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U.S. House Committee on Natural Resources Subcommittee for Indigenous Peoples of the United States Oversight Hearing on Reviewing the Broken Promises Report: Examining the Chronic Federal Funding Shortfalls in Indian Country

Written Testimony of President Fawn Sharp National Congress of American Indians November 19, 2019

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COMMUNITY

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

On behalf of the National Congress of American Indians (NCAI), thank you for holding this hearing on the U.S. Commission on Civil Rights' (USCCR) report, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans*. I am Fawn Sharp, President of the Quinault Indian Nation (Quinault), and the newly elected President of NCAI. I look forward to working with members of this Subcommittee and other members of Congress to ensure that the United States finally lives up to its treaty and trust obligations to tribal nations.

Founded in 1944, NCAI is the oldest and largest representative organization serving the broad interests of tribal nations and communities. Tribal leaders created NCAI in response to termination and assimilation policies that threatened the existence of American Indian and Alaska Native tribal nations. Since then, NCAI has fought to preserve the treaty and sovereign rights of tribal nations, advance the government-to-government relationship, and remove historic structural impediments to tribal self-determination.

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

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

Tribal nations continue to honor their treaties and agreements that have made the United States what it is today. For the Quinault, the promises of the United States were detailed in the Treaty of Olympia, which was signed on July 1, 1855, and on January 25, 1856 (11 Stat. 971). Over the past several years, the United States has continued to fall short of meeting its treaty obligations as appropriations cuts, sequestration,

government shut-downs, inflation, and other factors impede the federal government's ability to meet its trust responsibility. As a result, Quinault spends about \$6 million annually to supplement inadequate levels of federal funding. Quinault is not the only tribal nation in this position, as many tribal nations are forced to subsidize the federal government's unfulfilled treaty and trust obligations.

Broken Promises Report

In 2003, the USCCR issued its report, *A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country*. The *Quiet Crisis* report found that funding for programs serving Indian Country were "disproportionately lower than funding for services to other populations."¹ In May 2015, a bipartisan group of 20 House members sent a letter to the U.S. Commission on Civil Rights requesting an update to the 2003 *A Quiet Crisis* report.² In its letter, House members highlighted several ongoing funding concerns that contribute to the crisis across Indian Country and requested the updated report "to help ensure that the federal government is making progress in fulfilling its trust and treaty responsibilities."³

In December 2018, the USCCR released its report titled, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans*. The *Broken Promises* report found that in the past 15 years, efforts undertaken by the federal government have resulted in only minor improvements across Indian Country. Additionally, the report noted that federal programs serving Indian Country continue to be underfunded and, in some ways, federal initiatives for Native Americans have regressed. Specifically, the Commission found that:

"Federal programs designed to support the social and economic wellbeing of Native Americans remain chronically underfunded and sometimes inefficiently structured, which leaves many basic needs in the Native American community unmet and contributes to the inequities observed in Native American communities. The federal government has also failed to keep accurate, consistent, and comprehensive records of federal spending on Native American programs, making monitoring of federal spending to meet its trust responsibility difficult. Tribal nations are distinctive sovereigns that have a special government-to-government relationship with the United States. Unequal treatment of tribal governments and lack of full recognition of the sovereign status of tribal governments by state and federal governments, laws, and policies diminish tribal self-determination and negatively impact criminal justice, health, education, housing and economic outcomes for Native Americans."⁴

The *Broken Promises* report's findings further highlight the federal government's lack of progress in making good on its promises to Indian Country with respect to specific areas of federal policy. The findings include:

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

² Letter from Rep. Derek Kilmer to then-Chair Castro, Vice Chair Timmons-Goodson, and Commissioners on May 14, 2015, <https://kilmer.house.gov/news/press-releases/-kilmer-seeks-to-shine-a-spotlight-on-disparities-facing-tribal-communities>.

³ *Id.*

⁴ *Broken Promises* Report, Letter of Transmittal to the President, <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

- “Although overall funding for public safety in Indian Country has increased, it does not come close to meeting the public safety needs in Indian Country or the needs to police and protect natural resources.”⁵
- “Funding for the Indian Health Service (IHS) and Native American health care is inequitable and unequal.”⁶
- “The federal government has failed in its obligation to provide educational services that address the unique situation of Native American students.”⁷
- “Since the Commission’s 2003 report, the housing crisis in Indian Country has worsened.”⁸
- “The federal government has failed to honor its trust responsibility to promote Native American self-determination via its support of economic development in Indian Country. . . . The federal government has failed to assist the tribes with the individualized economic development necessary for tribes to exercise self-determination and make a knowledgeable decision as to how to best develop and manage their nation’s resources for the tribes’ benefit.”⁹

Immediate Action on the Broken Promises Report

The *Broken Promises* report is a status check on the federal government’s progress in upholding its obligations to American Indians and Alaska Natives and should be seen as an immediate call to action. The federal government has a long way to go in living up to the promises it made to Indian Country, and there is no doubt that fully and continuously meeting the treaty and trust obligations will not happen overnight. However, the following are recommendations for how Congress and the Administration can immediately begin working toward upholding their promises to tribal nations.

Provide Strong Tribal Funding in FY 2020 and Beyond

Congress and the Administration are currently engaged in ongoing negotiations regarding FY 2020 spending levels. As such, the federal government still has the opportunity to make significant investments to support public safety, health care, education, housing, and economic development in Indian Country. To ensure the federal government considers what it means to fund the federal treaty and trust obligations across the federal government, NCAI collaborates each year with national, regional, and issue-specific tribal organizations to develop the comprehensive recommendations included in the Indian Country Budget Request, which in FY 2020 is titled, [*Winds of Change: Protecting our Nations and People into the Future*](#). NCAI urges Congress and the Administration to consider these funding requests and account for the *Broken Promises* report’s findings and recommendations by providing significant increases in FY 2020 for programs serving Indian Country.

Moreover, the Administration’s work on the FY 2021 budget is already well underway. In the past few years, the President’s budget requests have included significant cuts for programs serving American Indians and Alaska Natives. This approach to federal budget policy is inconsistent with the federal government’s obligations to tribal nations. The Administration must immediately reconsider its budget policy with respect to Indian Country, and instead request significant increases for programs serving tribal nations in the FY 2021 budget.

⁵ *Broken Promises* Report, at 207, <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

⁶ *Id.* at 209.

⁷ *Id.* at 210.

⁸ *Id.* at 211.

⁹ *Id.* at 212.

Eliminate Uncertainty in the Federal Budget Process for Indian Country

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

Uncertainty in the federal budget process is particularly relevant this week as Congress considers a second short-term CR for FY 2020. The lack of continuity in federal funding and the possibility of yet another political impasse is cause for concern in Indian Country that tribal communities will continue to face significant hardships caused by a broken federal budget process. Accordingly, NCAI urges Congress to authorize advance appropriations for IHS and BIA to protect tribal programs from further uncertainty.

Reauthorize SDPI to Support Tribal Health

The United States must acknowledge that American Indians and Alaska Natives are dying earlier than the rest of the country. The *Broken Promises* report found that American Indians and Alaska Natives “have life expectancies that are 5.5 years shorter than the national average.”¹⁰ This is indicative of the inequitable and unequal funding for tribal health care programs emphasized in the *Broken Promises* report, as well as the federal government’s inconsistent commitment to supporting the efforts of tribal nations’ to improve health outcomes across Indian Country.

The Special Diabetes Program for Indians (SDPI) is one example. SDPI provides assistance for developing local initiatives to treat and prevent diabetes and has served as a comprehensive source of funding to address diabetes issues in tribal communities. SDPI provides grants for diabetes prevention and treatment services, totaling approximately 300 IHS, Tribal, and Urban Indian Health programs across 35 states. SDPI has produced remarkable outcomes, including a reduction in average blood sugar levels, a reduction in the incidence of heart disease, a significant increase in the promotion of healthy lifestyle behaviors, and a 54 percent decline in the incidence rate of end-stage renal disease in American Indians and Alaska Natives.

Despite the fact this program has been extremely successful and will ultimately reduce health care costs in Indian Country by preventing chronic conditions, tribal nations must regularly urge Congress to fund the program under the duress of its pending expiration. SDPI was set to expire at the end of FY 2019. However, it was temporarily extended as part of the CR that passed in September. Congress must provide tribal nations and citizens certainty that this program will continue to improve health outcomes in Indian Country by immediately reauthorizing SDPI permanently at \$200 million, indexed to medical inflation.

¹⁰ *Id.* at 208.

Reauthorize NAHASDA to Address the Housing Crisis in Indian Country

There is a housing crisis in Indian Country and Congress' inaction is making it worse. The *Broken Promises* report indicates that "since 2003, the number of Native Americans living in overcrowded households or households without adequate kitchens or plumbing has grown."¹¹ Additionally, a 2017 U.S. Department of Housing and Urban Development (HUD) report found that 33,000 new housing units are needed to alleviate housing overcrowding and an additional 35,000 housing units are needed to replace existing housing units in severe condition.¹²

The Native American Housing Assistance and Self-Determination Act (NAHASDA) authorizes Indian housing programs within the HUD to provide safe and affordable housing in tribal communities. NAHASDA supports tribal sovereign decision-making to address housing needs by providing block grant funding that tribal nations can use to design and implement their own housing and community development infrastructure programs. Unfortunately, Congress has not reauthorized NAHASDA since it expired at the end of FY 2013. Consequently, tribal nations have had to wonder from year to year whether NAHASDA would continue to be funded through annual appropriations bills.

Congress cannot wait any longer to address the immense housing needs across Indian Country. It must immediately enact programmatic improvements and provide increased investment in tribal housing programs, as funding for programs like the Indian Housing Block Grant have not kept pace with inflation. Reauthorizing NAHASDA will help bring certainty and vital resources to tribal nations as they plan and manage the housing needs of their citizens and communities. NCAI calls on Congress to reauthorize NAHASDA during the 116th Congress.

Support Tribal Nations' Ability to Ensure Public Safety

The *Broken Promises* report affirms a well-known fact of life in Indian Country—that American Indians and Alaska Natives suffer from the nation's highest rates of crime and victimization. A recent study by the National Institute of Justice found that over 80 percent of Native Americans will be a victim of intimate partner violence, sexual violence, or stalking in their lifetime. The study also found that 90 percent of these victims were victimized by a non-Indian perpetrator. Sadly, Native children are particularly affected by this violence. Native children are 50 percent more likely to experience child abuse and sexual abuse than white children. The complicated jurisdictional framework at play in Indian Country continues to undermine safety for victims of violence in tribal communities.

Tribal nations are the only governments in America whose authority to protect their communities from domestic and sexual violence, child abuse, stalking, and trafficking is limited by federal law based on the race/political status of the defendant. The Violence Against Women Reauthorization Act of 2013 (VAWA 2013) was an important step in the right direction, but it left gaps that perpetrators continue to exploit. We need to ensure that children, victims of sexual assault, trafficking, and stalking, and tribal police officers have the same protections that VAWA 2013 provided for domestic violence victims. Congress must reauthorize VAWA immediately. The victims in tribal communities cannot afford to wait.

¹¹ *Id.* at 211.

¹² U.S. Department of Housing and Urban Development, *Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report from the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs*, at xix, <https://www.huduser.gov/portal/sites/default/files/pdf/HNAIHousingNeeds.pdf>.

Making Good on Federal Promises

Until the federal government establishes and implements policy that recognizes the proper place of tribal nations in the American family of governments, American Indians and Alaska Natives will continue to face many of the challenges highlighted in the *Broken Promises* report. As I mentioned earlier in my testimony, the federal government promised to safeguard the right of tribal nations to govern themselves and to provide adequate resources to deliver essential services effectively. Given the federal government's longstanding neglect of its treaty and trust obligations, making good on these promises will take time and sustained effort to accomplish.

Going forward, it is imperative that federal policy treats tribal nations equitably when compared with other governments by providing the same access to federal resources, affirming the same authority to prosecute crimes and regulate commerce, and ensuring the same availability of federal incentives to spur investment and economic growth. The United States also must ensure that tribal nations are able to protect their communities from threats like climate change and manage their own resources without external interference and undue burdens.

Prosperous tribal communities can only come from strong tribal governments, and the United States has treaty and trust obligations to enact federal policies that truly support tribal sovereignty and self-determination, and provide direct, full funding of programs serving Indian Country so that tribal nations and citizens can forge a brighter future.

Conclusion

Thank you for the opportunity to testify regarding the USCCR's *Broken Promises* report. I look forward to working with this Subcommittee on a bipartisan basis to ensure that the federal government finally fulfills its treaty and trust obligations to tribal nations.