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U.S. House Committee on Natural Resources Subcommittee for Indigenous Peoples of the United States

Legislative Hearing on Advance Appropriations: Protecting Tribal Communities from the Effects of a Government Shutdown Testimony of First Vice President Aaron Payment National Congress of American Indians September 25, 2019

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NCAI HEADQUARTERS

1516 P Street, N.W.
Washington, DC 20005
202.466.7767
202.466.7797 fax
www.ncai.org

On behalf of the National Congress of American Indians (NCAI), thank you for the opportunity to provide testimony on H.R. 1128, the Indian Programs Advanced Appropriations Act; and H.R. 1135, the Indian Health Service Advance Appropriations Act of 2019. In addition to serving as Chairperson of the Sault Ste. Marie Tribe of Chippewa Indians, I serve as the First Vice President of NCAI and as President of the United Tribes of Michigan. I look forward to working with members of this Subcommittee and other members of Congress to ensure that tribal nations and their citizens are not harmed by impasses in the federal budget process.

Founded in 1944, NCAI is the oldest and largest national organization composed of tribal nations and their citizens. Tribal leaders created NCAI in 1944 in response to termination and assimilation policies that threatened the existence of American Indian and Alaska Native (AI/AN) tribal nations. Since then, NCAI has fought to preserve the treaty and sovereign rights of tribal nations, advance the government-to-government relationship between tribal nations and the federal government, and remove historic structural impediments to tribal self-determination.

Treaty and Trust Obligations

Tribal nations seek only those things promised to them and their citizens by the solemn treaties and agreements reached between tribal nations and the United States. When tribal nations ceded millions of acres of land to the United States, the federal government promised to safeguard tribal nations' sovereign right to self-governance, and to provide tribal nations adequate resources to deliver essential services effectively. These obligations are the foundation of the government-to-government relationship that exists between tribal nations and the United States.

My tribal nation, the Sault Ste. Marie Tribe of Chippewa, is the largest tribe east of the Mississippi River with 43,000 tribal citizens. We are also party to the 1836 Treaty of Washington, which ceded 14 million acres of land in exchange for our usufructuary rights and "health, education and social welfare" in perpetuity. Tribal nations pre-paid – in full – for federal funding for operations, programs, and services. The federal government must honor its treaty and trust obligations to tribal nations.

Like all other governments, tribal nations strive to build strong economies and ensure the health and wellbeing of their citizens and all those who reside in their communities. As part of tribal nations' responsibilities to their people, they provide a range of governmental services. These include education, law enforcement, judicial systems, healthcare, environmental protection, natural resource management, and basic infrastructure such as housing, roads, bridges, sewers, public buildings, telecommunications, broadband and electrical services, and solid waste treatment and disposal. Tribal nations are assuming greater levels of governmental responsibility to meet their citizens' needs in culturally appropriate ways, but receive inadequate federal funding for these essential public services.

The U.S. Commission on Civil Rights' December 2018 report, *Broken Promises: Continued Federal Funding Shortfall for Native Americans*, found that “[f]ederal programs designed to support the social and economic wellbeing of Native Americans remain chronically underfunded and sometimes inefficiently structured, which leaves many basic needs in the Native American community unmet and contributes to the inequities observed in Native American communities.”¹ The *Broken Promises* report reaffirms the conclusions of the 2003 *A Quiet Crisis* report, which found that federal funding for services to tribal communities was disproportionately lower than services to other populations.² This chronic underinvestment in the treaty and trust obligations makes tribal communities particularly vulnerable when the Administration and Congress cannot agree on spending priorities.

National Impact of Government Shutdowns

The national impacts of government shutdowns are concerning to tribal nations. According to the Senate Permanent Subcommittee on Investigations, the last three government shutdowns cost the federal government \$3.7 billion in back pay for furloughed employees, and at least \$338 million in extra administrative work, lost revenue, and late fees on interest payments.³ The Report also estimates that the last three shutdowns represent an estimated 56,938 years of lost productivity for federal agency employees.⁴ These losses to the federal government increase the likelihood that the United States will underinvest in its treaty and trust obligations to tribal nations.

Indian Country Impacts of Government Shutdowns and Continuing Resolutions

Tribal nations face significant challenges from uncertainty in the federal budget process. The 2019 government shutdown is the most recent example. As I testified earlier this year, when the government shuts down, tribal citizens must worry about whether they will have access to healthcare, whether emergency personnel will be able to reach them, whether police officers will have sufficient resources to protect tribal communities, and whether child welfare workers will have the ability to actively participate in proceedings. Even those tribal nations that are able to subsidize the federal government's treaty and trust obligations cannot do so forever, and the opportunity cost of diverting funds or seeking outside financing will affect those tribal nations

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

² *Id.*

³ Senate Permanent Subcommittee on Investigations, *The True Cost of Government Shutdowns*, <https://www.hsgac.senate.gov/imo/media/doc/2019-09-17%20PSI%20Staff%20Report%20-%20Government%20Shutdowns.pdf>

⁴ *Id.*

for years to come.

Due to the large role public administration jobs play in tribal communities and economies⁵—coupled with low average household wealth⁶—government shutdowns disproportionately hurt families in Indian Country. Earlier this year, thousands of Bureau of Indian Affairs (BIA) and Indian Health Service (IHS) employees, many of whom are tribal citizens, were furloughed or working without pay. Two of my tribal citizens, who serve as IHS Directors for other tribal nations, worked without pay. Federal BIA and IHS employees struggled to pay household bills and mortgages. Furloughs and missed paychecks not only hurt the affected employees, but entire families as well. A single salary may support an extended Native family, sending harmful ripples throughout the tribal nation and surrounding communities.

The uncertainty of a shutdown also compounds the challenges tribal nations face attracting and retaining professionals to work in healthcare, law enforcement, and other skilled professions that are critical to fulfilling the federal government’s treaty and trust promises to tribal nations. When there are interruptions, delays, and uncertainties in funding, our communities’ skilled professionals take other jobs so that they can more consistently provide for their families and their homes. In tribal communities, the loss of skilled professionals is devastating to the performance, operation, and maintenance of government services for tribal citizens.

Although government shutdowns are prominent examples of the negative effects of breakdowns in the federal budget process, tribal nations also must regularly contend with uncertainty when planning and delivering services to their citizens because of short-term continuing resolutions. Since FY 1998, there has only been one year (FY 2006) in which the Interior, Environment, and Related Agencies Appropriations bill has been enacted before the beginning of the new fiscal year. As such, healthcare provided by IHS and services provided by BIA are regularly impacted because both receive funding through Interior appropriations. These impacts are made worse by the fact that Indian Country programs already face significant underfunding.

We are in the final weeks of FY 2019, and there is again significant uncertainty regarding appropriations for the coming fiscal year. Congress and the Administration are currently working on yet another short-term continuing resolution and the national dialogue surrounding enacting FY 2020 appropriations legislation is cause for concern that tribal nations will see yet another impasse in the federal budget process that causes hardships across Indian Country.

Authorize Advance Appropriations for Indian Country

Congress must uphold its solemn obligations to tribal nations by protecting programs serving Indian Country from uncertainty in the federal budget process. BIA and IHS are the primary agencies responsible for providing critical services and resources to tribal nations and their citizens, in some cases directly and in others through compacts or contracts with tribal nations. Authorizing advance appropriations for IHS and BIA will ensure that services and resources that support the federal government’s treaty and trust obligations to tribal nations are not jeopardized

⁵ Todd, Richard. “Industry Concentration of Jobs Highlights Economic Diversification Opportunity in Indian Country.” Center for Indian Country Development Blog, May 31, 2018

⁶ Chang, Mariko, “Lifting as We Climb: Women of Color.” Wealth and America’s Future. Oakland, CA: Insight Center for Community Economic Development, 2010, 1

when the Administration and Congress cannot agree on spending priorities. This is because decisions on spending levels for the next fiscal year would already have been made for IHS and BIA.

On March 20, 2019, 60 House members sent a letter to the Chairman and Ranking Member of the House Committee on the Budget requesting advance appropriations for IHS and BIA. The letter states that, “[t]he recent government shutdown caused significant jeopardy to the health and safety of American Indians and Alaska Natives due to the lack of available funding for IHS, BIA law enforcement, and other fundamental services in Indian Country.” We are very grateful to the 60 members who signed the letter and hope that each member of this Committee and the entire House of Representatives will join in supporting advance appropriations for Indian Country.

H.R. 1128 and H.R. 1135

Preventing federal budget impasses from jeopardizing the health, safety, and wellbeing of tribal communities is a major priority for Indian Country. Following the 2019 government shutdown, NCAI adopted Resolution [ECWS-19-001](#), Support for Advance Appropriations for the Bureau of Indian Affairs (BIA) and Indian Health Service (IHS), during its 2019 Executive Council Winter Session. This resolution expands on NCAI Resolution [ANC-14-007](#), which calls for advance appropriations for IHS. NCAI is grateful to Representatives McCollum and Young in the House and Senator Udall in the Senate for introducing legislation to authorize advance appropriations for Indian Country.

H.R. 1128, the Indian Programs Advanced Appropriations Act was introduced by Representative McCollum. This legislation has a Senate companion bill, S. 229, and more than 30 bipartisan cosponsors. H.R. 1128 would authorize advance appropriations for several accounts at BIA, including Operation of Indian Programs, Contract Support Costs, and the Indian Guaranteed Loan Program. It also addresses several accounts at IHS, including Indian Health Services and Contract Support Costs.

H.R. 1135, the Indian Health Service Advance Appropriations Act, was introduced by Representative Young. This legislation has more than 25 bipartisan cosponsors, and we expect to see a Senate companion bill introduced soon. H.R. 1135 would authorize advance appropriations for several IHS accounts, including Indian Health Services and Indian Health Facilities.

NCAI supports H.R. 1128 and H.R. 1135.

Conclusion

Thank you for the opportunity to testify regarding these two bills. NCAI urges this Committee and the House to act swiftly to pass this legislation authorizing advance appropriations for IHS and BIA. Advance appropriations for IHS and BIA will enable the federal government to uphold its treaty and trust obligations to tribal nations by helping to insulate tribal communities from the harmful impacts caused by impasses in the federal budget process. We look forward to working with the members of this Subcommittee on a bipartisan basis to ensure federal commitments to Indian Country are honored and that legislation authorizing advance appropriations for tribal nations becomes law.