



NATIONAL CONGRESS OF AMERICAN INDIANS

U.S. House Committee on Appropriations Subcommittee on Interior, Environment, and Related Agencies Hearing on Indian Country COVID-19 Response and Update

Written Testimony of CEO Kevin J. Allis National Congress of American Indians September 28, 2020

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On behalf of the National Congress of American Indians (NCAI), thank you for holding this hearing on Indian Country's COVID-19 Response and Update. I serve as the Chief Executive Officer of NCAI, and I look forward to continued work with members of this Subcommittee and other members of Congress to better fulfill the federal government's responsibility to provide for the wellbeing of tribal nations and their citizens.

We are in unique times. We have a public health crisis that threatens to rival the 1918 pandemic; an economic crisis that is pulling us into a recession; and a reckoning on inequality that has not been seen since the Civil Rights era. Additionally, many communities and tribal nations have suffered a loss of life and property from still raging wildfires, floods, and natural disasters.

Today, Indian Country is in a national emergency that—while intensified by COVID-19—has its roots in the federal government's neglect of its fiduciary obligations to tribal nations and citizens.¹ This existing crisis created disparities that led to American Indians and Alaska Natives' (AI/AN) vulnerability to the COVID-19 pandemic and resulted in tribal communities having, at times, the highest per-capita COVID-19 infection rate in the U.S.

Federal funding deficiencies affect the lives of tribal peoples from access to health care to the education of our youth. When the Special Diabetes Program for Indians has to scrape by on short-term reauthorizations, tribal health programs cannot invest in long-term diabetes prevention to decrease comorbidities that make COVID-19 especially lethal to AI/ANs. And when 34 percent of AI/AN Native Children lack internet access at home, they experience diminished educational opportunities during a pandemic when the nation has gone virtual.²

In recent months, tribal nations and tribal organizations have written Congress expressing their emergency needs during COVID-19.³ These letters have consistently emphasized a unified message: tribal governments need more resources to address a multitude of COVID-19 needs, regulatory flexibility is needed to facilitate access to relief funding, and funding instabilities that have exacerbated Indian Country's susceptibility to this pandemic must be at the forefront of congressional assistance. Today, I will provide a snapshot of these issues with a specific focus on Interior

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

² Alliance for Excellent Education, Future Ready Schools, Students of Color Caught in the Homework Gap, <https://futureready.org/homework-gap/>

³ Inter-tribal Letter to Congress on Tribal Priorities for COVID-19 Relief Package, http://www.ncai.org/Covid-19/legislative-updates/20.7.24_-_NA_Caucus_Requests_-_House_COVID19_Stim_package_-_merged.pdf

emergency appropriations, regulatory barriers, annual appropriations, and data deficiencies which are disadvantaging tribal nations in receiving COVID-19 relief.

Additional Emergency Funding is needed for the Operation of Indian Programs

Tribal nations' existing systems of service delivery and infrastructure will experience greater stress and/or reach their breaking points as tribal nations seek to maintain and increase essential government services due to COVID-19. On July 24, 2020, the Harvard Project on American Indian Economic Development published a policy brief titled, "Federal COVID-19 Response Funding for Tribal Governments: Lessons from the CARES Act."⁴ This brief found that CARES Act funds were insufficient to overcome the combined blow to tribal governments' budgets from economic stoppages and from the additional expenditures necessary to combat COVID-19.⁵ This finding was echoed by tribal leaders during NCAI's September 16-17, 2020, Tribal Unity Impact Days roundtables with Congressional representatives.⁶

The CARES Act included \$453 million in emergency appropriations for the Department of Interior (DOI), Bureau of Indian Affairs (BIA), Operation of Indian Programs (OIP). OIP accounts include BIA or Self-Governance programs that tribal governments are able to receive funding to operate or to receive direct services from. While this aid was welcome, tribal governments continue to need emergency appropriations for OIP programs because responding to this pandemic is cost-intensive, and it impacts all aspects of tribal governance and life in tribal communities. Since Spring 2020, Indian Country has asked that Congress provide \$950 million in additional funding for Tribal Priority Allocation (TPA) programs and TPA-like programs (e.g., Police Services & Detention/Corrections) within the OIP account to fund critical tribal programs. Funding must be provided for these essential tribal programs to meet increased user demands due to COVID-19.

The Harvard Project's policy brief highlights the positive payoffs that arise when a tribal government has the resources needed to build critical administrative, regulatory, and policymaking capacities,⁷ specifically citing successful COVID-19 response programs designed by tribal governments throughout the United States.⁸ However, the policy brief also noted that chronic underinvestment by the federal government and the effects of dual taxation by state and local governments means tribal governments' administrative capacities are stretched thin.⁹ Tribal governments must be provided additional funding with the maximum flexibility possible to support the rapid development and expansion of tribal governmental infrastructure to respond to COVID-19.

Regulatory Provisions Meant for Regular Order are Impairing Tribal Relief Services

In addition to emergency tribal government capacity needs, the COVID-19 pandemic has resulted in an increased need for tribal citizens to access economic assistance programs, and such program eligibility criteria should be updated to facilitate this support. For example, Emergency Assistance is available under the BIA's Welfare Assistance program as a one-time funding source for eligible applicants. As workforces in tribal communities are displaced due to closures or miss work due to quarantines, there is a need to expand certain programs to provide economic relief to those tribal citizens affected by the spread of COVID-19. Often, assistance programs are limited to one payment

⁴ Harvard Project on American Indian Economic Development, *Federal COVID-19 Response Funding for Tribal Governments: Lessons from the CARES Act*, Policy Brief No. 5, 2, https://ash.harvard.edu/files/ash/files/policy_brief_5-cares_act_lessons_24july2020_final_for_dist.pdf?m=1595612547.

⁵ *Id.* at 2.

⁶ Tribal Unity Impact Days 2020, <http://www.ncai.org/events/2020/09/16/tribal-unity-impact-days-2020>

⁷ *Supra* at 6.

⁸ *Id.* at 6-7.

⁹ *Id.* at 8.

per person, per household, which puts Indian Country at a distinct disadvantage due to overcrowding. As a result, multi-family and multi-generational households are left with inadequate resources for assistance, effectively punishing otherwise eligible applicants during a pandemic for living with someone who also needs economic recovery assistance.

On April 2, 2020, NCAI and partner organizations urged DOI to consider whether existing regulations at 25 C.F.R. § 20.329 for Emergency Assistance under the Welfare Assistance Program can be interpreted to include individuals or families who are affected by COVID-19.¹⁰ NCAI also recommended that BIA regulations at 25 C.F.R. § 20.330 be temporarily waived to increase the maximum allowable individual Emergency Assistance payments from \$1,000 to \$5,000.¹¹ Emergency Assistance is one example of a BIA regulatory restriction that impairs tribal distribution of COVID-19 relief. Given the ongoing nature of the pandemic and to prevent further delayed access to emergency relief, Congress should also require the BIA in consultation and collaboration with tribal nations to review and report to Congress on all BIA regulations that inhibit emergency relief program delivery and efficacy at the tribal government level and recommend solutions to these issues.

Excepted Continuing Resolution Durations for BIA and IHS would Improve COVID-19 Response and Recovery by Providing Funding Certainty and Stability

Disruptions in federal funding are devastating to tribal nations because tribal governments rely on program funds to provide essential governmental services to their communities and surrounding areas. Funding to fulfill the federal government's obligations to tribal nations should not be discretionary, and funding for tribal programs must be appropriated on time. However, since FY 1998, there has been only one year (FY 2006) when the Interior, Environment, and Related Agencies budget, which contains the funding for BIA, BIE, and IHS, has been enacted by the beginning of the fiscal year. These delays impact the delivery and development of tribal programs and impact tribal health, safety, and welfare, as evidenced by the vulnerability of tribal communities to this pandemic due to conditions arising from the underfunding and delayed funding of tribal programs (e.g., the Special Diabetes Program for Indians).

Authorizing advance appropriations for the BIA and IHS is a solution to the issue of delayed funding. Advanced appropriations are an agreement to fund certain programs at a set amount, in advance of when that funding is made available. These advance appropriations amounts do not become available until the year they are designated to fund and can be modified to reflect changing conditions that may need revised appropriations at a later date. Advance appropriations are budget neutral and potentially flexible funds that help entities and programs manage specific planning concerns. Unfortunately, advance appropriations for BIA and IHS require authority that Congress has not granted.

While we strongly support advance appropriations, we additionally support excepted durations of Continuing Resolution (CR) funding for BIA and IHS to immediately insulate against tribal budget uncertainty during the COVID-19 pandemic. Even though CRs typically provide funds at a specified rate, they can also have provisions that provide an exception to duration, amount, or purpose of funds. These exceptions are called "anomalies," and most CRs include certain anomalies that adjust the duration, amount, or purpose of certain funding. Congress could provide for BIA and IHS with full-year funding at prior year amounts, subject to final FY 2021 appropriations adjustments. An excepted CR duration for BIA and IHS accounts would allow for Congress to complete its appropriations

¹⁰ Inter-tribal Letter to Secretary of the Interior David L. Bernhardt on Recommendations for the Rapid Disbursement of COVID-19 Relief Funding and Resources to Tribal Nations http://www.ncai.org/Covid-19/administrative/FINAL_COVID-19_Tribal_Governance_Letter.pdf.

¹¹ *Id.*

negotiations while providing immediate certainty and stability to tribal programs during the COVID-19 pandemic.

Data Deficiencies Are Harming Tribal Nations during Coronavirus Relief Negotiations

Indian Affairs programs at DOI do not collect the data necessary to measure unmet programmatic obligations across tribal programs. As a result, any measure of progress for tribal programs at DOI is arbitrarily compared to historical budgets that are documented as underfunded and insufficient to meet the trust and treaty obligations of the federal government to tribal nations and their citizens. Failure to collect this data and put forward a needs-based budget directly harmed tribal nations during legislative COVID-19 relief negotiations because tribal nations were often asked to supply data that documented the extent of unmet needs, and tribal relief asks were compared against underfunded DOI annual appropriations.

The Tribal/Interior Budget Council began work to measure unmet trust and treaty obligations associated with the Operation of Indian Programs at DOI more than half a decade before COVID-19, but the current Administration has discontinued these efforts. Certain statutory requirements have forced Indian Affairs to put forward some measures of unmet need for Indian programs, such as estimates of unmet staffing needs of law enforcement, corrections, and court personnel for the Tribal Law and Order Act report. However, these efforts are limited in scope in comparison to the entire Operation of Indian Programs and were based, in part, on data from the latest BIA Labor Force Report, which was last completed in 2014.

DOI's data deficiencies resulted in 574 tribal governments receiving only .5% of the \$2 trillion in CARES Act aid despite tribal communities' vulnerability to the rising pandemic. To address this lethal breach of trust, Congress should require DOI to complete an annual estimate of the cost to fully fund the obligations of each program within the Operation of Indian Programs to be included in the President's Budget Request. Each program estimate should include a detailed explanation of the methodology and underlying data relied on to provide Congress such estimates. Each methodology must be developed in consultation and collaboration with tribal nations. The report must also identify data deficiencies that limit accuracy and provide a plan for remedying those issues. The absence of this information has cost AI/AN lives and livelihoods. The urgency of this data collection effort demands Congressional action.

Additionally, the unauthorized release of tribal data during the Coronavirus Relief Fund implementation has renewed distrust and skepticism in the federal government's collection and use of tribal data. Government is data-driven and certain information is critical to saving AI/AN lives. As such, Congress must put strict and consistent confidentiality requirements on all tribal data collected, including restrictions on the internal use and transfer of tribal data between agencies and penalties for misuse. These measures would provide express assurances to tribal governments that the United States has a fiduciary obligation to safeguard tribal data that is collected for fulfillment of its federal trust and treaty responsibilities.

Conclusion

I thank you for the opportunity to testify and I look forward to working with Congress on the issues and solutions identified today.