



National Indian Health Board



May 11, 2020

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
Room S-230, The Capitol  
Washington, D.C. 20510

The Honorable Chuck Schumer  
Minority Leader  
United States Senate  
Room S-204, The Capitol  
Washington, D.C. 20510

**Re: COVID-19 Infrastructure Recovery Legislative Proposal (Phase #4)**

Dear Majority Leader McConnell and Minority Leader Schumer:

This letter is on behalf of the undersigned American Indian and Alaska Native (AI/AN) organizations, which collectively serve over 574 federally recognized AI/AN tribal nations. The recommendations outlined in this letter encompass critical funding and policy needs to help protect and prepare AI/AN communities to effectively respond to the current 2019 novel coronavirus (COVID-19) pandemic.

As the urgency, infection rate, and death toll of the COVID-19 pandemic intensifies, it has become increasingly clear that Indian Country needs significantly more resources to address infrastructure inequalities that exist within tribal nations. AI/AN communities are disproportionately impacted by insufficient infrastructure, including roads, housing, health and education facilities, water and sewer systems, and broadband. These insufficiencies create unsafe health conditions and hinder Indian Country’s response and long term recovery from COVID-19.

Additionally, tribal nations continue to experience inconsistencies in federal consultation policies, the violation of consultation policies, and mere notification of federal action as opposed to a solicitation of input. This problem is often exacerbated during infrastructure development and creates risks for tribal health, safety, and sovereignty. To address this immediate issue, tribal consultation should be included in federal statutes and utilize a canon of construction that facilitates effective consultation such as the language adopted by Congress in the General Welfare Exclusion Act.<sup>1</sup> In the long-term, Congress should support statutory tribal consultation that requires that dialogue with tribal partners occur with a goal of reaching consent.

In summary, the language included in this letter covers critical infrastructure priorities in tribal governance, health, housing, water sanitation and utilities, energy, telecommunications,

<sup>1</sup> See Pub. L. 113–168, §2(c) (“ambiguities in [this]... Act, shall be resolved in favor of Indian tribal governments and deference shall be given to Indian tribal governments....”)

transportation, and education. For your convenience, we have created an abbreviated list to coincide with the specific funding and policy requests found later in the letter. This abbreviated list previews how the letter is organized.

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- Provide mandatory funding for payments for section 105(l) lease agreements.
- Provide \$200 million for the BIA Public Safety and Justice Construction accounts.
- Provide \$20 million for Tribal Historic Preservation Officers at the National Park Service.

**Health: Critical Infrastructure Funding and Access Needs .....7**

- Provide \$2.5 billion for Health Care Facilities Construction to include support for new and current planned projects, the Small Ambulatory Health Center Program, and the Joint Venture Construction Program.
- Provide \$750 million for maintenance and improvement of Indian Health Service and Tribal facilities.

**Housing: Critical Infrastructure Funding and Access Needs .....9**

- Provide \$600 million in additional funding to the Indian Housing Block Grant formula distribution portion, with up to \$150 withheld for the Indian Community Development Block Grants and Imminent Threat projects tribal nations propose as a direct response to COVID-19 issues in their communities.
- Provide \$100 million for the BIA Housing Improvement Program.
- Include Tribal Nations and Native Americans in any new housing assistance or homeless assistance programs.

**Water, Sanitation, and Utilities: Critical Infrastructure Funding and Access Needs .....10**

- Provide \$1 billion for the Indian Health Services’ Sanitation Facilities Construction to provide tribal homes and communities with essential water supply, sewage disposal, and solid waste disposal facilities.
- Increase the tribal set-aside for the Safe Drinking Water State Revolving Fund and Clean Water State Revolving Fund to 5% of total funds to increase access to safe drinking water and wastewater management for tribal public water systems.
- Increase funding by \$200 Million for water infrastructure and create a tribal set aside within the USDA Rural Development water programs including Community Facilities Direct Loan & Grant Program; Water & Waste Disposal Grants to Alleviate Health Risks on Tribal Lands and Colonias; Grants for Rural and Native Alaskan Villages; Water & Waste Disposal Loan & Grant Program; and provide \$10 million to support tribal assessments on aging drinking water and wastewater infrastructure.
- Expand USDA Rural Development (RD) programs’ Substantially Underserved Trust Area (SUTA) designation to all programs at RD to support tribal priority.
- Provide tribal inclusion within grant programs that aid utilities that have incurred lost revenues during the pandemic.

- Increase the tribal allocation for the Clean Water Act Section 106 grants to 20% to aid development of tribal water quality for public health.
- Permanently reauthorize the Reclamation Water Settlement Fund (RWSF) to enable tribal communities to address water shortages through water delivery infrastructure for the health, safety, and welfare of their communities.

**Energy: Critical Infrastructure Funding and Access Needs .....13**

- Provide \$250 million in royalty relief to tribal mineral rights and land owner’s equivalent to royalties from pre-pandemic oil prices.
- Increase funding by \$10 million for the Department of the Interior’s Office of Indian Energy and Economic Development (OIEED) to expand technical assistance and grant support, and fund more feasibility studies to assess and plan for tribal energy, economic and infrastructure development projects.
- Increase funding by \$25 million for the Indian Loan Guarantee Program to leverage substantially more private sector financing for business, economic and infrastructure development projects, particularly projects assessed as viable in OIEED-funded feasibility studies.
- Provide \$30 million in funding and waive matching fund requirements for grants authorized through the Department of Energy’s Office of Indian Energy Policy and Programs.
- Provide \$2.5 million in funding for credit subsidies for the Tribal Energy Loan Guarantee Program, permit 100% loan guarantees, and waive non-statutory program requirements that create barriers for small-scale, community-based projects.
- Confirm the regulatory authority of tribal nations over their energy utilities, services, and infrastructure under the Federal Power Act, the Public Utilities Regulatory Policy Act, and the Rural Electrification Act.
- Provide \$100 million for tribal nations and organizations for the Low Income Home Energy Assistance Program (LIHEAP).
- Increase funding to at least \$250 million, waive matching-fund requirements, and create tribal set-asides for energy and electric programs within the USDA Rural Development programs.

**Telecommunications: Critical Infrastructure Funding and Access Needs .....17**

- Authorize a Tribal Broadband Fund at the Federal Communications Commission and provide \$5 billion to support the rapid development and deployment of broadband infrastructure across Indian Country.
- Authorize emergency Special Temporary Authority for Unassigned Spectrum; Support Tribal Access to Spectrum over Tribal Lands; and Require FCC to extend the 2.5 GHz Tribal Priority Window and the start of the Rural Digital Opportunity Fund.
- Create a 15 percent tribal set aside in the USDA Broadband Grant Programs and waive matching fund requirements.

**Transportation: Critical Infrastructure Funding and Access Needs .....20**

- Provide \$1 billion in funding for the Tribal Transportation Program (TTP).
- Provide an additional \$498 million in funding for the BIA Roads Maintenance Program.
- Provide \$50 million for the Tribal Transit Program formula-based model found at 49 U.S.C. § 5311(c)(1)(B).

- Provide over \$30 million for the Tribal High Priority Projects Program.
- Create a 10% tribal-specific set-aside within the Airport Improvement Program and the Essential Air Service Program and waive the cost-share requirements for tribal applicants.

**Education: Critical Infrastructure Funding and Access Needs.....22**

- Provide \$115 million for wireless hotspots for BIE students and teachers as an immediate solution to school closures.
- Provide \$60 million for laptops for BIE students and teachers as an immediate solution to school closures.
- Provide at least \$500 million in the Interior-BIE account for a TCU Deferred Maintenance and Rehabilitation Fund, as authorized under the Tribally Controlled Colleges and Universities Assistance Act.
- Appropriate \$24 million to the USDA’s Tribal College Initiative Grant Program and waive matching requirements.

Thank you for your consideration of the recommendations outlined in this letter. We look forward to working with you to ensure that Indian Country’s concerns and priorities are comprehensively addressed, as we respond to the COVID-19 pandemic.

Sincerely,

National Congress of American Indians  
 National Indian Health Board  
 National American Indian Housing Council  
 National Indian Education Association  
 National Center for American Indian Enterprise Development  
 National Indian Gaming Association  
 Self-Governance Communication & Education Tribal Consortium  
 American Indian Higher Education Consortium  
 Association on American Indian Affairs  
 Midwest Alliance of Sovereign Tribes  
 United South and Eastern Tribes Sovereignty Protection Fund  
 Affiliated Tribes of Northwest Indians  
 Inter-Tribal Council Of The Five Civilized Tribes

## **Governance: Critical Infrastructure Funding and Access Needs**

- **Provide mandatory funding for payments for section 105(l) lease agreements.**

**Background:** Section 105(l) of the Indian Self-Determination and Education Assistance Act (ISDEAA) provides that the Secretary of the Interior and the Secretary of Health and Human Services shall enter into leases with an Indian tribe or tribal organization for the administration and delivery of services under ISDEAA. The *Maniilaq Ass'n v. Burwell* decisions<sup>2</sup> establish that IHS is required to enter into and fully fund leases for facilities operated by tribal providers and used to carry out ISDEAA agreements. This rule is applicable to IHS, Bureau of Indian Education (BIE), and Bureau of Indian Affairs (BIA) 105(l) lease costs.

Unfortunately, there has never been dedicated funding lines to cover all 105(l) leases under current law. For example, there is no dedicated line item in the IHS budget for 105(l) lease expenditures, and BIE has traditionally supported 105(l) lease costs through the Facilities Operations budget line item. In recent years, many more tribal nations have elected to enter into 105(l) lease contracts with multiple agencies; however, without a dedicated source of funding in each agency's budget for this expense, they have been forced to reprogram dollars from other critical line items to pay for this obligation. In FY 2019 alone, IHS reprogrammed roughly \$72 million in funding from the Hospitals & Health Clinics line item and the Urban Indian line item to pay for 105(l). It is incumbent upon the agencies and Congress to establish mandatory funding for 105(l) lease costs in full to avoid funding this obligation at the expense of other funding streams that are particularly crucial to the fight against COVID-19.

- **Provide \$200 million for the BIA Public Safety and Justice Construction accounts.**

**Background:** The Public Safety & Justice (PS&J) construction program funds facility improvement and repair (FI&R) and similar projects at detention, correctional, and law enforcement facilities. Facilities include housing units to support public safety and justice employees. Restoration and improvement of BIA-funded detention and other Office of Justice Services facilities improve both public safety and the quality of life in Indian Country. The Program also maintains fire safety systems in these facilities.

Presently, the COVID-19 pandemic is increasing the need for tribal public safety and justice programs. Tribal courts have faced barriers in instituting social distancing measures due to lack of technology infrastructure, and individuals being held in detention also face increased risk of contracting the COVID-19 virus. 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.

- **Provide \$20 million for Tribal Historic Preservation Officers at the National Park Service.**

**Background:** Tribal Historic Preservation Officers (THPO) support federal agency compliance with the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA). Pursuant to NHPA, federal agencies are required to take into account the effect of the undertaking on historic properties and provide reasonable opportunity for public comment on those actions. This is

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<sup>2</sup> *Maniilaq Ass'n v. Burwell*, 72 F. Supp. 3d 227 (D.D.C. 2014); *Maniilaq Ass'n v. Burwell*, 170 F. Supp. 3d 243 (D.D.C. 2016).

often referred to as the “Section 106” review process and often involves government-to-government tribal consultation. Similarly, pursuant to NEPA, agencies are required to assess the impacts of federal actions on the environment as well as historic and cultural resources. Due to the pandemic, many THPO offices are closed or operating with significantly limited staff. Further, the Advisory Council on Historic Preservation (the agency charged with assisting federal agencies with the historic preservation responsibilities and overseeing the federal historic preservation review process, among other things), has advised that the Section 106 process involving THPOs is “paused” until those offices re-open and staff can fully review an undertaking. THPOs are integral to the timely completion of a variety of pre-COVID-19 development projects. Fully funding these offices is vital to ensuring that planned development projects continue, future projects are timely and efficiently completed, and THPOs and construction and related sectors remain employed.

## **Health: Critical Infrastructure Funding and Access Needs**

- **Provide \$2.5 billion for Health Care Facilities Construction to include support for new and current planned projects, the Small Ambulatory Health Center Program, and the Joint Venture Construction Program.**

**Background:** The Indian health system is beset by antiquated and largely deficient health care facilities that are fundamentally unequipped to respond to the COVID-19 pandemic. The average age of an IHS hospital is 37.5 years, compared to 10 years for mainstream hospitals. Space capacity at IHS facilities is only able to accommodate approximately 52 percent of the need based on AI/AN population sizes. Especially in small villages and remote tribal locations, there is no ability to place a patient in isolation, especially while waiting for a care referral. While most medical equipment has an average useful lifespan of six years, medical and laboratory equipment in most IHS facilities are more than twice as old as that. In many places, there are no negative pressure rooms to put people into isolation, and there are no facilities to allow people who live in overcrowded, multigenerational families to self-quarantine. This poses a serious public health risk for entire tribal communities. In the short-term, there is an immediate need for mobile clinics that can help isolate and quarantine patients. In addition, IHS and Tribal hospitals have a severe shortage of beds in intensive care units (ICUs), or lack of inpatient facilities altogether. There is an urgent need for \$2.5 billion not only to fund those facilities on the Health Care Facilities Construction Priority List (Priority List) but to help fund the construction costs for the Joint Venture Construction Program (JVCP) and the Small Ambulatory Program (SAP). The JVCP is a joint agreement between IHS and tribal nations to fund construction projects. Given the economic downturn and revenue losses resulting from the COVID-19 pandemic, there is significant concern that without an influx of funding, many JVCP projects will be delayed or lose resources for construction projects. There is a need to fund the construction costs of all the JVCP projects for all tribal nations and tribal organizations that satisfied eligibility for the past and current JVCP competition. The SAP provides funding to tribal nations and tribal organizations for the construction, expansion, or modernization of ambulatory health care facilities. These funds are particularly important for tribal nations that are not on the Priority List or participating in JVCP to address COVID-19 health care facility construction needs.

There is significant concern that without immediate funding relief for health facilities in Indian Country, the Indian health system will buckle under this emergency. Lastly, IHS and tribal nations need equitable and flexible funding not only to increase hospital and clinic capacity and the shortage of hospital beds, but also to acquire and construct shelters of opportunity – such as by renovating tribal gymnasiums or other suitable facilities to serve as triage units along with other priorities. There is an urgent need to:

- Increase capacity for shelters of opportunity;
- Provide funding for new and replacement healthcare construction projects, support Joint Venture programs between IHS and tribal nations, and enhance funding for Small Ambulatory Program needs;
- Build auxiliary facilities and nonmedical facilities for social isolation;
- Bolster hospital capacity; and
- Build temporary lodging for healthcare providers.

- **Provide \$750 million for maintenance and improvement of Indian Health Service and Tribal facilities.**

***Background:*** Maintenance and Improvement (M&I) funds are the primary source for maintenance, repair, and improvements for facilities that house IHS funded programs, whether provided directly or through Self-Determination contracts/Self-Governance compacts. The M&I program funding is distributed through a formula allocation methodology based on health facility industry standards. Unfortunately, current funding levels for M&I are below about 78 percent of the total needed for all eligible facilities. The backlog of essential maintenance and repair is estimated to be \$767 million to fully fund all M&I needs. The \$750 million requested will help reduce this need considerably. Adequate funding is essential to ensure functional health care facilities that meet building/life safety codes, conform to laws and regulations, and satisfy health accreditation standards. If adequate funding is not available, IHS and tribal nations need to reallocate program funds that could be used to help address health needs, including increased needs resulting from the COVID-19 crisis, for facility needs.



## **Housing: Critical Infrastructure Funding and Access Needs**

- **Provide \$600 million in additional funding to the Indian Housing Block Grant formula distribution portion, with up to \$150 withheld for the Indian Community Development Block Grants and Imminent Threat projects tribal nations propose as a direct response to COVID-19 issues in their communities.**

**Background:** To directly respond to COVID-19, new funds to tribal housing programs can lead to the quick development of temporary housing for health professionals, and safer assisted living housing for tribal citizens. Tribal communities also see overcrowded homes at a rate of 16 percent, roughly eight times the national average, which inhibits tribal communities from practicing safe ‘social distancing’ techniques that are required by the COVID-19 pandemic. Funding new construction across the board will help alleviate issues of overcrowding.

Tribal nations have the capacity and demonstrated success in the use of similar funding. In 2009, tribal nations received \$510 million in stimulus funding, which directly led to the creation of 1,954 new housing units, and the rehabilitation of 13,338 units. HUD and tribal nations used over 99 percent of the funds that were provided, which surpassed many other programs that received stimulus funding. Additionally, tribal housing programs selected to receive \$200 million in competitive grant funding in December 2019 will be able to build close to 1,200 new units. The tribal nations selected and awarded represented only 25 percent of the applications, so there is demonstrated need and projects that are ready to go.

- **Provide \$100 million for the BIA Housing Improvement Program.**

**Background:** The BIA Housing Improvement Program is a home repair, renovation, replacement, and new housing grant program administered by the BIA and federally recognized tribal nations for American Indians and Alaska Native individuals and families who have no immediate resource for standard housing. The COVID-19 Pandemic has shed light on the housing crisis in Indian Country, where there is not enough affordable housing; therefore, multiple families share small quarters. This situation makes social distancing and isolation nearly impossible for Native families.

Providing \$100 million for the BIA Housing Improvement Program will help ensure Native families have the opportunity to fund housing repairs for conditions that threaten the health and safety of the occupants.

- **Include Tribal Nations and Native Americans in any new housing assistance or homeless assistance programs.**

**Background:** At a time when many Americans are expected to need both mortgage, rental, or utility assistance, tribal nations and Native Americans must be included as eligible participants, either through express statutory language or direct set asides to tribal nations. As Congress considers funding existing national or state housing programs or creating new programs to address needs stemming from COVID-19 impacts, Congress must recognize that tribal nations are ineligible for many existing programs outside of NAHASDA, and that states and local partners often overlook tribal communities due to the existence of NAHASDA. Accordingly, Congress must expressly make tribal nations and tribal housing programs eligible entities to access any new funding or create specific set-asides for tribal nations to carry out similar housing assistance services provided through any COVID legislation.

## **Water, Sanitation, and Utilities: Critical Infrastructure Funding and Access Needs**

- **Provide \$1 billion for the Indian Health Services' Sanitation Facilities Construction to provide tribal homes and communities with essential water supply, sewage disposal, and solid waste disposal facilities.**

**Background:** According to the World Health Organization (WHO) and the CDC, the provision of safe water, sanitation, and hygienic conditions are essential to protecting human health in response to the COVID-19 outbreak. Unfortunately, according to the 2018 Annual Report to Congress on Sanitation Deficiency Levels for Indian Homes and Communities, over 31 percent of homes on tribal lands are in need of sanitation facility improvements, while nearly 7 percent of all AI/AN homes do not have adequate sanitation facilities. Even more troubling is that roughly 2 percent of AI/ANs do not even have access to safe drinking water. It is impossible for AI/AN communities to abide by CDC's sanitation and hygiene standards in response to COVID-19 without the necessary water and sanitation infrastructure.

It is essential that these funds be made flexible enough to address other related new and existing housing support projects for AI/AN individuals and families. In their FY 2021 budget request, IHS reported that \$2.57 billion is needed to raise all IHS and tribal sanitation sites to a Deficiency Level 1 classification. If Indian Country is to follow CDC guidelines for disease prevention, there is an urgent need for at least \$1 billion in assistance to get immediate safe water and sanitation systems to our tribal communities.

- **Increase the tribal set-aside for the Safe Drinking Water State Revolving Fund and Clean Water State Revolving Fund to 5% of total funds to increase access to safe drinking water and wastewater management for tribal public water systems.**

**Background:** Without access to safe, reliable, and clean drinking water, many households are unable to implement CDC protocols and guidelines to protect themselves and their communities. The lack of access to safe drinking water and basic sanitation in Indian Country threatens the public health of American Indian and Alaska Native communities. In a report titled Drinking Water and Wastewater Infrastructure: Opportunities Exist to Enhance Federal Agencies Needs Assessment and Coordination on Tribal Projects, the GAO found that in FY 2016, according to IHS, \$3.2 billion was needed to address existing tribal drinking and wastewater needs. Similarly, for FY 2016, the EPA estimated a \$2.4 billion need for future infrastructure requirements over the next 20 years. Additionally, approximately 17 percent of tribal homes do not have safe water or basic sanitation facilities. This is more than twenty times higher than the 0.6 percent of non-Native homes in the U.S. that lacked such infrastructure in 2005, according to the U.S. Census Bureau. These existing water inequities have directly hampered COVID-19 response and mitigation efforts and made it difficult for tribal communities to implement CDC preventative guidelines.

The tribal set-aside from the Safe and Clean Drinking Water State Revolving Funds should be increased from 1.5% to five percent. Further, in accordance with the 2016 Water Resources Development Act reauthorization, an eligible use of funds should continue to include water operator training and certification. Such an increase for sewage treatment construction programs would help achieve the basic human health and environmental protection needs for tribal communities.

- **Increase funding by \$200 Million for water infrastructure and create a tribal set aside within the USDA Rural Development water programs including Community Facilities Direct Loan & Grant Program; Water & Waste Disposal Grants to Alleviate Health Risks on Tribal Lands and Colonias; Grants for Rural and Native Alaskan Villages; Water & Waste Disposal Loan & Grant Program; and provide \$10 million to support tribal assessments on aging drinking water and wastewater infrastructure.**

**Background:** As noted above, approximately 17 percent of tribal homes lack access to safe drinking water and basic sanitation—a rate more than 20 times the national average. The lack of water infrastructure and its deleterious effects in Indian country are aggravated by COVID-19. Rural development programs are an opportunity to address some of these deficiencies by providing funding for essential facilities, including drinking water, sanitary sewer, and solid waste. By helping to provide essential community infrastructure, these grants can assist tribal nations maintain basic quality of life services and, in turn, attract businesses and sustainable employment. Such USDA grant programs include: USDA’s Community Facilities Direct Loan & Grant Program; Water & Waste Disposal Grants to Alleviate Health Risks on Tribal Lands and Colonias; Grants for Rural and Native Alaskan Villages; and Water & Waste Disposal Loan & Grant Program. However, tribal nations have difficulty accessing these grants because they must compete with other governments, corporate entities, and non-profits for limited funding. Further, existing USDA funding does not address aging water infrastructure which requires costly assessments. Needed are: increased appropriations, a tribal set aside within existing programs, and funding specifically for aging infrastructure studies to aid tribal governments in providing their communities with clean water access essential for responding to this pandemic and preventing future outbreaks.

- **Expand USDA Rural Development (RD) programs’ Substantially Underserved Trust Area (SUTA) designation to all programs at RD to support tribal priority.**

**Background:** The “substantially underserved trust area” (SUTA) designation authorized by the 2008 Farm Bill allows USDA’s Rural Utility Service (RUS) to offer entities residing in specific locations low interest rates on utility loans; waive non-duplication, matching, and credit support requirements; extend loan repayment terms; and provide funding priority to some utility infrastructure programs. SUTA should be amended to allow the Secretary to exercise SUTA across all Rural Development programs. A broader application of SUTA will recognize unique and essential tribal infrastructure and business development needs and help access tools to pursue opportunities to improve tribal communities during and beyond the COVID-19 crisis.

- **Provide tribal inclusion within grant programs that aid utilities that have incurred lost revenues during the pandemic.**

**Background:** State, local, and tribal governments have issued a mixture of suspension and forbearance orders prohibiting the disconnection of utility services during the COVID-19 pandemic. The National Association of Clean Water Agencies conservatively estimated a \$12.5 billion national economic impact to clean water utilities due to COVID-19. This finding did not include electrical and other utilities. For tribal communities, this loss of revenue directly impacts a tribal servicer’s ability to meet loan obligations, access further capital, and develop aging utility infrastructure. To address these impacts, any aid to governments and utility providers should include assistance for tribal utilities.

- **Increase the tribal allocation for the Clean Water Act Section 106 grants to 20% to aid development of tribal water quality for public health.**

**Background:** Clean Water Act (CWA) Section 106 grants are vital to tribal efforts to control water pollution, including water quality planning and assessments; developing and implementing water quality standards and total maximum daily loads; groundwater and wetland protection; and nonpoint source control activities. The number of eligible tribal nations to receive CWA Section 106 funding increased from 141 in 1998 to 257 in 2010. Tribal recipients are now required to submit their water quality data through the Water Quality Exchange (WQX) as part of their Section 106 reporting requirements without any increase in Section 106 program funding. The national CWA 106 allocation to tribal nations has flat-lined and – in certain cases – decreased in some years during the same time period (e.g., 15.49 percent in 1998 to as low as 11.55 percent in 2005). The current tribal allocation of approximately 12 percent is still too low; successful tribal CWA implementation requires at least 20 percent of the national CWA Section 106 allocation to keep pace with the expansion of tribal programs.

- **Permanently reauthorize the Reclamation Water Settlement Fund (RWSF) to enable tribal communities to address water shortages through water delivery infrastructure for the health, safety, and welfare of their communities.**

**Background:** The Reclamation Water Settlement Fund (RWSF, 43 U.S.C. § 407) is a vital resource for funding infrastructure projects, such as irrigation canals, dams and storage reservoirs, treatment facilities, and distribution facilities, tied to Indian water rights settlements. These infrastructure projects ensure that wet water reaches tribal lands. The RWSF is only authorized to receive deposits beginning in FY 2020 and until FY 2029 and future Indian water rights settlements are currently authorized to access the RWSF for infrastructure needs until FY 2034 when the fund expires. Public health depends on secure water resources. A permanent extension of the RWSF would ensure that essential water delivery projects are funded. The extension also would aid economic development by ensuring that tribal communities have access to critical infrastructure so essential for the economic development of their economies.

## **Energy: Critical Infrastructure Funding and Access Needs**

- **Provide \$250 million in royalty relief to tribal mineral rights and land owner's equivalent to royalties from pre-pandemic oil prices.**

**Background:** Like other oil and gas producers in the United States, Indian producers are suffering devastating hardships due to the COVID-19 pandemic and worldwide collapse in energy prices. For these tribal nations, energy development produces significant employment and generates most of the revenues they use to operate their governments and provide essential services and programs to their members as well as to the surrounding communities. Because of the effects of the COVID-19 crisis and resulting economic dislocation, tribal oil and gas producers cannot operate their wells profitably; they are closing the valves, curtailing critical revenue streams, and for companies that do temporarily close, their workers are being furloughed or laid off.

Oil and gas producers operating under federally-approved leases on Indian tribal lands pay a royalty, usually between 12.5% and 20% of the product's value. Similarly, tribal governments raise revenue through compensation paid for rights-of-way across tribal lands. Fees are typically paid monthly (although in some cases annually) to the tribal nation under the auspices of the Department of the Interior. For tribal lands subject to federally-approved oil and gas leases or minerals agreements, Congress can address this lost revenue and increased unemployment by providing relief from lost royalty and rights of way revenues by funding temporary federal reimbursement of these lost revenues.

- **Increase funding by \$10 million for the Department of the Interior's Office of Indian Energy and Economic Development (OIEED) to expand technical assistance and grant support, and fund more feasibility studies to assess and plan for tribal energy, economic and infrastructure development projects.**

**Background:** The Department of the Interior's Office of Indian Energy and Economic Development (OIEED) promotes tribal renewable and conventional energy development and economic development on tribal lands, including feasibility studies to assess and plan for such development, and initiatives to spur economic and business development assistance and training, expand job and skills training opportunities, and leverage limited federal funding to provide access to capital for business and economic development. At least an additional \$10 million is needed to provide for more: 1) feasibility studies and other grant support of infrastructure and related economic development projects; 2) building of tribal capacity for leasing tribal lands and managing infrastructure, economic and energy resource development; and opportunities for incubators of tribal-owned and other Native American-owned businesses striving to start up, revive and expand their businesses.

- **Increase funding by \$25 million for the Indian Loan Guarantee Program to leverage substantially more private sector financing for business, economic and infrastructure development projects, particularly projects assessed as viable in OIEED-funded feasibility studies.**

**Background:** OIEED's Division of Capital Investment administers the Indian Loan Guarantee Program, which successfully leverages substantial private financing for tribal and individual Native borrowers. This Program provides a 90% guarantee on private bank financing extended to the borrower meeting the requirements of affording 20% equity in the business or project seeking the loan and economic impact to the tribal community or BIA Service Area. OIEED-certified lenders

have great track records lending to Native borrowers on tribal lands and the guarantees leverage substantial private sector financing for business, economic, and infrastructure development projects, particularly projects assessed as viable in the OIEED-funded feasibility studies noted in the preceding request. The Program delivers a hefty return of about \$17 in private lending for every \$1 in federal guarantee. The requested funding increase could be used to demonstrate the feasibility of using the guarantees as a public component of a public-private partnership to develop infrastructure and economic development projects. Given the tremendous economic hardships caused by the pandemic, the Program requirements should be revised to require only 10% equity and permit a guarantee of up to 95% of the loan principal.

- **Provide \$30 million in funding and waive matching fund requirements for grants authorized through the Department of Energy’s Office of Indian Energy Policy and Programs.**

**Background:** It is essential to strengthen the federal infrastructure—specifically Native American Affairs offices within the key federal departments and agencies—that have the capacity to coordinate and better deliver assistance to Indian Country. Within our joint April 30, 2020 letter, we highlighted the Department of Commerce’s Office of Native American Business Development (ONABD) and the Small Business Administration’s Office of Native American Affairs (ONAA). We urged that these offices be given more authority immediately to operate at the same high level as their counterpart offices in other federal departments and agencies, and funded with substantial budgets of their own to direct technical and other urgently needed assistance to tribal nations, enterprises and other native businesses and communities throughout Indian Country.

Similarly, we request increased support for the Department of Energy’s Office of Indian Energy Policy and Programs (OIEPP). The Energy Policy Act of 2005 (P.L. 109-58) established OIEPP which provides technical assistance, education, and financial assistance to tribal nations, Alaska Native Villages, and Tribal Energy Resource Development Organizations. Energy development in Indian country is a catalyst for ensuring the economic strength and vitality of tribal nations. Providing \$30 million in funding to the OIEPP and waiving the matching funds requirements for grants will help tribal nations overcome the unique obstacles that hinder all forms of energy development in Indian country, help rebuild tribal economies, and provide energy security in the wake of COVID-19.

- **Provide \$2.5 million in funding for credit subsidies for the Tribal Energy Loan Guarantee Program, permit 100% loan guarantees, and waive non-statutory program requirements that create barriers for small-scale, community-based projects.**

**Background:** The Energy Policy Act of 2005 (Section 2602(c)) authorized the Department of Energy (DOE) to establish the Tribal Energy Loan Guarantee Program (TELGP) and create related loan guarantee regulations. FY 2017 appropriations provided \$9 million dollars to establish the Program, with \$8.5 million for the credit subsidy cost and \$500,000 for administrative expenses. And, in 2018, DOE issued its first solicitation for the Program. FY 2018 appropriations provided \$1 million to the Program for administrative costs and in FY 2019, Congress provided \$2 million for administrative costs. However, since FY 2019, the Administration has proposed to eliminate the Program. Subsidy funds must be used to support the development or expansion of generation projects that employ commercially proven and available renewable energy technologies. Tribal nations continue to urge Congress to support the TELGP with an additional \$2.5 million for credit subsidy costs. Lastly, appropriations language should not impose stricter limits on the use of

program resources than those included in the Energy Policy Act of 2005. Taking these actions will encourage private-tribal partnerships and help bolster job losses in the energy sector as a result of the pandemic.

- **Confirm the regulatory authority of tribal nations over their energy utilities, services, and infrastructure under the Federal Power Act, the Public Utilities Regulatory Policy Act, and the Rural Electrification Act.**

**Background:** Federal energy regulatory policies, originating in the early 20th century, have typically excluded tribal nations and tribal regulatory considerations from those policies. For example, both the Federal Power Act and the Public Utilities Regulatory Policy Act clearly delineate the federal and state roles in regulating the energy industry. Under these acts, the federal government is responsible for regulating the interstate commerce aspects of the energy industry, such as interstate transmission lines and wholesale power rates. States are responsible for regulating the retail aspects of the energy industry, including utility regulation, rate-setting, and siting and distribution infrastructure. But, neither act specifically includes the proper role that tribal nations can, and should, play in regulating the energy services industry on tribal lands. The result is that tribal nations, tribal citizens, and tribal enterprise utility customers located on tribal lands are, in effect, subject to state regulatory practices and decisions that have substantial impacts on energy development on tribal lands.

Distributed energy resource (DER) development and deployment will be one of many opportunities to recover from the economic impacts of the COVID-19 public health emergency. DER deployment will give tribal nations, tribal citizens, and tribal enterprises the ability to save money (through reduced energy use), and will create jobs for tribal citizens through the construction, operation, and maintenance of DER projects. But, DER is not viable in many states because of their state regulatory schemes. Acknowledging and confirming that tribal nations have the jurisdictional authority to control DER deployment on tribal lands will remove this major barrier to job creation, and financial savings for tribal communities

- **Provide \$100 million for tribal nations and organizations for the Low Income Home Energy Assistance Program (LIHEAP).**

**Background:** LIHEAP is intended to ensure that low-income families have financial assistance to heat or cool their homes during times of extreme weather. A 2013 American Housing Survey data show the U.S. average share of households with heating deficiencies was 2 percent for the United States but 12 percent for AI/ANs in tribal areas. The data also show that 36 percent of U.S. households have cost burdens to pay for bills, and a higher rate of 38 percent in tribal areas. At its current levels, LIHEAP can serve only a small portion of families in need within tribal communities. Additionally, the average LIHEAP grant is estimated to cover less than half of the average home heating/cooling costs for households, meaning that many low-income Native families and seniors have fewer resources available to meet other basic needs.

As a result of stay at home orders and increases in unemployment, families are experiencing rising energy costs at a time when they can least afford them. Additional funding for LIHEAP will aid vulnerable populations such as seniors, those quarantined for public health, and recently unemployed families by providing a measure of stability by assisting with utility costs.

- **Increase funding to at least \$250 million, waive matching-fund requirements, and create tribal set-asides for energy and electric programs within the USDA Rural Development programs.**

**Background:** USDA-Rural Development (USDA-RD) programs support a broad array of utility needs and business activities in Indian Country by providing loans, grants, and other assistance for community facilities, repair, electric utilities, high-cost energy, infrastructure, water/wastewater systems and other infrastructure deployments directly to tribal governments. USDA-RD manages programs across three mission areas – the Rural Business and Cooperative Programs, Rural Housing and Community Facilities Programs, and Rural Utilities Programs. These programs are designed to improve the economic stability of rural communities, businesses, residents, farmers, and ranchers and improve the quality of life in rural America. For example, the Rural Energy Savings Program (RESP) provides loans that ultimately assist energy consumers implement energy efficient and more cost-effective energy strategies and the High Energy Cost Grants program assists energy providers lower energy costs by financing the acquisition, construction, or improvement of facilities (including for natural gas, petroleum, backup, and renewable sources) as well as implement energy efficiency and improvement measures.

While tribal nations and their citizens can benefit from these programs, they must compete in the broader pool of applicants. Given the unique needs of Indian country, tribal set-asides are necessary. Similarly, in light of the economic hurdles faced by tribal nations in developing their energy infrastructure and providing services to members, waiving matching fund requirements ensures that tribal nations with the greatest need can access program benefits.



## **Telecommunications: Critical Infrastructure Funding and Access Needs**

- **Authorize a Tribal Broadband Fund at the Federal Communications Commission and provide \$5 billion to support the rapid development and deployment of broadband infrastructure across Indian Country.**

**Background:** Access to broadband internet for essential services, communications, and commerce is all the more critical during the COVID-19 pandemic. Tribal communities are disproportionately unserved or underserved when it comes to access to high-speed internet. In 2018, the FCC estimated that 35 percent of Americans living on tribal lands lacked access to broadband services, compared to eight percent of all Americans.

Funding is needed throughout Indian Country for rapid deployment, adoption, affordability, and access to broadband internet. COVID-19 has changed societal and market behaviors and driven more everyday tasks and activities online. An immediate robust investment into tribal communities is critical to ensure that tribal communities are not entirely left behind as our education, healthcare, government services, and commerce undergo years of changes in a few short weeks. The creation of a Tribal Broadband Fund enables tribal nations to construct, operate, and maintain more reliable and resilient broadband networks throughout Indian Country.

According to the FCC “[u]nderstanding the complexity of the digital divide in Indian Country requires an appreciation of the unique challenges facing Tribal Nations, which include deployment, adoption, affordability, and access to spectrum, as well as lack of investment dollars and access to credit and start-up or gap financing.”<sup>3</sup> The ability of tribal nations to obtain credit and financing for broadband infrastructure development is limited by difficulties in collateralizing assets held in trust by the federal government and in accessing investment capital.

The unique challenges of broadband deployment in Indian Country necessitate a Tribal Broadband Fund specifically designed to target tribal lands. As the FCC’s National Broadband Plan’s recommended: “Congress should consider establishing a Tribal Broadband Fund to support sustainable broadband deployment and adoption on Tribal lands, and all federal agencies that upgrade connectivity on Tribal lands should coordinate such upgrades with Tribal governments and the Tribal Broadband Fund grant-making process.”<sup>4</sup> Creation of a Tribal Broadband Fund would promote education, economic opportunity, health, public safety, and governance in tribal communities that currently face a severe broadband deficit and are at a distinct disadvantage during the COVID-19 pandemic and recovery process.

- **Authorize emergency Special Temporary Authority for Unassigned Spectrum; Support Tribal Access to Spectrum over Tribal Lands; and Require FCC to extend the 2.5 GHz Tribal Priority Window and the start of the Rural Digital Opportunity Fund.**

**Background:** Granting access to existing unassigned spectrum could immediately increase broadband deployment in certain tribal communities affected by COVID-19. Where spectrum is

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<sup>3</sup> U.S. Federal Communications Commission, Office of Native Affairs and Policy 2012 Annual Report, 7, (2013), <https://www.fcc.gov/document/office-native-affairs-and-policy-2012-annual-report>.

<sup>4</sup> Id.

unassigned over tribal lands, tribal nations should be granted temporary authority to operate within those unassigned frequencies. Unassigned spectrum should not lie fallow during a national emergency when better communication can directly reduce the impacts and duration of the emergency. Where infrastructure exists that could operate broadband wireless networks within unassigned spectrum, granting temporary authority to operate within those frequencies provides a virtually no cost federal solution to increased broadband deployment in Indian Country. Where suitable infrastructure does not exist, temporary infrastructure could be deployed by a tribal nation to utilize access to these unassigned licenses and rapidly deploy broadband networks.

Like all governments across the United States, tribal nations are working diligently on immediate responses to the COVID-19 pandemic. AI/AN communities are disproportionately impacted by the health conditions that the Centers for Disease Control and Prevention (CDC) notes increase risk for a more serious COVID-19 illness, including respiratory illnesses, diabetes, and other health conditions. As a result, tribal nations are currently providing essential services to their communities and dedicating resources to the unique circumstances of COVID-19 response that would otherwise be used on opportunities like the 2.5GHz tribal priority filing window and Rural Digital Opportunity Fund. Consequently, an extension of the tribal priority filing window and the start of the Rural Digital Opportunity Fund is essential.

- **Create a 15 percent tribal set aside in the USDA Broadband Grant Programs and waive matching fund requirements.**

**Background:** According to a 2019 FCC report, only 46.6 percent of rural, tribal areas have access to high-speed internet in comparison to the 73.3 percent broadband coverage that exists in non-tribal rural areas. This divide directly impacts the health, educational, and employment opportunities for tribal populations, adversely affecting tribal lives and livelihoods during the present pandemic.

The Rural Utilities Service (RUS) at the U.S. Department of Agriculture (USDA) houses two critical broadband programs to address broadband deployment and support technologies: the ReConnect Program and the Distance Learning and Telemedicine (DLT) grants. The ReConnect Program provides loans and grants to fund the costs of construction, improvement, or acquisition of facilities and equipment needed to provide broadband service in eligible rural areas. The Reconnect Program is open to governments, including tribal nations, corporate entities, and non-profits, and has a matching contribution equal to 25% of the overall project cost. The DLT Program provides grants for telecommunications equipment and software acquisition to rural end-users of telemedicine and distance learning applications. The DLT Program is open to governments, including tribal nations, corporate entities, and non-profits, and has a 15% matching contribution.

The ReConnect and DLT programs provide critical financial assistance to develop the physical and equipment infrastructure to deploy broadband in rural communities. While tribal nations are eligible for these funds, they are required to compete against larger governments, and more resourced corporate and non-profit entities. Similarly, grant match requirements serve as an additional barrier for tribes. The GAO has observed that within USDA broadband programs, “matching fund requirement can be difficult for some tribes to obtain” due to limited revenue and access to capital because “tribes cannot collateralize tribal property, and therefore often times are unable to get bank loans for infrastructure projects.”<sup>5</sup>

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<sup>5</sup> GAO Report, “Tribal Broadband: Few Partnerships Exist and the Rural Utilities Service Needs to Identify and Address Any Funding Barriers Tribes Face,” (2018). <https://www.gao.gov/assets/700/694810.pdf>

These barriers are exacerbated by the pandemic, which has resulted in a substantial loss of governmental revenue due to the closure of tribal enterprises. This lost revenue has reduced the ability of tribal nations to compete for these grants and to meet matching requirements. To address these barriers, we request the creation of a 15% tribal set aside within the ReConnect and DLT programs for tribal nations and waiver of matching requirements. These simple solutions would ensure that these programs provide equitable access to rural tribal nations that service some of the most digitally disadvantaged communities in the United States.

## **Transportation: Critical Infrastructure Funding and Access Needs**

- **Provide \$1 billion in funding for the Tribal Transportation Program (TTP).**

**Background:** Indian Country's road mileage consists of approximately 4,720 miles of gravel, and 17,130 miles of unimproved and earth surface roads. With some of the worst road conditions in America, a wide array of roads, bridges, and other facilities construction and improvement can immediately increase access to, from, and throughout Indian Country. As tribal nations continue to respond to COVID-19, transportation facilities remain essential community infrastructure that directly impacts tribal nations' ability to respond to COVID-19 and provide services to their citizens. Poor road conditions in Indian Country make it difficult for essential community service personnel such as police and emergency and medical responders to reach tribal communities and their citizens. The TTP provides funding for tribal transportation and public road access to and within Indian reservations, Indian lands, and Alaska Native Village communities. An investment of \$1 billion in funding for TTP would support tribal nations in rapidly addressing those transportation facilities critical and necessary to the delivery of essential services to respond to COVID-19.

- **Provide an additional \$498 million in funding for the BIA Roads Maintenance Program.**

**Background:** The integrity of the transportation infrastructure systems in Indian Country includes BIA-owned roads and facilities that have a direct impact on tribal and surrounding non-tribal communities. In 2018, in coordination with the Tribal/Interior Budget Council, the BIA developed and conducted a road maintenance survey intended to develop data on road maintenance budget needs. The road maintenance survey included both tribal and BIA respondents. The survey found, in part, that the estimated value of deferred road maintenance for all respondents was \$498 million. Funding for this deferred maintenance backlog in Indian Country would allow tribal nations to rapidly improve poor road conditions that limit accessibility during COVID-19, and dedicate more of their TTP dollars to construction projects (rather than road maintenance) to improve access for essential services.

- **Provide \$50 million for the Tribal Transit Program formula-based model found at 49 U.S.C. § 5311(c)(1)(B).**

**Background:** The Public Transportation on Indian Reservations (49 U.S.C. § 5311(c)(1)) (also known as the Tribal Transit Program) Program provides tribal nations with funding for capital, operating, planning, and administrative expenses to meet public transportation needs in tribal communities. As many tribal communities lack adequate access to essential services, tribal citizens heavily rely on tribal transit services to access basic needs. Elders rely on tribal transit program funding to receive care and services regularly from elder programs. Parents often rely on tribal youth programs to provide education, activities, and for many, a meal to eat, especially with summer approaching. Tribal transit programs play an integral role in summer activities and will be relied on to provide transportation to and from tribal community services. Additional resources are needed to accommodate increased operating expenses due to COVID-19.

- **Provide over \$30 million for the Tribal High Priority Projects Program**

**Background:** The Tribal High Priority Projects program was not funded in the Fixing America’s Surface Transportation (FAST) Act. This program previously afforded critically needed resources for projects that exceeded a tribal nation’s TTP funding, or responded to a tribal nation’s emergency or disaster that rendered a tribal transportation facility impassible or unusable. Tribal citizens often live in remote regions with crumbling or non-existent road infrastructure. Many roads devastated by years of significant adverse weather events cannot be maintained or repaired due to lack of funding, even after disasters. As communities everywhere spend more time at home due to COVID-19, road connections are especially essential in tribal communities. Restored funding for Tribal High Priority Projects is urgently needed for projects such as repairing culverts so that water can run properly, putting down gravel on a tribal road for the very first time, or digging a drainage ditch. These and other applicable projects can quickly address road access issues in remote and disconnected tribal communities that are worsened by COVID-19.

- **Create a 10% tribal-specific set-aside within the Airport Improvement Program and the Essential Air Service Program and waive the cost-share requirements for tribal applicants.**

**Background:** The Airport Improvement Program (AIP), (49 U.S.C. 471), provides grants to airports ranging in size from large publicly-owned commercial service airports to small public use privately-owned airports that are required to be available for public use. Grants may be used for the planning and development of public-use airports that are within the National Plan of Integrated Airport Systems. Pursuant to 49 U.S.C. 47102(20)(c), Indian tribes and pueblos are eligible for AIP grants. AIP provides 75% of the cost for large and medium sized airports and 95% of the cost for other (small) airports. In FY 2020, Congress appropriated approximately \$3.5 billion for AIP.

Similarly, the Essential Air Service program, established in the Airline Deregulation Act of 1978, seeks to ensure that smaller communities receive air service by subsidizing air carriers willing to provide commercial air service to communities that would otherwise receive no service. For many tribal citizens living in rural and remote areas, access to commercial flights is essential. And, in light of the pandemic, commercial carriers can also provide important cargo capabilities.

Removing the significant financial barrier of the cost-share requirement and providing a 10% tribal set aside would ensure essential services and commercial flights to tribal nations, their citizens, and the surrounding communities.

## **Education: Critical Infrastructure Funding and Access Needs**

- **Provide \$115 million for wireless hotspots for BIE students and teachers as an immediate solution to school closures.**

**Background:** Limited broadband access in Native communities continues to hamper efforts to provide effective culture-based virtual education options for Native students, particularly those who attend BIE and tribally controlled schools. In 2017, the National Center for Education Statistics reported that 36 percent of Native students nationwide did not have internet access in their homes, compared to 17 percent of white students and 18 percent of students nationwide. A 2019 report from the Center for Indian Country Development at the Federal Reserve Bank of Minneapolis further clarified that this discrepancy is more pronounced on tribal lands, where only 61 percent of households have broadband access, compared to the 70 percent average in the typical county that overlaps a reservation and the 69 percent nationwide average. Due to lack of internet access at home, BIE funded schools serving students on and near tribal lands have struggled to implement virtual education options during the COVID-19 outbreak. Wireless hotspots provide essential internet service for Native students to continue core educational programs through virtual learning tools until it is safe to return to the classroom.

- **Provide \$60 million for laptops for BIE students and teachers as an immediate solution to school closures.**

**Background:** BIE and tribally controlled schools have long been underfunded, resulting in outdated technology, infrastructure, and computer equipment. Many BIE funded schools do not have enough, if any, laptop computers to send home with students, educators, and staff to continue education in a virtual classroom. Native students must have the same access to resources as other students to ensure that current achievement and opportunity gaps do not widen due to the COVID-19 outbreak. Immediate appropriations are necessary to ensure that each student and educator at Bureau-funded schools have access to essential educational tools during this unprecedented time.

- **Provide at least \$500 million in the Interior-BIE account for a TCU Deferred Maintenance and Rehabilitation Fund, as authorized under the Tribally Controlled Colleges and Universities Assistance Act.**

**Background:** The American Indian Higher Education Consortium recently conducted a survey of 22 TCUs, which revealed a list of chronic facilities-related needs, including student and faculty housing, classrooms, libraries, and laboratories. The 22 TCUs have an estimated total need of \$332.5 million in deferred maintenance and rehabilitation and need \$558 million to fully implement existing master plans. Extrapolating this to all 37 TCUs, the total current need is \$500 million for Deferred Maintenance/Rehabilitation, and \$837 million for Completion of Master Plans.

- **Appropriate \$24 million to the USDA's Tribal College Initiative Grant Program and waive matching requirements.**

**Background:** The USDA's Rural Development Program, Tribal College and Initiative Grant Program, provides funding to 1994 Land Grant Institutions to make capital improvements to their educational facilities and to purchase equipment. Increased funding for this Program would enable TCU's to make investments in distance learning equipment to address the effect of this pandemic on students and their education.