

# Subcommittee on Indian, Insular and Alaska Native Affairs

Doug LaMalfa, Chairman  
Hearing Memorandum

March 17, 2018

To: Subcommittee on Indian, Insular and Alaska Native Affairs Members

From: Majority Staff, Subcommittee on Indian, Insular, and Alaska Native Affairs  
(x6-9725)

Hearing: Oversight hearing on *“Policy Priorities for the Administration’s FY2019 Budget for Indian Affairs and Insular Areas.”*

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The Subcommittee on Indian, Insular and Alaska Native Affairs will hold an oversight hearing on **Tuesday, March 20, 2018, at 10:30 a.m. in 1324 Longworth HOB** to review *“Policy Priorities for the Administration’s FY2019 Budget for Indian Affairs and Insular Areas.”*

The hearing will focus on the Trump Administration’s budget request covering services and programs for Native Americans and insular areas of the United States provided by four agencies in two departments: the Bureau of Indian Affairs (BIA), Office of the Special Trustee for American Indians (OST) and Office of Insular Affairs (OIA) within the Department of the Interior (DOI); and the Indian Health Service (IHS) within the Department of Health and Human Services.

## Policy Overview

- Appropriated funding for the BIA has increased by an average of approximately 5 percent annually since 2010.
- Appropriated funding for the IHS has increased almost 50 percent since 2008.
- Despite budget increases for tribal programs during the previous Administration, in February 2017 the Government Accountability Office added Indian education, health, and energy programs to its biennial list of “High Risk Areas” vulnerable to fraud, waste, abuse and mismanagement.<sup>1</sup>
- The Fiscal Year (FY) 2019 budget request emphasizes program management and efficiency and accountability.
- The Committee intends to analyze the priorities and other efforts to address systemic problems within the agencies charged with the primary responsibility for Indian tribes and the U.S. insular areas.

## Witnesses

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<sup>1</sup> See: <https://www.gao.gov/products/GAO-17-317>. The budget request for the Bureau of Indian Education is not included in this memo or the hearing agenda because Indian education is under the jurisdiction of the Education and Workforce Committee.

*The Honorable Doug Domenech*  
Assistant Secretary—Insular Areas  
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Washington, D.C.

*Mr. John Tahsuda*  
Acting Assistant Secretary—Indian Affairs  
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Acting Director  
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### **Summary of the Budget**

DOI, through BIA and OST, plays the lead role over the administration of federal laws concerning the affairs of federally-recognized Indian tribes and the lands, funds, and other assets held in trust by the United States for the benefit of Indians. Through OIA, the Department is also primarily involved with the United States' relationship with the territories of Guam, U.S. Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands. Also of importance is OIA's responsibility for the Compacts of Free Association the United States has signed with the three Freely Associated States (FAS): the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands. From the federally-recognized tribes to the insular areas, DOI focuses resources on helping these local governments maintain community services and on promoting self-sufficiency and expanding economic opportunity.

The President's FY2019 request of \$2.4 billion for the BIA, \$107.1 million for OST, and \$719 million for OIA reaffirms the Trump Administration's commitment to supporting tribal and insular communities through initiatives such as Indian education programs, full funding for Contract Support Costs and Tribal Grant Support Costs, and authorized land and water rights claim settlements, to name a few. A significant piece of the President's budget request includes a transfer of \$111 million from the Department of Defense to DOI to complete the Palau Compact. The Administration has expressed its intention to fulfill the terms of the Compact this FY and continues to request that inclusion of the necessary funding be made available to DOI through a transfer of funds from discretionary Defense Department appropriations.

Funding for Indian programs spans numerous federal governmental agencies. However, the BIA and IHS are the primary agencies which serve more than 2.5 million Native Americans and 573 federally-recognized Indian tribes and Alaska Native Villages.

OIA is responsible for carrying out responsibilities for the U.S-affiliated insular areas. These areas include the territories of Guam, American Samoa, the U.S. Virgin Islands (USVI), and the Commonwealth of the Northern Mariana Islands (CNMI), as well as three FAS.

### **Bureau of Indian Affairs**

FY2017 Enacted	\$2.86 billion
FY2018 Continuing Resolution (CR) Level	\$2.84 billion
<b>FY2019 President's Request</b>	<b>\$2.40 billion<sup>2</sup></b>

BIA is the lead agency responsible for administering federal laws and regulations governing 56 million acres of land held in trust for the benefit of tribes and individual Indians in the contiguous 48 States (10 million acres for individual Indians and 46 million acres for tribes). Many BIA duties have been assumed by tribes under contracts or compacts with the BIA pursuant to the Indian Self-Determination and Education Assistance Act.<sup>3</sup>

The President's FY2019 budget request is \$2.4 billion for BIA, a decrease of \$444 million from the 2018 appropriated level. BIA provides a variety of services for Indian country including law enforcement, housing, trust and realty services, irrigation, and energy and economic development assistance. BIA estimates staffing will equal 6,873 full time equivalent (FTE) employees in FY 2019, a decrease of 330 employees from FY 2018.

Funding for BIA is divided into broad categories of functions and services. For FY 2019 these include: Operation of Indian Programs (\$2 billion, a decrease of \$317.1 million below FY 2018); Contract Support Costs (\$231 million, a decrease of \$47 million); Construction (\$111.9 million, a decrease of \$78.8 million); Land and Water Claims Settlements (\$45.6 million, an increase of \$905,000); Indian Guaranteed Loan Program (\$6.7 million, a decrease of \$1.9 million); Fixed Costs (fully funded at \$9.7 million, a decrease of \$6.7 million). In addition to the \$2.4 billion budget request for BIA, \$122.5 million is provided through permanent budget authority. Most of the permanent budget authority is derived from revenues obtained through Indian power and irrigation projects, with the monies held by BIA and spent on maintaining and operating these systems.

### ***Trust-Natural Resource Management***

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<sup>2</sup> Budget Justifications for Fiscal Year 2019, Bureau of Indian Affairs, IA-ES-2.

<sup>3</sup> 25 U.S.C. §5304 et seq.

The Trust-Natural Resources Management Program assists tribes in the management, development, and protection of Indian trust land and natural resource assets. The FY 2019 budget provides \$153.4 million, a decrease of \$46.2 million over the FY 2018 appropriation.

### ***Indian Irrigation***

BIA has requested \$6.54 million for the Irrigation Project Construction Program which provides management, oversight, and engineering technical assistance to the irrigation projects under BIA’s jurisdiction. The BIA owns, operates, and maintains the projects, providing the manpower, materials, and equipment to operate and maintain these projects.

In addition, BIA requests \$3.3 million for Indian Irrigation Project Rehabilitation, which accounts for an increase of \$724,000.<sup>4</sup> The Committee commends this infrastructure investment given the lack investment during the previous administration. The increase will help address critical outstanding maintenance issues at the 17 Indian irrigation projects, which are important economic drivers for tribes and the communities where they are located. Many of these projects are nearly 100 years old, and the BIA estimates that irrigated lands served by these projects produce over \$960 million in gross crop revenues annually.

The budget also proposes \$26.4 million, an increase of \$949,000, for the Safety of Dams Program and \$1.9 million for Dam Maintenance. The Dam Maintenance Program performs recurring maintenance and repairs of high and significant hazard potential dams on located on 42 Indian reservations.

### ***Contract Support Costs***

The President requests \$231 million to fully fund contract support costs. Contract Support Costs are administrative costs (or overhead) incurred by tribes that have contracted with federal agencies (usually the BIA or IHS) to administer benefits and services for Indians under Public Law 93-638, the Indian Self-Determination and Education Assistance Act.<sup>5</sup> Contract support costs support the ability of tribes to assume responsibility for operating federal programs. The FY2019 budget continues to request full funding for Contract Support Costs in a separate indefinite current account.

### **Office of the Special Trustee for American Indians**

FY2017 Actual	\$139.02 million
FY2018 CR	\$138.1 million
<b>FY2019 President’s Request</b>	<b>\$107.1 million<sup>6</sup></b>

The President requests \$107.1 million (a decrease of \$22.31 million) for OST. OST has operational responsibility for financial trust fund management, including receipt, investment, and disbursement, of Indian trust funds and for real estate appraisals on Indian trust lands.

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<sup>4</sup> Budget Justifications for Fiscal Year 2019, Bureau of Indian Affairs, IA-CON-RM-1.

<sup>5</sup> 25 U.S.C. §5304 et seq.

<sup>6</sup> Budget Justifications for Fiscal Year 2019, Office of Special Trustee for American Indians, OST-3.

OST is the financial manager of approximately \$5 billion held in trust for Indians. The funds are held in approximately 3,500 trust accounts for more than 250 Indian tribes and in approximately 400,000 open Individual Indian Money accounts across the United States. Funds deposited in these trust accounts are generally from proceeds from development on Indian lands (e.g., land-use agreements, timber development, mineral leasing), financial investment, and certain claims and judgments. The FY2019 budget proposal focuses on reducing administrative and “fee-for-service” costs, as well as identifying and singling out areas that focus on the main goals of DOI, which are supporting the regulatory and statutory requirements of the federal government’s trust responsibility.

The 1994 statute establishing OST contemplates the eventual sunset of the office when certain trust fund accounting goals are met. The Committee looks to work with the Administration on the full completion reporting requirements contained in the Indian Trust Asset Reform Act<sup>7</sup> which contemplate a transition plan and timetable for the termination of OST and absorption of functions by other DOI agencies.

### ***Program Operations and Support***

Consistent with the Indian Trust Asset Reform Act, the FY2019 OST budget includes the transfer of the Office of Appraisal Services to the Office of the Secretary’s Appraisal and Valuation Services. This will allow for the consolidation of all appraisal services into a single entity under the Office of the Secretary.

Further, the request includes a reduction to Trust Services, as OST will be modernizing the trust fund accounting services and information will become more readily available to trust account holders using online and mobile reporting, which will reduce the call load, resulting in savings.

Lastly, the FY2019 OST budget proposes the transfer of OST from the Office of the Secretary to the Assistant Secretary for Indian Affairs. OST will continue to operate as a separate organization; however, the revised structure will enhance planning and coordination policies and services for Indian Country.

### ***Navajo and Hopi Program Office***

The FY2019 budget also includes \$3 million to transfer land management functions from the Office of Navajo and Hopi Indian Relocation (ONHIR) to OST. OST will serve as a coordinator for the DOI, ONHIR and the Office of Budget and Management to facilitate the orderly close out of ONHIR.

### ***Transfer of the Land Buy-Back Program for Tribal Nations***

OST currently provides significant support to the Land-Buy Back Program which was established pursuant to the Claims Resolution Act of 2010. The DOI believes that moving the

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<sup>7</sup> 25 USC §5601 et seq.

program from the office of the Secretary to OST will present opportunities to streamline the buy-back process.

### **Office of Insular Affairs**

FY2017 Actual	\$652.30 million
FY2018 CR	\$628.65 million
<b>FY2019 Request</b>	<b>\$719.00 million<sup>8</sup></b>

OIA is charged with carrying out all duties and responsibilities of the Secretary of the Interior regarding the territories of the United States as well as the FAS. The proposed FY2019 budget for OIA is \$719 million, an increase of \$90.3 million from the FY2018 appropriated level. The budget request increase includes a transfer of \$111 million from the Department of Defense (DOD) to the DOI for the full funding of the Palau Compact authorized in the FY2018 National Defense Authorization Act.<sup>9</sup> However, before accounting for the transfer of funds from the DOD, the budget request for OIA is \$608 million, a decrease of \$20.6 million from FY2018. The request for discretionary assistance is \$84.1 million, a decrease of \$23.7 million below the FY2018 level. Permanent spending commitments include \$302 million for fiscal payments to Guam and the U.S. Virgin Islands, and \$221.9 million for payments under the Compacts of Free Association.

The current discretionary funds for OIA are composed of assistance to the territories of the United States and limited discretionary funding for Compact-related programs. The total request for discretionary assistance to the territories is \$80.97 million, supporting the following primary items: American Samoa Operations (\$21.53 million); Capital Improvement Projects (\$27.72 million); Office of Insular Affairs (\$9.43 million); and General Technical Assistance (\$14.67 million).

The total current mandatory Compact of Free Association<sup>10</sup> funding request is \$3.11 million, a decrease of \$13.24 million. The decrease is attributed to moving funding for the extension of the Palau Compact from discretionary to mandatory. Instead of continuing the temporary extension for the Palau Compact, the budget proposes \$111 million in discretionary DOD appropriations as a transfer to DOI to support enactment of the 2010 Compact Review Agreement with Palau. These funds are provided to assist the Government of Palau in its efforts to advance the well-being of its people and in recognition of the special relationship that exists between the United States and Palau, its importance as an ally and a key part of the U.S. Asia-Pacific national security strategy.

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<sup>8</sup> Budget Justifications for Fiscal Year 2019, Office of Insular Affairs, page 5.

<sup>9</sup> P.L. 115-91, the National Defense Authorization Act for Fiscal Year 2018, Sec. 1259c.

<sup>10</sup> Compacts of Free Association provides grant money to the Republic of Palau, Republic of the Marshall Islands, and the Federated States of Micronesia. Public Law 108-188 and Public Law 111-88.

The total permanent proposal is \$520.81 million which includes \$221.93 million for Compact of Free Association funding for:

- Marshall Islands (\$78.22 million, increase of \$1.27 million)
- Federated States of Micronesia (\$113.34 million, increase of \$1.84 million)
- Compact Impact (\$30 million, no change from previous fiscal year)
- Judicial Training (\$367,000, increase of \$6,000)

The remaining \$302 million in mandatory appropriations are fiscal payments which reimburse the U.S. Virgin Islands for federal excise taxes collected on rum sales (\$224 million) and reimbursement to Guam for the income taxes collected from federal employees and military personnel residing in Guam (\$78 million).

### ***Monitoring the Economic Health of the Territories***

Except for the U.S. Virgin Islands, the economic challenges that the territories and the FAS face revolve around their isolated locations in the Pacific region. Due to the challenges of their isolated locations, the territories and the FAS all rely heavily on the funding they receive from OIA annual appropriations and federal grant programs, with perhaps the exception of Guam, where a strong U.S. military presence helps strengthen the local economy. Tourism plays a major economic role in most of the U.S. territories and FAS.

While Puerto Rico is one of the five territories of the United States, DOI and OIA refer most matters concerning this island to the White House Task Force on Puerto Rico. With the continued financial and economic distress impacting the Caribbean territory and the recently enacted Puerto Rico Oversight, Management and Economic Stability Act<sup>11</sup>, there is firm commitment from the Administration and Congressional committees of jurisdiction to monitor the law's implementation.

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Indian Health Service**

FY2017 Actual	\$5.1 billion
FY2018 CR	\$5.18 billion
<b>FY2019 Request</b>	<b>\$5.43 billion<sup>12</sup></b>

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<sup>11</sup> Public Law No: 114-187. "Puerto Rico Oversight, Management, and Economic Stability Act."

<sup>12</sup> Budget Justifications for Fiscal Year 2019, Department of Health and Human Services, 8.

IHS is an agency of the Department of Health and Human Services (HHS) which provides health care to approximately 2.5 million American Indians and Alaska Natives through 662 hospitals, clinics, and health stations on or near Indian reservations. Health facilities are mainly located in a rural primary care setting and managed by IHS or by tribes through contracts or compacts with the IHS, through third party billing. IHS also administers programs for Indians in urban areas. IHS provides an array of medical services, including inpatient, ambulatory, emergency, dental, public health nursing, and preventive health care in 36 States.

The Snyder Act of 1921<sup>13</sup> provides the basic authority for the federal provision of health services and benefits to Indians because of their status as Indians. The Indian Self-Determination and Education Assistance Act<sup>14</sup> authorizes tribes to assume the administration and program direction responsibilities that were previously carried out by the federal government through contracts, compacts and annual funding agreements negotiated with the IHS.

The modern statutory basis and framework for the federal provision of health care to Indians is under the Indian Health Care Improvement Act.<sup>15</sup> This law was permanently reauthorized in Title X of the Patient Protection and Affordable Care Act.<sup>16</sup>

The President's FY2019 budget request for IHS is \$5.4 billion, an increase of \$257 million above the FY2018.<sup>17</sup> Significant IHS program increases are as follows:

- \$2.19 billion (increase of \$268 million) for hospitals and clinics.
- \$506 million for health facilities.
- \$822 million to fund the estimated Contract Support Costs (CSC). The increase will fully fund the estimated CSC need for new and expanded contracts and compacts for FY2019.
- \$150 million for multi-year competitive grants for opioid abuse, prevention, treatment, and recovery support for Indian Country. American Indians and Alaska Natives had the highest drug overdose death rates in 2015, and the largest percentage change increase in drug overdose deaths from 1999-2015 of any population at 519 percent.<sup>18</sup>
- Increase of \$159 million to support staffing and operating costs for six newly-constructed facilities.

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<sup>13</sup> 25 U.S.C. §13.

<sup>14</sup> 25 U.S.C. §5304 et. seq.

<sup>15</sup> 25 U.S.C. §1601, et. seq.

<sup>16</sup> P.L. 111-148.

<sup>17</sup> Budget Justifications for Fiscal Year 2019, Department of Health and Human Services, 8.

<sup>18</sup> *Id* at 28.

### ***GAO High-Risk List***

As previously noted, in February 2017, the Government Accountability Office (GAO) listed Indian health as part of its biennial “high risk” report. Programs listed in the report are federal programs most vulnerable to waste, fraud, abuse, and mismanagement, or that need transformative change. For nearly a decade, Inspector Generals and others have found that inadequate oversight of healthcare continues to hinder the ability of IHS to provide an adequate quality of care despite continued robust increases to the agency’s budget. Numerous GAO report recommendations remain open and unresolved.

The Committee continues to consider legislation<sup>19</sup> that would make necessary reforms to the agency’s personnel processes, timeliness of care standards, and other operations. The Committee welcomes the opportunity to work with the agency to address deficiencies in the delivery of healthcare services to Indians and Alaska Natives.

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<sup>19</sup> See H.R. 2662, *Restoring Accountability in the Indian Health Service Act of 2017*. 115<sup>th</sup> Congress.