

# Indian Programs Advance Appropriations Act of 2021

## One Pager

The federal budget is a reflection of the extent to which the United States honors its promises to Tribal governments and American Indian/Alaska Native peoples to provide for basic government and health services. However, since 1998 Congress has not enacted federal appropriations bills in a timely manner, thus hampering Tribal programs budgeting, recruitment and retention of personnel, the provision of services, facility maintenance, and construction efforts. Most concerning, the lack of timely funding for key federal programs that serve Tribal Nations endangers health, life, safety and education of beneficiaries and facilities.

Since FY1997, Indian programs have received full-year appropriations by the start of the fiscal year once (in FY2006). As a consequence, activities generally have been funded for a portion of each year under a continuing resolution (CR). Receiving its funding under a CR has limited the activities that federal agencies serving Native Americans can undertake, in part because they can only expend funds for the duration of a CR, which prohibits agencies from making longer-term, potentially cost-saving purchases.

Advance appropriations is a budgetary solution that would protect these services from future lapses in appropriations and ensure they do not count against spending caps. The Indian Health Service (IHS) and Bureau of Indian Affairs (BIA), including the Bureau of Indian Education (BIE), fund many critical public services for Tribal Nations, including hospitals, schools, law enforcement, child welfare programs, and more. Moving federal Indian programs including BIA, BIE and IHS to the advance appropriations process will protect Tribal governments from cash flow problems that regularly occur due to delays in the enactment of annual appropriations legislation. President Biden affirmed this solution by putting advance appropriations for Fiscal Year 2023 in his Fiscal Year 2022 budget request for the Indian Health Service.

The *Indian Programs Advance Appropriations Act of 2021* will provide funding certainty for IHS, BIE and BIA by authorizing select accounts in their budgets to be funded a year in advance. Specifically, the bill provides for advance appropriations for: BIA Operation of Indian Programs, Contract Support Costs, Indian Guaranteed Loan Program, Payments for Tribal Leases, and Construction; BIE Operation of Indian Education Programs and Education Construction; and IHS Indian Health Services, Contract Support Costs, Payments for Tribal Leases and Indian Health Facilities. The bill also requires the President's budget and the supporting documents submitted to Congress to include detailed estimates related to the advance appropriations and includes advance funding for contract support costs and Tribal leases to provide certainty for Tribal Nations who operate IHS or BIA programs under self-governance contracts and compacts. Providing federal funds for these programs a full year in advance will ensure that the nation can better meet its commitment to safeguard the health, life safety and education of Indian programs and uphold trust and treaty responsibilities to Tribal governments and program beneficiaries. If advance appropriations are enacted for BIA, BIE and IHS, they would provide Tribal Nations with a stable budget to fulfill the federal trust obligations within those agencies.

# Background

## Indian Health Service.

IHS within the Department of Health and Human Services (HHS) is the lead federal agency charged with improving the health of American Indians and Alaska Natives. IHS is the only major federal provider of health care that is solely funded through regular appropriations on an annual basis. Other federal health care providers, such as the Veterans Health Administration (Department of Veterans Affairs, (VA)), receive the majority of their funding through advance appropriations, and a number of health programs, including Medicare and Medicaid, receive mandatory funding, which is controlled outside of appropriations acts. Since FY1997, IHS has once (in FY2006) received full-year appropriations by the start of the fiscal year. As a consequence, IHS activities generally have been funded for a portion of each year under a continuing resolution (CR). Receiving its funding under a CR has limited the activities that IHS can undertake, in part because IHS can only expend funds for the duration of a CR, which prohibits the agency from making longer-term, potentially cost-saving purchases.

Currently, over 60 percent of funding appropriated for the IHS is administered by Tribes in carrying out health programs under the Indian Self-Determination and Education Assistance Act (ISDEAA). Tribally-operated health programs are disproportionately affected by disruptions in federal appropriations since they rely on IHS funding transferred through ISDEAA contracts and compacts, but are not authorized the same emergency authorities granted to federal agencies during a lapse. Under a CR, these contracts can be issued only for the duration of the CR and must be reissued for each subsequent CR (or when full-year appropriations are enacted). This can be a time-consuming process for both IHS and Tribes, which may divert resources from other needed activities. The *Indian Programs Advance Appropriations Act* will would make funds available at the start of a fiscal year that comes after the fiscal year for which that appropriations act was enacted. For example, an advance appropriation in an FY2021 appropriations act would provide budget authority that would become available at the start of FY2022 (or later).

The *Indian Programs Advance Appropriations Act* could help ensure that full-year funding is available at the start of the fiscal year, and that IHS is not subject to a funding lapse or a temporary appropriation. Such funding might pose certain operational challenges to the agency and budget process concerns to Congress. Advance appropriations for the IHS could ensure continuity of health care provided to American Indian and Alaska Native people, especially in the event of a lapse in appropriations. During regular order, it could enable timely and predictable funding for IHS-funded programs. Advance appropriations could mitigate the effects of budget uncertainty on the health care programs operated across the Indian health system. The IHS could disburse funds more quickly, which could enable IHS, Tribal, and urban Indian health program managers to effectively and efficiently manage budgets, coordinate care, and improve health quality outcomes for American Indians and Alaska Natives. This planning stability could reduce unnecessary contract and administrative costs. Funding continuity could also alleviate concerns from potential recruits, especially health care providers, about the stability of their employment.

## **Bureau of Indian Education.**

The majority, but not all, BIE appropriations are forward funded in accordance with 25 USC 1810(b) and 2010(a)(2); while the remainder is regular budget year appropriations. The forward funds become available during the last quarter of the budget year. For example, in an appropriations act for FY2022, budget authority that is forward funded would become available during FY2022, but not until July 1, 2022, and would remain available through September 30, 2023. Forward funding is provided for many education programs to allow additional time for school officials to develop budgets in advance of the beginning of the school year and to better align federal appropriations with the fiscal year used by many school districts, which runs from July 1 to June 30. Most of the elementary and secondary education appropriations have been forward funded since at least FY1999. Provisions in the FY2010, FY2016, and FY2018 appropriations acts transitioned three Tribal college programs to forward funding.

The *Indian Programs Advance Appropriations Act* would authorize new budget authority for the same fiscal year as the bill and for the subsequent fiscal year (e.g., advance appropriations). Advance appropriations are enacted one or more fiscal years prior to when they become available. For example, in an appropriations act for FY2022, funds would generally become available for obligation at the start of the fiscal year—October 1, 2021. Advance appropriations in this FY2022 act, however, would not become available until the start of FY2023—October 1, 2022—or later. These provisions in appropriations acts could result in:

- No change in the way appropriations are provided.
- Appropriations that are currently regular budget year appropriations could be transitioned to advance appropriations (e.g., FY2022 appropriations act funds become available on October 1, 2022).
- Appropriations that are currently forward funded could:
  - (a) remain forward funded in the current budget year (e.g., FY2022 appropriations act funds become available on July 1, 2022);
  - (b) be provided as advance appropriations (e.g., FY2022 appropriations act funds become available on October 1, 2022); or
  - (c) be provided through a mix of forward funding and advance appropriations.

## **Bureau of Indian Affairs.**

The majority of BIA's budget is provided through discretionary funding, and of IHS, BIE and BIA would stand to benefit the most from advance appropriations. Congress and the Administration generally provide discretionary appropriations to BIA in annual appropriations laws for the Department of the Interior (DOI), Environment, and Related Agencies. (For more information on FY2021 BIA Appropriations, see [The Bureau of Indian Affairs: FY2021 Appropriations](#).) BIA discretionary appropriations are provided through several accounts. Operation of Indian Programs is BIA's largest account. Other accounts include: Contract Support Costs, Construction, Indian Land and Water Claim Settlements and Miscellaneous Payments to

Indians, the Indian Guaranteed Loan Program, and Payments for Tribal Leases. Each of these accounts are included in the bill.

While the majority of BIA's budget is provided through discretionary funding, the BIA does receive some mandatory appropriations. (For general information on mandatory appropriations, see [Overview of Funding Mechanisms in the Federal Budget Process, and Selected Examples](#).) For example, in FY2020, the BIA received an estimated \$159.4 million in enacted mandatory appropriations. DOI (among others) sometimes refers to mandatory appropriations as *permanent appropriations* or *permanent authority*. In contrast, the BIA received \$2.047 billion in enacted discretionary funding for FY2020 (though more recent data show a discretionary total of \$2.032 billion). (See page 4 of [DOI's 10 Year Appropriations History Table](#) from DOI's Office of Budget's [Budget Background Information website](#).) The bill does not include mandatory appropriations accounts for the BIA.

Unlike the BIE, the BIA does not have programs that are forward funded. Thus, discerning how advanced appropriations might impact forward funded programs is not an issue for BIA programs.

The *Indian Programs Advance Appropriations Act* would authorize new budget authority as provided in an appropriations act for each fiscal year, beginning in 2022, and for the subsequent fiscal year (e.g., advance appropriations). Thus, provisions in appropriations acts could result in the following potential outcomes for BIA programs:

- Under the bill, the applicable Secretary would be required to provide estimates of appropriations for the upcoming fiscal year and the next fiscal year.
- No change in the way appropriations are provided. For example, if the provisions in the bill were enacted providing the authority for advance appropriations, there could be no change in how appropriations are provided if the appropriations law does not in fact include advance appropriations.
- Appropriations that are currently regular budget year appropriations (i.e. discretionary appropriations for BIA programs) could be transitioned to advance appropriations.