S. HRG. 115–76

S. 943, S. 1223, AND S. 1285

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

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WEDNESDAY, JULY 12, 2017

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:30 p.m. in room 628, Dirksen Senate Office Building, Hon. John Hoeven, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. JOHN HOEVEN, U.S. SENATOR FROM NORTH DAKOTA

The CHAIRMAN. I call the meeting to order.

Good afternoon to our witnesses. Thank you for being here and of course also all of our Committee members. Senator Heitkamp is sitting in for Senator Udall as our Vice Chairman. I think he is having a little dental work done, so I am guessing he would rather be here but we understand that is important.

Welcome, Senator Heitkamp.

Today, the Committee will examine three bills: S. 943, the Johnson-O'Malley Supplemental Indian Education Program Modernization Act; S. 1223, the Klamath Tribe Judgment Fund Repeal Act; and S. 1285, the Oregon Tribal Economic Development Act.

On April 26, 2017, Senator Heitkamp, along with Senators Daines and Lankford, introduced S. 943, the Johnson-O'Malley Supplemental Indian Education Program Modernization Act.

Pursuant to the Johnson-O'Malley Act, the Bureau of Indian Education assists the Indian children enrolled in public schools where more than 90 percent of them attend. In my home State of North Dakota, during the 2016–17 school year, 10,262 Native children, 83.6 percent of the Native children in grades K–12, attended North Dakota public schools.

The types of services include dropout prevention, culturally relevant instruction assistance, and academic assistance such as tutorial services and school supplies. In some cases, the Johnson-O'Malley program may be the only means of academic assistance for even basic items such as school supplies.

However, to date, the Bureau of Indian Education has not conducted an accurate or verifiable student count for program funding and distribution since 1995, more than 20 years ago. It is estimated that up to two-thirds of the Indian children may not be receiving assistance due to the lack of a current official student count. Since this program may be a lifeline for some Indian chil-

dren, it is incumbent upon Congress and the Administration to do everything we can to support and improve it.

The bill, S. 943, amends the Johnson-O'Malley Act to direct the Secretary of the Interior to provide for the full participation of all qualified Indian students eligible for this program. This bill would require the Secretary of the Interior to provide a more accurate student count of Indian students.

The bill would further require the Government Accountability Office to provide a review and report on the implementation of this Act. It would also mandate the Department of the Interior to engage in negotiated rulemaking regarding the funding formula and eligibility definitions.

I will note that North Dakota's Superintendent of Public Instruction, Ms. Kirsten Baesler, has sent a letter of support, and I will make that letter part of the record.

On May 25, 2017, Senator Merkley introduced S. 1285, the Oregon Tribal Economic Development Act. It is co-sponsored by Senator Wyden. This legislation would allow five Indian tribes in Oregon to purchase, sell, lease, or otherwise convey fee land, without further congressional approval or oversight. In addition, S. 1285 provides that none of its provisions apply to land held in trust by the United States for the benefit of these tribes.

The third bill the Committee will examine is S. 1223, the Klamath Tribe Judgment Fund Repeal Act. This legislation was introduced on May 24, 2017 by Senator Merkley and is co-sponsored by Senator Wyden. S. 1223 repeals the Klamath Tribe Judgment Fund Act, which set forth a claim settlement distribution process for the Klamath Tribe.

The bill is intended to allow distribution of claim settlements against the United States for the Klamath Tribe to proceed under the less cumbersome process in the Indian Tribal Judgment Funds Use or Distribution Act.

I would now like to turn to Acting Vice Chairman, Senator Heitkamp, for her statement.

STATEMENT OF HON. HEIDI HEITKAMP,
U.S. SENATOR FROM NORTH DAKOTA

Senator HEITKAMP. Thank you, Chairman Hoeven, for calling this legislative hearing today to consider S. 943, S. 1223 and S. 1285. As said earlier, Senator Udall was unable to attend this afternoon and graciously offered me this opportunity to preside in his absence.

I want to first thank all the witnesses for traveling so far today to present your important testimony. We know that comes at some cost to your organizations and tribes. We always appreciate it when we can hear something here in the United States Congress other than beltway speak.

First, these are remarks written by my friend, Tom Udall. "S. 943 was introduced by my colleague, Senator Heitkamp, alongside Senators Lankford and Daines, that would help ensure that the Johnson-O'Malley Program, which is so critical, would serve all Native children. The Johnson-O'Malley Program was designed by parent committees and grantees to suit local individual needs of Native students."

"It plays a critical role in supporting educational needs of Indian students by making sure Native students have school supplies, culturally-based extracurricular opportunities, academic tutoring and other critical tools to ensure a comprehensive learning environment. I look forward to this Committee working together to support programs like Johnson-O'Malley that provide all Native students with resources and opportunities so they have the same chance at quality education as other students."

"We owe Indian Country nothing less and we owe our Native youth nothing less. To that end, we need to work openly and directly with Native communities to reconcile available data and develop new eligibility student count structures. The two remaining bills that are the subject of this hearing, S. 1223 and S. 1285, are non-controversial. They were introduced by our friend and colleague, Senator Merkley. These bills tie together to important topics, tribal sovereignty and economic development. S. 1223 would repeal the Klamath Tribal Judgment Fund Act. It is a remnant of the termination era that today limits the tribe's ability to direct how its own funds are actually spent."

"S. 1228 would allow five tribes in Oregon to have more control over land they own. This legislation will potentially free up much needed private capital for investment back into those tribal communities. Together these bills give the tribes more autonomy over their own internal tribal affairs."

"I look forward," meaning Tom, but I do also, "to working with Senator Merkley to mark up these bills and move them forward for our consideration. Again, thank you to all the witnesses today. I look forward to hearing the testimony."

Mr. Chairman, for the record, I would like to introduce my opening statement, especially as it relates to Johnson-O'Malley.

The CHAIRMAN. Absolutely.

Senator HEITKAMP. Thank you.

I just want to thank my co-sponsors, Senators Lankford and Daines. Senator Lankford and I work together a lot on government accountability. This is a program that drives us crazy. We cannot get a count, so we need to fix this problem.

I also want to ask that the record include the statement by the National Congress of American Indians in support of our bill; the National Indian Education Association's letter in support of our bill; the Tribal Education Department's National Assembly's support of our bill; the North Dakota United Tribes of North Dakota's letter in support of our bill; the support of the North Dakota Department of Public Instruction, as Senator Hoeven said; and the Muscogee (Creek) Nation's letter in support of the Johnson-O'Malley bill being introduced and heard today.

Senator FRANKEN. And the Senate Red Head Caucus.

Senator HEITKAMP. Thank you. That is our deal.

With that, Mr. Chairman, I thank you for calling this hearing and I again thank the witnesses.

[The prepared statement of Senator Heitkamp follows:]

PREPARED STATEMENT OF HON. HEIDI HEITKAMP, U.S. SENATOR FROM NORTH DAKOTA

Thank you Chairman Hoeven for holding this hearing on my bill and others today. I also want to thank Senators Daines and Lankford for joining me in working to update student counts to better express the amount of resources needed for Native students that are served by the Johnson O'Malley or JOM program.

As this Committee has so often heard, data is lacking across Indian Country. Because state agencies and policies continue to leave American Indians and Alaska Natives out of data collection efforts, data reporting, and analysis, Indian Country has become what the National Congress of American Indians calls the "Asterisk Nation".

The Bureau of Indian Education has not been able to collect accurate data for Native students served by the JOM program for more than 20 years. It's time to make much needed updates so this program can successfully serve our Native youth. The bill I introduced would utilize Census data and other existing information to assist the Bureau of Indian Education in overcoming this obstacle that has plagued the JOM program since 1995. Even though the U.S. Census Bureau stated there were nearly 800,000 qualified American Indian and Alaska Native students in the JOM-eligible age group in 2010, we continue to use the 1995 student count of just over 271,000 Native students. This disparity illustrates a substantial portion of unserved students.

Since the 1934 enactment of the Johnson-O'Malley (JOM) act, funds under the program have provided critical support to Native students and their cultures in public schools—where more than 90 percent of Native students attend. Unfortunately, funding has been diminishing over time due to the lack of official and verified data, freezing the estimated number of eligible students to 1995 levels.

As one of the fastest growing demographics, we must ensure that Native children receive the resources needed to achieve and sustain their cultures. These children deserve to be represented by accurate, verified data, not simply an asterisk.

Now is the time to examine different methods, so that we can accurately portray need and then concentrate on getting essential resources to our country's most vulnerable students.

Thank you again, and I look forward to finding solutions to this issue as well as any insights for strengthening the legislation so that it can best address the outdated student count and ensure that this program is able to achieve what it was intended to do.

The CHAIRMAN. I want to acknowledge that Senator Merkley has joined us. We will offer him an opportunity to comment on his bill, but I would ask if other Senators would like to make opening statements? We will start with Senator Barrasso.

STATEMENT OF HON. JOHN BARRASSO, U.S. SENATOR FROM WYOMING

Senator BARRASSO. Thank you very much, Mr. Chairman.

I welcome the opportunity today to welcome back to the Senate one of today's witnesses from my home State of Wyoming, Ms. Carla Mann, who is here today to represent the National Johnson-O'Malley Association. She is a resident of Ft. Fort Washakie, Wyoming and the Wind River Reservation.

She has visited my office a number of times over the last several years and has testified before this very Committee. In fact, she testified before the Committee last year on a previous version of Senators Heitkamp and Lankford's Johnson-O'Malley bill.

Ms. Mann, I appreciate your willingness to come to Washington to be with us today, and to lend your voice and experience to these important matters.

Education, especially in Indian Country, deserves the attention of this Committee and the Bureau of Indian Education.

Mr. Chairman, Ms. Mann is a tireless advocate on these issues and I am so pleased to help you welcome her to the Committee again, today.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Barrasso.

Are there other opening statements? Senator Lankford.

STATEMENT OF HON. JAMES LANKFORD,
U.S. SENATOR FROM OKLAHOMA

Senator LANKFORD. I would like to jump in on the Johnson-O'Malley conversation as well. I appreciate Senators Heitkamp, Daines and all of our staff and how much work has gone into this and the ongoing conversation about how to be able to make sure this is right.

The Johnson-O'Malley Program is extremely important for the people of my State and people around the Country. In fact, two of my staff members were recipients of the Johnson-O'Malley Program when they were in school.

Let me tell you the value of this in Oklahoma and what it really means. As the Chairman mentioned, due to the lack of count and it being updated over the last 21 years, the Oklahoma Department of Education estimates we have 130,000 Indian students in my State; 11,000 of them are currently eligible for Johnson-O'Malley based on the fact the count has not been done in 21 years. That is a pretty large disparity.

While we work through this process of trying to fix something that is unacceptable, I look forward to actually passing it through this Committee, getting it on the Floor, getting it passed, and getting this done.

This is one of those things that should have been resolved a long time ago. I am glad we are doing more than talking about it and wishing it was different. I am glad we are working through the process of actually making sure it is different.

I would like to ask unanimous consent to enter letters from the Choctaw Nation of Oklahoma in support of the Johnson-O'Malley bill and from our State School Superintendent, Joy Hofmeister, in support of what has been done with this.

I would ask unanimous consent that they be included in the record.

The CHAIRMAN. Are there other Senators wishing to make opening comments? Senator Merkley.

STATEMENT OF HON. JEFF MERKLEY,
U.S. SENATOR FROM OREGON

Senator MERKLEY. Thank you very much, Chairman Hoeven, for including these two bills that were introduced in partnership with Senator Wyden.

I would like to acknowledge Chief Warren Brainard of the Confederated Tribes of Coos, Lower Umpqua and Suislaw Indians, who made a trip from Coos Bay to testify in support of S. 1285, the Oregon Tribal Economic Development Act.

I would also like to acknowledge Don Wharton who is representing the Klamath Tribe. He will provide background on the need for the Klamath Tribe Judgment Fund Repeal Act.

The Oregon Tribal Economic Development Act is about tribal sovereignty and economic development. Several months ago, the tribe reached out to my office about a problem they had in obtaining a commercial mortgage for a self storage property they purchased.

The tribe had to pay out-of-pocket to purchase the facility, which is not sustainable for the tribe or for most tribes. At issue was an interpretation of the Indian Non-Intercourse Act that would require tribes to get Federal approval to purchase, sell or lease fee lands owned by federally-recognized tribes.

The Department of the Interior does not make this type of determination for non-trust lands. It is impractical to expect a tribe to get approval from Congress each time they want to obtain a mortgage for non-trust property.

The bill does not impact trust lands. It simply grants the authority to tribes in Oregon to buy, sell or lease their non-trust-owned land without further approval from the Federal Government.

I look forward to working with the members of the Committee to move this bill forward.

Let me turn to the Klamath Tribe Judgment Fund Repeal Act. The Klamath Tribe was a victim of the termination era that cruelly severed their trust relationship with the Federal Government.

Even after formal termination, the Klamath people held on to a stake in future claim awards against the government including inadequate compensation for ceding ancestral lands. This led to enactment of the Klamath Tribe Judgment Fund Act in 1965 which specified that any award be distributed based on the final membership roll when the tribe was terminated in 1954.

This Act is a relic of the termination era and assumed that the tribe would cease to exist in the Federal Government's eyes. That is clearly not the case as the tribe was restored in 1986. Without repealing this Act, the tribe is rightly concerned that any money left over from past awards or any award they may receive in the future would have to be distributed based on the 1954 roll, including heirs who are not members of the tribe or even Native American.

The cost to identify heirs and determine eligibility, which could be substantial, would be borne by the tribe. The tribe deserves more from us. This legacy artifact is unworkable. That is why this bill is an important bill.

I hope the Committee will work with the tribe and with Senator Wyden and myself to give back the tribe's ability to determine for themselves how the funds should be used.

Thank you for the chance to testify and again, thank you for holding this hearing on these two bills.

The CHAIRMAN. Do any other Senators wish to make opening statements? If not, we will proceed with our witnesses.

They are: Mr. Tony Dearman, Director, Bureau of Indian Education, U.S. Department of the Interior, Washington, D.C.; The Honorable Warren Brainard, Chief, Confederated Tribes of Coos, Lower Umpqua and Suislaw Indians of Coos Bay; Mr. Don Wharton, Senior Attorney, Native American Rights Fund, Boulder, Colorado; and Ms. Carla Mann, President, National Johnson-O'Malley Association of Tulsa, Oklahoma.

Welcome to all of you. I would remind you that your written testimony in its entirety will be made a part of the record. I would ask that you keep your opening statement to five minutes or less.

We will start with Mr. Dearman.

STATEMENT OF TONY DEARMAN, DIRECTOR, BUREAU OF INDIAN EDUCATION, U.S. DEPARTMENT OF THE INTERIOR

Mr. DEARMAN. Good afternoon, Chairman Hoeven, Acting Vice Chairman Heitkamp, and members of the Committee. It is good to be back with you. Thank you for the invitation to appear today to provide a statement and recommendations on behalf of the Department regarding S. 943, S. 1223 and S. 1285.

Regarding S. 943, the Johnson-O'Malley Supplemental Indian Education Program Modernization Act, the Department supports the bill and recommends some technical changes. Most recently, BIE performed student counts, as required by Congress in 2012 and 2014, which surveyed JOM eligible students served by current and prospective contractors.

Currently allowable under law, not all JOM contractors submitted data to the BIE which affected our ability to officially verify and formally update the data from the 1995 official count. That said, a total of 448 eligible entities submitted student count data in 2012 which identified more than 321,000 eligible students as compared to the 1995 official county which identified roughly 272,000 students.

The 2014 count resulted in more than 341,000 students for the 399 eligible entities that submitted student data. An accurate count of students served by the JOM Program is essential to illustrate local need. It is critical that the department utilizes funding in a way that diminishes waste and supports programs that can accurately portray need.

The legislation works to accomplish this while ensuring accountability for BIE as well as contractors and reporting. To that end, the department supports S. 943 and offers the following recommendations.

Section 7(a)(4) defines New Applicants as an entity that applies to participate in a contract "not later than 240 days" in coordination with S. 943's reporting requirements for the Bureau. The department believes this provision could potentially limit prospective applicants due to the period mentioned. We would be happy to work with you regarding language that clarifies that new applicants will not be restricted from applying as contractors.

Section 7(f) assumes sufficient funding will be available to meet the hold harmless requirement. The department believes the provision does not carve out an exception for potential funding reductions and recommends adding language that the hold harmless provision is contingent upon available funding.

I also want to note that the legislation directs the department to cross-check student count data with that from the U.S. Census Bureau, National Center for Education Statistics and the U.S. Department of Education's Office of Indian Education.

While we understand the need to analyze all sets of data to determine accuracy and potential need, there may be issues with comparing such data due to varying eligibility requirements and

legal definitions of eligible students. For example, the Department of Education's Title VI formula grants are based on student eligibility that is broader than the current JOM eligibility.

Regarding S. 1223, a bill to repeal the Klamath Tribe Judgment Fund Act, the department takes no position on this legislation at this time. The Klamath Tribe Judgment Fund Act, enacted October 1, 1965, authorizes the Secretary of Interior to establish and apply appropriated dollars to a judgment fund for the Klamath and Modoc Tribes.

At this time, the department needs to better understand how the repeal of this Act will impact our trust responsibility to the tribes but looks forward to working with the sponsors on this proposal. Regarding S. 1285, the Oregon Tribal Economic Development Act, which would allow the leasing or transferring of certain lands not held in trust by the United States, the Department supports this bill.

S. 1285 would expressly allow each of the tribes to lease, sell, convey, warrant or transfer all or any portion of its interest in any real property not held in trust status for the benefit of the tribe. Under S. 1285, further approval, ratification or authorization by the United States is not required in order to validate the land transaction.

Members of the Committee, thank you for the opportunity to present testimony today. The department looks forward to working with the sponsors and the Committee on these legislative proposals.

I would be honored to answer any of your questions.

[The prepared statement of Mr. Dearman follows:]

PREPARED STATEMENT OF TONY DEARMAN, DIRECTOR, BUREAU OF INDIAN EDUCATION, U.S. DEPARTMENT OF THE INTERIOR

Good afternoon Chairman Hoeven, Vice Chairman Udall, and Members of the Committee. It is good to see you again. As Director of the Bureau of Indian Education (BIE), I am here today to provide the Department of the Interior's (Department) views regarding S. 943, the Johnson-O'Malley (JOM) Supplemental Indian Education Program Modernization Act.

The Department supports the goals of S. 943 and recommends some technical changes.

Background

The supplemental educational JOM Program is authorized by the Johnson-O'Malley Act of 1934 and the implementing regulations are provided in Part 273 of Title 25 of the Code of Federal Regulations. As amended, this Act authorizes contracts for the education of eligible Indian students not enrolled in Bureau- or sectarian-operated schools. A local JOM program operates under a BIE approved individual educational plan. JOM education plans include objectives designed to address the educational needs of eligible American Indian and Alaska Native students, offering students various opportunities, which may include cultural enrichment, tribal language support, academic assistance, and dropout prevention programs.

We understand that Indian students have unique educational and cultural needs, which include learning their languages, cultures, and histories. The supplemental JOM program has historically worked to address this need by assisting Indian students who often enter public school with an academic skills deficit. In short, JOM functions to help Indian students thrive in an environment suited to their strengths.

Tribal organizations, Indian corporations, school districts, or states may be eligible to receive such funds once they establish an Indian Education Committee. The role of such committees is to approve supplementary support programs. American Indian and Alaska Native students are eligible if they are members of a federally-recognized Indian tribe or one-fourth or more degree of Indian blood and recognized

by the Secretary as being eligible for services from the Bureau. In addition, students must be age three through grade 12.

Student Counts

Most recently, BIE performed a student count as required by Congress in Fiscal Years (FYs) 2012 and 2014. After formal consultation with representatives from tribes, public schools, tribal organizations, and parents, a total of 448 entities submitted student count data. The FY 2012 JOM count identified 321,273 eligible Indian students as compared to the last official count from 1995, which identified 271,884 eligible Indian students. The FY 2014 count resulted in a final student count of 341,495 for the 399 JOM contractors that submitted data. Allowable under law, not all current JOM contractors submitted student count data to the BIE, which affected our ability to officially verify and update the student count. As such, the current official count of JOM-eligible students continues to be based on the number from 1995.

S. 943

An accurate illustration of need for students served by the JOM program is essential. To that end, the Department supports S. 943. For too long, the count has been considered inaccurate and therefore difficult to confirm true local needs of students served by the supplemental education program. As the BIE focuses on its core institutional mission—providing for the direct operation of schools and supporting classroom instruction for Indian students—we must ensure taxpayer dollars are being used efficiently and effectively. As such, it is critical that the Department utilizes funding in a way that minimizes waste and supports programs that can accurately portray need. This legislation works to accomplish this while ensuring accountability for contractors in reporting their number of students served under the program.

The Department has the following recommendations regarding S. 943, the JOM Supplemental Indian Education Program Modernization Act:

- *New Applicants.* Section 7(a)(4) defines "New Applicants" as an entity that applies to participate in a contract "not later than 240 days. . ." in coordination with S. 943's reporting requirements for the Bureau. The Department believes this provision could potentially limit prospective applicants due to the period mentioned and suggests language that clarifies that new applicants will not be limited to a particular timeframe.
- *Hold Harmless.* Section 7(f) assumes sufficient funding will be available to meet the hold harmless requirement. The Department is concerned that the provision does not carve out an exception for potential appropriation reductions and recommends adding language that the hold harmless provision is contingent upon available funding.
- *Student Count Data.* Section 7(c)(1)(B)(i) directs the Department, through the BIE Director, to cross-check student count data with data from the U.S. Bureau of Census, the National Center for Education Statistics (NCES) in the U.S. Department of Education's Institute for Education Sciences, and the U.S. Department of Education's Office of Indian Education (OIE). The Department assumes that the bill is referring to the student count used for OIE formula grant payments under Title VI of the ESEA (formerly Title VII).

  If that is the case, it should be noted that Title VI formula grants are based on student eligibility that is broader than the JOM eligibility, as OIE's count includes members of state-recognized tribes, and children and grandchildren of members of federally recognized tribes without regard to blood quantum. The Department is also concerned that U.S. Census Bureau data will include self-identified individuals who may not be eligible for services because BIE jurisdiction extends only to members of federally-recognized tribes or students who are identified as eligible under the Act. We look forward to working with the committee to ensure that the bill adequately protects the privacy rights of Indian students and their families.

Conclusion

Thank you for the opportunity to present testimony today on such important legislation. The Department and BIE look forward to continuing our work with this Committee, Indian tribes, and our important stakeholders. We also look forward to working with the sponsors of the legislation to address the aforementioned recommendations. Thank you for your time, and I would be honored to answer any questions you may have.

Thank you for the opportunity to present testimony on behalf of the Department regarding S. 1223, the Klamath Tribe Judgement Fund Repeal Act, which would repeal Public Law 89–224, commonly known as the Klamath Tribe Judgement Fund Act. The Department is still reviewing the legislation and cannot take a position at this time.

The Klamath Tribe Judgement Fund Act, enacted on October 1, 1965, authorizes the Secretary of the Interior to establish and apply appropriated dollars to a judgement fund for the Klamath and Modoc Tribes and Yahooskin Band of Snake Indians, better known as the Klamath Tribe.

Background

The Klamath Indian Reservation, located in southern Oregon, was established by the Treaty of October 14, 1864. The reservation was managed under the supervision of the Federal Government and headquartered at the Klamath Agency. In 1954, the federal trust responsibility for the reservation was terminated by the passage of the Western Oregon Indian Termination Act. Upon formal termination, the Klamaths were provided an opportunity to remain tribal members or withdraw from their tribal membership. Those opting to withdraw their memberships forfeited their share of some tribal assets, and those who remained retained ownership of tribal assets. Both groups were able to keep any interests in future awards claims.

Docket 100

The Aboriginal Title Claim case was settled when the Indian Claims Commission issued an order on January 31, 1964, which granted a judgement fund award of $2,500,000. This settled amount was to serve as fair payment for lands in Oregon ceded under the Treaty of 1864. Legislation authorizing distribution was not enacted by Congress until October 1, 1965. Payment began in 1966 and each of the 2,133 members on the membership roll received $1,124.00 resulting in a total of $2,351,250.14 paid out, and the remaining balance supported attorney fees and expenses.

Docket l00A

In September of 1969, the Klamath Tribe successfully claimed additional compensation for lands ceded by Treaty of October 14, 1864. The claim, better known known as 'the boundary claim' involved 621,824 acres that were excluded from inclusion in the reservation boundaries. Docket 100A was completed on September 2, 1969, with the sum of $4,162,992.82 being granted in favor of the Klamaths. Payment began in 1970 with each member receiving $1,841.45. Historically, the Bureau of Indian Affairs consulted with the Klamath Tribe to prepare proposed distribution of judgment funds remaining in the various Klamath accounts, pursuant to Klamath Tribal Resolution 96–15, dated March 6, 1996.

It is important to make clear that the Klamath Tribe Judgement Fund Act is the appropriate vehicle for distributing this funding. We have concluded that the Judgement Fund Distribution Act, which was signed into law in 1973, does not apply to the Klamath Tribe Judgement Fund, as its ability to apply dollars that were appropriated and authorized for use and distribution precedes 1973.

In 1983 and 1996, funds were disbursed for each tribal member on the 1954 Klamath roll. The Klamath Tribe currently has 188 Individual Indian Money (IIM) accounts for tribal members. An estate account was set up for deceased tribal members. These accounts are still open due to lack of information, no death certificates, no birth certificates, and Whereabouts Unknown. These funds will remain as IIM accounts with the Office of the Special Trustee (OST).

Conclusion

At this time, the Department needs to better understand the impact the repeal of this fund will have on our actions moving forward and the trust responsibility we have to the Tribe, and therefore takes no position on the legislation. Again, thank you for the opportunity to testify on the S. 1223, the Klamath Tribe Judgement Fund Repeal Act. I would be glad to answer any questions the Committee may have.

Thank you for the opportunity to provide a statement on behalf of the Department of the Interior (Department) on S. 1285. This legislation would allow the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of Siletz Indians of Oregon, the Confederated Tribes of Warm Springs, and the Cow Creek Band of Umpqua Tribe of Indians to lease or transfer certain lands. The Department supports S. 1285.

The Department is aware that the Tribes listed in this legislation wish to lease, sell, convey, warrant, or otherwise transfer all or any part of their interests in any real property that is not held in trust by the United States for the benefit of the Tribes without further approval, ratification, or authorization by the United States. As the language in the bill indicates, such lands do not include any lands held in trust by the United States for the benefit of the Tribes.

The Tribes have expressed their opinion that they cannot lease, sell, convey, warrant, or otherwise transfer all or any part of its interests in any real property not held in trust by the United States unless authorized by Congress. The Tribes presumably are referring to federal law, 25 U.S.C. §177, which prohibits any "purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians."

S. 1285 would expressly allow each of the Tribes to lease, sell, convey, warrant, or transfer all or any portion of its interest in *any real property not held in trust status by the United States for the benefit of the Tribe. Under S. 1285, further approval, ratification, or authorization by the United States is not required in order to validate the land transaction. The legislation also clearly states that S. 1285 does not authorize the Tribe to lease, sell, convey, warrant, or otherwise transfer all or any portion of any interest in any real property that is held in trust by the United States for the benefit of the Tribe*. Given these clear lines, the Department supports S. 1285 and believes this authority should be extended to all Tribes for fee simple lands.

Mr. Chairman and members of the Committee, thank you for the opportunity to appear before you today. I am happy to answer any questions you may have.

The CHAIRMAN. Thank you, Director Dearman.

Now, I would like to call on the Honorable Warren Brainard.

STATEMENT OF HON. WARREN BRAINARD, CHIEF, CONFEDERATED TRIBES OF COOS, LOWER UMPQUA AND SUISLAW INDIANS OF COOS BAY

Mr. BRAINARD. Good afternoon. My name is Warren Brainard and I serve as Chief of the Confederated Tribes of the Coos, Lower Umpqua and Suislaw Indians. We are located along the beautiful rural Oregon coast, a long way from Washington, D.C.

I am honored to testify today about S. 1285 and its importance to my people. I am accompanied here today by Teresa Spangler, who serves as Vice Chair of the Tribes.

This bill would remove barriers that hinder our effort to create economic development opportunities and jobs not only for our tribal community but also for surrounding communities. These barriers stem from the overly broad interpretation of the Non-Intercourse Act and by certain title companies and financial institutions in Oregon.

The bill would give us the right to buy, sell or lease property like any other American. It would make it clearer that no approval is required from the U.S. for real estate property transactions on our fee lands. The bill would also assist four other tribes in Oregon in this regard.

Further, I would like to emphasize the bill would not affect any trust land and does not relate to gaming.

We thank Senator Merkley for introducing S. 1285 and Senator Wyden for co-sponsoring this bill. We appreciate their efforts on our behalf. We also appreciate the Committee's efforts.

The Indian Non-Intercourse Act is a series of Acts from 1790 to 1834 and was intended to establish the Federal Government as the sole authority over Indian affairs in order to maintain peaceful and stable relations with tribes and prevent the loss of Indian lands from colonial encroachment.

The Acts prevent the sale, lease, transfer or other conveyance of Indian land without Federal approval. Typically, the Act has not prevented the tribe from being able to engage in fee land transactions.

However, some of the companies and financial institutions are interpreting the Act to require Federal approval for tribes for these types of transactions. The Department of Interior does not seek such determination for fee land transactions for tribes. Seeking congressional approval for every fee land transaction by a tribe is clearly impracticable.

Over the past 200 years, the application of the Act has varied depending on the time period and location resulting in a confusing set of judicial, legislative and administrative decisions. In 2014, we encountered this problem. We sought to purchase a self storage facility in Coos Bay, Oregon using a commercial mortgage.

However, the title company's underwriters determined the Act required the transaction be approved by the BIA and refused to issue title insurance. We were unable to obtain a commercial mortgage to purchase this facility and had to do all that we could to put together enough cash to acquire the facility.

Although we were able to complete the transaction, we do not have the means to execute all of our fee land transactions in cash. Without passage of this bill, we will continue to encounter this problem and will be unable to obtain mortgages, sell or lease existing fee lands. This would severely hamper our efforts to engage in economic development, create jobs and acquire some of our ancestral lands. We seek passage of the bill to address this problem.

Thank you for your efforts and working with us to enact this bill into law. I appreciate this opportunity to testify and would be happy to answer any questions.

Thank you.

The CHAIRMAN. Thank you, Chief Brainard. Thank you also for your service. I understand your son is a Colonel in the Air Force as well. We appreciate your service and his.

Mr. BRAINARD. Thank you.

The CHAIRMAN. Next is Mr. Wharton.

STATEMENT OF DONALD R. WHARTON, SENIOR ATTORNEY, NATIVE AMERICAN RIGHTS FUND

Mr. WHARTON. Good afternoon, Mr. Chairman and members of the Committee. Thank you for the opportunity to be here today.

I especially want to thank Senators Merkley and Wyden for introducing this legislation. I think Senator Merkley gave a very good synopsis of it, so I will try to limit my comments to additional issues.

I want to point out that this legislation, as pointed out, was part of and is vestige of the Termination Act of 1954, disastrous and ill-considered legislation that had very adverse effects on the tribe and its people. In 1965 when this was adopted, there were 2,133 members on the final roll who were the distributees identified under this Act.

To give you one example of the inequities that flow from this, a woman of the tribe married a non-Indian man. She passed away and he, of course, was heir to her estate. Her son watched as he

then passed along his interest to his children, non-Indians, watched as distributions came down and they received money and he did not.

To understand how this actually operates is to understand how inequitable it is and how disastrous it is for the tribe. This legislation denigrates sovereignty; it disallows a tribe the ability to determine the distribution and the allocation of its own assets. It deprives significant numbers of tribal members born after 1954 from sharing in any of that estate unless they are an heir or legatee.

Just being a descendant does not necessarily guarantee that. Current members of the tribe cannot share in the distribution if they were born after 1954 and are not an heir.

It is very expensive to distribute this money. The last distribution cost in the neighborhood of $300,000, because you have to identify every single heir and legatee. You have to know who they are, what their share is, where they live and how to get a check to them.

That is not always successful but that is a very expensive process for which the Bureau charges money and deducts that money from the money in the account, therefore diminishing the distribution. If the money cannot be distributed and it costs more than it would be worth to distribute it, under this Act, that money then goes back to the United States. It is not held for the benefit of the tribe, which I think is, again, a serious inequity to the tribe. Repeal of this Act would help to rectify that problem.

Future judgments, by the way, it is not just judgment money. This Act specifically requires that it applies to the judgment fund and all other funds deposited to the credit of the Klamath Tribes in the United States Treasury. It is not just judgment fund money. It covers every resource that gets deposited to the Treasury. It is important to understand this Act has serious inequities and would rectify a longstanding wrong to the tribe as a result of the Termination Act.

I understand the Office of Trust Services would like to better understand what is going on and we would very much like to facilitate the possibility of doing that. We would be glad to work with you to help that happen.

If this repealed distribution of judgment funds would be pursuant to 1401, the other Judgment Fund Act, that provision in the Judgment Fund Act also provides if monies have been distributed and have not all been distributed, those funds under 1401(b) would be held for the benefit of the tribe.

That would be a significant step forward in rectifying this inequity and serving the long term benefit of the tribe and honoring its sovereignty.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Wharton follows:]

PREPARED STATEMENT OF DONALD R. WHARTON, SENIOR ATTORNEY, NATIVE AMERICAN RIGHTS FUND

Chairman Hoeven, Vice Chairman Udall and members of the Senate Committee on Indian Affairs. My name is Donald R. Wharton. I represent the Klamath Tribes as an attorney with the Native American Rights Fund. This testimony is submitted in support of S. 1223 which will repeal *The Klamath Tribe: Judgment Fund Act* of 1965, Pub. L. 89–224 (The Judgment Fund Act). The Judgment Fund Act seriously

compromises the Klamath Tribes sovereignty and mandates distribution of tribal funds in a manner detrimental to the best interests of the Tribes and its members. It is the last remaining vestige of the disastrous and ill-considered legislation that in 1954 terminated the government-to-government relationship between the Klamath Tribes and the United States. That relationship was restored on Aug. 27, 1986 by Pub. L. 99–398, by the *Klamath Tribe: Restoration of Federal Supervision Act*.

I. The Historical Context of the Judgment Fund Act

The Klamath and Modoc Tribes and the Yahooskin Band of Snake Indians (now Klamath Tribes) had their government-to-government status as a recognized Tribe terminated in 1954 by the *Klamath Tribe: Termination of Federal Supervision Act*, (Pub. L. 86–40; 68 Stat. 718). This unilateral act of the United States Congress was taken without the consent or support of the Klamath Tribal Government. The purpose of the Act was to terminate Federal supervision over the trust and restricted property of the Tribe, and to remove from individual members their status as members of a "recognized" tribe. As a result, the lands and other tribal property were monetized and distributed to individual members of the Klamath Tribes. In order to accomplish this a "final roll" of the members of the Tribe as of midnight August 13, 1954 was compiled (the 1954 enrollees). There were 2133 members on that roll. The more complicated process of determining which of the members were the so-called "withdrawn members" and which were the so-called "remaining members" isn't germane to the consideration of S. 1223.

In addition to the reservation property of over 850,000 acres of prime timber and ranch lands, the Tribe also had pending before the now defunct Indian Claims Commission (ICC) lawsuits against the United States seeking compensation for the mismanagement or misappropriation of tribal assets; primarily timber and ranch lands. In the 1950s, and until 1965, claims before the ICC and later the Court of Federal Claims which resulted in judgments against the United States were not paid to the Klamath Tribe until authorized and appropriated by Congress. As a result, Congress determined that it would be more efficient to adopt a "Judgment Fund Distribution Act" that would allow for any funds secured as a result of judgment against the United States and deposited in the United States Treasury to the credit of the Klamath Tribe to be distributed in accord with the specific requirements of that Act. Thus, Congress adopted the Judgment Fund Act on October 1, 1965.

The Judgment Fund Act provided for distribution of funds appropriated in satisfaction of judgments obtained by the Tribes, *and all other funds deposited in the United States Treasury to the credit of the Klamath Tribes*, to the 2133 people on the Final Roll. (Sec 4 of Pub. L. 89–224). All funds deposited in the Treasury regardless of the source (e.g., payments for rights-of-way, trespass damages, or other revenues, together with any interest accrued) were included in the application of the Act.

II. The Problem With the Judgment Fund Act

The Judgment Fund Act's limitation on distribution of funds to persons on the "final roll", or to their heirs or legatees began to have unintended and deleterious results. As time went on, the 2133 members on the final roll began to pass on. Under the terms of the Judgment Fund Act, their share passed to their heirs or legatees. (Sec 2 of Pub. L. 89–224). Sometimes surviving spouses, sometimes children or other surviving relatives. Many of the people to whom shares passed were not Klamath tribal members, or even of Native American descent. As a result, distribution pursuant to the Judgement Fund Act has four impacts detrimental to the Tribes.

1. The Tribes have no ability to determine how tribal funds can be allocated to members or other tribal priorities. Indeed, many tribal members are ineligible to receive any part of the distribution of such funds, and the Tribes cannot designate any funds for general tribal benefit or development.

2. Because of inter-marriage with non-members the distribution of funds under the Act result in distribution of significant amounts of tribal funds to non-Indians and other non-members of the Tribes.

3. Distribution to the living 1954 enrollees, or their current heirs or legatees, requires a complicated process of identification and certification of each individual, necessitating an extraordinarily lengthy and extremely expensive process. The costs for distribution are deducted from the available funds, thus significantly reducing funds available for distribution.

4. Should there be funds in the account which the Secretary of the Interior determines are insufficient to justify further distribution—which could be substantial given the extraordinary cost of distribution—those funds must under the

Act be returned to the Treasury of the United States; not held for the benefit of the Tribes.

The Judgment Fund Act did not contemplate the August 27, 1986 *Klamath Tribe: Restoration of Federal Supervision Act*, Pub. L. 99–398, which restored the government-togovernment relationship between the Tribes and the United States. Restoration in part reinitiated the enrollment of tribal members born after the compilation of the 1954 Final Roll. It also reinvigorated the Klamath Tribes' Government which manages the affairs of the Tribes. Despite the restoration of many tribal powers the Judgment Fund Act disallows any tribal determination over the distribution of funds in the United States Treasury for the benefit of the Tribes or any members enrolled after August 13, 1954.

III. The Effect of Repeal

Repeal of the Judgment Fund Act would resolve these concerns and allow the Tribes to determine the best use of funds presently in trust accounts for the benefit of the Klamath Tribes. In the absence of the judgments from the U.S. Court of Federal Claims—there are no further claims before the ICC—would be made pursuant to the *Indian Tribal Distibution of Judgment Funds Use and Distribution Act* of October 19, 1973, 25 U.S.C. § 1401 (87 Stat. 466). That Act by its terms applies to any "Indian Tribe", which includes the Klamath Tribes. It is presently unavailable to the Klamath Tribes because the1965 Judgment Fund Act preempts its application.

IV. Conclusion

The repeal of this last vestige of the disastrous and ill-considered Termination Act of 1954 would be a welcome and necessary next step in respecting the sovereignty of the Tribes and returning the Klamath people to their former robust self-sufficiency.

The CHAIRMAN. Thank you, Mr. Wharton.

Ms. Mann, your testimony.

STATEMENT OF CARLA MANN, PRESIDENT, NATIONAL JOHNSON–O'MALLEY ASSOCIATION (NJOMA)

Ms. MANN. Thank you for the honor of speaking before you again today.

As you know, the National Johnson-O'Malley Association speaks for the JOM programs across the Nation asking for the unfreezing of the JOM Program. For approximately 16 years, we have come to Congress asking for that to be done. In the last four years, we have changed our direction.

When NJOMA began the pursuit of legislation to modernize and reform the Johnson-O'Malley Program, we established four primary goals for this legislation. First, we are seeking for the JOM Modernization Act to obtain a complete update of the student count for the number of Indian students eligible for JOM services and assistance.

Second, we wanted to initiate and conclude an open, honest and reality-based discussion about the true cost and funding needed to provide these types of supplemental learning and educational services and assistance needed by Indian students in today's educational and career environment.

Third, we wanted to obtain a general update and modernization of JOM's rules as reflected in Title 25, Code of Federal Regulations.

Finally, we wanted to codify the objective of increasing geographic and tribal participation in the Johnson-O'Malley Supplementary Education Program.

When we wanted to update the student count, we looked in different directions for how we were going to complete that. One suggestion was to utilize the count from the Census which is one of the accepted U.S. Government datasets, as well as the National

Center for Education Statistics and Office of Indian Education, Department of Education.

A recently published article shows that the Native population has increased by 26.7 percent across the Nation. The children we count right now are approximately 272,000. According to the Census, we have nearly 1 million reported.

NJOMA hopes to be able to continue working with this Committee, our other congressional supporters, the Department of Interior, and the BIE to fully identify and extend JOM services and assistance to the full Indian student population JOM is intended to reach.

In 1995, when the JOM was frozen, the students received approximately $125 per student. Right now, in today's dollars, we are getting $63. Effectively, that is around $43 per student. It can be much less for those tribes who count all students regardless of the number they are receiving money for.

On behalf of over 1 million Indian children eligible for JOM, NJOMA is overjoyed by the Committee's speedy consideration of S. 943 and would urge immediate approval. After 20-some years of waiting for any action by Congress or the Administration to rectify this shameful condition, that the JOM Program exists today, we are encouraged by today's hearing and the Committee's pending approval of this legislation.

We are hopeful that this Committee and the Senate will take quick action on this bill so that the House would have the opportunity to also quickly act on the bill. Given the number of tasks prescribed in the bill, we pray that all this work can be completed and put into place in time for the 2018–2019 school year.

Each school year that passes is one more year that our students are not receiving the benefits they should be receiving through treaty rights to further their education. To meet the proposed schedule, we need this bill enacted and signed by the President as soon as possible.

I thank you for your time and am open to any questions.

[The prepared statement of Ms. Mann follows:]

PREPARED STATEMENT OF CARLA MANN, PRESIDENT, NATIONAL JOHNSON-O'MALLEY ASSOCIATION (NJOMA)

Mr. Chairman and Members of the Committee, I am pleased to represent the National Johnson-O'Malley Association (NJOMA) before you today in support of S. 943, the Johnson-O'Malley Supplemental Indian Education Program Modernization Act of 2017; legislation developed to direct the completion of necessary updates to the Johnson-O'Malley Supplemental Indian Education program (JOM) operated by the Department of Interior, Bureau of Indian Education (BIE).

Mr. Chairman, as I have testified before, NJOMA has for nearly 25 years and through several Administrations advocated for actions to reverse the Department of Interior and BIE's "determined unwillingness" to complete the necessary work to be able to finalize a count of the numbers of Indian students "eligible" for JOM services. In 2012, 2014, 2016 and again in 2017, Members of Congress approved language in the Interior appropriations bills directing the Department and BIE to update and report to the Congress a count of the eligible Indian students for the JOM program. Given this unacceptable situation, I come here again today on behalf of the over 1 million Indian children asking this Committee and the Congress to quickly approve S. 943 so that these children can rightfully obtain the kinds of supplemental educational services and assistance they need to become productive American citizens.

We are extremely pleased and thankful that Senators Heidi Heitkamp, James Langford, Steve Danes have stepped up to reintroduce legislation to direct the Sec-

retary of Interior to acknowledge the 20 plus year gap in data collection for the JOM program, and to select and use one of the widely accepted government data sets such as Census Bureau and/or National Center for Education Statistics (NCES) data, to develop a reasonably reliable projection of the current JOM-eligible student population. This bill will authorize the Secretary to use one these data sets to establish a new baseline count of eligible Indian students for use in help BIE and NJOMA build a modern, more accurate, and uniform allocation funding formula; establish a data reconciliation process-like the one used by HUD in the Indian Housing Block Grant program to work with Tribes, public school districts and other organizations to refine, and establish on an ongoing basis, the requirement for BIE to keep the count accurate and report this information to the Congress on an annual basis.

When NJOMA began our pursuit of legislation to modernize and reform the Johnson-O'Malley program, we established four primary goals for this legislation:

- First, we are seeking the Johnson-O'Malley Modernization Act to obtain a complete update of the student count for the number of Indian students "eligible for JOM services and assistance";
- Second, we wanted to initiate and conclude an open, honest and reality based discussion about the true cost and funding needed to provide the types of supplemental learning and educational services and assistance needed by Indian students in today's educational and career environment;
- Third, we wanted to obtain a general update and modernization of JOM's Rules, as reflected in Title 25, Code of Federal Regulations; and
- Finally, we wanted to codify the objective of increasing geographic and Tribal participation in the Johnson-O'Malley Supplementary Education Program.

Updating the JOM Student Count

For nearly 25 years and through several Administrations, the Department of Interior and BIE have been unable, or in some peoples' opinion, unwilling to do the necessary work needed to finalize a count of the numbers of Indian students currently enrolled or calculate the true total count of Indian students eligible for JOM services. It should be noted once again that the JOM program has been all but frozen in time since 1995: no updated student count, no update of the program rules, and no real increase in funding to meet the real-time growth in the eligible population as noted from data collected for other Indian education activities and the 2010 Census (and its bi-annual Community Population updates).

Once again, I would remind the Committee that in 2012, 2014, 2016, and again in 2017, the Congress approved language in the Interior appropriations bills directing the Department and BIE to update and report to the Congress a count of the eligible Indian students for the JOM program. Given what I believe we would all agree is a totally unacceptable situation, we firmly believe that the "total eligible student population" for JOM when projected using the accepted factors of "enrollment in a Federally recognized Indian tribe or ¼ blood quantum" that the eligible JOM Indian student count is well over 1 million Indian children verses the 272,000 students counted in 1995, and still in use for funding and allocation purposes today.

NJOMA is totally supportive of the authorization contained in S. 943 that provides the Secretary of Interior with direct authorization to select and use one or more of the widely accepted government data sets such as Census, National Center for Education Statistics (NCES), and data collected by the Office of Indian Education of the Department of Education to develop a reasonably reliable projection of the currently enrolled JOM-eligible student population. We hope to be able to continue working with this Committee, our other Congressional supporters and the Department of the Interior and BIE to fully identify and extend JOM services and assistance to the full Indian student population JOM is intended to reach.

Determining True Cost and Funding to Provide Supplemental Learning and Educational Services and Assistance Needed by Indian Students in Today's Educational and Career Environment

Under currently utilized JOM regulations (Title 25 Code of Federal Regulations (CFR) INDIANS, Part 273, 16–17), JOM programs are based on community and student needs assessments, not the needs of the school district and therefore provide specialized educational services to Indian students. As you may know, the JOM program is the only Federally-funded Indian educational program that allows for student, parent, and community involvement in meeting their educational needs which are both academically, culturally and geographically based.

In 1995 when JOM was frozen, the per student allocation amount funded was approximately $125.00 per student, based on the then 272,000 counted students. A re-

view of the nearly 22 years of frozen funding for JOM appearing later in this testimony shows that today's JOM per student allocation is effectively $43.00 per student; an amount that is not based on any accepted measurement of the true costs of the goods, services, personnel and transportation costs and types of assistance needed by JOM eligible students.

NJOMA is pleased that S. 943 directs the Secretary to establish, in consultation with contracting parties, a present day per student funding allocation that shall serve as a funding "target baseline" for the JOM program going forward. This baseline will enable all of us to remain focused on insuring that the commitments make as far back as the early 1800s, and codified in the 1934 Johnson-O'Malley Act, to "ensure that Indian children received the educational opportunities that would not otherwise be provided" are kept.

We are also pleased that S. 943 requests that the Secretary make recommendations for legislation to logically increase the amount of funds available per eligible Indian student through contracts, at amounts equal to or greater than the amount of funds that were available per eligible Indian student for fiscal year 1995, and to identify additional sources of funding that do not reallocate existing funds otherwise utilized by Indian students served by JOM.

Finally, NJOMA is also supportive of the provisions that establish "Hold Harmless" funding conditions in S. 943, and are pleased that they accommodate the need, should it occur, for JOM Contracting Parties to adjust their program and services over a period to accommodate a decrease in enrolled students should it fall below the number of eligible Indian students identified in the initial eligible student count for that program entity.

Updating and Modernization of JOM's Rules

The program operating rules for JOM are terribly outdated and lacking in the kind of guidance generally needed by JOM Contracting Parties. Many of the needed Rule updates are to provisions that have not been reviewed or amended since the 1970s, or are in areas where the Courts have rendered decisions that require JOM Rules to be brought into compliance with the Court's findings such as the definition of "eligible Indian student" as ruled by the Ninth Circuit Federal District Court in *Diane Zarr v. Earl Barlow, 800 F.2d 1484 (9th Cir. 1986)*.

S. 943 instructs the Director of the Bureau of Indian Education to undertake and complete a rulemaking process to determine how the regulatory definition of 'eligible Indian student' may be revised to clarify eligibility requirements for contracting parties; determine, as necessary, how the funding formula may be clarified and revised to ensure full participation of contracting parties and provide clarity on the funding process; and otherwise reconcile and modernize the rules guiding the JOM program.

NJOMA looks forward to working with BIE and other JOM stakeholders to improve and update the JOM program Rules; and are hopeful that this effort will be conducted via a fully engaged and consultative process.

Increasing Geographic and Tribal Participation in the JOM Program

S. 943 instructs the BIE to consult with Indian tribes and contact State educational agencies and local educational agencies that have not previously entered into a contract to determine the interest of the Indian tribes and State educational agencies and local educational agencies in entering into contracts, and to share information relating to the process for entering into a contract. This mandate is justified because in 1996, BIE stopped accepting and processing applications from Tribes and other potential JOM program contractors, even as inquiries continued to flow into the Bureau from school districts, Tribes and other eligible entities.

NJOMA strongly believes that as the true impact of the likely "total eligible student population" for JOM of well over 1 million Indian children and that the need to increase the number of JOM Contractors, expand resources and otherwise raise funding for this U.S. Government "Trust Responsibility" program will be self-evident. We likewise believe it is important that these and other outreach efforts are critically needed to insure also that "No Indian Child is Left Behind."

What Does the Census Data Tell Us?

In previous testimony NJOMA has spoken to the issues of using widely acknowledged data and a reconciliation process to better determine and establish a viable estimate of the number of JOM eligible Indian students. The Native American population that has been one of the demographic groups experiencing positive population growth for the last 40 plus years. According to the 2010 census, 5.2 million people, or 1.7 percent of all people in the United States, identified as American Indian and Alaska Native, either alone or in combination with one or more races. This population alone grew by 27 percent from 2000 to 2010. In the 2010 census, those who reported being American Indian and Alaska Native alone totaled 2.9 million, an in-

crease of 18 percent from 2000 to 2010. The multiple race American Indian and Alaska Native population, as well as both the alone and alone-or-in-combination populations, all grew at a faster rate than the total U.S. population, which increased by 9.7 percent from 2000 to 2010. The data also shows us the steady growth that has occurred and is forecast to continue to happen within the ages 3–12 years old demographic, and the forecasts up to and beyond 2020 present this same picture.

In 2014, the U.S. Census Bureau provided Representative Tom Cole (R–OK) with census data regarding American Indian and Alaska Native child populations. The information provided included data tables that reflect American Indian and Alaska Native population aged 3 to 18 years by selected tribe from the 2000 Census, the 2006–2010 American Community Survey, the 2010 Census, and the 2008–2012 American Community Survey. In addition, the Census Bureau provided population projections of the American Indian and Alaska Native population aged 3 to 18 years for 2010 through 2020. According to the most reliable numbers available from the 2010 Census, there are at least 798,000 Indian and Alaskan Native students who are counted as having been enrolled in a single, federally recognized tribe. That number is over 1.0 million eligible Indian children who, based on meeting the current JOM 1/4thquantum requirement, and attending Public Schools who we believe, should also be receiving JOM services today.

Because of bureaucratic fumbling and Administration neglect, JOM's student count has been frozen at 272,000 students since 1994. The Senate Indian Affairs Committee stated in its 2012 Report accompanying S. 1262 (Senate Report 112–262), "[that] currently, 620,000 or 93 percent of Native students attend public schools and approximately 45,000, or 7 percent, attend BIE schools." It was clear then, and remains true, that there are many JOM-eligible students being denied or deprived of services that they are legally entitled to, amounting to a failure of the Federal Government to meet its trust responsibility.

NJOMA has lead an effort—that we are pleased that the BIE has now embraced—to temporarily set-aside BIE's once used annual student count process, and replace their count with U.S. Census or other data to build a new baseline count of JOM Indian students. We have argued that Census data is reliable, comprehensive information that is provided without any additional funding or resources for the Bureau. There are many federally funded programs, including ones specifically for Native American populations, which use U.S. Census data for the apportionment of funds. Census information is reliable data upon which Congress and the Administration regularly rely including for the Reading First State Grants (Dept. Ed), Career and Technical Education—Basic Grants to States (Dept. Ed), Tech-Prep Education (Dept. of Ed), Safe and Drug-Free Schools and Communities State Grants (Dept. Ed), Water and Waste Disposal Systems for Rural Communities (USDA), Grant Program to Establish a Fund for Financing Water and Wastewater Projects (USDA), Special Programs for the Aging Title VI, Part A, Grants to Indian Tribes Part B, Grants to Native Hawaiians (HHS), Urban Indian Health Services (HHS), Low-Income Home Energy Assistance (HHS), Head Start (HHS), Family Violence Prevention and Services/Grants for Battered Women's Shelters Grants to States and Indian Tribes (HHS), Preventive Health and Health Services Block Grant (HHS), Violence Against Women Formula Grants (DOJ), State Public Water System Supervision (EPA), Water Pollution Control State, Interstate, and Tribal Program Support (EPA), Nonpoint Source Implementation Grants (EPA), Economic Adjustment Assistance (DOC), National Fire Plan—Wildland Urban Interface Community Fire Assistance (DOI), Americorps (CNCS), Native American Employment and Training (DOL).

The Federal Government, including the Department of Interior and the Bureau of Indian Affairs use Census data for other Indian programs including tribal housing, tribal roads, law enforcement, and labor force reports. BIA currently uses Census data for its American Indian Population and Labor Force Reports and Congress regularly uses this data to inform policymaking decisions. Census data is also widely used locally for planning and program purposes to identify appropriate economic development approaches and gauge particular community needs and resources. Another critical use of this data is to determine levels of federal funding for tribes under the Workforce Investment Act, the Indian Housing Block Grant program, the BIA Tribal Transportation program, and many other Indian programs. Using Census data would reduce duplicitous spending by BIA to perform a count for which data already exists. Any significant changes to data collection (or lack thereof) and the continued non-collection of data impact the ability of tribal governments to adequately provide for their citizens, and affect the federal government from carrying out its trust responsibility in essential social and economic areas.

In 1997, OMB issued a *Federal Register* notice regarding revisions to the standards for the classification of federal data on race and ethnicity. OMB developed race

and ethnic standards in order to provide "consistent data on race and ethnicity throughout the Federal Government. The development of the data standards stem in large measure from new responsibilities to enforce civil rights laws." Among the changes, OMB issued the instruction to "mark one or more races" after noting evidence of increasing numbers of interracial children and wanting to capture the diversity in a measurable way and having received requests by people who wanted to be able to acknowledge their or their children's full ancestry rather than identifying with only one group. Prior to this decision, the Census and other government data collections asked people to report only one race.

The OMB states, "many federal programs are put into effect based on the race data obtained from the decennial census (i.e., promoting equal employment opportunities; assessing racial disparities in health and environmental risks). Race data are also critical for the basic research behind many policy decisions. States require these data to meet legislative redistricting requirements. The data are needed to monitor compliance with the Voting Rights Act by local jurisdictions".

While BIE has traditionally relied on tribes to provide data for the student count, tribes should not bear sole or primary responsibility for providing quality data with little to no resources, training, or other support from the Bureau to do so. It is clearly essential that student count data be available for monitoring the quality of services that the BIE and JOM contractors are responsible for providing to American Indian and Alaska Native students. Going forward, there needs to be greater coordination between the BIE, Census Bureau, and the Office of Management and Budget to address the widespread problems that plague data collection generally in Indian Country, and especially JOM.

For the record, BIA/BIE's 2012 and 2014 counts—as imperfect as they were—made it clear that there have been increases in the number of students needing and being serviced by JOM since 1995. The only real issues in dispute today are how much of a student increase has occurred, and what the cost would be of adequately serving this population. As the number of students served by JOM has grown, so too must the funding in order for JOM to continue to operate and offer the much needed services it provides to an already underserved Native American population.

In our view, at this point in time, it is clear that this data is a more comprehensive compilation of population data and more accurately reports the demographics of the client group that JOM is intended to serve. The BIE has more than proven that is not capable of performing and reporting student counts as mandated by Congress. S. 943 will direct the use of Census and/or other data to bridge the over 20-year gap since the last true JOM student count, but does serve as a replacement for a BIE count altogether.

We look forward to working with BIE, the current JOM contractors and all new program providers in providing Congress with accurate and compelling justifications for increases in funding and expansion of the allowable-but badly needed-program activities that JOM can operate that will advance the attainment of the goal of enhancing the education and training of Indian students.

JOM Funding and Student Count History

For over 60 years, the JOM program constituted a separate appropriation under the Federal budget and appropriations bills. However, in 1995, the Bureau of Indian Affairs moved the JOM program into the TPA budget category of the BIA. The TPA is a block grant to tribes of a number of program allocations and authorities which originally were separate programs. Theoretically, the TPA system allows tribes flexibility to move funds between activities within the program to meet locally, tribally designated priorities. However, as with most block grant schemes, the TPA has been used as a budget regulatory tool, with amounts for the TPA account limited and not increasing with the needs of various components. In fact, the TPA has allowed the Federal government to flat-line funds for the account for years, while the needs of the constituent programs have increased. The tribes and the JOM Indian community resisted the proposed Bureau addition of the JOM to the TPA. Despite tribal and educator opposition, the BIA added the JOM program to the TPA, creating the current program.

Prior to the 1995 freeze, the BIA had a full time JOM Director in the D.C. office. This director collected the program annual reports, student count information, and provided technical assistance the programs. While there were local JOM managers in the regional BIA offices that oversaw the local JOM programs and provided direct technical assistance, the JOM program administrators had a direct line to the Director in D.C. The Director's primary task was to provide the JOM programs with their annual funding based on the student count received from the local JOM managers. The Director makes a funding distribution based on the national budget divided by the student count, taking into consideration the cost of living in each state. For ex-

ample, Alaska received the highest per student cost based on the high cost of living in that state.

The regional JOM managers would collect the information from the local JOM programs; they would put out notices of deadlines, hold JOM forums, and conduct annual evaluations of each program, including a random student certification verification and financial audit review. These regional managers would provide their findings of non-compliance to the programs and provide them a timeline to comply or funding would be withheld until such time as the individual program was compliant with federal regulations and BIA policies and procedures. Compliance included annual reports, student count certificates, or lack of Local Indian Education Committee (LIEC) involvement.

The LIEC is comprised of parents of eligible Indian students enrolled in the public school district. Choices are made at the local level, with scarce resources going to locally determined needs. The regional JOM managers also reviewed each JOM program application and ensured that there were measurable goals and objectives based on an actual needs assessment that was conducted annually. In addition, the managers reviewed their prospective budgets before forwarding them to the Director in D.C. The managers collected the following from each program and sent them to the Director: annual needs assessment, program application with measurable goals and objectives, budgets, student count verifications, LIEC bylaws, and LIEC election process.

In 1982, the BIA proposed eliminating the JOM, arguing duplication of Indian Education Act. Congress soundly refuted this reasoning, stating the programmatic differences in local Indian control and scope, and difference in student eligibility. In 1983, the Department of Education (DOE) proposed eliminating the Indian Education Act, arguing similar funding was available from DOE and the lack of accountability for how the funding was used.

The U.S. Department of Education oversees the Title VII Indian Education Act programs and Title VIII Impact Aid funding which Congress considers duplicate funding sources for Indian Education. The Title VII program is run directly through the school districts and is not subject to tribal control. The tribes have no actual authority over the design or implementation of the Title VII programs.

Under the JOM regulations, parents of eligible JOM Indian students are 'vested with authority" to design and implement local JOM programs. 25 Code of Federal Regulations (CFR) INDIANS, Part 273, 16–17, states JOM programs are based on community needs assessments, not the needs of the school district and therefore provide specialized educational services to Indian students. The JOM program is the only Federally-funded educational program that allows for student, parent, and community involvement in meeting their educational needs which are both academic and cultural based.

The eligibility for Title VII students is not based on students being an enrolled member of Federally-recognized tribe; they simply need to identify themselves on a DOE Form #506. Congress reacted so negatively to this proposal that any further debate on these two programs was shelved and put to rest.

However, the effort to eliminate JOM was resurrected in 1995. The effort to eliminate JOM began with the reduction and eventual phasing out of the regional JOM manager positions, and eventually, the Director's position in D.C. The Director went from a full time coordinator, to a quarter time position, and then phased out altogether. At this time, there was an effort by the BIA to put more emphasis and efforts into the Bureau-operated schools and wanted to direct JOM funds to those schools.

JOM funding has been in a state of "suspended animation" since 1995. The funding formula and the movement of JOM into TPA has caused many tribes and other grantee/contractors under JOM to be frozen at the 1995 student count and funding figures, indefinitely. In 1994 the eligible Indian student count was 272,000 and now there is an unmet financial need for the additional JOM students currently being served by public schools throughout the nation. This student count is not an accurate representation of the number of Indian students served today.

Since the freeze in 1994, there has been no correlation of educational services with the lack of an accurate Indian student count. The JOM programs are not able to show due to the freeze and those Indian students attending public schools are being overlooked for services. Without a current JOM student count, there is no way to estimate the current percentage of JOM students being served in comparison to the BIE.

Many in Indian country believe that the Department of Interior and the BIE have mismanaged the JOM count for over two decades, a situation they many contend is a clear violation of the Federal Government's Trust Responsibility to Indian Country. Evidence of this mismanagement by BIA occurred with the FY 2007 Budg-

et submission. Lack of program performance accountability, duplication of other state and federal programs and implementation of management efficiencies were among the reasons given in the budget documents for the reprogramming of twenty-five percent of JOM funds by the BIA Tribal Budget Advisory Council (TBAC). The BIA has not monitored the JOM program properly since 1995, and thus these reasons are invalid and unverifiable. The JOM program is the one remaining Federal program that puts the program under the strict control of a LIEC.

Legislative History of JOM and the House Subcommittee on the Department of the Interior FY 1993–2017

Source: Dept. of the Interior Budget Justifications and Performance Information

DATE	SOURCE	AMOUNT REQUESTED	# STUDENTS FUNDED	NOTES	CITATION
1992	BIA Budget Justification FY 1993	Base: $22,817,000 FY 1993 Request: $22,177,000	228,681 in 32 states	▪ JOM funds home-school coordinators and academic remediation. • JOM has blood quantum and eligibility requirements. • Although JOM has a base of $22,817,000, $644,000 transferred to tribes so as to let them manage their educational needs.	ISBN 0-16-037580-0; pg. 1066 (BIA-184)
	Testimony re: FY 1993			▪ In oral testimony, Committee asks why BIA did not request more money for education even though it's a priority for the Clinton Administration. • In the "additional questions" section, the BIA answers basic questions about the feasibility of transferring JOM funds to tribes.	ISBN 0-16-038719-1 pgs. 172-76; 211-12
1993	BIA Budget Justification FY 1994	Base: $22,826,000 FY 1994 Request: $22,826,000	First reported as 229,728 students in 1993; later revised to 245,102.	▪ JOM-funded home-school coordinators work with families to motivate students to stay in school. ▪ JOM also helps parents meet school-related expenses.	ISBN 0-16-040785-0 pgs. 954, 1193 (BIA pgs. 83, 319)
	Testimony re: FY 1994			▪ To justify why its request matched its base, BIA explains that JOM enrollment increased by only .5 percent in the previous year. ▪ BIA expects JOM enrollment to increase to approximately 245,000 students in FY 1994 because private and tribal schools now receive JOM funds.	ISBN 0-16-041023-1 (pg. 228-29)
1994	BIA Budget Justification FY 1995	Base: $24,326,000 FY 1995 Request: $24,406,000	259,813	▪ Nothing in green book re: JOM activities.	Pg. 1044 of the FY95 budget justifications (BIA pg. 79)
	Testimony re: FY 1995			▪ ASIA Ada Deer discusses education at the beginning of her testimony and mentions JOM by name. • Committee notes that the amount requested for JOM is about the same as for FY 1994; BIA explains that it expects JOM to fund only a few more students than the year before.	Part 10, Pgs. 93; 228-29

DATE	SOURCE	AMOUNT REQUESTED	# STUDENTS FUNDED	NOTES	CITATION
1995	BIA Budget Justification FY 1996	Base: $24,359,000 **FY 1996 Request: $22,752,00**	271,857	• State-by-state breakdown shows that JOM primarily funding students in Alaska, Arizona, and New Mexico.	Part 2, pgs. 839; 1144-45 (BIA pgs. 61, appendix)
	Testimony re: FY 1996			• ASIA Ada Deer once again mentions education and JOM at the beginning of her testimony. • BIA explains JOM incentivizes non-Indian schools to share in the responsibility of educating Indian students.	Part 11 pg. 955
1996	BIA Budget Justification FY 1997	Estimated Base: $19,634,000 **FY 1997 Request: $22,570,000**	"nearly 272,000 students in 33 states"	• BIA notes that it received 14 percent less than its FY 1996 request. • Some JOM funds were transferred to self-governance compacts.	Part 4, 54-56
	Testimony re: FY 1997			JOM is mentioned nowhere in the testimony.	Part 5

DATE	SOURCE	AMOUNT REQUESTED	# STUDENTS FUNDED	NOTES	CITATION
1997	BIA Budget Justification FY 1998	Estimated Base: $18,177,000 **FY 1998 Request: $17,216,000**	"272,000 students in 33 states"	• JOM "is the only Bureau program that provides for the culturally related and supplementary academic needs of Indian children attending public schools." • Explains that JOM transferred to the TPA part of the Tribal Budget System in FY 1996. • BIA used the FY 1995 student count to distribute JOM funds to tribal TPA bases.	Part 2, pg. 692 (BIA pgs. 57-58)
	Testimony re: FY 1998			• JOM mentioned once in the oral testimony, but nothing else beyond that.	Part 8, pg. 304
1998	BIA Budget Justification FY 1999	Base: $18,534,000 **FY 1999 Request: $18,080,000**	a "constant population" of 272,000 students in 33 states	• Same information as previous year.	Part 2, pg. 878 (BIA 74)
	Testimony re: FY 1999			• Although Indian education discussed at length, JOM not mentioned.	
1999	BIA Budget Justification FY 2000	Base: $18,080,000 **FY 2000 Request: $17,469,000**	a "constant population" of 272,000 students in 33 states	• Same information as previous year.	Part 2, pg. 924-25 (BIA pg. 60-61)
	Testimony re: FY 2000			• JOM mentioned once, but nothing else beyond that.	Part 8, pg. 215

DATE	SOURCE	AMOUNT REQUESTED	# STUDENTS FUNDED	NOTES	CITATION
2000	BIA Budget Justification FY 2001	Base: $17,387,000 **FY 2001 Request: $17,035,000**	a "constant population" of 272,000 students in 33 states	• Essentially the same information as in previous years. • JOM funds "tutoring and counseling and parental involvement programs."	Part 2, pg. 789 [BIA pg. 63]
	BIA Testimony re: FY 2001			• **JOM mentioned nowhere in the testimony.** • At a couple of points, ASIA Kevin Gover concedes that BIA has struggled to keep up with student counts.	Part 8, pgs. 194, 255
2001	BIA Budget Justification FY 2002	Base: $16,998,000 **FY 2002 Request: $17,113,000**	a "constant population" of 272,000 students in 33 states	• JOM meets "the unique and specialized educational needs of Indian children in public school systems" • JOM for PreK-12 students, excludes "those who are enrolled in Bureau- or sectarian-operated schools"	Pg. 51-52
	BIA Testimony re: FY 2002			• JOM designed to meet "specialized and unique educational needs, including programs supplemental to the regular school program and school operational support."	Part 6, pg. 351
DATE	SOURCE	AMOUNT REQUESTED	# STUDENTS FUNDED	NOTES	CITATION
2002	BIA Budget Justification FY 2003	Base: $17,113,000 **FY 2003 Request:** $17,019,000	"about of 272,000 students in 33 states"	• "The program supports the Bureau's Annual Performance Plan goal of improving the succession of students to each educational level by providing tutoring and counseling and parental involvement programs.	Pg. 56
	BIA Testimony re: FY 2003			• JOM is not discussed	
2003	BIA Budget Justification FY 2004	**FY 2004 Request: $16,874,000**	"about of 272,000 students in 33 states"	• Approximately the same information as previous year.	Pg. 44-45
	BIA Testimony re: FY 2004			• JOM is not discussed	
2004	BIA Budget Justification FY 2005	2003 Actual: $16,908,000 2004 Enacted: $16,666,000 **FY 2005 Request: $16,743,000**	"about of 272,000 students in 33 states"	• Explains that "the programs in public schools are often not designed to provide ethnic Indians with the support systems they need to be successful."	Pg. 57-58
	BIA Testimony re: FY 2005			• JOM is not discussed	

DATE	SOURCE	AMOUNT REQUESTED	#STUDENTS FUNDED	NOTES	CITATION
2005	BIA Budget Justification FY 2006	FY 2004 Actual: $16,666,000 FY 2005 Enacted: $16,510,000 FY 2006 Request: $7,777,000	Not discussed	• To justify cutting JOM funds in half, BIA says its core responsibility is to operate federally funded schools; in light of scarcity, BIA wants to cut down on supplemental education funding.	Pgs. BIA-TPA 21-23
	BIA Testimony re: FY 2006			• BIA explains that JOM "grants for Indian children attending public schools do not currently address a focused goal for academic achievement and duplicate similar funding made available by the Department of Education." • Example of duplicate funding: DOE has $150 million in funding specifically targeted to Indian students attending public schools. • Remaining JOM funding will go toward "the highest-priority components" of the program	Pgs. 18, 74
DATE	SOURCE	AMOUNT REQUESTED	#STUDENTS FUNDED	NOTES	CITATION
2006	BIA Budget Justification FY 2007	FY 2005 Enacted: $16,510,000 FY 2006 Enacted: $16,371,000 FY 2007 Request: $0	Not discussed	• "These grants are duplicative of other Federal and State assistance programs and do not address a focused goal for academic achievement. Eliminating the $16.4 million JOM grants allows the Bureau to realign funds and focus resources on the requirements of the Bureau funded school system, while also reducing redundancy with other Federal programs."	Pgs. BIA-SUM-12,13; BIA-ED-1
	BIA Testimony re: FY 2007			• Sen. Dorgan [D-ND] asks why JOM is cut, says this is a mistake, points out that BIA does not seem to increase education spending elsewhere so as to "refocus" itself. • BIA explains that it is phasing out JOM because DOE programs can now provide the same types of grants.	Part 5, pg. 74

DATE	SOURCE	AMOUNT REQUESTED	# STUDENTS FUNDED	NOTES	CITATION
2007	BIA Budget Justification for FY 2008	FY 2006 Enacted: $16,371,000 FY 2007 CR: $0 **FY 2008 Request: $0**	Not discussed	"The FY 2008 request proposes corresponding reductions to Self-Governance Compacts and Consolidated Tribal Government Programs funding related to JOM. This reduction eliminates $6.7 million from Self-Governance Compacts. Public school districts will continue to receive funding and are eligible for grants similar to JOM under Title VII of the Indian Education Act (Public Law 107-110) through the US Department of Education. Title VII funding addresses the special academic and culturally relevant education needs of Indian children."	Pg. IA-TG-3; IA-EDUC-1
	BIA Testimony re: FY 2008		• Testimony from Umatilla: Restore JOM to 2004 levels • Umatilla questions BIA's argument that JOM was duplicative of Title VII funding available through DOE, saying that JOM monies go to tribes whereas Title VII monies are managed by non-Indian school districts. • Umatilla attributes underperformance of its students to lack of JOM programs. • Confederated Tribes of the Warm Springs Reservation in Oregon also testifies, asks that BIA restore JOM to $17 million • Warm Springs: "(JOM) is the only tool available to our Tribe to directly participate in the K-12 education of our children." • Fond du Lac Band: JOM not duplicative; unlike other programs, JOM had a cultural enrichment and Native language component unavailable elsewhere. Asks that BIA "restore full funding." • NCAI: JOM not duplicative; valuable because it gave tribes a foothold in the K-12 public school systems. • Nisqually: "While we support the administration's initiative to improve performance at BIA schools, we cannot support balancing these increases with cuts that would harm children attending public schools and our youth who are pursuing a college education." Asks that BIA restore JOM to $16.3M. • Puyallup: Restore JOM funding to $16 million. • Shoshone-Bannock Fort Hall: Restore JOM funding to $16.4 million. • Skokomish: JOM key to the tribe's ability to track students' academic progress.	Pgs. 194, 195-97, 292, 328, 358, 369,

DATE	SOURCE	AMOUNT REQUESTED	# STUDENTS FUNDED	NOTES	CITATION
2008	BIA Budget Justification for FY 2009	FY 2007 Operating Budget for JOM: $19,700,000 total • Grants: $12,000,000 • For Self-Governance Tribes: $6,689,000 • For Consolidated Tribal Programs: $1,011,000 FY 2008 Request: $0 FY 2008 Enacted: $21,341,000 total • Grants: $13,782,000 • Self-Gov: $6,570,000 • Consolidated Tribal Programs: $995 FY 2009 Request: $0	Not discussed	• BIA justifies elimination of JOM, points out that DOE's Office of Indian Education provides cultural and educational support akin to JOM's. • Reports that in 2008, DOE's Office of Indian Education administered $119.6 million in grants for improving Indian student achievement, special programs, and research activity	Pg. IA-OVW-9; IA-BDU-2
	BIA Testimony re: FY 2009			• When asked about the elimination of JOM, Secretary Kempthorne said that such funding could be replaced through DOE. • Alamo Navajo School Board: BIA's reasoning for cutting JOM is unsubstantiated; cutting JOM means letting go of a staff member integral to Indian learning. • Umatilla: Same information as previous year. • Fond du Lac: JOM key to helping Indian kids keep up with the achievement goals of No Child Left Behind. • Jamestown S'Klallam: Restore JOM to $21.4 million. • Lac Du Flambeau: JOM funds help tribal kids make the transition from an Indian-majority elementary school into a predominately white high school; points out that DOE has not increased its funding for Indian programs in years. • Lummi: Restore JOM to $21.4 M. • NCAI: "What is different about JOM is that its "special and unique needs" are determined not by the school boards, but	Pg. 195, 222, 291, 325, 369, 374-75, 384, 403, 443, 445, 453, 460, 464,

			instead through parent committees that each JOM program is required to have ..." ; Restore JOM to $21.4 million. • Puyallup: Restore JOM to $16M. • Quinault: Restore JOM to $21.4M • Skokomish: "remain disappointed" re: cutting JOM. • Squaxin Island: Restore JOM to $21.4 M. • Standing Rock: Opposes JOM cuts.	

DATE	SOURCE	AMOUNT REQUESTED	NOTES	CITATION
2009	BIA Budget Justification for 2010	FY 2008 Enacted: $13,782,000 FY 2009 Enacted: $13,797,000 FY 2009 Funding: $21,425,000 total • Education: $13,589,000 • Self-gov: $6,882,000 • Consolidated Tribal Programs: $954,000 FY 2010 Request: $13,589,000	• Explains that JOM can be used for small expenses such as school supplies. • Priority given to schools on or adjacent to Indian reservations or schools that are Oklahoma- or Alaska-based. • Appendix has a region-by-region breakdown of JOM funds distribution	IA-EDU-25
	BIA Testimony re: FY 2010		• Sen. Dicks (D-Washington) said JOM was "corrected" the previous year through a bipartisan effort. • Lummi: Restore JOM to $21.4 million • NCAI: Supports $24.3 million proposed for JOM • National Indian Education Association: calls for population re-count so as to reformulate program dollars; reports that JOM programs help Indian students build self-esteem through various means such as providing eyeglasses, resume review, etc. • Warm Springs: Restore JOM at $25 million; JOM important because it gives tribes a say in public schools • National Indian Education Association: Program dollars need updating because of growth in Oklahoma. • Navajo Nation: Restore JOM at $24.3 million to factor in "inflationary costs of additional students;" 50,000 Navajo students covered by JOM. • Cherokee Nation: mentions JOM in passing • National JOM Association (Harold Dustybull): Congress saved JOM; JOM effective because it is so flexible; JOM funds need to be stabilized to avoid mid-	Part 7: 2, 18, 78, 92-93, 96-97, 145, 209, 217, 255-57, 340, 344, 356, 800, 943,

			year re-adjustment; at least 300,000 students covered by JOM • Sault Ste. Marie Tribe of Chippewa Indians: lift the funding freeze, restore JOM to $24 million. • Cook Inlet: JOM funds core curriculum, including calculus; direct, positive correlation between JOM participation and GPAs. • Siletz Tribe: restore JOM to $24.3 million; $83,000 of JOM funds not enough for tribe's needs, which span 11 counties • Fond du Lac: Continue funding JOM because it addresses unique needs. • Squaxin: $21.4 million for JOM	

DATE	SOURCE	AMOUNT REQUESTED	NOTES	CITATION
2010	BIA Budget Justification for FY 2011	FY 2009 Enacted: $13,797,000 (TPA) FY 2010 Enacted: $13,589,000 (TPA) **FY 2011 Request: $21,273,000 total** • Education: $13,434,000 • Self-Governance: $7,074,000 • Consolidated Tribal Programs: $ 765,000	• Same information as previous year. • Does not mention how many students benefit.	IA-EDU-21,22
	BIA Testimony re: FY 2011		• Committee on Appropriations asks ASIA Larry Echo Hawk about the future of JOM; Echo Hawk says he is "just starting to learn more" about the program's significance; recognizes that program dollars do not match growing student population. • Lummi Nation: $21.4 million for JOM • Warm Springs: $25 million for JOM; criticizes $12.4 million requested for TPA in FY 2011; suggests JOM can counter dropout rates. • Siletz: $24.4 million for JOM; program helps tribal youth in Oregon's urban centers; numbers growing since 1995; covers scholastic and athletic school fees. • National Indian Education Association: $24 million for JOM; says tribal involvement is key to students' success. • National Johnson-O'Malley Association's Harold Dustybull: Blackfeet dedicates JOM monies to parental instruction classes; seeks $24 million for JOM. • Tribal Education Departments National Assembly: requested $2 million to help its members administer JOM and other programs.	Part 6: 20-21; Part 7: 8, 70, 76, 80, 91, 96-97, 209-211, 438-37

DATE	SOURCE	AMOUNT REQUESTED	NOTES	CITATION
2011	BIA Budget Justification for FY 2012	FY 2010 Enacted/ 2011 CR: $13,589,000 (TPA) **FY 2012 Request: $21,510,000 total** ▪ Education: $13,402,000 ▪ Self-governance: $7,189,000 ▪ Consolidated Tribal Programs: $919,000	• Same information as in previous years. • 88% of JOM funding distributed directly to tribes via base funding through Self-Governance compacts or Consolidated Tribal Programs. •	IA-EDU-23, 24
	BIA Testimony re: FY 2012		• JOM not discussed with ASIA Echo Hawk. • Pueblo of Acoma: requests $24.3 million for JOM; student recount for accuracy purposes • Cherokee: mentions JOM. • National Johnson-O'Malley Association: requests $24 million for JOM, asks that funding freeze be lifted; asks that Interior dedicate one staff position to JOM. • Standing Rock: $24.3 million for JOM • Lac Du Flambeau: JOM merits full funding. • Rep. Laura Richardson (D-Calif.): $24 million for JOM • Warm Springs: requests $27 million for JOM; notes that 85% of Indian children attend public school; says "doubling JOM to $27 million is a modest but helpful • gesture in recognition of the U.S. treaty and trust obligation to assist all Indian school children." • Siletz: $89,000 in JOM monies not enough; requests $24.3 million for JOM • Lummi: $24.3 million for JOM; • Cook Inlet: JOM funds health and wellness classes. • National Indian Education Association: notes that BIA request for FY 2012 less than its FY 1994 request; emphasizes importance of Indian parent committees. • Sac and Fox: requests $24.3 million for JOM, emphasizes importance of Indian parent committees.	Part 8, 274, 278-79, 334, 344-45, 376, 418, 522, 542, 546-47, 569, 616, 621, 784, 951, 1038

DATE	SOURCE	AMOUNT REQUESTED	NOTES	CITATION
2012	BIA Budget Justification for FY 2013	FY 2012 (TPA) Enacted: $13,304,000 **FY 2013 Request: $21,396,000 total** • **Education:** $13,286,000 • Self-governance: $7,197,000 • Consolidated tribal programs: $895,000	▪ Same information as previous years.	IA-BIE-30-31
	BIA Testimony re: FY 2013		▪ JOM not discussed with ASIA Echo Hawk ▪ Choctaw: compacts w/BIA re: JOM ▪ National Johnson-O'Malley Association: four major concerns include: o Combining JOM with Title VII would take JOM out of tribes' control o Restore JOM funds to $24 million o Order a new student population count o Reinstate JOM position at BIE ▪ Ute: JOM needs to be a permanent fixture on BIA budget. ▪ Siletz: same information as previous year ▪ Pueblo of Acoma: JOM program tailored for pueblo children ▪ Santa Clara Pueblo: $24.3 million for JOM;	Part B: 429, 445-50, 506, 855, 993-94, 1003,
DATE	SOURCE	AMOUNT REQUESTED	NOTES	CITATION
2013	Budget Justification for FY 2014	FY 2012 Enacted: $13,304,000 FY 2013 CR: $13,396,000 **FY 2014 Request: $21,484,000 total** • Education: $13,134,000 ▪ Self-governance: $7,197,000 • Consolidated Tribal Programs: $1,153,000	▪ Same information as previous year.	IA-BIE-32, 33
	Testimony re: BIA Budget FY 2014		▪ JOM student count mentioned in Washburn testimony as a topic discussed between BIE and tribal governments	
2014	Budget Justification for FY 2015	FY 2013 Enacted: $12,615,000	▪ Increase JOM funds for a JOM Coordination position and to update the 2012 student count	

		FY 2014 Enacted: $14,338,000 FY 2014 Request: $14,739,000	• Biennially update student count of all eligible students • Intends to implements the updated 2014 student count in FY 2015	
2015	Budget Justification for FY 2015	FY 2014 Enacted: $14,338,000 FY 2015 Enacted: $14,739,000 FY 2015 Request: $14,739,000	• Increase JOM funds $500,000 for a JOM Coordination position and to update the 2012 student count • Biennially update student count of all eligible students • Intends to implements the updated 2014 student count in FY 2015	
2016	Budget Justification for FY 2016	FY 2015 Enacted: $14,739,000 FY 2016 Enacted: $14,778,000 FY 2016 Request: $17,376,000	• Increase JOM funds $2.6 million to fund increased 2012 student count • Biennially update student count of all eligible students • Intends to implement the updated 2014 student count in FY 2016	
2017	Budget Justification for FY 2017	FY 2016 Enacted: $14,778,000 FY 2017 Enacted: $14,750,000 FY 2017 Request: $18,533,000	• Biennially update student count of all eligible students • Intends to implement the updated 2014 student count in FY 2017	
2018	Budget Justification for FY 2018	FY 2016 Enacted: $14,778,000 FY 2017 Enacted: $14,750,000 FY 2018 Request: $10,152,000	• A base reduction of $4.6 million.	

Conclusion

On behalf of the over 1.0 million Indian children eligible for JOM, NJOMA is elated by the Committee's speedy consideration of S. 943, and would urge its immediate approval. After 25 years of waiting for any action by Congress or the Administration to rectify this shameful condition that the JOM program exists today, we are encouraged by today's hearing and the Committee's pending approval of this legislation.

We are hopeful that this Committee and the Senate will take quick action on this bill so that the House would have the opportunity to also quickly act on the bill. Given the number of tasks that are prescribed in the bill, we pray that all this work can be completed and put in place in time for the 2018–2019 school year. To meet this proposed schedule, we need this bill enacted and signed by the President as soon as possible.

Thank you.

The CHAIRMAN. Thank you, Ms. Mann.

We will now start with five minute rounds of questions.

My first question is for Mr. Dearman. In regard to S. 943, right now, I think the number is 271,884 students as the count from the BIE in regard to Johnson-O'Malley total eligible student population. We are anticipating that it could be over 1 million.

How do you establish the determination of eligible Indian students and how are you going to make sure that you get an accurate count?

Mr. DEARMAN. Thank you for your question, Mr. Chairman.

We have already started conversations with the National Johnson-O'Malley Association and talking about how we are going to conduct this count.

One of the things S. 943 will assist us in doing is requiring all the contractors actually report current official counts. We have not had that up to this point. We definitely need that.

The other thing is we really have to utilize our tribes because the tribal enrollment from each one of our tribes is going to have what we are looking for because right now the requirement to receive services from the Bureau of Indian Education is you have to be a member of a federally-recognized tribe or you have to be one-fourth blood quantum.

Right now, we are looking forward to working with the National Johnson-O'Malley Association, NIEA, NCAI and our Department of Education.

The CHAIRMAN. Ms. Mann, I would like some of your thoughts as well in terms of how that count should be conducted.

Ms. MANN. I agree with Mr. Dearman. We have been in talks and would like a working group for us to be able to look at how we want to continue to count after we get the baseline count through like the Census. That is going to give us a starting point.

Right now we do not have a starting point because it has been so long. The last two counts that were done through the Bureau were really just an update, so we have no real numbers of what we should have except what we can see in the Census.

At that point, they are showing at least 1 million. All of those students could be eligible if they meet the Bureau requirements which are, as Mr. Dearman said, enrolled in a federally-recognized tribe or at least prove they are one-quarter blood degree.

Like he said, the tribes are going to be key in getting enrollment information for us. I know in some areas the Census numbers may even be lower than what they are. A lot of times the Census takers are not able to get to some places on the reservations. I know those numbers could be lower as well.

The CHAIRMAN. Mr. Wharton, there is a reserve fund that goes with the Klamath Tribe Judgment Fund Act. If the legislation is repealed, what happens to the reserve fund?

Mr. WHARTON. There are four accounts held by the Bureau of Indian Affairs on behalf of the Klamath Tribes. One of them is frequently referred to as the Litigation Account. It is an account that was established initially in 1958 to pay for the cost of litigation and $350,000 of tribal funds was put into that account.

As judgments were entered and paid out, the monies from those judgments were set aside to continue that $350,000 in the account. The money in the account now is about $397,000. That is the $350,000 plus the interest it has accrued over time.

With the repeal of this Act, it is my belief, based on my reading of 1401, that having been distributed under the Act, the judgment that was the source of this, these funds would then be eligible for the tribe to determine for themselves how it would be spent.

As Mr. Dearman has indicated, we need to work with the Office of the Special Trustee to make sure we come to an agreement about how those accounts can be managed.

The CHAIRMAN. Chief Brainard, the bill, S. 1223, would help your tribe in securing title insurance and completing your fee transactions. How does it help you accomplish that?

Mr. BRAINARD. By clarifying what is required from the BIA or not required so the title companies and the financial institutions are clear about how it is supposed to operate.

The CHAIRMAN. Senator Heitkamp?

Senator HEITKAMP. Mr. Chairman, I will defer to my colleagues to the left.

STATEMENT OF HON. CATHERINE CORTEZ MASTO, U.S. SENATOR FROM NEVADA

Senator CORTEZ MASTO. Thank you.

Mr. Dearman, help me understand this. I am looking at your testimony and was listening earlier.

If I am correct, the student data count is taken from 1995 which identified 271,884 eligible Indian students. However, we know that in 2012, there was a count identifying more, 321,273, and then again in 2014, the count resulted in the final student count of 341,495.

We know there is more than the 1995 numbers but we also know, according to what you are saying, that not all the JOM contractors submitted data.

As a result of that, we are going back to 1995 eligibility numbers even though we know it is less? Is that what I am hearing?

Mr. DEARMAN. Yes. The counts from 2012 and 2014 could not be verified because not all the contractors reported.

Senator CORTEZ MASTO. The 1995 numbers were verified?

Mr. DEARMAN. That was the last official count that is on record.

Senator CORTEZ MASTO. What do you determine is verification?

Mr. DEARMAN. I would have to go back, Senator, and ask or find out. I can provide to you in writing what the process was in 1995.

Senator CORTEZ MASTO. I am curious why is it taking so long for this to be updated, for the information to be transparent, for the verification to occur?

What is the holdup, number one? Number two, once we hopefully pass this bill, how can it be verified that you will continue to provide this updated information if you cannot do it now?

Mr. DEARMAN. By partnering with the National Johnson-O'Malley Center, our tribes and our contractors, actually by improving communications with our contractors, and creating the partnerships that we have created, we feel that is going to help us bring the JOM count up to where we need to get it and get the assistance we need.

I cannot really answer for what happened in 2012 or 2014, but I know we are looking forward to moving forward to collecting and getting the official counts coming up.

Senator CORTEZ MASTO. Can you guarantee to us that moving forward you will do just that?

Mr. DEARMAN. I can guarantee we are going to do everything we can to get that count up. The tribes are going to be a big part of the count and working with the tribes to get tribal enrollments, the U.S. Census, and cross checking the student data that we receive to make sure they are really eligible for services.

Senator CORTEZ MASTO. Without the hearing today, would we even know this updated data that has existed because, to my understanding, there is no transparency other than what you just told us?

Mr. DEARMAN. I believe we have been submitting some answers when we receive requests.

Senator CORTEZ MASTO. But there is nothing on the website, there is nothing out there that if the tribes want that information, parents want that information, nobody has any specific data on the counts you have done and the available numbers, is that correct?

Mr. DEARMAN. To my knowledge, it is not on our website right now, but we are working on getting our website to where it is more efficient for the public.

Senator CORTEZ MASTO. Does BIE have any other student data or student outcome-related data, for example, graduation rate trends, absenteeism trends in BIE schools and so forth that you can share with the Committee?

Mr. DEARMAN. That is a great question. Since taking office in November, we have been behind in student data for three years. Since we have been there, we have actually come together and worked hard and are getting caught up on our student data.

One of the things we have always been hammered with or talked about is our low graduation rate. Looking at and concentrating on our data, we are showing the 2014–2015 graduation rate, just because we have started concentrating on data and really correcting how we record the data at the school level, right now it is 67.49 percent.

The 2015–2016 graduation rate is showing to be approximately 83 percent. We are starting to focus on getting back to the schools and working with how we are recording the data. We have to do a better job of giving our schools a list of what we are expecting to be recorded in our system.

Senator CORTEZ MASTO. Do you have a plan to provide that data on a regular basis, whether to the Committee and/or to anyone else asking for that data and information?

Mr. DEARMAN. Absolutely. We are currently working on a communications plan. Right now, our website needs to be revamped. That will be a good place where we can share our data, announcements and anything else we have going on with BIE.

Senator CORTEZ MASTO. Thank you. I appreciate the conversation today.

With respect to the other bills, I am supportive. I think what I have heard today and in the conversations I have had, it makes sense to me that we should be doing everything we can to pass those bills.

Let me just say I do not understand why our students in Indian Country deserve anything less than any other student in our States. It just does not make sense to me.

Why is this happening? We need to do a better job. We need to do a better job of calculating that data, verifying it, not delaying it, and making sure we are bringing the necessary resources to the students who are there.

I will be watching. I look forward to working with you to help collect this data.

Thank you.

The CHAIRMAN. Senator Daines.

STATEMENT OF HON. STEVE DAINES,
U.S. SENATOR FROM MONTANA

Senator DAINES. Thank you, Mr. Chairman and Ranking Member Heitkamp.

Coming from a State that probably has a strong Indian Country heritage, I would say that providing our Native students with a strong education is absolutely an essential part of the U.S. trust responsibility.

In Montana, our 12 federally-recognized tribes very much benefit from the Johnson-O'Malley Program which is why I was pleased to join Senators Heitkamp and Lankford in introducing the Johnson-O'Malley Supplemental Indian Education Program Modernization Act. This legislation will help ensure full participation of all eligible Indian students in this program which addresses their unique academic as well as cultural needs.

In 2012 and 2014, and most recently in 2017, Congress approved Interior appropriations and was directing Interior and the BIE to update and report a count of Indian students eligible for the Johnson-O'Malley Program.

Mr. Dearman, to your knowledge, has BIA presented the reports suggested in the Interior appropriations bills?

Mr. DEARMAN. To my knowledge, right now there have been no reports submitted, but we are working on completing the reports. We will start getting the reports turned in on time. Since becoming director, one thing we are working on is our responsiveness.

Senator DAINES. They have set the bar pretty low in the past, so I am sure you can beat that. The question is, without having the updated counts, what is the numerical count that BIE currently uses for Johnson-O'Malley?

Mr. DEARMAN. The 1995 official count of 271,884 students.

Senator DAINES. That is deplorable.

Mr. DEARMAN. It is very low.

Senator DAINES. It is stunning. Can you imagine anyone running a business, running a program, using data from 1995 as the best data?

Let me ask this question. Are you aware how many students the National Congress of American Indians and the National Indian Education Association see as eligible for Johnson-O'Malley based on Census data?

Mr. DEARMAN. No, Senator, I am not.

Senator DAINES. The answer is 798,486 versus the number you gave me of 271,884. I have each of these organizations' documents with me here today that I can provide.

Roughly 800,000 versus 272,000 represents a serious gap between students being served and those who are supposed to be served. Do you believe the legislation that Senators Heitkamp and Lankford have proposed will help fix this disparity and result in a more accurate number of students served?

Mr. DEARMAN. Yes, Senator, I do. That is why the department supports S. 943.

Senator DAINES. I appreciate the support.

In what other ways do you see this legislation as beneficial to the education of Native American students?

Mr. DEARMAN. The biggest part I have seen that is really going to help us as far as continuing to update the account is the reporting requirement.

As I stated in my testimony, the 2012 and 2014 counts could not be verified because not all of the contractors reported. By law, they did not have to. S. 943 requires them to report.

Senator DAINES. So we are 22 years late at the moment. First of all, I appreciate your comments. I appreciate your commitment to getting this right. My request would be that we actually see results. Washington, D.C. is famous for bragging about activity and will brag about activity in a press release so folks back home think something is going on.

The bottom line is, it is the result that ultimately matters. The activities can be important, but that is a means to an end, and that is actually getting the result and getting the updated numbers so we can help the students out there in Indian Country.

Thank you for BIE's strong support of this legislation. I very much look forward to getting this legislation enacted into law.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Franken.

STATEMENT OF HON. AL FRANKEN,
U.S. SENATOR FROM MINNESOTA

Senator FRANKEN. Thank you, Mr. Chairman.

I am going to support all three pieces of legislation, the Johnson-O'Malley piece and the two Oregon pieces.

Director Dearman, I just wanted to ask about something else but something very central to education in Indian Country. Indian Country has a shortage of qualified educators. We have to support programs to get more teachers and principals to tribal communities.

Would you speak to some of the specific challenges that Native communities face regarding teacher shortages and attracting educators to Indian Country?

Mr. DEARMAN. Challenges, Senator?

Senator FRANKEN. Challenges.

Mr. DEARMAN. Isolation, drug use, abuse, low economic status, there are a lot of challenges.

Senator FRANKEN. Housing?

Mr. DEARMAN. Yes, housing. May I address some of the things we are doing to combat that?

Senator FRANKEN. Sure.

Mr. DEARMAN. Right now, human resources came under BIE on January 8, 2017. That has given us control of how we advertise. We have actually amended our hiring practices to match the States in which our schools reside because we had such stringent hiring qualifications that it was easier to go down the road and get a job in a public school than it was to get a job within the Bureau of Indian Education. We are making advertisements and qualifications match the States in which our schools reside.

Also, looking at the way we advertise. Coming out of education, North Eastern State University in Tahlequah, Oklahoma, I did not

know about BIE because I did not go to the government system to look for jobs. I went to teacher websites. We are really looking at how we advertise, where we advertise and also having outreach to universities that have teacher education programs.

Senator FRANKEN. Senator Tester, Vice Chairman Udall and I have a bill called the Native Educator Support and Training Act, the NEST Act. This bill would provide new scholarships, Federal student loan forgiveness, teacher development courses to prospective or existing educators or American Indians who commit to teaching at schools that serve high populations of Native students or both and schools that have both BIE and local public schools that have a high population.

I think it is critical that we find ways to recruit and support teachers who come to Indian Country, particularly because of those challenges and because of the shortages.

I hope that my colleagues on this Committee can continue to, I know Senator Heitkamp and I have done this, talk to our caucus. We who serve on the Indian Affairs Committee get testimony all the time and understand the challenges that face Indian Country in ways that our colleagues do not, obviously.

I think given the special nature of these challenges and also our obligations, this is one area where education is so key and that is if you have teacher shortages, if we can make it easier to teach in Indian Country, given all the challenges.

The challenges are if you are a teacher and want to bring your spouse and family, your spouse is going to ask about housing. If you have kids, they are going to ask about the school there. If they have health care issues, they are going to ask about the health care there.

All of these tend to be challenges to recruiting folks in any field. We hear it on Indian health and we hear it on everything.

I just want to urge my colleagues to be cognizant that sometimes in our caucuses we are the ones that really should be carrying this message.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Lankford.

Senator LANKFORD. Thank you, Mr. Chairman.

Tony, it is good to see you again. It is good to have a good Oklahoman taking care of that. I would assume that good Oklahoman is going to fix everything and be able to get this all done. We look forward to getting this resolved as well in the days ahead.

Can you help me understand what has prevented BIE from updating the Johnson-O'Malley count for the past 21 years?

Mr. DEARMAN. Right now, being unable to verify the count and not having a bill like S. 943 to require the contractors to actually report the eligible students they have in their programs.

Senator LANKFORD. Do you think this bill really solves the issue? My concern is that two years from now, I do not want us to come back and say actually we needed something different than what we have. Do you feel confident this will actually get us up to date?

Mr. DEARMAN. From what I have seen right now, I think this is a great start. We did have some recommendations in our testimony and would love to sit down with you.

Senator LANKFORD. I appreciate the recommendations as well. There were a lot of technical aspects. What I like about your recommendations is you are thinking through implementation, that when we implement it, these are the challenges we are going to have, so we actually have to get this stuff fixed. To me, that helps us make sure we actually get this done and at the very last minute, there is not a pushback to say it will not work because of this.

The input you gave today plus any other input you have does nothing but help us to be able to get the bill right. It improves our chances that at the end everyone is going to say it has been looked over by everyone. We think this is going to be effective at the end of it.

The GAO, as you know, has listed Indian education on their high risk list. Give me some background now on what is happening behind the scenes to be able to get it off the list and where you are trying to prioritize?

Mr. DEARMAN. As I stated and as I testified the last time I was here, that has become a priority of ours, not only in BIE but in Indian Affairs. We have created committees and have been meeting to address the GAO findings. We actually have a meeting Monday with GAO because, as we said in the testimony, it is a road map to make us better. We need to be sitting at the table with them to improve our system. It is still a priority.

Senator LANKFORD. It is a significant priority. It is tough for the first time for GAO to be able to look at. They will stay on it and evaluate progress which is helpful and what we asked GAO to do to be able to help us in that journey.

They key things they will want to see and we will want to see is progress, to say this has been identified and here is the clear problem. Here are the five steps it will take to be able to solve this. We are working on step 1 right now of the five.

If you can help us with that, within 15 years, we can get a turnaround. I would love to way it is within 15 months. We all know it is not going to be 15 months. There are significant issues.

If you can help us identify here what is the problem, there is the place we want to go, here are the five steps to get there, that will help GAO in the process and their oversight and that will help us as well. Quite frankly, it will help a lot of Native American students.

Mr. DEARMAN. We would be happy to provide you with an update of where we are since the last testimony.

Senator LANKFORD. That would be terrific. I do not want to take you off task of actually resolving it, but as you have updates, we would love to be able to get them as well.

Mr. DEARMAN. Okay.

Senator LANKFORD. Ms. Mann, thanks for being here as well and for the work you have done.

Are there other ways to reform Johnson-O'Malley you would recommend that are not included in this bill that you would specifically recommend to us?

Ms. MANN. Thank you, Senator.

We have reviewed this bill over and over. I think all the suggestions we have in here are what we think is going to help the program.

We hope to have a working group afterwards with NIEA, NCAI and NEA, TEDNA, several of those groups, as well as the BIE, to look at Federal regulations and the program in general to make sure we are doing everything we can to get it restarted pretty much so that we have regular counts, and that we know how the funding formulas are going to turn out. There are several different things we would like to do.

By doing it with this group, we feel we will hit most of Indian Country throughout these working meetings.

Senator LANKFORD. Terrific. Any recommendations you can get back to me from those conversations would be appreciated very much. That insight filtered to myself, Senators Heitkamp, Udall, Daines or any of us working on this bill all the time, we would be glad to be able to receive that.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Heitkamp.

Senator HEITKAMP. Thank you, Mr. Chairman.

Mr. Dearman, you are the person sitting in the chair representing years and years and years of problems, programmatic problems. It is really hard to get a level of accountability on this side because to us it seems to be unfair to put this back on you.

Can you tell me, in your judgment, what is the percentage high school graduation rate of Native American children?

Mr. DEARMAN. At this time, Senator Heitkamp, I really do not have that information but I can tell you we are working hard to get that because BIE needs to be a data-driven, decision-making organization based on our student data.

Senator HEITKAMP. What is the average adverse childhood experience of Native American children? We do not know, do we? We have not calibrated exact numbers on childhood trauma and what that experience looks like for Native children, right?

Mr. DEARMAN. We have started looking at our data with that, again, really looking at our system of where this data has been recorded, and if it has been recorded. We are starting to address that.

Senator HEITKAMP. What is the rate of asthma and respiratory problems because of environmental conditions, including black mold, in Native American students' homes?

Mr. DEARMAN. We do not have that data.

Senator HEITKAMP. What is the rate of incarceration of Native American students either in juvenile detention facilities, Federal facilities, if in fact the activity is undertaken, or in State facilities?

Mr. DEARMAN. Senator Heitkamp, we would love to work with you on priorities and things you feel we need to be looking at as well.

Senator HEITKAMP. I want to make a point about Senator Franken's comments. We began this process in our caucus because our frustration is, we hear the concerns and we hear the problems.

I am not suggesting that you are not sympathetic or even appalled by what we know instinctively, but not statistically, about the conditions of Native American students in this country. It is extraordinarily hard without data to drive any kind of resource allo-

cation or resource decision-making or innovation. As a result, we end up with this incredible lack of coordination and lack of real basic strategy on changing outcomes.

It is the reason why Senator Murkowski and I introduced the Commission on the Status of Native American Children. We are in the process of trying to get that commission established. It has been funded. It is a matter of getting it up and working.

We need your help in these counts. We cannot take the excuse that we are trying anymore. We have to know what they are because I think eventually when we come down with true data, we, in this country, should be ashamed of the conditions we have allowed Native American students to experience in their physical plant, their educational attainment, their vocabulary when they come in, the lack of support, and the lack of technology.

It is all there but yet we expect different outcomes. We are not going to get that if we do not know what the count is and what we need to do. It is not just failure in Indian schools. It is failure in schools in Grand Forks, North Dakota, Fargo, North Dakota, Minot, North Dakota, and Bismarck, North Dakota. You will see higher rates of Title I students that are Native American students in those schools. You would agree, right?

The Commission on Civil Rights, in the 1990s, I think did an actual report that looked at over representation of Native American students in special education programs.

There is an urgency to this because we need data and we need this count. We cannot let this opportunity pass. We decided to give everybody the benefit of the doubt, press the reset button and start counting.

Start working with Ms. Mann to make sure that you get the count and make sure she is getting the resources. You cannot get resources without knowing where to deploy them and where the count is.

This may seem like a bean-counting technical bill but it is the foundational piece for change for Native American students. We are committed here on this Committee and we are committed to expanding our knowledge among our colleagues to continue to build more support but we need the institutions at the level of administration to work with us to get those numbers.

I want to thank you for coming and letting me vent a little bit about where these problems are. Just know, I am not letting go of this. I do not think James is going to let go. We are not going to let go of this. We are going to be a dog with the bone.

There is going to be accountability and eventually, we are going to have to call out people when they are not performing.

Good luck. Let us know. Thank you for your support of the legislation. I think the invitation that Senator Lankford just gave both of you to rethink whether this is good enough or is there more is a good one.

We are committed to working to get this over to the other side. We have great partnerships on the other side. We should have been able to do it last Congress but did not. We are going to get it done this Congress but it had better be right.

It had better be complied with and we had better have answers in two years on how many Native American students there are and what are the educational challenges of those students.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Cortez Masto, did you have other questions?

Senator CORTEZ MASTO. No, other than, Mr. Dearman, are you sure you want this new job?

Let me just say this. We vented and we have frustrations. I would imagine you do as well. I agree with my colleagues that whatever we can do to assist you, let us know. Our goal, I am sure, is the same as yours. I would imagine you have similar frustrations with what you are trying to do and achieve to the benefit of Native American communities. Please do not hesitate to reach out.

Thank you.

The CHAIRMAN. With that, if there are no more questions today, I want to remind members that they may submit follow-up questions for the record. The hearing record will be open for two weeks.

Thank you again to our witnesses. We appreciate you being here.

I also want to take a moment to say thank you to Amanda Kelly, who served as Clerk of this Committee not once, but twice. I wish her the best of luck in her new role at the Ag Committee where we will be seeing her, so you cannot escape because we are both on the Ag Committee as well.

Thanks to our witnesses and to the Senators.

We are adjourned.

[Whereupon, at 3:43 p.m., the Committee was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. RUSSELL BEGAYE, PRESIDENT, NAVAJO NATION

As President of the Navajo Nation, I am submitting the following written testimony to the Senate Committee on Indian Affairs (SCIA) in response to the July 12, 2017 legislative hearing on the Senate Bill 943 "Johnson-O'Malley Supplemental Indian Education Program Modernization Act."

Background

The Navajo Nation is the largest land based Indian tribe in the United States spanning over 27,000 square miles across three states: Arizona, New Mexico, and Utah. We have over 300,000 enrolled tribal members, with nearly 180,000 members living on the Navajo Nation.

The Navajo Nation has been a proactive stakeholder in the education of our children. Through the Navajo Sovereignty in Education Act of 2005, the Department of Diné Education (DODE) and the Navajo Nation Board of Education (NNBOE) were created "to promote and foster lifelong learning for the Navajo people, and to protect the culture integrity and sovereignty of the Nation." Currently, the Navajo Nation contracts with the Bureau of Indian Education (BIE) to provide Johnson O'Malley (JOM) services through 27 subcontracts serving over 41,000 students annually.

The Johnson O'Malley (JOM) program has proven to be an effective and essential program for Navajo students attending public school and contributes to the Nation's educational goals "to protect the culture" of the Navajo Nation. During the 2014–2015 School Year, JOM funding provided for a variety of culturally based programs including Navajo language classes, Navajo Knowledge Bowls, Bilingual Showcase, and Navajo Spelling.

Concerns

The Navajo Nation is greatly concerned with the poor administration and technical assistance provided by the BIE in regards to the JOM program. As discussed during the July 12, 2017 hearing, an accurate student count is critical for JOM program administration, budget justification, and the delivery of student services. Since BIE has struggled to effectively update the student count report, tribes and students have been receiving funding according to outdated students count report numbers from 1995. The JOM program has been underfunded for years, forcing JOM programs to operate on meager budgets.

Current Student Eligibility

During the 114th Congress, Senator Heitkamp introduced a similar bill (S. 2842) to address the outdated JOM student count. Last year, during our initial review of S. 2842, the Navajo Nation Washington Office (NNWO) requested clarification from BIE regarding the student eligibility definition which states:

> "Indian students, from age 3 years through grade(s) 12, except those who are enrolled in Bureau or sectarian operated schools, shall be eligible for benefits provided by a contract pursuant to this part *if they are 1/4 or more degree Indian blood and recognized by the Secretary as being eligible for Bureau services*." (25 CFR 273.12)

Despite the regulatory definition, BIE uses various versions of the eligibility definition. Listed below, with emphasis, are several examples of BIE's use of varying definitions:

> "Eligible American Indian and Alaska Native students are enrolled members of a federally recognized tribe or at least one-fourth or more degree of Indian blood descendant of a member of a federally recognized Indian tribal government eligible for services from the Bureau." (BIE website)
>
> "American Indians age 3 through grade 12 who are enrolled in public schools are eligible if they are at least one fourth degree of Indian blood and recognized

by the Secretary of Interior as eligible for BIE services." (Dear Tribal Leader Letter, July 24, 2014)

"American Indians age 3 through grade 12 who are enrolled in public schools are eligible if they are a member of a tribe or at least one fourth degree of Indian blood and recognized by the Secretary of Interior as eligible for BIE services." (Dear Tribal Leader Letter, August 19, 2014)

"American Indians age 3 through grade(s) 12 who are enrolled in public schools are eligible if they are either a member of a tribe or at least one fourth degree of Indian blood and also recognized by the Secretary of Interior as eligible for BIE services." (Dear Tribal Leader Letter, December 2, 2014)

Suggestions for Modernization of Student Eligibility Definition

The Navajo Nation supports the overall goal of providing clarity within the JOM program, especially in regards to student eligibility. However, the proposed legislation directs DOI to conduct an initial determination of eligible students within existing contracts using multiple sources of data. We are concerned that using the various data sources with varying definitions of "American Indian/Alaska Native" may result in an inflated number of eligible students, while the future definition of student eligibility will not be finalized until rulemaking is conducted and may not align with data source definitions. To avoid potential duplicative actions, we suggest that the rulemaking be conducted prior to the initial determination reports for existing contracting parties and new applicants.

The use of different eligibility definitions is not only problematic in conducting student counts, but it could also limit services to otherwise potentially eligible students. The Navajo Nation currently administers the JOM program through 27 subcontracts using the regulatory student eligibility definition:

"1/4 or more degree Indian blood and recognized by the Secretary as being eligible for Bureau services"

For the Navajo Nation, the use of a less stringent definition, such as the definition used within the Elementary and Secondary Education Act (20 USC 7491), would result in a significantly higher number of eligible students.

More Students, More Funding

An updated student count and revision of the student eligibility definition will undoubtedly result in an increased number of eligible students. However, without an increase in funding for the JOM program for newly identified students, the efforts of Congress, the Bureau of Indian Education, and Tribes will be misspent. We strongly urge Congress to properly reinvest in the JOM program to fully serve AI/AN students attending public school.

Conclusion

In conclusion, we would like to thank the Senate Committee on Indian Affairs for the opportunity to submit testimony and feedback on S. 943. As it is the goal of the Navajo Nation to ensure delivery of quality education for our Navajo students, we appreciate Senators Heitkamp, Daines, and Lankford's efforts to improve Indian education through the Johnson-O'Malley program.

PREPARED STATEMENT OF HON. DONALD C. GENTRY, CHAIRMAN, KLAMATH TRIBES

Chairman Hoeven, Vice Chairman Udall and members of the Senate Committee on Indian Affairs. My name is Donald C. Gentry. I am the Chairman of the Klamath Tribes. This testimony is submitted in support of S. 1223 which will repeal *The Klamath Tribe: Judgment Fund Act* of 1965, Pub. L. 89–224 (The Judgment Fund Act). The Judgment Fund Act seriously compromises the Klamath Tribes sovereignty and mandates distribution of tribal funds in a manner detrimental to the best interests of the Tribes and its members. It is the last remaining vestige of the disastrous and ill-considered legislation that in 1954 terminated the government-to-government relationship between the Klamath Tribes and the United States. That relationship was restored on Aug. 27, 1986 by Pub. L. 99–398, by the *Klamath Tribe: Restoration of Federal Supervision Act*.

I. The Historical Context of the Judgment Fund Act

The Klamath and Modoc Tribes and the Yahooskin Band of Snake Indians (now Klamath Tribes) had their government-to-government status as a recognized Tribe terminated in 1954 by the *Klamath Tribe: Termination of Federal Supervision Act*, (Pub. L. 86–40; 68 Stat. 718). This unilateral act of the United States Congress was

taken without the consent or support of the Klamath Tribal Government. The purpose of the Act was to terminate Federal supervision over the trust and restricted property of the Tribe, and to remove from individual members their status as members of a "recognized" tribe. As a result, the lands and other tribal property were monetized and distributed to individual members of the Klamath Tribes. In order to accomplish this a "final roll" of the members of the Tribe as of midnight August 13, 1954 was compiled (the 1954 enrollees). There were 2133 members on that roll. The more complicated process of determining which of the members were the so-called "withdrawn members" and which were the so-called "remaining members" isn't germane to the consideration of S. 1223.

In addition to the reservation property of over 850,000 acres of prime timber and ranch lands, the Tribe also had pending before the now defunct Indian Claims Commission (ICC) lawsuits against the United States seeking compensation for the mismanagement or misappropriation of tribal assets; primarily timber and ranch lands. In the 1950's, and until 1965, claims before the ICC and later the Court of Federal Claims which resulted in judgments against the United States were not paid to the Klamath Tribe until authorized and appropriated by Congress. As a result, Congress determined that it would be more efficient to adopt a "Judgment Fund Distribution Act" that would allow for any funds secured as a result of judgment against the United States and deposited in the United States Treasury to the credit of the Klamath Tribe to be distributed in accord with the specific requirements of that Act. Thus, Congress adopted the Judgment Fund Act on October 1, 1965.

The Judgment Fund Act provided for distribution of funds appropriated in satisfaction of judgments obtained by the Tribes, and all other funds deposited in the United States Treasury to the credit of the Klamath Tribes, to the 2133 people on the Final Roll. (Sec 4 of Pub. L. 89–224). All funds deposited in the Treasury regardless of the source (e.g., payments for rights-of-way, trespass damages, or other revenues, together with any interest accrued) were included in the application of the Act.

II. The Problem With the Judgment Fund Act

The Judgment Fund Act's limitation on distribution of funds to persons on the "final roll", or to their heirs or legatees began to have unintended and deleterious results. As time went on, the 2133 members on the final roll began to pass on. Under the terms of the Judgment Fund Act, their share passed to their heirs or legatees. (Sec 2 of Pub. L. 89–224). Sometimes surviving spouses, sometimes children or other surviving relatives. Many of the people to whom shares passed were not Klamath tribal members, or even of Native American descent. As a result, distribution pursuant to the Judgement Fund Act has four impacts detrimental to the Tribes.

1. The Tribes have no ability to determine how tribal funds can be allocated to members or other tribal priorities. Indeed, many tribal members are ineligible to receive any part of the distribution of such funds, and the Tribes cannot designate any funds for general tribal benefit or development.
2. Because of inter-marriage with non-members the distribution of funds under the Act result in distribution of significant amounts of tribal funds to non-Indians and other non-members of the Tribes.
3. Distribution to the living 1954 enrollees, or their current heirs or legatees, requires a complicated process of identification and certification of each individual, necessitating an extraordinarily lengthy and extremely expensive process. The costs for distribution are deducted from the available funds, thus significantly reducing funds available for distribution.
4. Should there be funds in the account which the Secretary of the Interior determines are insufficient to justify further distribution—which could be substantial given the extraordinary cost of distribution—those funds must under the Act be returned to the Treasury of the United States; not held for the benefit of the Tribes.

The Judgment Fund Act did not contemplate the August 27, 1986 *Klamath Tribe: Restoration of Federal Supervision Act*, Pub. L. 99–398, which restored the government-to-government relationship between the Tribes and the United States. Restoration in part reinitiated the enrollment of tribal members born after the compilation of the 1954 Final Roll. It also reinvigorated the Klamath Tribes' Government which manages the affairs of the Tribes. Despite the restoration of many tribal powers the Judgment Fund Act disallows any tribal determination over the distribution of funds in the United States Treasury for the benefit of the Tribes or any members enrolled after August 13, 1954.

III. The Effect Of Repeal

Repeal of the Judgment Fund Act would resolve these concerns and allow the Tribes to determine the best use of funds presently in trust accounts for the benefit of the Klamath Tribes. In the absence of the Judgment Fund Act future distributions of funds appropriated in satisfaction of judgments from the United States Court of Federal Claims—there are no further claims before the ICC—would be made pursuant to the *Indian Tribal Distribution of Judgment Funds Use and Distribution Act* of October 19, 1973, 25 U.S.C. § 1401 (87 Stat. 466). That Act by its terms applies to any "Indian Tribe", which includes the Klamath Tribes. It is presently unavailable to the Klamath Tribes because the 1965 Judgment Fund Act preempts its application.

IV. Conclusion

The repeal of this last vestige of the disastrous and ill-considered Termination Act of 1954 would be a welcome and necessary next step in respecting the sovereignty of the Tribes and returning the Klamath people to their former robust self-sufficiency.

JOINT PREPARED STATEMENT OF JAMES PARRISH, EXECUTIVE DIRECTOR OF EDUCATION AND SHANE HADDOCK, DIRECTOR OF JOM. CHOCTAW NATION OF OKLAHOMA

Halito, Chairman Hoeven and members of the Senate Committee on Indian Affairs:

Thank you for holding a hearing to consider S. 943, a bill that instructs the U.S. Department of Interior to conduct an accurate count of Native American students in an effort to update formula allocations under the Johnson-O'Malley Act (JOM). JOM programming is vital to the continuation and success of public school systems within the Choctaw Nation's treaty territory. An updated student count is long overdue.

We applaud the Senate's leadership in this endeavor and wholeheartedly offer our support for passage of S. 943. The Choctaw Nation of Oklahoma welcomes this opportunity from your committee to provide comments on the importance of JOM student count and programming for Choctaw and native students.

Currently, there are 85 public school districts within the Choctaw Nation's treaty territory in southeastern Oklahoma. Of these school districts, 74 have JOM programs, with 12,885 verified JOM students. While the vast majority of these students are Choctaw citizens, 3,161 students are from approximately 80 other federally recognized tribal nations. Nonetheless, the Choctaw Nation supports all of these native students through our JOM programming.

Our school districts especially appreciate the flexibility of JOM programming and utilize this funding in many ways. One primary use is providing school supplies to Native American students. But this hallmark federal program is much more than just school supplies. JOM makes a difference for Native American students by providing a funding source that enhances Native American students' educational opportunities and fills in gaps that school districts cannot fill themselves. For example, JOM funding has supported a number of efforts ranging from increasing library media to providing supplemental teacher salaries, motivational awards, and other incentives. For some students, JOM funds provide a way to take ACT and SAT tests, help cover the expense of attending college and career events, and pay for dues and fees attached to almost all student extracurricular activities.

One especially important use of JOM funding is connecting native youth to their culture. Choctaw Nation utilizes JOM funds to cover the cost of Choctaw language tutors and teachers, as well as providing technology to broadcast language classes into classrooms around our expansive treaty territory. Choctaw Nation also uses JOM funding to cover the cost of providing cultural education events and activities such as guest speakers, tribal dancers, traditional crafts, and even traditional meals. These items may not seem like much to some, but for many Native American families in Oklahoma's Indian Country, JOM is the only way their children will get a chance at these opportunities.

When the student count was frozen during the 1994–1995 school year, Choctaw Nation's student count was 7,395. We have grown at an average of 275 students per year for the past 20 years with no additional funding to service these students. Before the student count freeze, per pupil funding was $125. Now it is only at $65. Due to state budget cuts and increasing demands on public schools' funding, JOM funding is needed now more than ever. As public schools in Oklahoma grasp onto every dollar they have, programs related to STEM, art, athletics, and agriculture

are being discontinued for school districts to just stay within their annual budget as they brace for more state funding cuts.

Adjusting the student count is an important step to improving JOM, but it is just the first step. With your leadership, Congress can implement improvements to go even beyond adjusting the student count by restoring JOM funding to $125 per pupil. An increase in JOM funding will allow Native American students to thrive in public schools through their partnerships with Choctaw Nation and other tribal nations. The JOM Program has a mission to meet educational needs of Native American students as they develop into successful, healthy, self-sufficient men and women. The passage of S. 943 would be an important step in continuing this mission.

The Choctaw Nation once again is grateful for this opportunity provided by Chairman Hoeven and the U.S. Senate Committee on Indian Affairs to provide our thoughts on the importance of S. 943 and how we utilize JOM programming in partnerships with public school districts to serve our youth. We fully support the passage of S. 943 and thank you for your leadership and support of Native American education. Please reach out to the Choctaw Nation Department of Education if we can provide any additional information as you consider this legislation.

Dear Chairman Hoeven and Vice Chairman Udall:

On behalf of the Leech Lake Band of Ojibwe, I am writing to express our support for the authorization of the Johnson-O'Malley Supplemental Indian Education Program Modernization Act (S. 943). This legislative effort builds upon Congress' focus on supporting Native education in the 21st century. S. 943 is a step in the right direction to honor the fiduciary trust obligation the federal government has with tribes to provide parity in access and equal resources to Native education.

The Johnson-O'Malley (JOM) program is utilized to meet specialized and unique educational needs of Indian students attending public and some tribal schools through the use of supplemental education programs. Such supplemental programs are designed at the local level under the purview of a local Indian Education Committee. Eligible JOM contract applicants are states, school districts, tribes, and tribal organizations.

The Leech Lake Band of Ojibwe is particularly supportive of the push to update the JOM eligible student count and to then move towards reconciling the per student allocation and funding afforded the program. For nearly 25 years and through several Administrations, the Department of Interior and BIE have not attempted to finalize a count of the numbers of Indian students currently using or the total pool of eligible Indian students for JOM services. Also over this period, the JOM program has been all but frozen: no updated student count, no update of the program rules, and no real increase in funding to meet the real-time growth in the eligible population as noted from data collected for other Indian education activities and the 2010 Census.

After 25 years of waiting for any action by Congress or the Administration to rectify the unacceptable conditions that the JOM program must exist under today, we are encouraged by the Committee's pending approval of this legislation. We are hopeful that this Committee and the Senate will take quick action on this bill so that the House would have the opportunity to also quickly act on the bill.

On behalf of the over 1.0 million Indian children eligible for JOM, the Leech Lake Band of Ojibwe is delighted by the Committee's speedy consideration of S. 943, and would urge its immediate approval.

Respectfully,

HON. FARON JACKSON, SR., CHAIRMAN, LEECH LAKE BAND OF OJIBWE

Dear Senator Lankford,

On behalf of the largest population of Native American students in the nation, I am writing to express the Oklahoma State Department of Education's support for the *Johnson-O'Malley Supplemental Indian Education Program Modernization Act*. This update will allow for more accurate counts of Johnson-O'Malley eligible students, ensuring greater access to vital programs and supports for our Native American youth.

Oklahoma's public schools serve over 130,000 Native American students, the largest number of Native students in any state. Oklahoma is home to 39 federally recognized tribes, and there are 400 Title VII Indian Education programs operating in our public schools. While Oklahoma serves more Native American students than any other state, the Bureau of Indian Education operates only one school in Okla-

homa, and the vast majority of Native students participate in the public school system. Nowhere is there a greater need for services to support the success of Native American students attending public schools.

As you know, an updated annual count of students eligible for the Johnson-O'Malley Program has not been conducted since fiscal year 1995, and that count—frozen in time over twenty years ago—is still used as a measure of eligible students although it does not reflect two decades of population growth. While we know that the number of eligible students has grown since 1995, funding has held static due in part to the frozen count, and this means that the value of the supports available to each participating student has actually declined. The proposed *Modernization Act* would equip the Johnson-O'Malley Program to better serve Native American students by providing for an up-to-date count of those eligible for the program.

While we remain mindful of the particular challenges that Native American students face in completing an education, Oklahoma's public school graduation rate for Native American students is consistent with the state's overall rate. At nearly 83 percent, our Native American students' graduation rate in 2014 well exceeded the nationwide rate of 67 percent for Native students. Oklahoma school districts work hard to meet the needs of our Native American students, and the Johnson-O'Malley Program provides much-needed support to participating districts and tribal nations.

The Oklahoma State Department of Education is committed to providing a high-quality education to all students, and recognizes our special role in educating the largest Native American student body in the country. We offer our strongest endorsement for the proposed update to the Johnson-O'Malley Act, which will help secure appropriate support for the thousands of eligible Native American students attending Oklahoma's public schools.

JOY HOFMEISTER,
State Superintendent of Public Instruction.

Dear Senator Heitkamp:

On behalf of the National Indian Education Association (NIEA), the only national organization advocating for improved educational opportunities to enable Native students to thrive in the classroom and beyond, I write to support Senate Bill 943, the Johnson-O'Malley Supplemental Indian Education Program Modernization Act. Through this legislation, the Department of Interior (DOI) would update student counts to ensure that Native students are receiving critical services through the Johnson-O'Malley Program.

The Federal Government has a constitutional and legal trust responsibility to support equitable, excellent, culture-based educational options for Native students. Despite many government-to-government agreements, ongoing budget cuts have led to limited educational options for Native students. To fulfill its unique constitutional duty, Congress must ensure that Native children have access to the educational resources that they deserve.

NIEA thanks you for your leadership on updating the Native student counts for programs authorized under the Johnson-O'Malley Program. Reauthorization should include language that strengthens tribal sovereignty in Native language programs and provides Native students fair and equal access to learning their culture and languages.

Congress enacted the Johnson-O'Malley Act of 1934 in to address unique academic and cultural needs of Native students. The Johnson-O'Malley Program authorizes funding for contracts to tribal organizations, school districts, and partner organizations, as approved by the Bureau of Indian Education (BIE), to provide critical resources to support excellent culture-based education for Native students in public schools.

Inaccurate eligible student counts result in large numbers of unserved students through Johnson O'Malley. According to the 2010 Census, there were 798,486 qualified American Indian and Alaska Native students. However, the most recent 1995 student count of Johnson-O'Malley resulted in 271,884 eligible students. As introduced, S. 943 would update the 1995 Johnson-O'Malley student count to include the 66 percent of eligible Native students that remain underserved by the Johnson-O'Malley program.

Thank you for your efforts to provide Native students access to excellent and culture based education options. NIEA urges Congress to fulfill the federal trust responsibility by passing the Johnson-O'Malley Supplemental Indian Education Program Modernization Act: we support your work on this legislation to provide brighter futures for Native students across the United States.

Sincerely,

YATIBAEY EVANS
PRESIDENT, NATIONAL INDIAN EDUCATION ASSOCIATION (NIEA)

UNITED TRIBES OF NORTH DAKOTA

Dear Senator Heitkamp:

Our Board of Directors for United Tribes of North Dakota, the unincorporated association of all of the federally recognized Tribes in North Dakota, has recently passed this letter in support of the effort to modernize and reauthorize legislation establishing the Johnson O'Malley (JOM) program. This program is often overlooked and subject to being cut in the appropriations process, but it is a program that has assisted thousands of children and their parents from pre-school through high school who are enrolled in public schools.

JOM is a program allowing school administrators to provide some benefits to Native American children whose families may not be able to provide basic school supplies to their children, and that can help parents be a more active part of their children's school activities by being part of an Indian Education Committee associated with the schools where their children attend classes. At United Tribes Technical College (UTTC) over the years, JOM funds have provided children with school supplies, allowed the establishment of an all-Indian school board for the elementary school at UTTC, and more recently assisted the pre-school to have special programs recognizing the accomplishments of the preschoolers. These kinds of activities help get parents involved in the education of their children, something that has been shown to be vital to future success of American Indians involved in education.

We urge you to assist all of the American Indians in the United States and be a co-sponsor of the legislation that will modernize the JOM program and that will actually acknowledge the numbers of American Indian children that will benefit from the program. I am certain that the national JOM association representatives, and our Tribal leaders from North Dakota, will be speaking to you about this issue, have further ideas and possibly a draft of the legislation, and will work with you as the legislation goes forward.

We thank you again for your continued leadership in promoting the interests of American Indian children. I look forward to seeing you soon on this and other issues.

Sincerely,

DAVE FLUTE,
Chairman of the Board.

DEPARTMENT OF PUBLIC INSTRUCTION

Dear Senator Heitkamp:

On behalf of the more than 12,000 Native American students who are part of North Dakota's five federally recognized American Indian tribes, I am writing to offer the North Dakota Department of Public Instruction's enthusiastic support for S. 943, the "Johnson-O'Malley Supplemental Indian Education Program Modernization Act."

During the 2016–17 school year, North Dakota had 12,272 Native American students, or 10.4 percent of our total number of students in grades kindergarten through 12. Of those 12,272 Native students, 10,262, or 83.6 percent, attended North Dakota public schools.

Johnson-O'Malley funds are distributed to federally recognized tribes and state public school districts to bolster vitally important programs and support for our Native students. These funds have been used to pay for tutoring, afterschool programs, school supplies, and materials for culturally relevant instruction.

The Johnson-O'Malley Act awards supplemental assistance to benefit eligible Native students. This is an important reason why the Act urgently needs to be rewritten. The Bureau of Indian Affairs now uses a 1995 count of JOM eligibles to determine money distributions. The 1995 count underestimates the number of eligible students by up to two-thirds, and the Bureau of Indian Education has been unable to provide a suitable updated number.

S. 943 would help to remedy this problem. Its language would authorize a more accurate count of the number of Native students eligible for Johnson-O'Malley benefits. It would empower the Interior Secretary to identify potential sources of JOM funding, and encourage all eligible students to take part in the program. It would update the program's funding formula and eligibility definitions, and require a yearly accountability report to Congress.

The Johnson-O'Malley Supplemental Indian Education Program Modernization Act would buttress the North Dakota Department of Public Instruction's commitment to providing a high-quality education to all students, including the thousands of Native American students in our public schools. Thank you for sponsoring this important legislation.

Sincerely,

KIRSTEN BAESLER,
Superintendent of Public Instruction.

NATIONAL CONGRESS OF AMERICAN INDIANS

Dear Chairman Hoeven and Vice-Chairman Udall:

On behalf of the National Congress of American Indians (NCAI), the oldest and largest organization of American Indian and Alaska Native tribal governments, we write in support of the Johnson-O'Malley Supplemental Indian Education Program Modernization Act (S. 943). The legislation directs the Secretary of Department of Education to determine the number of eligible Indian students, how to reconcile and the use the data of the student count, and to reform the funding to conduct the Indian student count. We understand that the Committee will be considering it in your hearing tomorrow and we urge the Committee to support this legislation. In 2013, NCAI membership passed a resolution in support of the program, entitled #REN–13–013, "Supporting Use of Accurate Student Numbers to Create a Sustainable Johnson O'Malley Supplemental Indian Education Program".

S. 943, the Johnson-O'Malley Supplemental Indian Education Program Modernization Act would modernize the ability of accounting for Indian students attending Public Schools. The funding of the Johnson-O'Malley Program (JOM) is determined by the certified student count. However the certified student count has been stationary at 1995 levels and has not accounted for the significant increase in the past 20 years of Indian students that attend Public Schools. NCAI understands the importance of ensuring the accuracy of student count of Indian students, and supports the use of the accurate annual student counts so that JOM programs continue to foster and provide these important culturally sensitive education programs. The JOM programs are critical to the development of Indian students in their academics, and provide students the tools succeed in post-secondary education.

Native students count, and this legislation would ensure that the Nation's education policy reflects that.

Sincerely,

JACQUELINE PATA,
Executive Director.

TRIBAL EDUCATION DEPARTMENTS NATIONAL ASSEMBLY (TEDNA)

Dear Chairman Hoeven and Vice Chairman Udall:

The Tribal Education Departments National Assembly (TEDNA) writes in support of S. 943, the Johnson-O'Malley Supplemental Indian Education Program Modernization Act. TEDNA is the national membership organization for the Education Departments, Divisions and Agencies of American Indian and Alaska Native (AI/AN) Tribes. Virtually all of TEDNA's members and the tribal students that they serve are assisted by or eligible for assistance from Johnson-O'Malley (JOM) programs around the country.

For over 80 years, Congress has provided JOM funding for hundreds of thousands of AI/AN students in K–12 schools. Today, JOM is a well-established supplemental program intended to meet eligible AI/AN students' specialized and unique educational needs. While JOM programs, services, and activities generally are defined by federal law and regulation to include such things as academic support, teacher support, transportation, and school supplies, they also are tailorable to meet the specific needs of students, families and communities at the local level.

JOM funds flow from the U.S. Department of the Interior annual appropriations to states, public school districts, tribes and tribal organizations, and some tribal schools. Like many federal education programs, JOM funding is based on a set formula, which includes a determination of eligible students. But unlike other federal education programs, the student count for JOM funding has been frozen for decades—the Bureau of Indian Affairs last determined eligible JOM students in 1995. The over-20-year-old count of 278,000 students is well under half of the K–12 AI/AN student population of almost 800,000 as reflected in the 2010 Census. TEDNA

knows of no other federal education program that has endured such disparity and inequity primarily due to outdated and inaccurate basic information maintained by a federal agency.

Administrative and other efforts to address this unacceptable situation have failed. S. 943 would correct the JOM program's incongruence and injustice by "directing the Secretary of the Interior to conduct an accurate comprehensive student count for the purpose of calculating formula allocations for [JOM] programs." TEDNA unequivocally supports immediate passage of S. 943 as the legislative solution to the full participation of AI/AN students in the schools they attend.

Very Respectfully,

GLORIA SLY,
President.

MUSCOGEE (CREEK) NATION

Dear Chairman Hoeven and Vice Chairman Udall;

On behalf of the Muscogee (Creek) Nation, I am writing to express our support for the authorization of the Johnson-O'Malley Supplemental Indian Education Program Modernization Act (S. 943). This legislative effort builds upon Congress' focus on supporting Native education in the 21st century. S. 943 is a step in the right direction to honor the fiduciary trust obligation the Federal Government has with tribes to provide parity in access and equal resources to Native education.

The Johnson-O'Malley (JOM) program is utilized to meet specialized and unique educational needs of Indian students attending public and some tribal schools through the use of supplemental education programs. Such supplemental programs are designed at the local level under the purview of a local Indian Education Committee. Eligible JOM contract applicants are states, school districts, tribes, and tribal organizations.

The Muscogee (Creek) Nation JOM program office provides services to the following:

- 11 Oklahoma Counties
- 45 School Districts (of which one program is community based)
- 17,363 Students
- 103 Federally Recognized Tribes

As a nation we strive to provide a comprehensive program that encumbers academic education. cultural aWareness and community involvement. Technical assistance is provided to JOM eligible school sites to facilitate parental involvement as well as a partnership that contributes to the academic success of all Native American students.

The Muscogee (Creek) Nation is particularly supportive of the bill's push to determine a new per student allocation. In 1995 when the program was all but frozen in place, the individual student allocation was approximately $125.00 per student. However, based on the 278,000 student count used since 1996, the current allocation has dropped to nearly $43.00 per student at a time when any reasonable measurement of the true costs of the goods, services, personnel and transportation costs and types of assistance needed by JOM eligible students would show a clear need for additional funding.

After 25 years of waiting for any action by Congress or the Administration to rectify the unacceptable conditions that the JOM program must exist under today, we are encouraged by the Committee's pending approval of this legislation. We are hopeful that this Committee and the Senate will take quick action on this bill so that the House would have the opportunity to also quickly act on the bill.

On behalf of the over 1.0 million Indian children eligible for JOM, the Muscogee (Creek) Nation is delighted by the Committee's speedy consideration of S. 943, and would urge its immediate approval.

Sincerely,

JAMES R. FLOYD,
Principal Chief.

THE NEZ PERCE TRIBE (TRIBE)

Dear Chairman Hoeven and Vice Chairman Udall:

The Nez Perce Tribe (Tribe) would like to express its support for the avthorization of the Johnson-O'Malley Supplemental Indian Education Program Modernization Act (S. 943). This legislative effort builds upon Congress' focus on supporting Native education in the 21st century. S. 943 is a step in the right direction toward honoring the fiduciary trust obligation the Federal Government has with tribes to provide parity in access and equal resources to Native education.

The Johnson-O'Malley (JOM) program is used to meet specialized and unique educational needs of Indian students attending public and some tribal schools through the use of supplemental education programs. Such supplemental programs are designed at the local level under the purview of a local Indian Education Committee. Eligible JOM contract applicants are states, school districts, tribes, and tribal organizations.

The Tribe is particularly supportive of the bill's acknowledgement that the JOM rules, as reflected in Title 25, Code of Federal Regulations, are desperately outdated and lacking in the kind of guidance generally needed by JOM contracting parties. Many of the needed rule updates are to provisions that have not been reviewed or amended since the 1970s, or are in areas where courts have rendered decisions that require JOM rules to be brought into compliance with a court's findings. S. 943 instructions require the Director of the Bureau of Indian Education to undertake and complete a rulemaking process to determine how the regulatory definition of "eligible Indian stuaent" may be revised to clarify eligibility requirements for contracting parties; determine, as neoessary, how the funding formula may be clarified and revised to ensure full participation of contracting parties, provide clarity on the funding process; and otherwise reconcile and modernize the rules guiding the JOM program.

After 25 years of waiting for any action by Congress or the Administration to rectify the unacceptable conditions that the JOM program must exist under today, we are encouraged by the Committee's pending approval of this legislation. The Tribe is hopeful that this Committee and the Senate will take quick action on this bill so that the House would have the opportunity to act quickly on the bill as well.

On behalf of the over one million Indian children eligible for JOM, the Nez Perce Tribe is delighted by the Committee's prompt consideration of S. 943 and would urge its immediate approval.

Sincerely,

MARY JANE MILES,
Chairman.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. HEIDI HEITKAMP TO TONY DEARMAN

Questions. Mr. Dearman, is the student count for the Johnson-O'Malley program used for any other programs? Do you expect that once BEE has completed an updated, verified student count, that it would be used for any other purposes? Can you describe the process and number of staff you have who would be involved in compiling BIE's student count number for JOM?

Answer. The current 1995 Johnson O'Malley (JOM) student count is utilized specifically for JOM programmatic funding distribution. As the Bureau of Indian Education (BIB) works to increase its focus on data across the organization, it will analyze the possibility of utilizing JOM data for other purposes, contingent on various programmatic eligibility requirements.

Regardless, an updated count will help BIE identify need and allow us to better allocate resources where appropriate.

The BIE acknowledges the need for improved coordination and outreach for attaining an accurate JOM student count. To that end, the BIE continues to work to fill the vacant Program Specialist (JOM) position. The JOM position will work to conduct outreach with tribes, Native organizations, and contractors in the fall 2017, when schools are in session, regarding the reconciliation of existing BIE, Department of Education, and Census Bureau data as well as the future collection of student count information. In the interim, BIE has detailed staff to provide outreach and carry out the position's functions prior to filling the vacancy.

BIE looks forward to working with Members of the Senate Indian Affairs Committee and key stakeholders to reconcile existing data as well as implement regular and accurate student counts going forward.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. HEIDI HEITKAMP TO CARLA MANN

Questions. Can you provide a brief description of how the JOM student count process operated prior to 1995, and how that compared to the actions BIE undertook in 2012, 2014 and 2016? Would you suggest that BIE use the same process utilized prior to 1995 to conduct and prepare the updated JOM student count required by S. 943?

Answer.

- JOM Student Count Procedures
- The JOM Student count process prior to 1995 was conducted annually by the Tribes, School Districts and Native Serving Organizations holding JOM contracts with BIE during the month of October.
- The first full week of October was generally observed as "JOM Count Week," all schools would endeavor to count JOM students on their highest enrollment day.
- Notice of the Annual Student count was published [30–45 days] in advance of "count week" in the *Federal Register* by BIE.
- Instructions detailing the count and reporting processes were detailed in the Federal Register Notice.
- All students were verified eligible for services, by utilizing individual Certificates of Indian Blood (CIB's).
- Once certified, the count numbers were sent to our local BIA, and the BIA Line Officer at the Regional Bureau of Indian Affairs.
- Each regional BIA office compiled the numbers reported in their region, and then sent them to the BIA Central office, in Washington DC.

Post 1996 JOM Student Count Activities

[Note: Despite the ending of formal JOM counts, many tribes still count the first full week of October, so that they can get updated numbers and to certify all eligible students.]

- FY 2012 Count

The above detailed process was not followed in 2012 in part, because Congress only directed the BIE "update" the student numbers from 1996." BIE did publish a Notice in the Federal Register in May 2013 calling for all current contractors to report their current student enrollment but little additional effort was expended to alert or advertise the announcement of this count.

Sadly, many of the reporting contractors only reported numbers based on their "contracted count level" verses the actual number of students currently "eligible for JOM services." In the rare cases where contractors did report a true count of their enrolled students, there was no effort made to determine if the current student population being served represented a count of all the students eligible for services [this was particularly noted in School districts where new schools have been added since 1996, and their 1996 contracts only authorized services in previously approved school sites]. Also, as you might assume, most school personnel and tribal JOM Directors do not read the Federal Register, and were not aware of the May 2013 request. In fact, most schools were already out of school or, preparing for the end of the school year.

- FY 2014

In 2014, the language from the Omnibus bill directed BIE to conduct a "comprehensive count of all eligible JOM students nationwide". The BIE was given (in the January 2014 Omnibus appropriations bill) until 9/30/14 to complete this count. On July 27 BIE began mailing letters to all Tribal Leaders requesting that they report their JOM student counts to BIE Headquarters via form made available only on the BIE website. Again, this process was directed when school is out of session, and contractors, other than Tribal Leaders, were not notified. In some instances, not all Tribal leaders received the letter, or the information was not received by the JOM offices that are responsible for the count.

- FY 2016

The count directive from the Omnibus bill in 2016, has not yet been complied with the BIE.

Question. Would NJOMA want to follow the same process that was followed prior to 1995?

Answer. NJOMA, would say no.

The counts from 2012 and 2014 show that the BIE is not capable of doing a comprehensive count that identifies the true size of the JOM "eligible student population" across the nation. The downsizing of BIE and other reorganizational activities have had a significantly negative impact on BIE's data management capabilities. We would also question BIE's baseline ability to design, construct and conduct the kind of data collection effort that would bridge the 21 year gap in collection of any data that would track the growth in Native American and Alaskan Native populations shown in the broader society. For this reason, NJOMA is supportive of S.943's intent to direct BIE to utilize widely accepted population/demographic data to create a new "model baseline count of all JOM eligible students.' We believe that once a new baseline projection and count is accomplished, that appropriate steps can then be taken to reconcile actual student counts, and further steps can then be taken to conduct annual counts that would be more routine for contractors and the BIE.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. HEIDI HEITKAMP TO DONALD R. WHARTON

Questions. S. 943 directs the Secretary of the Interior to report annually to Congress on all contracts performed under JOM. Should we (Congress) feel confident that the annual reporting provisions in S. 943 for the JOM program are sufficient? If not, what changes would you recommend? What tools exist in federal law or court decisions to enforce this provision?

Answer. Thank you for the invitation to respond to the question. Since S. 943 does not have any provision concerning reporting under JOM the Klamath Tribes offer no opinion on this issue.

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