

# Subcommittee on Indian, Insular, & Alaska Native Affairs

Don Young, Chairman

## Hearing Memo

March 16, 2015

**To:** Natural Resource Committee Members

**From:** Majority Staff, Subcommittee on Indian, Insular, & Alaska Native Affairs

**Hearing:** Oversight hearing entitled “*Funding Priorities for and the United States’ Responsibilities concerning Indians, Alaska Natives, and Insular Areas in the President’s FY 2016 Budget Request for the Bureau of Indian Affairs, Indian Health Service, Office of Insular Affairs, and Office of the Special Trustee for American Indians.*”

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The Subcommittee will hold a hearing on Funding Priorities for, and the United States’ Responsibilities concerning, American Indians, Alaska Native, and Insular Areas of the United States in the President’s Fiscal Year 2016 Budget Request. The hearing will take place on **Wednesday, March 18, 2015, at 2:00 p.m. in 1324 Longworth.**

The hearing will concern the President’s budget request covering services and programs for Native Americans provided by four agencies in two Departments, as follows:

In the Department of the Interior –

- Bureau of Indian Affairs (BIA)
- Office of the Special Trustee for American Indians (OST)
- Office of Insular Affairs (OIA)

In the Department of Health and Human Services—

- Indian Health Service (IHS)

### **MAIN MESSAGES**

- The President’s Budget request for Indian programs largely proposes to spend more money without proposing fundamental changes in federal laws and policies that have led to severe poverty, unemployment, and health problems in many tribal and Alaska Native Village communities.
- The Department of the Interior has been unable to provide precise data to assist Congress in developing laws and policies to help tribes improve their communities; for example, the BIA lacks reliable data regarding tribal economies, employment, and crime.

- The Obama Administration has paid more than \$3 billion to individual Indians and dozens of tribes to settle lawsuits alleging federal mismanagement of accounts and land resources held in trust for the benefit of Indians, but the Administration has not proposed any substantial change in outdated laws and policies that led to the mismanagement.

## **WITNESSES**

**Panel I:**      **The Honorable Kevin K. Washburn**, Assistant Secretary—Indian Affairs, U.S. Department of the Interior, Washington, D.C.

**The Honorable Esther Kia'aina**, Assistant Secretary—Insular Areas, U.S. Department of the Interior, Washington, D.C.

**The Honorable Vincent G. Logan**, Special Trustee—Office of Special Trustee for American Indians, U.S. Department of the Interior, Washington, D.C.

**Panel II:**      **The Honorable Yvette Roubideaux, M.D., M.P.H.**, Senior Advisor to the Secretary on Native Americans and Alaska Natives, U.S. Department of Health and Human Services, Washington, D.C.

## **SUMMARY OF BUDGET**

The President's FY 2016 budget proposes approximately \$20.9 billion to 22 Federal departments and agencies serving Indian Country and the Insular areas. For agencies under the jurisdiction of the Subcommittee, this breaks down to requests of: \$2.9 billion for the BIA, an increase of \$323.5 million from the FY 2015 enacted level; \$643.6 million for the Office of Insular Affairs, an increase of \$46.8 million; and \$6.4 billion for the Indian Health Service, an increase of \$486 million. The BIA and IHS budget requests represent 45% of the overall budget request for tribal programs.

## **BACKGROUND**

Funding for Indian programs spans numerous Federal governmental agencies. However, the Bureau of Indian Affairs and Indian Health Service are the primary agencies which serve more than 2 million Native Americans and 566 Federally Recognized Indian tribes and Alaska Native Villages.

The Office of Insular Affairs 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 Freely Associated States (FAS): the Federated States of Micronesia (FSM), the Republic of the Marshall Islands (RMI) and the Republic of Palau (Palau).

## **DEPARTMENT OF THE INTERIOR**

### **Bureau of Indian Affairs**

FY 2015 President's Request	\$2.68 billion
FY 2015 Enacted	\$2.6 billion
<b>FY 2016 President's Request</b>	<b>\$2.9 billion</b>

The BIA provides comprehensive services for Indian country including law enforcement, housing-related, trust and realty services, irrigation, and energy and economic development assistance. The bureau is the lead agency responsible for administering federal laws and regulations governing 56 million acres of land in 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 (P.L. 93-638).

The BIA estimates staffing will equal 7,595 full time equivalents in FY 2016, an increase of 90 employees from FY 2015. The Indian Energy Service center (established by the FY 2016 request) and the trust responsibility capacity programs account for these additions.

*Public Safety and Justice.* The President requests \$364.4 million, an increase of \$11.5 million over the FY 2015 enacted level. The increases are primarily for BIA and tribal law enforcement and detention personnel hires.

*Trust - Natural Resources.* The Trust – Natural Resources Management program assists tribes in the management, development, and protection of 56 million acres of Indian trust land and natural resource assets. The FY16 budget includes \$232.79 million, an increase of \$46.95 million over the FY 2015 enacted amount, one of the larger increases for the BIA.

*Indian Energy Service Center.* The FY 2016 budget proposes the creation of an Indian Energy Service Center at a cost of \$4.5 million, which would “facilitate conventional and renewable energy development.” The Center would be staffed by 20 BIA, Office of Natural Resource Revenue, the Bureau of Land Management and the Office of the Special Trustee employees.

## Concerns:

*Contract Support Costs (CSC).* The President requests \$272 million (increase of \$26 million) to fully fund contract support costs. Contract Support Costs are administrative costs (or overhead) incurred by a tribe that has contracted with a federal agency (usually the BIA or Indian Health Service) to administer benefits and services for Indians under P.L. 93-638, the Indian Self-Determination and Education Assistance Act of 1975 (P.L.93-638, 25 U.S.C. 450 et seq.)

In addition, the FY 2016 budget includes a legislative proposal which would reclassify CSC from discretionary to mandatory spending beginning in FY17. The Committee is very concerned with this approach, especially given that this Administration has not consulted Congress and appears to be circumventing the intent of the *Salazar v. Ramah* Supreme Court decision in 2012. Additionally, the Administration has not proposed any offsets for this proposed mandatory spending, or provided other options to resolve CSC besides creating a new entitlement.

*Trust—Natural Resources Management.* The Budget provides a total of \$50.4 million, a \$40.4 million increase over 2015, proposed across nine natural resource programs, to support tribal communities in sustainable resource management and for vaguely defined “climate resilience.” EPA Administrator Gina McCarthy statement on July 16, 2014, “when federal agencies combine efforts, nowhere are results needed more than in the fight against climate change.” It appears that the Administration is more focused on spending taxpayer money to prepare for climate resilience rather than on improving aging, substandard infrastructure in reservation communities that are needed to improve health and safety for tribal residents and to attract investment sorely needed in economically depressed reservations.

*Tribal Forestry.* The BIA proposes \$51.91 million (increase of \$4.18 million) for tribal forest management. For close to a decade the BIA has requested program decreases for tribal forest management, even as Congress has appropriated level funding. Tribal forest management provides employment, wildfire prevention, production of timber, and habitat protection. Even with the proposed increase, tribal forest management programs are underfunded as reported in 2013 by the Indian Forest Management Assessment Team, by as much as \$100 million. Since 2009, requested tribal forest program management funding has been on the decline and is concerning to the subcommittee. Since 2012, the U.S. has paid approximately \$2.2 billion to settle BIA mismanagement of tribal lands with the largest individual tribal settlements relating to mismanagement of timber resources.

*Indian Irrigation Projects.* The BIA has proposed \$2.61 million for Indian Irrigation Project Rehabilitation. This sum may be insufficient given that the BIA has estimated that the 15 revenue generating irrigation systems, which are all nearly 100 years old, have a combined deferred maintenance totaling close to \$600 million.

*Economic Development.* The Committee is concerned that the Department continues to display less interest in conventional energy resource leasing on Indian lands than on noncompetitive renewable energy development. Indian Country plays a key role in an all-of-the-above energy approach. Native lands hold an estimated ten percent of the Nation's untapped energy resources. Given the federal budget deficit, scarce focus should be steered toward conventional energy development on Native lands as U.S. infrastructure to deliver these forms of power is highly developed already, and these forms of energy are the most cost-competitive and marketable.

*BIA Loan Guarantee Program.* The President requests \$7.7 million for the Indian loan guaranteed loan program, level with FY 2015 enacted level, and of which nearly a million is for staffing.

### **Office of Insular Affairs**

FY 2015 President's Request	\$678 million
FY 2015 Enacted	\$596.8 million
<b>FY 2016 President's Request</b>	<b>\$643.6 million</b>

The Secretary of the Interior has responsibility for the U.S.-affiliated insular areas, which include the following territories: Guam; American Samoa; the United States Virgin Islands; and the Commonwealth of the Northern Mariana Islands, and additionally the freely associated states of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau under the Compacts of Free Association. The Office of Insular Affairs carries out the Secretarial responsibilities and is charged with promoting the self-sufficiency of the insular areas by providing financial and technical assistance, encouraging private sector economic development, promoting sound financial management practices in their governments, and increasing federal responsiveness to the unique needs of the island communities.

OIA's budget is divided into current (includes discretionary and mandatory) and permanent appropriations. Most of OIA's budget is composed of mandatory commitments and is permanently appropriated.

The proposed budget for the Office of Insular Affairs (OIA) is \$643.60 million, an increase of \$46.76 million from the FY 2015 enacted level. The request for discretionary assistance is \$102.97 million, an increase of \$537,000 above the enacted FY 2015 level. Mandatory commitments include \$282 million for Guam and the U.S. Virgin Islands, and \$258.62 million for payments under the Compacts of Free Association.

The discretionary funds for OIA are composed of assistance to Territories and discretionary funding for Compacts of Free Association. The request for assistance is \$99.66 million (increase of \$13.61 million), and would support the following primary items: American Samoa Government Operations (\$22.75 million); Covenant Grants (\$27.72 million); Office of Insular Affairs (\$10.18 million); General Technical Assistance (\$24.23 million).

The Compact of Free Association<sup>1</sup> request is \$3.31 million, a decrease of \$13.14 million. The decrease is attributed to moving the extension of the Palau Compact from discretionary to mandatory. In 2010, an updated 15 year agreement between the U.S. and Palau was reached and is currently awaiting Congressional action. No bill has been introduced in the 114th Congress. Total cost for the proposal is estimated at \$163 million for 2016-2024.

The mandatory funding proposal is \$540.62 million which includes: \$258 million for Compact of Free Association payments for the following:

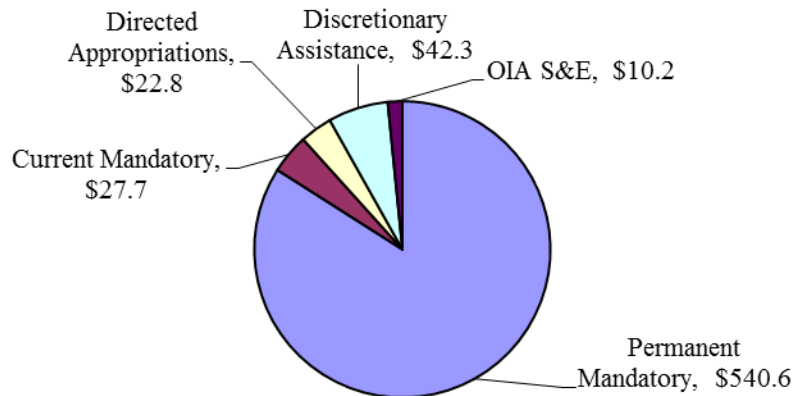
- The Marshall Islands Compact: \$76.53 million, increase of \$2.20 million
- The Federated States of Micronesia Compact: \$110.90 million, increase of \$3.19 million
- The Republic of Palau: \$40.82 million, increase of \$40.82 million (Assumption of the authorization of the mandatory funding in FY 2015).
- Compact Impact: \$30 million, no change
- Judicial Training: \$359,000, increase of \$10,000

The remaining \$282 million in mandatory appropriations are fiscal payments which reimburse the Virgin Islands for federal excise taxes collected on rum sales (\$211 million) and reimbursement to Guam for the income taxes collected from federal employees and military personnel residing in Guam (\$71 million).

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<sup>1</sup> Compacts of Free Association provides grant money to: The Republic of Palau, Republic of the Marshall Islands, and the Federated States of Micronesia. Authorizing legislation are P.L. 108-188 and P.L. 111-88.

## OIA FY 2016 Budget Request - \$643.6 Million



### Office of the Special Trustee

FY 2015 President's Request	\$139 million
FY 2015 Enacted	\$139 million
<b>FY 2016 President's Request</b>	<b>\$143 million</b>

The Office of the Special Trustee for American Indians (OST) was established pursuant to the American Indian Trust Fund Reform Act of 1994 ("1994 Act", 25 U.S.C. 4011 et seq.). An agency within the Department of the Interior, OST is headed by a "Special Trustee" appointed by the President, by and with the advice and consent of the Senate. The purpose of OST is "to provide for more effective management of, and accountability for the proper discharge of, the Secretary's trust responsibilities to Indian tribes and individual Indians ..." (25 U.S.C. 4041(1)). In practice, OST is the financial manager of trust funds for approximately 3,300 trust accounts for 397,000 individual Indians for more than 250 Indian tribes. These monies, currently totaling \$4.9 billion, are mostly proceeds from the use and leasing of Indian trust lands managed by the Bureau of Indian Affairs (e.g., timber development and mineral leasing), and from judgment funds and special payments by the United States.

Four programs (core elements) within OST carry out the agency's responsibilities: Field Operations, Office of Appraisal Services, Trust Services, and the Office of Historical Accounting.

The Administration's FY 2016 requests \$142.97 million (increase of \$3.9 million) and an increase of 17 FTE's over FY 2015 enacted. Other notable increases include:

- \$26.89 million (increase of \$1.6 million) to stem the growth of land fractionation and the number of Trust beneficiary estates requiring probate by providing additional estate planning opportunities to Indian Trust beneficiaries.
- \$12.12 million (increase of \$1.2 million) for an appraiser training program to address the shortage of qualified appraisers and the resulting delays in completing appraisal evaluations.
- \$16.76 million (increase of \$1.02 million) to fund expansion of the records training program at Haskell Indian Nations University (HINU) and create new records training programs at two additional tribal colleges.
- \$22.12 million (decrease of 972,000) for Office of Historical Accounting due to an anticipation of a workload decrease associated with requests from the Solicitors Office and the Department of Justice for litigation defense support for the Department. However, a fixed cost increase of \$1.0 million is also included in the OST final budget request for FY 2016, mitigating the impact of the reduction.

Concerns:

The 1994 statute establishing OST contemplates the eventual sunset of the Office when certain trust fund accounting goals are met. There is no indication the Department plans to terminate OST in the foreseeable future.

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

### **Indian Health Service**

FY 2015 President's Request	\$4.43 billion
FY 2015 Enacted	\$4.64 billion
<b>FY 2016 President's Request</b>	<b>\$5.10 billion</b>

The Indian Health Service (IHS) is an agency of the U.S. Department of Health and Human Services. IHS serves approximately 2.2 million American Indians and Alaska Natives through 650 hospitals, clinics, and health stations on or near Indian reservations. Facilities are mainly located in a rural primary care setting and managed by IHS, Tribal, and urban Indian health programs. IHS provides an array of medical services, including inpatient, ambulatory, emergency, dental, public health nursing, and preventive health care in 55 states.

The Snyder Act of 1921 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 of 1975 (25 U.S.C. 450 et. seq.) allows Tribes to assume the administration and program direction responsibilities that were previously carried out by the federal government.

The modern statutory basis and framework for the federal provision of health care to Indians is under the Indian Health Care Improvement Act of 1976 (25 U.S.C. §1601, et. seq.). This Act was permanently reauthorized in Title X of the Patient Protection and Affordable Care Act (P.L. 111-148).

The President's FY 2016 budget request for IHS is \$5.10 billion, an increase of \$460.6 million (9.9%) above the FY 2015 enacted level. The significant program increases are as follows:

- \$185 million (increase of \$100 million) for Health care facilities construction. The increased request is intended to address the backlog of construction which was estimated in the fall of 2014 to be \$467 million. The Health care facility backlog is estimated to be in excess of \$2 billion, which does not include facilities to be funded by the FY 2016 request.
- \$717.9 million (increase of \$55 million) to fund the estimated Contract Support Costs. The increase will fully fund the estimated CSC need for new and expanded contracts and compacts for FY 2016.<sup>2</sup>
- \$984.5 million (increase of \$70.3 million) for Purchased/Referred Care (formerly titled Contract Health Services), to provide health care services for Indians where IHS direct and tribal health care is not available. The increase of \$70.3 million would most notably provide:
  - \$35 million for inflationary costs of providing health care
  - \$25 million to provide additional services: 980 additional inpatient admissions, 19,800 outpatient visits, and 1,210 one-way transportation services.

Concerns:

*Special Diabetes Program:* IHS's FY 2016 budget requests \$150 million for this program which provides funding for the prevention and treatment of diabetes among Indians and Alaska Natives. Native Americans suffer type 2 diabetes at a disproportionate rate of 2.8 times the national average. Prior IHS requests for this program have remained stagnant since 2002. The National Indian Health Board has estimated the current need at \$200 million. According to the National

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<sup>2</sup> The President's FY 2016 budget further proposes to shift CSC to a mandatory appropriation beginning in FY 2017. This request is similar to the BIA's request for a mandatory CSC appropriation.

Indian Health Board, the SDPI has achieved significant positive results for the Native American population, including:

- A decrease (from 9% to 8%) in average blood sugar levels from 1996 to 2011.
- A decline of over 20% in the average LDL (bad) cholesterol between 1998 and 2011.
- A decline of 28% in the incidence rate of End-Stage Renal Disease (ESRD) in Indian individuals with diabetes between 1995 and 2006.<sup>3</sup>

*Affordable Care Act:* The Indian Health Care Improvement Act (IHCIA) was reauthorized and made permanent by the Affordable Care Act (ACA) in the 111<sup>th</sup> Congress. This inclusion into the ACA has recently caused issues for tribes. Courts have recently ruled that Tribal governments are not exempt from the larger employer mandate. This could force some tribes to pay millions in penalties or cause tribes to purchase insurance for tribal members who would otherwise be exempt from the individual mandate. This could have a great impact on tribal economies. Additionally, there are also several other definition inconsistencies in the ACA which could exclude some AI/ANs that the ACA was intended to benefit.

*Contract Support Costs:* As mentioned earlier, CSCs have been proposed to be shifted to mandatory appropriations. If this approach is not adopted, the Administration does not appear to have a contingency plan in place to address a CSC shortfall.

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<sup>3</sup> Given that Medicare costs per year per patient on hemodialysis were \$82,285 in 2009, this reduction in new cases of ESRD means a decrease in the number of patients requiring dialysis, and saves millions of dollars in costs for Medicare, IHS, and other third-party payers.