But that work would not have been possible without your partnership. Today's hearing will help us to chart a path forward for the 118th, build on our work, and make sure the Federal Government does everything it can to uphold its trust and treaty responsibilities to Native communities. I look forward to hearing from each of you today.

I will now turn to the Vice Chair for her opening statement.

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

Senator MURKOWSKI. Thank you, Mr. Chairman. Cama-i, good afternoon to all. I do appreciate the fact that we are starting this 118th Congress with this oversight, and as the Chairman has noted, to hear, to hear from you, to listen and to learn. Thank you all for being here.

I want to extend a special welcome to Nicole Borromeo. Nicole is the Executive Vice and General Counsel of Alaska Federation of Natives. Thank you for being here. I understand, Nicole, your son is here, was here. I am sure he is very proud of his mom. We welcome him as well.

Nicole has appeared before our Committee previously. Her work is outstanding in all that she does to affect Native people in Alaska, from civil and voting rights to energy and broadband. Her work leading the AFN Navigators Program has been absolutely critical to ensuring rural villages in Alaska are able to access the Federal dollars available for infrastructure. Thank you for all you do there.

We were privileged last week here in Washington, D.C., AFN hosted what they call Alaska Days, and invited members of the Cabinet, members of the military leadership, to discuss how we protect our northernmost border in the Arctic, particularly by getting the right priorities resourced. I appreciated AFN's leadership in hosting these conversations. It really dovetails well with what we are talking about today.

To advance tribal priorities, we have to understand both the overarching needs of Native communities but also how to address the unique needs across regions. Tribes across the Country have different sizes, land space, and service delivery models. Native Hawaiians exercise self-determination in different ways than tribes do in the contiguous United States. With 40 percent of the federally recognized tribes located in Alaska, our model of self-determination is also different, but is one we are very proud of for its effectiveness.

Two years ago, we started out the Congress, as you know, Mr. Chair, in much the same way, examining the priorities of our Native communities. We heard about the disparities in telecom and internet access, critical infrastructure, including basics like clean water and sanitation and housing, lack of public safety, justice. We did make progress last year, and I am proud of the progress that this Committee made. Through several new laws, we are providing tribes and Native communities with direct access to historic Federal funding opportunities, making critical investments in infrastructure.

Many of the witnesses, certainly Nicole, have on-the-ground knowledge of how the implementation of the infrastructure program is going. When agencies are setting up new programs, we know there are bumps in the roads. We hear about them all the time. But listening to tribes and tribal organizations is key to ensuring that the right priorities are resourced. Now that we are in the implementation phase of these once-in-a-generation investments, we need to make sure the Federal agencies are getting it right.

I am looking forward to learning more, to hearing directly from you about what is working, what is not working within the existing programs, and how we can help, in addition to understanding more about the other needs that are out there.

Just to highlight a few of those, of course, housing continues to be a priority, the need for more culture-based education and support for our Native youth. The Farm Bill, we know, is up for reauthorization. So we need to know what the priorities are there, so that we can help advance that bill and do more in supporting self-determination through things like the USDA programming.

A lot on the plate this afternoon. Thank you, Quyanaa. I look forward to us getting to work.

The CHAIRMAN. Thank you, Vice Chair.

Are there any members wishing to make an opening statement? If not, I will turn to the witnesses. I will introduce all of them and then proceed with the testimony.

We have the Honorable Shannon Holsey, the Treasurer of the National Congress of American Indians. We have the Honorable Thomas Lozano, Chairman of the Board of Directors of the National American Indian Housing Council. We have the Honorable Carmen Hulu Lindsey, the Chair of the Board of Trustees of the Office of Hawaiian Affairs.

We have Ms. Nicole Borromeo, Executive Vice President and General Counsel of the Alaska Federation of Natives. We have Ms. Kari Jo Lawrence, Executive Director of Intertribal Agriculture Council. We have Mr. Rico Frias, Executive Director, Native American Financial Officers Association, and Ms. Tesia Zientek, President of the Board of Directors of the National Indian Education Association in Washington, D.C.

I want to remind our witnesses that we have your full written testimony and it will be made part of the official hearing record. Please keep your statement to no more than five minutes, so that members have time for questions. I will try to be better about enforcing the five-minute guidelines than I was in the previous Congress.

Treasurer Holsey, you may begin with your testimony.

**STATEMENT OF HON. SHANNON HOLSEY, TREASURER,  
NATIONAL CONGRESS OF AMERICAN INDIANS**

Ms. HOLSEY. Thank you so much, Chairman Schatz. On behalf of the National Congress of American Indians, thank you for holding this hearing today to address tribal priorities for the 118th Congress.

Good afternoon. My name is Shannon Holsey. I serve as the Treasurer for the National Congress of American Indians as well as the president of my tribal nation, the Stockbridge-Munsee Band of Mohican Indians. It is truly an honor to be here today.

NCAI has submitted written comments for the record that detail a number of legislative priorities. Several of those priorities, for example, the need to address housing in Indian Country, the need to address crumbling education infrastructure on many of our reservations, and the need to reauthorize and expand the Farm Bill to allow for more self-governance and co-management opportunities

are all topics that our partner organizations at this hearing are likely to cover.

Given that, I am going to talk to you about three areas that are no less important, but that may not be discussed as much elsewhere today: health, public safety, and climate change.

I want to begin by talking about health care in Indian Country. NCAI commends Congress for recently providing advance appropriations for certain Indian Health Service accounts. This change will help protect Indian health care from harmful impacts of government shutdowns. We thank you and all members and staff of the Senate Committee on Indian Affairs for their tireless support of this historic moment, decades in the making.

Having said that, until the entirety of this IHS budget is provided, mandatory direct appropriations, it is critical that Congress not only continues to advance appropriations but improve them as well. Specifically, the advance appropriation recently enacted did not fund all IHS accounts and flat-funded the IHS accounts that it did include.

While historic in its inclusion, a flat-funded IHS needs Fiscal Year 2024 adjustments at a minimum for fixed costs and staffing for newly completed facilities and should also include the amounts requested by the IHS National Tribal Budget Formulation Work Group.

Next, I want to shift to public safety. Congress has long acknowledged its obligation under the trust and treaty responsibility to address and prevent crime in Indian Country. Unfortunately, inadequate funding, combined with legal history that has repeatedly created barriers for tribal nations trying to exercise their sovereignty to keep their communities safe has resulted in staggering rates of violent crime and victimization on many Indian reservations.

NCAI applauds Congress' enactment of the Violence Against Women Act, VAWA, Reauthorization Act of 2022 which if properly funded will help address violent crime in Indian Country.

But while VAWA 2022 was a huge victory for tribal nations, the Supreme Court's recent decision in *Oklahoma v. Castor-Huerta* was a strike against tribal sovereignty and tribal nations' ability to protect tribal citizens. In response to the Castor-Huerta decision, NCAI adopted Resolution SAC22043, calling on Congress to utilize its power to meaningfully strengthen tribal jurisdiction and improve public safety for all people who live on reservations and tribal lands.

Specifically, NCAI urges Congress to relax restrictions regarding tribal authority over non-Indian criminal activity to remove sentencing limitations and to amend Public Law 280 and other relevant statutes to ensure that States have no criminal jurisdiction in Indian Country unless they have first obtained tribal consent to that State criminal jurisdiction.

Finally, I would like to spend my last few minutes speaking about the single greatest challenge facing not just Native people but all peoples: climate change. Tribal nations are leading the way in climate action mitigation, adaptation, and resiliency responses for their communities and are an integral part of the global and



national response to the climate change crisis. This crisis will only be averted if we all work together.

NCAI urges Congress to consider legislative climate responses that includes full and meaningful consultation with decision makers, requires tribal nations' free, prior, and informed consent, and includes enforcement mechanism, the restoration of tribal land, water, wildlife, fishery resources including identifying and assessing the full cost of climate impact on tribal lands, opportunities for co-management and co-stewardship that support intergovernmental partnerships and integrate tribal traditional knowledge and climate response.

Tribal nations must also be included in climate financing action to increase appropriations, grants, public-private financing opportunities and removal of barriers to tribal climate responses, including competitive grants and matching fund requirements. And any Federal assistance provided to State and local governments should also be provided to tribal governments through tribal-specific funding mechanisms.

In conclusion, NCAI appreciates the opportunity to present Indian Country's priorities for the 118th Congress to this Committee. We look forward to working with the Senate Committee on Indian Affairs and its members during this Congress to advance the interests of tribal nations in accordance with the Federal trust responsibility.

Thank you.

[The prepared statement of Ms. Holsey follows:]

PREPARED STATEMENT OF HON. SHANNON HOLSEY, TREASURER, NATIONAL CONGRESS OF AMERICAN INDIANS

On behalf of the National Congress of American Indians (NCAI), thank you for holding this hearing to address tribal priorities for the 118th Congress. I am Shannon Holsey, President of the Stockbridge-Munsee Band of Mohican Indians and Treasurer of NCAI.

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

NCAI is honored and grateful to testify in front of the 118th Congress, and wishes to highlight the following policy priorities:

### **I. Appropriations**

The funding requests referenced in this testimony are rooted in the promises made by the U.S. Government in treaties and agreements with tribal nations. The 2018 *Broken Promises Report* from the U.S. Commission on Civil Rights (USCCR) found that "[f]ederal funding for Native American programs across the government remains grossly inadequate to meet the most basic needs the federal government is obligated to provide."<sup>1</sup>

Congress and the Administration have recently taken some initial steps toward making good on the federal government's promises to tribal nations. For example, NCAI commends Congress for providing advance appropriations for certain Indian Health Service (IHS) accounts. Additionally, the President's FY 2023 Budget Request to Congress called for a historic shift in the paradigm of nation-to-nation relations that seeks to restore the promises made between our ancestors and the United States in several key programs. It included requesting mandatory funding for: IHS, Department of the Interior (DOI) Contract Support Costs, and Section 105(1) Tribal

<sup>1</sup>U.S. Commission on Civil Rights, *Broken Promises: Continued Federal Funding Shortfall for Native Americans*, at 4, (2018), <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

Leases; along with a myriad of investments in Indian healthcare, education, public safety, natural resource management, and infrastructure.

However, there is much more to be done by the federal government to truly fulfill the promises made to tribal nations. Congress and the Administration must build on these initial steps. Accordingly, NCAI urges Congress to fully fund the U.S. Government's treaty and trust obligations. It also urges Congress and the Administration to continue to improve how funding is delivered to DOI, IHS and other federal programs that serve Tribal Nations by providing advance appropriations until such time that all trust and treaty obligations are accounted for, and provided as, mandatory spending.

#### *A. Indian Health Service-Expand and Sustain IHS Advance Appropriations*

In an historic first, the FY 2023 Omnibus provides an advance appropriation for the Indian Health Service. Enactment of Advance Appropriations for the IHS marks a paradigm shift in the nation-to-nation relationship between Tribal Nations and the United States. This change will help protect Indian healthcare from the harmful impacts of government shutdowns and continuing funding resolutions. Until the enactment of the FY 2023 omnibus, IHS was the only federal provider of health care that was on the regular, annual discretionary appropriations process. We thank all the members and staff of the Senate Committee on Indian Affairs for their tireless support for this historic moment, decades in the making.

Until the entirety of the IHS budget is provided mandatory direct appropriations, it is critical that Congress continue advance appropriations. Advance appropriations for the IHS are consistent with the trust and treaty obligations reaffirmed by the United States in the Indian Health Care Improvement Act. The advance appropriation enacted in the FY 2023 Omnibus excluded certain accounts in the IHS budget and flat-funded the IHS accounts that it did include. While historic in its inclusion, a flat-funded IHS needs FY 2024 adjustments, at a minimum, for fixed costs and staffing for newly completed facilities and should also include the amounts requested by the IHS National Tribal Budget Formulation Workgroup. The IHS need-based funding cost estimate for Fiscal Year (FY) 2024 is approximately \$51.4 billion, and the cost estimate for FY 2025 is approximately \$53.8 billion.<sup>2</sup> Additionally, IHS advance appropriations should be expanded to include all IHS accounts and must be sustained until Congress fulfills its duty the way it was intended-as a mandatory obligation in performance of a bargained-for exchange.

Both IHS and Tribal Nations have the collaborative tools to produce reliable advance appropriation requests and implement full year advance appropriations. For this appropriations cycle, Tribes have already provided official input on the FY 2025 budget to IHS with representatives of the Office of Management and Budget in attendance. This budget will be presented to the Department of Health and Human Services in April of this year.

#### *B. Department of the Interior-Bureau of Indian Affairs (BIA)*

The BIA is one of the primary agencies responsible for providing services throughout Indian Country, either directly or through compacts or contracts with tribal nations. The operation of these programs and services is essential for the health, safety, and social and economic well-being of tribal and surrounding communities. Unfortunately, chronic underfunding of tribal programs perpetuates systemic issues in Indian Country that could be reduced or eliminated by funding tribal programs in amounts that meet the federal government's treaty and trust obligations to Tribal Nations.

NCAI recommends \$20.695 billion for Indian Affairs programs in FY 2024, consistent with the official FY 2024 recommendation of the Tribal/Interior Budget Council (TIBC).<sup>3</sup> Within TIBC's FY 2024 recommendations are robust increases for all base-funded programs, and additional funding to address public safety and justice in tribal communities; the economic and social wellbeing of our citizens and all those who visit or do business in our communities; the backlog of school, community, and government infrastructure construction and maintenance; taking land into trust; and addressing climate resiliency in tribal communities and on Indian and federal lands.

<sup>2</sup>Workgroup publications available at: <https://www.nihb.org/legislative/budget-formulation.php>, accessed on: February 26, 2023.

<sup>3</sup>TIBC Tribal Representatives' FY 2024 Budget Submission to the Department of the Interior, May 16, 2022, accessed at: [https://res.cloudinary.com/ncai/image/upload/v1661949853/tibc-documents/march2022/004\\_-\\_TIBC\\_FY\\_2024\\_Budget\\_Submission.pdf](https://res.cloudinary.com/ncai/image/upload/v1661949853/tibc-documents/march2022/004_-_TIBC_FY_2024_Budget_Submission.pdf).

### C. Environmental Protection Agency (EPA)

As place-based peoples, Tribal Nations have sacred histories and maintain cultural practices that tie them to their current land bases and ancestral territories. As a result, tribal peoples directly, and often disproportionately, suffer from the impacts of environmental degradation. 50 years after the passage of the Clean Water Act, only 47 of 82 eligible Tribal Nations have EPA-approved water quality standards,<sup>4</sup> which are a cornerstone of the Clean Water Act. Given the disparate access of tribal communities to safe, clean water, NCAI recommends a five percent tribal set-aside for each of the National Safe Drinking Water State Revolving Fund (DWSRF) and the National Clean Water Act State Revolving Fund (SRF).

Additionally, NCAI recommends \$100 million be appropriated for the EPA Tribal General Assistance Program and \$30 million for the Tribal Air Quality Management Program.

### D. Hold Harmless for DOI—Indian Affairs, IHS and Other Programs for the Benefit of Tribal Nations

The DOI-Indian Affairs and IHS budgets are very small when compared to the overall national budget. Spending cuts or other budget control measures that affect tribal programs can have devastating impacts on tribal nations and their citizens but would have little impact on overall federal spending. To the extent Congress considers funding reductions in FY 2024, DOI-Indian Affairs, IHS and other programs for the benefit of Tribal Nations must be held harmless.

## II. Infrastructure

### A. Housing

Housing infrastructure in Indian Country continues to lag behind the rest of the United States. Over 70 percent of existing housing stock in tribal communities is in need of upgrades and repairs, many of them extensive.<sup>5</sup> In 2017, The U.S. Department of Housing and Urban Development (HUD) reported that, “the lack of housing and infrastructure in Indian Country is severe and widespread, and far exceeds the funding currently provided to tribes.”<sup>6</sup>

The lack of affordable housing contributes to homelessness and overcrowding. Tribal communities experience overcrowded homes at a rate of 16 percent, roughly eight times the national average.<sup>7</sup> HUD research also shows that such overcrowding has a negative effect on family health and contributes to the ongoing problems of domestic violence and poor school performance in Indian Country.<sup>8</sup> Funding new construction across the board will help alleviate issues of overcrowding. In addition to the historic funding shortfalls, the location of many tribal communities increases the material and labor costs of home construction and impose additional housing development costs upon communities already confronting enormous economic challenges.<sup>9</sup> Building materials must often be brought into tribal communities from miles away over substandard roads or even by air, and the availability of “qualified and affordable contractors” is limited.<sup>10</sup> Given these extensive funding needs, it is critical that Congress support (1) reauthorization of NAHASDA; (2) permanently reauthorize the Tribal HUD–VASH Program; and (3) introduce and pass legislation that aims to increase homeownership rates in Indian Country.

#### 1. Reauthorize NAHASDA and Increase Funding for IHBG Formula Grants

The Native American Housing Assistance and Self-Determination Act (P.L. 104–330) (NAHASDA), first enacted in 1996, authorized Tribal Nations to self-determine their housing programs. It gave flexibility for Tribal Nations to develop, construct and maintain housing for their members, transforming how federal housing pro-

<sup>4</sup> Environmental Protection Agency, *EPA Actions on Tribal Water Quality Standards and Contacts*, <https://www.epa.gov/wqs-tech/epa-actions-tribal-water-quality-standards-and-contacts>.

<sup>5</sup> U.S. Department of Housing and Urban Development, Fiscal Year 2017 Congressional Justifications, 11–12, (2016), [https://www.hud.gov/sites/documents/FY\\_2017\\_CJS\\_COMBINED.PDF](https://www.hud.gov/sites/documents/FY_2017_CJS_COMBINED.PDF).

<sup>6</sup> Broken Promises Report, at 137, (2018), <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

<sup>7</sup> U.S. Department of Housing and Urban Development, *Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report From the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs*, (2017), <https://www.huduser.gov/portal/sites/default/files/pdf/HNAIHousingNeeds.pdf>.

<sup>8</sup> Department of Housing and Urban Development (HUD), Fiscal Year 2017 Congressional Justifications, 11–4, [https://www.hud.gov/sites/documents/FY\\_2017\\_CJS\\_COMBINED.PDF](https://www.hud.gov/sites/documents/FY_2017_CJS_COMBINED.PDF).

<sup>9</sup> Broken Promises Report, at 138, (2018), <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

<sup>10</sup> *Ibid.*

grams addressed housing needs in tribal communities. NAHASDA consolidated existing housing funds into a single block grant—the Indian Housing Block Grant (IHBG)—resulting in tens of thousands of additional housing units being constructed, as well as increased tribal capacity to address related infrastructure and economic development challenges. The IHBG is a formula-based grant that provides certainty and security for long-term housing and community development. Unfortunately, NAHASDA funding has only increased 31 percent, from \$600 to \$787 million since 1998. Tribal Nations need \$1.1 billion just to keep pace with inflation over 20 years. Meanwhile, the total HUD budget has nearly tripled in 20 years, from \$23 million in 1998 to \$70.5 million today.<sup>11</sup> IHBG is failing to even keep pace with inflation while costs continue to increase and a housing crisis overwhelms tribal housing entities.<sup>12</sup>

In the 117th Congress, Senator Brian Schatz introduced S. 2264: The NAHASDA Reauthorization Act of 2021. S. 2264 proposed to reauthorize NAHASDA programs through 2032, create an Assistant Secretary for Indian Housing at HUD, and update several key provisions including: re-establishing a Drug Elimination program for tribal communities; streamlining environmental review requirements; allowing housing assistance for students; recognizing tribal sovereignty to govern maximum rent requirements; allowing tribal housing programs to access IHS sanitation funding; tribal eligibility for HUD Housing Counseling and Homelessness Assistance grants; and reauthorizing Native Hawaiian housing programs. NCAI strongly urges Congress to reintroduce and pass legislation that reauthorizes NAHASDA through 2032<sup>13</sup> and provides increased funding appropriations for IHBG formula grants upwards of \$1 billion to help address the ongoing housing crisis in Indian Country.

## 2. Permanently Reauthorize the Tribal HUD–VASH Program

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

In the 117th Congress, S. 5140 was introduced, which would codify and make permanent the Tribal HUD–VASH program within the larger HUD–VASH program and ensure adequate funding for the program. In addition, the bill would make all Tribal Nations and their tribal housing programs eligible for the HUD–VASH program, which to date has remained limited to the original 26 recipients. The bill would also call on IHS to assist the program as requested by HUD or the Department of Veterans Affairs (VA). NCAI has a standing resolution supporting this legislation.<sup>14</sup> Accordingly, NCAI urges this Committee to pass similar legislation early in the 118th Congress.

## 3. Support Legislation for Increased Homeownership in Indian Country

American Indians and Alaska Natives (AI/ANs) on tribal lands or in remote areas face significant barriers to homeownership. These barriers include AI/ANs having some of the highest rates of unemployment and poverty, lacking access to credit services, and lacking education about what it takes to become a homeowner. In 2019, the Federal Deposit Insurance Corporation (FDIC) found that 16.3 percent of AI/AN households were unbanked, compared to only 5.4 percent of the general popu-

<sup>11</sup>National American Indian Housing Council, “Legislative Priorities in the 118th Congress”, (2023).

<sup>12</sup>U.S. Department of Housing and Urban Development, Fiscal Year 2017 Congressional Justifications, 11–12, (2016), [https://www.hud.gov/sites/documents/FY\\_2017\\_CJS\\_COMBINED.PDF](https://www.hud.gov/sites/documents/FY_2017_CJS_COMBINED.PDF).

<sup>13</sup>NCAI Resolution PDX–20–055, NAHASDA Reauthorization, 2020, [https://www.ncai.org/attachments/Resolution\\_zLcDLBjJazSdLkmeWKIMhDmfuqZKQgveoNYpUaKaMUwGZPfkNYzw\\_PDX-20-055%20SIGNED.pdf](https://www.ncai.org/attachments/Resolution_zLcDLBjJazSdLkmeWKIMhDmfuqZKQgveoNYpUaKaMUwGZPfkNYzw_PDX-20-055%20SIGNED.pdf).

<sup>14</sup>NCAI Resolution ECWS–14–001, Support for Indian Veterans Housing Rental Assistance Demonstration Program in the Native American Housing and Self-Determination Act Reauthorization, [https://www.ncai.org/attachments/Resolution\\_rGJmzKMOpmPXCODBFDEimNAVXIDwbXbVvXGHmPeVbMNx\\_lCXSRjF\\_ECWS-14-001%20resolution.pdf](https://www.ncai.org/attachments/Resolution_rGJmzKMOpmPXCODBFDEimNAVXIDwbXbVvXGHmPeVbMNx_lCXSRjF_ECWS-14-001%20resolution.pdf).

lation.<sup>15</sup> Banks and credit institutions are less likely to have branches in tribal areas, which is due in part to the jurisdictional complexity of lending on tribal lands. A 2016 Native Nations Institute study found that Indian Country faces “high interest rates on loans, the inability to use trust land as collateral on loans, and a general unwillingness on the part of financial institutions to lend to reservation-based applicants.”<sup>16</sup> Economic and social constraints like lower borrower incomes and limited or blemished credit histories broadly impede the expansion of mortgage credit to underserved populations.<sup>17</sup>

In the 117th Congress, there were several legislative proposals introduced to address the lack of homeownership among Native Americans and Alaska Natives. Among these proposals, S. 70: The Tribal Trust Land Homeownership Act of 2023, has already been re-introduced by Senator John Thune. This bill seeks to improve the BIA land title procedures for home loans on trust lands. The unique status of trust lands being inalienable makes it difficult for private lenders to obtain security interests in individual plots and most private lenders are uneducated on what practices they can employ to lend to AI/ANs residing on tribal lands.<sup>18</sup> This makes lenders reluctant to lend to either individual AI/ANs, Tribal Nations, and Tribally Designated Housing Entities (TDHE) interested in developing housing. Further exacerbating the issue, the Bureau of Indian Affairs must review all trust land leases and provide verification of land ownership via a title status report. This verification has historically taken several weeks, months, or even years to complete.<sup>19</sup> This bill would set forth requirements for response times for certain reports required by the BIA.

Additionally, S. 4505: The [Veterans Administration (VA)] Native American Direct Loan Improvement Act, introduced by Senators Rounds and Tester in the 117th congress, is a bi-partisan bill that proposes to increase the number of home loans to Native Veterans returning home. The VA’s NADL program has only provided 190 loans to Native Americans nationwide over the past 10 years. This legislation would help to increase the number of NADL-administered loans by allowing veterans to refinance existing non-VA mortgages utilizing the NADL product, and would also allow veterans who have built homes with other sources of construction financing (e.g. a Native CDFI loan) to still use NADL as permanent financing. It also provides grant funding for Native CDFIs, Tribal Nations, Tribally Designated Housing Entities (TDHEs), and nonprofits to assist with outreach, homebuyer education, and other technical assistance to Native veterans seeking homeownership financing.

Finally, last session’s S. 2092: The Native American Rural Home-ownership Improvement Act utilizes Native CDFIs to deploy USDA Section 502 Single Family Home Loan funds to Native Americans. Support for Native CDFIs is essential to solving low rates of lending and homeownership on tribal lands. They provide extensive financial and homebuyer education to help their clients become self-sufficient private homeowners. The proposed expanded relending pilot program would increase the flow of mortgage capital to Indian Country by allowing Native CDFIs to be eligible borrowers under the 502 Direct Loan Program and enable them to relend to eligible families for the construction, acquisition, and rehabilitation of affordable housing. While this last bill does not fall neatly into the jurisdiction of the Senate Committee on Indian Affairs, we strongly encourage the members of this committee to support this legislation and work to get improvements to USDA housing programs included in the 2023 Farm Bill.

### *B. Education Facilities*

Schools operating within the BIE system are woefully outdated and, in some cases, dangerous for students and staff. At the end of FY 2019, BIE reported 71

<sup>15</sup>Federal Deposit Insurance Corporation, How American Banks: Household Use of Banking and Financial Services, 2019 FDIC Survey, <https://www.fdic.gov/analysis/household-survey/2019report.pdf>.

<sup>16</sup>Native Nations Institute. 2016. Access to Capital and Credit in Native Communities (digital version). Tucson, AZ: Native Nations Institute, available at: [https://nni.arizona.edu/application/files/8914/6386/8578/Accessing\\_Capital\\_and\\_Credit\\_in\\_Native\\_Communities.pdf](https://nni.arizona.edu/application/files/8914/6386/8578/Accessing_Capital_and_Credit_in_Native_Communities.pdf).

<sup>17</sup>HUD, Mortgage Lending on Indian Land: A Report From the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs, p. vii, (2017), <https://www.huduser.gov/portal/sites/default/files/pdf/NAHSG-Lending.pdf>.

<sup>18</sup>U.S. Department of Agriculture (USDA), Lending on Native American Land: A Guide for Rural Development Staff, (2006), <http://www.ruralhome.org/storage/documents/nativeamerguideforusda.pdf>.

<sup>19</sup>*Ibid.*

schools in poor condition,<sup>20</sup> which puts Native students at a significant, unfair learning disadvantage. The current cost as estimated by Interior’s Office of Inspector General for replacing or rehabilitating BIE school facilities exceeded \$4.6 billion.<sup>21</sup> Further, Interior identified \$629 million in deferred maintenance for BIE-funded education facilities and \$86 million in deferred maintenance for BIE educational quarters. To begin to address this issue, Congress passed H.R. 1, the American Recovery and Reinvestment Act (ARRA) of 2009, allocating \$200,000,000 for calendar year 2009 and \$200,000,000 for calendar year 2010 in tax credit bonds for purpose of construction, rehabilitation, and repair of schools funded by the BIA.

While this funding was appreciated, no Tribal Nations were able to use the ARRA tax credit bonds due to a lack of capital outlay and an escrow account to support the issuance of school modernization bonds. Tribal Nations recognize the need for adequate school facilities for students in their communities and have been working with the Administration and Congress to come to solutions for alternative school construction funding options under existing statutory authority. Some Tribal Nations have discussed and even developed a school construction/lease-back proposal whereby the community takes over the school design and construction function, and, when completed, leases the facility back to Interior. While this is a great solution for Tribal Nations that have the resources and capital to complete school design and construction, additional innovative solutions must be made.

In the Consolidated Appropriations Act of 2023, Congress allocated \$267,887,000 to be used for construction, improvement, and maintenance of BIE facilities. While every dollar of funding is needed and useful, the reality is that a significant funding increase is required to bring BIE schools into parity with non-Native public schools across the country. Therefore, NCAI urges this committee to work with Tribal Nations to develop additional innovative models of funding for BIE school construction and related infrastructure, provided that new funding sources or methods must supplement and not supplant existing funding methods.

### *C. Hold Oversight Hearings on Infrastructure Bill Funding*

As we rapidly approach the two-year anniversary of the Infrastructure Investment and Jobs Act (IIJA), NCAI encourages the Senate Committee on Indian Affairs to hold several oversight hearings on IIJA funding that is being deployed to Tribal Nations. IIJA included a record number of program eligibility and spending amounts allocated to Tribal Nations, and while the deployment of such large amounts takes time, we must be steadfast in our efforts to ensure that this funding is being deployed in the most effective and efficient manner possible. We encourage SCIA to hold oversight hearings on IIJA, including but not limited to: broadband funding in Indian Country, the Indian Water Rights Settlement Completion Fund, and clean drinking water and water infrastructure funding through the EPA and Department of the Interior. This funding for infrastructure is a once in a lifetime opportunity to deliver infrastructure funding to the communities who need it most. Congress has a responsibility to ensure that Tribal Nations are not only receiving the funding in a timely manner, but also receiving the technical assistance and guidance necessary to make the most of this historical funding.

## **III. Public Safety and Justice**

### *A. Funding*

Among the fundamental components of the federal government’s treaty and trust responsibilities to Tribal Nations is the obligation to protect public safety on tribal lands. Congress has long acknowledged this obligation, which Congress reaffirmed in the Tribal Law and Order Act (TLOA) expressly “acknowledging the federal nexus and distinct federal responsibility to address and prevent crime in Indian Country.”<sup>22</sup>

The inadequate funding for tribal criminal justice and public safety has resulted in staggering rates of violent crime and victimization on many Indian reservations. A Department of Justice (DOJ) study found that more than four in five American Indian and Alaska Native (AI/AN) adults have experienced some form of violence

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

<sup>21</sup>U.S. Department of the Interior, Office of Inspector General, Condition of Indian School Facilities, C-EV-BIE0023-2014, 2016, [https://www.doiig.gov/sites/doiig.gov/files/FinalEval\\_BIESchoolFacilitiesB\\_093016.pdf](https://www.doiig.gov/sites/doiig.gov/files/FinalEval_BIESchoolFacilitiesB_093016.pdf).

<sup>22</sup>Tribal Law and Order Act, 34 U.S.C. § 10381(j).

in their lifetime.<sup>23</sup> Among AI/AN women, 55.5 percent have experienced physical violence by intimate partners in their lifetime, and 56.1 percent have experienced sexual violence.<sup>24</sup> NCAI appreciates Congress' enactment of the Violence Against Women Act (VAWA) Reauthorization Act of 2022, which will help address violent crime in Indian Country, as it provides resources for the exercise of, and affirms, tribal nations' authority to address crime in their communities. Going forward, robust funding for these VAWA-related programs and tribal police departments and justice systems is absolutely essential for improving public safety on the ground in tribal communities.

The underfunding of tribal law enforcement and justice systems is well-documented. In 2022, BIA submitted a report to Congress (for FY 2019) estimating that to provide a minimum base level of service to all federally recognized tribal nations: \$1.3 billion is needed for Tribal Law Enforcement Programs, \$1.2 billion is needed for Tribal Courts, and \$240.6 million is needed to adequately fund existing Detention Centers.<sup>25</sup> FY 2023 funding levels fall far short of BIA's estimates.

Due to the inadequacy of BIA base funding, tribal nations often seek short-term, competitive grants to try to make up a portion of the shortfall. This is especially true with regard to funding for the non-incarceration aspects of justice systems, such as tribal courts, which, are even more severely underfunded than policing and detention.

In 2018, the USCCR found that there continues to be "systematic underfunding of tribal law enforcement and criminal justice systems, as well as structural barriers in the funding and operation of criminal justice systems in Indian Country" that undermine public safety.<sup>26</sup> Tribal justice systems must have resources so they can protect women, children and families, address substance abuse, rehabilitate first-time offenders, and put serious criminals behind bars. Well-functioning criminal justice systems, basic police protection, and services for victims are fundamental priorities of any government-Tribal Nations are no different.

As stated above, NCAI supports TIBC's FY 2024 recommendations, which include \$2.924 billion for Public Safety and Justice funding, with approximately \$1.766 billion for BIA Law Enforcement and \$1.155 billion for tribal courts.

### *B. Criminal Jurisdiction*

Tribal communities continue to be plagued by the highest crime victimization rates in the country. A study by the National Institute of Justice found that more than 80 percent of AI/AN people will be a victim of intimate partner violence, sexual violence, or stalking in their lifetime.<sup>27</sup> The study also found that 90 percent of these victims were victimized by a non-Indian perpetrator.<sup>28</sup> The complicated jurisdictional framework at play in Indian Country, which limits tribal authority to prosecute non-Indians, continues to undermine safety for victims of violence in tribal communities. Tribal Nations are the only governments in America whose authority to protect their communities from domestic and sexual violence, child abuse, stalking, and trafficking is limited by federal law based on the political status/race of the defendant.

When Congress passed the Violence Against Women Act (VAWA 2013), it included a provision that reaffirmed the inherent sovereign authority of Tribal Nations to exercise criminal jurisdiction over certain non-Indians who violate qualifying protection orders or commit domestic violence against AI/AN victims on tribal lands. However, victims of sexual violence, stalking, and trafficking, and AI/AN children and elders were left out. The historic passage of VAWA 2022 earlier this year included provisions that reaffirm tribal jurisdiction over non-Indians for certain crimes involving children and elders, sexual violence, stalking, sex trafficking, obstruction of justice, and assaults against law enforcement and corrections personnel. Now, re-

<sup>23</sup> U.S. Department of Justice, *Violence Against American Indian and Alaska Native Women and Men: 2010 Findings from the National Intimate Partner and Sexual Violence Survey*, 2 (2016), <https://www.ncjrs.gov/pdffiles1/nij/249736.pdf>.

<sup>24</sup> *Ibid.*

<sup>25</sup> U.S. Department of the Interior, *Report to Congress on Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country*, 2019, at 5 (Oct. 2021), <https://www.bia.gov/sites/default/files/dup/assets/bia/ojs/ojs/pdf/2019%20TLOA%20Report%20Final.pdf>.

<sup>26</sup> U.S. Commission on Civil Rights, *Broken Promises: Continued Federal Funding Shortfall for Native Americans*, at 32, (2018), <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

<sup>27</sup> Rosay, A. B. (2016). *Violence Against American Indian and Alaska Native Women and Men: 2010 Findings from the National Intimate Partner and Sexual Violence Survey*. Washington, DC: US Department of Justice.

<sup>28</sup> Rosay, A. B. (2016). *Violence Against American Indian and Alaska Native Women and Men: 2010 Findings from the National Intimate Partner and Sexual Violence Survey*. Washington, DC: US Department of Justice.

sources and technical assistance are required to allow opportunities for more Tribal Nations to exercise their sovereignty in this space.

While VAWA 2022 was a huge victory for Tribal Nations, the Supreme Court's recent decision in *Oklahoma v. Castro-Huerta* overturned the long-held understanding that states do not have authority to prosecute non-Indians who commit crimes against Indians in Indian country. In that case, the Supreme Court held that "the Federal Government and the State have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country" which strikes against tribal sovereignty and jurisdiction to protect tribal citizens.

In response to the *Castro-Huerta* decision, NCAI adopted several resolutions related to criminal jurisdiction in Indian Country, including Resolution #SAC-22-043, "Calling on Congress to Enact the Legislative Proposal to Improve Public Safety in Indian Country".<sup>29</sup> Congress has the power to meaningfully strengthen tribal jurisdiction and improve public safety for all people who live on reservations and other tribal lands. When Congress passed the "Duro fix" after the Supreme Court's decision in *Duro v. Reina*, 495 U.S. 676 (1990), Congress was recognizing and protecting tribal sovereignty from a Supreme Court decision that attempted to weaken tribal sovereignty. Over the years, other attempts to weaken tribal sovereignty have taken place and in the interest of both protecting tribal sovereignty and public safety, now is the time for Congress to once again take action. Specifically, NCAI calls on Congress to relax restrictions regarding tribal authority over non-Indian criminal activity and to remove sentencing limitation by amending the Indian Civil Rights Act; and to amend Public-Law 280 (and other relevant statutes) to ensure that states, other than those six states with mandatory criminal jurisdiction under 18 U.S.C. 1162 (a), have no criminal jurisdiction in Indian country unless they have first obtained tribal consent to that state criminal jurisdiction and, where necessary, have amended their state constitutions or statutes to permit that jurisdiction, all in compliance with procedures outlined in 25 U.S.C § 1324.

### C. Child Welfare

The Indian Child Welfare Act (ICWA) is a 45-year-old federal law widely considered to be the gold standard of child welfare policy and practice. Since ICWA state court guidelines were updated and the first-ever legally binding regulations were promulgated under the Obama Administration in 2016, ICWA has faced a wave of litigation from a small but well-resourced and well-coordinated group of opponents, including the Goldwater Institute and other conservative think tanks focused on states rights as well as some private adoption attorneys and agencies. Since 2015, the Goldwater Institute alone has filed lawsuits or amicus briefs in more than a dozen cases challenging ICWA.

The most serious challenge ICWA is currently facing is *Haaland v. Brackeen*, a case filed in 2017 and now before the US Supreme Court. In this case Texas Attorney General Ken Paxton and a handful of non-Native foster and adoptive parents challenged the constitutionality of ICWA. The most potentially far-reaching of their claims is that ICWA violates the equal protection clause of the Fourteenth Amendment and is based on race. This is an intentional misunderstanding of the fact that ICWA's protections for American Indian and Alaska Native children are based on their political status, their citizenship in-or eligibility for citizenship in-a federally recognized tribe. The Supreme Court heard oral argument in the case on November 9, 2022, and a decision will be rendered by June 30, 2023, at the latest. Whatever the outcome of the case, NCAI encourages Congress to continue to work with Tribal Nations and others partners to strengthen Native families and to do everything within its power to ensure that the literal future generations of Native people are not separated from their communities and cultures.

### IV. Farm Bill

Agriculture is a major economic, employment, and nutrition sector in Indian Country. According to the 2017 Census of Agriculture, there were at least 79,198 American Indian or Alaska Native (AI/AN) producers on more than 59 million acres of tribal homelands for the production of crops, livestock or both. These farms and ranches sold over \$3.5 billion of agricultural products, including more than \$1.4 billion of crops and \$2.1 billion of livestock and poultry. Agriculture remains the second leading employer in Indian Country and is the backbone of the economy for many Tribal Nations.

<sup>29</sup>NCAI Resolution #SAC-22-043, "Calling on Congress to Enact the Legislative Proposal to Improve Public Safety in Indian Country", available at: <https://ncai.assetbank-server.com/assetbank-ncai/assetfile/3164.pdf>.



NCAI is a founding and executive committee member of the Native Farm Bill Coalition, along with the Intertribal Agriculture Council, the Shakopee Mdewakanton Sioux Community, and the Indigenous Food and Agriculture Initiative. NCAI stands with the Native Farm Bill Coalition, who will also be testifying, but we want to emphasize the need for more opportunities for self-governance, co-management, funding flexibility, and direct management and implementation of programs.

The nutrition title is of particularly high importance to Indian Country. With 24 percent of AI/AN households receiving Supplemental Nutrition Assistance Program (SNAP) benefits, 276 Tribal Nations administering the Food Distribution Program on Indian Reservations (FDPIR), 68 percent of AI/AN children qualifying for free and reduced price lunches, and American Indians and Alaska Natives making up more than 12 percent of the participants in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) the importance of food assistance in Indian Country cannot be overstated. Any cuts to SNAP, FDPIR, WIC, or school lunch programs directly diminish the food, and in some cases the only meals, available to Native children, pregnant women, elders, and veterans. Additionally, food assistance programs like FDPIR must be provided the means and support to purchase traditional, locally grown food in their food packages. Traditional and locally grown foods from Native American farmers, ranchers, and producers encourage healthy living, cultural sustainability, and a return to traditional practices all while supporting economic development. NCAI urges Congress to support the expansion and making permanent of the Food Distribution Program on Indian Reservations (FDPIR), tribal eligibility to administer the Supplemental Nutrition Assistance Program (SNAP), and to allow the dual use of both SNAP and FDPIR. To realize many of these priorities there needs to be an expansion of 638 authority broadly across the Department of Agriculture (USDA) and its programs, as well as the reduction and elimination of match requirements.

## V. Climate Change and Energy

### A. Climate Change

The cultures, traditions, lifestyles, communities, foods, and economies of Tribal Nations are often dependent upon natural resources that are disappearing faster than they can be restored because of dramatic shifts in weather and climate.<sup>30</sup> As such, they are disproportionately affected by even incremental environmental changes.<sup>31</sup> Tribal Nations are at the front lines of the climate crisis responding to sea level rise, coastal erosion, ocean acidification, increased frequency and intensity of wildfires, extended drought, and altered seasonal duration.<sup>32</sup> These weather events have dramatic impacts on traditional cultural and subsistence practices and sacred places, tribal fisheries, timber harvesting and agricultural operations, ecotourism, and infrastructure.<sup>33</sup> Despite these challenges, Tribal Nations are leading the way in climate action mitigation, adaptation, and resiliency responses for their communities and are integral to the global and national responses to the climate crisis.<sup>34</sup> Tribal Nations have the following, non-exhaustive list of priorities and goals for Congressional climate responses:

- Legislation must include full and meaningful consultation with decision makers that requires Tribal Nations' free, prior, and informed consent and includes enforcement mechanisms;<sup>35</sup>
- Tribal Nations must be integrated into Congressional and Executive Branch climate planning, including on federal climate committees and working groups;<sup>36</sup>

<sup>30</sup> Broken Promises Report, at 193 (2018).

<sup>31</sup> Fourth National Climate Assessment, Vol. II: Impacts, Risks, and Adaptation in the United States, Chapter 15 (2018).

<sup>32</sup> Broken Promises Report, 193–194 (2018); Fourth National Climate Assessment, Vol. II: Impacts, Risks, and Adaptation in the United States, Chapter 15 (2018).

<sup>33</sup> Fourth National Climate Assessment, Vol. II: Impacts, Risks, and Adaptation in the United States, Chapter 15 (2018).

<sup>34</sup> NCAI, Climate Action Resource Center, <https://www.ncai.org/ptg/climate>, (last visited, Feb. 19, 2021).

<sup>35</sup> NCAI Resolution PHX–16–058, United States Federal Agency Consultation, Consent, Funding, and Actions to Address Climate Change Impacts to Tribal Treaty and Trust Resources, [https://www.ncai.org/attachments/Resolution\\_RQiEDgHAWYpzQLoUKEdwjuXDCxyGCwKeLQhGWLAKzxTUA\\_AUehsK\\_PHX-16-058%20final.pdf](https://www.ncai.org/attachments/Resolution_RQiEDgHAWYpzQLoUKEdwjuXDCxyGCwKeLQhGWLAKzxTUA_AUehsK_PHX-16-058%20final.pdf).

<sup>36</sup> NCAI Indians Resolution SD–15–024, Support for the Tribal Climate Change Principles: Responding to Federal Policies and Actions to Address Climate Change document and its Swift

- Restoring tribal land, water, wildlife and fisheries resources is critical to tribal climate responses. This includes identification and assessment of the full cost of climate impacts on Tribal Nations;<sup>37</sup>
- Co-management and co-stewardship opportunities should be created and furthered to support intergovernmental partnerships and integrate tribal traditional knowledge in climate responses;
- Any inclusion of Traditional Ecological Knowledge must be conditioned on Tribal Nations' free, prior, and informed consent;<sup>38</sup>
- Tribal Nations must be included in climate financing action through increased appropriations, grants, public-private financing opportunities, and removal of barriers to tribal climate responses, including competitive grants and matching fund requirements;
- Financing climate mitigation and adaptation measures must be comprehensive and support a wide range of climate-related activities, including wildfire management, coastal restoration, drought resiliency, and for the development and repair of tribal infrastructure;
- Financing must also be flexible and responsive to tribal needs and decision-making, and national efforts towards a carbon-neutral economy must ensure that the socio-economic needs of tribal energy producers are addressed;<sup>39</sup> and
- Any federal assistance provided to state and local governments should also be provided to tribal governments through tribal-specific funding mechanisms. Tribal Nations have the solutions to the climate crisis and we request that SCIA support legislation in the 118th Congress that incorporates the above tribal principles.

#### B. Energy

Tribal energy resources are vast, largely untapped, and critical to America's efforts to achieve energy security and independence, reduce greenhouse gasses, and promote economic development for both Indian Country and the United States as a whole. These resources include: one quarter of the nation's on-shore oil and gas reserves, one-third of the nation's western low-sulfur coal,<sup>40</sup> almost 3.5 percent of the nation's wind energy, and approximately five percent of the nation's total solar energy potential.<sup>41</sup>

Despite the energy potential in Indian Country, Tribal Nations face many challenges, including that approximately 14 percent of homes on reservations lack access to electricity<sup>42</sup> and unique federal laws, regulations, and policies create additional burdens for energy development on tribal lands.<sup>43</sup> Given the historic, social, and economic impediments Tribal Nations and citizens face, and the relatively short time in which they have been involved in energy development, the successes of Indian Country are clear indicators of future potential. Tribal Nations have several energy related priorities for the 118th Congress.

First, Tribal Nations need assistance financing energy development through use of tools such as loans, grants, and technical assistance.<sup>44</sup> For example, Interior's In-

Implementation by the Federal Government, [https://www.ncai.org/attachments/Resolution\\_NZdlSoySpGDwyQAPQHLWnPZLOBFtqiQXqWoQXOVmdKCcPLkzSqM\\_SD-15-024.pdf](https://www.ncai.org/attachments/Resolution_NZdlSoySpGDwyQAPQHLWnPZLOBFtqiQXqWoQXOVmdKCcPLkzSqM_SD-15-024.pdf).

<sup>37</sup> See e.g., NCAI Resolution ABQ-19-036, Calling on Congress to Support and Pass Recovering America's Wildlife Act, or Similar Legislation with a Tribal Wildlife Conservation and Restoration Account, [https://www.ncai.org/attachments/Resolution\\_wdmLQlFJtJWBerRSGeAYFkjXqdVikLhFyqxMmWUrHzSQVdFG\\_Gjo\\_ABQ-19-036.pdf](https://www.ncai.org/attachments/Resolution_wdmLQlFJtJWBerRSGeAYFkjXqdVikLhFyqxMmWUrHzSQVdFG_Gjo_ABQ-19-036.pdf).

<sup>38</sup> NCAI Resolution PDX-11-036, Traditional Ecological Knowledge and Climate Change, [https://www.ncai.org/attachments/Resolution\\_MZlrscMWUDNfPdJGEJQVODCZZtiNPdZRRWVaNmDdEYtmqg\\_YqTat\\_PDX-11-036\\_final.pdf](https://www.ncai.org/attachments/Resolution_MZlrscMWUDNfPdJGEJQVODCZZtiNPdZRRWVaNmDdEYtmqg_YqTat_PDX-11-036_final.pdf).

<sup>39</sup> See, e.g., NCAI Resolution ATL-14-050, Support the Wildfire Disaster Funding Legislation, [https://www.ncai.org/attachments/Resolution\\_QpVTbEqVjmjgrNAPeUJdzfXCaxahfjUDwghlXihJcGGiWidclwo\\_ATL-14-050.pdf](https://www.ncai.org/attachments/Resolution_QpVTbEqVjmjgrNAPeUJdzfXCaxahfjUDwghlXihJcGGiWidclwo_ATL-14-050.pdf).

<sup>40</sup> See e.g., Property and Environment Research Center, PERC Policy Perspective: Unlocking the Wealth of Indian Nations: Overcoming Obstacles to Tribal Energy Development, (2014), <https://www.perc.org/wpcontent/uploads/old/pdfs/IndianPolicySeries%20HIGH.pdf>.

<sup>41</sup> National Renewable Energy Laboratory, Techno-Economic Renewable Energy Potential on Tribal Lands, (2018), <https://www.nrel.gov/docs/fy18osti/70807.pdf>.

<sup>42</sup> Department of Energy Department of Energy FY 2017 Congressional Budget Request—Volume 3, (Feb. 2016), p. 755. <https://energy.gov/sites/prod/files/2016/02/30/FY2017BudgetVolume3.pdf>.

<sup>43</sup> Broken Promises Report, at 182, (2018).

<sup>44</sup> NCAI Resolution FTL-04-110, Support for Legislation to Enhance the Development of Indian Tribes' Energy Resources, [https://www.ncai.org/attachments/Resolution\\_QJdbbwFnrWmGVaJqGSHocjqjFSErRkvVBOJzsMmkGfVBlNw\\_Mrp\\_fil04-110.pdf](https://www.ncai.org/attachments/Resolution_QJdbbwFnrWmGVaJqGSHocjqjFSErRkvVBOJzsMmkGfVBlNw_Mrp_fil04-110.pdf).

dian Energy and Economic Development (IEED) Indian Loan Guarantee Program (ILGP) promotes tribal renewable and conventional energy development and mineral resource development for the purposes of economic development. IEED is responsible for many creative and successful initiatives that encourage energy resource development on tribal lands, spur economic and business development assistance and training, expand job and skills training opportunities, and leverage limited federal funding to provide access to capital for business development. However, there is a strong need for additional appropriations. With additional funding, the program could develop additional tribal capacity in managerial and technical capabilities, develop resource integration projects, and establish and maintain environmental programs in support of economic development.

Relatedly, Interior needs additional resources to enter into and help implement Tribal Energy Resource Agreements (TERAs). Tribal Nations can, and should, play a role in regulating the energy services industry on their lands and TERAs would assist in that endeavor. Without this authority, Tribal Nations, tribal citizens, and tribal enterprise utility customers located on tribal lands are, in effect, subject to state regulatory practices and decisions that have substantial impacts on energy development on tribal lands.<sup>45</sup> To this end, Tribal Nations should not be subject to non-statutory funding eligibility requirements. These demands are a barrier to tribal participation in energy development funding programs and stifle Indian country's energy potential.<sup>46</sup>

Finally, any energy-related legislation must include principles of parity and meaningful tribal consultation. This is critical since Tribal Nations must have the opportunity to provide their energy resources in an open market. Doing so will assist Tribal Nations and America in addressing critical energy needs.<sup>47</sup> With respect to consultation, Tribal Nations are best suited to make culturally and economically relevant decisions about the development and use of their energy resources. As such, Tribal Nations must be fully and meaningfully consulted with respect to the development of their energy resources. This includes both on and off-reservation development of energy resources that impact tribal interests.<sup>48</sup> Despite the energy potential in Indian Country, Tribal Nations face many challenges, including underfunding, and unique federal laws, regulations, and policies that apply to energy development on tribal lands. Investing in and empowering Tribal Nations provides strong returns and outcomes for tribal and rural communities.

## VI. Additional Priorities

### A. Address Dual Taxation and Other Barriers to Economic Self-Sufficiency

Across Indian Country, Tribal Nations are building sustainable tribal economies—including through nation-owned and tribal citizen owned businesses—to provide for the economic and social well-being of their growing communities. This development is grounded by tribal self-determination, which includes the ability of each tribal nation to create a viable, robust economy based on its cultural values, distinct challenges, particular circumstances, and short-and long-term community development priorities. In the area of tribal taxation, state and local governments have been allowed by the federal courts to encroach upon tribal sovereignty and jurisdiction. Consistent with the United States' treaty and trust responsibilities, the federal government must take action to protect tribal economies and prevent further escalation of the taxation problem. NCAI urges Congress to pass legislation that promotes Na-

<sup>45</sup> *Id.*

<sup>46</sup> NCAI Resolution TUL-13-043, Support for Removal by Congress and the President of Barriers to Full Control by Tribal Nations of the Development of Their Renewable and Non-renewable Energy Resources, [https://www.ncai.org/attachments/Resolution\\_ttpWzJwjtHdUfEAcemlckTRjoAGzZhJuZoAOdLMxjazDEdHsjYQ\\_TUL-13-043%20FINAL.pdf](https://www.ncai.org/attachments/Resolution_ttpWzJwjtHdUfEAcemlckTRjoAGzZhJuZoAOdLMxjazDEdHsjYQ_TUL-13-043%20FINAL.pdf).

<sup>47</sup> NCAI Resolution RAP-10-050, In Support of the Indian Energy Promotion and Parity Act of 2010, [https://www.ncai.org/attachments/Resolution\\_qIVBoCiVrzspHSubVtxDGRAkCIWuwPTgnRpGrZyiFMpCrCuwBg\\_a\\_RAP-10-050.pdf](https://www.ncai.org/attachments/Resolution_qIVBoCiVrzspHSubVtxDGRAkCIWuwPTgnRpGrZyiFMpCrCuwBg_a_RAP-10-050.pdf).

<sup>48</sup> NCAI Resolution SD-15-038, Indian Country's Priorities for Federal Energy Legislation, [https://www.ncai.org/attachments/Resolution\\_qMHMstHTzqxRxfysznHlJtQWsjwCTsRfxceShlONcPiSBAVith\\_SD-15-038.pdf](https://www.ncai.org/attachments/Resolution_qMHMstHTzqxRxfysznHlJtQWsjwCTsRfxceShlONcPiSBAVith_SD-15-038.pdf); see also, NCAI Resolution, REN-19-001, Opposing Mining on Public Lands and Around the Grand Canyon without Tribal Nations' Free Prior and Informed Consent, [https://www.ncai.org/attachments/Resolution\\_fEBYoYKOtODFcWRgdViPRcbNmdjBuOuhGLIbNztNyaAqDLIALfA\\_REN-19-001%20FINAL.pdf](https://www.ncai.org/attachments/Resolution_fEBYoYKOtODFcWRgdViPRcbNmdjBuOuhGLIbNztNyaAqDLIALfA_REN-19-001%20FINAL.pdf); NCAI Resolution REN-19-024, Staying Mineral Leasing and Paleontological Use Permitting in Areas of Tribal Interest, such as the Buffalo Strip and Ball Ranch Area of Critical Environmental Concern, Where Tribal Nations Do Not Consent, [https://www.ncai.org/attachments/Resolution\\_AgWCYVGVOVfmUHPUmQqpmRGwechoEDblkAfdngPpHJPvAwfICv\\_REN-19-024%20FINAL.pdf](https://www.ncai.org/attachments/Resolution_AgWCYVGVOVfmUHPUmQqpmRGwechoEDblkAfdngPpHJPvAwfICv_REN-19-024%20FINAL.pdf).

tive American tax parity; expands the Indian Employment Tax Credit and other tax credits; and removes barriers while promoting access to capital, credit, and other financial products that support growth of tribal economies.

*B. Pass a Clean Carcieri Fix to Support Tribal Lands*

On February 24, 2009 the Supreme Court held in *Carcieri v. Salazar*, 129 S.C. 1058 (2009) that the Secretary of the Interior lacked authority to take land into trust under Section 5 of the Indian Reorganization Act (IRA) for Indian tribes that were not under federal jurisdiction at the time of the Act's passage in 1934. Since the 111th Congress,<sup>49</sup> Members of SCIA have either co-sponsored or introduced legislation to "fix" the Supreme Court's flawed decision. Such legislation has had bipartisan support and has sought to amend the IRA to undo the damage *Carcieri v. Salazar* has inflicted on Indian country. NCAI supports an amendment that would (1) restore the Interior Secretary's authority to take land into trust for all federally recognized Tribal Nations; and (2) re-affirm existing trust lands. NCAI strongly supports passage of a clean *Carcieri* fix in the 118th Congress.<sup>50</sup>

*C. Pass the Native American Voting Rights Act to Create Equity in Voting for Native People*

Despite being the first inhabitants and sovereigns of what is now the United States, American Indians and Alaska Natives were the last people granted the right to vote. Native people were not even recognized as United States citizens with a right to vote until the Indian Citizenship Act in 1924, and it took more than three decades after that before all Native Americans were able to fully participate in state elections.<sup>51</sup> Because many Native American reservations are rural with poor infrastructure, we still face unique barriers to making our voices heard at the ballot box.<sup>52</sup> With recent court decisions and state laws increasingly taking advantage of our isolated conditions in order to make it more difficult for tribal citizens to vote, federal legislation is needed to provide Native people with fair and equal access to voting.<sup>53</sup> NCAI applauds the bipartisan introduction during the 117th Congress of the Native American Voting Rights Act (NAVRA), and calls on Congress to reintroduce and pass NAVRA or similar legislation designed to put Native American voters on equal footing with the rest of the nation.

**Conclusion**

NCAI appreciates the opportunity to present Indian Country's priorities for the 118th Congress to the Committee. We look forward to working with the Indian Affairs Committee and its members during this Congress to advance the interests of Tribal Nations in accordance with the federal trust responsibility.

The CHAIRMAN. Thank you very much.  
Mr. Lozano, please proceed.

**STATEMENT OF HON. THOMAS LOZANO, CHAIRMAN, BOARD OF DIRECTORS, NATIONAL AMERICAN INDIAN HOUSING COUNCIL**

Mr. LOZANO. Good afternoon, Chairman Schatz, Vice Chair Murkowski, and distinguished members of the Senate Committee on Indian Affairs.

My name is Thomas Lozano, and I am the Chairman of the National American Indian Housing Council, a national organization based in Washington, D.C. that advocates as the unified voice of

<sup>49</sup>Indian Country Today, "Tester Re-Introduces a 'Clean Carcieri Fix,'" <https://indiancountrytoday.com/archive/tester-re-introduces-clean-carcieri-fix-4hr-jxvB-E6Z8EU3sZkZOw>.

<sup>50</sup>NCAI Resolution RAP-10-024, To Support Legislation to Address the Supreme Court Decision in *Carcieri v. Salazar*, [https://www.ncai.org/attachments/Resolution\\_oIGOSYZkdNCzZHOUkmLuFtLzAGVAKglEruWMYEKWqiSixNMKwJq\\_RAP-10-024.pdf](https://www.ncai.org/attachments/Resolution_oIGOSYZkdNCzZHOUkmLuFtLzAGVAKglEruWMYEKWqiSixNMKwJq_RAP-10-024.pdf).

<sup>51</sup>American Bar Association, Resolution 112 (adopted: February 17, 2020) (available at: <https://www.americanbar.org/content/dam/aba/directories/policy/midyear-2020/2020-mid-year-112.pdf>).

<sup>52</sup>Native American Rights Fund, Obstacles at Every Turn: Barriers to Political Participation Faced by Native American Voters (2020) (available at: [https://vote.narf.org/wpcontent/uploads/2020/06/obstacles\\_at\\_every\\_turn.pdf](https://vote.narf.org/wpcontent/uploads/2020/06/obstacles_at_every_turn.pdf)).

<sup>53</sup>National Congress of American Indians, Resolution MSP-15-030 (2015) (available at: <https://www.ncai.org/resources/resolutions/tribal-equal-access-to-voting>).

tribal housing programs across Indian Country. I have also served on the tribal council for my tribe, Enterprise Rancheria, Estom Yumeka Maidu, for more than 18 plus years. I am honored to sit before you all today and share our tribal housing legislative priorities for the 118th Congress.

As members of this Committee, I am sure you are all aware of the incredible and profound need for quality affordable housing in tribal communities. According to a 2017 HUD American Indian, Alaska Native and Native Hawaiian housing needs study, approximately 60,000 housing units are needed to address overcrowding and substandard housing conditions.

These dire conditions were magnified during the COVID pandemic, as Native families were unable to social distance due to overcrowded homes, and in some cases unable to wash their heads regularly because of severe lack of water and sanitation infrastructure.

This is unacceptable. Our Native youth, elders, and veterans should not live this way. They deserve better.

NAIHC represents nearly 500 tribal housing programs, and we have two main legislative priorities. They have been the same priorities for several years now. Number one, reauthorization NAHASDA. NAHASDA was last reauthorized in 2008 and expired in 2013.

Congress continues to fund NAHASDA programs with some slight increases over the last few years since its inception in 1997. NAHASDA's success has been evident with hundreds of tribal housing programs building capacity as they develop their own Indian housing plans tailored to the individual tribe's housing needs and priorities.

Included in recent reauthorization bills are certain programmatic changes that can significantly improve tribal housing programs and strengthen sovereignty, like letting tribes set minimum rent rates for housing units, increasing access to projects such as the Indian Health Services sanitization funds, and HUD's Housing Council grants, and developing a more streamlined environmental review process for tribes that leverages funding from multiple Federal sources.

While NAIHC supports the latest versions of NAHASDA reauthorization bills and amendments, there are several provisions from prior versions of NAHASDA that Congress should also consider, including creating a set-aside for tribes to access USDA rural housing programs, parity with States on flood insurance requirements, and a fix for a court jurisdiction issue regarding the HUD 184 loan guarantee program.

At its foundation, NAHASDA is a tribal self-determination program that supports tribal sovereignty. We ask the Committee to respect and remember the nature and intent of NAHASDA.

Priority number two is to increase funding and resources for tribal housing programs. While funding has increased the last two years, it still leaves over 370 grantee tribes with less than \$500,000, and 170 tribes with less than \$100,000 to operate their housing programs. With these funds, tribes are expected to manage and maintain their existing housing units, provide low-income rental assistance, and other housing services, and develop new housing

units. It is simply not possible for tribes to do all those things without more resources.

The IHBG annual appropriations, when compared over time to inflation adjusted levels, shows that tribal housing programs have lost over \$4 billion since NAHASDA was first funded in 1998. Inflation isn't the only metric that shows tribal housing funding is lagging. In 2000, NAHASDA funding was 2.5 percent of the entire HUD budget. In Fiscal Year 2023, that slice of funding has dropped to only 1.2 percent of the HUD budget, which has nearly tripled in that same time with \$65 billion.

Congress must increase the resources provided to tribal housing programs to overcome the high rates of overcrowding and substandard homes.

Development costs continue to increase and tribes are not receiving enough resources to maintain their existing housing stock and develop new affordable housing units. Each tribe may have their own housing priorities, but the beauty of NAHASDA is that it allows tribes to help Native families, students, elders, veterans, create homeownership opportunities or whatever the tribal community needs. We must make sure tribes are getting the resources they need.

In conclusion, on behalf of NAIHC and our member tribes, thank you for holding this hearing and for the opportunity to keep tribal housing and NAHASDA on the radar. Tribes are resilient and resourceful and have constantly shown how far they can stretch the housing dollars. But they shouldn't have to.

NAIHC and tribal housing programs look forward to working with this Committee, our partners in Congress, and Federal agencies to continue building safe, quality affordable housing across tribal communities.

Thank you for your time.

[The prepared statement of Mr. Lozano follows:]

PREPARED STATEMENT OF HON. THOMAS LOZANO, CHAIRMAN, BOARD OF DIRECTORS,  
NATIONAL AMERICAN INDIAN HOUSING COUNCIL

Good Afternoon. My name is Thomas Lozano, and I am the Chairman of the Board of Directors of the National American Indian Housing Council. I am a member of the Enterprise Rancheria which are Maidu people, and I currently serve as the Treasurer of the Tribal Council and sit on the Board of Commissioners for the Enterprise Rancheria Indian Housing Authority. I want to thank Chairman Schatz, Vice Chair Murkowski, and all committee members for having this hearing today and for recognizing and understanding that tribal housing issues and the reauthorization of the Native American Housing Assistance and Self-Determination Act (NAHASDA) are important priorities for this 118th Congress. I also want to thank this Committee for always working to ensure the United States is fulfilling its trust and treaty obligations towards Indian Country with respect to providing safe, affordable housing opportunities in tribal communities and to Native people anywhere in the country.

#### **Background on the National American Indian Housing Council**

The NAIHC was created by tribal housing programs in 1974 and for nearly five decades has provided invaluable Training and Technical Assistance (T&TA) to all tribes and tribal housing entities; provided information to Congress regarding the issues and challenges that tribes face in their housing, infrastructure, and community development efforts; and worked with key federal agencies to ensure their programs' effectiveness in native communities. Overall, NAIHC's primary mission is to promote and support American Indians, Alaska Natives and native Hawaiians in their self-determined goal to provide culturally relevant and quality affordable housing for Native people.

The membership of NAIHC is comprised of 292 members representing 493<sup>1</sup> tribes and tribal housing organizations. NAIHC's membership includes tribes and tribally-designated housing entities throughout the United States, including Alaska and Hawaii. Every member of this Committee serves constituents that are members of NAIHC, either directly through tribes located in your States, or generally through the United States' government-to-government relationship with all tribes within the United States. NAIHC's members are deeply appreciative of your work to improve the lives of Indigenous Peoples throughout the Country.

### **Profile of Indian Country**

There are 574 federally-recognized Indian tribes in the United States. Despite progress over the last few decades, many tribal communities continue to suffer from some of the highest unemployment and poverty rates in the United States. Historically, Native Americans in the United States have also experienced higher rates of substandard housing and overcrowded homes than other demographics.

The U.S. Census Bureau reported in the 2019 American Community Survey data that American Indians and Alaska Natives were almost twice as likely to live in poverty as the rest of the population—23.0 percent compared with 12.3 percent. The median income for an American Indian Alaska Native household is 30 percent less than the national average (\$45,476 versus \$65,712).

In addition, overcrowding, substandard housing, and homelessness are far more common in Native American communities. In January 2017, the Department of Housing and Urban Development (HUD) published an updated housing needs assessment for tribal communities. According to the assessment, 5.6 percent of homes on Native American lands lacked complete plumbing and 6.6 percent lacked complete kitchens. These are nearly four times than the national average, which saw rates of 1.3 percent and 1.7 percent, respectively. The assessment found that 12 percent of tribal homes lacked sufficient heating.

The assessment also highlighted the issue of overcrowded homes in Indian Country, finding that 15.9 percent of tribal homes were overcrowded, compared to only 2.2 percent of homes nationally. The assessment concluded that to alleviate the substandard and overcrowded homes in Indian Country, 68,000 new units need to be built.

Since the Native American Housing Assistance and Self-Determination Act (NAHASDA) was enacted in 1996, tribes have built over 37,000 new units according to HUD. However, as the appropriations for the Indian Housing Block Grant (IHBG) (established by NAHASDA) have remained level for a number of years, inflation has diminished the purchasing power of those dollars, and new unit construction has diminished as tribes focus their efforts on existing unit rehabilitation. While averaging over 2,400 new unit construction between FY2007 and 2010, new unit construction has dropped in recent years with only 2,000 new units between 2011 and 2014, and HUD estimating less than 1,000 new units in future years as tribes maintain existing housing stock over new development.

### **Status of Housing Opportunities for Native Americans**

There remains a large unmet need for quality, affordable housing in tribal communities. As members of the committee are aware, there is a housing shortage across the country, and that is definitely true for Native communities. With a lack of consistent data collection year-to-year, NAIHC is largely relying on the American Indian, Alaska Native and Native Hawaiian Housing Needs Study, published by HUD in January 2017. The report identified an unmet need of 68,000 units to address overcrowded and substandard housing conditions. With new housing construction or acquisition fairly stagnant around 1,000 new units per year in tribal communities across the United States. It is unlikely the unmet need has changed. Additionally, many of NAIHC's members have opined that they believe the 2017 Study's unmet need calculation is underestimated.

The large unmet need is persistent, growing, and largely due to insufficient resources to address reversing the trends. In 2018, the United States Commission on Civil Rights updated its "Broken Promises" report first released in 2003, and found that housing conditions had deteriorated, with the number of overcrowded households or households with inadequate plumbing growing by 21 percent, and the number of families facing severe housing costs growing by 55 percent.

<sup>1</sup> There are 574 federally recognized Indian tribes and Alaska Native villages in the United States, all of which are eligible for membership in NAIHC. Other NAIHC members include state-recognized tribes eligible for housing assistance under the 1937 Housing Act and that were subsequently provided funding pursuant to the Native American Housing Assistance and Self-Determination Act of 1996, and the Department of Hawaiian Home Lands, the state agency that administers the Native Hawaiian Housing Block Grant program.

Despite these trends moving in the wrong direction, Congress has been decreasing the amounts of housing assistance to tribal communities each year through stagnant funding of NAHASDA programs while inflation has grown over the past 20 years. In FY20, Congressional IHBG formula funding of \$650 million provided roughly two-thirds the purchasing power that tribes received at the inception of NAHASDA in FY98 (\$600 million in FY 1998). Tracking IHBG funding since NAHASDA's passage revealed that annual appropriations compared to inflation-adjusted levels have caused tribal housing programs to lose \$3.4 billion since FY 1998. Recent funding additions to NAHASDA programs, such as the competitive IHBG funding, are welcome and encouraging, but alone are insufficient to make up for the loss of funding over time.

To put the funding in another perspective, the FY2021 IHBG funding levels provide 379 tribes/grantees with less than \$500,000 to operate their housing program, which includes managing their existing housing units, providing low-income rental assistance, other housing services AND developing new housing units. Further, 175 of the IHBG grantees received less than \$100,000 a year to carry out these activities. While some of the tribes form umbrella organizations to create efficiencies, it should be easy to see why we're not making much progress against the levels of unmet need.

While the funding of NAHASDA programs continues to be an issue, the program itself is helpful to tribes and over the years has built the capacity of tribal housing programs across the country. Tribes have been able to rely on consistent, dedicated funding through NAHASDA for over 20 years, which has allowed them to create housing programs and develop and train dedicated staff to operate those housing programs. The success of tribal housing programs was evident early on in NAHASDA, when tribes were producing new housing units at rates similar to or higher than HUD prior to NAHASDA's enactment. NAHASDA has also increased the local control of funding as it is the tribes themselves that develop their own Indian Housing Plan for the communities. These plans are tailored to the individual tribe's priorities for housing and have provided the flexibility tribes need to carry out their programs. For example, a tribe could prioritize senior assisted housing, rental assistance, or homeownership, and they would do so by incorporating those services into their Indian Housing Plan.

It is with that upgraded capacity of tribal housing programs provided for by NAHASDA that we can begin to look at the full landscape of federal housing resources and programs. HUD itself has numerous housing programs and resources, some general, some tribe-specific. Tribal programs include the Indian Community Development Block Grant (ICDBG), the HUD 184 Native American Loan Guarantee Program, NAHASDA Title VI Loan Guarantee Program, the formula funded and competitive IHBG programs, and Native Hawaiian programs. Other HUD programs have varying levels of eligibility for tribes, and NAIHC has advocated both to Congress and with our federal partners to improve tribal access to these more national-scope programs. The best example is the HUD Housing Counseling program, which tribes are currently ineligible to apply for funds but may soon find themselves subject to housing counseling regulations not tailored for tribal communities. Another example is the Continuum of Care program, which was addressed by Congress through the inclusion of the Tribal Access to Homeless Assistance Act in the FY2021 Consolidated Appropriations Act and which tribes are now eligible to participate in.

In addition to HUD, tribes can find housing resources at the U.S. Treasury, such as tax credit programs and the recently created Emergency Rental Assistance Program and Homeowner Assistance Funds; the U.S. Department of Agriculture and its Rural Housing programs; the Veterans Administration and its Native American Direct Loan Program; and others.

NAHASDA was passed in 1996 to streamline tribes' access to housing programs dollars by consolidating multiple programs into a single block grant. However, with the lack of increased appropriations to NAHASDA programs, tribes are again piecing their housing programs together by finding resources from different programs across the federal government. In a 2018 survey conducted by NAIHC, only 17 percent of our members who responded indicated they planned to utilize non-HUD funds in their programs. So while there are various resources available to tribes, it takes a lot of work to gather these pieces and leverage it with multiple funding opportunities, while also operating the day-to-day housing program and caring about the community.

#### **Priorities for 118th Congress**

*Reauthorization of NAHASDA, increased resources:* NAHASDA was last reauthorized in 2008 and expired in 2013. While Congress has continued to provide funding to NAHASDA programs, and even increased some program funding in the last few



years, there are some programmatic changes that recent reauthorization bills contain that could streamline various aspects of HUD and IHBG programs. For example, one long-standing fix would address duplicative environmental reviews, which tribes often face when they leverage multiple federal funding sources. Recent reauthorization bills have also contained provisions to create an Assistant Secretary for Indian Housing to provide enhanced attention at the senior leadership of HUD.

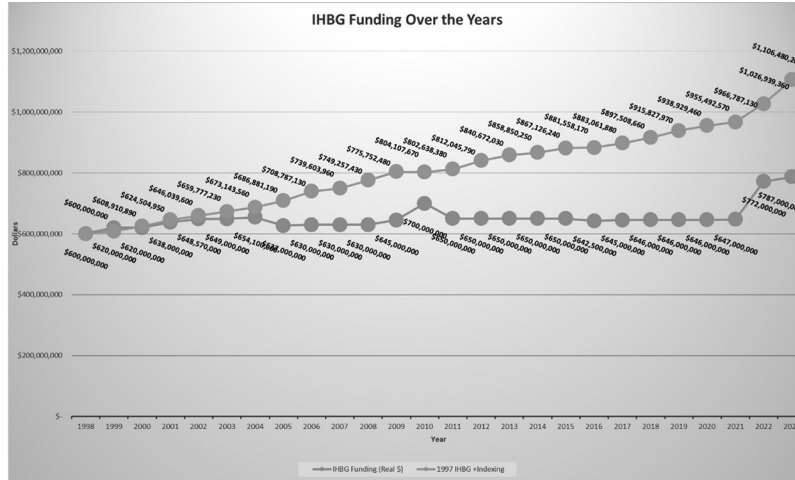
The Senate reauthorization bills from the 117th Congress also have several important leveraging provisions that allow tribal housing projects to utilize the Indian Health Service's Sanitation funds, provide access to HUD Housing Counseling grants, and encourage leveraging other federal funds by relaxing match requirements. Other smaller fixes include simplifying Total Development Cost allowances, clarifying the rent-to-ownership process and allowing tribes to assist with student housing. One provision related to promoting tribal sovereignty and self-determination, a key component of NAHASDA, would allow tribes to set minimum rent rates for its housing units, and NAIHC supports its continued inclusion in NAHASDA reauthorization efforts.

NAIHC recognizes the progress that has been made on getting NAHASDA reauthorization enacted, and particularly would like to thank the Chair and Vice Chair of the Senate Committee on Indian Affairs for their efforts.

While NAIHC supports the latest versions of NAHASDA reauthorization bills and amendments, there are several provisions that Congress should also consider. A prior version of NAHASDA, H.R. 5319 in the 116th Congress, contained several provisions that garnered bipartisan support. That bill had 35 bipartisan cosponsors. One key provision of that bill would create tribal set-asides for several USDA Rural Housing programs. These programs serve rural and low-income populations across the United States but they have not been very effective in tribal communities. Specific set-asides for tribal communities, coupled with incorporating Native CDFIs and tribal programs on the ground at the local level, would guarantee that these Rural Housing programs reach tribal communities.

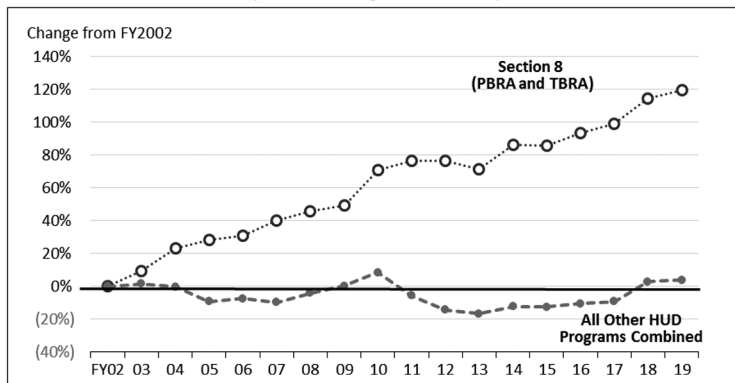
H.R. 5319 also included a fix for a court jurisdiction issue regarding the HUD 184 Loan Guarantee program. This provision would have clarified that tribal courts are proper jurisdiction, along with other courts, for certain foreclosure proceedings, and it would have allowed the Department of Justice flexibility in contracting attorneys familiar with tribal courts to carry out any such work. The bill also included an important parity provision that would exempt tribal programs from the National Flood Insurance Program, similar to the exemption that state housing programs currently enjoy. NAIHC encourages that these provisions be considered in a NAHASDA package.

Outside of reauthorizing NAHASDA, NAIHC's priority for this Congress is to increase funding and resources provided to tribes and tribal housing programs. Congress has increased funding for the Indian Housing Block Grant by 20 percent over the past three years and that is a welcome trend. However, prior to the recent increase, NAHASDA funds were stagnant for over 20 years, allowing inflation to eat away at the only dedicated funding stream for tribal housing programs. Even today, with the increases, tribal housing programs only have 71 percent of the purchasing power they had in 1998 with original funding under NAHASDA. Over the 25 years of NAHASDA, tribal housing programs have lost out on over \$4 billion dollars without program funding keeping pace with inflation. The graph below shows the IHBG funding levels compared to the original funding indexed for inflation.



Inflation is not the only metric by which funding for tribal housing is falling behind. NAHASDA funding in 2000 was nearly 2.5 percent of the entire HUD budget (\$600 million vs. \$25 billion). In FY23 that has dropped to only 1.2 percent (\$787 million vs. \$65 billion). The large portion of growth in the HUD budget has been related to the Section 8 voucher program, which tribes specifically gave up access to as part of NAHASDA. Unfortunately, if tribes had retained access to that program, tribal communities would have seen some of that growth that they have not received under NAHASDA. The graph below from CRS shows the growth of Public Housing Section 8 program versus all other HUD programs.

**Figure 4. Cumulative Percentage Change Since 2002 in Annual Appropriations for Section 8 Programs, Compared to All Other HUD Programs Combined**  
(based on changes in nominal \$)



**Source:** CRS analysis of congressional funding data contained in conference reports accompanying annual appropriations acts. See **Table A-1** for data.

Congress must increase the resources we provide to tribal housing programs to overcome the high rates of overcrowding and substandard homes. Development costs continue to increase and tribes are not receiving enough resources to maintain their existing housing stock and development new affordable housing units.

**Other Improvements to existing Housing Programs**

*Make HUD-VASH Permanent and Expand to All Tribes:* Currently, only 26 tribes have participated in the Tribal HUD-VASH program, which provides both housing

and supportive services to tribal veterans and their families that are homeless or at-risk of homelessness. HUD-VASH is another example of a larger, national housing program that originally left tribal communities out when it was created in 2008. Congress expanded the program through a tribal demonstration project beginning in FY 2015. The program has identified obstacles, such as the lack of housing stock in tribal communities to house veterans through the program and the need for greater supportive services from the VA to native veterans in tribal communities. Many of the tribes participating in the pilot have found ways to provide these supportive services through various partnerships between the VA and tribal or IHS professionals and tribes may be more able to secure housing units for the program if it was made permanent and tribes had more certainty for future funding of the program.

It is well known that Native Americans have served in the United States Armed Forces at higher rates than any other demographic, so it is vital that Native veterans are provided the support they deserve and have earned through their service. Native veterans are not limited to the 26 tribes that have participated in the program, and we look forward to working with Congress to ensure the program is expanded to include all tribes and their veterans. The full Senate has passed the Tribal HUD-VASH Act in each of the last two Congresses and has faced some obstacles in the House. NAIHC will continue to work to address any outstanding issues to make sure HUD-VASH is made permanent and working for all tribal communities.

*Section 184 Loan Guarantee Program:* The 184 Loan Guarantee program helps a tribe or tribal member secure a mortgage for an existing or new-construction home by providing a loan guarantee to a private sector bank or lending institution. While the program is targeted to tribal communities and nearby service areas, the program has struggled to incentivize mortgages on trust lands in tribal communities, where many families reside on land their families have held for generations. Obstacles include a slow and burdensome title process involving the Department of the Interior's Bureau of Indian Affairs and banks and lenders general preference to work with the more familiar property held "in fee". Improvements include streamlining the process at the BIA, encouraging more private lenders to participate in the program generally and participate through mortgages specifically on trust lands.

*State housing programs and passthroughs:* Several federal programs, notably the Low Income Housing Tax Credits and the Housing Trust Fund, establish funds or processes that operate at the state-level. While many of these states utilize the unmet housing needs in tribal communities to improve their allocations, there is not necessarily a mechanism that requires the states to prioritize tribal areas in receiving the final benefit of these federal housing programs. The result is a mix of effectiveness of these programs in tribal communities, where the relationship between state and tribal officials can greatly affect the final impact of these programs for tribes. In states where we see tribal or rural areas receiving some type of allocation or increased application scores, tribes have been successful in developing new projects with these federal funds.

However, there is often a blind eye turned to tribal communities (and not always intentional) as state programs often believe tribal housing issues are a federal issue, or that the tribe can rely on direct federal funding. This is not unique to states, as even non-HUD federal housing programs can omit tribal communities, believing that tribes can rely solely on NAHASDA or BIA programs to meet their community housing needs.

*Training and Technical Assistance:* The current model of TTA to tribal housing programs requires tribes to submit requests to HUD offices. Those requests are then analyzed and then submitted to national or regional TTA providers, of which NAIHC is one of several. However, the model likely discourages tribes to request TTA as they would be submitting requests to the same federal agency that oversees their program implementation or funding. NAIHC believes that providing more flexibility to the TTA providers to receive and respond to tribal TTA requests directly can improve the delivery of those services and encourage tribal housing programs to actually address their training needs.

*Restore Access to Section 8 Vouchers:* Prior to NAHASDA, many tribes have been receiving tenant-based vouchers to provide low-income rental assistance to members in tribal communities. With NAHASDA providing the single block grant to tribes, NAHASDA expressly restricted tribes from accessing vouchers moving forward. However, with NAHASDA funds remaining stagnant (or decreasing due to inflation), tribes find it difficult to provide the same low-income rental assistance year-to-year or to expand that assistance as new housing units come online in their communities. Congress routinely adds vouchers to the larger national program to keep pace with the need, or to fund existing vouchers adequately each year, while tribal programs have no similar mechanism. While the restriction on section 8 vouchers

could be removed entirely, past NAIHC resolutions have called for the specific restoration of vouchers for LIHTC projects in tribal communities, as the two programs work together well in the non-tribal setting.

*Improve the Effectiveness of non-HUD housing programs in Indian Country:* As stated above, there are several federal housing programs established outside of HUD. While these programs are often national in scope, the lack of attention paid by these programs to tribal communities often limits their impact for native families. For instance, USDA Rural Housing programs are tailor made for rural areas, and often are targeted to low-income families, yet their reach to tribal communities has been limited. Often this is due to USDA program staff not geographically located near the tribal community or limited outreach to families in those tribal communities. We're often asking our overburdened tribal housing professionals to know the USDA programs well enough to connect those families with USDA resources. A recent pilot project in South Dakota has allowed the USDA 502 Single Family Home Loan program to lend to Native CDFIs as intermediaries, while those Native CDFIs carry out the lending directly in tribal communities. This has been successful, with the Native CDFIs largely maxing out their mortgage lending with the funding available under the pilot. This on-the-ground presence in tribal communities as well as the comfort level of native families working with native housing professionals has allowed more native families to access USDA resources. This model could be expanded both throughout

USDA Rural Housing programs and through other federal housing programs, such as the VA's Native American Direct Loan Program. The NADLP program only have 7-10 staff to market the program and serve Native American veterans in all 574 tribal communities across the country. As a result of the lack of presence of that program, very few mortgage loans are provided to Native veterans each year.

*Further incentivize private investment in tribal communities:* Indian Country is almost always last to receive the attention of private, commercial banking. The lack of economies of scale in tribal communities, increased development costs, and the complexities of tribal lands and communities (both actual and perceived) simply lead private banking to avoid tribal areas. While there have been national tax credit programs or other incentives available for years to spur development in underserved areas, the programs have generally been less effective for Indian Country. Strengthening incentives for development in Indian Country or creating specific set-asides or mandates through these programs is needed to ensure that tribal communities are not left further behind.

*Including Indian Country in Infrastructure Packages:* Development costs are higher in Indian Country. The rural nature of most tribal communities and the lack of pre-existing roads, water, electricity and other infrastructure increase the cost of developing new housing. As Congress works to address the infrastructure needs of the entire nation, it must recognize the lack of infrastructure funding over decades to tribal communities and include Indian Country appropriately. While NAIHC believes infrastructure should include housing resources directly, any investments in infrastructure in tribal communities will improve tribal housing programs' ability to plan and develop new housing construction in the future.

### **Conclusion**

NAIHC wants to thank the members of this Committee for holding this important hearing and we want to thank all the members of Congress who have introduced and sponsored bills and supported efforts to improve housing opportunities in tribal communities. Tribes have consistently shown how far they can stretch their housing dollars to help the most members of their community as possible, and NAIHC and tribal housing programs look forward to working with our partners in Congress and Federal agencies to continue building safe, affordable housing in our communities. NAIHC asks for the Committee's support to reauthorize NAHASDA, increase funding to critical tribal housing programs, and help address the incredible need for housing units and developments across Indian Country.

The CHAIRMAN. Thank you very much.

Ms. Lindsey, Aloha. Please proceed with your testimony.

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

Ms. LINDSEY. Mahalo nui loa, thank you very much, Chairman Schatz, Vice Chairman Murkowski, and distinguished members of the Committee, for the opportunity to testify on behalf of the Office

of Hawaiian Affairs and our beneficiaries, the Native Hawaiian community.

The priorities OHA presents today align with one guiding principle: further self-determination for Native Hawaiians. Chairman Schatz, we are particularly grateful for your efforts to secure much-needed increases in funding through the Fiscal Year 2023 Omnibus Appropriations Bill to support the Native Hawaiian community.

OHA also celebrates the enactment into law of the Durbin Feeling American Languages Act of 2022, and the Native American Language Resource Center Act of 2022. We thank the Committee and Senator Schatz for championing these bills in the 117th Congress.

OHA also recognizes the dedicated leadership of Vice Chairman Murkowski and the rich legacy of collaboration between Hawaii and the Alaska Congressional delegation to advance issues to advance issues important to each of our non-contiguous States, especially for our Native peoples. Specifically, we want to acknowledge and thank you for reintroducing legislation last month to amend the Native American Tourism and Improving Visitor Experience Act and authorize grants to Native Hawaiian organizations.

OHA is encouraged by the continued bipartisan work of this Committee and its members and its commitment to promoting policies that promote education, health, housing, economic stability, and a variety of other Federal programs that support Native Hawaiian self-determination. OHA's written testimony details a broad handful of priorities for the 118th Congress.

OHA's first priority is to urge the Committee to consider mandating the preparation of and funding for a ceded lands inventory report. The terms of statehood of Hawaii acknowledged the plight of the Native Hawaiian people.

Specifically, in the Admission Act of 1959, Section 5(f) of the Act refers to the crown and government lands of the Hawaiian kingdom which had been designated as ceded to the Republic of Hawaii, and then to the United States. Once the property of the Hawaiian monarchy and the government of the kingdom of Hawaii, these lands totaled 1.8 million acres upon annexation in 1898.

Further, the Admission Act of 1959 conveyed these lands to the new State of Hawaii with the caveat that revenues from these lands were to be managed as a trust for five purposes, one of which is the betterment of conditions of Native Hawaiians. Sixty-three years after statehood, the State does not have a complete inventory of these trust lands.

OHA's next priority is to urge this Committee to pass legislation in the 118th Congress that would codify the Federal consultation mandate of Executive Order 13175 and extend these rights to all Native Americans, including Native Hawaiians. OHA is encouraged by the Department of the Interior's recent proposed draft, Native Hawaiian Community Consultation Policy and Procedures, which affirms and honors the political and trust relationship between the United States and the Native Hawaiian community.

OHA specifically acknowledges and is grateful to see that the National Defense Authorization Act for Fiscal Year 2023 requires a report on the Department of Defense plans to identify, stand-

ardize, and coordinate best practice with respect to consultation and engagement with the Native Hawaiian community.

Given the magnitude of the catastrophe and its environmental and community impacts, we recommend the Committee and Congress continue its vigilant oversight in accelerated defueling and closure of the Red Hill Fuel Storage Tanks. OHA thanks you, Chairman Schatz, for securing funding through the Fiscal Year 2023 Omnibus Appropriations Bill to effectively defuel and shut down the Red Hill bulk storage facility and to conduct initial planning and design activities to explore the feasibility of a potential water treatment and distribution facility for the Red Hill shaft.

We call on and support the Committee and Congress' actions to safeguard Native Hawaiian women, children, and families. We highlight OHA's work with the Hawaii State Commission on the Status of Women to convene a task force to study missing and murdered Native Hawaiian women and girls. Native Hawaiian women and girls experience violence at rates disproportionate to their population size. However, Native Hawaiians have largely been left out of the Federal policy discourse and resource allocation to address violence against indigenous communities in the United States.

Thank you for this opportunity to testify and share OHA's priorities for the 118th Congress. We remain available to the Committee.

[The prepared statement of Ms. Lindsey follows:]

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

Mahalo nui loa (Thank you very much) Chairman Schatz, Vice Chairman Murkowski, and distinguished members of the Committee, for the opportunity to testify on behalf of the Office of Hawaiian Affairs (OHA) and our beneficiaries-the Native Hawaiian community. The priorities OHA presents today align with one guiding principle-furthering self-determination for Native Hawaiians. Chairman Schatz, we are particularly grateful for your efforts to secure much needed increases in funding through the FY 2023 Omnibus Appropriations Bill to support the Native Hawaiian community. OHA also celebrates the enactment into law of the Durbin Feeling Native American Languages Act of 2022 and the Native American Language Resource Center Act of 2022. We thank the Committee and Senator Schatz for championing these bills in the 117th Congress.

OHA also recognizes the dedicated leadership of Vice Chairman Murkowski and the rich legacy of collaboration between Hawai'i and the Alaska Congressional delegation to advance issues important to each of our non-contiguous states, especially for our Native peoples. Specifically, we want to acknowledge and thank you for reintroducing legislation last month to amend the Native American Tourism and Improving Visitor Experience Act and authorize grants to Native Hawaiian organizations. OHA is encouraged by the continued bipartisan work of this Committee and its Members, and its commitment to promoting policies that promote education, health, housing, economic stability, and a variety of other federal programs that support Native Hawaiian self-determination.

**Background on OHA and its Standing to Represent Native Hawaiians**

Established by our State's Constitution,<sup>1</sup> OHA is a semi-autonomous agency of the State of Hawai'i with a mandate to better the conditions of Native Hawaiians. Guided by a board of nine publicly elected trustees, all of whom are Native Hawaiian, OHA fulfills its mandate through advocacy, research, community engagement, land management, prudent investments and the funding of community programs. Hawai'i state law recognizes OHA as the principal public agency in the State responsible for the performance, development, and coordination of programs and activities relating to Native Hawaiians.<sup>2</sup> Furthermore, state law directs OHA to for-

<sup>1</sup>Haw. Const., art. XII, § 5 (1978).

<sup>2</sup>Haw. Rev. Stat. § 10-3(3).

ulate policy for Native Hawaiians;<sup>3</sup> to advocate on behalf of Native Hawaiians;<sup>4</sup> to advise and inform federal officials about Native Hawaiian programs; and to coordinate federal activities relating to Native Hawaiians.<sup>5</sup>

#### **Priorities for the 118th Congress**

The following are OHA's priorities for the 118th Congress, and we respectfully request the Committee's (and Congress') support:

- 1) For the preparation and funding of a ceded lands inventory report, which would detail the lands transferred, via the 1959 Admissions Act,<sup>6</sup> to the state government, in order to assess the stewardship and management practices of the state of Hawai'i in upholding the Federal Trust responsibilities to Native Hawaiian;
- 2) To ensure broad inclusion of Native Hawaiians in federal conference, coordination, engagement and consultation policies and practices;
- 3) To continue vigilant oversight of the accelerated defueling and closure of the Red Hill fuel storage tanks;
- 4) To ensure funding for environmental assessment, cleanup and mitigation of sacred lands polluted and contaminated by the United States military; and
- 5) To ensure broad funding and programming equity for all Native Americans, including American Indians, Alaska Natives, and Native Hawaiians.

Each of these priorities is discussed in more detail below.

##### *1) Commission and Funding of a Ceded Lands Inventory Report*

The terms of statehood for Hawai'i acknowledged the plight of the Native Hawaiian people, specifically in the Admission Act of 1959. Section 5(f) of the Act refers to the crown and government lands of the Hawaiian Kingdom which had been designated as "ceded" to the Republic of Hawai'i, and then to the United States. Once the property of the Hawaiian monarchy and of the government of the Kingdom of Hawai'i, these lands totaled 1.8 million acres upon annexation in 1898. Pursuant to the Joint Resolution of Annexation, *all of these lands were considered "ceded" to the United States government "for the benefit of the inhabitants of the Hawaiian Islands."* Further, the Admission Act of 1959 conveyed these lands to the new State of Hawai'i with the caveat that revenues from these lands were to be managed as a trust for five purposes. One of these was the betterment of the conditions of Native Hawaiians.

Underscoring the historical injustices that gave rise to the federal trust responsibility relating to the ceded lands are the findings of Congress in the 1993 Apology Resolution:<sup>7</sup>

Whereas, the Republic of Hawaii also ceded 1,800,000 acres of crown, government, and public lands of the Kingdom of Hawaii, *without the consent of or compensation to the Native Hawaiian people of Hawaii or their sovereign government.*

Whereas, *the indigenous Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people or over their national lands to the United States, either through their monarchy or through a plebiscite or referendum.*<sup>8</sup>

(Emphasis added.) When statehood was granted in 1959, the federal government returned to the State of Hawai'i all ceded lands not set aside for the federal government's own use. Section 5(f) of the Admission Act directed the state to hold the lands in trust for the following five purposes:

- 1) the support of public education;
- 2) the betterment of the conditions of Native Hawaiians as defined in the Hawaiian Homes Commission Act of 1920;
- 3) the development of farm and home ownership;
- 4) the making of public improvements; and
- 5) the provision of lands for public use.

<sup>3</sup>Haw. Const., art. XII, § 6 (1978).

<sup>4</sup>Haw. Rev. Stat. § 10-3(4).

<sup>5</sup>Haw. Rev. Stat. § 10-6(a)(4).

<sup>6</sup>The Admission Act, An Act to Provide for the Admission of the State of Hawaii into the Union, March 18, 1959, Pub L 86-3, 73 Stat 4.

<sup>7</sup>Public Law 103-150 (1993)

<sup>8</sup>The Admission Act, An Act to Provide for the Admission of the State of Hawaii into the Union, March 18, 1959, Pub L 86-3, 73 Stat 4.

The first fiduciary obligation of a trustee is to inventory and account for the trust assets. Yet sixty-three years after statehood, the State does not have a complete inventory of these trust lands. In addition, a complete inventory of ceded lands, including former Kingdom Government and Crown lands, and holdings by the federal, state and county governments, is critical for the federal government to uphold its trust responsibility to Native Hawaiians. *Accordingly, OHA urges the Committee to consider mandating the preparation of, and funding for, a ceded lands inventory report.*

*2) Broad Inclusion of Native Hawaiians in Federal Conference, Coordination, Engagement and Consultation Policies and Practices*

Native Hawaiians are owed the same trust responsibility as any other Native American group. Similar to American Indians and Alaska Natives, Native Hawaiians have never relinquished our right to self-determination despite the United States' involvement in the illegal overthrow of Queen Lili'uokalani in 1893 and the dismantling of our government. In fact, over 150 Acts of Congress consistently and expressly recognize a special political and trust relationship to Native Hawaiians based on our status as the Indigenous, once-sovereign people of Hawai'i. Among these laws are the Hawaiian Homes Commission Act, 1920 (42 Stat. 108) (1921), the Native Hawaiian Education Act (20 U.S.C. § 7511) (1988), the Native Hawaiian Health Care Improvement Act (42 U.S.C. § 11701) (1988), and the Hawaiian Homeownership Act codified in the Native American Housing Assistance and Self Determination Act (NAHASDA), Title VIII (25 U.S.C. § 4221) (2000). Indeed, Congress expressly established the Office of Native Hawaiian Relations within the Department of the Interior to implement the special legal relationship between the federal government and Native Hawaiians.

OHA is encouraged by the Department of the Interior's recent proposed draft Native Hawaiian Community consultation policy and procedures, which affirms and honors the political and trust relationship between the United States and the Native Hawaiian Community. This is an important, historic step towards a voice in federal decisionmaking. However, Native Hawaiians are still largely omitted from consultation policies and processes across other federal agencies. History has shown that failure to include the voices of Indigenous leaders in formulating policy affecting their communities has all too often led to undesirable and, at times, devastating and tragic results. *We urge this Committee to pass legislation in the 118th Congress that would codify the federal consultation mandate of Executive Order 13175 and extend these rights to all Native Americans, including Native Hawaiians.*

Although the Native Hawaiian community has not yet reorganized a government, Congress's thoughtful inclusion of Native Hawaiians in key legislation like the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. § 3001) and the National Historic Preservation Act (NHPA) (16 U.S.C. § 470 *et seq.*) demonstrates that Native Hawaiians can be effectively included in consultation now, with representation through Native Hawaiian organizations. OHA, moreover, is already actively involved with federal consultations. OHA receives and reviews approximately 240 requests for federal consultations each year, including Section 106 NHPA and NAGPRA reviews. *The federal government takes many more actions affecting the Native Hawaiian community than are covered by these two statutes without ever giving Native Hawaiians an opportunity to consult. This must change.*

OHA specifically acknowledges and is grateful to see that the National Defense Authorization Act for FY 2023 requires a report on Department of Defense (DOD) plans to identify, standardize, and coordinate best practices with respect to consultation and engagement with the Native Hawaiian community. Given the significant presence of DOD operations and activities in Hawai'i, it is critical that Native Hawaiians are engaged in any proposed undertakings that would impact our community.

*3) Vigilant Oversight in Accelerated Defueling and Closure of the Red Hill Fuel Storage Tanks*

OHA underscores the health and safety concerns of our beneficiaries and lands who have been adversely impacted by leaks from the U.S. Navy Red Hill Bulk Fuel Tanks (RHBFT). RHBFT has the capacity to store up to 250 million gallons of fuel only 100 feet over O'ahu's major aquifer which provides drinking water to over 400,000 residents of O'ahu. OHA thanks you, Chairman Schatz, for securing funding through the FY 2023 Omnibus Appropriations Bill to effectively defuel and shut down the Red Hill Bulk Storage Facility, and to conduct initial planning and design activities to explore the feasibility of a potential water treatment and distribution facility for the Red Hill shaft. We also appreciate your recent letter urging the Environmental Protection Agency to fully review and consider public comments on the proposed Consent Order and Statement of Work for closure of the Red Hill Bulk



Fuel Storage Facility. *Given the magnitude of the catastrophe, and its environmental and community impacts, we request that this Committee continue its vigilance in providing the necessary oversight to ensure that additional transparency and mandatory input from the Native Hawaiian community is incorporated.*

*4) Fund Environmental Assessments, Cleanup and Mitigations of Sacred Lands Polluted and Contaminated by the U.S. Military*

Remediation for contamination on sacred lands by the U.S. military must receive the highest priority given the United States' trust responsibility to Native Hawaiians, particularly in light of this Administration's strong commitment to ensuring environmental justice in disadvantaged communities.<sup>9</sup> Approximately 46,500 acres of land across the State of Hawai'i is being used by the U.S. military. This includes U.S. Army, Navy and Air Force bases and installations, with the largest being the Army's Pohakuloa Training Area on Hawai'i Island which encompasses approximately 23,000 acres.<sup>10</sup> Several sacred sites, including Pohakuloa, Kaho'olawe and Haleakala, require environmental assessments and clean-up as a result of the federal government's actions. Just last month, officials from the U.S. Space Force announced that an estimated 700 gallons of diesel fuel was spilled at the Maui Space Surveillance Complex, located at the summit of Haleakala. The Complex, originally built as an electro-optical observation platform for missile tests, hosts the U.S. Department of Defense's largest optical telescope designed for tracking and imaging satellites. The spill on Haleakala is just the latest in the military's history of repeated contamination and degradation of lands and waters throughout the state of Hawai'i. Another example from 2004 relates to the U.S. Navy's ending of the environmental mitigation project known as the Kaho'olawe UXO Clearance Project—yet an astonishing *twenty-five percent (25 percent) of the island (6,692 acres) has not been cleared of unexploded ordnance and unescorted access to these areas remains unsafe.*<sup>11</sup> There are nearly 3,000 archeological and historical sites on Kaho'olawe, which was once a traditional Native Hawaiian navigational center for voyaging, the site of an adze quarry, an agricultural center, and a site for religious and cultural ceremonies. *Given the impact of these military operations on our resources, rights, and lands, we urge the Committee to mandate further study and remediation. We also request that the Committee exercise its oversight authority to ensure accountability and consultation with the Native Hawaiian community through this process.*

*5) Broad Funding and Programming Equity for Native Hawaiians*

Congress has utilized a patchwork of programs administered through federally funded Native Hawaiian-serving organizations such as OHA, the Department of Hawaiian Home Lands, the Native Hawaiian Education Council, Papa Ola Lokahi, and the Native Hawaiian Health Care Systems to deliver and coordinate services to Native Hawaiian communities. Unlike American Indian tribes, our organizations are not equipped or empowered to exercise certain governmental functions, including providing law enforcement and other public safety services. As such, funding should be allocated to the State and County entities in Hawai'i that provide these services to our communities. However, our experience is that when Native Hawaiians are not specifically identified, or funding is not set aside, the needs of our communities may be overlooked. *Thus, Native Hawaiian-serving organizations should be empowered and utilized as an effective service-delivery system to the extent possible. If certain funding must ultimately pass through State and County agencies, it is important that the trust responsibility to Native Hawaiians is specifically identified and acknowledged, so that our communities can ultimately realize the benefits of these allocations.*

Over the past several decades, the Native Hawaiian Health Care Improvement Act, the Hawaiian Homelands Homeownership Act, and the Native Hawaiian Education Act has provided resources to the Native Hawaiian community through a variety of programs and services. Further, the Native Hawaiian Revolving Loan Fund—administered by OHA—and the U.S. Department of Treasury's Community Development Financial Institutions (CDFI) fund Native American CDFI Assistance Program

<sup>9</sup>See e.g., E.O. 13985, Advancing Racial Equity and Support for Underserved Communities through the Federal Government (addressing federal agency barriers and allocating resources to address historic failures) (Jan. 20, 2021); E.O. 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (requiring review of agency actions from January 20, 2017 through January 20, 2021, and holding polluters who disproportionately harm communities of color/low income accountable) (Jan. 20, 2021); and E.O. 14008, Tackling the Climate Crisis at Home and Abroad (creating a task force to deliver environmental justice and engage with Native communities) (Jan. 27, 2021).

<sup>10</sup>US Indo-Pacific Command, Hawai'i Military Land Use Master Plan, 2021 Interim Update, Final—April 2021

<sup>11</sup> <https://www.kahoowawe.hawaii.gov/history.shtml>, retrieved February 28, 2023.

have supported the emergence and growth of Native Hawaiian businesses. *We urge this committee to strengthen and expand these programs to achieve parity with other Native American groups, and further support Native Hawaiian self-determination.*

#### *Native Hawaiian Health*

Similar to our Indigenous relatives on the continent, there are significant health disparities among Native Hawaiian and non-Native populations. In response to these disparities, Congress enacted the Native Hawaiian Health Care Act in 1988, which was later retitled as the Native Hawaiian Health Care Improvement Act (NHHCIA) (Pub. L. 111-148, title X, § 10221(a), Mar. 23, 2010, 124 Stat. 935). *OHA recommends that the NHHCIA be permanently reauthorized, like the Indian Health Care Improvement Act was in 2009, and that all Congressionally authorized appropriations remain available until expended.*

The NHHCIA established the Native Hawaiian Health Care program, which funds the Native Hawaiian Health Care Systems (NHHCSs) administered by Papa Ola Lokahi (POL). Together the five Systems on the islands of Kaua'i, O'ahu, Maui, Moloka'i, and Hawai'i provide primary health care, behavioral health, and dental services. In addition, the Systems provide health education to manage disease, health related transportation, and other services. NHHCIA also established the Native Hawaiian Health Scholarship Program (NHHSP) for Native Hawaiians pursuing careers in designated health care professions. It supports culturally appropriate training and the placement of scholars in underserved Native Hawaiian communities following the completion of their education. More than 300 scholarships have been awarded through this program and most program alumni work in Hawai'i.

The pandemic highlighted the urgent need for several amendments to the NHHCIA. This includes increasing funding to the NHHCIA to expand Native Hawaiian health resources; removing the matching requirements applied to the NHHCSs for parity with other Native health care providers; making the NHHCSs eligible for 100 percent of the Federal Medical Assistance Percentage (FMAP) as well as the Prospective Payment System (PPS) reimbursement rate; expanding Federal Tort Claims Act coverage to POL, the Systems, and their employees in parity with other Native health care providers; allowing federal program funding to be used to collect and analyze health and program data which currently falls under the ten percent administrative cost cap for the program; allowing the Systems to be a specific eligibility group for supplemental federal funding streams; and providing a tax exemption for the NHHSP. *We urge the Committee to support increased funding for and technical amendments to the NHHCIA to address avoidable inequalities and health care disparities.*

OHA specifically acknowledges and thanks you, Chairman Schatz, for securing additional funding in the FY 2023 Omnibus Appropriations Bill to provide access to health education and promotion, disease prevention and basic primary care services for Native Hawaiians.

#### *Native Hawaiian Housing*

The median price for a single-family home in Hawai'i is \$870,250, but differs by county ranging from \$539,000 in Hawai'i county to \$1,162,500 in Maui county.<sup>12</sup> Of the 28,155 Native Hawaiians in rental units in Hawai'i, 54.9 percent of them are cost-burdened, paying more than 30 percent of their income to rent. On O'ahu 42 percent of individuals included in the annual Point in Time count of unsheltered homeless were Native Hawaiians.<sup>13</sup> As such, the Hawaiian Homelands Homeownership Act (HHHA) plays a crucial role in supporting the Department of Hawaiian Homelands' (DHHL) mission-to develop and deliver land and housing to Native Hawaiians. Congress enacted the HHHA in 2000. The HHHA established the Native Hawaiian Housing Block Grant (NHHBG) program and the Section 184A Loan Guarantees for Native Hawaiian Housing. The NHHBG provides much needed funding to DHHL to deliver new construction, rehabilitation, infrastructure, and various support services to beneficiaries living on DHHL lands.

The 184A Loan Guarantee program provides eligible beneficiaries with access to construction capital on DHHL lands by fully guaranteeing principal and interest due on loans. The program currently serves owner-occupant single family dwellings on the DHHL lands. To address housing needs, DHHL has used NHHBG funds for

<sup>12</sup> Hawai'i Realtors. <https://www.hawaiiirealtors.com/resources/housing-trends-2/>, retrieved February 10, 2023.

<sup>13</sup> Partners in Care O'ahu Continuum of Care (2022). Native Hawaiian Stub-Report: 2022 Point in Time Count. <https://static1.squarespace.com/static/5db76f1aadbeba4f677280f1/t/63926c530aa9a91e44d2e5a4/1670540372709/Native+Hawaiian+Sub-Report+PITC2022+FINAL.pdf>, retrieved February 10, 2023.

emergency rental assistance for eligible Native Hawaiians; rental subsidies for lower income elderly; rehabilitation of homes primarily for elderly or disabled residents; homeownership opportunities for lower income working families; and homeownership and rental counseling to address barriers experienced by Native Hawaiians. *We urge this Committee to support increased funding for, and expansion of the NHHBG and 184A Loan Guarantee programs.*

#### *Native Hawaiian Economic Well-Being*

Economic well-being and opportunity are central to the ability of any community to exercise self-determination. Of the 5 largest groups in Hawai'i (White, Filipino, Native Hawaiian, Japanese, and Chinese), Native Hawaiians have the lowest median income at \$73,065.<sup>14</sup> This is \$10,000 less than the State median income. The per capita income for Native Hawaiians is \$25,612 compared to the state per capita income of \$36,989.<sup>15</sup> Of the 5 major race groups, Native Hawaiians have the highest percent (15.5 percent) of families in poverty.<sup>16</sup> There are several economic development and access to capital programs that serve Native Hawaiians, including the Department of the Treasury (Treasury), Native American Community Development Financial Institutions (CDFI), Minority Depository Institutions (MDI), and the Native Hawaiian Revolving Loan Fund (NHRLF). The Native Hawaiian community has also benefitted from Treasury's Emergency Rental Assistance, Homeowner Assistance Fund, Capital Projects Fund and Small Business Credit Initiative, Emergency Capital Investment Program, Rapid Response Program, and Native American CDFI Assistance Program. In addition, Native Hawaiian organizations are eligible to receive additional funds as sub-recipients to the state and/or counties, and *we recommend the Committee consider OHA's state agency status as an accountable mechanism for federal funds to quickly flow to Native Hawaiian communities.*

For example, in its nearly three decades in operation under OHA's administration, NHRLF closed approximately 2,700 loans valued at more than \$63 million of lending to Native Hawaiian businesses and individuals. In its 2021 Report to Congress, NHRLF reported that borrowers: improved their overall economic wellbeing during the loan period; experienced improved preconditions to financial stability after receiving a NHRLF loan; and increased their income due to education and business loans. The value of NHRLF borrowers' financial and non-financial assets increased over time, with smaller gains resulting from home improvement loans. As a result of increased asset value, the average net worth of OHA borrowers grew over the loan period; and Native Hawaiian-owned businesses with NHRLF loans improved their financial performance from before the loan was received to 2019.

However, the devastating impact of the COVID-19 pandemic on Hawai'i's economy derailed the positive outcomes NHRLF borrowers experienced over the loan period in the areas of economic wellbeing, preconditions to financial stability, and income. *Accordingly, OHA asks the Committee to support programmatic fixes to NHRLF, including ending the demonstration status of the program, removing restrictions on outdated unallowable loan activities, and reducing the Native Hawaiian ownership percentage requirement from 100 to 50—all to create a broader pipeline of programming and funding for Native Hawaiian economic development.*

#### *Native Hawaiian Education*

Congress established the Native Hawaiian Education Program the Native Hawaiian Education Act (NHEA) for the following four purposes:

- 1) "To authorize and develop innovative educational programs to assist Native Hawaiians;
- 2) "To provide direction and guidance to appropriate Federal, State, and local agencies to focus resources, including resources made available under this part, on Native Hawaiian education, and to provide periodic assessment and data collection;
- 3) "To supplement and expand programs and authorities in the area of education to further the purposes of this title; and

<sup>14</sup>Native Hawaiian Data Book (2021). Chapter 4 Income. Table 4.20 Household Income by Race-Ethnicity in Hawai'i: 2019. <http://www.ohadatabook.com/DB2021.html>, retrieved February 10, 2023.

<sup>15</sup>Native Hawaiian Data Book (2021). Chapter 4 Income. Table 4.03 Per Capita Personal Income by Race-Ethnicity and Selected Characteristics in Hawai'i: 2019. <http://www.ohadatabook.com/DB2021.html>.

<sup>16</sup>Native Hawaiian Data Book (2021). Chapter 8 Human Services. Table 8.13 Families Below Poverty Level by Race-Ethnicity in Hawai'i: 2019. <http://www.ohadatabook.com/DB2021.html>, retrieved February 10, 2023.

4) “To encourage the maximum participation of Native Hawaiians in planning and management of Native Hawaiian education programs.”<sup>17</sup>

Data helps to set the context of the struggles of our keiki (children) and ‘opio (youth), as well as the need for increased funding and support for the NHEA. While Native Hawaiian students make up 23.7 percent of the total student population in Hawai‘i, they account for over 50 percent of the students considered chronically absent, 41 percent of suspensions, and 35 percent of students enrolled in special education.<sup>18</sup> Mandatory testing through the No Child Left Behind Act and the Every Student Succeeds Act has revealed that Native Hawaiian students have continued to lag behind other student groups—scoring second to the lowest of all student groups in both reading and math, just above another Indigenous group, Pacific Island students. In 2014, the State Department of Education transitioned from the Hawai‘i State Assessment to the Smarter Balanced Assessment. The latest test scores for School Year 2021–2022 show that only 35.5 percent of Native Hawaiian students met or exceeded proficiency in English Language Arts compared to 52.4 percent of all students, and 21.8 percent in Math compared to 38.5 percent of all students.<sup>19</sup> Given the great need of our students, OHA appreciates the funding provided in the FY 2023 Omnibus Appropriation Bill, which will support programs that strengthen Native Hawaiian culture and education, and provide for the construction, renovation and modernization of public schools that predominantly serve Native Hawaiian students. *We urge the Committee to continue Congress’ focus on Native Hawaiian education and support increased funding for the Native Hawaiian Education Program in FY 2024; also to help us ensure that implementation of the NHEA is done in consultation with stakeholders, including the Native Hawaiian Education Council.*

*Safeguarding Native Hawaiian Women, Children, and Families*

Pursuant to H.C.R. 11, the Hawai‘i State Commission on the Status of Women (CSW) convened a Task Force to study Missing and Murdered Native Hawaiian Women and Girls (MMNHWG). The Missing and Murdered Native Hawaiian Women and Girls Task Force (MMNHWG TF) is administered through OHA and the Hawai‘i State Commission on the Status of Women, and comprises individuals representing over 22 governmental and non-governmental organizations across Hawai‘i that provide services to those who are impacted by violence against Native Hawaiians.

Native Hawaiian women and girls experience violence at rates disproportionate to their population size.<sup>20</sup> However, Native Hawaiians have largely been left out of the federal policy discourse and resource allocation to address violence against Indigenous communities in the United States. Last year (2022) marked the first year that Native Hawaiians were formally recognized by a United States President as belonging to the Indigenous populations disproportionately impacted by interpersonal and systemic violence that leads to Native women and girls being murdered and missing.<sup>21</sup> *We urge the Committee to include Native Hawaiians in federal policy initiatives, funding, and legislation aimed at responding to the crisis of murdered and missing Indigenous women and girls (MMIWG).*

Hawai‘i has the eighth highest rate of missing persons per capita in the Nation at 7.5 missing people per 100,000 residents.<sup>22</sup> More than a quarter of missing girls in Hawai‘i are Native Hawaiian.<sup>23</sup> According to the first report and study conducted by the MMNHWG TF, while only 10.2 percent of the total population of Hawai‘i identifies as a Native Hawaiian female, from 2011–2021, 26 percent of all missing females age 17 and below were Native Hawaiian/part-Hawaiian girls and rep-

<sup>17</sup> 20 U.S.C. 7513

<sup>18</sup> Native Hawaiian Data Book (2021). Chapter 6 Education. Tables 6.15 Chronic Absenteeism in Native Hawaiian Public School Students by Island, School District, School Complex, Grade, and School in Hawai‘i: SY2014–2015 to SY2017–18, Table 6.16 Public School Students Receiving a Suspension by Grade in Hawai‘i: SY2012–2013 to SY2017–2018, Table 6.07 Public School Special Education (SPED) Students by Island, School District, School Complex, Grade, and School in Hawai‘i: SY2015 to SY2017–18, Table 6.01 Public Schools Race-Ethnicity of Students in Hawai‘i: SY2011–2012 to SY2020–2021. <http://www.ohadatabook.com/DB2021.html>, retrieved February 10, 2023.

<sup>19</sup> State of Hawaii Department of Education Accountability Data Center. <https://adc.hidoe.wa.gov/proficiency>, retrieved February 10, 2023.

<sup>20</sup> Missing and Murdered Native Hawaiian Women and Girls Task Force Report (Task Force Report), at 4. [https://www.oaha.org/wp-content/uploads/MMNHWG-Report\\_Web.pdf](https://www.oaha.org/wp-content/uploads/MMNHWG-Report_Web.pdf), retrieved March 2, 2023.

<sup>21</sup> Task Force Report, at 6.

<sup>22</sup> Task Force Report, at 5.

<sup>23</sup> Task Force Report, at 5.

resented 13 percent of all missing children’s cases in Hawai‘i.<sup>24</sup> According to the Missing Children’s Center Hawai‘i (MCCH), the average age of a missing child is 15-years old, 77 percent are female, and 84 percent are Native Hawaiian.<sup>25</sup> On Hawai‘i Island, Native Hawaiian children ages 15–17 represent the highest number of missing children’s cases.<sup>26</sup> From 2018–2021, there were 182 cases of missing Native Hawaiian girls on Hawai‘i Island, higher than any other racial group.<sup>27</sup> Because of a lack of reporting and accessible data, statistics on MMNHWG are limited and the true scope of this crises is likely much larger than OHA can demonstrate at this time.

#### *Domestic Violence*

Native Hawaiian women experience gender-based violence, such as domestic violence and sexual assault, at rates higher than any other population in Hawai‘i.<sup>28</sup> Domestic violence is the leading cause of homelessness for women and children.<sup>29</sup> 22 percent of O‘ahu’s homeless Native Hawaiian population report experiencing intimate partner violence compared to 18 percent of non-Hawaiians.<sup>30</sup> Also, 22 percent of domestic violence survivors filing a Temporary Restraining Order are Native Hawaiians.<sup>31</sup> OHA appreciates the technical amendments to the Violence Against Women Act (VAWA) that were signed into law in the 117th Congress, which will greatly support Native Hawaiian survivors of gender-based violence. OHA requests that this Committee include Native Hawaiians in VAWA-related funding, oversight, and legislation in the 118th Congress.

#### *Commercial Exploitation*

Indigenous people, including Native Hawaiians, are at a higher risk of human trafficking. There are at least 85 known sex traffickers in Hawai‘i and the majority (43 percent) of sex trafficking cases in Hawai‘i are Native Hawaiian girls trafficked in Waikiki, O‘ahu.<sup>32</sup> 57 percent of participants served through the Mana‘olana Program, which provides free comprehensive case management for victims of human trafficking, are Native Hawaiian females.<sup>33</sup> 59 percent of clients served through Susannah Wesley Community Center between October 2021 and May 2022 are trafficking victims.<sup>34</sup> 37 percent of cases are sex trafficking cases, the majority (86 percent) are female and (45 percent) are Native Hawaiian/part-Native Hawaiian or other Pacific Islander.<sup>35</sup> Given these alarming statistics and realities, OHA requests that Native Hawaiians are included in any legislation or funding to combat human trafficking in Indigenous communities.

#### *Child Sexual Assault and Abuse*

Native Hawaiian children are particularly vulnerable to exploitation and abuse, and are overrepresented in the Hawai‘i foster care system.<sup>36</sup> In 2019, 45 percent of children in foster care in Hawai‘i were Native Hawaiian.<sup>37</sup> 44.4 percent of “street youth,” including those who are homeless and runaways, are Native Hawaiian, the largest percentage of any group in Hawai‘i.<sup>38</sup> According to the State Department of Human Services, a victim of child abuse is likely to be 7 years of age (median), female (53.0 percent), and Hawaiian or Part-Hawaiian (39.8 percent).<sup>39</sup> In 2019, law enforcement in Hawai‘i began conducting a series of criminal interventions through Operation Keiki Shield (Operation), aimed at identifying predators who approach children online for sex or sexual activities.<sup>40</sup> Out of all those arrested through the

<sup>24</sup> Task Force Report, at 16.

<sup>25</sup> Task Force Report, at 16.

<sup>26</sup> Task Force Report, at 5.

<sup>27</sup> Task Force Report, at 5.

<sup>28</sup> Task Force Report, at 10.

<sup>29</sup> Task Force Report, at 17.

<sup>30</sup> Task Force Report, at 17.

<sup>31</sup> Task Force Report, at 16.

<sup>32</sup> Task Force Report, at 16.

<sup>33</sup> Task Force Report, at 5.

<sup>34</sup> Task Force Report, at 17.

<sup>35</sup> Task Force Report, at 17.

<sup>36</sup> Task Force Report, at 14.

<sup>37</sup> Task Force Report, at 14.

<sup>38</sup> Task Force Report, at 14.

<sup>39</sup> A Statistical Report on Child Abuse and Neglect in Hawai‘i (2021) at 6, 6.1, 8, available at <https://humanservices.hawaii.gov/wp-content/uploads/2023/01/2021-CAN-report-print.pdf>, retrieved March 2, 2023.

<sup>40</sup> Task Force Report, at 12.

Operation, 38 percent were active-duty U.S. military personnel.<sup>41</sup> These military personnel were arrested both off and on U.S. military bases as part of non-military covert operations that targeted civilians off-base and “military ops” between the military and local law enforcement to arrest on-base offenders who commit Internet-facilitated sexual crimes against children. Notably, 25 percent of the offenders arrested in a March 2019 Operation, which was the only documented non-military Operation on O’ahu since 2019, were male U.S. military personnel.<sup>42</sup>

Greater congressional attention to this issue is necessary for the safety of our communities, and our children. OHA would like the Committee’s assistance in requesting further engagement and consultation with federal and U.S. military law enforcement partners to address these alarming statistics.

#### **Conclusion**

Thank you for this opportunity to testify and share OHA’s priorities for the 118th Congress and thank you for your continued attention to Native Hawaiian issues. We look forward to continuing our collaborative engagement with the Committee and Congress to ensure the federal trust responsibility to Native Hawaiians is upheld. A hui hou (until we meet again),

The CHAIRMAN. Thank you very much.

Ms. Borrromeo, please proceed.

#### **STATEMENT OF NICOLE BORRROMEO, EXECUTIVE VICE PRESIDENT/GENERAL COUNSEL, ALASKA FEDERATION OF NATIVES**

Ms. BORRROMEO. Aloha, Chairman Schatz, Senator Murkowski, and aloha also to members of the Senate Committee on Indian Affairs.

The Alaska Federation of Natives appreciates the opportunity to testify today on the Native communities’ priorities for the 118th Congress. My name is Nicole Borrromeo, and I have the distinct pleasure of serving as AFN’s Executive Vice President and General Counsel.

Established in 1966 to achieve a fair and just settlement of our aboriginal land claims, AFN is the largest statewide Native organization in Alaska today. Our mission is to advance and enhance the political, economic, social, and cultural voice of Alaska Natives on issues of mutual concern including in the U.S. Congress, on behalf of all of Alaska’s federally recognized tribes, tribal organizations, and Alaska Native Corporations.

Today I am joined by my 11-year-old son, Kellan. I would like to recognize him to help illustrate what our number one priority as Alaska Natives in this Congress is. That is, capitalizing on this once-in-a-lifetime investment for all of those who come after us, including Kellan, his children and his children’s children.

Chairman Schatz, Vice Chair Murkowski, this Committee, together with your colleagues, has secured more than \$35 billion in tribal set-asides across six major economic relief recovery bills, the largest being the Infrastructure and Investment Jobs Act, which has \$13 billion earmarked for tribal communities and Native entities. This is being implemented widely across every Federal agency right now.

However, implementation has become a major challenge. Streamlining implementation has become our number one priority as Alas-

<sup>41</sup>Task Force Report, at 17.

<sup>42</sup>Task Force Report, at 17.

ka Natives. Without reform, the laws that you worked so hard to enact will die on the vine at the agency level.

To prevent this from happening, AFN has four succinct recommendations. We feel as though we have subject matter authority in presenting these recommendations, because for the last two and a half years, we have been running a navigator program on behalf of the entire Alaska Native community. Senator Murkowski alluded to it earlier.

The navigator program's challenge is to track, amend laws as they move through Congress, and then also to track and amend implementation at the agency level, when the Federal agencies are implementing the programs in a way that doesn't benefit the Alaska Native community or Indian Country generally.

Our first recommendation to this Committee is to draft future legislation that makes clear consortium applications are permitted by tribes or eligible entities in line with settled principles of tribal self-governance and Native self-determination.

Our second recommendation is to waive match requirements for small and needy tribes. These tribes have less than \$200,000 annual operating revenue, and the match requirement is akin to offering them free lifetime oil changes when they don't have a car in which an oil change can be performed.

Our third recommendation is to allow eligible entities, including most notably our small and needy tribes, to report on an annual basis instead of quarterly reporting. One grant program, to give you an example of this, is the good resilience program which is being implemented right now at the Department of Energy. That is a five-year program with a formula fund allocation that is non-competitive.

However, to secure this about \$65,000 annually, every tribe has to report on a quarterly basis. In the end, this will prevent more tribes from accessing these funds than securing them when grid maintenance is desperately needed.

Finally, we would like to see eligible entities be able to submit their compliance and reports via the regular U.S. Postal Service versus online. Again, many of the programs and the laws that we have seen in Indian Country over the last few years have been dedicated to bringing broadband to our tribal communities and Native villages.

But many of the eligible entities that are eligible to apply for them do not have broadband necessary to make that application in the first place. That relates back to our first recommendation, which is to allow a consortium application, so organizations like AFN and similar to us can help our tribes secure this once-in-a-lifetime investment.

Quyanaa, mahalo, for your commitment to ensuring Alaska Natives and Native Hawaiians and American Indians have the benefits intended by this historic investment in our communities. I welcome the opportunity to answer any questions.

[The prepared statement of Ms. Borrromeo follows:]

PREPARED STATEMENT OF NICOLE BORROMEO, EXECUTIVE VICE PRESIDENT/GENERAL COUNSEL, ALASKA FEDERATION OF NATIVES

## I. Introduction

Thank you, Chairman Schatz, Vice-Chair Murkowski, and Members of the U.S. Senate Committee on Indian Affairs, for inviting me to testify today on “Native Communities’ Priorities for the 118th Congress.” My name is Nicole Borromeo, and I am the Executive Vice-President and General Counsel of the Alaska Federation of Natives (AFN).<sup>1</sup>

AFN is the largest statewide Native membership organization in Alaska. We serve 229 Indian tribes—nearly half the tribes in the country—and more than 180 Alaska Native corporations created by Congress<sup>2</sup> to guide the economic goals of the Alaska Native Claims Settlement Act (ANCSA). We also serve nearly 40 regional and other statewide tribal organizations who exercise delegated tribal authority to accomplish a wide variety of self-governance matters.

The post-pandemic work this Committee has accomplished is transforming Indian country and Alaska Native and Native Hawaiian communities in real time. However, while you and your colleagues have carved out billions in set-asides to bring our rural Native villages into the 21st century, some of the programs you designed have been deployed in a way at the agency level that makes them nearly inaccessible to the poorest tribal communities. This is especially true for over 300 “small and needy” tribes from Alaska to Oklahoma and from Minnesota to Montana.

If changes are not made, more than 300 of these “small and needy” tribes—who by definition receive less than \$200,000 annually in revenue—will be excluded from the very programs you worked so hard to create.

“Small and needy” tribes often have one part-time tribal administrator and do not have money to pay for high priced grant writers or consultants. Few have funds to make the necessary federal matches. More than 200 Alaska Native villages are “unserved” by broadband, yet they are required to submit grant applications online using non-existing broadband. Most do not allow grant applications and reports to be submitted using the United States Postal Service. That is why 210 “small and needy tribes” in Alaska must rely on tribal organizations with dedicated grant writing departments—and broadband connections—to help them apply for federal grants and ensure that compliance reports are submitted on time.

We recommend you immediately enact a technical corrections bill to provide a global solution to these problems that would:

1. Allow tribal organizations to submit consortia applications on behalf of “eligible entities,”—including tribal governments, if and only if, a tribe makes a program specific designation to the tribal organization in writing.
2. Allow tribal consortia and “small and needy” tribes to submit compliance reports on an annual basis rather than quarterly.
3. Allow Native entities without broadband to submit grant applications through the United States Postal Service rather than online.
4. Waive any statutory matches for “small and needy tribes” notwithstanding any other provision of law.

## I. Permit Tribal Organizations to Submit Consortia Applications on Behalf of Tribes

Many of Alaska’s 229 tribes have been designated by the Bureau of Indian Affairs (BIA) as “small and needy.” Small is defined as having fewer than 1,500 enrolled tribal members. Needy is defined as having less than \$160,000 in income (\$200,000 for Alaska).

Many of these “small and needy” tribes have a skeleton staff of one or maybe two people who often work part-time, yet these tribes are often the ones with the greatest needs, including:

- No running water and open sewers
- No broadband

<sup>1</sup> Shareholder of Doyon, Limited, the ANCSA regional corporation for Interior Alaska, and the Board Chairman for MTNT, Ltd., the ANCSA village corporation representing four Interior Alaska villages. Member of the Alaska Redistricting Board; the U.S. Census Bureau’s National Advisory Committee on Race, Ethnicity, and Other Populations; and the U.S. Department of Energy’s Indian Country Energy and Infrastructure Workgroup. Founding Board Member of Justice Not Politics Alaska, a nonpartisan organization promoting the independence of Alaska’s judiciary. Mentor in the Color of Justice Program. J.D., University of Washington; B.A., the University of Alaska-Anchorage. I reside in Anchorage with my husband and our four children.

<sup>2</sup> 43 U.S.C. § 1601 *et seq.*



- Extremely high poverty rates
- Energy costs 1,000 times the national average—\$1.50 per kilowatt hour versus 15 cents

These tribes do not have the capacity to apply for federal grants in their own right, and instead rely on their affiliated tribal organizations to submit applications for them. Yet unless Congress specifically authorizes a tribal organization to apply for a federal program for the tribes some federal agencies reject applications from tribal organizations.

A recent example is the Department of Energy (DOE) Grid Resilience Program for Indian tribes. Together with the Senate Natural Resources Committee, this Committee created a separate formula grant program for Indian tribes which provides roughly \$60,000 per year per tribes. Each tribe must submit an annual application, an annual work plan, four compliance reports, and an annual financial statement—seven documents. All of those must be submitted online—even if the Native village or tribal community has no broadband connection. Over the four-year life of the program, each tribe will have to submit 28 online documents for a total of \$300,000 in federal funding. If each eligible tribe in Alaska applies for the program, Alaskans alone will submit 11,480 documents to DOE. That is excessive.

By comparison, if each of Alaska's 12 regional tribal organizations were able to submit an application on behalf of their tribal members, there would still be 48 applications over four years, but that would be a lot better than 1,640 applications. Likewise, if tribes could submit their applications online, and compliance reports could be submitted annually rather than quarterly, suddenly the program becomes much more attractive. Finally, DOE has interpreted Section 40101(d) of the Infrastructure Investment and Jobs Act (IIJA) to require up to a 115 percent tribal match—which puts the entire grid program out of reach for nearly all “small and needy” tribes. AFN has recommendations on how to address each of these issues. At the heart of our solution is allowing consortia application for every federal grant program. This is a proven model that other agencies have permitted. For example, AFN submitted consortia applications, with the written consent and direction of eligible Indian tribes, to the:

1. Department of Commerce Digital Equity Act tribal set-aside on behalf of 147 eligible Indian tribes;
2. Department of Commerce Tribal Broadband Connectivity Program on behalf of more than 74 Indian tribes and tribal organizations;
3. Department of the Treasury Capital Projects Program on behalf of 56 Indian tribes; and
4. Department of the Treasury State Small Business Credit Initiative Program on behalf of 129 Indian tribes (through the Alaska Small Business Development Center).

Nearly every one of Alaska's federally recognized tribes belongs to at least one and sometimes as many as five tribal organizations—regional Native Tribally Designated Housing Entities (TDHEs), regional non-profit tribal health organizations, regional non-profit tribal organizations, and several statewide tribal organizations like AFN or the Congressionally created Alaska Native Tribal Health Consortium (ANTHC). In recognition of their inherent government rights and self-determination, tribes have the power to designate a tribal organization to apply for a grant on its behalf, administer that grant, and ensure that compliance reports are timely filed. The federal government should recognize that power of designation across each of its agencies.

Fortunately, nearly every federal department and agency has permitted tribal organizations to submit consortia applications on behalf of their tribal members, but some agencies have been better than others. Every time a new program is unveiled, organizations like ours has to go to work to convince the department, agency, and program office to allow consortia applications. Often, we end up in the general counsel's office with lawyers who little, if any, federal Indian law experience. This is a laborious and time-consuming process which requires us to produce legal memoranda and sometimes requires us to go farther up the chain to the Secretary, the Director of the Office of Management and Budget, or even the White House. It does not, and should not, have to be this way.

To solve this problem going forward, and on a global basis, AFN recommends the following legislative language. This would provide a blanket authorization for tribal organizations to submit applications on behalf of requesting tribes. This could be done through a freestanding bill, or as a rider to the Financial Services Appropriations bill. Below is draft language for your consideration:

Sec. \_\_\_\_\_. Hereafter, notwithstanding any other provision of law, a “tribal organization” as defined in Section 4(l) of P.L. 93–638 may submit or file any grant application or other request for federal financial assistance to any federal department, agency, commission, independent agency, or instrumentality of the federal government on behalf of an “Indian tribe” as defined in Section 4(e) of P.L. 93–638 so long as such application or request is accompanied by a tribal resolution or letter authorizing such tribal organization to submit the application on behalf of such Indian tribe.

## **II. Allow “Small And Needy” Tribes or Consortia Representing Them to Submit Compliance and Financial Reports on an Annual Basis Rather Than a Quarterly Basis**

A major hurdle encountered by a number of Alaska Native Tribes are the quarterly compliance reports. Just for one federal program, the Department of Energy Grid Resilience Program, each eligible Indian Tribe must submit some 16 compliance reports over the life of the program for a total of \$300,000 in federal funding. If all the eligible Alaska tribes apply for this grid grant, collectively they will be forced to submit some 1,640 compliance reports each year—or 6,540 over the life of the program. What purpose does this serve other than requiring DOE to spend its money pushing paper rather than fixing the grid?

A quarterly compliance regime is onerous for “small and needy” tribes with just one part-time administrator. Tribes are eligible for more than 400 federal grant programs according to the White House—a tribute to the work of this Committee. But when tribal administrators are consumed with submitting applications for these once in a lifetime opportunities, imposing overwhelming and unnecessary compliance requirements on them for small amount of money creates a systemic obstacle to participation. What happens if a tribe fails to submit a compliance report in a timely manner? They risk jeopardizing all of their future federal funding.

To address this issue, AFN recommends the following legislation which again can be done as part of a free-standing bill or included in the Financial Services Appropriations bill:

Sec. \_\_\_\_\_. Notwithstanding any other provision of law, “small and needy” Indian tribes as defined by the Bureau of Indian Affairs, or consortia including such Indian tribes, that have been awarded grants or other federal financial assistance shall submit annual compliance reports and financial reports in lieu of quarterly reports.

## **III. Permit Tribes, Tribal Organizations, Native Corporations, and Native Hawaiian Organizations to Submit a Paper Grant Application if Their Community is “Unserved” by Broadband**

A major hurdle encountered by a number of Alaska Native entities when presented with an Infrastructure Investment and Jobs Act (IIJA) grant opportunity is most federal program applications can only be submitted electronically. Unfortunately, this requirement excludes many remote Alaska tribes and Native corporations and serves as a form of structural exclusion. For example, the Tribal Broadband Connectivity Program preferred that “eligible entities” submit their applications online for the \$1 billion that was set-aside for tribes. Online applications were strongly encouraged. That requirement seems overly stringent.

In the case of Rampart, a small, rural, Native village, the Tribal Administrator had to float down a portion of the raging Yukon River by skiff for 20 miles, get out on the other side of the river, walk several miles to a road, only to hitchhike to the nearest city with broadband to submit the Tribe’s application for a federal IIJA program. This is not fair to similarly situated tribes. When tribes, Native corporations, tribal organizations (and Native Hawaiian organizations) do not have access to reliable broadband, they should be encouraged to mail paper copies of their applications to federal agencies.

One federal agency at the Department of Health and Human Services when confronted with this scenario said, “it’s not our problem.” Only six of Alaska’s 229 tribes were able to participate in that agency’s programs. When AFN inquired about making an exception to the rule, we were told that no exceptions could or would be made.

In contrast, the Rural Development Administration which is used to dealing with rural communities allows tribes with inadequate broadband to submit paper applications. They should be the model.

AFN recommends this Committee champion an amendment that applies government wide requiring all federal agencies to accept paper applications when eligible Native entities have inadequate broadband. This could be a stand-alone bill, or an

amendment to the General Provisions in the Financial Services Appropriations bill. Draft language for purposes of the Committee's consideration is as follows:

Sec. \_\_\_\_\_. Hereafter, notwithstanding any other provision of law or requirement of a Notice of Funding Opportunity or similar instrument, any grant application or request for assistance may be submitted by United States mail or by mailing service by tribes, tribal organizations, Alaska Native Corporations, or Native Hawaiian organizations located in communities unserved by broadband as defined by the National Telecommunications and Information Administration, so long as such application or request is postmarked or marked by the mailing service no later than the application deadline and applicant retains the receipt of mailing as proof of timely filing.

#### **IV. Waive Matching Requirements for "Small and Needy" Tribes**

In 1997 Congress recognized that not all tribes have benefitted from Indian gaming operations, oil and gas leases, or other economic development activities. Many live in abject poverty without even the most basic resources to operate their tribal governments.

There are some 310 "small and needy" tribes across the country including California, New York, Montana, Minnesota, Nevada, Michigan, and Oklahoma—as well as Alaska—many without even the most basic services like running water or human waste disposal. AFN recommends that this Committee hold a hearing on the needs of "small and needy" tribes. In the meantime, the very programs you designed to help small and needy tribes are placed out of their reach by sometimes onerous matching requirements.

AFN recommends that the Committee enact legislation that statutorily waives the tribal match for these poorest Indian tribes.

Sec. \_\_\_\_\_. Notwithstanding any other provision of law, any matching requirements for Indian tribes designated by the Bureau of Indian Affairs as "small and needy" are waived.

#### **V. Conclusion**

Thank you again for inviting AFN to testify as part of today's hearing on "Native Communities' Priorities for the 118th Congress." We are happy to supplement our written testimony if requested.

The CHAIRMAN. Thank you very much.  
Ms. Lawrence, please proceed.

#### **STATEMENT OF KARI JO LAWRENCE, EXECUTIVE DIRECTOR, INTERTRIBAL AGRICULTURE COUNCIL**

Ms. LAWRENCE. Chairman Schatz, Vice Chair Murkowski, and members of the Committee, thank you for the opportunity to submit testimony as it relates to agriculture priorities in Native communities in 2023. I am Kari Jo Lawrence, the Executive Director of the Intertribal Agriculture Council and a co-chair of the Native Farm Bill Coalition.

For 35 years, the IAC has supported tribal producers across the Country through technical assistance, market access, natural resources programs, and advocacy around the policies that govern the tribal agriculture landscape. With 2023 marking a Farm Bill reauthorization year, the IAC and its co-stewards of the Native Farm Bill Coalition are elevating tribal agriculture priorities, some of which are unique to USDA programming, but many address the Bureau of Indian Affairs oversight of tribal lands.

The Native Farm Bill Coalition has received feedback from tribal leaders offering resounding support for greater 638 contracting authority throughout USDA programming and greater parity. Sixty-three authority is an acknowledgement of tribal sovereignty that opens the door to food purchasing decisions, allowing for more tribally produced foods that support tribal economies.

The two 638 pilot projects authorized in the 2018 Farm Bill are a step in the right direction and offer a strong foundation for permanent and expanded 638 authorities in 2023. At minimum, the existing pilot projects should be made permanent, but there is strong support for expansion. Indian Country rarely fits neatly within the county and State-based frameworks under which most USDA programs operate, resulting in inconsistent access to USDA programs.

Credit, conservation, commodities, and crop insurance are foundational to all agriculture producers. But accessing these presents unique challenges to tribal producers, often due to the status of the land on which they operate.

Indian Country is a credit desert that affords tribal producers few options for the capital necessary for agriculture operations. Native CDFIs have been a key source for credit for tribal producers, but have limitations. The Farm Service Agency needs greater flexibility and Native CDFIs need resources to bridge or fill the credit gap that exists. Also, greater education and accountability on the lender side are critical to improving access to credit.

Risk is an inherent component of agriculture, and the commodity conservation and crop insurance titles of the Farm Bill are intended to guard against some of these risks. But the current framework under which the programs supported by these titles operate is often ill-suited to meet the needs of tribal producers, because USDA programs are often administered at a county or State committee level. Add in BIA oversight, and tribal producers find themselves responsible for navigating a maze of bureaucracy between two Federal agencies.

Without cooperation and accountability at BIA and every office across Indian Country, the Farm Bill will fall short of providing comprehensive improvements to tribal agriculture. Many tribal producers express frustration around BIA's land management and lease enforcement practices, often citing BIA delays and lack of transparency. Clearer processes and timelines around agriculture leases, enforcement of lease terms, and clarity around producers' rights in relation to agricultural leases would begin to address tribal producers' concerns.

BIA roadblocks may also be alleviated through more widespread use of agriculture resource management plans, and more technical assistance dedicated to tribal producers. ARMPs prioritize tribal management of agriculture resources and provide opportunities for tribes to benefit from their own resources.

Yet only a handful of tribes have developed ARMPs. This is due in part to the expense and complexity inherent in planning for an integrated resources use, as well as capacity limitations in carrying out the plans. Adequate funding and technical assistance, resources on the front end would better support the labor-intensive development of ARMPs.

Key to opportunities like ARMPs is technical assistance to connect tribal producers to implementation resources. The IAC has entered into recent multi-year technical assistance agreements with the USDA that have enabled us to serve as a bridge between producers and USDA programing. A similar approach at BIA may

serve better to connect tribes and tribal producers to BIA resources.

In sum, supporting tribal agriculture priorities can improve opportunities for tribal producers, advance tribal sovereignty, build tribal economies, and improve tribal community health. Thank you.

[The prepared statement of Ms. Lawrence follows:]

PREPARED STATEMENT OF KARI JO LAWRENCE, EXECUTIVE DIRECTOR, INTERTRIBAL AGRICULTURE COUNCIL

Chairman Schatz, Vice Chair Murkowski, and Members of the Committee, thank you for the opportunity to submit testimony on behalf of the Intertribal Agriculture Council as it relates to agriculture priorities in Native communities in 2023. I am Kari Jo Lawrence, the Executive Director of the Intertribal Agriculture Council (IAC), which is headquartered in Billings, Montana. I am Hidatsa, and an enrolled member of the Three Affiliated Tribes located on the Fort Berthold Indian Reservation, where I was raised on a cattle ranch. Prior to joining the Intertribal Agriculture Council, I had a 20-year career with the United States Department of Agriculture's Natural Resources Conservation Service in North Dakota and South Dakota, and I now live, work and ranch with my family on the Cheyenne River Sioux Reservation. In addition to my role as Executive Director for IAC, I also serve as the co-Chair of the Native Farm Bill Coalition, a nationwide initiative that was launched in 2017 by the Shakopee Mdewakanton Sioux Community, the Intertribal Agriculture Council, the Indigenous Food and Agriculture Initiative—as research partner for the Coalition—and the National Congress of American Indians, to share the voices of Indian Country during the Farm Bill reauthorization.

The Intertribal Agriculture Council is a national, Native-led nonprofit that was formed in 1987 and tasked with pursuing and promoting the conservation, development, and use of our agriculture resources for the betterment of our people. Since our founding, IAC has actively supported Tribal producers across the country through on-the-ground technical assistance and services, as well as advocacy for improvements in the policies that govern the landscape in which Tribal producers must operate. In 1987, IAC's predecessor, the National Indian Agricultural Working Group, published a report that outlined a number of recommendations aimed at improving the environment for the main Indian industry: *agriculture*. The report noted that the issues it addressed were “neither new, nor unknown.”

While there have certainly been improvements around Tribal agriculture since 1987, the sentiment remains the same. The issues Tribal producers face today are neither new, nor unknown. Similar to 1987, Tribal agriculture could still be better supported through “innovative approaches to land management. . . . and modifications to Department of Agriculture programs and procedures at the county or local level to enhance Indian Agricultural producer involvement in agriculture programs. . . .”

With 2023 marking a Farm Bill reauthorization year, the IAC, through feedback we receive from producers who engage with our Technical Assistance Network, as well as outreach conducted by the Native Farm Bill Coalition, is focused on elevating agriculture priorities Tribes and producers have shared across Indian Country.<sup>1</sup> Some of these priorities are unique to USDA programming, but many priorities are areas of concern where Tribal agriculture intersects with the Bureau of Indian Affairs' oversight of Tribal lands.<sup>2</sup>

This testimony will cover two key priority areas which often intersect: first, USDA programming and directives authorized under the 2023 Farm Bill; and second, the Bureau of Indian Affairs, and its role in Tribal agriculture.

<sup>1</sup>For purposes of this testimony, Indian Country means “(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.” 18 U.S.C. § 1151.

<sup>2</sup>For purposes of this testimony, “Indian land” and “Tribal land” are used interchangeably and mean “any tract in which any interest in the surface estate is owned by a tribe or individual Indian in trust or restricted status and includes both individually owned Indian land and tribal land.” 25 C.F.R. § 162.003 (the definition for Indian land in the leasing provisions for the Indian Title in the Code of Federal Regulations).

### 2023 Farm Bill, Generally

In the last year, the Native Farm Bill Coalition has conducted more than 60 roundtables across Indian Country—both in-person and virtually—to ascertain the agriculture priorities Tribes and producers are advancing in 2023.

Specific to the Farm Bill, there is resounding support for greater 638 contracting authority throughout USDA programming and parity, generally.

While we know Tribes have successfully implemented 638 authority over Bureau of Indian Affairs and Indian Health Services programs for decades, the USDA has been slow to recognize the same authority. In the 2018 Farm Bill, Congress authorized two 638 pilot projects: one for the procurement portion of the Food Distribution Program on Indian Reservations, the other for the co-management of forests. These marked the first time Congress directed the USDA to recognize Tribes through a self-determination lens.

According to USDA's report to Tribal leaders at a recent FDPIR consultation, USDA's Food and Nutrition Services (FNS) paid \$250,000 in FY21 and FY22 to the BIA to handle the "638" contracting process for the FDPIR pilot. This is understandable, while USDA has no "638" contracting office, and this program is in a pilot phase. However, Tribal leaders have expressed that USDA needs its own staff and office for this work in anticipation of these "638" authorities being expanded and made permanent. This is because Tribal leaders support broad "638" expansion beyond any single agency or authority at USDA: food assistance programs through FNS, forestland management and agroforestry through Forest Service, and land stewardship through NRCS, just to name a few. With so many USDA agencies potentially well-suited for "638" agreements, it would not make sense for USDA to subcontract all of that work to an entirely different Department, especially one as chronically overworked as BIA.

#### *Expanding and Making Permanent FDPIR 638 Authority*

The Coalition's 2022 *Gaining Ground* report shares IAC's position that FDPIR 638 authority is critical to not only the physical health of our community members but to Tribal economies that support Tribal producers in keeping locally-grown food in our communities:

FDPIR 638 is an important acknowledgment of Tribal sovereignty that opens the door to food purchasing decisions that allow for more traditional, Tribally-grown, local, and regionally produced foods. Since [the 2018 Farm Bill authorized the FDPIR pilot project], seven self-determination contracts have been awarded to eight Tribal Nations and Tribal organizations for the FDPIR procurement project, including one intertribal partnership between the Menominee Tribe and Oneida Nation of Wisconsin, as well as individual contracts with the Red Cliff Band of Lake Superior Chippewa, the Little Traverse Bay Bands of Odawa Indians, the Lummi Nation, the Alaska Native Tribal Health Consortium (ANTHC), the Chickasaw Nation, and the Mississippi Band of Choctaw Indians. Initial contract awards for these Tribes and Tribal organizations totaled \$3.5 million, all of which support Tribal and locally produced foods moving into the FDPIR food packages of those Tribes. Additional funds appropriated by Congress since those contracts were awarded have enabled USDA to extend existing contracts and consider opening new applications for additional participation. Legal constraints, both statutory and regulatory, [however,] prevent Tribal governments and producers from taking full advantage of more opportunities, like the FDPIR food sourcing program, to expand food access and food economies.<sup>3</sup>

As a pilot project, funding for this 638 authority is capped at \$5 million, with approximately \$3 million being appropriated annually thus far. This severely limits the number and size of the Tribes that can participate in this demonstration project. Even so, "[p]articipating Tribes are reporting higher take rates of Tribally-procured foods among their FDPIR participants and higher engagement with the program. . . . If Congress made this procurement opportunity permanent and granted it mandatory funding in the Farm Bill, more Tribal Nations would be able to participate and take advantage of this pathway to improved Tribal food access."<sup>4</sup>

Further, the 638 authority is limited to procurement, instead of authorizing Tribes to exercise greater control in the design and implementation of this program. "Tribal Nations have also called for a full expansion of '638' authority for the entirety of the FDPIR program, not just the sourcing opportunity from Sec. 4003(b) of the 2018 Farm Bill. This would facilitate full Tribal authority over this program

<sup>3</sup>Erin Parker and Carly Griffith Hotvedt, et al., *Gaining Ground: A Report on the 2018 Farm Bill Successes for Indian Country and Opportunities for 2023* 46–47 (Sept. 2022).

<sup>4</sup>*Id.* at 48.

for the first time, and enable Tribal Nations to offer the program in a way that best fits the needs of their community.”<sup>5</sup> Expanding and making FDPIR authority permanent would, as this Committee knows, not represent an increase in spending, but rather, reallocate existing spending for FDPIR in instances where Tribes express a desire to exercise such authority, and would further support Tribal self-determination in feeding their own.

*Expanding 638 Authority to All USDA and Implementing 638 Office at USDA*

In 2018, prior to being appointed as General Counsel of USDA, Janie Simms Hipp testified before this Committee and shared the findings from a report authorized under the 2014 Farm Bill that reviewed the feasibility of Tribal administration of federal food assistance programs. At that time, USDA, and FNS specifically, maintained the position that they did “not have the requisite ‘638-like authority’ that explicitly provides Congressional support for executing contracts between federal agencies and Tribes to coordinate the management of specific federal programs.”<sup>6</sup>

In part, this absence of congressionally-recognized 638-like authority at USDA only exacerbates the pervasive lack of recognition or understanding of the federal trust responsibility owed to Tribes—and by extension, Tribal lands and producers—across USDA agencies and staff, generally, creating obstacles to progress for Tribal agriculture endeavors.

This lack of recognition or understanding is underscored by the fact that for the two 638 pilot projects the 2018 Farm Bill authorized, the USDA contracts the negotiation function to the Bureau of Indian Affairs (BIA) at the Department of the Interior. The BIA tells Tribal leaders it is chronically underfunded and needs additional financial support to negotiate its current level of contracts. No one would like to see a fully funded and functional BIA more than Tribal leaders and Tribal producers in Indian Country, for whom BIA delays often cost business opportunities and stifle economic development. Indeed, this is part of the reason that several of the initial “638” pilot recipients were dismayed to learn that BIA, not USDA, would be handling the contract negotiation process. Should “638” authority expand at USDA, we must reiterate that the process—as well as a chunk of administrative funds that should be supporting Tribal communities—must not be diverted to BIA. If Congress wishes to increase BIA funding support, it surely can choose to do so directly. Future expansion of “638” authority at USDA should not be used as a backdoor fund for BIA. There are only disadvantages, and no advantages, for USDA and for Tribes to allow any USDA funds to be diverted to BIA for “638” administration. And it is completely unnecessary. A relatively small “638” staff group at both BIA and IHS routinely negotiates and transfers hundreds of millions of dollars each year to hundreds of Tribes and tribal organizations. USDA can, and should, do the same without reinventing the wheel or outsourcing the residual “638” negotiation work to BIA. It merely needs to replicate the BIA and IHS model for a “638” office at USDA, and keep that wheel attached to the USDA axle.

**Challenges Unique for Tribal Producers in USDA Programming**

There are additional Farm Bill-specific priorities that reflect issues IAC regularly encounters in the services our Technical Assistance Network provides to Tribal producers on the ground. Programs at the USDA are rarely structured to meet the unique needs specific to Tribes and producers based on jurisdiction of land and the federal government’s trust obligations to Tribes. As a result, Tribes and producers operating on Tribal lands that don’t fit neatly within the county and state-based frameworks under which most, if not all, USDA programs operate, are treated inconsistently within the USDA—and often bear the negative consequences.

*Credit*

Access to credit in Indian Country cannot begin without discussing the unique status of Indian land. Because Indian land is either held in trust or has a restricted status, Tribal producers often encounter obstacles to accessing credit through traditional banking institutions. The data to reflect this, however, is limited and/or less than accurate. In the 2018 Farm Bill, Congress directed a report on the availability of credit to Tribes and Tribal producers in agriculture.<sup>7</sup>

<sup>5</sup> *Id.*

<sup>6</sup> Breaking New Ground in Agribusiness Opportunities in Indian Country: Oversight Hearing before the Senate Comm. on Indian Affairs 4 (Jan. 17, 2018), (Testimony of Janie Simms Hipp), [https://www.indian.senate.gov/sites/default/files/JanieSimmsHippTestimonySCIA-AgribusinessHearing-011718-FinalSubmitted\\_0.pdf](https://www.indian.senate.gov/sites/default/files/JanieSimmsHippTestimonySCIA-AgribusinessHearing-011718-FinalSubmitted_0.pdf)

<sup>7</sup> See *Agriculture Improvement Act of 2018*, Pub. L. 115–334, Sec. 5415 (Dec. 20, 2018); see also Government Accountability Office, GAO–19–464, *Indian Issues: Agricultural Credit Needs and*

In the report published by the Government Accountability Office, it was noted that “[a]ccording to tribal stakeholders, experts, and BIA officials we interviewed, tribal members who obtain agricultural credit likely receive it from USDA’s Farm Service Agency, other USDA programs, or Native CDFIs. Some tribal members receive agricultural credit from local private lenders, but they are typically larger, more established borrowers. One expert told us that tribal members who are smaller or beginning agricultural producers and cannot access commercial banks instead may borrow money from family members.”<sup>8</sup> That is, Indian Country is a credit desert that affords Tribal producers few options for the capital necessary to maintain and build their operations. The report went on to note that Tribal producers operating on trust lands must navigate accessing credit when “some lenders, including [the Farm Credit System] associations, report[] concerns about their ability to recover loan collateral if the borrower defaulted on a loan involving tribal lands.”<sup>9</sup> It is difficult enough to find lenders familiar with and willing to lend around the inherent risks and uncertainties that accompany agribusiness, but to find lenders that also have an understanding of the unique status of Tribal lands and are willing to lend within this landscape at a reasonable interest rate can be rare.

The information in the 2019 GAO report represents a step in the right direction of understanding credit access for Tribal producers, however, the report itself is now outdated, or otherwise misses key points that underscore the need around credit for Tribal producers. In December 2022, Akiptan—a Native American Community Development Financial Institution (CDFI) that provides loans and technical assistance to those in Indian Agriculture—published its Native Agriculture Market Study Report. The 179-page Akiptan Report “assess[es] the current needs and barriers that exist for Native producers across the U.S. . . . to determine what the unmet financing need is for Native producers amongst other barriers that, if addressed, would lead to greater prosperity and sustainability for Native agriculture.”<sup>10</sup> Based on the 273 producers (representing 81 tribes) who took the Native producer survey, the “total unmet financing need” is \$147,406,308.67, or an average of \$539,949.85 per producer.<sup>11</sup> The Akiptan Report further states that “[w]hen extrapolated to all Native producers in the United States (79,198 producers in 2017) we would estimate the total unmet capital need for Native producers to be \$42,762,948,220.”<sup>12</sup> Nearly \$43 billion. This amount stands in stark contrast to the outdated amounts cited in the GAO Report<sup>13</sup>—a Report that interviewed representatives of 6 of the 574 federally recognized Tribes, with no consideration for individual Tribal producers.<sup>14</sup>

Accordingly, access to credit through the USDA’s Farm Service Agency (FSA) and, more recently, through Native CDFIs, is critical to Tribal producers. Even so, obstacles and/or limitations remain for Tribal producers in accessing credit through the FSA or through Native CDFIs—obstacles and limitations that can be addressed through the Farm Bill.

In instances where Tribal producers are attempting to access credit, be it through a commercial lender or their FSA county office, they are often forced into the role of educator on the unique status of Tribal lands and why the Tribal land status should not be an impediment to accessing credit. Greater education and accountability on the lender side are critical to improving credit access outcomes for Tribal producers.

#### *Commodities, Conservation and Crop Insurance*

Risk is an inherent component of agriculture—whether you’re a Tribal producer operating on Tribal lands or a non-Tribal producer operating on your own fee lands—and the Commodity, Conservation and Crop Insurance Titles of the Farm Bill are

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*Barriers to Lending on Tribal Lands* (May 2019) (“Congress included a provision in statute for GAO to review the ability of [the Farm Credit System, a government-sponsored enterprise that includes 69 associations that lend to farmers and ranchers,] to meet the agricultural credit needs of Indian tribes and their members on tribal lands. This report describes (1) what is known about the agricultural credit needs of Indian tribes and their members, (2) barriers stakeholders identified to agricultural credit on tribal lands, (3) FCS authority and actions to meet those agricultural credit needs, and (4) stakeholder suggestions for improving Indians’ access to agricultural credit on tribal lands.”).

<sup>8</sup>Government Accountability Office, GAO–19–464, *Indian Issues: Agricultural Credit Needs and Barriers to Lending on Tribal Lands* 10 (May 2019) (“GAO Report”), <https://www.gao.gov/assets/gao-19-464.pdf>.

<sup>9</sup>GAO Report 16.

<sup>10</sup>Akiptan, Native Agriculture Market Study Report 4 (Dec. 2022), [https://www.akiptan.org/files/ugd/023fa2\\_9a012afa1cd745d29fd1cd3b0d45e8ea.pdf](https://www.akiptan.org/files/ugd/023fa2_9a012afa1cd745d29fd1cd3b0d45e8ea.pdf).

<sup>11</sup>*Id.* at 6.

<sup>12</sup>*Id.*

<sup>13</sup>See GAO Report 11, 23.

<sup>14</sup>*Id.* at 32–34.



intended to serve as a buttress against some of these risks. But the current framework under which the programs supported by these Titles operate is often ill-suited to meet the needs of Tribal producers. That is, Tribal producers operating on trust or restricted fee lands often encounter barriers, inequities, and inefficiencies in accessing USDA programs administered under a county or state committee.

Extreme, long-term drought, market challenges, and region—specific issues underscore the need for programs that offer flexibility instead of a one-size-fits-all approach. Recognizing Tribal sovereignty and authority over Tribal lands in USDA programming would alleviate inconsistent access to and application of commodity, conservation, and crop insurance programs that Tribal producers regularly experience.

Currently, a Tribal producer’s ability to access disaster relief or a conservation program can be inhibited because Tribal lands are not considered under a reservation framework, but as a part of a county. Similarly, Tribal producers encounter challenges in accessing USDA’s Natural Resources Conservation Service’s (NRCS) programs, as access often requires negotiation or sign-off from the Bureau of Indian Affairs (BIA) and navigating around NRCS program terms that conflict with BIA leasing or land management terms. As an example, both FSA and NRCS administer conservation programming that assists with the installation of structural practices that are crucial to proper land management. Prior to completing these projects, FSA and NRCS require cultural resource surveys. If the survey for an agriculture operation is on fee land, the producer is eligible to have agency-compensated staff conduct the survey. But if the producer is operating on trust or restricted fee lands, the producer is responsible for hiring and paying for the cultural resource survey, which can cost thousands of dollars out of pocket, as the FSA and NRCS will not accept surveys completed by a Tribal Historic Preservation Office (THPO) in instances where the THPO is willing and able to do the survey. This creates a significant burden on Tribal producers who are operating on Tribal lands for no fault of their own.

Barriers to these programs could, however, be addressed in the Farm Bill by recognizing the unique status of Tribal lands and authorizing flexibility in programs that can and should be tailored to the Tribal agriculture landscape.

As an example, the Gaining Ground report makes the recommendation that the “Farm Service Agency (FSA) County Committee determinations on normal grazing periods and drought monitor intensity should be amended to ensure that separate carrying capacities and normal grazing periods for each type of grazing land or pastureland are set at different rates for Tribal lands and are established by the national FSA office (not at the county committee level).”<sup>15</sup> Moreover, the Gaining Ground report makes the case that “rates should be established after Tribal consultation and must be established after discussions with the Bureau of Indian Affairs as well.”<sup>16</sup>

Until the programs in these Titles are tailored to address Tribal lands as distinct from non-Tribal lands, the health of the Tribal land and Tribal agriculture operations will suffer. At a minimum, Tribes should have the authority to identify Priority Resource Concerns and have parity with states in these Titles. Ideally, however, Tribes would have the authority and the necessary set-asides to administer programs based on a Tribal lands framework, independent of county and state committee determinations.

#### *Intersection of Tribal Agriculture and the Bureau of Indian Affairs*

While the 2023 Farm Bill reauthorization compels Farm Bill-related priorities, most conversations with Tribal producers veer toward issues with BIA oversight of Tribal lands. Without cooperation and accountability at the BIA—in every office across Indian Country—Tribal priorities gained in the Farm Bill will likely fall short of providing comprehensive improvements to the Tribal agriculture landscape. This is true as it concerns the BIA’s interactions with individual Tribal producers, as well as the BIA’s interactions with Tribes related to agriculture issues.

At IAC, our priorities related to the intersection of agriculture and the BIA are informed by Tribal producers who work with our Technical Assistance Network to address outstanding BIA issues. Some of the issues involve cross-agency cooperation, or lack thereof, while other issues are solely within the scope of the BIA.

Agriculture Leases, Lease Enforcement, and Land Management, Generally Many Tribal producers, especially in the West, have expressed frustration around the BIA’s land management and lease enforcement practices, citing BIA delays and lack of transparency at the root of many of these frustrations.

<sup>15</sup>Parker and Hotvedt, *supra* note 1 at 22.

<sup>16</sup>*Id.*

The BIA could begin to address these frustrations by communicating clear processes and timelines around agriculture leases, and enforcement of lease terms, as well as provide clarity around Tribal producers' rights in relation to agriculture leases.

*Agriculture Resource Management Plans*

Another priority aimed at improving the agriculture landscape for Tribes and producers is more comprehensive support for Tribal Agriculture Resource Management Plans. When Congress passed the American Indian Agriculture Resource Management Act in 1993 (AIRMA), Tribes were encouraged to develop comprehensive Agriculture Resource Management Plans (ARMPs) to plan for the use and management of agricultural resources to “produce increased economic returns, enhance Indian self-determination, promote employment opportunities, and improve the social and economic well-being of Indian and surrounding communities” (25 USC Ch. 39) and yet only a handful have developed ARMPs. This is partially due to the expense and complexity inherent in planning for integrated resource use as well as limitations in internal capacity for carrying out plans.

With adequate funding and technical assistance resources on the front end, more Tribes would be able to undertake the labor-intensive development of ARMPs. The development and implementation of these plans are key to supporting Tribal agriculture priorities, improved land management practices that will benefit the health and productivity of the land, and local economies that value Tribally-produced food staying in Tribal communities. Until the use of ARMPs becomes widespread among Tribes, we expect Tribes and producers will continue to battle extractive agriculture that values the exportation of Tribal resources with few benefits reaching the Tribal communities from which they come.

*Technical Assistance*

In recent years, the IAC has entered into multi-year technical assistance agreements with the USDA. Through multi-year agreements, our TA Network is able to walk alongside producers from the beginning of a project through completion. Under these multi-year cooperative agreements, the IAC, through our Technical Assistance Network, works to “ensure improved understanding of and equitable participation in the full range of USDA programs and services among underserved farmers, ranchers, forest landowners and operators through supporting the organizational delivery of technical assistance projects and networks.” We do this by providing technical assistance, program development, curriculum development, deployment and evaluation of impact through (1) an introduction to USDA programs; (2) financial literacy training; (3) market planning; and 3) technical support.

It is through these multi-year agreements that a federal agency like the USDA can fulfill some of its obligations to Tribal communities—by working with Native-led organizations like the IAC to reach out to Tribal producers in a meaningful way in an effort to ensure they are aware of and taking advantage of programming that suits their agriculture operations. Likewise, multi-year planning allows projects to advance from aspirational to coming to fruition. With inconsistent access to BIA staff across Indian Country, multi-year cooperative agreements may be a path the Department of Interior should consider in advancing Tribal agriculture priorities on the ground.

**Conclusion**

In sum, there is no shortage of priorities in Tribal agriculture, all of which could improve not only the livelihood of individual Tribal producers, but support Tribal sovereignty, build Tribal economies, and improve the health of Tribal members.

The CHAIRMAN. Thank you very much.  
Mr. Frias, please proceed.

**STATEMENT OF RICO FRIAS, EXECUTIVE DIRECTOR, NATIVE AMERICAN FINANCIAL OFFICERS ASSOCIATION**

Mr. FRIAS. [Greeting in Native tongue.] Good afternoon, Chairman Schatz, Vice Chair Murkowski, members of the Senate Committee on Indian Affairs. My name is Rico Frias. I am the Executive Director of NAFOA, Native American Financial Officers Association, and a citizen of the Chihene Nde Nation.

I want to thank you for your time today and the opportunity to speak to you about priorities for the 118th Congress and beyond. I believe this hearing is especially important now, in the wake of COVID-19 as Indian Country prepares for new opportunities and challenges that we know will come.

NAFOA is a national intertribal organization for the 155-member tribes in 26 States. Our mission is to strengthen tribal financing and grow tribal economies by advocating for bipartisan policy solutions. Our priorities are to ensure parity for tribes with States and to unlock the economic potential of Indian Country.

Meaningful tribal tax reform will put tribes on equal footing with States. Unlocking the potential for energy development in Indian Country will promote economic diversification. Eliminating dual taxation will better enable tribes to provide for their tribal citizens.

For many years, Indian tribes have called for tax reform to address inequities in the current regulations. Members of both parties, including Vice Chair Murkowski, Senator Cortez Masto, Representative Ron Kind, and the late Representative Don Young all introduced legislation in the last Congress to address Indian Country's longstanding priorities with regard to tax reform.

I would like to thank the members for their work and leadership on this legislation. And I include Representative Gwen Moore, who has agreed to take responsibility for this important legislation in the House, now that Representative Kind has retired.

Taken together, the Tribal Tax and Investment Reform Act first introduced by Congressman Kind in 2013 in the 113th Congress and the Native American Tax Reform and Relief Act introduced by Senator Cortez Masto in the 117th, with support from Chairman Schatz and Chairman Wyden, outlined Indian Country's tax priorities. While varying slightly, the legislation included important provisions that will put tribes on equal footing with State and local governments.

Our request for tribal tax reform can be summarized as follows: remove the essential governmental function in the issuance of tax-exempt bonds to allow tribes to issue tax-exempt bonds on equal footing with State and local governments. Ensure that contributions to charities created by tribal governments are treated the same as contributions to charities created by State and local governments.

Improve the effectiveness of tribal child support enforcement agencies by creating parity of access. Expand the Special Needs Adoption Credit so it includes adoptions ratified by tribal courts. Create an annual \$175 million new markets tax credit for low-income tribal communities and for projects that serve or employ tribal members.

Create parity with State governments by removing the essential governmental function test for the Employee Retirement Income Security Act, and codify that possessory interest, permanent improvements, without regard to ownership, and activities under leases or rights-of-way on Indian trust lands are not subject to State taxation.

To promote greater access to capital, we can make changes to allow the new market tax credits to be used in conjunction with the Bureau of Indian Affairs' Indian Loan Guarantee Program. Cur-

rently, tribes cannot take advantage of the new market tax credits if utilizing the Indian Loan Guarantee Program. Correcting this would cost Congress nothing, but would dramatically increase the ability of smaller tribes to access capital.

The COVID-19 pandemic made it abundantly clear that tribal economies must be diversified in order to be strong. Congress can help unlock the energy potential of Indian Country and help tribes diversify their economies and create jobs. Whether renewable or traditional, energy is an important part of tribal economic diversification.

Currently, there is confusion on whether loans with the LPO may be accessed by tribes that receive other Federal funding, such as grants. There is a disconnect between the intent of Congress and the way this program is being implemented. Codifying the intent of Congress and making it clear that tribes should be able to access this program would unlock the \$20 billion that Congress has allocated for this program.

Congress has an obligation to protect tribal sovereignty and promote tribal self-determination. We urge this Congress to take up the above priorities, to promote the general welfare of tribes and their citizens by encouraging the economic growth and prosperity of Indian Country.

Thank you.

[The prepared statement of Mr. Frias follows:]

PREPARED STATEMENT OF RICO FRIAS, EXECUTIVE DIRECTOR, NATIVE AMERICAN  
FINANCIAL OFFICERS ASSOCIATION

Good afternoon Chairman Shatz, Vice Chair Murkwoski, and Members of the Senate Committee on Indian Affairs. I would like to thank you for your time today, as well as the opportunity to talk with all of you about priorities for 2023, the 118th Congress, and beyond. I believe this hearing is especially important now, in the wake of COVID-19, as Indian Country prepares for the new challenges and opportunities that we know will come. NAFOA is a national intertribal organization with one hundred fifty-five (155) Member Tribes in twenty-six (26) states. Our mission is to strengthen tribal finance and grow tribal economies by advocating for bipartisan policy solutions. Our priorities are to ensure parity for tribes with states and to unlock the economic potential of Indian country. We support meaningful tribal tax reform to ensure tribes are treated the same as states elimination of the essential governmental function test, parity for tribal courts in regards to access to adoption tax credits and child support enforcement, and the elimination of dual taxation on tribal lands which stifles economic development. In order to grow unlock the full economic potential of Indian country we ask rights of way, leases, and permits must be approved as swiftly on Indian lands as they are outside of Indian lands.

I started with NAFOA in July of 2021. Over the last two years NAFOA has worked to keep tribal governments informed about the funding opportunities provided under the CARES Act, ARPA, and other statutes like the Inflation Reduction Act (IRA). We have hosted numerous webinars and events with Administration officials from the Departments of the Treasury, Commerce, Interior, and Energy, while also working to educate those officials, many of whom had not worked on tribal issues before. Each tribe is unique with its own array of issues and priorities, and there is no "one size fits all" solution for Indian Country to any problem Indian tribes face. However, there are changes that can be made to increase the ability of tribes to provide for their tribal citizens. History has shown that when the economic potential of Indian tribes is unlocked, the surrounding communities benefit as well.

**The Trust Responsibility**

A trust responsibility exists between the United States federal government and Indian tribes. Beginning with the 1778 Treaty with the Delaware, the United States entered into numerous treaties with Indian tribes and these treaties gave rise to the trust responsibility. The Commerce Clause of the United States Constitution has been interpreted to give the Congress broad authority in regard to Indian tribes.

Under the trust responsibility the federal government has an obligation to uphold tribal sovereignty and the right to self-governance. Consistent with this obligation we urge the Congress to pass legislation to fix current tax regulations and meet the needs of tribes as they exist today. Tribes face structural obstacles arising from our unique history. One is that our lands are held in trust by the federal government and cannot be used as collateral when tribes are seeking financing. In addition, tribes are unable to create revenue through the imposition of property taxes as states do. These unique challenges impact tribal governments as they work to meet the needs of their tribal citizens.

### **Tax Reform**

For many years Indian tribes have called for tax reform to address inequities in the current regulations. Members of both parties, including Vice Chair Murkowski, Senator Cortez Masto, Representative Ron Kind, and the late Representative Don Young all introduced legislation in the last Congress that addressed some or all of Indian country's long-standing priorities with regard to tax reform. I would like to thank the Members for their work and leadership on this legislation and include Representative Gwen Moore who has agreed to take responsibility for this important legislation now that Representative Kind has retired.

Taken together, the Tribal Tax and Investment Reform Act, first introduced by Congressman Ron Kind in 2013 in the 113th Congress and reintroduced in every Congress since, and the Native American Tax Party and Relief introduced by Senator Cortez Masto in the 117th, outline Indian country's tax priorities. While varying slightly, the legislation includes important provisions that will put tribes on equal footing with state governments.

Our requests for tribal tax reform can be summarized as follows: remove the essential governmental function test in the issuance of tax exempt development bonds to allow tribes to issue tax-exempt development bonds on equal footing with states by eliminating the essential government function test; ensure that contributions to charities created by tribal governments are treated the same as contributions to charities created by state and local governments; improve the effectiveness of tribal child support enforcement agencies by creating parity of access to the federal parent locator service and federal tax refund offsets; expand the special needs adoptions credit so it includes adoptions ratified by tribal courts; create an annual \$175 million New Markets Tax Credit for low income tribal communities and for projects that serve or employ tribal members; create parity with state governments by removing the essential governmental function test from the Employee Retirement Income Security Act; codify that possessory interests, permanent improvements (without regard to ownership), and activities under leases or rights-of-way on Indian trust land are not subject to state taxation this is a critical change that has had bipartisan support in the past.

A change that would provide tribes with greater access to capital and is consistent with the above suggestions would be to ensure the New Market Tax Credits can be used in conjunction with the BIA's Indian Loan Guarantee Program. In our work with tribal leaders, banks, and financial advisors, NAFOA hears first-hand the various issues and challenges they run into when trying to help tribes access capital for business or economic projects. Currently, tribes cannot take advantage of the NMTC if going through the Indian Loan Guarantee Program. This oversight would cost Congress nothing to correct but would dramatically increase the ability of smaller tribes to make deals.

### **Economic Development**

The COVID-19 pandemic made it abundantly clear that tribal economies must be diversified in order to be strong. Congress can help unlock the energy potential of Indian country and help tribes diversify their economies and create jobs. Whether renewable or traditional, energy is an important part of tribal economic diversification. As the Biden administration emphasizes the shift to net zero by 2030, tribes are important partners in that shift. Over the past two years, NAFOA has partnered with the Department of Energy and other stakeholders to make sure tribes have the information they need to make decisions regarding energy development and about the various federal funding options that are available. We have seen the strong interest in energy development from Indian Country. I hear it when I speak to tribal leaders at the NAFOA conferences and as I attend other events across Indian country. The webinars NAFOA has hosted on energy development have been some of the best attended over the past two years.

Last year NAFOA testified before the House Energy & Commerce Committee on the Indian Loan Guarantee Program, which is part of the Department of Energy. The LPO program, which now is authorized to loan up to \$20 billion, is an example

of the kind of initiative that solves two problems at once, increasing credit for tribal governments and unlock the energy potential of Indian Country. The 53 million acres of Indian lands are host to 20 percent of Americas conventional energy resources and hold the potential for vast renewable energy resources, all of which are ready to deploy. However, there are still many barriers facing tribal energy project development. The Inflation Reduction Act from last year included important changes that I am hopeful will have a strong impact, though that impact will depend on how the direct pay program and tax credits are implemented when the rules are finalized.

As mentioned above, tribal lands are generally held in trust by the federal government. This unique status creates unique barriers. It also creates barriers that non-tribal energy developers do not encounter. I have repeatedly heard that delays in approvals by the Bureau of Indian Affairs of rights-of-ways, permits, and leases increases costs of tribal projects, delays projects unnecessarily, and sometimes, directs projects onto neighboring non-tribal fee lands. Beyond energy, these delays impact broadband and other infrastructure projects. Congress can improve the efficiency of these processes by putting authority back into the hands of tribal governments where they wish to exercise it. Archaic and stifling rules regarding tribal land use can tie-up the process in red tape and discourage investments. In some cases, BIA requests could take up to two years, which can be the end to of any economic, development project. According to the GAO, the permitting review process under the BIA can take two times as long as the Bureau of Land Management.

Last April, NAFOA joined other intertribal organizations on a Tribal Partner Organizations letter supporting the necessary fix required of the *Carciari* decision. To quote from that letter "It must be acknowledged and understood that at its core, the *Carciari* decision is an attack on the Indian Reorganization Act (IRA) of 1934, which Congress enacted to stop the massive loss of Tribal homelands inflicted by the General Allotment Act of 1887 (Allotment Act)." Twice the House passed strongly bipartisan legislation that would address and fix the inequities arising from the *Carciari* decisions during the 117th. This past week, Senator Tester and Representative Cole again introduced legislation addressing the *Carciari* decision. I thank them both for their leadership on this topic, and I hope that this is the Congress we are able to fix this misguided decision and restore the ability of all tribes to take land into trust.

### **Conclusion**

Congress has an obligation to protect tribal sovereignty and to promote tribal self-determination. NAFOA urges this Congress to take up the above priorities to promote the general welfare of tribes and their citizens by encouraging the economic growth and prosperity of Indian country. Tribal governments have been pushing for tax reform for decades and should not have to wait even longer for these crucial changes. I thank you all again for your time and look forward to answering any questions you might have.

The CHAIRMAN. Thank you very much for your testimony.  
Ms. Zientek, please proceed.

### **STATEMENT OF TESIA ZIENTEK, CITIZEN POTAWATOMI NATION, PRESIDENT, BOARD OF DIRECTORS**

Ms. ZIENTEK. Boozhoo, [phrase in Native tongue.] On behalf of the National Indian Education Association, miigwech for this opportunity to provide testimony to the U.S. Senate Committee on Indian Affairs Oversight Hearing on Native Communities.

In communities across the U.S., many Native students do not have access to high-quality, culture-based education options. Safe and health classrooms that center language and culture are essential to equity in education.

Rooted in treaties, the U.S. Constitution, Federal law and U.S. Supreme Court decisions, the Federal Government has a direct responsibility to tribal nations and their citizens. The trust responsibility is an acknowledgement that the debt paid for by our ancestors through the loss of life and lands is to be paid for in part with education.

The Federal debt to Indian education grew exponentially during the boarding school era, due to the increased loss of our children's lives and the misuse of Indian trust monies to pay it. The Federal trust responsibility includes the obligation to provide parity in access and equal resources to all Native students, regardless of where they receive an education, from the cradle to college and career.

Native-serving early childhood education and Head Start programs are some of the most successful Federal programs that focus directly on Native children. These programs work to address health and education disparities in a holistic, community-based manner, similar to our traditional methods of nurturing.

It is essential that Native communities have the ability to include as much culturally grounded curriculum and alternative assessments for Head Start as well as programs that bridge home to school learning pathways and increase family engagement.

We at NIEA are seeking to reclaim the brilliance of our Native students by ensuring community, family, and mental health are part of the academic wheel. Programs that support social and emotional learning have been effective strategies in closing the achievement gap for Native youth.

If the Federal Government is committed to education, it must actively work to center healing in school communities. One of the largest wounds that exists in Native communities across the Country is the lasting effects of Federal Indian Boarding School policies. Students today still experience intergenerational trauma from what our relatives and ancestors experienced.

This Congress should actively work to support a substantial increase of social and emotional programs for Native youth to address these traumas and also update and pass the Truth in Healing Commission on Indian Boarding School Policy Act, which would ensure students both past and present have their stories heard and their traumas addressed.

Native students succeed the most when their communities are thriving. Keeping families and communities together is essential to the well-being of our Native children and youth.

The Indian Child Welfare Act was enacted to address the alarming number of Indian children being removed from their homes. However, ICWA is currently facing many serious challenges, including the recent Supreme Court case, *Brackeen v. Haaland*. It is essential that Congress work together to strengthen ICWA.

There is a direct link between cultural identity and the cognitive success of students. Due to over a century of assimilative policy, followed by unprecedented loss of Native elders during the COVID-19 pandemic, many of our languages face extinction today.

NIEA is proud that Congress and the Administration are currently working to increase the supports for Native language programs with the passing of Durbin Feeling and the Resource Centers Act, alongside the new Federal plan on Native language revitalization. This should only be the start of a full government commitment to Native languages.

Our Native languages feed our spirits, but our children's bodies must also be fed. Native students and families are twice as likely to experience food insecurity due to high rates of poverty and the rural nature of our communities. Though some schools that serve

Native students have implemented programs to offer traditional foods, there is not currently a Federal program that allows tribal nations to operate their own school lunch programs.

NIEA strongly recommends passage of the Tribal Nutrition Improvement Act, which would not only authorize this, but would make Native students categorically eligible for free school lunches.

Ninety-three percent of Native students attend public schools but still face unique educational needs. The Johnson O'Malley program provides these critical educational resources for after school programs, academic support, and Native cultural enrichments. While JOM is currently supported by many tribes, Congress should uphold tribal sovereignty by authorizing tribal nations to use P.L. 638 contracting to operate JOM programs themselves.

Public schools supporting Native students are also supported by Impact Aid, ensuring all schools have the financial resources they need, regardless of the tax base they have access to. Even though tribal nations do not levy taxes, tribally controlled schools are not eligible for Impact Aid. Furthermore, even though Natives from the lower 48 and Alaska are eligible, Native Hawaiians are not. It should be the job of this Committee to rectify that situation.

Prosperous Native communities can only come from strong, intentional support of Native youth by fully upholding the United States treaty and trust obligations to Native education.

Miigwech for this opportunity to testify. We look forward to working with each of you.

[The prepared statement of Ms. Zientek follows:]

PREPARED STATEMENT OF TESIA ZIENTEK, CITIZEN POTAWATOMI NATION, PRESIDENT,  
BOARD OF DIRECTORS

On behalf of the National Indian Education Association (NIEA), the oldest and most inclusive Native education organization, thank you for this opportunity to provide testimony for the US Senate Committee on Indian Affairs Oversight Hearing on Native Communities. In communities across the US, many Native students do not have access to high-quality culture-based education options that would provide them opportunities to thrive. Safe and healthy classrooms that center language and culture are essential to equity in education. From early childhood through postsecondary education, Native students must have access to programs and resources that provide the best chance at success.

NIEA was founded to advance comprehensive, culture-based educational opportunities for American Indians, Alaska Natives, and Native Hawaiians, representing Native students, educators, families, communities, and Tribal Nations. NIEA advocates for educational excellence by working to ensure that students receive equal access to high-quality academic and cultural education.

Rooted in treaties between Tribal Nations and the federal government, the U.S. Constitution, federal law, and U.S. Supreme Court decisions, the federal government has a direct fiduciary responsibility to Tribal Nations and their citizens. The trust and treaty responsibility are an acknowledgement that the debt paid for by our ancestors through the loss of life and land, is to be paid for, in part, with education.

### **The Federal Trust Responsibility**

In December 2018, the U.S. Commission on Civil Rights released a report titled, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans*. This report noted that many federal programs designed to support Native communities and uphold the federal trust responsibility are chronically underfunded.<sup>1</sup> Full fund-

<sup>1</sup>*Broken Promises Report*, Letter of Transmittal to the President, <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.



ing for Native education is pivotal to Native governance and community development leading to empowered Native youth thriving in the classroom and beyond.

Originally conceived to acculturate and assimilate Natives, Indian education continues to be a pillar of federal policy. Modern Indian education programming instead uplifts tribal sovereignty, by including Native history, culture, and language in curricula for tribally controlled schools (TCSs), Bureau of Indian Education (BIE) operated schools, and public schools. It is uniquely important that federal support for Native education continue to strengthen self-governance and Tribal Nations' ability to address their communities' unique need given the century long federal Indian boarding school policy era. The federal debt to Indian education grew exponentially during this period, due to the increased loss of our children's lives and the misuse of Indian trust monies to pay for boarding school operations.<sup>2</sup> The initial Federal Indian Boarding School Initiative's investigation has already found over 500 deaths which took place at these schools and expects the numbers to rise as the investigation continues.<sup>3</sup>

The Department of the Interior, succeeding the Department of War, has served as the center for educating Natives in the US for almost two centuries. Today however, 93 percent of Native students do not attend BIE-funded schools.<sup>4</sup> The federal trust responsibility to includes the obligation to provide parity in access and equal resources to all Native students, regardless of where they attend school, encompassing the Office of Indian Education (OIE) at the Department of Education (ED), Administration for Native Americans (ANA) and Substance Abuse and Mental Health Services Administration (SAMHSA) at the Department of Health and Human Services, the National Telecommunications and Information Administration (NTIA), and the Department of Agriculture (USDA) alongside the Bureau of Indian Education at the Department of the Interior, Congress, and the rest of the federal government.

#### **Early Childhood Education**

Native-serving Early Childhood Education (ECE) and Head Start programs are some of the most successful federal programs that focus directly on the unique circumstances faced by Native children. These programs work to address health and education disparities as well as family and community needs. By supporting children from the cradle, these programs are similar to our traditional educational practices by including our youngest relatives as a central focus for community-based work. A strong ECE foundation with community support and resources sets families on a trajectory that promotes foundational knowledge and increases the capacity to be engaged throughout their child's educational experience. It is essential that Native communities have the ability to include as much culturally-grounded and community oriented curriculum and alternative assessments for Head Start. This includes creating and integrating culture and language standards and assessments that align with tribal knowledge and understandings. NIEA calls for increased access to birth to Pre-K programs that bridge home-to-school learning pathways, and promote family engagement in literacy, nutrition and growth. In addition, these programs should nurture culture and language learning, and promote school entry and social skills development.

#### **Social Emotional Learning**

NIEA promotes a framework for Native education that seeks to reclaim the brilliance of our Native students by ensuring community, family, and mental health are part of the academic wheel. This approach aims to close the gaps that fail to address the mental, spiritual, physical, and emotional needs of our Native students.

Programs that support Social and Emotional Learning (SEL), including Native languages and cultural programming, have been effective strategies in closing the achievement gap for Native youth and have been rehabilitative. SEL strategies have been proven effective in mitigating the effects of complex trauma and improving academic achievement. More resources must be given in remote areas, as well as hands-on implementation at the school and community levels. This includes mental health specialists. If the federal government is committed to high-quality education, it must actively work to alleviate trauma, embrace greater equity, and create healing in school communities.

<sup>2</sup>Department of the Interior, Bureau of Indian Affairs, 2022, Federal Indian Boarding School Initiative Investigative Report, 44. [https://www.bia.gov/sites/default/files/dup/inline-files/bsi\\_investigative\\_report\\_may\\_2022\\_508.pdf](https://www.bia.gov/sites/default/files/dup/inline-files/bsi_investigative_report_may_2022_508.pdf).

<sup>3</sup>*Ibid.*, 9.

<sup>4</sup>National Center for Education Statistics (NCES), 2021, Table 203.50, [https://nces.ed.gov/programs/digest/d21/tables/dt21\\_203.50.asp?current=yes](https://nces.ed.gov/programs/digest/d21/tables/dt21_203.50.asp?current=yes).

One of the largest wounds that exists in Native communities across the country is the lasting effects of federal Indian Boarding School policies. Students today still experience intergenerational trauma from the harms many of their relatives and ancestors experienced. The Truth and Healing Commission on Indian Boarding School Policy Act would establish a comprehensive examination of the Indian boarding school legacy and would ensure Native students, both past and present, have their stories heard and their traumas addressed. We urge Congress to pass this legislation and thoroughly own up to the negative effects of the boarding school era in Indian Country, including those effects that directly impact our students in the classroom today. This must also include culturally appropriate support services for all Native students.

### **Indian Child Welfare**

Native students succeed the most when their communities are thriving. Keeping families and communities together is essential to the mental and cultural wellbeing of our Native children and youth. The Indian Child Welfare Act (ICWA) was enacted in 1978 to address the alarmingly high number of Indian children being removed from their homes by both public and private agencies.<sup>5</sup> Before ICWA (1978), approximately 80 percent of Native families living on reservations lost at least one child to the foster care system, according to data compiled by the National Indian Child Welfare Association.<sup>6</sup> However, ICWA is currently facing many serious challenges, including the recent Supreme Court Case *Brackeen v. Haaland*. Tribal Nations and Congress must work together to ensure that colleagues across the federal government are educated on the benefits of ICWA, its relationship to good child welfare practices, and opportunities to strengthen ICWA implementation and protect the law at the federal, state, and local levels.

### **Native Languages**

There is a direct link between cultural identity and the cognitive success of students. For Natives across the country, linguistic and cultural identity are intrinsically linked. Due to over a century of assimilative policy, followed by unprecedented loss of Native elders during the COVID-19 pandemic, cultural heritage, ceremonies, religions, and languages face extinction today. It is critical to our communities that fight, harder than ever, to protect our Native languages. NIEA is proud that Congress and the administration are currently working to increase the supports for Native language programs, with the passing for the Durbin Feeling Native Languages Act and the Native American Language Resource Centers Act and the announcement of a 10-year National Plan on Native Language Revitalization. This should only be the start of a full federal government commitment to Native language revitalization. Native culture and languages are within the foundation of the United States, alongside the land we have known for generations.

As we work together to protect our unique heritage, there must be supports for Teachers, principals, school leaders, and staff that serve Native youth to meet and advance the unique cultural, linguistic, and educational needs of our students. Further, our Native language programs are in need of larger, sweeping financial support to sustain their work. Many of the grants which fund language work are housed across various agencies, the Bureau of Indian Education, the Department of Education, the Office of Indian Economic Development, and the Administration for Native Americans. Congress should work with the interagency Native Languages Workgroup to maximize the federal government's efforts in promoting Native Languages.

### **Child Nutrition**

Native students and families are nearly twice as likely to experience food insecurity than white communities due to high rates of poverty and the rural/remote nature of Native communities, increasing the likelihood of food deserts and significantly higher food costs. This means Native students participate in school nutrition programs and services at rates disproportionately higher than those of their peers. Though some schools which serve Native students have implemented programs to offer traditional foods within a wider culture-based education approach, there is not currently federal program which allows Tribal Nations and tribally-controlled schools to operate their own school lunch programs or other school meal programs. NIEA strongly recommends passage of the Tribal Nutrition Improvement Act which

<sup>15</sup> National Indian Child Welfare Association, The Indian Child Welfare Act: A Family's Guide, 1. <https://www.nicwa.org/wp-content/uploads/2020/10/Family-Guide-to-ICWA-2018.pdf>

<sup>16</sup> National Indian Child Welfare Association, Disproportionality in Child Welfare Fact Sheet, 2021. [https://www.nicwa.org/wp-content/uploads/2021/12/NICWA\\_11\\_2021-Disproportionality-Fact-Sheet.pdf](https://www.nicwa.org/wp-content/uploads/2021/12/NICWA_11_2021-Disproportionality-Fact-Sheet.pdf).

would not only provide a pilot program for tribally controlled school meals, but would make Native students at BIE-funded schools categorically eligible for free school lunches.

### **Bureau of Indian Education**

School lunch is not the only major inequity for BIE-funded schools. There are only two educational systems for which the federal government is directly responsible: Department of Defense (DOD) schools and federally operated and federally funded tribal schools. BIE schools, however, lag far behind DOD schools in funding, school construction, and student achievement. While DOD schools are being renovated and remodeled, schools within the BIE system are woefully outdated and, in some cases, dangerous for students and staff. As one of the most vulnerable populations, Native students should have equal access to resources and opportunities. Congress should fulfill its responsibility to Native students by remedying the disparities between these two federally operated school systems.

The Department of Interior has estimated that more than \$639 million would be needed to fix only the most pressing deferred maintenance issues for BIE schools. Beyond this it will take over an estimated \$1 billion to cover all the associated costs to bring BIE schools up to a quality which would be considered adequate for the federal education trust responsibility. Better school buildings lead to improved conditions for learning, academic outcomes, and student achievement. These accounts must also authorize construction for educator housing. The rural nature of tribal communities makes it difficult to attract high-quality educators, something which can easily be rectified by offering housing. Education construction for tribally controlled schools provides long-term investments for better education objectives.

The other 93 percent of Native students attend public schools, but are still in face unique educational needs.<sup>7</sup> The Johnson O'Malley (JOM) program provides these critical educational resources for after school programs, academic support, dropout prevention, funding for college access testing, the purchase of school supplies, and Native cultural and language enrichment. JOM is supported by its parent committees which determine the needs of Native students in their communities. However, while currently supported by many tribes, the federal government needs to follow the thread of local tribal control and allow Tribal Nations to use P.L. 638 contracting to operate JOM programs themselves. In this vein, they should also be able to determine their own eligibility for their programs.

### **Impact Aid**

The Department of Education (ED) operates a number of essential programs for educational success for Native students. Some are the same as programs non-Native students participate in, such as Impact Aid, a key program with a goal of ensuring all schools have the financial resources they need, regardless of the tax base they have access to. Though Native students, as Federally Impacted Indian Children, represent as disproportionate number of those eligible for Impact Aid, the current law still leaves many Native children behind. NIEA advocates for expanding the Impact Aid Program to include Tribally Controlled Schools. These schools are in a unique situation as they are run by Tribal Nations, who do not have the same access to a traditional tax base due to complications in the federal tax code. Therefore, they too should be eligible to receive Impact Aid. Further, though American Indians and Alaska Natives (AI/ANs) are eligible as federally Impacted Indian children, Native Hawaiians are not. Even when these are students living on federal trust lands, known as Hawaiian Homesteads, the same as other AI/ANs in the lower 48 states and Alaska. We urge Congress to rectify these inequities.

### **Conclusion**

Prosperous Native communities can only come from strong, intentional support of Native youth by fully upholding the United States treaty and trust obligations to Native education. It is the responsibility of this committee and the entire federal government to federal policies that truly support tribal education sovereignty and provide direct, full funding of all education programs serving Native students so that Tribal Nations and citizens can forge a brighter future.

Thank you for the opportunity to testify before this committee's Oversight Hearing on Native Communities. We look forward to working with each of you on a regular basis to ensure that our children have access to the high-quality, culturally-grounded education our ancestors paid for in perpetuity.

<sup>7</sup>National Center for Education Statistics (NCES), 2021, Table 203.50, [https://nces.ed.gov/programs/digest/d21/tables/dt21\\_203.50.asp?current=yes](https://nces.ed.gov/programs/digest/d21/tables/dt21_203.50.asp?current=yes).

The CHAIRMAN. Thank you very much to all of the testifiers. I will now turn to the Vice Chair, Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman. I join you in thanks and appreciation.

I think this was a good overview of these areas that are so important, everything from education to economy to what is happening with agriculture. Clearly, implementation of infrastructure, housing, these priorities have been well articulated. I appreciate what you have shared with the Committee.

Ms. Borromeo, I want to drill down on some of the specifics, because you were very succinct in providing us four suggestions. What I particularly like is I think they are imminently achievable.

Certainly things like being able to submit compliance reports by utilizing mail rather than online, which we know in far too many of our Alaska Native communities, and in so many parts of Indian Country, broadband is still not where we want it to be despite our good infrastructure bill. Then reporting annually rather than quarterly, when we acknowledge just what it takes to meet these compliance requirements. So I thank you for that.

You noted the priority for making consortium applications eligible. I think you have hit on something that is really key to us in recognizing that AFN and other tribal consortia make use of economies of scale to ensure that some of the smallest villages which oftentimes have absolutely the highest need can benefit.

But they simply lack that capacity, the resources. You shared how you think, for instance, in reporting annually rather than quarterly, that that is a demonstrated benefit.

Can you expand a little bit more for the Committee on why the Federal Government really needs to focus on recognizing this power of tribal designation in the administration of some of these infrastructure programs?

Ms. BORROMEO. Quyanaa for the question, Vice Chairman Murkowski. The basic tenet and central to Federal Indian is recognizing the inherent tribal self-governance and Native self-determination powers of our tribes.

When they make a designation as to who or how they would like to receive a particular Federal benefit, the Federal Government should, absent some very serious concerns, for lack of a better word, allow that tribe to receive that benefit in the manner that it sees fit.

A consortium application is a smart way of making sure that all of the resources that this Committee has worked so hard to achieve and see in our communities will actually get there. As long as the organization, whether it be AFN or any throughout Indian Country or in the islands, is administering the grant program correctly, the tribe should be able to utilize that as an opportunity to receive the benefit.

Having implemented these programs now for two and a half years, I can assure you that the audit requirements are stringent, that the Federal program officers are on the ball and doing their job. We have regular check-ins with ours.

Also, though, that broadband is a significant portion of a grant application and compliance as well. It takes me an AFN's Federal program officer for the NTIA tribal broadband connectivity pro-

gram about an hour and a half to work on certain aspects of our compliance. That is two attorneys with high-speed broadband.

I can't imagine if Josh Standing Horse, who is our FPO for NTIA was having to do this with 74 tribes spread out from Utqiagvik to Unalaska, all the way down to Saxman. It would be impossible. It would be an administrative burden that would be too heavy a load to bear.

Senator MURKOWSKI. Thank you for that. I so appreciate gleaning from what AFN and others have done some of the lessons learned here. We need to be paying attention to that.

I want to turn to you quickly, Mr. Lozano. We have heard that we are seeing some delays in BIA Realty Service. It is impacting home construction projects on some of our Native allotments in rural Alaska and parts of the State that are just desperate for housing.

Where can Federal agencies like HUD, NBIA, look to streamline their realty process? Is it just in simplifying the approval process? What needs to be done here?

Mr. LOZANO. Thank you for the question, Senator Murkowski. Also before I answer that question, I would like to thank Chairman Schatz, and Vice Chair Murkowski for your support and constant champion work for NAHASDA. We truly appreciate that, and all the hard work you have done, and other Committee members as well.

As you know, BIA is still a slow process. Senate Bill 70, I think, is a perfect solution, a fix that came out of the Committee that will help BIA process and put pressure on them to process any request sooner. Anything along that nature. I think by making the BIA be more transparent with tribes, homebuyers and lenders about where they are in the process will be a help as well, as transparency always increases accountability.

Senator MURKOWSKI. So transparency and SB 70. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.  
Senator Cortez Masto.

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

Senator CORTEZ MASTO. Thank you, Mr. Chairman, and Ranking Member. I too agree, this is a great panel and a great start for this Congress. Thank you all for being here. An important conversation.

Mr. Frias, first of all, let me say thank you, thank you for highlighting the piece of legislation that I have introduced. I want to talk a little bit about this, because this legislation to me was something that sitting down with the tribes just in Nevada we had focused on how we could look at and really address economic development for so many of our tribes. Not just in Nevada, but across the Country, by looking at the tax code.

So one of the things I am interested in, Mr. Frias, is this restriction because of the language "essential government function." In particular, if you don't mind, I would love for you to discuss the importance of repealing that language, essential government function test, for tribes.

According to Brookings, who has taken a look at this, State governments issue a total of \$47 billion every year in non-taxable municipal bonds for infrastructure. Tribes, because of this restriction, issue less than \$90 million a year.

So everyone on the Committee knows it is an issue. Would you touch on that a little bit and how it would make a difference, just by repealing this, it would be for the tribes and their economic development?

Mr. FRIAS. Thank you, Senator, for that question. Eliminating the essential governmental function test, which is an arbitrary test that prevents tribes from using tax-exempt bonds for the same types of activities that State and local governments use them for, it would allow us to use general tax-exempt bonds for convention facilities, for hotels, for other things, golf courses.

All we are really asking for when we look at this is for parity for tribal governments, where you treat it the same as State governments. That greater flexibility promotes tribal self-determination, which is completely in line with the trust responsibility.

It is a big hurdle for tribal governments, and I think what you highlight is the amount which these tax-exempt bonds are used by State and local governments, we can see a much greater uptake from tribal governments, if we look, for example, at tribal economic development bonds, which didn't have this restriction in it. When it was first put out as a pilot program, the cap was very quickly reached by tribes.

So clearly, there is a need, and a desire on the part of tribes for this sort of financing. Thank you.

Senator CORTEZ MASTO. Thank you.

You also talked about new market tax credits. I want to touch on this, because another part of the Tribal Tax Parity bill that I have introduced provides a tribal set-aside of \$175 million for the new markets tax credit. Historically, we have seen a very low share of the tax credit allocation going to tribal lands.

What are the barriers for tribal participation in the new markets tax credit program? How do you think a direct tribal set-aside would help?

Mr. FRIAS. I really appreciate that you included that in your legislation. I think it is really important.

Since 2018, there have been no allocations from the CDFI Fund to entities dedicated 100 percent to working in Indian Country. Numerous stakeholders that I have talked to attribute this to a lack of understanding of Indian Country on the part of the CDFI Fund within the CDFI Fund itself.

A set-aside would ensure that the funds are going to entities that work in Indian Country, have a familiarity with Indian Country, and understand the unique status of tribes, rather than entities which just express an interest in working in Indian Country but have no experience, don't understand the particularities, the importance of tribal law, the ways in which tribal lands are held, which can vary. It is very different in Alaska than it is down here in the lower 48.

So a set-aside would make new market tax credits much more available to Indian Country.

Senator CORTEZ MASTO. I appreciate that, thank you. I would offer to my colleagues to join me; it is the Native American Tax Parity and Relief Act. We have all been talking about the needs for our tribal communities and the resources that are essential.

I think part of this is giving them parity to develop their own resources through economic development. Parity with the States, parity with local governments to be able to do so. That gives them the autonomy that we are talking about, trying to provide essential resources and everything that we have just talked about here, to at least change the tax code to give them some sort of parity in this space as well.

Thank you all for being here. I appreciate it, Mr. Chairman.

The CHAIRMAN. Thank you very much. Senator Mullin?

**STATEMENT OF HON. MARKWAYNE MULLIN,  
U.S. SENATOR FROM OKLAHOMA**

Senator MULLIN. Mr. Chairman, thank you so much. Sorry if I disturbed everybody a while ago, but I really stuck my foot in my mouth back there and everybody was laughing at me. I am sure no one has ever done that before, but that was truly me.

Ms. Zientek, thank you so much for being here. As a fellow Oklahoman, I just want to tell you I appreciate it your rich history in serving our communities, Potawatomi, the Citizens, I think you guys had 38,000 enrollees, and now working all the way as president, I can't tell you how much I appreciate it.

Working with education the way that you do, your heart, your passion for it, you are the expert of this. I think Indian Country is very blessed to have you representing our kids and our educators. So thank you.

With that being said, I would like you to take an opportunity to just explain the unique challenges that you have with education and Indian Country when it comes to funding and when it comes to especially Native languages. It is something that is near and dear to our heart. I think Cherokee Nation has done a phenomenal job on immersion.

My first trip with Don Young was to Alaska, and we went to different towns, working with different entities, trying to figure out how to keep us from losing our Native languages. Because there is no place in the Country where we are literally losing Native languages faster than Alaska right now.

It is a challenge, because that is our history, that is our heritage, that is how we tell our stories. Can you speak a little bit that?

Ms. ZIENTEK. Absolutely, miigwech for that opportunity and for those words.

It is absolutely a huge issue within indigenous communities to re-learn or reclaim our Native language, especially for dispersed tribes like the Citizen Potawatomi Nation, the Cherokee Nation of Oklahoma certainly leading the way in that effort. I had an opportunity yesterday evening to meet Ms. Feeling, the wife of the late Mr. Durbin Feeling. Very grateful for the Durbin Feeling and the NALRC legislation that has been recently passed.

I think the challenges are certainly reaching our tribal citizens throughout our Nation and the world. These two laws are great first steps. I am really eager to see how Durbin Feeling will do that

assessment to know where programs are residing and what is being successful so we can model those throughout the rest of Indian Country.

So of course more funding in that area, and continued funding in that area is helpful. Then the sense we are bringing together those resources and making those relationships that again we can learn from each other, we can collaborate.

And then continuing to bring these experts to the table, so that we can make sure to follow their lead, these language experts, these elders, these people who have dedicated their lives to language learning. They are the ones; we should be following their lead.

Senator MULLIN. Right. Thank you so much. I appreciate that.

Ms. Lawrence, do you believe that 638 contracting can apply to USDA's FSA inspections for tribal beef processing facilities?

Ms. LAWRENCE. I think it could, definitely. Anything that allows our tribal communities to handle their business would be super helpful. Just seeing all the opportunities that come forward with self-governance and taking a look at what is really needed I think would help shape what is actually needed in the community. So yes, I see opportunity there for sure.

Senator MULLIN. So if tribes could perform their own inspections, what specifically do you think Congress needs to do in the next Farm Bill to help promote this?

Ms. LAWRENCE. That specifically?

Senator MULLIN. Yes. Right now we have Cherokee Nation, we have the Quapaws, Creek, but those are the only three that are doing it, right? Four? Which one am I missing? Do you know? This is what happens when you don't read your questions, you are kind of going off the cuff here.

But there is a good opportunity, because we don't have enough inspectors anyway. It is very difficult, it is prohibitive. It is a unique opportunity where tribes could help fill that gap. Since we have to do a Farm Bill this year, we have to, I see it as a great opportunity for us to do it.

Maybe that is an opportunity that, Ms. Lawrence, you and I and whoever else would like to work on it with us could come up with specific language to help put in there to advance true sovereignty.

Ms. LAWRENCE. Absolutely.

Senator MULLIN. And economic growth in our back yard.

Ms. LAWRENCE. Yes. We are very interested in that and would love to work with you on coming up with some language to include that in the Farm Bill.

We are actually going to be having a fly-in at the end of this month to all four of those facilities in Oklahoma. I welcome you to come along. We will be working on that.

Senator MULLIN. At the end of this month.

Ms. LAWRENCE. Yes.

Senator MULLIN. Thanks for the notice. Appreciate that. Maybe we can work on that. We will see.

Let's see if my staff can be there. We would like to participate in it. If I can't personally, I want to make sure my team is part of it. Thank you.

Ms. LAWRENCE. Thank you.



The CHAIRMAN. Thank you, Senator Mullin. Thanks to all the testifiers.

Just a couple of comments before we move on. It seems to me there is consensus on the Committee that we need to collect our thoughts and our proposals, and I mean on the Committee as well as the expert witnesses, and come up with some discrete proposals for the Farm Bill. So let's do that together with staff.

Then in the category of grants implementation, I think there is some work to do. I am going to start my question on grants with Chair Lindsey. Native Hawaiians are now eligible for more money than ever, but it is the problem of knowing where to look and how to apply. You just bought yourself something that you have to execute and may make you subject to audit.

Is there any thought for the Office of Hawaiian Affairs to serve as a resource to other Native Hawaiian organizations to identify these grant opportunities?

Ms. LINDSEY. Thank you, Senator, for asking the question and prompting supportive and collaborative strategies and solutions. I offer three points for the Committee's consideration.

First, promote a community-based mindset of collaborative versus competitive funding. This can look like facilitating A, organizations with more Federal funding process and reporting experiences, [phrase in Native tongue], or support less experienced organizations to meet the front office, which is the prospecting, alignment, collaboration, application writing, implementation reporting.

And the back office, the responsibilities and accountabilities. For example, the operations accounting reporting, valuation, human resources, payroll, and what we describe as [phrase in Native tongue] or the older sibling or [phrase in Native tongue], the younger sibling relationship.

Or B, the creation and/or funding of shared services of organizations or function set can provide not only application of front office and back-office grant-related supports.

Second, federally-funded technical assistance, contracts, via institutions of higher learning that specifically require recipients to assist community organizations with the Federal grant opportunities supports. For example, prospecting, alignment, collaboration, application writing, implementation reporting.

Communities are often frustrated by colleges or universities who have faculty and/or staff writing the grants that do not support surrounding community-based organizations and programs. OHA could facilitate community-based relationships and collaborations with the University of Hawaii system. We have three campuses and seven community colleges and community programming.

Third, leverage OHA's State agency status as a conduit for Federal funding to reach Native Hawaiian communities more directly via subcontracting and/or sub-granting processes. Utilization of OHA as a conduit could mitigate duplicative or minimize administrative or overhead costs across Federal grantor sources.

The CHAIRMAN. Thank you very much.

I am going to get to, between the Inflation Reduction Act, some of the COVID relief funds, and of course the IIJA, there is a lot of new money for Native people out there. Congress decided to make Native communities, to make tribes and Alaska Natives and

Native Hawaiians eligible, right? But a lot of times, we used an existing statutory structure and just added who was eligible.

The problem is, there is an old saying in Hawaii, that when you are talking to certain people in the government, they say, I don't care who wrote the law, I write the rules. So we are left with this problem of sort of the legacy rules and architecture and processes, so that it is fine that you are technically eligible. But the way these processes roll out are basically a series of roadblocks.

I am going to ask this question of all of you for the record, because I think it does apply to everybody in every category, ag, housing, finance.

I am going to start with Mr. Frias. Could you give me one example of the extent to which Congress' explicit intent to make Native communities eligible is being thwarted by people who in good faith were working over in Treasury and now are being told, accommodate the tribes, and they don't even know how to do that?

I think what we need is a lot of information about that. There are a lot of knots to untangle. There is a lot of troubleshooting to do. But we need to know where this is happening, so we can exercise our oversight responsibly and frankly, give the information to the White House, to either Mitch Landrieu or John Podesta or whoever is point person on implementing these laws, so they can go into those agencies, burrow in and say, Congress made a law here, you have to not make it impossible for them to participate.

Sorry for the long question. Go ahead.

Mr. FRIAS. Thank you, Chairman Schatz, for the question. One would be the example I gave of confusion that has been created on the loan programs option at the Department of Energy. I don't believe it is in the statute, but there is confusion about whether tribes can access this money, \$20 billion in the IRA, if they are receiving other Federal funding. I don't believe that was at all your intent, but when the regulations are written in, it comes down to there is this restriction.

Another example would be related to the Greenhouse Gas Reduction Fund, another large pot of money specifically mentioning CDFIs. But CDFIs won't be able to, under the guidance that was recently released, they are going to put out two, I believe, large grants. They are going to be much larger than the CDFIs, the Native CDFIs are going to be able to handle. Whereas clearly, the intention was to spread this money around and get it into a lot of local entities that are closer to the problem.

Those are good examples of how Congress has expressed their intent and then when the regulations are drafted and they get out there, there is confusion and the intent of Congress is not expressed.

The CHAIRMAN. Two things. All of you, please get back to us with examples of this. I don't want this to be an abstraction. I want us to have a list of problems to troubleshoot on your behalf, and I want to be able to hand over a list to Mitch Landrieu and John Podesta and the Office of Legislative Affairs at the White House so that they can go in there.

I don't think that it is in their interests to have Congress' intent or President Biden's intent thwarted. It is just that people have been doing the same thing for a very long time. They are now being

given a new mandate to accommodate. And they don't even know how they would go about doing that.

So we really need this information as quickly as possible. I am quite sure we can follow up on a bipartisan basis.

Senator Daines.

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

Senator DAINES. Chairman Schatz, Vice Chair Murkowski, thank you.

I want to first welcome a fellow Montanan, Keri Jo Lawrence, welcome from Billings, Executive Director of the Intertribal Ag Council. My mom and dad grew up in Billings, my dad married the girl next door from Billings and my dad is an old Billings Senior High Bronc. So I feel like we are right back home today.

It is also great to have a strong voice for agriculture, tribes, those that are driving our number one economic driver in Montana, which is ag. So thank you.

My top priorities for this Congress are some of the top issues facing Montanans, it is increasing public safety, bolstering tribal sovereignty, and passing the last Indian water rights settlement in the State. I have helped lead the effort to finalize longstanding water compacts, and I look forward to getting the job done now for the Fort Belknap community.

The CSKT compact took years, years of work. In fact, decades of work, and a lot of negotiation. Fort Belknap will likewise take a lot of negotiation. It will be long nights to ensure that the tribe, the counties, the local landowners, water users, and the governor of Montana can stand side by side in support.

We must stay focused on the mission and pass a well-crafted bill that makes good on our promises to Indian Country and Montana as a whole. I look forward to taking that settlement to the next level.

Public safety has been a top priority of mine for years. Yet I continue to hear the same concerns from our tribes. I have written countless letters, nothing changes. The BIA expects us to just provide them with more funding and the tribes see no difference on the ground. We need to empower our tribes, give them the raise, let them control their law enforcement instead of throwing money at BIA and just hoping it might stick.

Putting Washington, D.C. in charge of public safety is the last thing we should be doing. Today, Congress is voting on a massive bipartisan rebuke, a repudiation, against D.C.'s far left pro-crime agenda.

I know the leaders back in Indian Country, in Montana, see clearly the solutions are not here in Washington, D.C. They are in Browning, they are in Crow Agency, they are in Poplar, they are in Lame Deer, they are in Harlem.

I look forward to continuing to work with Montana tribes to craft a bill that will finally put our tribes first. As sovereign nations, they should be first in defining how they address the issues of crime and enforcement of the law.

Ms. Lawrence, I want to thank you again for coming to discuss important tribal issues and related to agriculture. It is our top eco-

conomic driver in Montana. This Farm Bill is a chance to increase tribal participation in programs and continue to bolster food security and economic prosperity in tribal communities.

Likewise, extend the good neighbor authority and supporting active forest management and public grazing will increase forest and wildlife health and better protect our communities from catastrophic wildfire.

Ms. Lawrence, what actions should Congress be taking to support Montana and other ag producing tribes in this year's Farm Bill?

Ms. LAWRENCE. Thank you for the question. First of all, I think authorizing the 638 authorities, compacting and contracting over feeding programs. I think in Indian Country, including SNAP, I think that would be an amazing step.

Congress can eliminate the dual use prohibition that currently keeps feeding program participants from accessing both programs in the same month for FDPIR. FDPIR is the only feeding program where there is a dual use prohibition. Authorize the Buy Indian Act that prioritizes purchasing food in Indian Country for their feeding programs for tribal producers. That would be a strong economic driver.

Authorize greater flexibilities in vendor requirements, so we can ensure tribal producers can provide food to their communities while being fairly compensated for the products they are providing. Also extend Indian hiring preferences to USDA, so that Native perspectives and lived experience are part of the Federal program delivery for all those programs.

And of course, the consultation is definitely certain, it is needed so much. Substantive tribal input is critical. I think that can be accomplished by authorizing tribes to identify their resource concerns on tribal lands, for example. So delineating tribal set-asides within specific programs so it is really reaching tribal lands and tribal folks. Those are some first steps, for sure.

Senator DAINES. That is a lot of great input. Thank you. I appreciate it.

As I wrap up, Ms. Holsey, a quick question. This gets back to the issue of maintaining your own police and public safety and sovereign territory. Ms. Holsey, how do we embolden tribes to get BIA and D.C. out of the way?

Ms. HOLSEY. Thank you, Senator Daines, for that question. I know exceedingly there are multiple challenges, especially with tribal police forces, especially many like my own that are cross deputized. We seek parity also to stabilize. Currently, we have exceeding challenges with retaining our police force, because tribal nations are not eligible for pension plans and other things that would be in parallel to other police officers. So it is a revolving door.

I know there is a tribal parity bill, and we are seeking support for that. It would be exceedingly important to stabilize that. For our tribal nation we probably, we are a force of seven. Having to retrain and retain consistently creates significant barriers in our tribal nations. I know we are one of 11 tribal nations in the State of Wisconsin. In my region, there are 35 tribal nations in the Midwest. I know that this has exceedingly been one of those issues.

So we are seeing that parity.

Senator DAINES. Great. Ms. Holsey, thank you.  
 Chairman Schatz, I appreciate it.  
 The CHAIRMAN. Senator Luján.

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

Senator LUJÁN. Thank you, Mr. Chairman.

One of my top priorities this Congress is advancing the Native American Voting Rights Act. I welcome everyone to come to the table to make this possible.

Ms. Borrromeo, yes or no, does the Alaska Federation of Natives agree that passage and enactment of the Native American Voting Rights Act should be a priority for Congress?

Ms. BORROMEIO. Thank you for the question, Senator, and yes, we do. It is one of our priorities. Our number one priority, though, is implementation of this once-in-a-lifetime investment.

Senator LUJÁN. Why is it important?

Ms. BORROMEIO. Which one, sir?

Senator LUJÁN. The Native American Voting Rights Act.

Ms. BORROMEIO. Thank you. We have a long, detailed history of discrimination and disenfranchisement when it comes to making sure that we receive equitable access to the ballot box. Several of the provisions in NAVRA, we move those barriers and allow our people to exercise our right to vote on par with the rest of the Country.

We have been working very closely with both the Native American Rights Fund, National Congress of American Indians, and then of course internally in Alaska with most of our tribes and Native corporations and tribal non-profits to make sure that the provisions are tailored to Alaska, and that they work for Alaska.

So we would like to see that piece of legislation move as well this Congress.

Senator LUJÁN. I appreciate that. I also am grateful that when we worked with you and with others to help build this, we were blessed that it initially received bipartisan support as well. I am hopeful we can find a path forward to get this done.

Another one of my priorities is ensuring that every tribe, especially those without broadband, can access funding Congress provides for that purpose, including the NTIA Tribal Broadband Connectivity Fund. I am focused on providing digital equity for tribes. One part of your testimony stood out to me. Yes or no, is it true that applications for NTIA's Tribal Broadband funds can only be submitted electronically?

Ms. BORROMEIO. Thank you for the question, Senator. It is true that originally that was their intent. They did come around at the end of round one and we are accepting some submissions via mail. But it was very late in the process.

Where we did see the bigger hangup with that, Senator, is on the Treasury's Capital Projects Fund side, which one of the stated purposes is to advance broadband to underserved areas, and you could only apply for the allocation, which was a formula allocation, non-competitive, through the internet.

Senator LUJÁN. I appreciate that, Madam Vice Chair. That is where my head is. That is incredible. I am hoping everyone watch-

ing can fix what needs to be fixed. I appreciate what NTIA has done, but more must be done.

Thank you for that powerful testimony as well. How would you recommend NTIA change their process so that areas with zero connectivity can still apply for broadband funds, even with this change, or Treasury Department?

Ms. BORROMEO. Thank you again for that question, Senator Luján. Honestly, the recommendation is to keep doing what they are doing. NTIA has been one of the more responsive agencies out there. When AFN comes and highlights a hurdle, they have worked diligently to remove that hurdle. Of course, we wish they would move a little bit quicker in issuing some of the programs, digital equity being one of them.

But we also understand that the administration of these funds is a Herculean task, and that they are doing the best they can.

Where I always point members of Congress and other administrative officials is over to the Department of Treasury. Fatima Abbas has been elevated to a permanent office in the Office of Native American Recovery, and she is a superstar. If we could clone her and send her out into the rest of the agencies, I am confident that all of the laws, as you enacted them and the spirit in which they were enacted, would be implemented in no time flat.

Senator LUJÁN. I agree with your assessment. I appreciate that testimony.

Mr. Frias, with your testimony you talked about easements and approvals as it pertains to infrastructure. Mr. Frias, yes or no, would you support legislation to require the Bureau of Indian Affairs to maintain a national data base of all rights of way on tribal lands, to allow tribes to access records from their homelands?

Mr. FRIAS. Thank you, Senator Luján. Although I live in Maryland now, it is always a pleasure to see my New Mexico delegation.

Yes, absolutely, and I would hope the legislation would also return authority to tribal governments to approve rights-of-way, leases, and permits on their own lands.

Senator LUJÁN. I appreciate that. Mr. Chairman, Madam Vice Chair, I know we have talked about this quite a bit. But I am certainly hopeful that we can find a path forward.

I often share the story of a bridge in Manuelito on the Navajo Nation where there was this terrific storm that came on. Declaration of disaster was issued, FEMA awarded the money, and then BIA wouldn't approve the easement. The money was lost, the money was recaptured.

But it took 12 years. People had to drive miles and miles to get to school, kids, fire engines couldn't get to emergencies. But it is what I fear could happen to these infrastructure projects as well.

Mr. Chairman, if I may on a note of personal privilege, Mr. Frias, I hope you and I can speak about another issue, the Traditional Use Act, which is a piece of legislation I have been working on for 13 years. We can visit later. It is a piece of legislation that encourages harmony and bringing people together.

I know you wrote an email to the House Natural Resources Committee telling them of your opposition. We have never spoken about it. So I hope we can chat about this. It is a piece of legislation that

embedded in it says that it will not infringe up on Native American rights at all, no sovereign rights.

So I am hoping we can address this. It is a New Mexico issue. It is an issue where it is families that live with each other, work with each other, often married to one another. I am certainly hopeful we can find a way to ensure that communities that don't have lobbyists, that don't have financial means, that are often run over by the Federal Government, this sounds familiar, can get a little support. I am hoping we can chat about that in the near future.

Thank you, Mr. Chairman.

Mr. FRIAS. I look forward to speaking with you about that, Senator.

The CHAIRMAN. Senator Hoeven.

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

Senator HOEVEN. Thank you, Mr. Chairman.

Ms. Holsey, I want to talk to you about the crime, and victims on the reservation, what we can do to mitigate crime on the reservation. Actually since I was chairman of this committee, I have been working to advance the SURVIVE Act, which would set aside 5 percent of the Crime Victims Fund to be allocated directly to tribes. So I continue to do it to make sure we are doing an adequate job of funding law enforcement, and protection and assistance for victims.

I would like to know what steps you think Congress can take and this Committee should take to better address public safety on the reservation, particularly for women and children.

Ms. HOLSEY. Thank you for that question, Senator Hoeven. As committee co-chair of VAWA, I appreciate that. To your point, safety and wellness of our citizens impacts many departments, from law enforcement to social services and the protections, especially the most recent reauthorization of VAWA.

But it also requires cooperation of multi-Federal agencies in order to share communications across the board. As you know, especially as it relates to violence against women or human trafficking and other issues that many tribal nations contend with, it is cross-jurisdictional, it is interstate, sometimes across State lines. And sometimes internationally. It requires immediate response to that.

So having the ability to have those interpolations of communication through multi-jurisdictional law enforcement agencies, as well as other Federal agencies, is exceedingly helpful. To your point, making sure that there are set-asides or specific resources to help us, sharing data especially creates a level of safety because it has a more timely response to somebody that is in danger or who is missing or who is unaccounted for.

As many of you know, there is an erasure issue among tribal nations. We have citizens that have been missing for centuries sometimes. So now there is a more robust attempt to start to resolve. But I appreciate Chairman Schatz' statement at the beginning of the hearing where he said no decisions about us. So it requires robust consultation with tribal nations. Because tribal nations are

not monolithic. They have unique needs and jurisdiction issues and their own tribal governing laws.

So I would say that would be a robust start in that inclusion and consultation as to how to resolve these issues and bring safety to our tribal nations.

Senator HOEVEN. That is a good point. There is incredible diversity among the 700-plus reservations across the United States. I think a lot of people don't realize that, but that is a really strong point.

Another thing that we have worked on and are working on diligently is more BIA law enforcement officers. There is a shortage. We worked to set up additional training, for example, we have a BIA law enforcement center at Camp Grafton in North Dakota to help recruit and train BIA law enforcement officers.

I am co-sponsoring with Senator Cortez Masto the Bridging Agency and Ensuring Safety for Native Communities Act, BADGES, we call it. I have worked with Senator Udall on some of these initiatives. So the work continues. This legislation would allow BIA to do their own background checks.

Do you have any ideas on what else we can do, working with tribes to recruit and get more people into these BIA law enforcement positions?

Ms. HOLSEY. I think it takes, it is going to take an entire look at even the structure of how officers are compensated and how that works. I know oftentimes even with different agency partners, even with the challenges most recently with the Secretary of IHS in terms of Roselyn Tso, in terms of the way, when you look at the parity of the wage and the significant job that you are asking people to adhere to, it oftentimes is looking at compensation structures and how that works.

And making sure, as I previously stated, even for tribal nations, to not necessarily Interior police offices, but tribal police officers, in my instance, cross-deputized police officers, it is a stabilizing endeavor in making sure that there is parity.

Because right now, we are in competition with our local county and our State to retain tribal officers. Because we are unable to provide police officers with a pension and the things they should be entitled to like any other officer that serves and protects any jurisdiction.

Senator HOEVEN. I am glad you said that. That is one of the things we are trying to get, more flexibility in wages and incentives to recruit. I am glad to hear you say that. Thank you so much.

Again, thank you to the Chairman and Ranking Member for holding this hearing. Thanks to all of you for being here and for your work. I appreciate it.

The CHAIRMAN. Senator Murkowski, for some closing remarks.

Senator MURKOWSKI. Mr. Chairman, thank you. I thought this was good input from those who are testifying today.

I would like to continue this hearing in a way that is not hearing-based, but an ask, not only for those who are testifying, but for those who have been listening. We are looking for lessons learned. We are looking for an identification of those continuing barriers that prohibit tribes or organizations to move forward and freely ac-



cess, whether it is the infrastructure funds, whether it is other funds that are available, programs that we have put in law.

This Committee is an oversight committee. We put into, we are the authorizing committee that puts programs, whether it is NAHASDA or whatever the program may be, we need to know where things are working.

So what you have laid out in terms of a challenge, Mr. Chairman, I think is really important here. We want those examples. I think it was very telling when Senator Luján raised his example of the bridge, when Nicole raised her example of the broadband application. Every one of us had a reaction of, “you have to be kidding me.”

So I think we need to have a category of stories where you can submit to the Committee the “you have to be kidding me” stories. You all know different situations where you have looked at it, you know what is going on, and it has gotten to the point where nobody can defend what is actually happening here.

Those are the things I think, Mr. Chairman, you are a guy who likes to fix things. But in order for us to really fix things, the more detailed that we can get the issues, the better we are able to rattle some cages here and actually fix them. I look forward to doing that with you.

Thank you. I look forward to the “you have to be kidding me” portal.

[Laughter.]

The CHAIRMAN. Thank you very much, Vice Chair. I couldn't agree more.

I think there is sometimes a tendency not to want to come to members of Congress, United States Senators, members of the Indian Affairs Committee with small stuff. There is also a tendency on the Committee to want to do big authorizing legislation, landmark stuff, the kind of stuff that when you retire, you can say, I passed this bill.

But we are in a phase now where strategy is execution. Having been a professional non-profit executive for the earlier part of my career and doing some of those grant applications, I understand that this stuff can be hard or this stuff can be easy.

I guess my encouragement is yes, get us information and do so as quickly as possible. But also, don't be afraid to ask for a small favor, not a big one. Sometimes it is just a nudge of an agency to undo a silly decision. We can all benefit from the laws that we have already passed.

So if there are no further questions for our witnesses, members may also submit follow-up written questions for the record. The hearing record will be open for two weeks.

I want to thank all the witnesses for their time and their testimony. This hearing is adjourned.

[Whereupon, at 4:07 p.m., the hearing was adjourned.]



## A P P E N D I X

### PREPARED STATEMENT OF HON. DOREEN BLAKER, PRESIDENT, KEWEENAW BAY INDIAN COMMUNITY

Chairman Schatz, Vice Chair Murkowski, and honorable Members of the Senate Committee on Indian Affairs, my name is Doreen Blaker. I have the honor of serving as President of the Keweenaw Bay Indian Community ("Community" or "KBIC"). Thank you for the opportunity to provide testimony regarding the Community's priorities for the 118th Congress. My testimony will focus on the need for the United States to fulfill its trust obligation by correcting the injustices stemming from the breach of our treaties and the taking of our treaty-protected tribal lands. This objective would be achieved through the enactment of the Keweenaw Bay Indian Community Land Claim Settlement Act.

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

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

The 1854 Treaty provided that the signatory bands would transfer extensive and valuable land claims in Michigan and Wisconsin to the federal government in exchange for permanent reservations in their ancestral homelands. In addition, it described the L'Anse Reservation by its exterior boundaries and both the Community, and the United States understood that all land within these boundaries was reserved for the sole use of my people. The intent of the parties to the Treaty could not have been expressed more clearly: The United States promised in paragraph 11 that "the Indians shall not be required to remove from the homes hereby set apart for them."

Unfortunately, this promise wasn't kept and in the latter half of the 19th Century and early in the 20th Century, the United States allowed various lands within the boundaries of the L'Anse Reservation to be wrongfully transferred to the State of Michigan. First, the Community was dispossessed of more than 1,300 acres of land that was reserved for the L'Anse Reservation and set aside in the 1854 Treaty. Lands were selected from the public domain throughout the State of Michigan for a 750,000-acre land grant to serve as payment for the construction of a canal at Sault Ste. Marie.

Through either carelessness or expediency, the Secretary of the Interior approved the Canal Company's land selection on January 24, 1855, fourteen days after the 1854 Treaty set aside the same lands as part of the L'Anse Reservation. The L'Anse Reservation lands were withdrawn from sale by the order of the President on March 7, 1855, but the title to the "canal lands" selected by Michigan, including those within the L'Anse Reservation, was transferred to the Canal Company in accordance with the orders of the Michigan Attorney General.

Sadly, these were not the only lands within the L'Anse Reservation that were transferred to the State. Shortly after the signing of the 1854 Treaty, the State of Michigan began demanding that the federal government issue it patents to wetlands within the L'Anse Reservation on grounds that a federal swamplands statute grant- ed states the ability to select and claim such lands. For many years, the federal gov-

ernment flatly rejected Michigan's contentions and the United States General Land Office ("GLO") refused to issue patents to Michigan.

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

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

The Community has strengthened its efforts to resolve these longstanding land claims in the last few years. In the spirit of cooperation, we worked closely with our neighboring communities, the State of Michigan, the Department of the Interior, and our U.S. Congressional Delegation to develop the Keweenaw Bay Indian Community Land Claim Settlement Act ("KBIC Settlement Act"). This bipartisan, bicameral legislation was introduced on January 31, 2023, by Senators Gary Peters and Debbie Stabenow (S.195), and the House companion bill (H.R. 650) was introduced by Representative Jack Bergman.

The KBIC Settlement Act:

- Acknowledges the uncompensated taking by the Federal Government of the Reservation Swamp Lands and the Reservation Canal Lands,
- Provides compensation to the Community for those takings,
- Extinguishes all claims by the Community to those lands held by third parties,
- Confirms the ownership by the current landowners of those lands, and
- Extinguishes all potential claims by the Community against the United States, the State, and current landowners concerning title to, use of, or occupancy of those lands.

The Keweenaw Bay Indian Community urges the Senate Committee on Indian Affairs to hold a legislative hearing on S. 195, the Keweenaw Bay Indian Community Land Claim Settlement Act. Our neighboring communities—Baraga County, the Village of Baraga, and the Village of L'Anse—support this legislation; Michigan Governor Gretchen Whitmer expressed support for the legislation; and after careful review of pertinent documents, Assistant Secretary for Indian Affairs Bryan Newland "determined the Tribe's claims to the Swamp Lands and Canal Lands have merit."

Thank you for the opportunity to share the Community's top priority for the 118th Congress. Enactment of the Keweenaw Bay Indian Community Settlement Act would have wide-reaching benefits. KBIC would finally be compensated for the taking of our invaluable lands and the resulting missed opportunities; our neighbors who innocently acquired these lands would have clear title; and the State and federal governments would right a historical wrong.

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PREPARED STATEMENT OF HON. LINDA CAPPS, VICE CHAIRMAN, CITIZEN POTAWATOMI NATION

On behalf of the Citizen Potawatomi Nation (CPN or Nation), I write in response to a request from the Senate Committee on Indian Affairs (SCIA) during a hearing on March 8, 2023. Senator Murkowski requested testimony from tribes regarding continuing barriers to implementation of tribal programs. Several instances of agency roadblocks come to mind that have plagued CPN over the years, but three of those are particularly egregious.

First, from the Department of Health and Human Services (DHHS). Under the authority given in P.L. 102-477, tribes may add DHHS programs to their 477 plans to unify program accounting, reporting, and administrative oversight under a single-cause umbrella supporting the advancement of employment and related services within Indian communities. This is in contrast with the per-grant separate accounting and reporting typically required by DHHS. Currently, DHHS will not allow a tribe to both begin administering a new program and add that program to their 477

plan in the same year. Instead, tribes are forced to initiate each new program separately under the traditional grantee structure, and prove one year of successful operation. In the second year, all of that structure is eliminated, and the program in question is reconfigured to operate under 477. Tribes being forced to operate as traditional grantees for the first year of a program creates new cost and training burdens, just to throw it all away and start over with the 477 structure in year two. This happens for all 477-eligible DHHS grants, including Temporary Assistance for Needy Families (TANF) and the Community Services Block Grant (CSBG).

Second, from the Department of Energy (DOE). Section 40101 (d) of the Bipartisan Infrastructure Law authorizes non-competitive formula grants to states and tribes for projects that increase resilience of the electrical grid. Because tribes are not listed as "eligible entities" in the statutory language, they are forced to apply for the funds, then petition the Secretary of Energy to be made an eligible entity. Only then can they directly implement projects using their allocation. If they are not approved for eligible entity status, a third party must do the relevant work on behalf of a tribe, which must make a subaward to said third party and oversee them as a grantee. Additionally, if a tribe is approved for eligible entity status, they are responsible for both the 15 percent match required of recipients, as well as the 100 percent match required of implementing entities listed in Section 40101 (d). This is not a reasonable expectation, nor is it spelled out in statute. There will be tribal applicants who wish to implement their own projects as eligible entities but cannot provide 115 percent cost match. Tribes should not be forced into a subaward relationship with third parties for work they can do themselves.

Third, from the Department of Homeland Security. Assistance funds from the Federal Emergency Management Agency (FEMA) are occasionally made available to tribes with a qualifying disaster declaration in their communities through the Hazard Mitigation Grant Program (HMGP). The administrative burden to receive these funds is frankly astounding. Tribes must designate at least one staff member to serve as the lead for the project, and undergo a federal pre-employment background check, which includes extensive family and employment history details and explicit authorization for a credit review. Once that is complete, the staff member has to request access to the FEMA National Emergency Management Information System (NEMIS), which requires either an authorized federal computer system be issued to the staff member, or they must travel to the nearest FEMA site. For CPN this is 3.5 hours away. In addition, tribes must also have an approved Hazard Mitigation Plan and a separate Hazard Mitigation Administration Plan complete prior to the application deadline. These documents are extensive planning and execution documents that detail how a tribe will respond once funds are received. All of this is required, often for less than \$100,000 in hazard mitigation funds. It was only because of exceptional assistance from FEMA Region 6 that CPN was able to successfully complete an HMGP application. Understandably, tribes do not often apply for these funds, even though specific allocations are set aside for affected tribes.

There are more instances of policy and regulatory roadblocks to successful program implementation than can reasonably be covered in this response. The examples in this letter are not exhaustive; an examination of Indian programs across the federal government will show similarities in every agency. CPN suggests that SCIA membership request a GAO review of these types of roadblocks, agency-by-agency, with an aim towards a long-term corrective action plan that will increase the efficiency and efficacy of tribal programs across the board. However, we also look forward to a portal option for tribes to submit their own experiences, such as the one briefly mentioned by Senator Murkowski during the March 8th hearing. CPN appreciates the opportunity to offer comments on continuing barriers for federal tribal programs.

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PREPARED STATEMENT OF WILLIAM SMITH, CHAIRMAN, NATIONAL INDIAN HEALTH BOARD

Chairman Schatz, Vice Chairwoman Murkowski, and Members of the Committee, on behalf of the National Indian Health Board (NIHB) and the 574 sovereign federally recognized American Indian and Alaska Native (AI/AN) Tribal nations we serve, thank you for the opportunity to provide testimony on priorities for Indian health in the 118th Congress.

Tribal nations have a unique legal and political relationship with the United States. Through its acquisition of land and resources, the United States formed a fiduciary relationship with Tribal nations whereby it has recognized a trust relation-

ship to safeguard Tribal rights, lands, and resources.<sup>1</sup> In fulfillment of this tribal trust relationship, the United States “charged itself with moral obligations of the highest responsibility and trust” toward Tribal nations.<sup>2</sup> Congress reaffirmed its duty to provide for Indian health care when it enacted the *Indian Health Care Improvement Act* (25 U.S.C. § 1602), declaring that it is the policy of this Nation, in fulfillment of its special trust responsibilities and legal obligations to Indians—to ensure the highest possible health status for Indians and to provide all resources necessary to effect that policy. Unfortunately, those responsibilities and legal obligations remain unfulfilled and Indian Country remains in a health crisis.

### The Health Status of Indian Country

The Centers for Disease Control and Prevention (CDC) now reports that life expectancy for AI/ANs has declined by nearly 7 years, and that our average life expectancy is now only 65 years-equivalent to the nationwide average in 1944.<sup>3</sup> With a life expectancy 10.9 years less than the national average,<sup>4</sup> Native Americans die at higher rates than those of other Americans from chronic liver disease and cirrhosis, diabetes mellitus, unintentional injuries, assault/homicide, intentional self-harm/suicide, and chronic lower respiratory disease.<sup>5</sup> Native American women are 4.5 times more likely than non-Hispanic white women to die during pregnancy.<sup>6</sup> The CDC also found that, between 2005 and 2014, every racial group experienced a decline in infant mortality except for Native Americans<sup>7</sup> who had infant mortality rates 1.6 times higher than non-Hispanic whites and 1.3 times the national average.<sup>8</sup> Native Americans are also more likely than people in other U.S. demographics to experience trauma, physical abuse, neglect, and post-traumatic stress disorder.<sup>9</sup> Additionally, Native Americans experience some of the highest rates of psychological and behavioral health issues as compared to other racial and ethnic groups<sup>10</sup> which have been attributed, in part, to the ongoing impacts of historical trauma.<sup>11</sup> The chronic underfunding of the HIS is one significant contributing factor to this disparities.

The following testimony discusses top legislative issues for Indian Health. We also enclose the full 2023 Legislative and Policy Agenda for a more comprehensive view of the health needs of Indian Country.

### Renewal of the Special Diabetes Program for Indians.

We would like to highlight the need for Congress to renew the Special Diabetes Program for Indians (SDPI). It expires on September 30, 2023. SDPI serves 780,000 American Indians and Alaska Natives across 302 programs in 35 states. SDPI focuses on community-directed approaches to treat and prevent Type 2 diabetes in Tribal communities that are culturally informed. American Indians and Alaska Natives suffer disproportionately from Type 2 diabetes, but thanks to SDPI, that statistic is improving. Between 2013 and 2017, there was a 5.5 percent decrease in the prevalence of type 2 diabetes for AI/ANs.<sup>12</sup>

By allowing Tribes to determine their own approach, SDPI has become the nation’s most effective federal initiative to combat diabetes and serves as a useful

<sup>1</sup> *Worcester v. Georgia*, 31 U.S. 515 (1832).

<sup>2</sup> *Seminole Nation v. United States*, 316 U.S. 286, 296–97 (1942).

<sup>3</sup> U.S. Department of Health and Human Services, *Centers for Disease Prevention and Control, Provisional Life Expectancy Estimates for 2021* (hereinafter, “*Provisional Life Expectancy Estimates*”), Report No. 23, August 2022, available at: <https://www.cdc.gov/nchs/data/usrr/usrr023.pdf>, accessed on: October 13, 2022 (total for All races and origins minus non-Hispanic American Indian or Alaska Native).

<sup>4</sup> *Id.*

<sup>5</sup> SEE, U.S. Commission on Civil Rights, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans* (hereinafter “*Broken Promises*”), 65, available at: <https://www.usccr.gov/files/pubs/2018/12-20-Broken-Promises.pdf>, accessed on: November 20, 2022.

<sup>6</sup> *Broken Promises* at 65.

<sup>7</sup> *Broken Promises* at 65.

<sup>8</sup> *Broken Promises* at 65.

<sup>9</sup> *Broken Promises* at 79–84.

<sup>10</sup> Walls, et al., *Mental Health and Substance Abuse Services Preferences among American Indian People of the Northern Midwest*, COMMUNITY MENTAL HEALTH J., Vol. 42, No. 6 (2006) at 522, <https://link.springer.com/content/pdf/10.1007%2Fs10597-006-9054-7.pdf>, accessed on: November 20, 2022.

<sup>11</sup> Kathleen Brown-Rice, *Examining the Theory of Historical Trauma Among Native Americans*, PROF'L COUNS, available at: [http://tpcjournal.nbcc.org/examining-the-theory-of-](http://tpcjournal.nbcc.org/examining-the-theory-of-historical)

[historical-trauma-among-native-americans/](http://tpcjournal.nbcc.org/examining-the-theory-of-historical-trauma-among-native-americans/), accessed on: November 22, 2022.

<sup>12</sup> “Special Diabetes Program for Indians 2020 Report to Congress. Changing the Course of Diabetes: Charting Remarkable Progress.” IHS Division of Diabetes Treatment and Prevention. 2020. Accessed February 10, 2023.

model both for diabetes programs nationwide and public health programs in Indian Country. SDPI has resulted in documented lower incidence of end Stage renal disease and lower prevalence of Type 2 diabetes among AI/ANs. All these things save taxpayer dollars in medical costs.

Communities with SDPI-funded programs have seen substantial growth in diabetes prevention resources, including more than doubling the number of on-site nutrition services, and physical activity and weight management specialists for adults, and an exponential increase of sites with physical activity services for youth. For the first time, from 2013 to 2017 diabetes incidence in AI/ANs decreased each year. Between 1996 and 2013, incidence rates of end-stage renal disease (ESRD) in AI/AN individuals with diabetes declined by 54 percent. This reduction alone is estimated to have already saved \$520 million between 2006–2015.<sup>13</sup>

NIHB appreciates the work that the members of the Senate Committee on Indian Affairs have done to support SDPI reauthorization over the years. Your leadership in supporting this critical program has been essential in ensuring that we can sustain the major accomplishments of this life-saving program. Unfortunately, SDPI has been flat funded at \$150 million since FY 2004. This has resulted in a significant loss of resources due to increases costs for medical staff; equipment; supplies; and other interventions.

In 2023, we are requesting SDPI be permanently authorized and funded at a level of at least \$250 million per year (with annual increases tied to medical inflation). We were pleased to see the Biden Administration’s FY 2024 budget request which also recommended \$250 million for SDPI. This increase will allow for important program expansion and keep SDPI programs whole as there will be decreases to the program in coming years. It is also important to note that last year, the Department of Health and Human Services (HHS) expanded the pool of potential grantees beyond current grantees to all eligible grantees. Practically, in 2022, this meant that there were 11 new grantees in the SDPI program, with the same level of funding. If we do not act to improve funding for this highly successful program, we risk all the accomplishments that SDPI has seen over the last several decades.

In addition, Tribes and Tribal organizations have repeatedly called for a change to the SDPI program structure to allow recipients the option to receive funding through P.L. 93–638 contracts and compacts. This change will establish SDPI as an essential health service and remove the barriers of competitive grants—which do not honor the Trust and treaty obligation to tribal nations. Self-governance also removes unnecessary administrative burdens which leaves more funding available for services. Self-governance Supports Tribal sovereignty by transferring control of the program directly to Tribal governments.

Thank you again for your strong support of this program, and we look forward to working with you in 118th Congress to renew this critical program at a funding level that will enable the program to serve more AI/ANs, and continue the remarkable results of this program.

#### **Full Funding for the Indian Health Service**

Since 2003, Tribal leaders, technical advisors, and other policy advisors have met during the annual national Tribal Budget Formulation work session to collaboratively develop an estimate for full IHS funding. The IHS need-based funding aggregate cost estimate for Fiscal Year (FY) 2024 is approximately \$51.4 billion, and the cost estimate for FY 2025 is \$53.8 billion.<sup>14</sup> For FY 2024 and 2025, the Workgroup continues to request the Hospitals & Health Clinics (\$13.6 billion for FY 2025) and Purchased/Referred Care (\$9.1 billion for FY 2025) IHS line items receive the largest increase. The Workgroup also continues to request the Alcohol and Substance Abuse (\$4.8 billion for FY 2025), Mental Health (\$4.5 billion for FY 2025), Indian Health Care Improvement Fund (\$3.7 billion for FY 2025), and Healthcare Facilities Construction (\$2.5 billion for FY 2025) line items receive the next largest increases for IHS. The annual Workgroup request includes a detailed justification for spending by IHS account or budget policy issue and NIHB supports the Tribally-driven, data-based cost estimates and justifications of the National Tribal Budget Formulation Workgroup for the IHS.<sup>15</sup>

<sup>13</sup> Department of Health and Human Services, Assistant Secretary for Planning and Evaluation. “The Special Diabetes Program for Indians: Estimates of Medicare Savings.” May 2019.

<sup>14</sup> Workgroup publications available at: [https://www.nihb.org/legislative/budget\\_formulation.php](https://www.nihb.org/legislative/budget_formulation.php), accessed on: February 26, 2023.

<sup>15</sup> *Id.*

### **Mandatory Funding for the Indian Health Service**

IHS spending should be provided through mandatory direct appropriations with adjustments for inflation and population growth in an allocation mutually agreed to by Tribal governments. NIHB supports Tribes in their call for a direct appropriation codified in statute. Additionally, NIHB supports the immediate transfer of certain IHS account payments, such as Contract Support Costs and Payments for Tribal Leases to mandatory funding. This would fulfill obligations that are typically addressed through mandatory spending. Inclusion of accounts that are mandatory in nature under discretionary spending caps has resulted in a net reduction on the amount of funding provided for Tribal programs and, by extension, the ability of the federal government to fulfill its promises to Tribal nations.

### **Expand and Sustain IHS Advance Appropriations**

Until such time that IHS is provided mandatory direct appropriations, advance appropriations for the IHS are consistent with the trust and treaty obligations reaffirmed by the United States in the *Indian Health Care Improvement Act*. The advance appropriation enacted in the FY 2023 omnibus excluded certain accounts in the IHS budget and flat-funded the IHS accounts that it did include. While historic in its inclusion, a flat-funded IHS needs FY 2024 adjustments, at a minimum, for fixed costs and staffing for newly completed facilities and should also include the amounts requested by the IHS National Tribal Budget Formulation Workgroup. As the process begins to normalize, both IHS and Tribes have the collaborative tools to produce reliable advance appropriation requests. For this appropriations cycle, Tribes have already provided official input on the FY 2025 budget to IHS with representatives of the Office of Management and Budget in attendance.

### **Hold the Indian Health Service Harmless in any Spending Cuts or Control Measures**

The IHS budget remains so small in comparison to the national budget that spending cuts or budget control measures would not result in any meaningful savings in the national debt, but it would devastate Tribal nations and their citizens. As Congress considers funding reductions in FY 2024, IHS must be held harmless. As we saw in FY 2013 poor legislative drafting subjected our tiny, life-sustaining, IHS budget to a significant loss of base resources. Congress must ensure that any budget cuts—whether automatic or explicit—hold IHS and our people harmless. We cannot balance the budget on the backs of the First Americans.

### **Expansion of Tribal Self Governance at the Department of Health and Human Services**

NIHB looks forward to working with the Committee this Congress on legislation to expand self-Governance at the Department of Health and Human Services beyond the IHS. Expanding Self-Governance at HHS is the logical next step for the Federal government to promote Tribal sovereignty and Self-Determination and improve services to American Indians and Alaska Natives.

The recent pandemic has demonstrated the need for more coordinated funding, better communication and coordination between all Departments and agencies at the Federal level, and more equitable funding for all Tribes. Under Self-Governance, programs and services throughout HHS would be better designed and operated with better results, better health, and better social outcomes for Tribal citizens, their families, and communities. Tribal health programs would reduce administrative costs and eliminate onerous and duplicative reporting requirements. NIHB is confident that this is the next step in getting funding to Tribal Nations outside of the Indian Health Service.

### **Conclusion**

Thank you for your attention to these critical issues in the 118th Congress. The leadership of the Senate Committee of Indian Affairs is essential as Congress works to fulfill its role for the trust responsibility for health to Tribal Nations. Below NIHB includes our 2023 Legislative and Policy Agenda\* which provides an overview of key actions we are hoping to work with Congress and the Administration on this year. Please do not hesitate to reach out to NIHB with any questions.

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



PREPARED STATEMENT OF THE UNITED SOUTH AND EASTERN TRIBES SOVEREIGNTY  
PROTECTION FUND

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is pleased to provide the Senate Committee on Indian Affairs (SCIA) with the following testimony for the record of the Oversight Hearing on, “Native communities’ priorities for the 118th Congress.” USET SPF continues to seek foundational and systemic change to our relationship with the United States, which will lead to a more appropriate, respectful, honorable, and modern diplomatic relationship for the 21st century. Toward this goal, we continue to urge SCIA to harness its long history of bipartisanship to enact bold, transformative policy that will have lasting impacts on the trust and treaty obligation and relationship. We offer the below items of interest and opportunities for collaboration during this Congress and the remaining years of the Biden Administration. This is by no means an exhaustive list of priorities for our member Tribal Nations, who, as governments, have broad and diverse interests across a host of issue areas, including housing, transportation, emergency services, social services, and veteran’s affairs, among others. However, we view the below as the foundation for our initial engagement at the beginning of this new Congress.

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

**Introduction—Enact Laws that Recognize of Inherent Tribal Sovereignty and Deliver Upon Trust and Treaty Obligations**

Tribal Nations are political, sovereign Nations. We have inherent sovereignty that pre-dates the founding of the United States. The U.S. Constitution, treaties, statutes, Executive Orders, and judicial decisions all recognize that the federal government has a fundamental trust and treaty relationship to Tribal Nations. This includes an obligation to uphold the right to self-government. Our federal partners must fully recognize the inherent right of Tribal Nations to fully engage in self-governance and self-determination, so we may exercise full decisionmaking in the management of our own affairs and governmental services, including jurisdiction over our lands and people.

However, the full extent of our inherent sovereignty continues to go unacknowledged and, in some cases, is actively restricted by other units of government. This restriction includes federal, state, and local governments that undermine the provision of essential services to our citizens such as public safety, the health and welfare of our citizens, and the continuity and exercise of our cultures. We expect that you will exercise leadership in this space, including in circumstances where supporting Tribal sovereignty may be at odds with other interests or political positions.

Further, as you well know, Native people have endured many injustices as a result of federal policy, including federal actions that sought to terminate Tribal Nations, assimilate Native people, and to erode Tribal territories, learning, and cultures. This story involves the cession of vast land holdings and natural resources, oftentimes by force, to the United States out of which grew an obligation to provide benefits and services—promises made to Tribal Nations that exist in perpetuity. These resources are the very foundation of this nation and have allowed the United States to become the wealthiest and strongest world power in history. Federal appropriations and services to Tribal Nations and Native people are simply a repayment on this perpetual debt. USET SPF has consistently called upon the United

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

States to deliver and fulfill its sacred promises to Tribal Nations and to act with honor and honesty in its dealings with Indian Country.

Over the course of our centuries-long relationship, at no point has the United States honored these sacred promises; including its historic and ongoing failure to prioritize funding for Indian country. The chronic underfunding of federal Indian programs continues to have disastrous impacts upon Tribal governments and Native people. As the United States continues to break its promises to us, despite its own prosperity, Native people experience some of the greatest disparities among all populations in this country and have for generations.

In December 2018, the U.S. Commission on Civil Rights issued the Broken Promises Report, following years of advocacy from Tribal Nations and organizations seeking an update to the 2003 Quiet Crisis Report. The Commission concluded that the funding of the federal trust responsibility and obligations remains “grossly inadequate” and a “barely perceptible and decreasing percentage of agency budgets.” The report confirms what we in Indian Country already know—with the exception of some minor improvements, the U.S. continues to neglect to meet its “most basic” obligations to Tribal Nations. Though these chronic failures have persisted throughout changes in Administration and Congress, it is time that both the legislative and executive branches confront and correct them.

While USET SPF takes a firm position that all members of Congress have an obligation to Tribal Nations, the members of SCIA have a greater role in understanding and working toward fulfillment of trust and treaty obligations. As leaders who have consistently demonstrated a greater understanding of this commitment and obligation, we implore you to lead the change within Congress that is necessary to improve how the United States views, honors, and fulfills its promises to Indian Country, including through the enactment of the below proposals.

#### *Expansion and Evolution of Tribal Self-Governance*

Despite the success of Tribal Nations in exercising authority under the Indian Self-Determination and Education Assistance Act (ISDEAA), as well as the Practical Reforms and Other Goals to

Reinforce the Effectiveness of Self-Governance and Self-Determination (PROGRESS) for Indian Tribes Act, the goals of self-governance have not been fully realized. Many opportunities still remain to improve and expand upon its principles. An expansion of Tribal self-governance to all federal programs under ISDEAA would be the next evolutionary step in the federal government’s recognition of Tribal sovereignty and reflective of its full commitment to Tribal Nation sovereignty and self-determination.

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

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

We expect several opportunities for SCIA to consider and support legislation that would advance Tribal self-governance and self-determination this Congress. USET SPF strongly supports legislative proposals that would create a demonstration project at HHS aimed at expanding ISDEAA authority to more programs within the Department. In addition, a major priority for Tribal Nations during the upcoming reauthorization of the Special Diabetes Program for Indians (SDPI), along with increased funding and permanency for the program, is ISDEAA authority. Finally, as Congress drafts a reauthorization of the Farm Bill, we are seeking expanded ISDEAA authority at the U.S. Department of Agriculture.

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

USET SPF is working toward a future in which all federal dollars are eligible to be contracted or compacted under the Indian Self-Determination and Education Assistance Act. In the meantime, we urge Congress to ensure all federal Indian funding can be transferred between federal agencies, so that it may be received through contracts and compacts. We cite the unnecessary delays and barriers to the receipt of urgently needed COVID-19 relief funding as an example of why this authority must be confirmed, as well as a recent Government Accountability Office Report.

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

#### *Full and Mandatory Funding for Federal Trust and Treaty Obligations*

USET SPF celebrates and expresses its gratitude to this body for the historic achievement of advance appropriations for the Indian Health Service (IHS). For the very first time, the agency’s clinical services will have budgetary certainty in the face of continuing resolutions and government shutdowns. It is our expectation that appropriators will continue to include language providing advance appropriations for IHS beyond Fiscal Year (FY) 2024. We urge the inclusion of all of IHS’ budget line items in this mechanism, as well as advance appropriations for all federal Indian agencies and programs as next steps for this Congress. Despite its importance in the stabilization of funding, however, we continue to view advance appropriations as a temporary funding mechanism in our overall advocacy for the full delivery of trust and treaty obligations.

Above all, the COVID-19 crisis has highlighted the urgent need to provide full and guaranteed federal funding to Tribal Nations in fulfillment of federal obligations. Because of our history and unique relationship with the United States, the federal government’s trust and treaty obligations to Tribal Nations, as reflected in the federal budget, is fundamentally different from ordinary discretionary spending and should be considered mandatory in nature. Payments on debt to Indian Country should not be vulnerable to year to year “discretionary” decisions by appropriators. Honoring the first promises made by this country, in pursuing the establishment of its great principled democratic experiment, should not be a discretionary decision.

The Biden Administration’s FY 2024 Request continues to propose a shift in funding for IHS from the discretionary to the mandatory side of the federal budget, including a 10-year plan to close funding gaps and an exemption from sequestration, a move that would provide even greater stability for the agency and is more representative of perpetual trust and treaty obligations. Year after year, USET SPF has urged multiple Administrations and Congresses to request and enact budgets that honor the unique, Nation-to-Nation relationship between Tribal Nations and the U.S.,

including providing full and mandatory funding. While we firmly believe all Indian Country funding should be fully funded today, including the IHS, we continue to strongly support this proposal, recognizing that additional detail and planning is necessary to provide a fully developed plan to fund IHS on a full and mandatory basis. We look forward to working with IHS to draft legislation that reflects our guidance for implementing these changes.

The FY 2024 Request also, once again, proposes mandatory funding for Contract Support Costs and 105(l) leases—binding obligations—at IHS, Bureau of Indian Affairs and the Bureau of Indian Education (BIE). While we contend that all federal Indian agencies and programs should be subject to mandatory funding, in recognition of perpetual trust and treaty obligations, we continue to support the immediate transfer of these lines to the mandatory side of the federal budget. This will ensure that funding increases are able to be allocated to service delivery, as opposed to the federal government's legal obligations. The Senate Interior Appropriations Subcommittee ultimately supported these important first steps in achieving mandatory funding for Indian Country in its mark for FY 2023. We now call Congress to work with Tribal Nations and the Administration fulfill its responsibilities and work to ensure that this proposal is included in any final FY 2024 appropriations legislation.

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

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

#### *Marshall Plan for Tribal Nations—Rebuild and Restore Tribal Infrastructure*

For generations, the federal government—despite trust and treaty obligations—has substantially under-invested in Indian Country's infrastructure. While the United States faces crumbling infrastructure nationally, there are many in Indian Country who lack even basic infrastructure, such as running water and passable roads. The United States must commit to supporting the rebuilding of the sovereign Tribal Nations that exist within its domestic borders. Much like the U.S. investment in the rebuilding European nations following World War II via the Marshall Plan, the legislative and executive branches should commit to the same level of responsibility to assisting in the rebuilding of Tribal Nations, as our current circumstances are, in large part, directly attributable to the shameful acts and policies of the United States. In the same way the Marshall Plan acknowledged America's debt to European sovereigns and was utilized to strengthen our relationships and security abroad, the United States should make this strategic investment domestically. Strong Tribal Nations will result in a strengthened United States. At the same time, any infrastructure build-out, in Indian Country and beyond, must not occur at the expense of Tribal consultation, sovereignty, sacred sites, or public health.

#### *Cultural Sovereignty*

While the practice of spiritual, ceremonial traditions, and beliefs varies significantly among USET SPF Tribal Nations, our spirituality is overwhelmingly place-based. From the Mississippi Band of Choctaw Indians' Nanih Waiyah mounds to the ceremonial stone landscapes of New England, each member Tribal Nation has specific places and locations that we consider sacred. These places are often the sites of our origin stories, our places of creation. As such, we believe that we have been in these places since time immemorial. Through these sites, we are inextricably linked to our spirituality, the practice of our religions, and to the foundations of our

cultural beliefs and values. Our sacred sites are of greatest importance as they hold the bones and spirit of our ancestors and we must ensure their protection, as that is our sacred duty. As our federal partner in this unique government-to-government relationship, it is also incumbent upon all branches of the U.S. government to ensure the protection of these sites, including by upholding our own sovereign action. As the federal government seeks to permit the explosion of infrastructure deployment authorized by recently enacted laws, this includes seeking the consent of Tribal Nations for federal actions that impact our sacred sites, lands, cultural resources, public health, or governance.

#### *Restoration of Tribal Homelands*

Possession of a land base is a core aspect of sovereignty, cultural identity, and represents the foundation of a government's economy. That is no different for Tribal Nations. All federally recognized Tribal Nations are justly deserved of a strong, stable, sufficient land base—a homeland—regardless of their historical circumstances, to support robust Tribal self-government, cultural preservation and economic development. USET SPF Tribal Nations continue to work to reacquire our homelands, which are fundamental to our existence as sovereign governments and our ability to thrive as vibrant, healthy, self-sufficient communities.

While USET SPF member Tribal Nations ultimately seek full jurisdiction and management over our homelands without federal government interference and oversight, we recognize the critical importance of the restoration of our land bases through the land-into-trust process. We further recognize that the federal government, and not any other unit of government, has a trust responsibility and obligation to Tribal Nations in the establishment and management of trust lands. The federal government's objective in the execution of its trust and treaty obligations must be to support healthy and sustainable self-determining Tribal governments, which fundamentally includes the restoration of lands to all federally-recognized Tribal Nations, as well as the legal defense of these land acquisitions.

In the wake of the previous Administration's unconscionable attempts to remove USET SPF member, the Mashpee Wampanoag Tribe's, ancestral homelands from trust, we are strongly supportive of current efforts within the Department of the Interior to codify M-37029 and otherwise improve the federal fee-to-trust process. However, USET SPF continues to call for the immediate passage of a fix to the Supreme Court decision in *Carcier v. Salazar* to ensure that Tribal Nations have true certainty in the restoration and status of our homelands.

#### *Ensure Tribal Nation Economic Parity*

The federal government has a responsibility to ensure that federal tax law treats Tribal Nations in a manner consistent with our sovereign governmental status, as reflected under the U.S. Constitution and numerous federal laws, treaties, and federal court decisions. With this in mind, we remain focused on the advancement of tax reform that would address inequities in the tax code and eliminate state dual taxation. Revenue generated within Indian Country continues to be taken outside our borders or otherwise falls victim to a lack of parity. Similarly, Tribal governments continue to lack many of the same benefits and flexibility offered to other units of government under the tax code. This largely prevents Tribal Nations from achieving an economic multiplier effect, allowing for each dollar to turn over multiple times within a given Tribal economy. The failure of the federal government to recognize Tribal Nations in a manner consistent with our sovereign governmental status has hindered our efforts to rebuild and grow our economies.

USET SPF continues to press Congress for changes to the U.S. tax code that would provide governmental parity and economic development to Tribal Nations. These efforts included support in previous Congresses for the Tribal Tax and Investment Reform Act. This bill specified the treatment of Tribal Nations as states with respect to bond issuance and modified the treatment of pension and employee benefit plans maintained by a Tribal Government. It also aimed to modify the treatment of Tribal foundations and charities, improve the effectiveness of Tribal child support enforcement agencies, and recognize Tribal governments for purposes of determining whether a child has special needs eligible for the adoption tax credit. USET SPF urges the Subcommittee to support similar legislative efforts in the 118th Congress to increase Tribal Nation economic parity.

#### *Address Dual Taxation in Indian Country*

Dual taxation hinders Tribal Nations from achieving our own revenue generating potential. Although Tribal Nations have authority to tax noncitizens doing business in Indian Country, when other jurisdictions can tax those same noncitizens for the same transactions, Tribal Nations must lower their taxes to keep overall pricing at

rates the market can bear or forgo levying a tax at all. The application of an outside government's tax often makes the Tribal tax economically unfeasible.

Dual taxation undercuts the ability of Tribal Nations to offer tax incentives to encourage non-Indian business entities onto our lands to create jobs and stimulate Tribal economies. As long as outside governments tax non-Indian businesses on our lands—even if a Tribal government offers complete Tribal tax immunity to attract a new non-Indian business—that business is subject to the same state tax rate that is applicable outside our jurisdictional boundaries. As a matter of economic fairness, we ask SIIA to work with us to support and advance initiatives that would bring certainty in tax jurisdiction to Tribal Lands by confirming the exclusive, sovereign authority of Tribal governments to assess taxes on all economic activities occurring within our jurisdictional boundaries.

*Address Climate Change with Tribal Nations at the Table*

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

**Conclusion**

USET SPF calls upon SCIA and the 118th Congress to join us in working toward a legacy of change for Tribal Nations, Native people, and the sacred trust relationship. The COVID-19 pandemic has underscored the urgent need for radical transformation in the recognition of our governmental status and the delivery of federal obligations our people. We can no longer accept the status quo of incremental change that continues to feed a broken system. The federal government must enact policies that uphold our status as sovereign governments, our right to self-determination and self-governance, and honor the federal trust obligation in full. We look forward to partnering with this Committee in an effort to advance these policies in the coming months and years.

