

**Tribal Partner Organizations Letter  
In Support of Budget Reconciliation Spending for Tribal Program**

August 19, 2021

The Honorable Nancy Pelosi  
Speaker  
U.S. House of Representatives  
H-232 Capitol Building  
Washington, D.C. 20515

The Honorable Kevin McCarthy  
Minority Leader  
U.S. House of Representatives  
H-204 Capitol Building  
Washington, D.C. 20515

**RE: Budget Reconciliation Spending for Tribal Programs**

Dear Speaker Pelosi and Minority Leader McCarthy:

This letter is on behalf of the undersigned American Indian and Alaska Native (AI/AN) organizations, which collectively serve and advocate on behalf of over 574 federally recognized Tribal governments. The recommendations in this letter summarize additional critical investments necessary to address centuries of chronic underfunding for Native American programs by the federal government and better deliver upon trust and treaty obligations. It is important to stress that fulfillment of these obligations should not be understood as special interests, but rather execution on sacred promises that resulted from massive losses of Indian Country land and natural resources that the United States continues to enjoy and benefit from today. Last week, the U.S. Census Bureau announced that the total AI/AN alone and in combination population increased by 86.5 percent, representing 2.9 percent of the U.S. population. Tribal Nations make significant contributions to the local, state, and regional economies and have a rich and vibrant culture that contributes positively to the past and current history of the United States. We hope these data inform any budget reconciliation efforts by Congress to ensure tribal inclusion is at least proportionate to our representative population. There is a present opportunity for the United States to reverse centuries of neglect and broken promises, as reported in both the 2003 U.S. Commission on Civil Rights' (USCCR) *A Quiet Crisis* report<sup>1</sup> and updated 2018 *Broken Promises* report,<sup>2</sup> and take the necessary actions to begin to correct this historical wrong.

Senate Concurrent Resolution 14 provides reconciliation instructions that direct 25 House and Senate Committees to report changes in laws within their jurisdiction that increase the deficit by up to \$3.5 trillion for the period of fiscal years 2022-2031, including up to \$20.5 billion for the U.S. Senate Committee on Indian Affairs and up to \$25.6 billion for the U.S. House Committee on Natural Resources. While the inclusion of direct funding for Indian Country via these committees of jurisdiction in the reconciliation instructions is appreciated and essential, these sums represent less than 1 percent of total spending authority. With this in mind, it is our expectation

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<sup>1</sup> U.S. Commission on Civil Rights (USCCR), *A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country*, 2003. <https://www.usccr.gov/pubs/na0703/na0204.pdf>

<sup>2</sup> USCCR, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans*, 2018. <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>

that Tribal Nations will be meaningfully included within the authorities of other Congressional Committees.

Additionally, we continue to request that the following unified principles apply to tribal provisions in the forthcoming reconciliation bill:

- funds must be provided directly to tribal recipients and not as pass-through funding to states or another entity;
- indirect costs must be an eligible use of funds and tribal recipients must be given the maximum flexibility possible in their use of federal funds;
- all funds for tribal recipients should be available until expended;
- funds should not be subject to competitive grants and match requirements; and
- explicitly require the Indian canons of construction be applied to provisions of this bill.

The budget resolution also includes provisions that lay a clear path to advance appropriations for Indian Health Services and Indian Health Facilities Accounts. Disruptions in resources for Tribal Nations have an outsized impact that substantially harms healthcare delivery. Advance Appropriations will reduce programmatic waste made by funding disruptions and partial-year budgets that result in duplicative tribal and federal government functions on an already underfunded system.

We applaud Congress for its historic inclusion of tribal program investments in the American Rescue Plan, the Consolidated Appropriations Act 2021, and the Infrastructure Improvement and Jobs Act. These inclusions reflect that there is always a way, when it is supported with a want and a desire. However, additional investments are necessary to address the health, safety, welfare, and development deficiencies of AI/AN Communities as we continue to rebuild our nations after centuries of unfavorable federal Indian policy that we are still recovering from today. We urge Congress to include robust spending for tribal programs and set-asides that reflect the maximum allowable spending within each Committee’s reconciliation instructions.

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In conclusion, we thank you for your attention to our requests outlined in this letter. We look forward to working with you to ensure that Indian Country’s infrastructure and tax concerns and priorities are comprehensively addressed in forthcoming packages.

Sincerely,

- Affiliated Tribes of Northwest Indians
- American Indian Higher Education Consortium
- Association on American Indian Affairs
- Great Plains Tribal Chairmen’s Association
- Inter Tribal Association of Arizona
- Intertribal Agriculture Council
- Inter-Tribal Council of Michigan, Inc.
- Inter-Tribal Emergency Management Coalition
- National American Indian Housing Council
- National Center for American Indian Enterprise Development
- National Congress of American Indians
- National Council of Urban Indian Heath
- National Indian Child Welfare Association
- National Indian Education Association
- National Indian Health Board
- Native CDFI Network
- Native Farm Bill Coalition
- Northwest Indian Fisheries Commission
- Self-Governance Communication & Education Tribal Consortium
- United South and Eastern Tribes Sovereignty Protection Fund

## **Healthcare**

Over the last several decades, Tribal Nations have seen incremental improvements in the federal government's efforts to support tribal sovereignty and honor the trust responsibility regarding health. However, the Indian health system remains critically underfunded with medical services funded at only 48 percent of need. As a direct result, AI/ANs experience some of the poorest health outcomes when compared to all other groups. Strategic investment in health infrastructure is necessary to build a health system that will improve the health of all AI/ANs and prevent and prepare for public health emergencies. Outlined below are the current infrastructure needs in Indian Country related to the Indian health systems.

***Advance Appropriations.*** We applaud the inclusion of the Indian Health Service (IHS), and its Facilities accounts, for approval of advance appropriations.

The Indian health system faces chronic challenges that are made worse by the endless use of continuing resolutions (CRs) and the persistent threat of government shutdowns. Of the four federal health care programs, IHS is the only one not protected from government shutdowns and CRs. Medicare and Medicaid programs receive mandatory appropriations and the Veterans Health Administration (VHA) receives advance appropriations starting a decade ago.

In September 2018, the Government Accountability Office (GAO) issued a report that noted “uncertainty resulting from recurring CRs and from government shutdowns has led to particular adverse financial effects on tribes that operate their own health care programs with funding from IHS.”<sup>3</sup> These effects have been quite traumatic and we celebrate your leadership in recognizing this important moment of progress.

### **Health Care Facilities Construction**

On average, IHS hospitals are 40 years of age, which is almost four times more than other U.S. hospitals with an average age of 10.6 years. A 40-year-old facility is nearly 26 percent more expensive to maintain than a 10-year facility. Further, current health care facilities are grossly undersized—about 52 percent—for patient populations, which has created crowded, even unsafe, conditions among staff, patients, and visitors.<sup>4</sup> At current rates of funding, if a new facility was built today, it would not be replaced for 400 years.<sup>5</sup> The absence of adequate facilities frequently results in either treatment not being sought, or sought later, prompted by worsening symptoms, and/or referral of patients to outside communities. To address these needs, we request the following:

- At least \$21 billion for Healthcare Facilities Construction, including but limited to: support for new and current planned projects, the Small Ambulatory Health Center

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<sup>3</sup> U.S. Gov't Accountability Off., GAO-18-652, Indian Health Service: Considerations Related to Providing Advance Appropriations Authority.

<sup>4</sup> The 2016 Indian Health Service and Tribal Health Care Facilities' Needs Assessment Report to Congress. Indian Health Service, 2016.

[https://www.ihs.gov/sites/newsroom/themes/responsive2017/display\\_objects/documents/RepCong\\_2016/IHSRTC\\_on\\_FacilitiesNeedsAssessmentReport.pdf](https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/documents/RepCong_2016/IHSRTC_on_FacilitiesNeedsAssessmentReport.pdf)

<sup>5</sup> House Committee on Natural Resources, Oversight Hearing on Improving and Expanding Infrastructure in Tribal and Insular Communities, Remarks by Congressman Doug LaMalfa (R-CA), March 9, 2017. <https://republicans-naturalresources.house.gov/newsroom/documentsingle.aspx?DocumentID=401671>

Program, the Joint Venture Construction Program, and innovative approaches to addressing unmet construction needs for health facilities as described in 25 U.S.C. § 1631(f);

- At least \$1.8 billion for equipment;
- At least \$750 million for maintenance and improvement of IHS and Tribal Facilities;
- At least \$10 billion in facilities construction funding for Tribes that do not qualify under the current Healthcare Facilities Construction Priority System (HFCPS) criteria;
- At least \$2 billion for behavioral health facilities; and
- At least \$580 million devoted to incorporating sustainability features into construction projects (new and existing facilities).

### Public Health Infrastructure

Public health infrastructure in Indian Country is one of the most severely underfunded and underdeveloped areas of the health service delivery system. The majority of the health disparities tribal communities currently face, such as obesity, diabetes, heart disease, and cancer are largely preventable chronic conditions. Treating these chronic health conditions imposes unnecessary challenges on tribal health systems and IHS. Presently, full funding for the IHS is at least \$48 billion to address these needs. A significant federal investment must be made to improve the tribal public health system to begin to make meaningful reductions in chronic and infectious disease disparities experienced by the AI/AN people. Accordingly, we request full funding for the Indian Health Service and the following:

- Full funding for the IHS at \$48 billion;
- At least \$3 billion for Electronic Health Records and Health IT Modernization;
- \$250 million annually, with increases for medical inflation for the Special Diabetes Program for Indians (SDPI) through FY 2031;
- At least \$1 billion for an inter-tribal, interoperable public health infectious disease surveillance system;
- At least \$2.3 billion for Tribal Nations and Tribal Epidemiology Centers (TECs) to build and strengthen tribal public health infrastructure and capacity;
- At least \$45 million of the Strategic National Stockpile for Tribal Nations; and
- An additional \$200 million annually, with increases for medical inflation, for IHS Behavioral Health Programs.

### Tribal Health Workforce Development

IHS and tribal health providers continue to struggle to find qualified medical professionals. Currently, estimated vacancy rates are as follows: physician 34 percent; pharmacist 16 percent; nurse 24 percent; dentist 26 percent; physician's assistant 32 percent, and advanced practice nurse 35 percent.<sup>6</sup> Current vacancy rates make it nearly impossible to operate a quality healthcare program. With competition for primary care physicians and other practitioners/administrators at an all-time high, the situation is unlikely to improve soon. IHS cannot meet workforce needs with the current strategy. To strengthen the healthcare workforce, Indian Country needs investment from the federal government to educate, recruit, and expand its pool of qualified medical and healthcare administration professionals. To accomplish this, we request the following:

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<sup>6</sup> U.S. Government Accountability Office, Indian Health Service, Agency Faces Ongoing Challenges Filling Provider Vacancies, GAO-18-580. (2018). <https://www.gao.gov/assets/gao-18-580.pdf>

- At least \$6 billion for tribal medical residency programs under the HRSA Teaching Health Centers program;
- Eliminate tax revenue from the IHS Scholarship and Loan Repayment Program;
- At least \$10 billion in non-competitive tribal funding within annual Medicare funding in tribal Graduate Medical Education (GME), removing administrative barriers and allowing all reasonable costs for GME funding by Indian operated hospitals;
- At least \$90 million in Public Health Scholarships within HRSA for AI/ANs and tribal health providers;
- At least \$2 billion for improved housing options and long-term livable standards for IHS and Tribal health workforce staff quarters; and
- At least \$25 million for the Community Health Aide Program (CHAP).

### *The Indian Health Care Improvement Act*

The Indian Health Care Improvement Act (IHCIA) was permanently reauthorized in 2010. All of the programs included in the law were meant to further fulfill the trust and treaty responsibility owed to Tribal Nations by the federal government and provide high quality healthcare to AI/ANs. This obligation requires full funding of these programs. We request the following programs, authorized in IHCIA, be fully funded:

- Health Professional Chronic Shortage Demonstration Project;
- Indian Health Care Delivery Demonstration Projects;
- Indian Country Modular Component Facilities Demonstration Program;
- Mobile Health Stations Demonstration Program;
- Services for Community Based Long-Term Care; and
- Inpatient and Community Health Facilities Design, Construction, and Staffing for at least one inpatient mental healthcare facility per IHS Area.

### *Urban Indian Organizations*

There are 41 Urban Indian Organizations (UIOs) operating in 77 health facilities across 22 states that provide high-quality, culturally competent care to urban Indian populations. However, certain bureaucratic rules greatly impact their ability to provide services and operations.

- Full (100 percent) Federal Medical Assistance Percentage (FMAP) to services provided at UIOs permanently.

### **Water Infrastructure**

Water is a critical resource in Indian Country. It has implications for the physical, cultural, and economic wellbeing of tribal citizens. Yet 48 percent of Native households lack access to clean water and 12.5 percent of AI/AN homes do not have basic sanitation facilities. Further, approximately two percent of these homes lack access to safe drinking water, as compared to 0.6 percent of non-Native homes in the U.S.<sup>7</sup> To place this discrepancy in perspective, the Environmental Protection Agency's Sixth National Drinking Water Infrastructure Needs Survey

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<sup>7</sup> Indian Health Services, Safe Water and Waste Disposal Facilities, Fact Sheet, <https://www.ihs.gov/newsroom/factsheets/safewater/>.

and Assessment – which focuses on Drinking Water State Revolving Fund eligible projects – reported that for this program there was a combined Indian country need of \$3.8 billion in capital investments over the next 20 years.<sup>8</sup> Access to clean water and water infrastructure is a top priority for Indian Country and necessary for our health and development of tribal economies.<sup>9</sup> Accordingly, we request the following:

- Permanently increase to 20 percent the tribal allocation for Water Pollution Control Grants (Clean Water Act Section 106) to aid development of tribal water quality for public health;
- At least \$25 million to support tribal environmental programs in assessing and managing nonpoint source pollution programs and threats;
- At least \$30 million to support the protection and management, conservation, and utilization of trust water resources;
- Increase funding by \$200 Million for water infrastructure and create a tribal set-aside within the U.S. Department of Agriculture (USDA) Rural Development water programs, including for: Community Facilities Direct Loan & Grant Program, Water & Waste Disposal Grants to Alleviate Health Risks on Tribal Lands and Colonias, Grants for Rural and Native Alaskan Villages, Water & Waste Disposal Loan & Grant Program;
- At least \$10 million to support tribal assessments on aging drinking water and wastewater infrastructure; and
- Permanently authorize and fund the Reclamation Water Settlement Fund (RWSF) to enable tribal communities to address water shortages through water delivery infrastructure for the health, safety, and welfare of their communities.

### **Telecommunications**

Funding is needed throughout Indian Country for rapid deployment, adoption, affordability, and access to broadband internet. According to a 2019 Federal Communications Commission (FCC) report, individuals residing on tribal lands are nearly 4.5 times as likely to lack any terrestrial broadband internet access as those on non-tribal lands.<sup>10</sup> Even when examining fixed broadband deployment at speeds lower than 10 Mbps, only 6 percent of homes on non-tribal lands lack coverage by any wired provider, while 25 percent of homes on tribal lands have no wired option for 10/1 Mbps service.<sup>11</sup>

Barriers to broadband deployment in Indian Country range from a lack of financial investment, to difficult terrain that leads to excess deployment costs, and complex and burdensome regulatory environments.<sup>12</sup> Many Tribal Nations face multiple of these barriers at once, compounding the

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<sup>8</sup> Environmental Protection Agency, “Drinking Water Infrastructure Needs Assessment Survey: Sixth Report to Congress” (2018), pp. 42-46.

<sup>9</sup> Id., at Broken Promises, pp. 180-184.

<sup>10</sup> Federal Communications Commission, *Report on Broadband Deployment in Indian Country, Pursuant to the Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018*, 5, (2019), [https://aipi.clas.asu.edu/sites/default/files/05011019fccreport\\_on\\_broadband\\_deployment\\_in\\_indian\\_country\\_pursuant\\_to\\_the\\_repack\\_airwaves\\_yielding\\_better\\_access\\_for\\_users\\_of\\_modern\\_services\\_act\\_of\\_2018.pdf](https://aipi.clas.asu.edu/sites/default/files/05011019fccreport_on_broadband_deployment_in_indian_country_pursuant_to_the_repack_airwaves_yielding_better_access_for_users_of_modern_services_act_of_2018.pdf)

<sup>11</sup> Id., at p-5.

<sup>12</sup> Department of Interior, Indian Affairs, *National Tribal Broadband Strategy*, p. 6, (2021), <https://www.bia.gov/sites/bia.gov/files/assets/as-ia/doc/2020.%20December.%20National%20Tribal%20Broadband%20Strategy%20FINAL-cover%20change.pdf>

issue and perpetuating digital exclusion. Modest estimates have indicated that the cost to begin closing the digital divide in Indian Country would be in excess of \$8 billion. In 2009, The American Recovery and Reinvestment Act (ARRA) distributed \$7.2 billion in broadband grants and loans with less than two percent of those funds going towards Tribal broadband projects.<sup>13</sup> Broadband is critical infrastructure and Congress must ensure that tribal communities are not left behind as education, healthcare, government services, and commerce undergo years of changes in a short time. Accordingly, we request the following:

- At least \$1 billion for a Tribal Broadband Fund within the FCC to provide technical assistance, training, and direct funding to tribal governments for broadband infrastructure deployment, maintenance, and upgrades;
- Provide a 20 percent tribal set-aside for the USDA’s Rural Utility Service broadband programs and 5 percent of the FCC’s Universal Services Fund for the benefit of broadband deployment on Tribal lands;
- At least \$1 billion for tribal broadband grant programs through BIA and establish the Tribal Broadband Right-of-Way Pilot Program to allow the Secretary of the Interior to delegate the authority to approve rights-of-way for the construction, maintenance, and facilitation of broadband service to Indian Tribes;
- Increase funding and provide an annual budget of \$1.5 million to the FCC’s Office of Native Affairs and Policy (ONAP) to fully-staff the Office and conduct training, outreach, and consultation with Tribal Nations. Also, elevate the Office of Native Affairs and Policy from the Consumer & Governmental Affairs Bureau to provide the Office with direct, independent reporting to the FCC Chair and Commissioners;
- Waive matching fund and non-duplication requirements for Tribal Nation applicants to USDA Broadband Loan programs;
- Establish a Tribal Priority Window in all FCC spectrum license auctions to ensure spectrum licenses over Tribal Homelands can be claimed prior to going to public auction. This process should be similar to how the Tribal Priority Window was established in the auction of the 2.5 GHz Educational Broadband Service but should not be limited to a definition “rurality” based on a Tribal Nation’s land base;
- Direct the FCC to assist Tribal Nations in accessing spectrum licenses through secondary-market mechanisms. The FCC should support Tribal Nations in these negotiations with industry and other license holders;
- Establish the Tribal Broadband Interagency Working Group to serve as a forum to improve coordination across Federal broadband programs; reduce deployment barriers; promote awareness of Federal support for broadband deployment; and develop common Federal goals, performance measures, and plans to deploy affordable broadband on Tribal lands;
- Establish a Tribal Broadband Deployment Advisory Committee for Tribal leaders to meet and make recommendations to Congress on ways of improving the deployment of Tribal broadband services;
- Provide \$150 million for TCU’s to strengthen and expand their Information Technology Infrastructure and ensure TCU access to state and regional education and research networks; and

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<sup>13</sup> Congressional Research Service, *Background and Issues for Congressional Oversight of ARRA Broadband Awards*, R41775, (2015), p. 2-3, <https://crsreports.congress.gov/product/pdf/R/R41775>



- Establish and permanent TCU IT Service Fund at \$24 million under the U.S. Department of Agriculture Rural Utilities Service.

### **Energy Infrastructure**

The energy resources of Tribal Nations are vast and critical to tribal and national energy security, the reduction of greenhouse gases, and tribal economic development. 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>14</sup> almost 3.5 percent of the nation’s wind energy, and approximately five percent of the nation’s total solar energy potential.<sup>15</sup> Despite this potential, Tribal Nations encounter significant financial and regulatory barriers to developing resources within their homelands, including access to existing infrastructure and financing energy development.<sup>16</sup> The consequence of these hurdles are dire for tribal citizens in Indian Country. For example, approximately 14 percent of homes on reservations do not have access to electricity.<sup>17</sup> Congress must act to address long-standing funding and structural inequities facing Tribal Nations as they seek to develop their energy resources. Accordingly, we request the following:

- At least \$1 billion for Tribal energy grant programs within the Department of Energy’s Office of Indian Energy Programs.
- At least \$60 million to the U.S. Department of Agriculture High Energy Cost Grant Program for Tribal applicants.
- At least \$35 million to Bureau of Indian Affairs Tribal Energy programs.
- Fully funding the Columbia Basin Initiative to ensure a sustainable energy future for the Pacific Northwest that addresses the extinction crisis for Columbia Basin salmon and steelhead by restoring the lower Snake River to a naturally-flowing river, providing critical ecological and climate resilience, and sustainably replacing the power, irrigation, and transportation services provided by the four federal dams on the lower Snake River.

### **Housing**

Tribal Nations need an extensive investment in tribal housing programs to meet the current backlog of maintenance, fund new construction, and alleviate overwhelming housing instability. Presently, tribal communities face overcrowded homes at a rate of 16 percent, roughly eight times the national average.<sup>18</sup> Over 70 percent of existing housing stock in tribal communities is in need of upgrades and repairs, many of them extensive.<sup>19</sup> Housing shortages and deficiencies have a ripple effect in the local and regional communities and economies. These shortages and deficiencies serve as a

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<sup>14</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>15</sup> National Renewable Energy Laboratory, Techno-Economic Renewable Energy Potential on Tribal Lands, (2018), <https://www.nrel.gov/docs/fy18osti/70807.pdf>

<sup>16</sup> Id, at Broken Promises, pg. 182

<sup>17</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/f30/FY2017BudgetVolume3.pdf>.

<sup>18</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>19</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)

deterrent to retaining and recruiting staff and exacerbate educational challenges and social wellbeing that arises from housing security and stability.

The flat-funding of federal housing programs for Tribal Nations, combined with inflation in construction costs over time—has resulted in a sharp decrease in the number of affordable housing units developed in Indian Country in recent years.<sup>20</sup> In 2016, the Acting Deputy Assistant Secretary at HUD stated that, “one of the greatest impediments to developing affordable housing in Indian Country is the flat funding of the Indian Housing Block Grant (IHBG) for most of the program’s history.”<sup>21</sup> Since NAHASDA was enacted, Tribal Nations have lost nearly \$3.5 billion in funding from the lack of inflation indexing alone. In addition to historical funding shortfalls, the location of many tribal communities increases the material and labor costs of home construction and impose additional housing development costs.<sup>22</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>23</sup>

In a 2017, HUD reported it would take approximately 33,000 new units to alleviate overcrowding and an additional 35,000 to replace existing housing units that are in grave condition.<sup>24</sup> Current annual IHBG appropriations only allow tribes to build or purchase 1,000-1,200 units a year. To meet the total need of approximately 68,000 housing units (new and replacement), with the average development cost of a three-bedroom home, the total cost is in excess of \$33 billion.<sup>25</sup> While IHBG is the largest single source of federal funding for housing development and assistance, programs promoting housing development, maintenance, and rehabilitation in tribal communities are also found at the U.S. Department of Veterans Affairs, U.S. Department of Agriculture, and U.S. Department of the Interior.<sup>26</sup> To address Indian Country’s extensive housing needs, we request an investment of \$10 billion for tribal housing programs.

- At least \$10 billion in additional funding to be available until expended for Indian Housing Block Grant Programs and other Federal Tribal Housing Programs to address urgent housing needs in Indian Country.
- At least 5% Tribal set-asides included within any housing maintenance and repair funding to upgrade existing housing infrastructure in Tribal communities.
- At least 5% Tribal set-asides included within any rental and mortgage assistance funding authorized through budget reconciliation.

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<sup>20</sup> Id, at Broken Promises, pg. 142

<sup>21</sup> Randall R. Akers, then Acting Deputy Assistant Secretary at HUD, *Testimony*, Briefing Transcript, pp. 166–67.

<sup>22</sup> Id, at Broken Promises.

<sup>23</sup> Ibid.

<sup>24</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>25</sup> National congress of American Indians, *Tribal Infrastructure: Investing in Indian Country for a Stronger America*, An initial report by NCAI to the Administration and Congress, 2017, p. 11, [https://www.ncai.org/attachments/PolicyPaper\\_RslnCGsUDiatRYTpPXXwThNYoACnjDoBOrdDIBSRcheKxwJZDCx\\_NCAI-InfrastructureReport-FINAL.pdf](https://www.ncai.org/attachments/PolicyPaper_RslnCGsUDiatRYTpPXXwThNYoACnjDoBOrdDIBSRcheKxwJZDCx_NCAI-InfrastructureReport-FINAL.pdf)

<sup>26</sup> National congress of American Indians

## **Transportation**

The economy and wellbeing of Indian Country are dependent upon transportation infrastructure. U.S. Department of Transportation officials have characterized roads in Indian Country as the “most rudimentary of any transportation network in the United States,” with nearly two-thirds of BIA-owned and tribally-owned public road systems comprised of unimproved earth and gravel.<sup>27</sup> The CDC notes that AI/ANs suffer fatal motor vehicle crashes and pedestrian deaths at two and three times the national average.<sup>28</sup>

Infrastructure Improvement and Jobs Act, as passed by the Senate, includes increases for the Tribal Transportation Program (TTP), funding for bridges and road maintenance, and certain set-asides and expanded eligibility for competitive grant programs. While we applaud the increases and improvements that are included, the investment is insufficient to address the growing deferred construction and maintenance backlogs throughout Indian Country. Further, competitive grant opportunities are often illusory or cost prohibitive for Tribal Nations to invest in the application process across hundreds of federal programs with a low probability of award. The Infrastructure Improvement and Jobs Act also did not include a fix to the obligation limitation that rescinds TTP and other Highway Trust Fund contract authority each year, despite inclusion of a solution by the House during the 116th Congress. Prior to surface transportation reauthorization under MAP-21, the TTP was included as an exemption from the obligation limitation and its subsequent deduction. The end result is a continuation of funding transportation in Indian Country that is one step forward, and five steps back. Due to the obligation limitation deduction, the reality of funding provided for Indian Country’s surface transportation facilities is significantly less than the contract authority provided by Congress in any reauthorization text. In consideration of the Highway Trust Fund total contract authority, the TTP represents an extremely small comparative investment; however, the obligation limitation deduction has an outsized impact on surface transportation in Indian Country each year. Without additional investment in Indian Country’s surface transportation by Congress, deferred construction and maintenance backlogs will continue to increase, putting more lives at risk and dampening economic growth.

Dedicated tribal surface transportation facility investment is necessary and immediate, but Indian Country is multi-modal. Dedicated tribal funding for air and water transportation is needed to ensure that Tribal Nations have equal opportunity to grow their transportation networks in a way that makes sense for their communities. The coronavirus pandemic has highlighted the infrastructure deficiencies that exist throughout Indian Country. Accordingly, we request the following one-time investment in roads, bridges, highways, and transit systems to help connect Indian Country to goods, services, cultural events, education, jobs and markets, improve the economies of the Nation’s Indian tribes, and rebuild vibrant and safe tribal communities:

- At least \$2 billion in additional funding for Tribal Transportation Program to be available until expended;

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<sup>27</sup> U.S. Department of Transportation, *Hearing on Transportation Issues in Indian Country Before the Committee on Indian Affairs U.S. Senate*, July 12, 2007, <https://www.transportation.gov/testimony/tribal-transportation-indian-reservation-roads-irr-program-and-federal-highway>

<sup>28</sup> Centers for Disease Control and Prevention, *Tribal Road Safety: Get the Facts*, 2020, <https://www.cdc.gov/motorvehiclesafety/native/factsheet.html>

- Exempt the Tribal Transportation Program from the obligation limitation on contract authority made available from the Highway Trust Fund; and
- Provide a 10 percent Tribal set-aside within the Airport Improvement Program and the Essential Air Service Program.
- Provide funding for Tribal Nations to develop water transportation and ferry networks and facilities.

### **Law Enforcement, Public Safety, and Justice**

Tribal governments serve as the primary instrument of law enforcement, homeland security, emergency management, and justice delivery for the more than 50 million acres of land that comprise Indian Country. As a result of historic underfunding and complex jurisdiction issues, AI/ANs experience disproportionately high rates of violent crime. Violent crime rates are more than 2.5 times the national rate, and some reservations face more than 20 times the national rate of violence.<sup>29</sup> Notwithstanding these rates of violence, law enforcement, public safety, and justice infrastructure across Indian Country has largely remained underfunded.

The COVID-19 pandemic completely changed the landscape for Tribal Nations, tribal domestic violence programs, and AI/AN victims and survivors throughout Indian Country. Since the beginning of the pandemic many AI/AN victims have been trapped in their homes with their abusers. AI/AN victims have been unable to reach out for help or leave their homes due to the lack of resources and safe housing. However, these programs are limited by funding, space, and lack of personal protective equipment for staff and victims. AI/AN victims also have a higher need for transportation, transitional housing, and non-congregate sheltering during the pandemic. Congress must provide funding for tribal domestic violence and sexual assault programs to meet the needs of AI/AN victims in Indian Country as the pandemic continues.

In addition to violent crimes, man-made disasters and natural disasters contribute to the lack of safety in Indian Country. Despite the rising number of disasters across the country tribal governments have been continuously left further behind in meeting the core homeland security and emergency management capabilities and capacities. In contrast, Congress has provided consistent funding to state and local governments for over 50 years to develop and sustain the same core capabilities and capacities.

The COVID-19 pandemic illustrated how the years of failing to invest in all tribal emergency management capabilities and capacity has directly prevented 85 percent of Tribal Nations from accessing billions in life saving COVID-19 funds to this day.<sup>30</sup> Moreover, many of the Department of Homeland (DHS) Security funding streams lack a tribal set-aside and include burdensome administrative requirements to access the billions of dollars in funds. The tribal capacity and funding gaps showcased during the pandemic will continue to grow unless all tribal governments

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<sup>29</sup> See Department of Justice (DOJ) and Department of Interior (DOI), Tribal Law and Order Act (TLOA) Long Term Plan to Build and Enhance Tribal Justice Systems, Joint Report in collaboration with the Work Group on Corrections, August 2011, p. 2 (quoting Steven W. Perry, American Indians and Crime, A BJS Statistical Profile, 1992-2002, DOJ, Bureau of Justice Statistics, 2004.

<https://www.justice.gov/sites/default/files/tribal/legacy/2014/02/06/tloa-tsp-aug2011.pdf>

<sup>30</sup> See Federal Emergency Management Agency, By the Numbers Coronavirus Pandemic Whole-of-America Response (Feb. 8, 2021); Federal Emergency Management Agency, By the Numbers Coronavirus Pandemic Whole-of-America Response (March 8, 2021).

receive streamlined support to build their homeland security and emergency management capacity. Congress must ensure the safety of all Americans by providing the following funding streams for tribal law enforcement, public safety, and justice in Indian Country:

- Eliminate all non-federal cost share requirements for Tribal Nations under Tribal Major Disaster Declarations and Tribal Emergency Disaster Declarations;
- \$1 billion for law enforcement infrastructure in Indian Country;
- \$200 million for the BIA Public Safety and Justice Construction;
- \$500 million for the construction of tribal multi-justice centers and detention facilities through the Department of Justice, Bureau of Justice Assistance;
- \$500 million for Tribal courts, including courts in P.L. 280 jurisdictions through the BIA Indian Tribal Justice Act programs;
- \$527.4 million for criminal investigations, police services, and detention/corrections through the BIA;
- Establish the Tribal Resiliency Continuity Program within DHS to build tribal emergency management capacity and provide \$244 million;
- \$40 million for the Tribal Homeland Security Grant Program;
- Establish a 10 percent set-aside for tribal governments in cybersecurity funding available for state and local governments, as well as to require DHS to submit an annual report to Congress outlining the cybersecurity needs of Indian Country; and
- \$50 million for grants to tribal governments, tribal coalitions, tribal non-profit organizations, and tribal organizations that serve Native victims.

### **Lands and Natural Resource**

Despite losing more than 1.5 billion acres to U.S. expansion between 1776 and 1934, AI/ANs have nurtured, lived, and thrived off their traditional homelands since time immemorial as the first stewards of those places. As land managers, Tribal Nations and their citizens maintain deep and ongoing physical, cultural, spiritual, and economic relationships. As such, when these lands and natural resources are mismanaged, Tribal Nations suffer. Further, Many Tribal Nations ceded their territories in exchange for reserving the right to continue to fish, hunt, and gather. Without abundant natural resources to sustain tribal lifeways, tribe's treaty rights, cultures, and economies are inevitably threatened. This is particularly true in light of off-reservation development and management of federal lands in ways that do not adequately include tribal interests and ignore impacts to tribal cultural heritage and natural resources. Congress must better fund and incorporate tribal knowledge and co-management strategies into natural resources infrastructure. Accordingly, we request the following:

- Enact a Clean *Carciari*-Fix to ensure all Tribal Nations have the ability to restore their Homelands;
- At least \$550 million for the National Park Service Tribal Historic Preservation Officer (THPO) Program;
- Reauthorize and provide at least \$500 million in funding to the Indian Environmental General Assistance Program (IGAP);
- At least \$100 million for Tribal fish hatchery infrastructure, including deferred maintenance, facility upgrades, and new facilities;

- At least \$1.1 billion for the Pacific Coastal Salmon Recovery Fund, which provides funding to states and tribes to support salmon recovery and uphold the treaty fishing rights of the tribes.
- Establish a tribal wildlife corridors program and provide at least a \$10 million set-aside for tribal governments; and
- At least \$15 million for programmatic funding under the American Indian Agricultural Resource Management Act (AIARMA) including funds for Agriculture Resource Management Plans to support Traditional Ecological Knowledge (TEK) land management practice, which in turn strengthen Tribal Nations' climate sustainability, economic development, and sovereignty.
- At least \$2 billion for Mitchell Act hatcheries, which would ensure that these hatcheries operate at full production level to meet federal obligations to mitigate for fish and habitat loss caused by the federal hydropower dam system on the Columbia River.
- At least \$10 billion for coastal resiliency and habitat restoration for fish stocks, including a tribal set-aside.
- At least \$2 billion for fishery surveys, research and monitoring.

### **Climate Sustainability**

The cultures and lifeways of Tribal Nations and their citizens are place-based and closely tied to subsistence practices. These resources are disappearing faster than they can be restored because of dramatic shifts in weather and climate.<sup>31</sup> As a consequence, Tribal Nations are at the front lines of the climate crisis and disproportionately affected by having to respond to dramatic and incremental events like 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 impacts on traditional cultural and subsistence practices and sacred places, tribal fisheries, timber harvesting, and agricultural operations, eco-tourism, and infrastructure.<sup>33</sup> As a result of these challenges, Tribal Nations are involved in all stages of climate response, including but not limited to, emissions reduction, mitigation, and adaptation. Tribal Nations are key partners in the national and global response to climate change. Accordingly, we request the following:

- At least \$1.8 billion for tribal climate resilience and adaptation;
- Authorize HUD's Sustainable Communities Initiative to support tribal planning efforts to help communities integrate housing, transportation, infrastructure, and environmental goals;
- Authorize a Climate Migration Program to facilitate and fund tribal governments' climate-related migration planning and implementation needs; and
- Authorize FEMA to work with Federal agencies to streamline and standardize the application process for grants and other financial assistance to increase collaboration between the federal government and Native communities and develop unified, comprehensive plans that incorporate hazard mitigation plans, risk assessments, climate vulnerability assessments, and flood maps that can be used to streamline federal climate adaptation resources.

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<sup>31</sup> Id, at Broken Promises, pg. 193.

<sup>32</sup> Id. at, pp.193-194.

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

## **Education**

### **K-12 Infrastructure**

Many Native-serving schools remain shuttered, creating major complications for students who have only experienced education through distance and virtual programs in the past year. As our schools look at reopening, many lack the basic infrastructure to safely return to the classroom. The Department of Interior reports a \$725 million backlog in addressing deferred maintenance issues at Bureau-funded schools.<sup>34</sup> This is nearly double the \$430 million backlog in 2016 when the Department of Interior Office of Inspector General found it would take \$1.6 billion to replace the 68 Bureau-funded schools in the worst condition.<sup>35</sup> Most recently, at the end of FY 2019, BIE reported 71 schools in poor condition.<sup>36</sup> Additionally, public schools that serve students on and near tribal lands face similar issues, as shown by a 2017 report from the National Association of Federally Impacted Schools (NAFIS), which found over \$4.2 billion in infrastructure projects with the “most pressing need” at schools receiving Impact Aid funding.<sup>37</sup>

The number of schools that need replacement have grown since these reports, particularly taking into account public health hazards such as ventilation. Deferred maintenance has nearly doubled, exacerbating the rate of deterioration in our school facilities and increasing the need for a strong investment in school replacement and facility construction. Even the newest facilities must undergo major renovations to heating and air, plumbing, and other systems to ensure the safety of students, staff, and faculty in the building. In addition, transportation expenses are expected to rise due to limitations on space, and requirements for technology support and broadband have become even more essential in the new virtual world. Accordingly, we request the following:

- \$725 million to address deferred maintenance and failing infrastructure in Bureau-funded schools, as defined in 25 U.S.C. § 2021(3);
- At least \$2.6 billion for Replacement School/Facility/Employee Housing Construction at Bureau-funded schools, as defined in 25 U.S.C. § 2021(3);
- \$120 million for education information technology;
- \$73 million to the BIE Student Transportation Program for funding and improving transportation; and
- \$4.2 billion to address pressing school facility needs at Impact Aid schools.

### **TCU Infrastructure**

The nation’s 37 TCUs serve more than 160,000 AI/ANs, and other rural community members each year through academic and community-based programs at more than 75 sites in 16 states. TCU

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<sup>34</sup> Statement of Jason Freihage, Deputy Assistant Secretary For Management Office Of The Assistant Secretary For Indian Affairs Department of The Interior Before The Subcommittee on Interior, Environment, and Related Agencies, House Committee on Appropriations on Education Facilities And Construction, July 24, 2019, <https://www.congress.gov/116/meeting/house/109835/witnesses/HHRG-116-AP06-Wstate-FreihageJ-20190724.pdf>

<sup>35</sup> U.S. Congressional Research Service, Indian Elementary- Secondary Education: Programs, Background, and Issues, RL- 34205; July 28, 2020. <https://files.eric.ed.gov/fulltext/ED607186.pdf>

<sup>36</sup> U.S. Department of the Interior Site Assessment Analysis for FY 2020, Data as of end of FY 2019 Q4. <https://www.ncai.org/12 - Improving School Facilities - Site Assessment Analysis for FY 2020.pdf>

<sup>37</sup> NAFIC, Foundations for Learning: The Facilities Needs of Federally Impacted Schools, Jocelyn Bissonnette, 2017. <https://www.nafisd.org/wp-content/uploads/2017/07/2017-school-construction-report.pdf>

students represent well over half of the over 574 federally recognized tribal governments, hailing from more than 30 states, and 79 percent receive federal financial aid.

A July 2021 survey of TCUs, conducted by the American Indian Higher Education Consortium (AIHEC), revealed a list of outstanding, chronic facilities-related needs.<sup>38</sup> These needs include campus renovations; technology-enabled facilities; and student and faculty housing, classrooms, libraries, and laboratories. A recent TCU Cyberinfrastructure study conducted by AIHEC and EDUCAUSE, revealed that TCUs have more expensive and, on average, much slower Internet connectivity than other U.S. institutions of higher education.<sup>39</sup> Additionally, the average TCU IT equipment replacement rate is 8.29 years, lagging behind the industry standard rate of three to five years. In order to address these urgent needs, dedicated funds should be established at the U.S. Department of the Interior to address new construction needs, deferred maintenance and rehabilitation issues, and facilities operations and maintenance needs for TCUs. A dedicated fund should also be established at the U.S. Department of Agriculture-Rural Utility Service to provide and develop critically needed telecommunication and broadband services to better serve TCUs, as rural, community-based, and under-resourced institutions. Accordingly, we request the following:

- \$404 million for TCU immediate construction, deferred maintenance, and rehabilitation; and \$2.717 billion for TCU master plan completion, for a total of \$3.27 billion for TCU facilities;
- A technical amendment to COVID-19 relief funding bills to clarify to the Departments of the Interior and Education that TCU COVID-19 relief funds may be used for construction;
- Provide \$150 million for TCU's to strengthen and expand their Information Technology Infrastructure and ensure TCU access to state and regional education and research networks;
- Establish a permanent TCU IT Service Fund at \$24 million under the USDA-Rural Utilities Service Program;
- An additional \$200 million for TCU/1994 land-grant research, equity, and extension programs to establish a level of equity for the thirty-five 1994 land-grant institutions compared to programs for the fifty 1862 institutions and eighteen 1890 institutions;
- Land-grant research infrastructure funding: no less than 33 percent should be designated for the 1994 land-grant institutions (based on the share of institutions in the nation's land grant system);
- To help build a highly skilled and educated Native workforce, no less than 10 percent of any funding within the Department of Education (ED) designated for minority-serving institutions should be specifically designated for TCUs;
- An adequately funded ED-Capital Financing Fund should be established for TCUs, consistent with the existing Capital Financing Fund for HBCUs;
- Designate for TCUs at least 10 percent of Department of Labor workforce development funding provided to community colleges and other institutions of higher education;

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<sup>38</sup> AIHEC, TCUs: Survey of TCU Deferred Maintenance, Construction, and Master Plan Needs and Costs; July 2021.

<sup>39</sup> AIHEC, TCUs: Information Technology & Cyberinfrastructure Needs, February 2021.  
[http://www.aihec.org/what-we-do/docs/FY22/TCU%20IT%20Fund%20\\$24M.pdf](http://www.aihec.org/what-we-do/docs/FY22/TCU%20IT%20Fund%20$24M.pdf)



- \$20 million for the Department of Health and Human Service TCU-Head Start Partnership Program to help address the dearth of trained and credentialed workers;
- At least \$20 million to TCU programs directed at science and engineering education; and
- Establish a TCU Native American Language Vitalization and Training program at \$15 million annually to preserve and revitalize the use of endangered Native American languages.

### **Indian Child Welfare**

AI/AN child welfare programs and social service agencies need to have the resources necessary to support families in times of crisis and uncertainty. The COVID-19 pandemic further revealed and exacerbated many of the disparities that tribal governments face in trying to address child safety concerns in their communities. The lack of investment in infrastructure has negatively impacted the ability of Tribal Nations to develop comprehensive data collection, telemedicine options for youth, and child welfare human service program areas. For example, Tribal Nations only receive approximately one-half of one percent of all federal child welfare funds despite the fact that Native children represent approximately two percent of the United States population under the age of 18 and four percent of the child welfare population.<sup>40</sup> Accordingly, we request the following:

- \$25 million to support tribal child welfare data systems development (authorize under Title IV-B, Subpart 1 of the Social Security Act – the Stephanie Tubbs Jones Child Welfare Services Program);
- \$20 million to support the development of tribal child welfare telemedicine options (authorize under Title IV-B, Subpart 1 of the Social Security Act – the Stephanie Tubbs Jones Child Welfare Services Program); and
- Create a 5 percent tribal set-aside under the Title XX Social Services Block Grant to fund workforce development training and the ability to have flexible funds to address other cross-cutting human service infrastructure needs across a range of human service populations.

### **Agriculture and Rural Development**

#### **Agriculture Infrastructure**

Agriculture serves as a major economic force in Indian Country, especially as a job creator for rural tribal communities. Tribal governments and farmers rely on partnerships with the federal government to support the agriculture industry and the more than 35 percent of AI/ANs who live in rural communities. USDA's 2017 Census of Agriculture counted nearly 80,000 Native farmers and ranchers operators utilizing more than 59 million acres of land.<sup>41</sup> These farms and ranches sold \$3.5 billion of agricultural products, including more than \$1.4 billion of crops and \$2.1 billion of

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<sup>40</sup> National Indian Child Welfare Association, American Indian/Alaska Native Children Exposed to Violence in the Home Testimony of Dr. Sarah L. Kastelic, Deputy Director National Indian Child Welfare Association provided to the Attorney General's Task Force on American Indian and Alaska Native Children Exposed to Violence, Pg. 5-7, 2013, [https://www.nicwa.org/wp-content/uploads/2016/11/NICWATestimonyTaskForceonAIANChildren-ExposedToViolence\\_Dec2013.pdf](https://www.nicwa.org/wp-content/uploads/2016/11/NICWATestimonyTaskForceonAIANChildren-ExposedToViolence_Dec2013.pdf)

<sup>41</sup> USDA National Agricultural Statistics Service, 2017, *Census of Agriculture*, Table 63, [https://www.nass.usda.gov/Publications/AgCensus/2017/Full\\_Report/Volume\\_1,\\_Chapter\\_1\\_US/usv1.pdf](https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_1_US/usv1.pdf).

livestock and poultry.<sup>42</sup> However, AI/AN agricultural producers often struggle to access loans, insurance, and credit lines.<sup>43</sup> To address this lack of investment, we request the following:

- \$725 million to fund the Conservation Stewardship Program within the Natural Resources Conservation Service (NRCS), allow for updated cost and payment schedules, and support specific additional and regenerative conservation practices;
- \$30 million to the National Institute of Food and Agriculture, Federally Recognized Tribal Extension Program to recruit more agents, particularly in those states that are considered top ten states for agricultural production by AI/ANs, but where there currently are no FRTEP agents; and
- \$320 million for Food Distribution Program on Indian Reservations (FDPIR) new construction, new sites and expansion of existing sites and service, new and existing infrastructure, and technological upgrades.

### Rural Development

Rural development programs across the federal government offer opportunities to address barriers tribal communities face by providing funding for essential infrastructure. For any infrastructure investment plan to be truly national, it must assess and account for the unique needs of Indian Country. Therefore, in any upcoming infrastructure package, we request the following:

- \$3.5 billion infrastructure investment to build integrated Tribal food hubs throughout Indian Country, which includes funding for processing, meat processing, storage, logistics, distribution, technical assistance, financial support, and Native youth opportunities;
- At least \$29 billion in loan authority for the Rural Housing and Community Facilities Programs;
- At least \$3.4 billion to USDA Rural Development, Rural Utilities Programs, and Rural Housing and Community Facilities Program; and
- Establish a 20 percent Tribal set-aside for the USDA's Rural Utility Service broadband programs and 5 percent of the FCC's Universal Services Fund for the benefit of broadband deployment on Tribal lands.

### Tax Parity and Equity

Congress has a trust and treaty responsibility to ensure that federal tax policy grants tribal governments the same opportunities as other governments to provide for their citizens. Currently, the tax code does not provide tribal governments many of the benefits and protections available to state and local governments. These disparities place tribal governments at a distinct disadvantage when it comes to providing for the health, safety, and welfare of their communities. These inequities are further exacerbated by dual taxation. While Tribal Nations have the inherent authority to tax within their jurisdiction, economic activities on tribal lands are often subject to attempts by state and local governments to tax the same activity. This creates unpredictability and disincentives for investments on tribal lands.

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<sup>42</sup> Ibid.

<sup>43</sup> Id., at Broken Promises, pg. 213.

Tribal governments often forego taxation in order to retain private investment on their lands. As a consequence, they lose essential government revenue to support their communities' infrastructure needs. These impacts necessitate federal action to address dual taxation and also highlight the urgent need for legislative efforts to increase access and deployment of targeted tax credits in Indian Country to address significant socio-economic disparities. Indian Country has long expected Congress to pass legislation in the areas contained in NCAI Resolution PDX-20-025<sup>44</sup>, and we request their inclusion in any tax and infrastructure package. These include, but are not limited to, the following:

- Increase deployment of Low-Income Housing Tax Credits in Indian Country and ensure Tribal inclusion in program allocation;
- Increase deployment of New Markets Tax Credits in Indian Country and provide a proportional Tribal allocation;
- Bring parity to the issuance of Tax-Exempt Bonds by eliminating the essential government functions test for Tribal Nations;
- Amend the Tribal General Welfare Exclusion Act to clarify that the value of a tribal general welfare benefit is excluded from income for a social security eligibility determination and any determination for federal benefits program; and
- Expressly exclude the transfer of funds by a Tribal Nation to young tribal members from the “kiddie tax penalty” structure.

### **Economic and Workforce Development**

Chronic underinvestment and the growing backlog of critical infrastructure projects hampers the ability of Tribal Nations to fully leverage their economic potential and the ability of their citizens to fully participate in the American economy. In addition to increased direct funding, Congress must support tribal governments' ability to leverage and attract private capital for continuing infrastructure needs. As identified in the Broken Promises report, the lack of financial institutions near tribal lands, the inadmissibility of trust land as collateral, and outright discrimination against AI/ANs have been barriers to accessing capital. These issues necessitate investments in tribal programs that incentivize private investments in Indian Country to finance infrastructure. “Access to Capital” programs enable tribal governments and Native businesses to secure loans and surety bonding through expanded loan guarantees which will better enable participation in rebuilding our infrastructure and economy. Yet, the U.S. Department of the Interior's Indian Loan Guarantee Program – unique to Indian Country and a key mechanism for attracting, accessing, and leveraging private investments for business and economic development – has long been underfunded and was left out of previous COVID relief measures.

Additionally, “Access to Contracting” tools also are essential, especially those unique to Indian Country, to increase opportunities for tribal enterprises and other Native businesses to pursue award of federal contracts and subcontracts for infrastructure-related development, including transportation, water, power, cyber defense, telecommunications and broadband deployment, and housing, school and health facilities construction, and other economic development projects. Lastly, to realize the long-term economic benefits of infrastructure development, workforce

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<sup>44</sup> PDX-20-025, Calling Upon Congress to Enact Legislation to Provide Equitable Tax Treatment for Tribal Governments, [https://www.ncai.org/attachments/Resolution\\_wPZfxMuBQFONFflmBcWUhzqEfEPuosDgIMnpHmjJAhdhIIAWMsQ\\_PDX-20-025%20SIGNED.pdf](https://www.ncai.org/attachments/Resolution_wPZfxMuBQFONFflmBcWUhzqEfEPuosDgIMnpHmjJAhdhIIAWMsQ_PDX-20-025%20SIGNED.pdf)

investments must be made to ensure tribal citizens have training and access to skilled labor positions. Accordingly, we request the following:<sup>45</sup>

- Provide \$1 billion for Interior’s Indian Loan and Surety Bond Guarantee Programs;
- Provide \$100 million for the Native American CDFI Assistance (NACA) fund to provide access to capital for small businesses, consumers and homeowners;
- Expand the Buy Indian Act’s application government-wide, beyond the Departments of Interior and Health and Human Services to other Departments that will receive substantial funding for deployment in Indian Country for energy, broadband, infrastructure, transportation, housing and community development, cyber security and education facilities (i.e., Energy, Commerce, Agriculture, Transportation, Housing and Urban Development, Homeland Security, and Education), and initiate rulemaking to improve existing regulations; and
- At least \$60.5 million for the Department of Labor, Employment and Training Administration, Indian and Native American Program Workforce Innovation and Opportunity Act Section 166 program.

### **Tribal Governance and Funding Stability**

In exchange for the land and resources that made the United States the most powerful country in the world, Tribal Nations paid in full to retain their inherent right of sovereignty and for the programs, services, functions, or activities (PSFAs) provided by the federal government. These PSFAs represent an exchange of promises made and the acknowledgement of sovereign rights already held by tribal governments. Federal funding for these PSFAs should be provided through mandatory spending mechanisms and should not be administered in the form of competitive grants.

The ability of any governing body to promote, develop, and maintain physical and institutional infrastructure is derived from the stability and certainty of revenue sources to operate government. Disruptions in resources for Tribal Nations have an outsized impact that substantially harms infrastructure advancement. Ambiguities in the intent of Congress with respect to Section 105(l) lease agreements under the Indian Self-Determination and Education Assistance Act (ISDEAA) also stand to impact health delivery and substantially hinder the development of healthcare infrastructure throughout Indian Country.<sup>46</sup> The following policy solutions will ensure that Tribal Nations have the basic certainty and security in the continuity of resources to address systemic infrastructure needs throughout Indian Country and maximize federal investment:

- Make spending for programs that fulfill the trust and treaty obligations of the United States mandatory.
- Provide such sums as may be necessary for ISDEAA Section 105(l) lease agreements through mandatory spending for DOI and IHS and confirm that space used to provide

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<sup>45</sup> These asks are detailed in an April 10, 2021 inter-organization letter which we endorse and is accessible here: <https://www.ncaied.org/buy-indian-expansion-proposals/>

<sup>46</sup> NCAI Resolution #ECWS-2021-002, Support for Legislative Fix to Amend Lease Compensation Provisions of the Indian Self-Determination and Education Assistance Act. [https://www.ncai.org/attachments/Resolution\\_contvOcwAgAYphrWIBPWpscJEzItoIqJInPaYgiHtOhHqZpSyCL\\_NCAI%20Resolution%20ECWS-21-002.pdf](https://www.ncai.org/attachments/Resolution_contvOcwAgAYphrWIBPWpscJEzItoIqJInPaYgiHtOhHqZpSyCL_NCAI%20Resolution%20ECWS-21-002.pdf)

services within the scope of an ISDEAA agreement—to any patient—is compensable under Section 105(l) of the ISDEAA.

- Provide such sums as may be necessary for Contract Support Costs through mandatory spending for DOI and IHS.