

**TESTIMONY
OF
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ON
S. 612
INDIAN NEEDS ASSESSMENT AND PROGRAM EVALUATION ACT
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE**

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INTRODUCTION

Mr. Chairman, I appreciate the opportunity to appear before you today to discuss S. 612, the *Indian Needs Assessment and Program Evaluation Act*. Having recently completed development of the President's budget request for FY 2001, I understand the Committee's concern that the Federal Government sometimes lacks detailed information about the needs in Indian Country. This information would enable us to undertake a more systematic, comprehensive approach to improving conditions for tribal communities that lack resources and to link these resources with performance data, pursuant to the Government Performance and Results Act (GPRA) of 1994. We would, therefore, like to work with the Committee to address this situation.

Having said that, I do not underestimate the complexity of the task. Working with Indian tribes, the Bureau of Indian Affairs (BIA) has tried for years to develop "standards of need." As part of the Reorganization Task Force in the early 1990's, a tribal-Federal work group spent almost three years attempting to develop standards for just one program: Indian Child Welfare Act Grants. That effort was unsuccessful. As noted in the August 1994 report from the Reorganization Task Force, problems were encountered because:

- There was no current standard information about tribal ICWA operations and the tribal responses to request for information for Task Force use was uneven.
- The authorizing legislation is extremely broad as grants can be used for licensing foster homes, operating and maintaining counseling and treatment facilities, provision of homemaker assistance, day care, after school care, and employment, recreational activities, respite care, home improvement, education and training, and adoption subsidies. Tribal programs varied widely since current grants range from less than \$30,000 to almost \$700,000.

More recently, as part of the TPA study, we had limited success in identifying appropriate standards against which to measure BIA-funded programs. We are making progress, however. For example, BIA's facilities information is collected in a systematic manner. We can report that the existing backlog of school construction and repair totals \$802 million and that we have a repair backlog of

\$56.3 million in detention facilities. During the next several years we will be conducting thorough reviews of the funding and staffing needs for all trust programs administered by the Department of the Interior to better identify the resources needed to meet our statutory trust responsibilities to Indian tribes and Indian people. Nonetheless, there are very real limits on our ability to produce the type of information described in the bill.

Program Goals

Many of the programs that we administer lack specific statutory goals and reporting requirements. This is especially true in those instances where the Snyder Act is our only legislative authority. That legislation simply authorizes us to spend money that Congress may from time to time appropriate for the "benefit, care, and assistance of Indians throughout the United States."¹ Some of the programs operated under this authority are the housing improvement program (HIP), scholarships, aid to tribal government, and welfare assistance. None of these programs has any other statutory underpinning, so there are no standards against which to measure need. While we can tell you that each year we provide about 10,000 students an average of \$3,000 each toward college expenses through the scholarship program, we can't say whether that's good or bad or high or low because it's not clear what the program is supposed to accomplish. Should we administer the program like Pell Grants and fund all eligible students? Should there be some maximum or minimum award amount? Our regulations state that students who do not live on or near reservations will be funded only after funding those who meet the preferential residency requirements, so should we count only "Indian country" students when determining need, or all applicants regardless of residence? I will discuss a possible pilot project for scholarships toward the end of my testimony.

It is also unclear as to where the BIA's responsibility for housing ends and that of the Department of Housing and Urban Development begins. BIA is not the only agency that must raise and answer similar questions. In short, before we can report on "need," it is first necessary that there be some quantitative program objective.

Reporting

Once we have established program goals, the next question is how to assess progress toward meeting those goals. Clearly, accomplishment reporting is required, yet there are laws that limit our authority. The Indian Self-Determination and Education Assistance Act precludes us from establishing any program standard or reporting requirement that is not statutorily required. The only statutory reporting requirement for a Public Law 93-638 contract is a single audit and a "brief annual report." The actual form and content of the report has to be negotiated separately with each tribe. Further, other than annual audits, there are no reporting requirements for Self-Governance

¹ The Snyder Act provides that: "The Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of Indians throughout the United States for the following purposes: General support and civilization, including education. For relief of distress and conservation of health. For industrial assistance and advancement and general administration of Indian property. For extension, improvement, operation, and maintenance of existing Indian irrigation systems and for development of water supplies. For the enlargement, extension, improvement, and repair of the buildings and grounds of existing plants and projects. For the employment of inspectors, supervisors, superintendents, clerks, field matrons, farmers, physicians, Indian police, Indian judges, and other employees. For the suppression of traffic in intoxicating liquor and deleterious drugs. For the purchase of horse-drawn and motor-propelled passenger-carrying vehicles for official use. And for general and incidental expenses in connection with the administration of Indian affairs." 25 U.S.C. § 13.

tribes. Because Indian tribes, not Federal employees, operate the majority of Federal assistance programs, the issue of tribal reporting requirements must be addressed if Congress is to have more information on program effectiveness. The National Congress of American Indians has organized a workgroup on data management, needs assessment, and auditing that is scheduled to meet in Washington later this month and again in May, so we remain hopeful that progress will be made on reporting.

Automated Information Systems

Discussions of reporting requirements invariably focus on the word "burdensome." Tribes claim that they do not have the resources to devote to generating a lot of paperwork for the Federal government. The challenge is to develop automated program management systems that improve the productivity of tribal and Federal employees and generate standard management reports that can be used to provide better information to Congress. For instance, if you asked me today the median number of months that an Indian child spends in our foster care system, I cannot tell you. I would further submit that it would, indeed, be burdensome for tribal and Federal employees to tell us how long each child has been in foster care so that we could then calculate the median. A social services case management system could document eligibility and placements, track home visits, interface with the payment system, and provide information on each social worker's caseload.

A scholarship applicant system could provide information on the number of applicants, the average amount of the award, the number of students who were eligible for assistance, but denied aid due to a shortage of funds, the types of postsecondary institutions that the students attend, the number of scholarship students successfully completing each year of college, the reasons that students do not complete college, the number of transfers from 2-year to 4-year colleges, and the percentage going on to further education or entering the job market upon graduation.

To get better information will require an investment in program management systems, whether for general assistance, foster care, tribal courts, law enforcement, or a number of other areas. Since there is always a cost associated with hardware, software, training, and maintenance of any system, the program should be of sufficient size and importance to warrant such an investment. We don't want to find ourselves spending almost as much on program reporting as we are on the program itself.

With that as background, I will now turn to the legislation. We are submitting a detailed section-by-section analysis for the record, so I will simply highlight those provisions that most concern us.

Summary of the Bill

S. 612 proposes that the Secretary of the Interior be responsible for a government-wide effort to develop uniform criteria for determining the Federal "assistance needs of Indian tribes and Indians nationwide." Based on these criteria, each Federal agency would be required to determine "the actual needs of Indian tribes and Indians eligible for programs and services administered" by the agency.

In addition, section 3(b) of S. 612 proposes that, on an annual basis, the Secretary provide Congress with information on all expenditures for Indian programs, on all tribes benefitting from

each program, on all tribes whose application for program services was denied, and on all federally funded tribal programs that were terminated in the last year. This section also requires that we file an Annual Indian Program Evaluation Report.

Section 3(c) of the bill would require us to publish annually in the Federal Register information on all programs and services offered by the Federal government for which Indian tribes or their members are eligible.

Finally, within 18 months of enactment and following tribal consultation, the bill would require the Secretary to submit a Strategic Plan for the Coordination of Federal Assistance for Indians.

Uniform Criteria

The legislation proposes that a single set of criteria be developed to determine the needs of Indian Tribes and individual Indians across the entire Federal Government. We believe that is neither possible nor desirable. There are more than 1,400 Federal programs listed in the 1999 Catalog of Federal Domestic Assistance. Indian Tribes are eligible for more than 300 programs and individuals may meet the eligibility criteria for about 580 programs. Attached to my written testimony is a table that shows how many different programs each agency has available for individuals, Indian Tribes, and States. For almost all Federal agencies, the program goals and eligibility criteria are established by law and cannot be superseded by an inter-agency work group.

Even in the BIA, it would be impossible to arrive at one formula to support just those programs that we fund. We have law enforcement responsibilities in some States, but not in all; we fund schools on some reservations, but not on all; we have irrigation systems in the west, but not in the east; some reservations are forested, some have oil and gas or coal deposits, some are primarily range land, some cover hundreds of thousands of acres; and some are smaller than the Capitol grounds. In order to develop a formula to distribute resources, there needs to be some common, measurable indicator that bears a relationship to the program's goal – and being "Indian" is not a sufficient indicator.

There are more than 550 Federally-recognized Indian tribes in this nation and only 50 States. Whatever the range of differences among the 50 States, those differences would be multiplied considerably to reflect these more than 550 tribal governments.

In the BIA, we are refining our distribution criteria for a number of programs. For example, the Housing Improvement Program funds will be distributed based on the relative number of eligible applicants in each tribe. We are also working to develop a funding formula for law enforcement and another for road construction and road maintenance. But I would not recommend using the same formula for housing, law enforcement, roads, natural resources, scholarships, and welfare assistance. The programs are simply too different to allow for common measures.

Population and Socio-Economic Indicators

The needs assessment described in the bill is to include population data and information on socio-economic conditions. As you know, the Census Bureau is in the midst of the 2000 census count. Census data is by far the most accurate measure of population and socio-economic statistics

available to the Federal Government. Further, socio-economic indicators of the Indian population are far more meaningful when compared both to the general population and to other segments of the population. For such comparisons to be valid, the data must be collected and analyzed in the same fashion. The Census Bureau is making an unprecedented effort to ensure an accurate count of all minority groups and they have been working closely with Indian communities for months. No other Federal organization can hope to match the completeness and accuracy of population and socio-economic data as will be provided through the census. Annually, almost \$200 billion in Federal assistance is distributed based on census data. To the extent that the Committee believes that selected Federal Indian programs should be funded based on socio-economic conditions, we believe that the quality and reliability of the census data far exceeds any information that the Department of the Interior could gather.

Availability of Similar Programs

The needs assessment is to identify the availability of similar programs within the geographical area that are available to tribes or tribal members. The bill language does not limit the identification of "similar programs" to those funded by the Federal Government. We simply have no capacity to identify all State, county, local, and non-profit program services that may be available in and around Indian Country. Using the Catalog of Federal Domestic Assistance, we have, however, identified Federal programs by functional categories that are available to Indian tribal governments and we have provided that information to the Committee.

Annual Report on Tribal Applications for Federal Programs

Under S. 612, Federal agencies would be required to report all expenditures for programs or services for the benefit of Indians. The Congressional Research Service, for example, presently compiles budget information for the major Federal Indian programs and provides that information to the Congress.

Agencies would also be required to report the names of all tribes receiving Federal funds or services, those whose application for funds or services was denied, and those whose Federally funded programs or services were terminated within the last fiscal year.

Government-wide data on Federal assistance grants that are approved are presently collected through the Federal Assistance Awards Data System that is managed by the General Services Administration. We cannot estimate the cost to each agency of capturing data on applications that are not approved or on awards that have been terminated. We are unsure as to how the Committee would define a "terminated" program or service, because the Federal government supports a number of one-time projects. We might fund an assessment of the mineral development potential on a reservation, or survey the exterior boundaries of a reservation, or award a business development loan. When the projects are completed, the following year's funding is used to do similar work for another tribe. Likewise, once a school, or jail, or hospital, or clinic is built, the project has ended, and it seems inappropriate to classify the completion of construction as the "termination" of an award.

The BIA does not have an automated grants management system that would enable us to easily comply with the reporting requirement, nor do we have any mechanism to record and report tribal requests for services from BIA employees and whether those services were provided.

Catalog of Federal Domestic Assistance

On a positive note, the Federal government annually publishes the Catalog of Federal Domestic Assistance programs. The Catalog contains a brief description of each program, identifies those individuals, organizations, and governments eligible to apply for assistance, and provides names and telephone numbers of agency staff to contact for additional information. The Catalog is widely distributed. Each BIA agency, regional office and education line office receives a copy. In addition, a searchable version of the Catalog is on the Internet. Since this information is currently available, we recommend that the requirement to publish this information in the Federal Register be deleted from the proposed legislation.

Strategic Plan for the Coordination of Federal Assistance

The final reporting requirement in S. 612 relates to the development of a Strategic Plan for the Coordination of Federal Assistance for Indians. We are to consult with tribal governments and submit the Plan within 18 months of enactment. The Federal Government has already done and is currently performing some strategic planning with respect to Native Americans. In August 1998, the President directed the Departments of the Interior and Treasury and the Small Business Administration to develop a strategic plan for coordinating existing economic development initiatives for Native American and Alaska Native communities. These agencies reported back to the President in December 1998. In addition, the President's executive order on American Indian and Alaska Native Education require a strategic plan on educational needs of Indian students. The Departments of the Interior and Education continue to work together on this effort, including a memorandum of understanding on educational research needs. Finally, the President's historic FY 2001 budget for Native Americans was coordinated across the entire Federal Government and takes a comprehensive view of the needs of Native American communities. Mr. Chairman, I think that we can expect to see better coordination of all Federal programs for all levels of government and all citizens in the coming decade through the use of information technology, the Internet, and improved use of annual performance plans.

Authority of the Secretary

S. 612 seeks to make the Secretary of the Interior responsible for implementation of Government-wide initiatives on program eligibility, needs analysis, data collection, reporting, and program coordination. The scope of the activities is beyond the authority of the Secretary of the Interior who can direct only the activities of the Department of the Interior. And, because the scope of this bill is government-wide, the Departments of Health and Human Services, Education, Veterans Affairs, Commerce, and Transportation and the Environmental Protection Agency have identified a number of concerns that would need to be addressed in addition to those that I have presented here today.

Conclusion

While we support better information about and effective coordination of Federal programs assisting Native Americans, we do not believe that all Federal programs can be neatly tied together and we question the value of submitting thousands of pages of reports to Congress annually. We would prefer that the resources Federal agencies would have to dedicate to these reporting requirements be used to provide additional police, or teachers, or doctors, or social workers, or forest rangers on Indian reservations. While we may not be able to tell you everything you would like to know

about the conditions in Indian Country, those indicators that we do have show a gap between Indian communities and mainstream America. Our attention and resources are better focused on closing the gaps rather than expanding the reporting requirements.

We know from information already collected by BIA and other federal agencies that:

- The rate of growth of the Indian population is almost twice that of the nation as a whole.
- Violent crime in Indian country increased 56 percent from 1997 to 1998 while, during the same period, the nation as a whole experienced a decline of 17 percent in the rate of violent crime.
- In 1998 there were more than 27,000 referrals for investigation of child abuse and neglect and that in 40 percent of these cases alcohol or drugs were cited as contributing factors.
- Forty percent of the homes in Indian communities are overcrowded and have serious structural problems while only 6 percent of all homes in the nation fall into that category.
- 30,000 people are waiting for rental housing in Indian country.
- Over 16 percent of Indian homes lack complete plumbing.
- One-third of Indians live below the poverty line.
- Indians are under-represented in the management, professional, and technical areas and over-represented in the service and general laborers categories.
- Less than one-third of our high school students complete the core curriculum recommended for college admissions.
- Only two percent of college-bound Indian students have a combined SAT score of 1100 or higher compared with 22 percent of all college-bound high school graduates.
- A majority of our college students are at 2-year colleges while a majority of non-Indian students are at 4-year colleges.
- Based on BIA's Labor Force Report, unemployment hovers near 50 percent on many Indian reservations while the rest of the nation enjoys the best economic times in history.
- BIA has dilapidated schools, irrigation projects that barely deliver water, jails that offer no rehabilitation or counseling programs for inmates, and drug smuggling problems in the Arizona-Mexico border region.

While I do recognize the legitimate interest of the Congress in our undertaking efforts to develop better data to support our budgets and to measure the impact our programs have in Indian Country, S. 612 is so broad in scope that we would be destined to fail. It also places the full reporting burden on the Federal government despite the fact that our common goal is to have Indian tribes assume responsibility for program operations. Our ability to report will continue to be circumscribed

until there is recognition that much of the needed data resides with tribal governments, not with the Federal government. To begin to address the Committee's concerns, we suggest that we conduct a pilot program during the next fiscal year using the higher education scholarship program as a model.

Our budget includes a \$2.2 million increase for scholarships. The appropriators have asked us how we can be sure that this money will actually be used for scholarships since the program is funded through TPA. Right now, our honest answer has to be that we hope it will be used for that purpose, but we can't make any guarantees. We would like to pilot a scholarship information and reporting system. If your Committee and the Appropriations Committees agree to pilot the program, we could get around the limitations on mandatory reporting, by using the budget increase as a "carrot" only those tribes agreeing to use the system and to provide reports on scholarship applications can share in the increase. Our goal would be not only to have better information for Congress, but also to provide a system that helps the tribes better manage the scholarship program. We would appreciate the Committee's support of this approach rather than the process outlined in S. 612.