

# TRIBAL INFRASTRUCTURE: INVESTING IN INDIAN COUNTRY FOR A STRONGER AMERICA



*An Initial Report by the National Congress of American Indians (NCAI)  
for the Trump Administration and the 115<sup>th</sup> Congress*

**DISCUSSION DRAFT  
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National  
Congress of  
American  
Indians

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## TRIBAL INFRASTRUCTURE: INVESTING IN INDIAN COUNTRY FOR A STRONGER AMERICA

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“We’re going to rebuild our infrastructure — which will become, by the way, second to none. And we will put millions of our people to work as we rebuild it.”

– U.S. President-Elect Donald J. Trump, November 8, 2016<sup>1</sup>

*The following initial report presents a data-supported sampling of the nature and gravity of the unmet infrastructure needs that Indian Country currently faces, and the vast economic promise that Tribal Nations can unlock when properly resourced and properly equipped with the right instruments for self-determined, effective action. It is intended to serve as foundational context for the emerging dialogue between Tribal Nations and the new Administration and Congress about how best to revitalize and empower the infrastructure of Indian Country and the nation as a whole, and the seminal role that Tribal Nations can and should play as primary decision-making partners in this process.*

### **Introduction**

There is growing support across the political spectrum at the federal, state, Tribal, and local governmental levels about the glaring need for a bold national plan to repair and revitalize this country’s rapidly decaying infrastructure. Crumbling roads. Deteriorating water and sewer systems. Unsafe bridges that remain in use long past their expiration dates. Antiquated, under-resourced public transit systems that fail to keep up with the needs of our growing population. And the list goes on.<sup>2</sup>

A historic investment in our nation’s infrastructure is not just about fixing what is broken or replacing what is no longer useful. It is about unleashing America’s full economic potential and enhancing its competitiveness in today’s global economy.<sup>3</sup> In many places across this country – from urban areas to rural communities – governments and citizens alike are hampered by the pervasive economic costs of outdated 20th Century infrastructure. In turn, they lack the critical foundation for achieving economic prosperity that cutting-edge, 21st Century infrastructure is proven to provide.<sup>4</sup>

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<sup>1</sup> National Public Radio, “In Economy As In Business, Trumponomics May Mean Building Big Things,” November 9, 2016 (<http://www.npr.org/2016/11/09/501476997/trump-provides-clues-into-economic-plan-during-acceptance-speech>). For an overview of President-Elect Trump’s infrastructure development priorities, see <https://www.donaldjtrump.com/policies/an-americas-infrastructure-first-plan>.

<sup>2</sup> Communities for Transit, “INFOGRAPHIC: Huge Cost of America’s Decaying Transportation Infrastructure,” August 16, 2013 ([http://www.communitiesfortransit.org/america\\_s\\_crumbling\\_infrastructure](http://www.communitiesfortransit.org/america_s_crumbling_infrastructure)).

<sup>3</sup> Josh Bivens, “The Short- and Long-Term Impact of Infrastructure Investments on Employment and Economic Activity in the U.S. Economy,” Economic Policy Institute, July 1, 2014 (<http://www.epi.org/publication/impact-of-infrastructure-investments/>); National Economic Council and the President’s Council of Economic Advisers, “An Economic Analysis of Transportation Infrastructure Investment,” July 2014 ([https://www.whitehouse.gov/sites/default/files/docs/economic\\_analysis\\_of\\_transportation\\_investments.pdf](https://www.whitehouse.gov/sites/default/files/docs/economic_analysis_of_transportation_investments.pdf)).

<sup>4</sup> *Ibid.*, p. 4.

While there is, appropriately, a fervent debate about how to undertake this monumental task – as well as how to pay for it – there is no disputing one incontrovertible fact: in order for a national infrastructure investment plan to be truly comprehensive and thus transformative, it must consciously include Indian Country. This is so for five primary reasons:

**1. Tribal Nations are governments:** As recognized by the U.S. Constitution, Tribal Nations are part of the original American family of governments, possessing a legal and political status equivalent to that of state governments and foreign nations.<sup>5</sup> Today, the inherent sovereignty of Tribal Nations is exercised by 21st Century Tribal governments that are full-fledged governments in every sense of the word.<sup>6</sup> They are determining their own citizenship, establishing and enforcing criminal and civil laws on their lands, administering justice, taxing, licensing, and regulating, among many other functions. They are providing a wide range of governmental services, from education to healthcare to environmental protection. Like other governments, Tribal governments recognize and accept the fundamental responsibilities of governance – with building and maintaining the vital infrastructure upon which their constituents rely among the most critical responsibilities. As governments, Tribal Nations need and deserve to be at the decision-making table when it comes to developing and implementing an infrastructure investment plan for the nation. They deserve to be at the table because they have the capacity, experience, and know-how to craft, inform, and execute solutions to the infrastructure challenges facing their communities and those of their neighbors.

**2. Tribal governments prove that local decision-making and solutions work best:** An extensive body of research built over the past three decades concludes definitively that Tribal self-determination/self-governance is the only policy that has ever succeeded in improving the lives of Native people and the quality of life in Tribal communities.<sup>7</sup> Why? Because just like state and local governments, Tribal governments know best the nature and intricacies of the particular challenges their communities face, and are best-positioned and best-equipped to forge informed, innovative solutions capable of overcoming them. As President Ronald Reagan astutely recognized in 1988, “Tribes need the freedom to spend the money available to them, to create a better quality of life and meet their needs as they define them. Tribes must make those decisions, not the federal government.”<sup>8</sup> Tribal governments also boast a growing track record of partnering with other surrounding governments (state, county, municipal) to construct and enact solutions aimed at addressing shared community challenges, from healthcare to law enforcement to public transit.<sup>9</sup>

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<sup>5</sup> See Article I, Section 8, Clause 3 of the United States Constitution (known as the “Commerce Clause”), which articulates the power of Congress “to regulate commerce with foreign nations, and among the several states, and with the Indian Tribes” (<https://www.law.cornell.edu/constitution/articlei#section8>).

<sup>6</sup> There are 567 federally recognized tribal governments as well as dozens of state-recognized tribal governments that exercise governmental responsibilities on behalf of their citizens. For more general information about tribal nations and sovereignty, see: [http://www.ncai.org/resources/ncai\\_publications/tribal-nations-and-the-united-states-an-introduction](http://www.ncai.org/resources/ncai_publications/tribal-nations-and-the-united-states-an-introduction).

<sup>7</sup> See, for example, Stephen Cornell and Joseph P. Kalt, “Two Approaches to the Development of Native Nations: One Works, the Other Doesn’t,” *Rebuilding Native Nations: Strategies for Governance and Development* (Miriam Jorgensen, Ed.), Tucson, AZ: University of Arizona Press, 2007, pp. 3-33.

<sup>8</sup> The American Presidency Project, “Ronald Reagan: Statement by Assistant to the President for Press Relations Fitzwater on the President’s Meeting with American Indian Leaders,” December 12, 1988 (<http://www.presidency.ucsb.edu/ws/index.php?pid=35256>).

<sup>9</sup> See, for example, the Coeur d’Alene Tribe’s Benewah Medical & Wellness Center (<http://bmcwc.com/whoweare>), the Flandreau Santee Sioux Tribe’s joint police department with the City of Flandreau (South Dakota)

**3. Indian Country is an integral part of rural America:** Rural America faces its own distinct and often daunting infrastructure challenges – from existing infrastructure (telecommunications, transportation, water and energy infrastructure, etc.) that has long since fallen into disrepair to the pressing need to develop the tech-driven infrastructure necessary to make rural areas economically viable now and in the future.<sup>10</sup> Compounding these challenges are the high costs of addressing them as compared to more densely populated areas.<sup>11</sup> What’s more, the vast majority of this country’s land area (72 percent) is rural.<sup>12</sup> Meanwhile, Indian lands – totaling more than 100 million acres spread across 34 states – are predominantly rural, inextricably linking the state and fate of Indian Country’s infrastructure with that of the rest of rural America.<sup>13</sup> For any infrastructure investment plan to be truly national, it will need to assess and account for the particular and often shared infrastructure needs of rural communities – both Native and non-Native. It also must draw on the innovative infrastructure development fixes that Tribal and other governments that serve rural geographies together have forged – including the growing number involving intergovernmental and public-private partnerships – for they offer important lessons for how to undertake such development elsewhere.

**4. Indian Country’s infrastructure needs are acute and longstanding:** The infrastructure crisis facing Indian Country is not a recent phenomenon. For generations, the federal government – despite abiding trust and treaty obligations – has substantially under-invested in Indian Country’s infrastructure, evident in the breadth and severity of its unmet infrastructure needs as compared to the rest of the nation (see the following sections for details). In 2009, as one indication, a contingent of U.S. Senators penned a letter to the Administration citing a \$50 billion unmet need for infrastructure on Indian reservations.<sup>14</sup> The number of “shovel ready” infrastructure projects in Indian Country remains too many to count, and many of those have been that way for years if not decades.<sup>15</sup> This chronic underinvestment and the growing backlog of critical infrastructure projects not only negatively impacts the social, physical, and mental wellbeing of Tribal and neighboring communities, it 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. The more than \$3 billion in funding designated for Indian Country by the American Recovery and Reinvestment Act supported important first steps in addressing Tribal Nations’ needs for justice infrastructure, health facilities, roads projects, water systems development, and other vital infrastructure projects, but collectively they amounted to a “drop in the

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(<http://hpaied.org/sites/default/files/publications/Flandreau%20Police%20Department.pdf>), and the Umatilla Tribes’ Public Transit system (<http://hpaied.org/sites/default/files/publications/ctuir%20public%20transit.pdf>).

<sup>10</sup> Jessie Scott, “Potential Solutions for Improving Rural Infrastructure.” Successful Farming at Agriculture.com, September 2, 2016 (<http://www.agriculture.com/news/business/potential-solutions-for-improving-rural-infrastructure>).

<sup>11</sup> President’s Council of Economic Advisers, “Strengthening the Rural Economy - Strengthening Rural Infrastructure,” 2010 (<https://www.whitehouse.gov/administration/eop/cea/factsheets-reports/strengthening-the-rural-economy/strengthening-rural-infrastructure>).

<sup>12</sup> U.S. Department of Agriculture Economic Research Service. *Rural America at a Glance: 2016 Edition*. Economic Information Bulletin 162, November 2016, p. 1 (<https://www.ers.usda.gov/webdocs/publications/eib162/eib-162.pdf>).

<sup>13</sup> For example, as of 2007, Tribal agricultural land alone comprised roughly 58 million acres (NCAI, *Fiscal Year 2014 Indian Country Budget Request*, 2014, p. 72, [http://www.ncai.org/resources/ncai-publications/indian-country-budget-request/fy2014/11\\_NCAI\\_2014\\_Budget\\_Request\\_Ag.pdf](http://www.ncai.org/resources/ncai-publications/indian-country-budget-request/fy2014/11_NCAI_2014_Budget_Request_Ag.pdf)).

<sup>14</sup> NCAI. *Investing in Tribal Governments: An Analysis of Impact and Remaining Need under the American Recovery and Reinvestment Act*. 2010, pp. 8-9 (<http://www.ncai.org/resources/ncai-publications/investingintribalgovernmentsananalysisoffarra.pdf>).

<sup>15</sup> *Ibid.*, p. 2.

bucket” of what it will take to energize self-determined, sustainable community development and economic opportunity in Tribal communities.<sup>16</sup>

**5. Tribal Nations produce difference-making returns on infrastructure investments:** In the 1960s, rural Neshoba County in Mississippi – home to the Mississippi Band of Choctaw Indians – was one of the most economically impoverished areas in the United States. Living conditions on the Band’s reservation were deplorable – most houses were substandard, nine in ten had no indoor plumbing, and a third had no electricity. Seeking to uplift its community, the Band embarked on creating a diversified, sustainable economy, appropriately targeting the strategic building of its physical infrastructure as a critical first order of business. Fifty years later, the Band has not only transformed its reservation’s quality of life, it has become a major economic engine in its part of the state, employing thousands of Natives and non-Natives through its suite of Band-owned enterprises.<sup>17</sup> A growing number of other Tribal Nations are authoring equally impressive stories of community revitalization and local and regional economic success empowered by precise investments in infrastructure development.<sup>18</sup> From the Citizen Potawatomi Nation’s Iron Horse Industrial Park to the Tulalip Tribes’ state-of-the-art waste water treatment facility to Ohkay Owingeh’s Tsigo Bugeh Village, Tribal Nations across the country are turning Tribal, federal and other investments in their infrastructure into lasting economic and social benefits for Native people and other local residents who rely on said infrastructure to support a good quality of life.<sup>19</sup>

### **Indian Country’s Infrastructure: Unmet Needs, Unrealized Potential**

The following provides an area-by-area overview of the current state of Indian Country’s infrastructure, focusing in particular on: (1) the gravity of unmet needs, (2) the degree to which federal resources have been allocated to meet those needs, (3) the disparities between Indian Country and the rest of the nation regarding needs and funding, and (4) how increased federal funding and other key actions by the federal government could catalyze Tribal infrastructure development efforts.

<sup>16</sup> Ibid., p. 9. As referenced throughout this report, Indian Country’s infrastructure challenge writ large is not simply about funding or a lack thereof. For example, the U.S. Department of Housing and Urban Development’s (HUD) Section 184 Indian Home Loan Guarantee Program provides mortgage loans to Native people, but a full percent 90 percent of those loans are for homes located on fee land, with very little mortgage lending done on reservation trust lands. This dynamic, in turn, stunts the development of community amenities and facilities on reservations, further driving economic and community development away from reservations (see HUD, “HUD Releases Comprehensive Assessment of Housing Needs of American Indians and Alaska Natives” (press release), HUD No. 17-012, January 19, 2017, [https://portal.hud.gov/hudportal/HUD?src=/press/press\\_releases\\_media\\_advisories/2017/HUDNo\\_17-012](https://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2017/HUDNo_17-012)).

<sup>17</sup> Ibid., p. 7. In 2010, the Mississippi Choctaw was the second-largest employer in the State of Mississippi.

<sup>18</sup> A recent demonstration of Tribes’ capacity to make good on infrastructure investments came with the American Recovery and Reinvestment Act of 2009 (ARRA). The Act provided \$47.25 million to Tribes for Indian Housing Block Grant (IHBG) activities on top of the regular IHBG allocation, with the proviso that funds would be recaptured if they were not obligated within one year of the date they were made available and spent within three years. Tribes were able to spend virtually all (more than 99 percent) of these funds consistent with that requirement, yielding an additional 1,954 new construction units and 13,338 rehabilitated units between 2009-2012 (HUD, *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: Executive Summary*, January 2017, p. xxiv, <https://www.huduser.gov/portal/publications/HNAI/HousingNeeds.html>).

<sup>19</sup> For more on these success stories, see: <http://www.ohkayowingehhousingauthority.org/tbv.php>; <http://www.ironhorsecpn.com/>; and <https://www.tulalipTribes-nsn.gov/Home/Operations/Environment.aspx>.

## PHYSICAL INFRASTRUCTURE

### 1. Infrastructure Permitting Processes

Tribal lands and natural resources are a primary source of economic activity for Tribal communities<sup>20</sup>; however, Tribal Nations are often left out of the planning stages of large-scale federal infrastructure permitting projects near reservations or on ancestral lands. Due to this, Tribal governments voice concerns with many of these projects not because they are against development, but because Indian Country often bears the burdens and harms of infrastructure projects without getting any of the benefits.

Tribal Nations should be included in infrastructure decision-making from the very earliest stages, including being involved in key decisions regarding priorities for development. Tribal Nations should also be included in any discussions regarding particular projects. For instance, as soon as Federal agencies are discussing projects with private parties or state governments, they should also be talking to Tribal Nations. Early consultation ensures that problems are identified and resolved in a timely fashion, preventing costly delays down the line.

In addition to this, Tribal Nations have also consistently requested that the federal government modernize outdated regulations and statutes to provide them with more flexibility and the option of greater control over decision-making and self-governance, the ability to be more responsive to the needs of their citizens, and to bolster economic development in Indian Country. The trust relationship and responsibility must be modernized to be consistent with self-determination and rooted in inherent sovereign authority to create a 21st Century trust for 21st Century Tribes.

An important part of addressing the Nation-to-Nation relationship is, in the context of infrastructure decision-making, the need for responsible economic development, with a specific focus on how Tribes can benefit from infrastructure development. Based on the input from tribal leaders across Indian Country, NCAI developed a set of Principles and Best Practices for Infrastructure Permitting Relating to Tribal Nations and the Federal Trust Responsibility that we believe can fit into the existing regulatory framework.

For any project affecting Tribal lands, waters, treaty rights, or sacred spaces, at the outset the United States must expressly consider the following five principles: (1) recognition of Tribal sovereignty; (2) respect for treaty rights; (3) compliance with the Federal trust responsibility, including seeking Tribal informed consent; (4) upholding all statutory obligations; and (5) ensuring environmental justice. How these principles were addressed should be reflected in the written record for any decision.

We also recommend that the federal government implement the following seven best practices: (1) regional mapping and Tribal impact evaluation; (2) consultation in early planning and coordination; (3) early, adequate notice and open information sharing; (4) funding for Tribal participation in processes; (5) training for agencies to improve understandings of Tribal Nations; (6) creation of Tribal impact statements and a Trust Responsibility Compliance Officer; and (7) evaluation of cumulative impacts and regional environmental impacts.

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<sup>20</sup> Tribes also face burdensome bureaucratic practices that hinder their own development on their lands.

Infrastructure permitting must respect the federal responsibilities to Tribal Nations who continue to struggle to protect their lands, resources, sacred sites, and cultures in processes that too frequently authorize projects despite their threats to these Nations.

## 2. Water Infrastructure

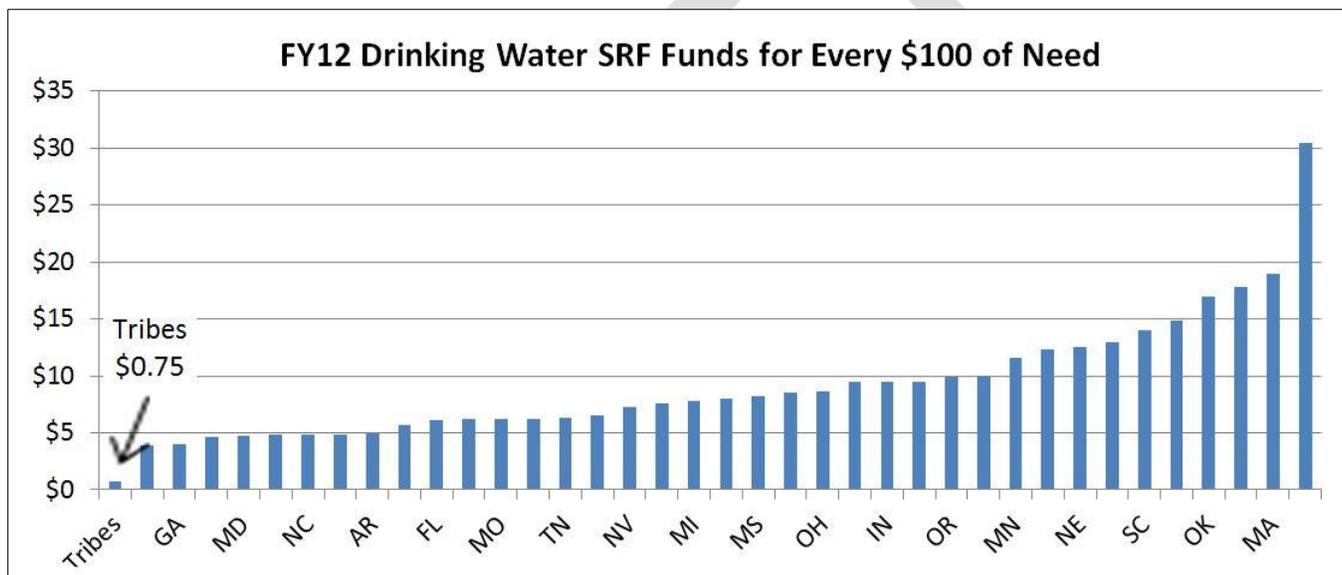
### *Drinking Water*

#### Safe Drinking Water State Revolving Fund

**Total Safe Drinking Water Fund Need:** Approximately \$45 million annually (or 5 percent set-aside)

**FY 2016 Funding:** \$20 million

**Need:** Tribes only receive 75 cents for every \$100 of need for drinking water.



Source: 2007 Drinking Water Needs Survey; Drinking Water SRF Funds Available for Projects, Net Sources, by State, July 1, 1987 – June 30, 2012 (National Tribal Caucus, “FY 2015 Addendum - National Environmental Resource Needs and Priorities for Indian Country and Alaska Native Villages (ANVs) for the Fiscal Years 2012-2016,” July 2013, p. 12).

According to EPA, in FY 2015 while 91 percent of the U.S. population served by community water systems receives drinking water that meets all health standards, only 88 percent of Native people received drinking water that met all applicable health-based standards.<sup>21</sup> Further, Tribes receive only 75 cents for every \$100 of need from the Safe Drinking Water Revolving Fund, which is substantially less than the closest state. The fundamental inequity in the quality of Tribal water systems must be addressed.

<sup>21</sup> Department of Health and Human Services (HHS) – IHS. *Fiscal Year 2017 Justification of Estimates for Appropriations Committees*. January 2016, p. CJ-169

(<https://www.ihs.gov/budgetformulation/includes/themes/newihstheme/documents/FY2017CongressionalJustification.pdf>).

## Waste Water and Sanitation

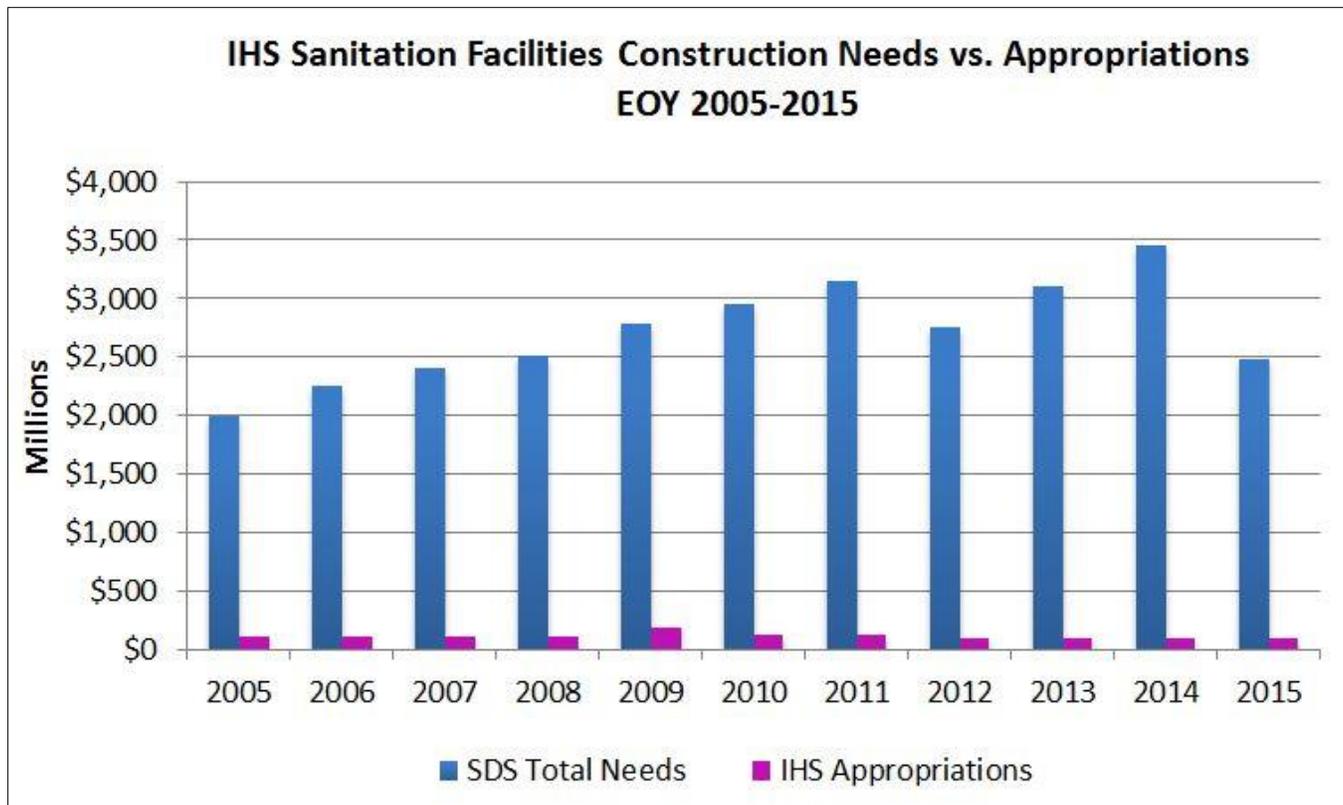
### Indian Health Service (IHS) Sanitation Facilities Construction

**Total Sanitation Facility Construction Need:** \$3.39 billion

**IHS Sanitation Facilities and Construction Program Backlog (Cost):** \$2.5 billion

**FY 2016 Funding:** \$99.4 million

**Need:** 47 percent of American Indian/Alaska Native homes need sanitation facilities improvement.



Source: National Indian Health Board, "Federal Indian Trust Responsibility: The Quest for Equitable and Quality Indian Healthcare," June 2016, p. 37.

As of FY 2015, 47 percent of American Indian/Alaska Native (AI/AN) homes were in need of repair to their sanitation facilities, and six percent did not have access to adequate sanitation facilities at all.<sup>22</sup> Meanwhile, while one percent of the U.S. general population lacks access to safe water, nine percent of Indian homes lack access to safe water.<sup>23</sup> And this troubling state of affairs is rapidly growing more grave. In just the 10-year period from 2005 to 2015, the cost of the total sanitation facility need in Indian Country has increased more than 80 percent from \$1.86 billion to \$3.39 billion.<sup>24</sup> There also exists a current backlog of over \$2.5 billion for the Sanitation Facilities and Construction Program.<sup>25</sup>

<sup>22</sup> Ibid.

<sup>23</sup> National Indian Health Board (NIHB). *Federal Indian Trust Responsibility: The Quest for Equitable and Quality Indian Healthcare*. June 2016, p. 96

(<http://nihb.org/docs/06212016/FINAL%20FY%202018%20IHS%20Budget%20Workgroup%20Recommendations.pdf>).

<sup>24</sup> HHS – IHS, January 2016, p. CJ-169.

<sup>25</sup> NIHB, June 2016, p. 97.

Due to older existing facilities, growth in Tribal communities, inflation, and new environmental laws and regulations, these figures will no doubt continue to increase.<sup>26</sup>

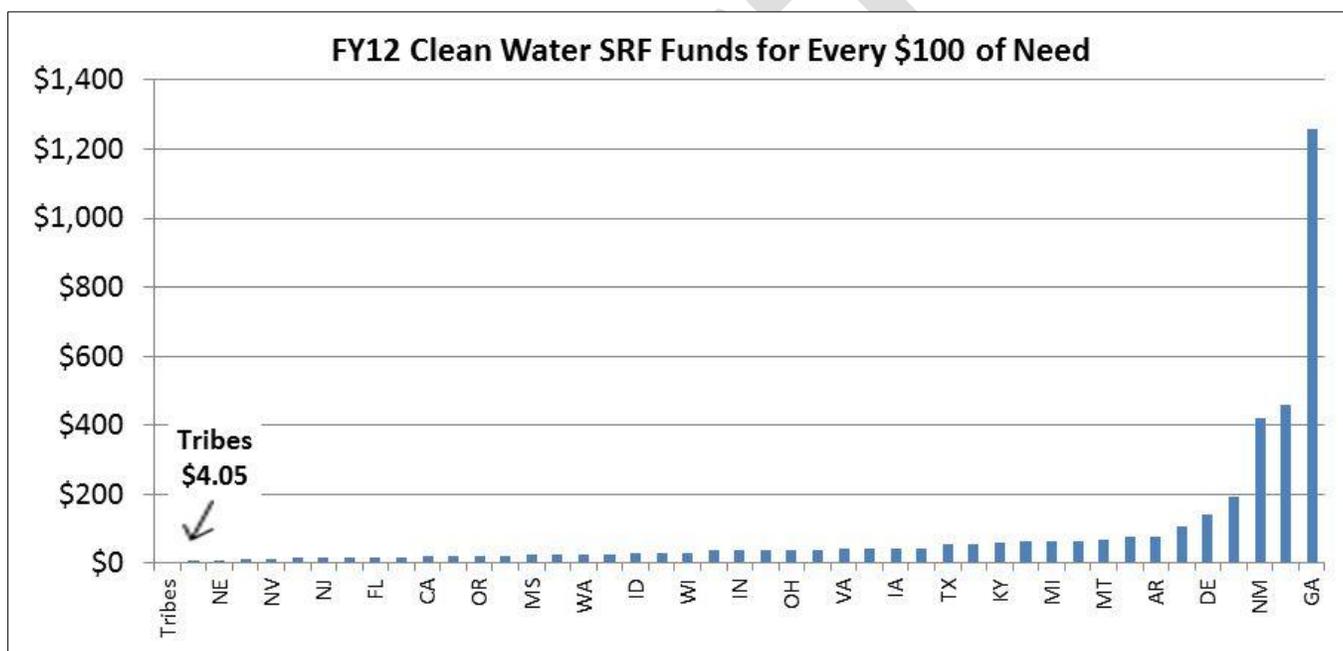
These figures highlight the dire need for swift action and significant funding to fix the outdated and failing sanitation systems in Indian Country – through mechanisms such as the IHS Sanitation Facilities and Construction Program – in order to ensure adequate water quality and safe drinking water and also to prevent the spread of diseases in Tribal communities.

### Clean Water State Revolving Fund

**Total Clean Water Fund Need:** \$46.5 million annual set-aside

**FY 2016 Funding:** \$30 million

**Need:** Tribes receive \$4.05 for every \$100 of need.



Source: 2008 Clean Water Needs Survey; Clean Water SRF Funds Available for Projects, Net Sources, by State, July 1, 1987 - June 30, 2012 (National Tribal Caucus, "FY 2015 Addendum - National Environmental Resource Needs and Priorities for Indian Country and Alaska Native Villages (ANVs) for the Fiscal Years 2012-2016," July 2013, p. 12).

IHS reports a backlog of 2,878 sanitation facilities construction projects and estimates the cost to provide safe drinking water and adequate sewerage systems to all American Indians and Alaska Natives homes is estimated to be \$2.8 billion approximately.<sup>27</sup>

<sup>26</sup> According to NIHB, "The provision of sanitation facilities also has other far-reaching, positive effects. The availability of such facilities is of fundamental importance to social and economic development. In turn, such development leads to an improved quality of life and an improved sense of well-being. A recent cost benefit analysis indicated that for every dollar IHS spends on sanitation facilities to serve eligible existing homes, at least a twentyfold return in health benefits is achieved" (Ibid., pp. 96-97).

<sup>27</sup> IHS, *Fact Sheet: Safe Water and Waste Disposal Facilities*, September 2016 (<https://www.ihs.gov/newsroom/factsheets/safewater/>).

## **Water & Waste Disposal Grant Program**

**Need:** \$55 million in additional funds to support Tribal requests

**FY 2016:** \$1.7 billion (\$452 million in budget authority for grants and \$1.2 billion in direct loan programs)

In FY 2016, 28 Tribal projects requesting a total of \$55.1 million under the Water & Waste Disposal Grant program went unfunded. Additional funding should be provided so that Tribal Nations can access these grant programs.

## ***Dams and Irrigation***

### **Safety of Dams**

**Deferred Maintenance:** \$556 million

**FY 2016 Funding:** \$23.5 million

**Need:** The Bureau of Indian Affairs (BIA) currently lists 31 high- or significant-hazard dams; fund the High-Hazard Indian Dam Safety Deferred Maintenance Fund authorized at \$22.75 million annually for FY 2017-2023; fund the Low-Hazard Indian Dam Safety Deferred Maintenance Fund authorized at \$10 million annually for FY 2017-2023.

The BIA Safety of Dams program is response for 137 dams in Indian Country across 8 different regions. Of these dams, 136 are high or significant-hazard dams located on 42 Indian reservations in 13 States. 31 of these high- or significant hazards dams on 15 reservations would have catastrophic effects if they were to fail. Not only would a dam failure impact Tribal schools, courts, housing, and economic endeavors, it could result in significant loss of life and culture. Funding must be appropriated to the new High-Hazard Indian Dam Safety Deferred Maintenance Fund and Low-Hazard Indian Dam Safety Deferred Maintenance Fund created by the Water Infrastructure Improvements for the Nation Act – Pub. L. 114-332.

### **BIA Irrigation Program – Rehabilitation**

**Deferred Maintenance:** \$576 million

**FY 2016 Funding:** \$2.6 million

**Need:** Fund the new Indian Irrigation Fund at \$35 million per year until FY 2021.

The BIA Irrigation Program provides irrigation water to 17 projects spanning over 780,000 acres.<sup>28</sup> Among other things, this water helps with the production of over \$300 million a year in gross crop revenues.<sup>29</sup> However, most these projects are nearly 100 years old, reached or exceeded their useful lifespan, were never fully completed, and/or have extreme differed maintenance.<sup>30</sup> Funding must be

<sup>28</sup> U.S. Department of the Interior (DOI). *Budget Justifications and Performance Information, Fiscal Year 2017*. 2016, p. IA-ES-20 ([https://www.doi.gov/sites/doi.gov/files/uploads/FY2017\\_IA\\_Budget\\_Justification.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/FY2017_IA_Budget_Justification.pdf)).

<sup>29</sup> S. Rpt. 114-245, The Irrigation Rehabilitation and Renovation for Indian Tribal Governments and Their Economies Act (The IRRIGATE Act), p. 3 (<https://www.congress.gov/congressional-report/114th-congress/senate-report/245/1>).

<sup>30</sup> DOI, 2016, p. IA-CON-RM-3.

appropriated to the new Indian Irrigation Fund established by the Water Infrastructure Improvements for the Nation Act – Pub. L. 114-332.

### 3. Water Settlements – Funding and Implementation

#### Indian Water Settlements Funding – Bureau of Reclamation

**Funding Need to Complete Water Settlement Infrastructure:** \$1.445 billion

**FY 2016 Funding:** \$210.9 million

**Need:** A permanent funding source for Indian water rights settlements under the existing the Reclamation Fund.

It is essential for Indian water rights settlements to be resolved and fully funded to fulfill the federal government’s obligation to manage water resources held in trust on behalf of Tribal Nations. These settlements often represent decades of negotiations between Tribal, federal, state, and local stakeholders and seek to improve water systems throughout the country. The Reclamation Fund is an appropriate primary funding mechanism for Indian water rights settlements in the west. Created in 1902 to finance agricultural water projects and infrastructure to build up the 17 western states, the Reclamation Fund is ideally positioned to fund Indian water rights settlements that comply with Reclamation Act requirements. The Reclamation Fund acquires money through repayments on the sale, lease, or rental of public lands, as well as revenues from mineral leases and timber sales. These payments have been increasing in recent years, and the available balance makes it a viable mechanism for funding Indian water rights settlement. The funds accruing in this account must be made available to support water infrastructure projects authorized through Indian water rights settlements. Beginning in FY 2020, Congress should authorize annual transfers of \$120 million from the Reclamation Fund to the Reclamation Water Settlements Fund, established by the Omnibus Public Lands Management Act of 2009, and allow for the permanently use of these funds for Indian water settlements.

### 4. Energy Infrastructure

#### *Power Grids*

#### Grid Modernization – Tribal Energy Programs: Tribal Energy Grant Program

**Funding Requested:** \$1 million

**FY 2016 Funding:** \$500,000

**Need:** 14.2 percent of Tribal households lack access to basic electricity services

Tribes face significant barriers to provide electric service to their citizens as location and access to capital continue to dampen Tribal energy development and energy infrastructure build out.<sup>31</sup> In fact, 14.2 percent of Tribal households do not have access to the most basic electric services<sup>32</sup> and have to rely on other, more expensive and inefficient power sources. Providing more grants opportunities to

<sup>31</sup> The HEARTH Act of 2012, for example, was intended to support tribal energy projects (solar, wind, etc.), but such projects have been slow to materialize in Indian Country because of cumbersome land use regulations, among other reasons.

<sup>32</sup> Department of Energy. *Department of Energy FY 2017 Congressional Budget Request – Volume 3*. February 2016, p. 755 (<https://energy.gov/sites/prod/files/2016/02/f30/FY2017BudgetVolume3.pdf>).

build out power grids helps to solve this problem while creating much needed jobs and energy infrastructure in rural areas.

### ***Electricity***

#### **High Energy Cost Grants Program - USDA**

**Funding to Match Need in Indian Country:** Additional \$50 million

**FY2016 Funding:** \$16.9 million

**Stat:** Electricity costs can be 275 percent higher than the national average in some places in Indian Country.

Due to location and the lack of access to efficient and reliable electric energy sources, many people in Indian Country face electricity costs that are 275 percent higher than the national average. The High Energy Cost Grants program helps assist energy providers to lower costs for people living in these high-cost areas; however the program is underfunded based on just the need in Indian Country. In FY 2016, the program had only \$16.9 million for grants, but entities from Indian Country submitted \$48 million in eligible requests.

### ***Traditional and Alternative Energy Development***

#### **Tribal Energy Loan Guarantee Program**

**Request:** \$20 million

**FY 2016 Funding:** \$0

**Untapped Potential:** Traditional energy reserves in Indian Country could generate up to \$1 trillion for Tribes and surrounding rural communities; five percent of the nation's renewable energy resources are situated on Tribal lands.<sup>33</sup>

The Tribal Energy Loan Guarantee Program was authorized by the Energy Policy Act of 2005 but has never been funded. This program would allow for up to 90 percent of the principal and interest of a loan issued to a Tribal Nation for energy development to be guaranteed by the Department of Energy (DOE). Congress estimated that even just \$9 million for the program could provide between \$50-\$85 million for energy projects in Indian Country, helping to build infrastructure and provide jobs in rural areas.

#### ***DOE Office of Indian Energy and Economic Development***

**Request:** \$23 million in direct appropriation

**FY 2016 Funding:** \$0 million (Provided \$16 million from within the Departmental Administration appropriation)

**Need:** A direct appropriation provides stabilized funding to continue and develop successful programs.

Investing in Tribal energy programs is proven to have strong returns and results not only for Tribes, but also for rural communities. In the last seven years, DOE has deployed 43 energy programs in Indian

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<sup>33</sup> Ibid., p. 761.

Country valued at over \$70 million.<sup>34</sup> This investment is already paying significant dividends. *For every \$1 invested by DOE, Tribes have seen a savings of \$7.22 for a total of over \$500 million in savings, equivalent to creating 13,700 jobs.*<sup>35</sup> Further, these projects have reduced the demand on diesel fuel in rural areas, saving rural households \$240 each.<sup>36</sup> Over 2,500 Tribal buildings and 29,000 Tribal citizens have seen their electric bills reduced by 58 percent.<sup>37</sup> It is critical that these programs, investments, and training opportunities are not only continued, but are stabilized to ensure consistent support for Tribal energy development. The Office of Indian Energy and Economic Development is key to providing funding and services in Indian Country and must have its own separate appropriation.

### ***DOE Office of Congressional and Intergovernmental Affairs***

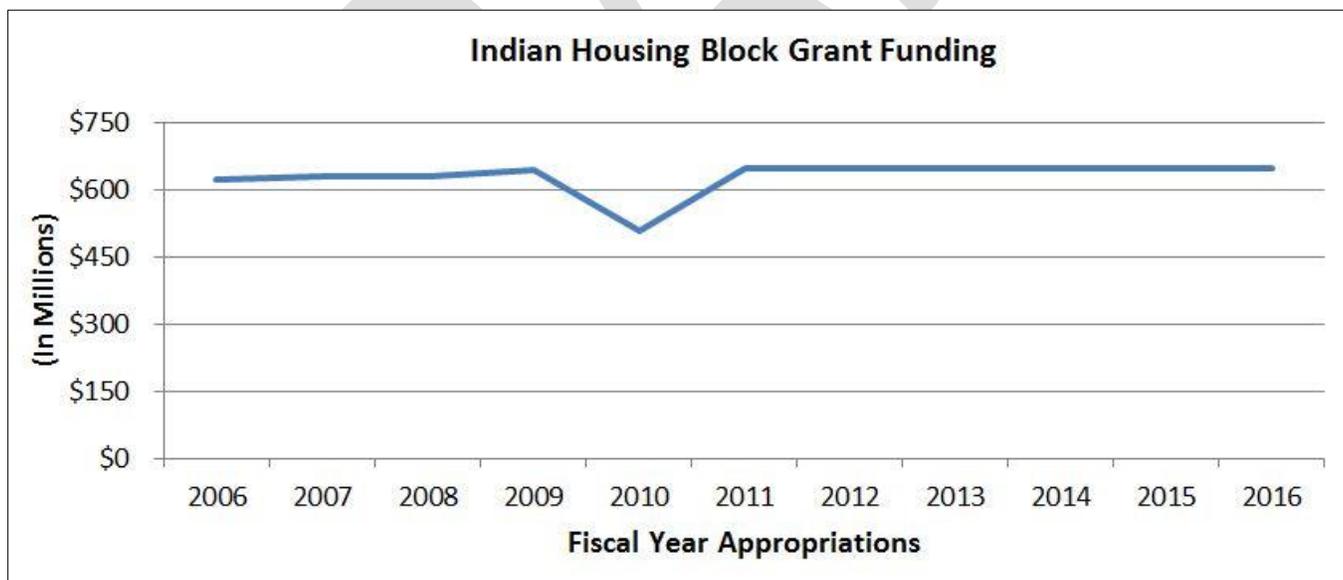
DOE's Office of Congressional and Intergovernmental Affairs is an important part of ensuring Tribal access to various offices, programs, and processes focusing on the development and implementation of energy policies and programs. As Tribal Nations look to take additional steps beyond technical assistance programs, to energy project development and implementation, this Office is vital for improving energy services in Indian Country.

## **5. Housing Infrastructure**

### **Indian Housing Block Grant Program**

**Indian Housing Block Grant needs additional 68,000 housing units (cost): \$33,673,920,000**

**Funding amount received in FY 2016: \$650 million**



Source: Enacted budgets for FY 2006 through FY 2016 for the IHBG Program.

<sup>34</sup> See DOE – Office of Indian Energy and Economic Development, *Tribal Energy Project Successes*, 2016 (<https://www.energy.gov/indianenergy/tribal-energy-project-successes>).

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

The Indian Housing Block Grant (IHBG) Program is authorized by the Native American Housing and Self-Determination Act (NAHASDA). This program provides funding to Tribes to develop, construct and maintain housing. However, as inflation has increased and the need has increased over the years, the funding level for this program has stayed between \$500 million to \$650 million from enacted FY 2006 to FY 2016. A recent report stated it would take approximately 33,000 new units to alleviate overcrowding and additional 35,000 to replace existing housing units which are in grave condition. 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>38</sup>

## 6. Transportation Infrastructure

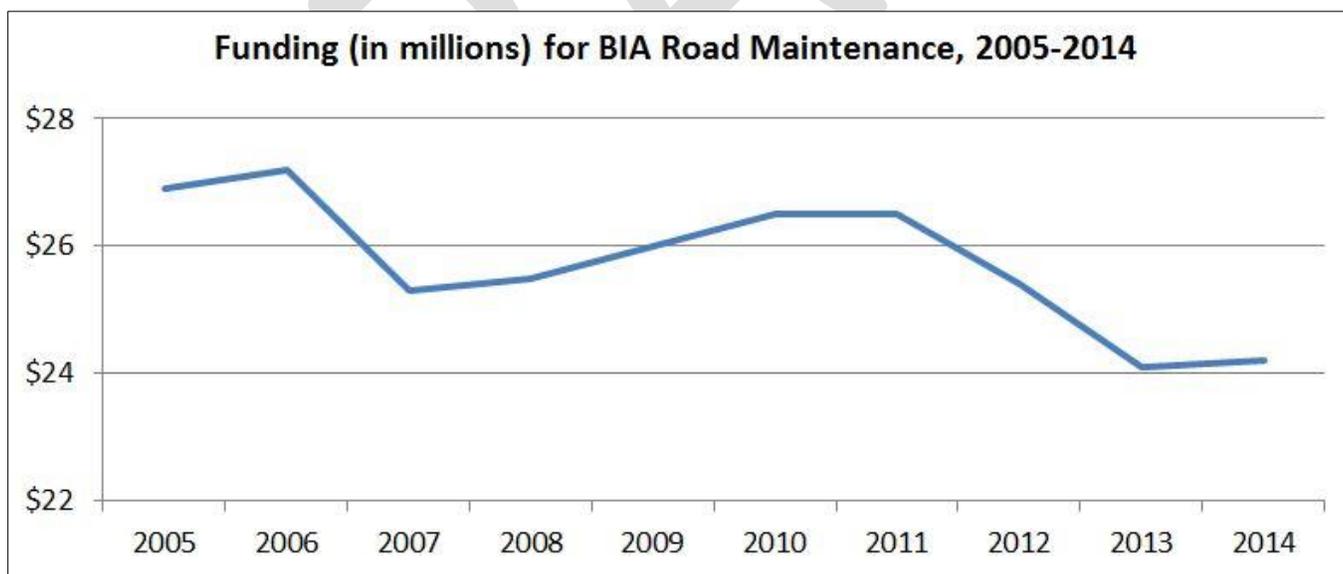
### BIA Roads Maintenance

**BIA Roads Maintenance Deferred Maintenance Backlog: \$289 million\***

**FY 2016 funding: \$24 million**

\* Not including Tribal roads

The BIA has maintenance responsibility for approximately 29,000 miles of roads and 900+ bridges. The road mileage consists of 7,150 miles of paved, 4,720 miles of gravel, and 17,130 miles of unimproved and earth surface roads. The total public road network serving Indian Country is 140,000+ miles according to the National Tribal Transportation Facility Inventory. The Office of Indian Services Division of Transportation in Washington, DC provides oversight and distribution for the annual maintenance program. The amount received in the TPA portion of the budget has been approximately \$24,000,000 per year, which is less than nine percent of the deferred maintenance of \$289,000,000 for FY 2015.



Source: Enacted budgets for FY 2005 through FY 2014 for BIA Road Maintenance.

<sup>38</sup> HUD, January 2017, pp. 5-6.

## **Public Transportation on Indian Reservations Program**

**Public Transportation on Indian Reservation Competitive Grant:** \$45 million

**FY 2016 funding:** \$5 million

| <b>Tribal Transit Program Discretionary Applications &amp; Awards Since FY2013</b> |                           |                                |                         |                              |
|--|---------------------------|--------------------------------|-------------------------|------------------------------|
| <b>Fiscal Year</b>   | <b>Total Applications</b> | <b>Total Funding Requested</b> | <b>Awarded Projects</b> | <b>Total Funding Awarded</b> |
| 2013   | 75                        | \$18.1M                        | 48                      | \$5,000,000                  |
| 2014/2015  | 79                        | \$19.5M                        | 65                      | \$10,000,000                 |
| 2016   | 44                        | \$8.3M                         | 35                      | \$5,000,000                  |
| <b>Total:</b>  | <b>198</b>                | <b>\$45.9M</b>                 | <b>148</b>              | <b>\$20,000,000</b>          |

Source: Department of Transportation, email correspondence with NCAI, December 22, 2016.

The Public Transportation on Indian Reservations (5311(c)) (also known as Tribal Transit Program), is a program that enables Tribes to use the funding for capital, operating, planning, and administrative expenses for public transit projects to meet the needs of public transportation in rural Tribal communities. This program continues to be a successful program for Tribal governments. This program includes a \$25 million formula and \$5 million competitive grant program. Since FY 2013 to FY 2016, there have been a total of 198 applications for the competitive grant programs with the total cost of \$45.9 million. However, the Federal Transit Administration has only been able to fund a total of \$20 million from FY 2013 to FY 2016.

## **7. Healthcare Infrastructure**

### **Access to Quality Health Care in or near Tribal Communities**

The Affordable Care Act (ACA) expanded insurance and Medicaid coverage available to eligible AI/AN people. But these benefits can be realized only if newly covered AI/ANs can readily access health care sites that provide the covered services. The IHS and Tribal health care facility sites offer the only feasible source of health care services for many remote and isolated AI/AN communities. Moreover, AI/ANs often choose culturally competent service providers when they have a choice. For these reasons, it is prudent to assume that IHS facilities will continue as the primary health care access point for AI/ANs seeking services covered by Medicaid or other insurance plans. Any unanticipated service and utilization impacts resulting from ACA that may develop between 2016 and 2021 will be reflected in the next edition of this report.

A network of more than 650 IHS and Tribal health care facilities located in or near American Indian/Alaska Native (AI/AN) communities provide health care services where alternatives are few or non-existent. Practical access to local health care sites is crucial for the AI/AN population, which is burdened by low health status compared with other Americans. The facilities of the IHS network are widely dispersed among 36 states<sup>39</sup>, primarily on or near Indian reservations where travel can be

<sup>39</sup> Indian Health Service. *Trends in Indian Health: 2014 Edition*. Department of Health and Human Services, 2014 (<https://www.ihs.gov/dps/publications/trends2014/>).

difficult, especially where transportation options are unavailable or limited by harsh climatic conditions. For most of these rural communities, IHS and Tribal health care facilities offer the only feasible source of health care services.

### **Renovating /Replacing Aging IHS Facilities**

But across the board, IHS facilities simply aren't up to the task, primarily because of their increasing age and outdated infrastructure. The numbers and consequent impacts are startling:

IHS hospitals now average 40 years of age, almost four times older than U.S. hospitals (10.6 years of age).<sup>40</sup> Aging facilities risk code noncompliance, lower productivity, and compromises for health care services. Aging has pushed up costs of maintenance and essential repairs. Beginning in 2011, maintenance deficiencies could not be fully corrected because the IHS Maintenance and Improvement budget was insufficient. National benchmarks for operation and maintenance costs report that a 40-year old facility is about 26 percent more expensive to maintain than a 10-year old facility.<sup>41</sup> Preventative maintenance and improvements have been deferred and will push up future costs of addressing further deterioration and/or breakdown. Health Care Facility Construction (HCFC) appropriations between 2010 and 2016 have averaged ~\$76 million/annually. The 2016 HCFC appropriation was \$105 million. At the current rate of HCFC appropriations, the average age of IHS facilities will continue to increase at a great rate. At the existing replacement rate, a new 2016 facility would not be replaced for 400 years (this assumes that 14 million square feet of existing space needs replacement; appropriations adjusted for inflation; 30 percent of HCFC appropriation is for replacement; and a replacement cost of \$770/square feet:  $14 \text{ million square feet} / [(\$76 \text{ million/year})(1/3)/\$770/\text{square feet}] = 425 \text{ years}$ ).

### **The Need is Enormous – and Growing**

Compounding these issues is the fact that IHS facilities collectively are not sufficient for meeting the current healthcare needs of the population it serves. And given that this population is rapidly growing (see note 77 below), the strain on the IHS system is certain to build with each passing year. Consider these facts:

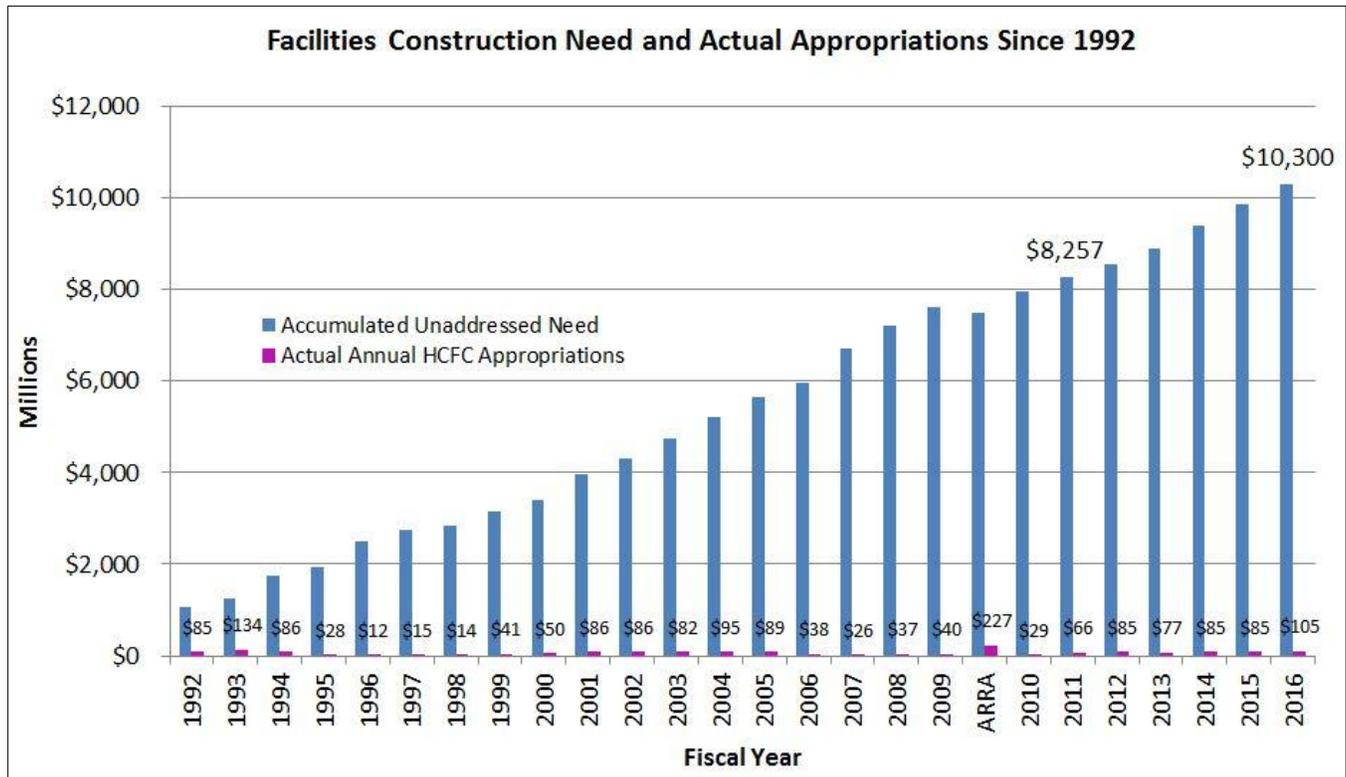
- Existing space in IHS facilities (14 million square feet) is substantially less than required (~27 million square feet) for the 2015 AI/AN user-population. Insufficient capacity and resources severely restrict health care services that can be provided. An additional 4.7 million square feet is becoming outdated and should be replaced. Unless these needs are addressed, the growing AI/AN population and gradual deterioration of older space will further expand the need.
- Space capacity of IHS health care facilities is only about 52 percent of that required for the AI/AN population. Estimated costs to construct an additional 18 million square feet of new and replacement space would total \$10.3 billion in 2016 compared to \$8 billion five years ago, an increase of 25 percent. The facilities space need has accumulated over many years. Since the

<sup>40</sup> Almanac of hospital financial & operating indicators: a comprehensive benchmark of the nation's hospitals (2015 ed., pp. 176-179): <https://aharesourcecenter.wordpress.com/2011/10/20/average-age-of-plant-about-10-years/>

<sup>41</sup> Adams, Tim, et al. *Operations and Maintenance Benchmarks for Health Care Facilities Report*. International Facility Management Association, 2010 ([facilityexecutive.com/wp-content/uploads/ASHEIFMABenchmark.pdf](http://facilityexecutive.com/wp-content/uploads/ASHEIFMABenchmark.pdf)).

last report, facility construction appropriations have averaged (2010 to 2016) only about \$76 million annually. This rate is disproportionately low (\$35 per capita compared to \$374 per person for the US).<sup>42</sup>

- In coming years, accelerating obsolescence will further compromise services as the AI/AN population continues to grow faster than facility capacity to serve it.



Source: Indian Health Service, "The 2016 Indian Health Service and Tribal Health Care Facilities' Needs Assessment Report to Congress," 2016, p. 4.<sup>43</sup>

### Building New IHS Facilities: A Strong, Proven Return on Investment

As previously referenced, IHS facilities vary widely in age, capacity, design, and function. Some were constructed decades ago before the modern era of medical practice, standards, and codes. Some of the oldest facilities continue in use well past their expected useful life and many older facilities are overcrowded. By contrast, recent IHS facilities are designed for state-of-the-art medical practice such as patient/family center models of care. Their internal configuration is updated, which improves productivity and patient flow.

Space and layout limitations in older IHS facilities impede delivery of modern health care services. Older IHS facilities were constructed before the advent of contemporary patient care models and

<sup>42</sup> Centers for Medicare and Medicaid Services. "National Health Expenditure Data: NHE Fact Sheet." December 2, 2016 (<https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NHE-Fact-Sheet.html>).

<sup>43</sup> Available online at [https://www.ihs.gov/newsroom/includes/themes/newihstheme/display\\_objects/documents/RepCong\\_2016/IHSRTC\\_on\\_FacilitiesNeedsAssessmentReport.pdf](https://www.ihs.gov/newsroom/includes/themes/newihstheme/display_objects/documents/RepCong_2016/IHSRTC_on_FacilitiesNeedsAssessmentReport.pdf).

require modernized internal layouts and space. Contemporary facility designs benefit from decades of credible research, evidence-based design, and a host of other advances yielding improvements across a spectrum of clinical, productivity, satisfaction, and cultural measures: “A functional design can promote skill, economy, conveniences, and comforts; a non-functional design can impede activities of all types, detract from quality of care, and raise costs to intolerable levels.”<sup>44</sup>

The IHS has begun assessing facility space needs for a few facility types that are newly authorized in the IHCA. Based on results from a 2015 survey of facility priorities in Tribal communities, five types of facilities were added into our assessment having an estimated cost of \$4.2 billion. The five facility types are:

- Inpatient Mental/Behavioral Health and Alcohol Substance Abuse Program Facilities
- Long-Term Care Facilities – Clinical
- Long-Term Care Facilities – Non-Clinical
- Specialty Medical Services Facilities
- Dialysis Facilities

The initial Capital Investment (CI) in construction and/or major renovation of a facility spread across a 30 year design life are only a small portion of annual operating costs. Most CI projects provide a return that exceeds the investment. Health care is labor-intensive, accounting for 60 to 75 percent of annual operating expenses. Consequently, modern facility layout that increases workforce productivity can lower overall costs in the long run.<sup>45</sup> Similarly, improvements in facilities and ongoing maintenance reduce total life-cycle costs and extend facilities’ useful life with a relatively small up-front investment.<sup>46</sup>

## 8. Education Infrastructure

### **Bureau of Indian Education (BIE) Schools**

**BIE Schools Current Replacement Value:** \$4.4 billion

**BIE Deferred Maintenance Backlog:** \$388.9 million

**FY 2016 Funding:** \$45.5 million

**Need:** \$1.3 billion

- The 2010 estimate for upgrading BIE schools in poor condition to satisfactory condition was \$1.3 billion.<sup>47</sup>

<sup>44</sup> Hardy, Owen B. and Lammers, Lawrence P. *Hospitals, the Planning and Design Process*. Aspen Systems Corporation: Germantown, Maryland, 1977.

<sup>45</sup> Carr, Robert F. *Health Care Facilities*. Whole Building Design Guide, National Institute of Building Science, October 22, 2014 (<https://www.wbdg.org/building-types/health-care-facilities>).

<sup>46</sup> National Research Council of the National Academies. *Investments in Federal Facilities: Asset Management Strategies for the 21st Century*. The National Academies Press, 2004 (<https://www.nap.edu/catalog/11012/investments-in-federal-facilities-asset-management-strategies-for-the-21st>).

<sup>47</sup> Tribal Representatives et al. *Broken Promises, Broken Schools: Report of the No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee*. BIA, December 2011, p. 9

(<https://www.bia.gov/cs/groups/xraca/documents/document/idc1-025523.pdf>). Also see U.S. Government Accountability

- At the end of FY 2015, BIA has 82 schools in “good” condition, 46 in “fair” condition and 55 in “poor” condition with an overall average of building conditions at “fair” as measured by the Facilities Condition Index. This means the majority of BIE schools (approximately 55 percent) are in either poor or fair condition.

The BIA Education Construction Program reconstructs and rehabilitates BIE schools and dormitories.<sup>48</sup> There are 183 BIE schools and dormitories in 23 states, and serve approximately 48,000 students from K through 12<sup>th</sup> grade. In addition, BIE owns and operates two post-secondary institutions. The Facilities Condition Index is a system used by the BIA to calculate, manage and develop constructions plans for repair and rehabilitation of school facilities. In FY 2015, there were 82 schools that were considered in good condition, 46 in fair condition, and 55 in poor condition. It would take approximately \$388 million in deferred maintenance to bring the schools up to good conditions.

## 9. Community Development and Community Facilities Infrastructure

### Indian Community Development Block Grant Program

The Indian Community Development Block Grant (ICDBG) is a critical program for addressing the profound infrastructure needs in Indian Country. Community development projects eligible for the ICDBG program include housing construction and rehabilitation, land acquisition for housing or economic development, construction of community facilities, and installation of community infrastructure, public services, and economic development projects. These grants provide a source of flexible funds to meet community development priorities. Evaluations have shown that ICDBG funds structures that support the delivery of services that were previously unavailable or inadequate and that ICDBG investments establish a platform from which economic development can grow. In particular, the funding addresses the lack of access to private capital for public facilities, housing, and infrastructure. ICDBG funding can act as “seed” money to attract further investment and reduce perceived risk by funders.<sup>49</sup>

### Community Facilities Programs – Department of Agriculture (USDA)

**Request:** Increase grant funding to TCUs to \$8 million; increase overall funding of Program

**FY 2016 Funding:** \$2.2 billion in direct loans; \$148 million guarantee loans; \$39 million in grants

**Need:** Continued improvements to critical community service infrastructure facilities that provide health care, safety, and education to Tribal and rural communities.

The Community Facilities Programs at USDA helps Tribal and rural communities build essential facilities such as hospitals, health clinics, courthouses, town halls, fire departments, police stations, community and childcare centers, libraries, and utility services for telemedicine and distance learning. In the last 8

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Office (GAO), *Bureau of Indian Education Needs to Improve Oversight of School Spending*, GAO-15-121, November 2014, <http://www.gao.gov/assets/670/666890.pdf>.

<sup>48</sup> The BIA controls the funding for this program, which often goes to roads instead of school and dorm rehabilitation.

<sup>49</sup> Econometrica, Inc. *Evaluation of the Indian Community Development Block Grant Program, Volume I – Summary Results & Observations*. Project No. C-0029.208, Submitted to HUD Office of Native American Programs, May 2006, p. xix.

years, this program has helped build 8,350 community facilities.<sup>50</sup> It also provides \$4 million in grants directly to Tribal Colleges and Universities (TCUs), which are often the closest provider for many necessary services to Tribal citizens. With the lack of access to many of these vital facilities in Indian Country and in rural areas, funding for the Community Facilities Programs must be increased, including raising grant funding for TCUs to \$8 million.

## LAW ENFORCEMENT, PUBLIC SAFETY, AND JUSTICE INFRASTRUCTURE

### 1. Law Enforcement Infrastructure

**BIA Estimated Need:** \$1 Billion Dollars

**FY 2017 Budget Request:** \$418 Million

**Law Enforcement Need:** 4,290 Sworn Officers

Investing in safer American communities should be a top priority for this new Administration. For American Indian and Alaska Native communities, reducing criminal activity on Tribal lands and keeping local communities safe remains a continuous and burdensome challenge for the 567 federally recognized Tribes in this country. Tribal governments serve as the primary instrument of law enforcement 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, American Indians experience disproportionately high rates of violent crime. American Indian and Alaska Native communities are frequently less safe – and sometimes dramatically more dangerous – than most other places in our country. 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>51</sup>

Police in Indian Country function within a complicated jurisdictional net, answer to multiple authorities, operate with limited resources, and patrol some of the most desolate of territory often without assistance from partner law enforcement agencies. On Tribal lands, 1.3 officers must serve every 1,000 citizens, compared to 2.9 officers per 1,000 citizens in non-Indian communities with populations under 10,000. Of the 56 million acres of Tribal lands in the lower 48 states, there are approximately 2,400 BIA and Tribal Uniformed Officers. A total of at least 4,290 sworn officers are needed in Indian Country to provide the minimum level of coverage enjoyed by most communities in the United States.<sup>52</sup>

In 2011 and 2012, funding for BIA Law Enforcement programs reached approximately \$228.5 million and \$227.2 million respectively. According to a recent report by the BIA's Office of Justice Services, the

<sup>50</sup> USDA. *Exit Memo: United States Department of Agriculture, January 5, 2017*. USDA, FY 2017 Budget Summary, p. 36 (<https://obamawhitehouse.archives.gov/administration/cabinet/exit-memos/united-states-department-agriculture>).

<sup>51</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>52</sup> Tribal Law and Policy Institute. "Tribal Law Enforcement." Tribal Court Clearinghouse, quoting NCAI (<http://www.tribal-institute.org/lists/enforcement.htm>).

funding dropped to \$209.8 million in 2013.<sup>53</sup> Furthermore, the report also states that “in each of the three years, about 40 percent of the funding was allotted to BIA direct service programs and the rest went to Tribally-run programs.”<sup>54</sup>

### **Scalable Law Enforcement Budget Model**

| <b>Tribal Service Population Size</b> | <b>Law Enforcement Need</b>               | <b>Annual Cost (in thousands)</b> |
|---------------------------------------|---|-----------------------------------|
| <600                                  | Basic @ $\approx$ 1/3 capacity            | \$666                             |
| 600-1,600                             | Basic @ $\approx$ 2/3 capacity            | \$1,333                           |
| 1,601-6,500                           | Basic                                     | \$2,019                           |
| 6,501-9,750                           | Basic @ $\approx$ 50% increased capacity  | \$2,994                           |
| 9,751-13,000                          | Basic @ $\approx$ 100% increased capacity | \$3,836                           |
| 13,001-16,250                         | Basic @ $\approx$ 150% increased capacity | \$4,679                           |
| 16,251-19,500                         | Basic @ $\approx$ 200% increased capacity | \$5,501                           |
| 19,501+                               | Basic @ $\approx$ 250% increased capacity | \$6,344                           |

Source: BIA, Office of Justice Services, “Report to the Congress on Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country,” August 16, 2016, p. 6.

According to the BIA, estimated costs for a standard Law Enforcement program model serving a Tribal community ranging from 1,601-6,500 residents is \$2.0 million. This includes police officials, dispatchers, administrative services, and supplies and equipment. The number of officers budgeted at each level generally follows a ratio of 2.8 officers per 1,000 residents.<sup>55</sup> The table above shows the basic program scaled to various levels based on Tribal service populations.

## **2. Public Safety and Justice Infrastructure**

### **Construction of Tribal Multi-Justice Centers and Detention Facilities**

**FY2017 DOI-BIA Budget Request:** \$11,306,000

**DOJ Annual Budget:** \$8-9 Million

**Unmet Need:** \$211,898,628 (as of FY 2011)

The Tribal Law & Order Act (TLOA) of 2010 requires that the Departments of Justice (DOJ) and the Interior (DOI) develop, in consultation with Tribal Leaders and tribal professionals, a long-term plan to address the high rates of incarceration and the alternatives to incarceration within Indian country.<sup>56</sup> Some tribal jails have not been upgraded since they were built and lack sufficient staffing and funding to function safely and effectively. Currently, a comprehensive assessment of current and pending

<sup>53</sup> Report to the Congress on Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country. August 16, 2016, p. 4 (<https://www.bia.gov/cs/groups/xojs/documents/document/idc2-051817.pdf>).

<sup>54</sup> Ibid.

<sup>55</sup> Ibid., p. 6.

<sup>56</sup> DOJ and DOI, August 2011, p. 2.

construction projects for multi-justice centers and both short term and long term detention facilities for individual tribes as well as regional facilities is needed.

Through DOJ, the Bureau of Justice Assistance (BJA) within the Office of Justice Programs (OJP) administers the Tribal Justice Systems Infrastructure Program (TJSIP), which provides grants that support planning, constructing, and renovating tribal justice facilities. BJA helps tribes conduct comprehensive justice system planning through two vehicles: (1) direct planning grants to recipients who are planning to construct or renovate correctional facilities; and (2) funding cooperative agreements with entities that provide training and technical assistance (T&TA) to recipients of BJA planning grants. From fiscal years (FY) 2009 through 2014, BJA awarded \$275,960,760 in funds to support the TJSIP.<sup>57</sup> While the BJA is primarily responsible for providing construction grants as well as renovation grants, the responsibilities for operations, maintenance and support of these facilities are managed by the BIA. However, because of limited funding BIA cannot fund these types of projects in full.<sup>58</sup>

In a recent 2017 report, the Office of the Inspector General (OIG) conducted an audit to: “(1) assess OJP’s management and oversight of the funding provided under the TJSIP, including the contracting activities of grantees; and (2) determine the extent of OJP’s cooperation and coordination with BIA to ensure efficient and effective correctional services in Indian country.”<sup>59</sup> The audit was supported by five separate OIG audits issued between December 2014 and November 2015. Each of those audits found issues with those specific TJSIP grants. Based on this review of TJSIP activities from FYs 2009 through 2014, the OIG found that “coordination between OJP and BIA was not always effective, resulting in delays in the completion of TJSIP grants and grantees’ inability to operate and fully staff grant-funded facilities upon completion of construction.”<sup>60</sup> Inadequacies also existed during application processes and grantee oversights.

Historically, the BJA’s Correctional Systems and Correctional Alternatives on Tribal Lands Grant Program (CSCATL) has funded adult and juvenile detention programs.<sup>61</sup> However, the American Recovery and Reinvestment Act of 2009 and the Tribal Law and Order Act of 2010 expanded CSCATL’s scope of work to include other construction projects, including multi-purpose justice centers, correctional alternative facilities, and regional detention facilities. Although Tribes continue to express the need for detention facilities, there is an increase in the number of requests for multi-purpose justice centers and correctional alternative facilities. Correctional alternative facility requests include: transitional living, vocational training, enhanced community supervision capacity, and substance abuse treatment programming.<sup>62</sup> The following chart shows the type, number, and dollar amount of facility requests and awards under CSCATL from the years FY 2009-2011, including multi-purpose justice centers and regional detention centers.

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<sup>57</sup> DOJ, Office of the Inspector General . *Audit of the Office of Justice Programs’ Tribal Justice Systems Infrastructure Program*. January 2017, p. 2 (<https://oig.justice.gov/reports/2017/a1710.pdf>).

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid., p. 3.

<sup>61</sup> DOJ, “Constructing and Sustaining Tribal Justice System Facilities,” June 11, 2012 (provided to NCAI by DOJ, January 13, 2017).

<sup>62</sup> Ibid.

**Correctional Systems and Correctional Alternatives on Tribal Lands Program Application Breakdown (FY 2009 - FY 2011)**

| Facility Type                          | Applications Submitted | Total Funds Requested | Awards Made | Total Funds Awarded  | Unmet Need           |
|--|------------------------|-----------------------|-------------|----------------------|----------------------|
| Multi-Purpose Justice Center           | 42                     | \$197,896,915         | 20          | \$108,975,520        | \$88,921,395         |
| Correctional Alternatives Facility     | 19                     | \$15,071,698          | 11          | \$9,809,594          | \$5,262,104          |
| Single Jurisdiction Detention Facility | 63                     | \$184,005,284         | 40          | \$78,873,605         | \$105,131,679        |
| Regional Detention Center              | 9                      | \$23,823,284          | 8           | \$11,707,050         | \$12,116,234         |
| Justice System Facility Planning       | 8                      | \$1,204,156           | 5           | \$736,940            | \$467,216            |
| <b>Total</b>                           | <b>141</b>             | <b>\$422,001,337</b>  | <b>84</b>   | <b>\$210,102,709</b> | <b>\$211,898,628</b> |

Source: DOJ, "Constructing and Sustaining Tribal Justice System Facilities," June 11, 2012 (provided to NCAI by DOJ, email correspondence, January 13, 2017).

These figures highlight the dire need for new construction is immense and federal funding is not significant enough to meet that need. Additionally, federal programs are now no longer funding new construction projects and annual budgets of \$8-9 million annually focus instead on renovations, expansions and maintenance.<sup>63</sup> Of the 96 detention facilities monitored by the BIA, 26 facilities currently in operation need to be replaced, with five of those facilities designated as high priorities.<sup>64</sup> A comprehensive assessment of these much needed facilities is critical to understanding existing and future needs for tribal communities while improving the overall impact of tribal justice systems, alternatives to incarceration and public safety throughout Indian Country.

### 3. Emergency Management and Homeland Security Infrastructure

The risk to homeland security from domestic and foreign threats, especially terrorism, is on the rise. These threats require tribal and other communities to develop and enhance homeland security response planning, training, and exercise efforts. Congress and the Administration have a trust obligation to assist Tribal governments to protect all citizens, Native and non-Native within their jurisdictions. There has been no change in a decade in providing funding to Tribal governments and Tribal communities for critical homeland security needs. Without necessary resources, Indian Country will remain a weak link in achieving a cohesive and coordinated homeland security strategy, which creates a significant and potentially dangerous gap in the security of the United States.

Since 2003, Congress has allocated over \$50 billion in homeland security grant funds to state and local governments. Tribal Nations have only been allocated \$60 million in federal homeland security funding during the same period. Four Department of Homeland Security (DHS) grant programs allocated \$20.3 billion from 2002 to 2011 to state and local governments, some of which the GAO found to contain

<sup>63</sup> DOJ, Bureau of Justice Assistance. Provided to NCAI by DOJ, email correspondence. January 13, 2017.

<sup>64</sup> BIA, Office of Justice Services. "Indian Country Detention Facilities." Provided to NCAI by BIA, email correspondence, January 12, 2017.

duplicative funding.<sup>65</sup> Unmet Tribal homeland security needs are significant, and every year Tribes request at least four times more than the funding amount provided at the discretion of the DHS Secretary for the program. Of those Tribes that do apply (current law excludes many tribes from applying and excludes Alaska Native Villages from eligibility), there is generally a requested need of \$4 for every \$1 funded. Several Tribes could utilize the entire amount budgeted for the Tribal Homeland Security Grant Program (THSGP).

DHS recently issued infographics showing that it provides \$17.6 million in federal assistance and \$4.4 million in homeland security grants daily.<sup>66</sup> The 567 federally recognized Tribal Nations in hundreds of congressional districts, and Alaska Natives or American Indians living in every state, receive less than half of this daily allocation in an entire year. While DHS and the Federal Emergency Management Agency (FEMA) provide \$22 million every day to states,<sup>67</sup> it provides roughly \$10 million to Tribes *in an entire year*. At current funding levels, it would take 803 years for Tribes to receive what is allocated to states annually. On average, states are allocated \$26.24 of federal funding for each resident annually and Tribal Nations are allocated roughly \$3.41 for each of their citizens. Additionally, state governors have access to federally funded, state-centric programs like the Emergency Management Assistance Program that exclude Tribes. Tribal governments deserve equitable treatment, access, and funding support to enable them to play their part in ensuring the integrity of a safe and secure nation.

There is a potentially dangerous and significant human, technical and infrastructure shortfall in homeland security and emergency response capacity throughout Indian Country. The weak link in national homeland security and emergency management infrastructure is not the fault of Tribal community leaders and residents, but a result of neglectful and exclusionary federal homeland security budgetary and programmatic policies. Continued disregard for Tribal community unmet needs increases the possibilities of high-risk homeland security consequence scenarios of becoming reality. Tribes are ready, willing and able to meet the challenges of homegrown and complex coordinated attacks but require infusion of resources and funding. Assistance to Indian Country must be prioritized to ensure the ability of Tribes to build, enhance, and sustain adequate protection and defense with neighboring community and federal partners.

### **Tribal Homeland Security Grant Program**

Nearly 40 Tribes are located directly on or near the imposed U.S. international borders with Mexico and Canada. Tribal governments have extensive border-security responsibilities, including immigration, anti-terrorism, and anti-smuggling. In addition, dozens of Tribes have critical national infrastructure on their lands, including national oil and gas pipelines, nuclear facilities, missile sites, and dams.

Tribes need to have access to homeland security and emergency management programmatic funding at a level of at least \$20 million annually for the next five years. This would represent a significant increase over the \$10 million that DHS has made available for Tribal grants in recent years in its attempt to address the funding shortfalls that the Congress provides for the 567 federally recognized

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<sup>65</sup> GAO. *Homeland Security: DHS Needs Better Project Information and Coordination Among Four Overlapping Grant Programs*. GAO Report 12-303, March 20, 2012, pp. 120-122 (<http://www.gao.gov/products/GAO-12-303>).

<sup>66</sup> DHS. "To protect our nation, today DHS will" (infographic). October 24, 2016 (<https://www.dhs.gov/todayDHSwill>).

<sup>67</sup> Ibid.

Tribes. Additionally, Congress must allow DHS to reallocate funding to federally recognized Tribes and prioritize Tribal access to homeland security equipment purchased with federal grant funds that is considered surplus by state and local governments. While there are no required reports to the Congress on surplus activities, many believe that there are significant opportunities for reallocation of homeland security assets to Tribal nations. If Congress provided at least \$20 million annually for Tribal homeland security efforts, a stronger and more resilient nation would be the result.

### **Tribal Emergency Management Assistance Compact Development and Management**

Congress funded the development and continues to fund the operation of the state-to-state emergency management assistance compact (EMAC) as a mutual aid agreement between states and territories of the United States. It enables states to share resources during natural and man-made disasters, including terrorism. The 567 federally recognized Tribes are not part of this agreement and there is no congressional mandate for them to become part of it. It is important for Tribes to develop their own Tribal nation-to-Tribal nation system of assistance similar to that which Congress has provided for the states. Eighty percent of Tribal disasters are never designated federal disaster declaration status. Providing funding for the establishment and operations of Tribal EMACs will strengthen national homeland security by providing Tribes a first resource between and among themselves similar to that of state-to-state EMACs. This effort will increase resiliency in our nation and we urge Congress to provide \$4 million for Tribal emergency management compact development.

### **Provide Funding for Tribal Government Emergency Management Training**

More Tribes have developed and enhanced emergency management capability since the Stafford Act amendment authorizing Tribal governments to seek direct emergency and disaster declarations independent of states. FEMA recently released the Tribal Declarations Pilot Guidance outlining procedures to request a Stafford Act declaration. Tribes will need additional training for all departmental staff in order to understand and comply with the new guidance. FEMA's Emergency Management Institute (EMI) has developed several training courses for Tribal officials toward enhanced Tribal government emergency management capacity. The current EMI budget restricts delivery of the courses at EMI and in the field. We urge the Congress to provide FEMA with budget support for delivery of Tribal emergency management courses. Knowing the challenges Tribal officials face to attend the training, Congress should allow FEMA to schedule and ticket travel for Tribal attendees at field course. Specifically, we request \$1 million be available for Tribal government emergency management training.

## **4. Imminent Threats to Tribal Communities and Infrastructure (Erosion and Flooding)**

### **Coastal Climate Resilience Fund – DOI**

**Request:** \$2 Billion

**FY 2016 Funding:** N/A

**Need:** Many Tribal communities, especially in Alaska and near the Gulf of Mexico, are facing immediate threats to their homes, villages, and infrastructure due to erosion from rising sea-levels.

In 2009, the Government Accountability Office identified 31 Alaska Native Villages which are currently at-risk due to continuing erosion,<sup>68</sup> and just this year the Isle de Jean Charles Band of Biloxi-Chitimacha-Choctaw became the first tribe in the Lower 48 to be forced to move due to flooding. However, the Band needed a \$48 million grant from the U.S. Department of Housing and Urban Development in order to move. The resources necessary to move and rebuild entire Tribal communities are not readily or widely available to many Tribes. The cost to move three of the most at-risk villages – Kivalina, Newtok, and Shishmaref – was calculated to be between \$80 million and \$200 million each in 2006.<sup>69</sup> The cost now to move Kivalina is estimated to be \$100 million to \$400 million dollars.<sup>70</sup> With the cost of moving and rebuilding infrastructure continuing to increase with the growing threats of flooding and erosion, the federal government should act now to provide funding for a Resilience Fund to provide Tribal Nations with the necessary funding to move their communities before disaster strikes.

## COMMUNICATIONS INFRASTRUCTURE

### 1. Broadband and Wireless Deployment

#### Advanced Telecommunications need

**All Tribal Lands:** 1.6 million people, 41 percent

**Rural Tribal Lands:** 1.3 million people, 68 percent

#### Tribal Mobility Fund

**Phase 1:** \$50,000,000 one-time support

**Phase 2:** \$100,000,000 annually for 5 years

Advanced communications capability is severely lacking on Tribal lands. The Federal Communications Commission speed benchmark for broadband is 25 Mbps/3 Mbps. The table below shows that 41 percent of Tribal lands and 68 percent of rural Tribal lands do not have access to broadband, compared to the national average of 10 percent.

#### *Americans without Access to Fixed Advanced Telecommunications Capability (Millions)*

| Location         | Population | Percentage of Population |
|------------------|------------|--------------------------|
| United States    | 33,982,000 | 10%                      |
| Rural Areas      | 23,430,000 | 39%                      |
| Urban Areas      | 10,552,000 | 4%                       |
| Tribal Lands     | 1,574,000  | <b>41%</b>               |
| Rural Areas      | 1,291,000  | <b>68%</b>               |
| Urban Areas      | 283,000    | 14%                      |
| Alaskan Villages | 128,638    | 49%                      |
| Rural Areas      | 113,706    | 70%                      |
| Urban Areas      | 14,932     | 15%                      |

<sup>68</sup> GAO. *GAO Report, Alaska Native Villages: Limited Progress Has Been Made on Relocating Villages Threatened by Flooding and Erosion*. GAO-09-551, June 2009, p. 12 (<http://www.gao.gov/new.items/d09551.pdf>).

<sup>69</sup> *Ibid.*, p. 10.

<sup>70</sup> National Oceanic and Atmospheric Administration (NOAA). "U.S. Climate Resilience Toolkit: Relocating Kivalina (Case Study)." NOAA's Climate Program Office, July 6, 2016 (<https://toolkit.climate.gov/case-studies/relocating-kivalina>).

| Location                                   | Population | Percentage of Population |
|--|------------|--------------------------|
| <b>Tribal Lands in the Lower 48 States</b> | 588,324    | 58%                      |
| <b>Rural Areas</b>                         | 469,818    | 72%                      |
| <b>Urban Areas</b>                         | 118,506    | 33%                      |

Source: Federal Communications Commission, "2016 Broadband Progress Report," GN 15-191, 2016, p. 43.<sup>71</sup>

The government provides industry subsidies for broadband and wireless providers to build out on spectrum, including broadband deployment on Tribal lands. Over 1.5 million people lack advanced telecommunications infrastructure on Tribal lands. 41 percent of people living on Tribal lands lack access to advanced telecommunications capability, compared to the 10 percent national average. Sixty-eight percent of people living in rural areas on Tribal lands lack access compared to the 39 percent national average for rural areas. The FCC notes that there are over 270,000 people in the two states of Arizona and New Mexico alone that lack access on Tribal lands. People living on reservations also have substantially fewer wireline internet providers to choose from, 43 percent having only one company to choose for service. Various programs at the FCC and Department of Agriculture incentivize industry to build out their network on Tribal lands, such as the Tribal Mobility Fund within the High Cost Fund (Connect America), Tribal Lands Bidding Credit, Rural Utility Service, Community Connect Program, Rural Broadband Access Loan and Loan Guarantee Program, Telecommunications Infrastructure Loans and Loan Guarantee Program, and Underserved Trust Areas. The federal government should make it easier for industry to deploy high-speed internet on Tribal lands.

## 2. Telemedicine

### IHS - Telemedicine Programs

#### Telebehavioral Health Center of Excellence (TBHCE)

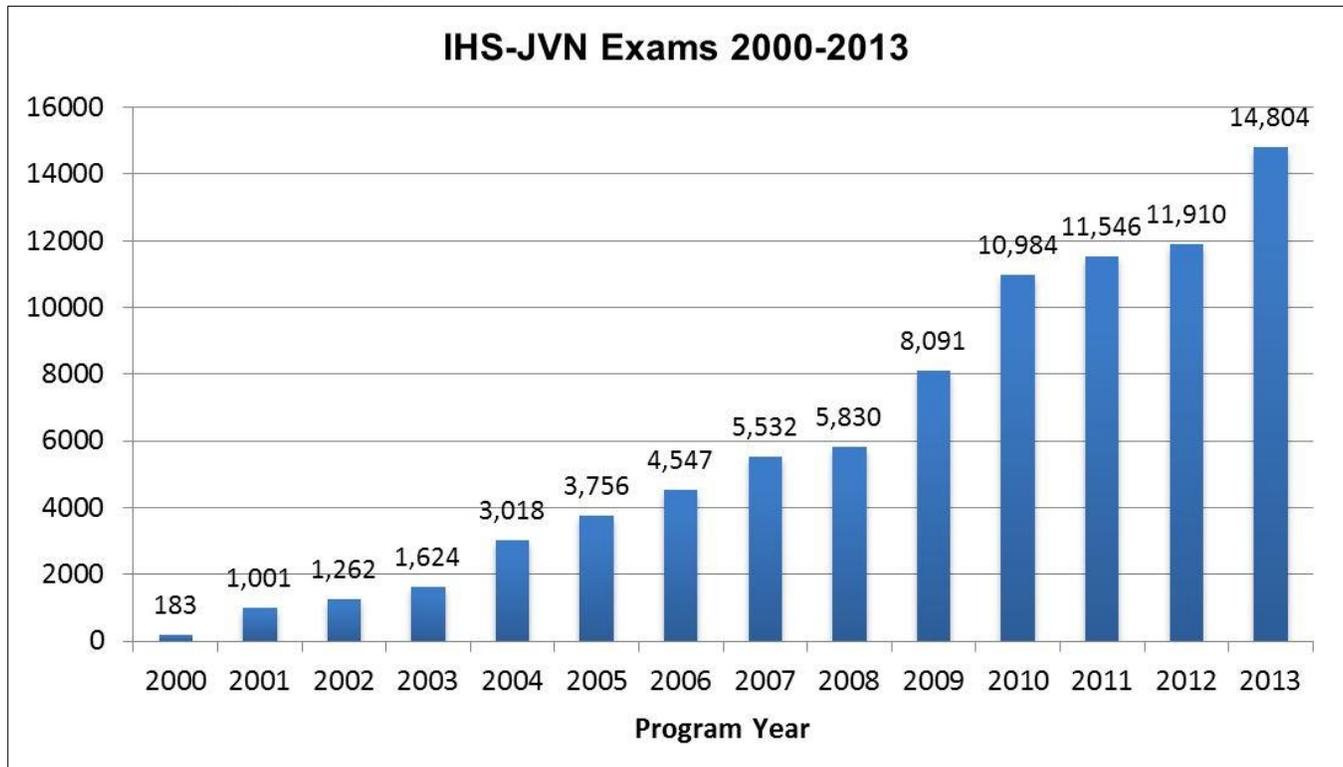
#### Health Information Technology, Office of Information Technology Infrastructure, Office Automation, & Telecommunications (IOAT)

**Need:** 575 Indian health facilities do not have telemedicine programs.

Connecting patients with providers through telehealth is a critical component of the future of health in Rural America, including Indian Country. An IHS study noted that only 17 percent of IHS and Tribal facilities implemented telemedicine for Mental Health, leaving 575 facilities across the country without telemedicine resources. Between FY14 and FY15, telehealth has increased patient contacts within IHS by 47 percent leading to an additional 41,880 patient seen across the country. Telehealth is increasingly important for rural of residents. In Alaska, approximately 16 percent of all Alaska Natives were involved in telehealth in a single year. In Nome, Alaska, 47 percent of new patients would wait five months or longer for an in-person appointment and after the introduction of telemedicine, this rate dropped to 3 percent in 6 years. Telehealth saves patients substantial travel costs including over 1 million miles of travel avoided, 17,520 hours of work or school not missed and increased patient savings of 47 percent between FY14 and FY15. In Alaska, an estimated \$8 to \$10 million is saved annually in patient travel costs because of telehealth.

<sup>71</sup> See [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-16-6A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-6A1.pdf).

### Increase in Tele-ophthalmology Exams, Indian Health Service (2000-2013)



Source: IHS, "Telehealth/Telemedicine Overview," Presentation April 5, 2016, Sioux Falls, South Dakota, April 5, 2016.<sup>72</sup>

### 3. Connecting Schools and Libraries

#### E-Rate (Universal Service Fund)

**Need:** \$10 million specifically for Tribal Libraries

| Tribal Library Internet Connection Speeds (n=99) |              | Tribal Library Internet Connection Types (n=122) |              |
|--|--------------|--|--------------|
| Speed  | Distribution | Type   | Distribution |
| 768 Kbps or less                                 | 7%           | Dial-up modem                                    | 2%           |
| 769 Kbps-1.4 Mbps                                | 4%           | Satellite  | 6%           |
| 1.5 Mbps   | 10%          | Integrated Services Digital Network (ISDN)       | 4%           |
| 1.6 Mbps - 3.0 Mbps                              | 11%          | T-1 Lines  | 15%          |
| 3.1 Mbps - 4.0 Mbps                              | 8%           | Digital Subscriber Line (DSL)                    | 21%          |
| 4.1 Mbps - 6.0 Mbps                              | 7%           | Cable modem                                      | 8%           |
| 6.1 Mbps - 10 Mbps                               | 9%           | Wireless Broadband                               | 33%          |
| 10.1 Mbps - 20 Mbps                              | 10%          | T-3 Lines  | 6%           |
| 20.1 Mbps - 30 Mbps                              | 5%           | Fiber optic cable                                | 5%           |
| 30.1 Mbps - 40 Mbps                              | 4%           |  |              |
| 40.1 Mbps - 99.9 Mbps                            | 9%           |  |              |
| 100 Mbps or greater                              | 15%          |  |              |

Notes: 1) If a library reported more than one connection type, the higher-speed connection was counted. 2) How a library's "wireless broadband" is connected to the Internet is unknown.

Source: Association of Tribal Archives, Libraries and Museums, "Digital Inclusion in Indian Country: The Role of Tribal Libraries." Final Report, RE 56-13-0080-13, 2014, p. 14.<sup>73</sup>

<sup>72</sup> See [https://www.ihs.gov/newsroom/includes/themes/newihstheme/display\\_objects/documents/2016\\_Speeches/TelehealthOverview040516.pdf](https://www.ihs.gov/newsroom/includes/themes/newihstheme/display_objects/documents/2016_Speeches/TelehealthOverview040516.pdf).

Tribal Schools and Libraries are falling on the wrong side of the Digital Divide. On average, Tribal libraries receive less than \$3 per capita per year, in contrast to public libraries that receive \$38 per capita per year. Similar to general connectivity rates, 66 percent of Tribal Libraries are not connected to Broadband, according to the FCC's speed benchmark. The Federal Communications Commission's speed benchmark is 25 Mbps/3 Mbps; only 33 percent of Tribal Libraries have connection speeds above 20.1 Mbps. Tribal libraries are also not receiving E-Rate funding from the Universal Service Fund at similar rates to non-Tribal institutions; 15 percent of Tribal Libraries receive E-Rate funding, compared to the national average of 61 percent. Thirty-eight percent of Tribal Libraries surveyed are the only source of free public Internet access in their communities. NCAI has been working towards administrative fixes that allow for more Tribal libraries to apply for E-Rate.

## HUMAN CAPACITY AND JOBS INFRASTRUCTURE

### 1. Tribal Planning for Infrastructure Development

Transformative infrastructure development capable of driving and sustaining social and economic prosperity begins with effective planning.<sup>74</sup> Given the gravity and complexity of unmet infrastructure needs that Tribal Nations face, the tangle of laws and regulations they must navigate, and the critical partnerships they must forge and maintain with their neighboring governments to address shared infrastructure needs, the role of – and the capacity to engage in – strategic planning for infrastructure development is paramount. The federal government should make significant investments in (1) developing and enhancing the capacity of Tribal leaders and planners to engage in Tribal infrastructure planning, and (2) supporting the development and implementation of comprehensive Tribal infrastructure development plans on Tribal lands and in partnership with surrounding communities.

### 2. Jobs and Employment

There exist disparities within Indian Country in both labor force participation and infrastructure that if jointly addressed could help to stimulate Tribal economic growth. These two aspects of development are intertwined, as labor force participation among Native people – particularly on tribal lands – is lower as compared to the rest of the U.S. population in part because of a lack of opportunity in many Tribal communities. This lack of opportunity in Indian Country is particularly evident in places where key infrastructure – such as roads, water access, and broadband – is underdeveloped or in a state of disrepair. One study, for example, found that based on household consumption in Indian Country, tribal lands could be supporting over one million jobs and almost 280 million square feet of commercial retail space. This amounts to “a far cry from the actual number of jobs and amount of commercial space found in Indian country” currently.<sup>75</sup>

<sup>73</sup> See <http://www.atalm.org/sites/default/files/FINAL%20REPORT%20RE-56-13-0080-13.pdf>.

<sup>74</sup> For more on this topic, see Ted Jojola, *Physical Infrastructure and Economic Development*, NCAI, May 2007 ([http://www.ncai.org/attachments/PolicyPaper\\_OAYcOPFdNTxazqxAOZGImEXOHFGoAnZIOepYZcUnSgRGgoWUTLp\\_Jojola%20and%20Gover%20FINAL%20FORMATTED%205.8.07.pdf](http://www.ncai.org/attachments/PolicyPaper_OAYcOPFdNTxazqxAOZGImEXOHFGoAnZIOepYZcUnSgRGgoWUTLp_Jojola%20and%20Gover%20FINAL%20FORMATTED%205.8.07.pdf)).

<sup>75</sup> Listokin, David, et al. *Housing and Economic Development in Indian Country: Challenges and Opportunity*. New Brunswick, NJ: Center for Urban Policy Research-CUPR, Edward J. Bloustein School of Planning and Public Policy, Rutgers, The State U of New Jersey, 2006, Appendix D.

Significant, targeted investments could concurrently address the infrastructure and labor force participation disparities facing Indian Country while at the same time seeding long-term economic growth in Tribal communities. Native people – given their residency in areas of severe infrastructure need – are ideally positioned to directly contribute to Tribal and shared community infrastructure projects by filling the locally created jobs that a major national infrastructure investment plan would provide. Such a plan should purposefully identify and recruit qualified Native people for employment, and should emulate what Tribal Employment Rights Offices (TEROs) have done in matching unemployed Native workers with locally available construction jobs, as one example.

### 3. Workforce Development

Workforce development in Indian Country is a particularly daunting challenge. Yet across a growing number of Tribal communities, Tribally driven workforce development efforts are making significant headway in preparing Tribal citizens to pursue and succeed in high-demand careers – including infrastructure-critical careers – where other efforts before them have failed. This affirms the fact that Tribal Nations are best positioned and equipped to develop their own workforces.<sup>76</sup> Tribal Nations are forging these successes in spite of the fact that federal funding for Native workforce development programs is a fraction of what it was in the past. Meanwhile, the Native population is one of the fastest growing in the country, increasing by 27 percent between 2000 and 2010.<sup>77</sup> It also is one of the country's youngest populations, with 32 percent of the Native population under the age of 18 (compared to 24 percent of the U.S. population as a whole).<sup>78</sup>

#### **Key Data Points Supporting Funding Increase in Section 166 WIOA Comprehensive Services Program**

| <b>Data Point</b>  | <b>Year(s)</b>     | <b>% Change</b> | <b>Source</b>  |
|--|--------------------|-----------------|--|
| <b>Total size of American Indian/Alaska Native only population</b> | <b>2000 - 2014</b> | <b>25.4%</b>    | <i>U.S. Census Bureau, 2000 Decennial Census and 2014 Population Estimates (the 2014 number from the Census Bureau's Population Estimates Program has been adjusted to make it comparable to the count in the 2000 Census)</i> |
| <b>American Indian/Alaska Native only unemployed</b>               | <b>2000 - 2014</b> | <b>39.2%</b>    | <i>U.S. Census Bureau, 2000 Decennial Census and 2014 1-year American Community Survey (ACS) estimates, adjusted for undercount in ACS (Adjustment in ACS 2014 to compensate for undercount of AI/AN)</i>                      |
| <b>American Indian/Alaska Native only in poverty</b>               | <b>2000 - 2014</b> | <b>44.7%</b>    | <i>U.S. Census Bureau, 2000 Decennial Census and 2014 1-year American Community Survey (ACS) estimates, adjusted for undercount in ACS (Adjustment in ACS 2014 to compensate for undercount of AI/AN)</i>                      |

<sup>76</sup> For an overview and examples of tribal workforce development successes, see <http://www.ncai.org/ptg/work-force-development>.

<sup>77</sup> During this period, the American Indian and Alaska Native alone-or-in-combination population grew by 27 percent, from 4.1 million to 5.2 million. It increased nearly three times as much as the total U.S. population, which grew by just under 10 percent (9.7 percent) (see U.S. Census Bureau. *The American Indian and Alaska Native Population: 2010*. 2010 Census Briefs, C2010BR-10, January 2012, pp. 3-4, <http://www.census.gov/prod/cen2010/briefs/c2010br-10.pdf>).

<sup>78</sup> NCAI. *Tribal Nations and the United States: An Introduction*. 2015, p. 13

([http://www.ncai.org/resources/ncai\\_publications/tribal-nations-and-the-united-states-an-introduction](http://www.ncai.org/resources/ncai_publications/tribal-nations-and-the-united-states-an-introduction)).

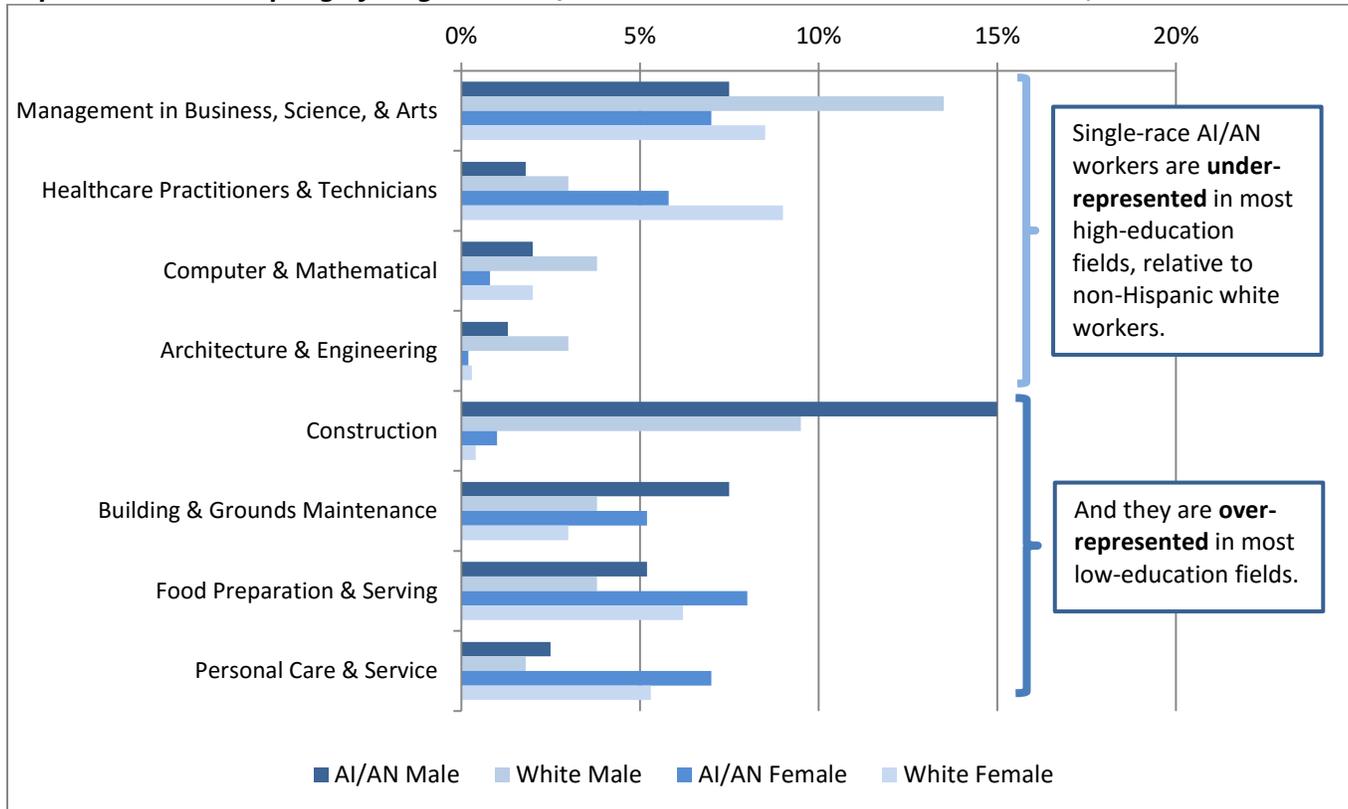
|   |  |              |   |
|---|--|--------------|---|
| <b>Loss in purchasing power due to inflation in funds provided for Section 166 Comprehensive Services Program</b> | <b>In 2014 compared to 2000 price levels</b> | <b>45.7%</b> | <i>U.S. Department of Labor, Section 166 Comprehensive Services Program allocation table; Bureau of Economic Analysis, GDP Price Deflator applicable to state and local government expenditures</i> |
| <b>Cost of tuition, fees, room and board for two-year public colleges and universities</b>                        | <b>2001 - 2002 to 2012 - 2013</b>            | <b>33.9%</b> | <i>U.S. Department of Education, National Center for Education Statistics</i>   |
| <b>Cost of tuition, fees, room and board for four-year public colleges and universities</b>                       | <b>2001 - 2002 to 2012 - 2013</b>            | <b>46.3%</b> | <i>U.S. Department of Education, National Center for Education Statistics</i>   |

The federal government should, without delay, restore full funding for vital Native American workforce development and related grant programs (the Workforce Investment Opportunity Act (WIOA), BIA's Job Placement and Training, Adult and Vocational Education (Department of Education), Tribal TANF, and Tribal Vocational Rehabilitation programs, to name a few) to the levels they were in 2000, adjusted for the significantly expanded size of the service population and increases in the cost of services such as tuition for post-secondary educational institutions (see above for WIOA-specific considerations). It also should streamline the funding and reporting requirements of these programs and remove the operational barriers inhibiting their effective implementation by Tribal governments and organizations. Finally, it should invest in targeted training of Native people for the specific types of jobs that a national infrastructure investment plan will require, and then connect them with locally available positions in those fields.

#### **4. Education for the 21<sup>st</sup> Century Job Market**

A critical piece of the infrastructure puzzle for Indian Country requiring focused attention involves the ability of Native people to fully participate in the 21<sup>st</sup> century job market, a market that increasingly relies on advanced degrees, tech-based education and training, and the acquisition of adaptable skills. Preparing Native people to contribute to the infrastructure development and maintenance of Tribal and neighboring communities relies on the accessibility and affordability of these types of educational opportunities. But the research shows that Indian Country has some distinct challenges to contend with in this regard. One particular issue with labor force participation among Native people is that there is a dissimilarity of occupational choice. A recent study by the Federal Reserve Bank of Minneapolis, for example, shows that Native people (American Indians and Alaska Natives, or AI/AN) are consistently over-represented in protective services and most "low education" fields, but under-represented in most "high education" fields (other than community and social services; see below).

### Representative Sampling of Single-race AI/AN Workers Relative to White Workers, 2010



Source: Jacob Wise, Richard M. Todd, and Carolyn A. Liebler. "Dissimilarity on the Career Path: The Occupational Structure of the American Indian and Alaska Native Workforce." Center for Indian Country Development Working Paper 2017-01, Federal Reserve Bank of Minneapolis, February 2017, p. 6.

Not surprisingly, this research also found that disparities in educational attainment in these high education fields contribute significantly to the occupational gap. Other researchers also cite education as a primary driver of improvements in per capita income amongst counties with a Tribal presence (improving interstate highways and arterial roads is another proven driver).<sup>79</sup> There is mounting evidence that reinforces the importance of investing in and building up a skilled workforce who can meet the infrastructure and development needs of Tribal communities and help stimulate economic activity beyond the creation of just low-skill and low-wage jobs, which tend to dominate across Indian Country.

## 5. Native CDFIs and Tribal Colleges and Universities

### Native Community Development Financial Institutions (CDFIs)

There are more than 70 federally certified Native CDFIs spread across 19 states that serve primarily American Indian, Alaska Native, or Native Hawaiian communities.<sup>80</sup> The majority of these CDFIs are situated in rural areas challenged by limited and/or outdated infrastructure. Aside from providing vital *financial* infrastructure and asset building opportunities to Tribal communities that otherwise would

<sup>79</sup> Listokin et al., 2006, p. 150.

<sup>80</sup> To learn more about Native CDFIs, see: <http://nativecdfi.net/>.

have few of them, Native CDFIs also help to improve the physical and educational infrastructures of Tribal communities so that they can better support business development and home ownership, two key ways that individuals, families, and communities build wealth and financial stability.<sup>81</sup> Native CDFIs also play an instrumental role in efforts to train Tribal workforces and seed new employment opportunities upon which those workforces can capitalize.

Among other steps, the federal government can strengthen the ability of Native CDFIs to support multifaceted infrastructure development by reinstating and making permanent the waiver for the non-federal match requirement for the CDFI Fund's Native American CDFI Assistance (NACA) Financial Assistance Program. Congress waived non-federal match requirements for NACA from FY09 to FY13 during the recession. While there have been some signs of recovery across Indian Country, many Tribal communities are in persistent poverty counties where ongoing investment and opportunities are necessary. The ability of Native CDFIs to access NACA without a non-federal match is a budget-neutral strategy that was working well to overcome significant economic barriers; increase the flow of capital and credit to Native businesses, homebuyers, and consumers; and increase workforce training and job opportunities. Making the New Markets Tax Credit (NMTC) program permanent would similarly empower Native CDFIs to make greater, more impactful investments in Indian Country's infrastructure. A growing number of Native CDFIs have succeeded in deploying NMTC investments, and with program permanence, NMTC investors and Native CDFIs will have the time they need to strategically plan and invest in transformative infrastructure initiatives.

### **Tribal Colleges and Universities (TCUs)**

TCUs contribute significantly to Tribal and surrounding local economies and play an increasing role in job creation through entrepreneurial and small business programs. They also serve as the primary educational providers for precisely the types of jobs (construction, engineering, etc.) upon which the effective execution of a national infrastructure investment plan will depend.<sup>82</sup> A recent prime example is the federally funded DeMaND program administered by United Tribes Technical College, which worked to train both Native and non-Native students to fill positions in North Dakota's rapidly expanding oil and gas industry.<sup>83</sup>

In partnership with TCUs, community and vocational colleges, and other higher education institutions that serve Native people, the federal government should increase its investment in developmental education and academic bridge programs at those institutions so that Native people are better able to

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<sup>81</sup> Native Community Finance in New Mexico, for example, provides lending products, home mortgage loans, home rehabilitation loans, and construction lending to several tribal communities in its vicinity. Lummi CDFI in Washington, meanwhile, creates critical educational infrastructure in partnership with Northwest Indian College, offering courses in business development as well as college courses. And Wisconsin Native Loan Fund provides home loans on all the reservations in Wisconsin, providing homeownership opportunities that would not otherwise exist. For more about the breadth of Native CDFIs' activities and impacts, see: [http://nativecdfi.net/wp-content/uploads/2012/06/NCN-Member-Survey-Quick-Facts-Report\\_1.10.17.pdf](http://nativecdfi.net/wp-content/uploads/2012/06/NCN-Member-Survey-Quick-Facts-Report_1.10.17.pdf). Also see Native Nations Institute, *Access to Capital and Credit in Native Communities*, University of Arizona, Tucson, Arizona, 2016, pp. 13-24 ([http://nni.arizona.edu/application/files/8914/6386/8578/Accessing\\_Capital\\_and\\_Credit\\_in\\_Native\\_Communities.pdf](http://nni.arizona.edu/application/files/8914/6386/8578/Accessing_Capital_and_Credit_in_Native_Communities.pdf)).

<sup>82</sup> For example, many TCU-based construction and trades programs actually have their students build homes for themselves, other students, tribal elders, and community members as part of their training.

<sup>83</sup> For more on this program, see: [http://demandworkforce.com/data/upfiles/media/DeMaND%20Evaluation%20Annual%20Report%20Y3\\_2.pdf](http://demandworkforce.com/data/upfiles/media/DeMaND%20Evaluation%20Annual%20Report%20Y3_2.pdf).

succeed in college-level courses, obtain the appropriate certifications and/or degrees, and then gain employment through local or regional infrastructure projects. In addition, it should consider eliminating the state pass-through for the Carl D. Perkins Vocational and Technical Education Act and instead establish a Tribal version of the Act that would appropriate direct funding to TCUs to provide basic adult education and job and skills training, as well as expand the Act's parameters to support the pursuit of four-year degrees. Neither of these investments should come at the expense of funding provided to Tribal Nations and other Native-controlled entities providing workforce development services.

## **DATA INFRASTRUCTURE**

### **1. Federal Data Quality and Availability**

The ability of Tribal governments and leaders to develop and inform effective infrastructure development initiatives depends on their intimate understanding of the current state and size of their population and the infrastructure needs of Tribal and neighboring communities. Gaining that understanding depends on whether they have reliable, relevant, localized data at their fingertips. In this regard, the federal streams of data currently available to Tribal governments and decision-makers are sorely lacking. There is a critical need for accurate, meaningful, and timely data collection in Tribal communities. Accurate data collection can validly and reliably capture true Tribal community needs and drive Tribal investments, resulting in a cost-effective use of Tribal, federal, state, local, and private resources. Without quality data, policymakers and community planners cannot set policy goals, monitor implementation, measure impact, or plan for demographic shifts in an effective way.

Economic statistics and data are important for economic development and for informing policy. Improving the quality of data will be a long-term effort and should involve multiple agencies. Agencies should include the Census Bureau, Bureau of Labor Statistics, and the BIA. Currently, there is a lack of official economic statistics for Indian Country as a part of the statistical measurement of the U.S. economy. Focusing specifically on labor, DOI should produce and release the statutorily required American Indian Population and Labor Force report without further delay. This directive also should mandate that DOI collaborate with Tribal leaders and data experts, the Department of Labor, and the Office of Management and Budget in the planning and production of the report. The report should be informed by workforce and occupational data generated by Tribal researchers, to which the federal government should provide technical expertise and financial resources in order to perform the work. This data should be geared towards measuring the distinct infrastructure needs of Indian Country and the human capacity required to address those needs.

### **2. Building Tribal Data Capacity**

Enhancing the quality and accessibility of federal data relative to infrastructure considerations is an important piece of the data infrastructure puzzle, but it is not the only piece. The inherent limitations of national data – even when optimally generated and shared as described above – and the utility of assessing *their* local infrastructure needs and opportunities for developing locally customized infrastructure investment solutions argue strongly for the right of and need for Tribal Nations to take a data leadership role. Tribal decision-makers require locally relevant, accurate data accompanied by

relevant analysis to advance their strategic policy and planning efforts for infrastructure development.<sup>84</sup> The federal government should invest in Tribal data systems and the training of Tribal researchers to generate useful data that can inform the development and implementation of infrastructure development projects and assess the effectiveness of those projects over time.

### **The Path Forward**

So what do the information and findings shared in this initial report collectively articulate about the best path forward for strengthening America's infrastructure, and the rightful role of Tribal Nations and governments in charting that path? The following takeaway points are particularly instructive.

#### **Takeaway Points:**

- Investing in Indian Country's infrastructure furthers Tribal self-governance and self-determination by acknowledging Tribal governmental parity and the federal trust responsibility.
- Tribal successes in the realm of infrastructure development affirm the benefits of – and the need to support – Tribal self-determination as well as intergovernmental and public-private partnerships involving Tribal governments.
- Regulations must be streamlined to provide Tribal Nations with the same ability to engage in economic development and serve the best interests of their citizens as state governments have.
- Tribal consultation must occur *early* in the federal infrastructure permitting process, with the goal to (1) achieve informed consent on projects impacting Tribal lands and resources, and (2) ensure that infrastructure projects produce lasting benefits for Tribal communities based on identified Tribal priorities.
- For any national infrastructure investment plan to be effective, it will need to emerge from the concerted, coordinated efforts of all governmental players.
- Any investment in infrastructure needs to *treat* and *fund* Tribal, state, and local governments on an equitable footing (through Tribal set-asides, carve-outs, etc.).
- Investments in infrastructure need to foster Tribal government and industry partnerships. Supporting the efforts of Tribal governments to collaborate with industry providers will foster locally rooted solutions that yield the most cost effective results.

*For questions or to learn more about the facts and data presented in this report, please contact NCAI at [gsalt@ncai.org](mailto:gsalt@ncai.org).*

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<sup>84</sup> NCAI has partnered with the National Science Foundation, U.S. Census Bureau, tribal communities and organizations, and universities to build a community that is actively invested in building tribal capacity for data-intensive research. This partnership has promoted data collection efforts among Tribes not yet engaging with community socio-demographic data; supported individual Tribes in enhancing the reliability, validity, and long-term sustainability of their data collection efforts; and produced targeted tools for the standardization of data collection and retention protocols. In 2017, the partnership is preparing to release a state-of-the-art report on the quality of existing tribal-level data, a scan of federal reporting requirements for Indian Country, and an Indian Service Area Catalogue that further details data sources for defined geographies.