

**House Appropriations Committee
Subcommittee on Interior, Environment, and Related Agencies**

Written Testimony of the Tribal Interior Budget Council for Fiscal Year 2020

March 7, 2019

On behalf of the Tribal Interior Budget Council (TIBC) Tribal Caucus, thank you for holding this American Indian and Alaska Native Public Witness Hearing. As one of the Tribal Representatives of the TIBC, I would like to share our views on the Interior Department's fulfillment of the United States' treaty, trust, and other responsibilities to American Indians and Alaska Natives in the fiscal year (FY) 2020 budget. My name is Aaron Payment. In addition to serving as Chairperson of the Sault Ste. Marie Tribe of Chippewa Indians, I serve as the Midwest Region Tribal Representative to the Tribal Interior Budget Council and as President of the United Tribes of Michigan. My tribe is the largest tribe east of the Mississippi with 43,000 tribal citizens.

As background, TIBC's mission is below:

The TIBC provides a forum and process, consistent with the Indian Self-Determination and Education Assistance Act, Section 450 a-1, Executive Order #13175, and Department of the Interior's (DOI) Government-to-Government policy, whereby tribes and the Department work together to develop policy and budgets that provide for 1) the Department to fulfill its trust responsibilities and treaty obligations; and 2) the fulfillment of tribes' inherent sovereign rights of self-determination, self-governance, and self-sufficiency, as well as securing levels of funding necessary to strengthen Tribal governmental capacity to serve their Tribal citizens and communities.

The TIBC provides an appropriate forum for BIA budget "government-to-government" consultation, with statutory authority in the Indian Self-Determination and Education Assistance Act. According to 25 U.S.C. 5325(i), "on an annual basis, the Secretary shall consult with, and solicit the participation of, Indian tribes and tribal organizations in the development of the budget for the Indian Health Service and the Bureau of Indian Affairs (including participation of Indian tribes and tribal organizations in formulating annual budget requests that the Secretary submits to the President for submission to Congress pursuant to section 1105 of title 31)."

Tribal Caucus Recommendations for FY 2020 Appropriations

Tribes ceded, often by force or coercion, millions of acres of land and natural resources, which are the foundation of the wealth and power of the United States. In return Tribes have the right of continued self-government and the right to exist as distinct peoples on their own land; for its part, the United States has assumed a trust responsibility to protect these rights and to fulfill its solemn commitments to Indian Tribes and their citizens. Part of this trust responsibility includes basic governmental services in Indian Country, funding for which is appropriated in the discretionary portion of the federal budget.

The budget formulation and consultation process is critical to identifying potential efficiencies while at the same time ensuring the federal government upholds its solemn treaty and trust obligations to Indian Country. As part of the FY 2020 budget consultation process, tribes from each BIA region completed a survey to outline which 10 budget lines they would prefer to provide increased funding to and why. The results of this process show that BIA Social Services, Indian Child Welfare Act (ICWA), Tribal Courts, Aid to Tribal Government, Scholarships and Adult Education, Criminal Investigations/Policing, Road Maintenance, Housing, Johnson O'Malley, Detentions and Corrections, and Welfare Assistance made up the top eleven. This testimony will address some of these program areas, but not all.

In Human Services, the **Social Services** Program provides the only BIA and tribal-specific funding available for child protective services for both children and adults in Indian Country. Native families are exposed to domestic violence and child endangerment situations at a higher rate than in non-native communities. These disparities are related to problems of poverty, violence, and substance and child abuse. Within the Social Services program, tribes have requested more staff for case management and for salaries to meet national standards. Training is needed for foster parents to increase foster youth placement. Training is also needed for life skills and prevention programs.

The Social Services Program is drastically underfunded, and tribal programs, families, and children suffer as a result. Recent increases as part of the successful *Tiwahe* Initiative (which in three years decreased the crime in implementing tribal communities by 56 percentⁱ) are to be commended and the momentum must be continued. Another \$5 million must be appropriated for this program—children and families depend on it. This increase will ensure that basic child protective services are provided in tribal communities across the country, that tribes have access to meaningful training and technical assistance, and that the BIA has the resources necessary to fill service gaps.

Indian Child Welfare: As the Attorney General's Advisory Committee on American Indian/Alaska Native Children Exposed to Violence recently stated “If AI/AN children today are to be provided with a reliable safety net, the letter and spirit of [the Indian Child Welfare Act] must be enforced.”ⁱⁱⁱ To prevent the troubling practices of Native children being removed from their homes, ICWA provides protections to tribes and AI/AN families in state child welfare and judicial systems. It also recognizes the sovereign authority of tribal nations to provide child welfare services and adjudicate child welfare matters. To implement these provisions, ICWA authorized grant programs to fund child welfare services on or near reservations and for ICWA support in off-reservation, urban Indian programs.

ICWA funding is the foundation of most tribal child welfare programs. In order for AI/AN children and families to receive the best possible services in tribal and state systems and allow tribes to assist state agencies and courts, adequate funding must be provided to tribal governments to support their child welfare programs. At the time that ICWA was passed in 1978, Congress estimated that between \$26 million–\$62 million would be required to fully fund tribal child welfare programs on or near reservations.ⁱⁱⁱ Even after an important FY 2015 increase as part of the *Tiwahe* Initiative, current funding levels fall far short of this estimate—especially after adjusting for inflation. As AI/AN children are still being removed from their families and

tribes in high numbers through efforts of those who seek to circumvent the law and ignore the best interest of AI/AN children, Congress should increase the Indian Child Welfare Act On or Near Reservation Program appropriations to \$20 million and provide \$5 million for the off-reservation ICWA program (which has never been funded).

The **Welfare Assistance** line item provides five important forms of funding to AI/AN families: general assistance, child assistance, non-medical institution or custodial care of adults, burial assistance, and emergency assistance.

AI/AN child welfare programs and social service agencies need to have the resources necessary to support families in times of crisis and uncertainty. AI/AN adults – including parents and kinship caregivers – are unemployed on reservations at a rate more than two times the unemployment rate for the total population.^{iv} Thirty-four percent of AI/AN children live in households with incomes below the poverty line as compared to 20.7 percent of children nationwide.^v The crippling of Native economies before the self-determination era left tribal communities with few economic opportunities, high unemployment, and overwhelmingly impoverished. The barriers to employment vary region to region in Indian Country, but include geographic remoteness, a weak private sector, poor basic infrastructure, and even a lack of basic law enforcement infrastructure. These conditions make the programs funded under welfare assistance an important safety net for AI/AN families.

The current funding for the Welfare Assistance Program does not begin to meet the needs in tribal communities. For example, in FY 2016, based on BIA Financial Assistance and Social Service Reports (FASSR) action Welfare Assistance expenses were \$93 million, leaving tribes with an out-of-pocket shortfall of \$18 million. Funds should be increased to \$80 million to provide tribal governments the resources they need to support families and children in crisis.

The **Housing Improvement Program** is a home repair, renovation, replacement and new housing grant program for American Indians and Alaska Native individuals and families who have no immediate resource for standard housing. In 2015, the BIA updated its regulations and expanded the eligible use of HIP funds to include down payment assistance for very low-income working families seeking to become private homeowners. This new activity expands homeownership opportunities for Native families and allows leveraging of federal housing funds to increase the number of families served and projects funded. To maximize this opportunity to improve self-sufficiency through private homeownership, the HIP program should be funded at \$23 million.

Tribal Courts: The BIA submitted a report to Congress estimating that tribal courts are just funded at a 3 percent of estimated need. Due to the inadequacy of the base funding provided by BIA, tribal governments rely on short-term, competitive grants to try and address 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 under-funded than policing and detention. Tribes should receive stable base funding so they can protect women, children and families, address substance abuse, rehabilitate first-time offenders, and put serious criminals behind bars. Tribal leaders reports that equipment is failing and outdated in tribal courts, there is

a need for new staffing to address backlogs, training is needed, and there are increased costs due to the enactment of the Tribal Law and Order Act.

Criminal Investigation and Policing: Tribal law enforcement officers are usually the first responders to crime scenes on tribal lands, but their current funding lags well behind that of their non-tribal counterparts. The U.S. Commission on Civil Rights recently noted that tribes have “less officers per capita than law enforcement agencies nationwide, leaving residents of Indian Country less safe and subject to higher rates of crime.”

Tribes in BIA’s Eastern Region report that funding for Criminal Investigation programs has allowed for tribal police to be more pro-active in policing. The ability to hire and train officers with K9 units has been an important factor in successful narcotic apprehensions, which has led to a decrease in “drug houses” on-reservation. In some cases where drug charges were made, the apprehension allowed for additional information to surface which resulted in more charges, such as identity theft.

BIA recently conducted an analysis of law enforcement and detention needs pursuant to the Tribal Law and Order Act, and found that the total need for basic law enforcement and detention services in Indian country is \$1.2 billion. This estimate includes tribes without regard to whether they are located in a PL 280 jurisdiction. Given the inadequacy of current funding levels, the BIA has had a policy for many years to generally provide law enforcement and detention funding only to tribes in non-PL280 jurisdictions. This has left tribes in many areas completely without BIA support for tribal police and detention needs.^{vi} We ask Congress to commit to fully funding tribal law enforcement and detention (which was funded at \$373.3 million in FY 2018) within the next five years by incrementally increasing funding each year, starting with a \$200 million increase for FY 2020.

Conclusion

Thank you for this opportunity to share our views from the TIBC Tribal Caucus. We look forward to working with this Subcommittee in the FY 2020 appropriations process.

ⁱ U.S. Commission on Civil Rights. (2018). *Broken Promises: Continuing Federal Funding Shortfall for Native Americans* (p. 208). Received from <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

ⁱⁱ U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention. (2014). *Attorney General’s Advisory Committee on American Indian/Alaska Native Children Exposed to Violence: Ending violence so children can thrive* (p. 75). Retrieved from www.justice.gov/sites/default/files/defendingchildhood/pages/attachments/2014/11/18/finalaianreport.pdf

ⁱⁱⁱ S. Rep. No. 95-597 (1977) (p. 19).

^{iv} Stegman, E. & Ebarb, A. (2010). Sequestering opportunity for American Indians/Alaska Natives. *Center for American Progress*. (Para. 1). Retrieved from www.americanprogress.org/issues/poverty/news/2013/11/26/80056/sequestering-opportunity-for-american-indians-and-alaska-natives/

^v U.S. Department of Health and Human Services, Health Resources and Services Administration, Maternal and Child Health Bureau. (2013). *Child health USA 2012*. Rockville, MD: Author. (p. 9).

^{vi} Bureau of Indian Affairs, Office of Justice Services. “Report to Congress on Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country,” Sept. 12, 2017, *available at* https://www.bia.gov/sites/bia.gov/files/assets/bia/ojs/ojs/pdf/Report_Final-Cleared.pdf.