

September 29, 2022

Ad Hoc Committee on Racial and Ethnic Health Inequities
National Academies of Sciences, Engineering, and Medicine

To the Members of the Ad Hoc Committee:

On behalf of Child Trends, I am proud to submit the enclosed response to the Ad Hoc Committee's request for input on federal policies that contribute to racial and ethnic health inequities. The response is authored by Child Trends researchers Heather Sauyaq Jean Gordon, PhD, Deana Around Him, DrPH, and Elizabeth Jordan, JD, and is fully endorsed and supported by Child Trends.

Thank you for your efforts to promote health equity and for the opportunity to provide input to your work.

Sincerely,



Carol Emig
President

Federal Policies That Contribute to Racial and Ethnic Health Inequities and Potential Solutions for Indigenous Children, Families, and Communities

Heather Sauyaq Jean Gordon, Deana Around Him, and Elizabeth Jordan

Dear Committee of the National Academies of Sciences, Engineering, and Medicine:

We are grateful for this opportunity to provide examples of how federal policies contribute to racial and ethnic health inequities for Indigenous children and families. As we describe below, due to Federal Indian Law, Indigenous communities have faced unique traumas and challenges from a history of colonization and genocide; however, they also bring incredible strengths and protective factors that could be better supported through federal policy. We believe the federal government has a key role to play in reducing disparities for Indigenous communities through changes to federal policies that currently foster inequities in the health and well-being of Indigenous children and families.

Throughout these comments, we use the terms **Indigenous Peoples, Indigenous Nations, and Indigenous communities** to refer to Alaska Natives (Indigenous Peoples from lands presently known as Alaska), American Indians (Indigenous Peoples from lands presently known as the contiguous 48 states), Native Hawaiians (Indigenous Peoples from lands presently known as Hawaii), Other Pacific Islanders (Indigenous Peoples from lands presently known as the Pacific Islands), and descendants of the Taino (living primarily in lands presently known as Puerto Rico). These are Peoples who existed in the United States (U.S.) and U.S. territories prior to European/Russian colonization beginning in the late 1400s.

Background on Child Trends and Our Researchers

Child Trends is a highly respected, nonpartisan research organization focused exclusively on improving the lives and prospects of children, youth, and their families. Our researchers and evaluators have decades of experience providing research support and technical assistance to a variety of leaders, including Tribal Nations, programs serving Indigenous children and families, early childhood programs, and states. We also provide research, analysis, and technical assistance services through grants and contracts from several federal offices, including the Administration for Children and Families (ACF).

Our research experience and academic credentials show our commitment to working with Indigenous communities to achieve community well-being. Our researchers' close collaborations with Indigenous communities have included teaching, supporting and leading research projects, providing capacity building to communities and researchers, and supporting relationship building between Indigenous communities and researchers to create mutually beneficial research. We have backgrounds in the social determinants of health and the life course approach to health, training in maternal and child health, and experience working with Indigenous communities to develop and adapt interventions, build public health research and evaluation capacity, and strengthen knowledge and infrastructure in the areas of research oversight and ethics. We also

have experience with participatory approaches to research, including community-based participatory research (CBPR) or community-led approaches with Indigenous communities. Our recent Comments on Technical Assistance Needs and Priorities on Implementation and Coordination of Early Childhood Development Programs in American Indian and Alaska Native Communities provide extensive¹ information on how to work with Indigenous Peoples—insights that will be vital in addressing federal policy changes.

Our research team also includes a prior employee of the Administration for Native Americans who worked closely with prospective grantees, helping them develop rigorous evaluation plans for their projects; these plans included clearly defined objectives, goals, and steps to accomplish goals. In that role, this researcher also worked with the Native Youth Initiative for Leadership, Empowerment, and Development (I-LEAD) grantees, sharing strategies on engaging youth through photovoice (a participatory research method that asks youth to take photos of their communities to more authentically document and reflect on reality), talking about culture as a protective factor, and reviewing futures scenarios to help Indigenous youth reach an optimistic future and have positive outlooks. They also advised ACF on the missing and murdered Native Americans crisis and on methods for research and evaluation with Indigenous Peoples.

Federal Efforts to Achieve Racial and Ethnic Equity for Indigenous Peoples Should Emphasize Decolonization and Support Tribal Sovereignty and Self-determination

Much of federal policy, statute, and case law (especially Federal Indian Law and past and present policies) affects the health of Indigenous Nations, Peoples, and communities in the United States and U.S. territories. Colonization, which is ongoing and pervasive in federal policy, continues to negatively affect the health² of Indigenous Peoples and communities. Relationships between Indigenous Peoples and foreign governments began with treaties³ (many which have since been broken) and continue today in case law, statute, and policy. This body of policy, also known as Federal Indian Law,⁴ directly impacts the health of Indigenous communities (Image 1). Research demonstrates a loss of both sovereignty and the ability for Indigenous Peoples to practice their self-determination (defined by the United Nations Declaration on the Rights of Indigenous Peoples as the right of Peoples to “freely determine their political status and freely pursue their economic, social and cultural development”)⁵ in Indigenous communities.

Figure 1: Adverse Outcomes of Federal Indian Law⁶



Image source: Hoss, A. (2019). Federal Indian law as a structural determinant of health. *Journal of Law, Medicine & Ethics*, 47(S4), 34-42.

Indigenous Nations are inherently sovereign⁷ based on their governments’ existence prior to colonization; however, Federal Indian Law places “practical” limits on Tribal sovereignty,⁸ in that the U.S. government

provides their own interpretation of how it can exist. The U.S. federal government only recognizes the sovereignty of 574 Tribal Nations.⁹ Dozens more Tribes are unrecognized by the federal government and may be working toward recognition,¹⁰ including some Tribes that lost recognition during the Termination Era¹¹ (1945-1960)—when the federal government took away federal recognition and land in an attempt to dissolve Tribal governments and assimilate their populations (Native Hawaiians, Other Pacific Islanders, and Taino descendants do not have any federal recognition of their sovereignty).

Earlier case law also aimed to take land. Three U.S. Supreme Court cases known as the Marshall Trilogy¹² (*Johnson v. McIntosh* in 1823,¹³ *Cherokee Nation v. Georgia* in 1831,¹⁴ and *Worcester v. Georgia* in 1832¹⁵) took Indigenous lands through the Doctrine of Discovery.¹⁶ The cases limited who Tribes could sell or cede land to¹⁷ (only the federal government); characterized Tribes as “domestic dependent nations¹⁸” and related them to the United States as a “ward to his guardian,” such that the United States had trustee responsibilities to protect their resources and well-being and provide educational services; and determined that, although considered “dependent” on the U.S. government, Tribes have the “right to self-government.” While these cases restricted the external powers of Indigenous Peoples, they also recognized limited but persistent Tribal sovereignty over Tribal lands and members. In 1886, the U.S. Supreme Court decided *United States v. Kagama*,¹⁹ which gave the U.S. Congress “plenary power” to extinguish Tribal sovereignty (in the practical sense) at any time.

Beyond limiting sovereignty, federal policy has also caused great harm to Indigenous Peoples’ health and well-being through warfare,²⁰ disease,²¹ deceitful treaties,²² slavery,²³ and forced relocation—practices considered justified by the *Doctrine of Discovery*.²⁴ The *Indian Removal Act* of 1830²⁵ forced tens of thousands of American Indians from their homelands in the southeastern United States to lands roughly 1,000 miles away. Thousands died from disease, winter weather, and starvation along what is now described as the Trail of Tears.²⁶ The 1887 Dawes Act²⁷ further disrupted Indigenous communities when it deliberately broke up reservation land and sold it to non-Native people. In 1968, Congress passed the *Indian Civil Rights Act* (ICRA),²⁸ which described the limited governmental powers Indigenous Nations are allowed to possess, according to their colonizer, the U.S. government.

The United States purchased Alaska from Russia in the 1867 *Russian-U.S. Treaty of Cession*,²⁹ even though Alaska Natives did not recognize Russia as the owners of Alaska. The United States annexed Hawaii in the 1898 Newlands Resolution,³⁰ claiming ownership of all islands of Hawaii without the consent of the Hawaiian sovereign government. Territories with Indigenous populations were acquired through the 1898 Treaty of Paris³¹ (Guam, Puerto Rico); the 1900 and 1904 cessions of the islands of Tutulia and Manu'a,³² respectively, and a 1925 act of the U.S. Congress relating to Swain Island (American Samoa); and the 1947 United Nations *Trust Territory of the Pacific Islands*³³ (Commonwealth of the Northern Mariana Islands). Most Indigenous Peoples in the United States and its territories have had most, if not all, of their land taken by the United States. Kimmerer explains,³⁴ “To the settler mind, land was property, real estate, capital, or natural resources. But to our people, it was everything: identity, our connection to the ancestors, the home of non-human kinfolk, our pharmacy, our grocery store, our library, the source of everything that sustained us.”

Further assimilation practices have also led to loss of life, cultures, and languages. These include forced and coercive attendance at government and missionary boarding schools³⁵ beginning in the 1800s, which did not allow Indigenous cultures or languages; restrictions on spiritual practices through the *Religious Crimes Code* in 1883,³⁶ which were not lifted until the U.S. Constitution’s First Amendment rights were granted to Indigenous Peoples in the *American Indian Religious Freedom Act* of 1978³⁷ (even though their U.S. citizenship had been established in the 1924 *Indian Citizenship Act*³⁸); sterilization of American Indian women³⁹ without their consent by the U.S. Indian Health Service; and disconnection fostered by the 1940s and 1950s *Indian Relocation Program*,⁴⁰ which decreased funding to reservations and moved Native people from reservations to cities with little preparation or support.

Federal policy efforts that attempt to address race equity and health for Indigenous Peoples and communities should emphasize decolonization.

Health inequities experienced by Indigenous Peoples are directly linked to their colonization⁴¹ through treaties, case law, statutes, and policies, which over time have included genocide⁴² through wars and massacres⁴³; diseases⁴⁴; forced removal from their homelands⁴⁵; boarding schools and related assimilation policies⁴⁶; racism⁴⁷; and legislation suppressing cultures,⁴⁸ religions,⁴⁹ and languages⁵⁰. Colonization is not over⁵¹: There has never been decolonization or an overhaul of Federal Indian Law and the policies, case law, and legislation that continue colonization of Indigenous Peoples.

Colonization results in historical trauma,⁵² which is the cumulative emotional and psychological wounding that Indigenous people experience over their lifespans and across generations. Historical trauma impacts the well-being⁵³ of Indigenous individuals, families, and communities. Increased cumulative stress from historical trauma⁵⁴ can have direct, negative impacts on health and drive the adoption of unhealthy behaviors, resulting in adverse mental,⁵⁵ behavioral, physical, social, and relational health⁵⁶; high rates of suicide,⁵⁷ substance misuse,⁵⁸ adverse childhood experiences,⁵⁹ poverty,⁶⁰ maternal morbidity and mortality,⁶¹ food insecurity,⁶² rape, assault,⁶³ and homicide⁶⁴; overrepresentation in the criminal justice system⁶⁵; environmental injustice⁶⁶; and more. These disparities are maintained by colonizing federal policies, case law, and statutes (Image 2).

Figure 2: Logic Model Linking Federal Indian Law to Adverse Health Outcomes⁶⁷



Image source: Hoss, A. (2019). Federal Indian law as a structural determinant of health. *Journal of Law, Medicine & Ethics*, 47(S4), 34-42.

Federal policies should promote and support Indigenous cultures, which serve as a preventive and protective factor against colonization and historical trauma⁶⁸ for Indigenous children and families and build Indigenous community resilience⁶⁹ against adverse health outcomes. Federal policies should reflect what Indigenous Knowledge has known for millennia and what a growing body of research tells us—that an asset-based approach⁷⁰ that recognizes culture as a protective and preventive factor improves Indigenous child and family well-being. There are six primary areas of Indigenous cultures linked to protective and preventive results, including 1) enculturation and Indigenous identity formation⁷¹; 2) traditional activities and games⁷²; 3) relationships with the land,⁷³ including subsistence and traditional foods; 4) social connectedness⁷⁴ among family, across generations and with Elders, and with community; 5) Indigenous languages⁷⁵; and 6) spirituality and ceremonies.⁷⁶

Indigenous health and well-being are tied to Indigenous relational perspectives⁷⁷ on the natural world, traditional healthy foods, and passing on cultural practices. Subsistence is an important aspect of well-being for Indigenous Peoples and means more⁷⁸ than just hunting, fishing, and gathering food. Indigenous Peoples see subsistence as part of spirituality⁷⁹ and way of life,⁸⁰ and as a way to relate to the natural world and steward it as protectors and keepers while it provides food for survival. Subsistence is intricately related to Indigenous Peoples' overall sense of well-being,⁸¹ and passing on subsistence practices gives younger generations grounding in their culture (which, in turn, is protective).

Federal Indian Law is an extensive amassing of case law, statutes, and policies that legalize past and present colonization and genocidal practices.⁸² It is directly tied to health disparities as a structural determinant of health through termination of Tribes⁸³ (explained above), hyperregulation of Indigenous Peoples and citizenship through blood quantum,⁸⁴ and removal of Indigenous ownership and access to ancestral sacred

lands and waters.⁸⁵ At present, Federal Indian Law sustains the U.S. government as a guardian of Indigenous Peoples⁸⁶—able to use plenary power,⁸⁷ break treaties,⁸⁸ and dictate consultation⁸⁹ (a trust responsibility established by treaties)—leading to decisions that inhibit Tribal jurisdiction over their lands and citizens.

Until the harm caused by Federal Indian Law is addressed, it will continue the genocide of Indigenous Peoples in the United States and its territories. From 1492 to now, it's estimated that 13 million Indigenous people have died⁹⁰ on present-day U.S. lands. As defined by Polish lawyer Raphael Lemkin,⁹¹ “genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be the disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups.”

Response to Question 1: Examples of Federal Policies That Create Racial and Ethnic Health Inequities for Indigenous Communities

In this section, we outline five ways in which federal policies create health inequities for Indigenous Peoples and negatively impact the community and cultural context for Indigenous children and families. Although we do not provide a comprehensive accounting of all Federal Indian Law, the categories are helpful for organizing the overarching policy issues.

First, policies that diminish Indigenous sovereignty and self-determination create health inequities for Indigenous children, families, and communities. Past and present colonization by the United States suppresses the freedom of Indigenous Nations to be self-determining. As Dr. Darlene Sambo Dorough (Iñupiaq Indigenous rights advocate) explained,⁹² when “self-determination is denied, the repercussions are felt by its individual members and overall Indigenous communities are destroyed or become vulnerable to destruction.” Self-determination is a right⁹³ outlined in the United Nations Declaration on the Rights of Indigenous Peoples. Makau W. Mutua, JD emphasized⁹⁴ that “The most fundamental of all human rights is that of self-determination ... Without this group or individual right, no other human right could be secured, since the group would be unable to determine for its individual members under what political, social, cultural, economic and legal order they would live.”

Self-determination is a freedom required for well-being⁹⁵ and survival,⁹⁶ and Indigenous Nations practice it through self-government,⁹⁷ subsistence,⁹⁸ fate control,⁹⁹ freedom,¹⁰⁰ and cultural regeneration and maintenance.¹⁰¹ When Indigenous Peoples are removed from their traditional lands and food sources, stripped of their identity through assimilation practices, and have their sovereignty limited, these practices lead to a lack of wellness. The well-being of Indigenous children and families is directly impacted by policies that limit self-determination and impede Indigenous Peoples’ access to protective cultural practices (e.g., healthy traditional foods) and ability to provide safe homes and communities. A recent study found that putting decision-making power in the hands of Indigenous Nations¹⁰² to address their own lives is the best way to deal with colonialism, especially as Indigenous Peoples may hold values different from the majority population.¹⁰³ Example policy areas in which Indigenous sovereignty and self-determination are diminished include:

- **Public Law 83-280 (PL-280)**, enacted by Congress in 1953, infringes on Tribal sovereignty¹⁰⁴ by granting states concurrent/shared jurisdiction with Tribes over crimes committed on Indian Country/Reservation lands and civil jurisdiction over civil suits arising on Indian Country/Reservation lands filed in Tribal or federal courts. PL-280 has been, and continues to be, opposed by Indigenous

Nations¹⁰⁵ due to its failure to recognize and respect Tribal sovereignty and self-determination. It is also often cited as a rationale for denying Tribes law enforcement funding,¹⁰⁶ leading to complex legal and safety concerns.

- The **Violence Against Women Act (VAWA)** diminishes Tribal sovereignty and jurisdiction—for example, by placing limits on Tribes' ability to prosecute offenders,¹⁰⁷ which then leads to a lack of safety.
- Policies that disproportionately impact **voting rights for Indigenous people** silence their voices on issues important to the well-being of their children, families, and communities and should be addressed by the federal government. Indigenous populations are more likely to experience barriers to voting,¹⁰⁸ such as poverty and rurality, and to live in states with ongoing efforts to restrict voting rights.¹⁰⁹
- The U.S. government has **broken treaties with Indigenous Nations**, which Indigenous Nations continue to honor. The consequences of broken treaties include the taking of additional land,¹¹⁰ the failure to provide adequate health care¹¹¹ and education,¹¹² and many other issues that affect children and families' well-being.

Second, policies that erode Indigenous rights to land stewardship and subsistence damage the relationship between Indigenous Peoples and the natural world and create health inequities by harming food security, the ability to pass on protective cultural ways, and access to healthy traditional foods.

Examples of specific policies that erode Indigenous rights to land stewardship and subsistence include:

- The **Alaska Native Claims Settlement Act (ANCSA)**¹¹³ removed all but one Alaska reservation and all Alaska Native subsistence rights on state and federal land, which are vital to health and well-being.
- The **Alaska Federal Subsistence Board**¹¹⁴ is made up of five federal organizational leaders (historically non-Indigenous) and provides only three spaces for subsistence users. The board's structure results in Indigenous people being outvoted in all decisions and should be more equitably organized.¹¹⁵ The current system limits access to subsistence,¹¹⁶ which is essential for Indigenous spiritual and cultural health, cultural continuity, and access to healthy traditional foods.

Third, policies that reinforce blood quantum are a codification of race and prevent Indigenous people from having unified communities and passing protective cultural ways to future generations. Indigenous people do not see themselves as being a "percentage" Indigenous. This type of external classification conflicts with Indigenous cultures, causes community stratification, and damages well-being. However, federal policies promote or reinforce this idea in many ways. For example:

- Indigenous people are the only population in the United States that has their **blood degree codified in Federal law**. Citizens of federally recognized Tribes get a Certificate Degree of Indian Blood card¹¹⁷ from the Bureau of Indian Affairs to prove their Indigeneity for services from the federal government. Blood quantum leads to community stratification, as people with low blood quantum may not be eligible for Tribal membership¹¹⁸; previously, this was not part of Indigenous culture, and marrying across Tribes and adopting people into Tribes was common. Policies that reinforce blood quantum can tear families apart and take away an individual's identity. Some Indigenous people fear that blood quantum will be used to enact a "paper genocide."¹¹⁹
- The **Marine Mammal Protection Act (MMPA)**¹²⁰ says that Alaska Natives must be at least one-fourth blood quantum to harvest marine mammals and use their products. When an Alaska Native child's blood quantum is below this threshold due to mixed heritage, the child can watch their parents¹²¹ but not engage in these activities. MMPA is problematic as it prevents cultural transmission and poses food security issues for families who depend on marine mammals for food.
- The **Hawaiian Homes Commission Act (HHCA)**¹²² says that Native Hawaiians must have at least 50 percent Native Hawaiian blood to be eligible for a homestead lease. In addition to facing long waitlists

and being awarded land that is not suited for agriculture, lessees can only pass the land on to eligible relatives with at least 25 percent Native Hawaiian blood.

Fourth, health care for Indigenous people (part of the federal trust responsibility, codified in the Snyder Act¹²³) is chronically underfunded, lacks adequate infrastructure, and is difficult to access, all of which perpetuate grave health inequities for Indigenous children, families, and communities. For example:

- The Indian Health Service (IHS) is grossly underfunded,¹²⁴ resulting in **limited access to care within the diverse areas where Indigenous people live.** Approximately 70 percent of Indigenous people live outside of reservation lands,¹²⁵ yet only 25 percent of those in urban areas¹²⁶ have access to an IHS facility in their county.
- IHS underfunding (less funding than Medicare, Medicaid, and Veterans Affairs per person) results in **inadequate facilities and care.**¹²⁷ This was evident as Indigenous populations died at disproportionate rates¹²⁸ during the COVID-19 pandemic.
- On average, IHS facilities are nearly four decades old.¹²⁹ **Indigenous people are not able to fully benefit from current and emerging health care technology.**
- IHS should receive **advanced appropriations.**¹³⁰ The Affordable Care Act offered relief to Tribal communities that had previously needed to advocate for increased funding and extended access to health care choices for Indigenous people, but these communities must still expend constant energy to receive additional dollars, rather than simply having it appropriated in the federal budget. IHS should also receive mandatory funding¹³¹ so that government shutdowns do not impact communities' access to care.
- Indigenous families need improved **access to standard health care services across the lifespan that are culturally appropriate.** Indigenous populations face disproportionately high maternal and infant mortality¹³² rates and need additional supports to provide high-quality Elder care.¹³³

Fifth, chronic underfunding of education (part of the federal trust responsibility)—as well as barriers to federal funding for infrastructure and other services—perpetuate social and economic inequities that contribute to health inequities for Indigenous communities. For example:

- The U.S. Census is known for **undercounting Indigenous people,**¹³⁴ producing inaccurate data on where Indigenous people live and making it difficult to appropriately direct funding to support their well-being. Inadequate data collection results in an incomplete understanding of the range of inequities experienced by Indigenous people and prevents efficient responses to public health emergencies like the COVID-19 pandemic.¹³⁵ Federal policies should promote the use of best practices in data collection¹³⁶ for Indigenous populations.
- Bureau of Indian Education **schools need increased funding**¹³⁷ to improve facilities and services, retain staff, support culturally grounded learning and evaluation, and promote student success. Increased funding is also needed to support the large number of Indigenous students who are educated in public school systems.¹³⁸
- Increased investments are needed to address the trauma, and loss of culture and language, that resulted from federal boarding schools and assimilation policies. Historically, the federal government poured thousands of dollars¹³⁹ into these efforts to extinguish Indigenous languages and cultures, a practice that did not change until the 1990 passage of the Native American Languages Act Public Law 101-477.¹⁴⁰ Matching those funds in today's dollars to **support cultural and language revitalization** would promote healing and have long-term impacts on well-being. For example, the Administration for Native Americans funding for Native language revitalization¹⁴¹ programs could be increased and be noncompetitive.

- In many rural and reservation areas, there is a history of **inadequate funding for infrastructure** to meet basic needs¹⁴² such as housing, water, sewage and waste, and electricity, as well as technological needs¹⁴³ such as fiber/broadband internet and cellphone towers.¹⁴⁴
- Criminal justice is also underfunded and, when mixed with the jurisdictional restrictions noted above, results in public safety issues¹⁴⁵ like the missing and murdered Indigenous relatives crisis. Federal policies that address infrastructure needs in Indigenous communities will also address health inequities faced by Indigenous children and families.

Response to Question 2: There Are Encouraging Federal Policies to Promote Health Equity for Indigenous Children and Families, but Additional Steps Must Be Taken to Support Full Implementation

Since the 1970s Self-Determination policy era,¹⁴⁶ Congress has passed a number of federal statutes that promote Tribal self-determination and self-government. Many of these laws were passed due to strong advocacy by Indigenous Nations and people. For example, the 1975 Indian Self-Determination and Education Assistance Act¹⁴⁷ created opportunities for Indigenous Nations to engage in more self-governance. With greater attention to their full implementation, many other federal policies and practices can also promote Indigenous health equity.

First, government acts and policies written specifically to improve the well-being of Indigenous populations are vulnerable to being rescinded, or are being implemented in ways that are detrimental to the health of Indigenous children and families.

- The **Snyder Act**,¹⁴⁸ which formalized creation of the Indian Health Service (IHS), is not fully implemented as required by the federal trust responsibility. As noted above, IHS is underfunded and not accessible to many Indigenous people. Additionally, many IHS patients report substandard care that is not culturally responsive. Patients also report that current feedback mechanisms may not capture service issues¹⁴⁹ due to the ways in which questions are asked. Staff providing health care to Indigenous communities should receive training on historical trauma and survivor-centered and trauma-informed approaches to care.¹⁵⁰
- The 1978 **Indian Child Welfare Act (ICWA)**¹⁵¹ was passed to stop the systematic removal of Indigenous children from their parents, families, and Tribal Nations. However, the accessibility of ICWA protections varies. For example, families and Tribes may not have access to attorney fees for raising an ICWA violation or appealing ICWA decisions. ICWA is also challenged in its application—with recent cases invoking the concept of minimum blood quantum¹⁵² in considerations of who qualifies as an Indigenous child (rather than appropriately focusing on Tribal citizenship/eligibility) and through the exclusion of Native Hawaiian and other Pacific Islanders in ICWA.
 - The 1990 **Native American Graves Protection and Repatriation Act**¹⁵³ was passed to protect Indigenous gravesites and repatriate remains, as well as items taken from graves. However, this protection has been ignored as recently as 2020, when areas containing sacred lands and ancestral graves in Arizona were blasted as part of barrier construction along the U.S. southern border. For many Indigenous people, well-being today is connected to the past and future, and such acts cause relational harm.
 - Following removal and relocation to reservations, Indigenous people began to starve without access to traditional subsistence foods and fertile lands. In response, the federal government

began providing food rations, a practice that continues today with the **distribution of commodity foods** and the Food Distribution Program on Indian Reservations.¹⁵⁴ Healthy, natural, traditional foods were replaced¹⁵⁵ with canned beef, salted pork, wheat flour, and refined sugar, which over time have contributed to high rates of obesity, Type 2 diabetes, and high blood pressure.¹⁵⁶ Increasing access to traditional foods within these federal food programs would improve health.

Second, despite increasing federal investments in programs and services for Indigenous Peoples that can reduce disparities, resources are inadequate to meet federal obligations and inaccessible to many communities. The following circumstances create environments wherein Indigenous Nations may not feel appropriately consulted or qualified to apply for funding, or feel that their specific needs are being met regarding issues related to the well-being of their children, families, and communities.

- **Requiring a competitive funding process** for Indigenous Nations, while states have noncompetitive funding, creates inequities. For example, states are allocated Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program¹⁵⁷ funding, whereas Tribes must apply for Tribal MIECHV through a competitive process.
- Indigenous Nations lack the same **access to Federal Emergency Management Agency services**¹⁵⁸ as states in post-disaster situations. This can leave Tribes reliant on states to receive funds despite the federal government's trust responsibility to Tribes, and may delay access to emergency aid for Indigenous children and families.
- Federal program officers and grant reviewers **need training**¹⁵⁹ on colonization, Indigenous Peoples and cultures,¹⁶⁰ sovereignty, and Indigenous research approaches and methodologies. Such training would help them solicit proposals that align with the health needs and priorities of Indigenous communities, accurately evaluate submissions from Indigenous applicants (e.g., understand that funding for food at gatherings is culturally appropriate, and see Indigenous spirituality as part of well-being¹⁶¹ and different from western organized religion), and fund ethical and culturally and scientifically rigorous projects. Funding for federal programs and services increasingly requires that prevention and intervention services be evidence-based; however, many culturally grounded Indigenous programs and practices have not been evaluated in ways that meet western scientific standards of rigor. The research enterprise needs a better understanding of the context and needs of Indigenous communities to support efforts to address health inequities.
- Federal funding agencies should embrace **Indigenous Data Governance and Sovereignty**¹⁶² as a key principle in the ethical conduct of research with Indigenous Peoples. CARE data principles¹⁶³ include Collective benefit, Authority to control, Responsibility, and Ethics regarding Indigenous Data Governance. Indigenous Peoples, communities, and individuals own their data and federal agencies should strive to avoid issues and project delays if Indigenous Peoples do not want their data shared or public. The Urban Indian Health Institute¹⁶⁴ has multiple reports on best practices for data collection.¹⁶⁵
- **Grant opportunities that require a Tribal match** are extremely difficult for Indigenous Peoples, as many do not have a tax base or way to generate the matching funds other than grants.
- Federal **investments in Indigenous public health need to be tailored to Indigenous cultures** to reduce inequities that may be unique to these communities. For example, ACF's Missing and Murdered Native American (MMNA) framework¹⁶⁶ cites protective factors from the Center for the Study of Social Policy that do not speak specifically to Indigenous populations, cultures, histories, lived experiences, or the MMNA crisis, which could signal the ACF's lack of understanding of how to approach such a painful issue for Indigenous communities.
- With the 1975 *Indian Self-Determination and Education Assistance Act*¹⁶⁷ and later amendments, **federally recognized Tribes can contract and compact with federal agencies** like the Department of Interior and IHS. Tribes can receive federal funding to operate their own services and programs (e.g., IHS funding can support a Tribally operated health clinic). This process has opened self-determination opportunities and

shown that Tribes can administer successful, culturally connected programs and services¹⁶⁸ in their communities. Tribes have asked for more federal agencies to engage in contracting and compacting. For instance, ACF has repeatedly been asked to consider contracting and compacting in lieu of its current models that are often competitive and report heavy.

- The federal government requires federal agencies to engage in **consultation with Indigenous Peoples**.¹⁶⁹ Consultation is often regarded as not meaningful¹⁷⁰ and recommendations from consultations are frequently not acted upon.¹⁷¹ Additionally, consultation often neglects the perspectives of state-recognized, unrecognized, Native Hawaiian and other Pacific Islanders, and urban Indigenous centers. Although consultations are typically recorded with transcripts posted online, there is often no report explaining how the agency will address what was learned from the consultation. For example, the Operation Lady Justice (OLJ) consultations resulted in a Year 1 report¹⁷² that lists only the locations and dates of consultations, with no qualitative data analysis and only summaries of the discussions. Additionally, with administration changes, agencies tend to not coordinate, leaving Tribes overburdened by consultation requests.
- While federal agencies establish Tribal Advisory Councils/Committees/Boards¹⁷³ to help them provide services to Indigenous Peoples as part of their federal trust obligation, the structure and implementation of these bodies often do not allow members to truly guide agency decisions and work. Tribal leaders serving in these roles are already extremely busy and often do not receive adequate time to prepare for meetings. Meetings are often structured such that federal employees talk at, rather than listen to, Indigenous leaders. Without meaningful engagement and a culturally appropriate approach to advising, Indigenous voices are not able to fully inform federal decisions that impact Indigenous health equity.

Third, many current federal policies and initiatives limit participation to federally recognized Tribes, reducing their ability to correct existing health inequities. For example:

- Due to ANCSA,¹⁷⁴ **Indigenous land in Alaska is held by Alaska Native regional and village corporations¹⁷⁵ instead of Tribes.** The lands are not considered reservation land with Indian Country status,¹⁷⁶ which precludes full Tribal self-governance—including, to an extent, subsistence and natural resource management of the land. In 2015, the Alaska Exception that did not allow Alaska Native Tribes to put land into trust was removed,¹⁷⁷ but only one Tribe was able to take advantage of the change before the Trump Administration called for a legal review that resulted in consultations and a pause on additional Tribes putting land into trust.¹⁷⁸ There have been some indications of federal action to correct this: The Biden-Harris campaign plan¹⁷⁹ affirmed the rights of Alaska Native Tribes to put land into trust. However, federal action has not yet been taken. Limited self-governance is tied to health issues resulting from Indigenous communities' inability to practice and pass on culture, steward lands, enjoy subsistence rights, and apply for federal funding to have justice officers.¹⁸⁰
- The **Alaska National Interest Lands Conservation Act (ANILCA)**¹⁸¹ sought to address subsistence rights removed in ANCSA, but granted subsistence rights to rural Alaskan communities rather than to Alaska Natives; this creates the potential for legal action when urban Alaska Natives travel to their rural home areas to engage in traditional subsistence at specific times.
- The federal government lacks **government-to-government relationships** with some Indigenous Nations that had their federal recognition removed in the Termination Era, with Tribes still seeking federal recognition, with Native Hawaiians and Pacific Islanders, and with the Taino in Puerto Rico. Without this relationship, there is no recognition of sovereignty or effort to work with a particular Indigenous Nation as a government. Hawaii is a complex situation,¹⁸² as some Native Hawaiians do not want federal recognition and will only accept complete independence.
- Federal **preferential hire**¹⁸³ is only available to citizens of federally recognized American Indian and Alaska Native Tribes, which creates inequity and stratification within Indigenous communities where poverty and economic diversity is prevalent.

Fourth, U.S. laws and policies do not adequately protect resources and rights foundational to human health within Indigenous communities. There are many instances in which environmental regulatory practices within or near Indigenous communities are not enforced, are insufficient, or fail, resulting in environmental injustices (e.g., poisoned lands and waters that increase toxic exposures through everyday activities and traditional food and medicinal sources). For example:

- Due to colonization, Indigenous Peoples experienced land dispossession and formed permanent settlements where they had previously been nomadic. Lands currently considered Indigenous (e.g., reservations, places where non-land-holding Alaska Native Tribal governments are based, Native Hawaiian and other Pacific Islanders' islands) face **higher risk of climate-related disasters** like extreme low precipitation,¹⁸⁴ wildfires, storms, erosion,¹⁸⁵ and flooding¹⁸⁶ than their traditional home areas, or the areas where they previously lived nomadically between seasons. However, few of these communities qualify for assistance from the federal government. A large number of Indigenous people live with environmental injustices such as damaged ecosystems, and live near old military polluting sites,¹⁸⁷ nuclear testing sites,¹⁸⁸ oil extraction¹⁸⁹ sites and pipelines,¹⁹⁰ and mining sites¹⁹¹ (e.g., uranium,¹⁹² lead, copper, and gold mines), many of which are abandoned. Additionally, the federal government has a history of making deals with companies that extract natural resources from reservation lands at well below market value and at great environmental risk to Tribes.¹⁹³ These injustices result in pollution,¹⁹⁴ polychlorinated biphenyls (PCBs) in breast milk,¹⁹⁵ and contaminated soil and water,¹⁹⁶ which impact the health of Indigenous people.
- The Native American Lands Environmental Mitigation Program (NALEMP)¹⁹⁷ is under the National Defense Authorization Act.¹⁹⁸ The purpose of NALEMP is to address **Department of Defense (DoD) impacts (i.e., pollution) on Indigenous lands**; however, it is not adequately funded or deployed. Many Indigenous lands are polluted from leaking barrels¹⁹⁹ and nuclear testing²⁰⁰ with insufficient cleanup procedures (e.g., DoD policy is to leave contamination in place but fence it off). This program needs to be revised and expanded to better meet its goals and serve the needs of all Indigenous communities.
- **Policies should allow Indigenous Peoples to make decisions on their own lands**²⁰¹ (in accordance with the United Nations Declaration on the Rights of Indigenous Peoples²⁰²). For example, when industry and government pipelines are proposed to go across Indigenous lands, Indigenous peoples should be involved in this decision making. The Standing Rock DAPL pipeline protests²⁰³ demonstrate how Indigenous peoples want to be involved in these decisions.
- The Inflation Reduction Act.²⁰⁴ passed in 2022, has some promising language for Indigenous populations²⁰⁵ specific to environmental justice issues. However, the Act did not address climate justice through ending fossil fuel expansion.²⁰⁶ Continued investment in fossil fuel expansion instead of renewable energy puts Indigenous communities at risk.
- The Biden administration recently released a memorandum, “**Indigenous Traditional Ecological Knowledge and Federal Decision Making**²⁰⁷” and held Tribal consultations²⁰⁸ on the topic. In March 2022, Charles F. Sams III, the director of the National Park Service, stated in a congressional hearing that his agency is committed to increasing the role that Tribal Nations play in the management of public lands.²⁰⁹ This is promising for future land stewardship and critical for Indigenous health, as Indigenous Peoples depend on the land for subsistence, healthy food, and cultural practices. However, overall federal policy does not use Indigenous Knowledge²¹⁰ in land and water management²¹¹ in the United States and its territories. Indigenous Knowledge should lead management, as research shows that land stewarded by millennia of Indigenous oral history and relationality²¹² has greater ecological diversity.²¹³ Current land management priorities create conflicts between economic interests (i.e., resource extraction), conservation (i.e., no use of the land), and Indigenous approaches to stewardship and subsistence (i.e., sustainable use).

Additional Resources and Federal Policy Recommendations

Much work has been done by Indigenous Peoples and the federal government to understand the ways in which policies contribute to health inequities and to develop potential policy solutions. With that existing work in place, we recommend the Committee look to two additional resources to understand some of the key federal policy gaps and areas for necessary implementation support. The first is the National Congress of American Indians' (NCAI) annual and mid-year resolutions²¹⁴—“one of the policy mechanisms utilized by NCAI to express the consensus positions of member tribes on tribal, federal, state, and/or local legislation, litigation, or policy matters that affect the welfare and rights of American Indian and Alaska Native governments or communities.” Resolutions go into detail on **improving implementation of federal grant programs and funding for Tribes** (e.g., Calling on Centers for Medicare and Medicaid Services to Permanently Expand Telehealth,²¹⁵ Calling on Federal Agencies to Expedite Grant Review and Award Processing²¹⁶ for Critical 2022 Tribal Infrastructure Projects, Particularly in Areas with Limited Construction Windows, and In Support Of Expanding Access to Impact Aid²¹⁷ for Tribally Controlled Schools), **providing federal strategies for supporting Tribal sovereignty and self-determination** (e.g., Calling Upon Congress to Recognize a Right of Indigenous Economy²¹⁸ and Calling on the Federal Communications Commission [FCC] to Respect Tribal Data Sovereignty Regarding Broadband Data²¹⁹ in the Broadband Data Collection Portal), **describing the ways in which Indigenous culture may both support and be supported by federal policy** (e.g., Supporting Tribal Nations' Innovative Solutions to Drought²²⁰ in the West and Declaring Native American Languages in a State of Emergency²²¹ and Support for an Executive Order on Native American Language Revitalization), and **elevating unique needs and historical injustices of Indigenous children, families, and communities** (e.g., Support for a National Native Youth Suicide Prevention Initiative²²² and Entreating a United States²²³ Proclamation that a Genocide was Committed on Native Children, Families, and Nation).

In addition to NCAI's resolutions, the U.S. Commission on Civil Rights published a 2004 report, Broken Promises: Evaluating the Native American Health Care System,²²⁴ which was later updated and expanded in 2018.²²⁵ Many of the recommended changes to federal policy within both reports remain unfulfilled and may be informative to the Committee. In addition to describing the strong connection between the federal government's broken treaty obligations and Indigenous Peoples' health, both reports describe how health equity could be supported through federal investments in housing, public safety, education, economic development, core infrastructure, and technical assistance. In particular, the 2018 report provides comprehensive descriptions of the health disparities experienced by Indigenous people, such as lower life expectancies and higher infant mortality and suicide rates, and describes the ways in which federal health care programs fail to fully support the needs of these communities.

Conclusion

We hope the Committee's analysis considers how federal policies that do not acknowledge and respect Indigenous sovereignty, Knowledge, self-determination, histories, and needs lead to health inequities for Indigenous Peoples. We conclude with the following considerations when prioritizing action regarding federal policies to advance health:

- Respect for Indigenous sovereignty and self-determination²²⁶ in the many areas described above is central to Indigenous health and well-being. This respect includes not legally diminishing that sovereignty as has previously occurred through Federal Indian Law, to instead privilege federal and state governments. Federal Indian Law (case law, statutes, and policies) needs a massive overhaul.

- Overturning the Doctrine of Discovery and returning land is also central to Indigenous health. Having access to sacred lands, burial grounds, and traditional subsistence areas is intricately tied to Indigenous well-being. Indigenous Peoples in Alaska lost 90 percent of their land²²⁷ to colonizers, but the remaining 10 percent went to Alaska Native corporations instead of Tribes. Indigenous Peoples in the contiguous United States lost 98.9 percent of their historical lands.²²⁸
- Indigenous People's wants, needs, cultures, voices, perspectives, and Indigenous Knowledge must be meaningfully included in policy changes and implementation. Indigenous Peoples should be involved in the policy, practice, and service decisions that impact them, as explained in the United Nations Declaration on the Rights of Indigenous Peoples.²²⁹
- Due to colonization, Indigenous Peoples live on lands with extensive environmental injustices. These lands have been poisoned by the government²³⁰ or corporations through lax policies²³¹ and should be cleaned up for health.²³² Additionally, climate change²³³ is an environmental injustice that disproportionately affects Indigenous populations. In Alaska, many communities need to be moved from coastal areas²³⁴ because they are being flooded and eroded. These communities are located in such unsustainable places²³⁵ due to government and missionary boarding schools. The federal government must acknowledge their funding of all boarding schools and pay to move communities at risk of climate-related disasters so that people are safer.

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