



Self-Governance Communication & Education Tribal Consortium

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February 1, 2019

The Honorable Lisa Murkowski, Chairwoman
Appropriations Subcommittee on Interior, Environment and Related Agencies
U.S. Senate
S-128, The Capitol
Washington, DC 20510
ATTN: Leif Fonnesbeck, Majority Subcommittee Clerk

RE: Support for the Indian Programs Advance Appropriations Act

Dear Chairwoman Murkowski,

On behalf of the Self-Governance Communication and Education (SGCE) Tribal Consortium, a non-profit Tribal consortium created in 1988 to assist and support all Tribal Nations in their efforts to achieve their goals of self-government, we are writing today to request your support for the ***Indian Programs Advance Appropriations Act (IPAAA)*** and to urge Congress to take swift action passing this measure.

On January 25, 2019, Senator Tom Udall introduced S. 229 in the Senate Committee on Indian Affairs and we are actively working to get similar legislation introduced in the House. **We ask that the Subcommittee on Interior, Environment and Related Agencies give every consideration to this legislation to alleviate the lapse in appropriations, such as the recent occurrence of the longest government shutdown in history, for critical public safety, child welfare, and health care programs at the Bureau of Indian Affairs (BIA) and Indian Health Service (IHS).**

IPAAA Seeks to Improve Delivery of Indian Programs Through Advance Appropriations Authority

The IPAAA provides advance appropriations authority for certain accounts of the BIA and Bureau of Indian Education (BIE) of the Department of the Interior and the IHS of the Department of Health and Human Services. Advance appropriations authority will help improve delivery of Indian programs by providing certainty in funding across fiscal years.

Funding Uncertainty and Lapses and Delays in Appropriations Put the Health and Well-Being of Tribal Nations and their Citizens at Risk

The effects of the current lapse in appropriations, as well as prior lapses and delays in the enactment of the budget, have exacerbated operational challenges in the administration of programs that serve Tribal Nations and their citizens and placed the health and safety of our people and communities at risk. As a result of this shutdown, Tribal governments are instituting hiring freezes for key medical staff, teachers, law enforcement officers, and social welfare professionals.

Tribal governments are also being forced to lay off employees, put essential infrastructure improvement and economic development projects on hold, and to curtail services that are essential for the health and welfare of their citizens. The effects of this shutdown illustrate why we need Congress to pass IPAAA, which will help ensure Indian country is not harmed in future political battles that hold critical services and resources as ransom. Self- Governance Tribes, who have assumed responsibility for Federal programs, services, functions and activities, find themselves in an absurd and unjust dilemma of deciding how to fund these programs that are the trust responsibility of the Federal government.

IPAAA Provides Numerous Benefits and Represents a Significant Step Forward

We believe that IPAAA provides numerous benefits for agencies and Tribal governments that administer programs that serve Tribal communities and citizens. Some of these benefits are identified below.

Figure 1: Examples of some benefits offered by passage of IPAAA

ADVANCE APPROPRIATIONS authority insulates funding that helps to fulfill Federal Trust obligations from political pressures

ADVANCE APPROPRIATIONS authority can help a Federal agency address hiring challenges

ADVANCE APPROPRIATIONS authority allows for seamless operations of critical services across fiscal years

ADVANCE APPROPRIATIONS authority increases parity among federal health programs

ADVANCE APPROPRIATIONS authority assists Federal agencies and Tribal governments to incorporate long-term budget planning and procurement processes which reduce acquisition and construction costs

ADVANCE APPROPRIATIONS authority can breakdown barriers to Tribal self-government.

The infographic features a glowing lightbulb on the left and a group of diverse professionals (a woman with glasses, a man in a white lab coat, a man in a blue uniform, a man in a red fire suit, and a woman in a white lab coat) on the right. The background is dark with a blue and yellow glow.

Source: SGCE, designed with Venngage.

Insulates Funding That Helps Fulfill Federal Trust Obligations. The U.S. Commission on Civil Rights (USCCR) recently reported that “Treaties between the United States and tribal nations provide the original legal foundation for the federal government’s obligation to provide health care for Native Americans.¹ Through these treaties, the seizure of tribal nations’ land and resources by the United States was to be

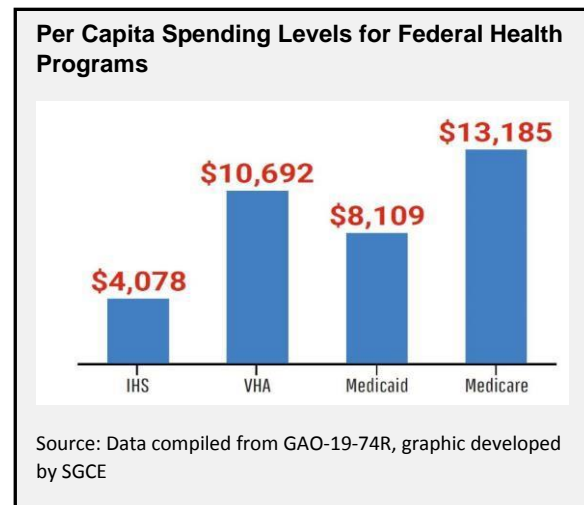
¹U.S. Commission on Civil Rights, Broken Promises: Continuing Federal Funding Shortfall for Native Americans, Briefing Before the United States Commission on Civil Rights Held in Washington, DC (Washington, D.C., Dec. 2018).

compensated by the federal government’s promise to provide payments and services—including the promise to provide health care to tribal citizens.” The Supreme Court has held that the Federal government’s contractual obligations to provide for the health care needs of Native Americans remain in effect even when the government lacks sufficient funds. Yet, the lapse in appropriations for fiscal year 2019 has demonstrated that the Federal government has not met its contractual obligations. IPAAA can insulate funding that helps to fulfill trust obligations from the year-to-year political pressures which annual appropriations impose.

Helps Address Hiring Challenges. IHS officials were reported by General Accountability Office (GAO) as saying that advance appropriations authority allows recruitment and outreach activities to continue without disruption across fiscal years, and selected candidates could be brought on board as scheduled.² A Tribal representative reported to GAO that advance appropriations could help with recruitment by providing perceived job stability that is similar to the Veteran’s Administration (VA) or the private sector. GAO also reported that VA officials stated that the agency’s experience with advance appropriation authority suggests that the authority can facilitate physician recruitment, including hiring. For example, if the VA was far along in the hiring process at the end of a fiscal year, but could not finalize the hire before the end of the year, having advance appropriations for the next fiscal year provides the certainty that they will be able to make the hire in the new fiscal year. BIA, BIE, and IHS each face challenges hiring critical personnel and we believe IPAAA provides these agencies with a tool to help overcome these challenges.

Provides for seamless operations across fiscal years. GAO reported in November 2018 that advance appropriations provided to the Veteran’s Health Administration (VHA) give the agency some assurances that it will be able to continue health care operations seamlessly across fiscal years. In addition, the USCCR recently recommended that “the federal government should provide **steady**, equitable, and nondiscretionary funding directly to Tribal Nations to support the public safety, health care, education, housing, and economic development of Native tribes and people.” IPAAA provides BIA, BIE, and IHS with the same assurances provided to the VA and helps to address the recommendation from the Commission that calls for steady funding.

Advances Fairness and Parity. Indian programs have always faced significant disparity compared to similar programs and the failure of the United States to provide sufficient funding for these programs undermines the ability of some Tribal governments to provide adequate services to their communities. For example, in December 2018, the GAO reported that IHS’s per capita spending levels were significantly less than those of the VHA, Medicare, and Medicaid. For example, IHS per capita spending level is 60 percent less than the VHA per capita spending level.



²GAO, *Indian Health Service: Spending Levels and Characteristics of IHS and Three Other Federal Health Care Programs*, GAO-19-174R (Washington, D.C.: Dec. 10, 2018).

The USCCR recommended that Congress should provide **consistent**, non-discretionary funding to Tribal governments to create parity between Tribal governments and other governments by allowing Tribal governments to leverage Federal funding. While IPAAA does not provide for the needed increases in funding, it does provide an opportunity for current Federal resources to be used more effectively and efficiently.

The current lapse in appropriations also demonstrates the disparity in funding vehicles within the Federal government. Other Federal health programs are specifically exempted during a shutdown, yet the Indian Health Service, which is already severely underfunded to fulfill its mission to deliver health care to American Indian and Alaskan Natives (AI/AN)—a very vulnerable population—is not. The USCCR recommended in December 2018 that “Congress should provide increased, non-discretionary, and advance appropriations for IHS to bring it to parity with other federal health programs, such as the Veterans Health Administration, including for facilities and urban Indian health.” As a matter of fairness, IPAAA provides IHS with the same authority as other Federally-funded health care programs.

Reduced Acquisition & Construction Costs. The GAO reported in October 2018 that the experience of the VHA with advance appropriations authority demonstrates that the authority allows for greater planning and more efficient spending. Incorporating effective budget planning and acquisition processes into program and project administration allows increased certainty of funds which can result in lower interest rates and allows for goods, services, and materials to be purchased in larger bulks and in advance. As a result, acquisition and construction are reduced and more funds are dedicated to increased services for Tribal communities. During the shutdown period, although much of IHS and some BIA and BIE activities have been deemed to be ‘excepted,’ the agencies are not able to pay any vendors or health providers providing services via contract. This inability to timely pay often results in higher costs in the future to acquire these services, or that the vendor will no longer elect to do business with the agency.

Helps to Overcome Barriers to Self-Governance. The USCCR states in its December 2018 report that the United States and Native Americans have committed to and sustained a special trust relationship. This relationship obligates the Federal government to promote Tribal self-government, among other things.

Tribal Nations currently participating in Self-Governance know that the effect of increased Tribal control and decision-making authority over their lands, resources, and the welfare of their citizens is increased social and economic well-being. Yet, the success of Self-Governance requires both the Tribal Nation and the Federal government to uphold obligations agreed upon in legally binding compacts and other agreements. A key factor hindering some Tribal Nations from pursuing participation in Self-Governance and Self-Determination is the uncertainty associated with the disbursement of Federal funds agreed upon in compacts and contracts.

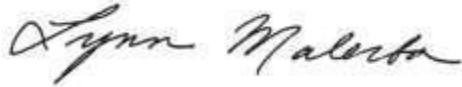
The USCCR reported that increased consistency in the timely payment of contract support costs increases Tribal government interest in operating their own health care systems—an outcome consistent with the goal of Tribal self-government. IPAAA provides Federal agencies with information that should help them to better plan for the disbursement of funds that cover longer periods of time.

For all of the reasons presented in this letter, the Self-Governance Communication and Education Tribal Consortium supports the IPAAA and is ready to assist the Congress in any way possible to ensure swift passage of this bill. If you have additional questions or would like to discuss further, please contact Jay Spaan, Executive Director, SGCE, at jays@tribalselfgov.org or 918-370-4258.

Sincerely,



W. Ron Allen, Tribal Chairman/CEO, Jamestown S’Klallam Tribe; Chairman, Self-Governance Education and Communication Tribal Consortium; and Chairman, Self-Governance Advisory Committee



Lynn Malerba, Chief, Mohegan Tribe, and
Chairwoman, Tribal Self-Governance Advisory Committee

Cc: Majority Members of the Appropriations Subcommittee on Interior, Environment and
Related Agencies, U.S. Senate
SGAC, TSGAC and Technical Workgroup Members