

Annual Report to Congress

NATIVE AMERICAN GRAVES
PROTECTION & REPATRIATION REVIEW COMMITTEE

FY2026

October 1, 2025-September 30, 2026

October 1, 2026

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Executive Summary

The passage of the Native American Graves Protection and Repatriation Act (NAGPRA or the Act) on November 16, 1990, mandated the formation of a Federal advisory committee to "monitor and review the implementation of the inventory and identification process and repatriation activities required under sections 3003, 3004 and 3005" of the Act.¹ One of the specific duties of the Native American Graves Protection and Repatriation Review Committee (Review Committee) is to report to Congress annually regarding progress made and any barriers encountered in implementing the Act's provisions during the previous year.²

This report summarizes Review Committee activities and progress made and barriers encountered in implementation of NAGPRA during fiscal year (FY) 2026 (October 1, 2025-September 30, 2026). The Review Committee also offers specific recommendations to improve implementation of NAGPRA in the future. The following summary of the Review Committee's recommendations include references to where in this report they are described in greater detail. The Review Committee recommends that the Congress:

1. Amend sections of NAGPRA regarding the definitions of "sacred objects" (recommendation #1A), "Federal lands" (#1B), "Native American" (#1C and #7B), "Hui Malama I Na Kupuna O Hawai'i Nei" (#1D), "Native Hawaiian organization" (#1E), "right of possession" (#1F), "aboriginal land" (#2A), and sections regarding notification (#2B), review committee's responsibilities (#3), Native Hawaiian traditional religious leaders (#6), illegal trafficking (#7C); exemption from disclosure of culturally sensitive information (#8), administration of the NAGPRA program (#9), and scope of the review committee's report to Congress (#11).
2. Amend a section of the National Museum of the American Indian Act to grant the United States District Courts jurisdiction over violations of the Act and clarify the inventory process (recommendation #10).
3. Request that the Government Accountability Office complete evaluations of Federal agency compliance with the requirements of 25 U.S.C. § 3002 (recommendation #2C), implementation of the civil penalty provisions (#4), and the NAGPRA grant program, including the timely obligation and expenditure of appropriated grant funds and the costs of implementing the 2024 regulations (#5A and #5B)."
4. Establish and fund an interagency investigative and prosecutorial effort to combat illegal trafficking of Native American cultural items (recommendation #7D).

¹ 25 U.S.C. § 3006 (a).

² 25 U.S.C. § 3006 (h).

5. Include \$3 million in the FY2026 and subsequent year budgets for implementation of the Safeguard Tribal Objects of Cultural Patrimony Act (recommendation #7A).
6. Establish and fund capabilities within the Department of Justice, Environmental Crimes Section to coordinate prosecution of violations of NAGPRA, ARPA, and the Stop Act (recommendation #7E).
7. Revise the National Park Service *Management Policies (2006)* to allow the reburial of Native American human remains and funerary objects repatriated under NAGPRA on NPS lands regardless of the original location of removal (recommendation 12).
8. Reject any new regulation under Section 106 of the NHPA that limits a tribe's ability to consult on federal undertakings due to the potential impact on NAGPRA implementation (recommendation 13).
9. Exercise authority over federal agency compliance with NAGPRA training, to ensure regulatory compliance is not impeded by agency staff (Recommendation 14).

Summary of Activities

NAGPRA affects Indian Tribes, Native Hawaiian organizations, lineal descendants, museums, and Federal agencies. The development of long-term positive collaborations and cooperation among these different communities as part of their compliance and involvement with the law is an important goal. Through its public meetings, oversight of implementation of the Act, review and recommendations regarding the resolution of disputes, and recommendations to the Secretary of the Interior, the Review Committee works to achieve the goals and objectives of the statute.

Review Committee Members Serving during FY2026

Nominated by Indian Tribes and Native Hawaiian organizations:

- Domonique deBeaubien. Nominated by the Seminole Tribe of Florida. (term ends November 22, 2026).
- Toby Patrick, Traditional Indian Religious Leader. Nominated by the Confederated Tribes of the Umatilla Indian Reservation. (term ends June 1, 2027).
- Vacant, Traditional Indian Religious Leader. (last filled October 7, 2024).

Nominated by national museum and scientific organizations:

- E Halealoha Ayau. Nominated by the American Anthropological Association. (term ends November 22, 2026).
- Michael Catches Enemy. Nominated by the American Anthropological Association. (term ends December 4, 2028).
- Monica Shah. Nominated by the Association of Art Museum Directors. (term ends December 4, 2028).

Nominated by consensus of the Review Committee:

- Angela Garcia-Lewis. (term ends November 22, 2026)

Review Committee members are appointed for a four-year term and may be reappointed for a second, two-year term.

Review Committee Meetings

In FY2026, the Review Committee held one telephonic meeting, and no face-to-face meetings.

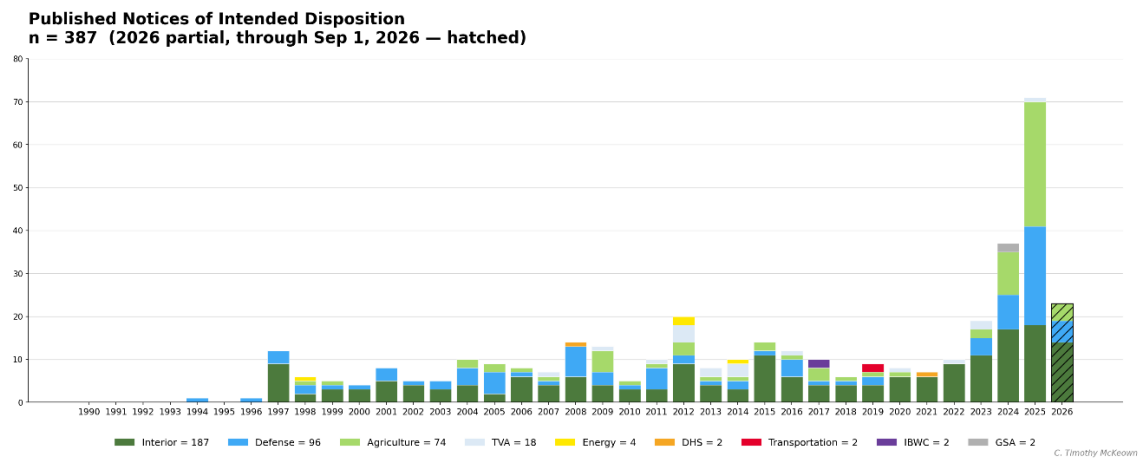
The 92nd meeting of the Review Committee was held telephonically on September 30, 2026. During the meeting, the Review Committee benefited from a presentation by the U.S. Forest Service, and considered and approved its FY2026 Report to Congress.

Minutes and transcripts of past meetings can be accessed at:
<https://www.nps.gov/subjects/nagpra/meetings.htm>

Progress Made

Congress has charged the Review Committee with reporting on progress made and barriers encountered in NAGPRA implementation. We are pleased to report the following progress in implementing NAGPRA.

1. Increase in disposition activities on Federal lands. Section 3 of NAGPRA requires Federal land managers to take specified actions whenever Native American human remains or other cultural items are inadvertently discovered or intentionally excavated on Federal or tribal lands. A primary means of monitoring implementation of Section 3 is through notices of intended disposition, which are required after a discovery or excavation and before disposition of the items to the appropriate Indian Tribe or Native Hawaiian organization.



From 1996-2024, regulations required publication of each notice of intended disposition twice in newspapers by the specific agency. The 2024 regulations changed this to a single publication in the Federal Register coordinated by the National Park Service. As shown in the above figure,³ the volume of published notices rose only modestly through the newspaper-publication era — averaging under 9 per year from 1994–2023, with a ramp-up to around 11 per year by 2019–2023 — before spiking sharply in 2024 and especially 2025, then falling back substantially in 2026. That shape is the signature of a one-time catch-up rather than a sustained new baseline: the 2024 regulatory changes, effective January 12, 2024, both moved publication from local newspapers to the Federal Register and required agencies with cases already pending under the old

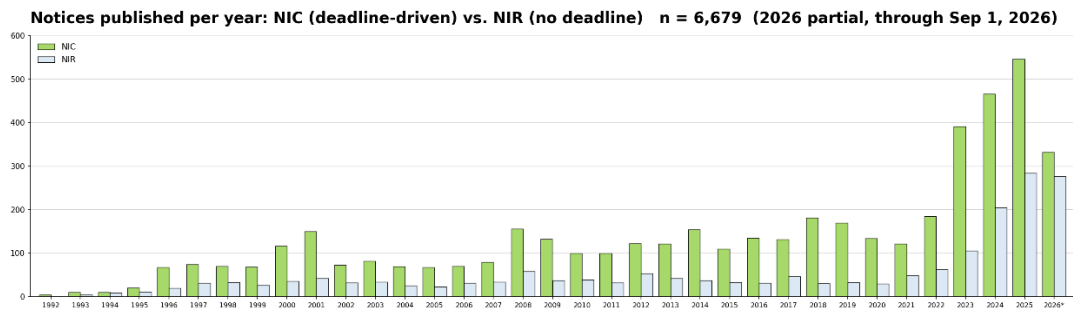
³ Data sources: Notices published between 1990 and 2024 were compiled from records obtained through Freedom of Information Act requests submitted by C. Timothy McKeown to the National Park Service, supplemented by notices located in online newspaper archive databases (e.g., Newspapers.com) for cases not captured in the FOIA production. Notices published from 2024 through September 1, 2026 were drawn from the National Park Service's National NAGPRA Program online database, with each entry verified by the author against the corresponding official notice published in the Federal Register. Because the pre-2024 dataset relies on records retention, FOIA responsiveness, and the completeness of digitized newspaper archives, it may undercount notices that were published in newspapers not indexed by these databases or not identified in agency records. The 2026 figure is partial, covering January 1 through September 1, 2026, and is not directly comparable to the full-year totals shown for other years.

process to complete consultation by July 12, 2024 and submit notices by January 13, 2025. The 2025 bar — at roughly four times the pre-2024 average — lines up with that January 2025 compliance deadline, and 2026 volume has already dropped to a fraction of the 2025 peak as the backlog clears. A close reading of individual notices reinforces this: several 2024–2025 notices describe human remains and objects removed from federal land in the 1990s and early 2000s, well before the new rule, indicating agencies were publishing long-pending cases rather than reporting new discoveries. Even so, 2026 volume remains several times higher than the pre-2024 baseline, so some portion of the increase — whether a longer tail of backlog processing or a genuine rise in new discovery and consultation activity — appears likely to persist.

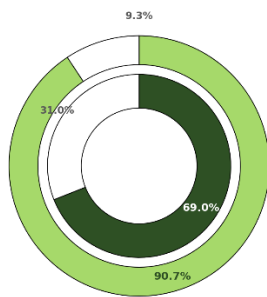
2. Increase in repatriation activities for museum and Federal agency collections and holdings. Sections 4, 5, and 6 of NAGPRA require Federal agencies and institutions that receive Federal funds to provide summaries of Native American holdings or collections that may include unassociated funerary objects, sacred objects, and objects of cultural patrimony and inventories of human remains and associated funerary objects to lineal descendants, Indian tribes, and Native Hawaiian organizations and, upon request, repatriate culturally affiliated cultural items. A primary means of monitoring implementation of Sections 4, 5, and 6 is through inventories, notices of inventory completion, and notices of intended repatriation. The statute established a 1995 deadline for the completion of inventories of Native American human remains and associated funerary objects. The 2024 regulations set a 2029 deadline for Federal agencies and museums to revise their inventories.

As shown in the following figure,⁴ the number of Notices of Inventory Completion (NIC) published rose sharply after 2022, from roughly 130–180 per year through 2018–2021 to 391 in 2023, 466 in 2024, and 546 in 2025. This increase was most likely driven by the January 12, 2024 regulations' five-year deadline requiring museums and Federal agencies to complete consultation and revise their inventories of human remains and associated funerary objects by January 12, 2029. Notices of Intended Repatriation (NIR) rose over the same period, from roughly 30–60 per year through 2018–2021 to 105 in 2023, 205 in 2024, and 284 in 2025, with 2026 already on pace to exceed 2025. This parallel rise likely reflects the same underlying activity: institutions conducting the tribal consultation required to update their NIC inventories are, in the course of that same consultation, identifying and processing associated sacred objects, unassociated funerary objects, and objects of cultural patrimony subject to Section 6 summaries and NIR notices.

⁴ Data sources: Notices of Inventory Completion (NIC) and Notices of Intended Repatriation (NIR) counts, and the published human remains (HR) and associated funerary object (AFO) totals, were obtained from the National NAGPRA Program's online database (National Park Service) as of September 1, 2026. Not-yet-published HR and AFO totals were obtained from the National NAGPRA Program's online Inventories database as of the same date, which reflects items not yet the subject of a completed notice. The 2026 figures in the timeline are partial, covering January 1 through September 1, 2026, and are not directly comparable to full-year totals shown for other years.



Human remains (HR) and associated funerary objects (AFO): published vs. not yet

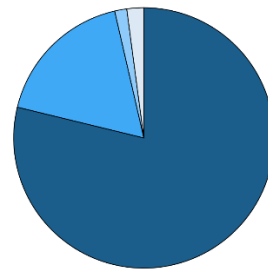


HR: 169,064 published (69.0%) - 76,110 not yet (31.0%)
AFO: 5,320,100 published (90.7%) - 547,437 not yet (9.3%)

NAGPRA Section 7 - Repatriation Data

HR published AFO published Not yet

Objects published in Notices of Intended Repatriation



UFGs (78.8%) Objects of cultural patrimony (17.6%) Sacred objects (1.5%) Sacred & patrimony, dual (2.1%)

C. Timothy McKinnon

Substantial work remains to meet the 2029 deadline. As of September 1, 2026, 31.0% of human remains (76,110 individuals) and 9.3% of associated funerary objects (547,437 objects) held by museums and Federal agencies had not yet been the subject of a published notice. The pace of that remaining work is uneven across the two categories. Over the twelve months ending September 1, 2026, institutions published notices covering 10,190 individuals — a pace that would need to more than triple, to roughly 32,000 individuals per year, to complete the remaining human remains inventory by the January 2029 deadline. By contrast, associated funerary objects were published at a pace of just over 1,022,000 per year over the same period, well above the roughly 231,000 per year needed to clear the remaining backlog. The rising count of published notices therefore does not, by itself, indicate the pace of underlying repatriation activity is on track to meet the statutory deadline for human remains specifically, even as it appears comfortably on track for associated funerary objects.

3. Continued Press Coverage of Repatriation Issues. Press coverage of NAGPRA and repatriation issues continued through FY2026. Outlets including Indian Country Today, Native News Online, ProPublica — which has continued to update its NAGPRA repatriation-tracking database — and regional and trade press such as New Mexico Magazine and Archaeology Magazine published articles on repatriation activity, ranging from individual tribal repatriations to broader assessments of institutional compliance with the revised regulations. The Review Committee is appreciative of the press's

continued efforts to keep the public informed. As in FY2025, however, the Committee recognizes that heightened public scrutiny has also produced an increase in public records requests demanding sensitive information, including reburial area locations, photographs of ancestors, and consultation records containing traditional knowledge. The Committee reiterates its concern that such requests pose a real risk to the privacy and cultural integrity of the information NAGPRA consultation is meant to protect, and encourages agencies and museums to apply appropriate exemptions where available under FOIA and analogous state public records laws.

4. Consideration of the Truth and Healing Commission on Indian Boarding School Policies Act. This bill was introduced in the Senate on February 26, 2025, by Senator Murkowski and currently has 26 cosponsors.⁵ The Senate Committee on Indian Affairs reported the bill without amendment on July 31, 2025, and it was placed on the Senate Legislative Calendar under General Orders, Calendar No. 139, where it awaits floor action.⁶ A parallel bill was introduced in the House on February 3, 2026, by Representative Cole and currently has 18 cosponsors.⁷ The Review Committee supports this legislative initiative and looks forward to working with Congress and the Commission, once seated, to ensure the appropriate protection or disposition of student graves found on Federal lands, and that if excavation occurs, is carried out pursuant to Section 3 of NAGPRA.⁸ The Review Committee also looks forward to working with the Commission to ensure all remains of boarding school students and funerary objects excavated or removed from lands controlled by any relevant institution or state or local government agency that received Federal funds are repatriated to the appropriate lineal descendant or culturally affiliated Indian tribe or Native Hawaiian organization pursuant to Sections 5, 6, and 7 of NAGPRA.⁹

Barriers to Overcome

Several barriers to full implementation of NAGPRA were identified in FY2026.

1. Continued resistance by some institutions. The Review Committee has heard that some states insist on relying solely on state burial law regarding the disposition of Native American human remains and associated funerary objects under state control and ignore NAGPRA's repatriation requirements that also apply. Some states have taken the position that since these remains are under state jurisdiction, were discovered on state land, or are held pursuant to state cemetery law, state burial law alone governs their disposition, and that NAGPRA's inventory, consultation, and repatriation requirements do not independently apply. This position misreads the relationship between the two bodies of law: NAGPRA's Sections 5 through 7 obligations attach to any museum or agency that receives Federal funds, independent of the state law that

⁵ S. 761, 119th Cong. (2025).

⁶ S. Rep. No. 119-54 (2025); S. 761, 119th Cong., Senate Legislative Calendar, Calendar No. 139.

⁷ H.R. 7325, 119th Cong. (2026).

⁸ 25 U.S.C. § 3002.

⁹ 25 U.S.C. §§ 3003–3005.

would otherwise govern the remains, and NAGPRA's savings clause at 25 U.S.C. § 3009 preserves state law protections that exceed NAGPRA's requirements but does not permit state law to substitute for them. The Committee is concerned that this misunderstanding, if uncorrected, allows some state-controlled institutions to avoid consultation with lineal descendants, Indian Tribes, and Native Hawaiian organizations that NAGPRA requires regardless of state law.

Another issue raised in last year's Report to Congress, the allegations that the U.S. Army ignored NAGPRA's requirements regarding the planned excavation of Native American human remains at the site of the U.S. Army War College in Carlisle, Pennsylvania, seems close to resolution. On May 14, 2026, the U.S. Court of Appeals for the Fourth Circuit, in *Winnebago Tribe of Nebraska v. Department of the Army*¹⁰, vacated a district court's dismissal of the Tribe's NAGPRA repatriation claim regarding two children buried at Carlisle, holding for the first time that a federal appellate court has interpreted NAGPRA to apply to human remains held by a federal agency without the consent of family or tribe, including remains in a cemetery the Army itself has described as a repository for Indian school students. The case was remanded to the district court for further proceedings. The Army has continued to conduct disinterments under its own Army Regulation 290-5, citing NAGPRA's savings clause at 25 U.S.C. § 3009 rather than conceding that NAGPRA itself governs the process, and the Winnebago litigation remains pending on remand rather than finally resolved. Approximately 136 additional children remain buried at the Carlisle cemetery. The Review Committee will continue to monitor whether the Army brings its disinterment practices into full alignment with NAGPRA going forward.

2. Last year's Report to Congress identified two GAO recommendations that remained unimplemented in FY2026.

- The Secretary of Energy, and Administrator of the Federal Highway Administration should document in their agencies' tribal consultation policy how agency officials are to communicate with tribes about how tribal input from consultation was considered in agency decisions on proposed infrastructure projects.¹¹
- The Congress should consider ways to expedite the Smithsonian's repatriation process including, but not limited to, directing the Smithsonian to make cultural affiliation determinations as efficiently and effectively as possible.¹²

3. Conflicting estimates of the cost of repatriation. The Review Committee has consistently requested that Congress appropriate additional funding for implementation of NAGPRA since its first report to Congress in 1995. Representatives of Indian tribes, Native Hawaiian organizations, and museums have consistently expressed the need for

¹⁰ *Winnebago Tribe of Nebraska v. United States Department of the Army*, No. 24-2081 (4th Cir. May 14, 2026).

¹¹ Government Accountability Office, Tribal consultation: Additional Federal actions needed for infrastructure projects (Mar. 20, 2019). GAO-19-22 (recommendations 6, 7, 10, and 14).

¹² Government Accountability Office, Smithsonian Institution: Much work still needed to identify and repatriate Indian human remains and objects (Mar. 25, 2011). GAO-11-515.

additional funding. The Government Accountability Office's (GAO) report entitled Native American Graves Protection and Repatriation Act: After Almost 20 Years, Key Federal Agencies Still Have Not Fully Complied with the Act (GAO-10-768) identified a lack of resources within Federal agencies dedicated to NAGPRA implementation as "one of the most significant challenges" to compliance with the Act. However, the Department of the Interior reported estimates that are largely consistent with current appropriations, and have indicated that the new regulations requiring museums and Federal agencies to complete or revise inventories in consultation with Indian tribes and Native Hawaiian organizations for over 100,000 Native American human remains and associated funerary objects within a five year period will not impose a significant economic impact on a substantial number of small entities.¹³ Further, the Department of the Interior has failed to issue a Notice of Funding Opportunity for the \$3.4 million in NAGPRA grants appropriated in FY2026. This exacerbates the situation shown earlier where museums are lagging behind the pace needed to meet the 2029 deadline for inventory completion required by the 2024 regulations. The Review Committee feels there is a need for accurate, impartial, and comprehensive assessment of the overall costs of compliance with NAGPRA by museums, Federal agencies, Indian tribes, and Native Hawaiian organizations.

4. Sensitive information is currently unprotected. Of critical importance, sensitive information shared during NAGPRA consultations by lineal descendants, Indian Tribes, and Native Hawaiian organizations and in the possession of a Federal agency or museum may be released under the Freedom of Information Act. For example, it is not in the spirit of the law to create open opportunities for looters by disclosing specific information on burial locations. Ceremonial information could be shared in a consultation session but should not be released to the general public. The inability to keep sensitive information confidential is a significant barrier to repatriation.

5. Staff Support. NAGPRA requires the Secretary of the Interior "to provide reasonable administrative and staff support necessary for the deliberations of the committee." The Review Committee's repeated requests for copies of the 85 comments on a draft proposal to revise existing regulations that were provided to the Department by Indian tribes and Native Hawaiian organizations and 10 comments provided by Federal agencies on the proposed rule were denied. The Review Committee's deliberations on the draft proposed regulations were cut short after only reviewing two sections. The Department's initial distribution of the Review Committee's FY2023 Report to Congress took nearly six months, and the FY2025 Report to Congress is still "under Departmental review" and has not been distributed to Congress eleven months after it was finalized by the committee. The Department facilitated only one telephonic meeting of the Review Committee in FY2026.

6. Native Hawaiian organizations. When NAGPRA was enacted in 1990 it defined

¹³ National Park Service, Cost-benefit and regulatory flexibility threshold analyses: Native American Graves Protection and Repatriation Act proposed revisions (Sept. 2022).
<https://www.regulations.gov/document/NPS-2022-0004-0002> (accessed Sept. 22, 2025).

“Native Hawaiian organization” to include two organizations, namely Hui Malama I Na Kupuna O Hawai‘i Nei and the Office of Hawaiian Affairs. In 2015, Hui Malama I Na Kupuna O Hawai‘i Nei ceased to exist. Thereafter, the organization Hui Iwi Kuamo‘o was established by former Hui Malama I Na Kupuna O Hawai‘i Nei members to continue repatriation efforts. The Review Committee recognizes the need to address this confusion and supports the replacement of Hui Malama I Na Kupuna O Hawai‘i Nei with Hui Iwi Kuamo‘o throughout the Act and regulations.

7. Importance of Statutory Amendments. On June 28, 2024, the Supreme Court overturned its 1984 "Chevron" precedent, precluding courts from deferring to an agency's interpretation of an ambiguous statute simply because the agency administers it.¹⁴ In the post-Chevron era, it is critical for Congress to enact the Review Committee's recommended legislative changes to the National Museum of the American Indian Act and NAGPRA, rather than relying on the Department to accomplish comparable objectives through regulation alone.

The pending litigation in *Wyoming Association of Professional Archaeologists v. Burgum*¹⁵ illustrates why this concern is not merely theoretical. Filed July 24, 2026, against the Secretary of the Interior, the Department, and the Bureau of Land Management's Wyoming and Colorado offices, the suit challenges the 2024 regulations' elimination of the "culturally unidentifiable" classification and their expanded definitions of human remains and funerary objects as exceeding the authority Congress granted the Department in NAGPRA. The plaintiffs argue that Congress reserved to itself, not the Department, the authority to determine the disposition of culturally unidentifiable human remains, and that the Review Committee's own role under 25 U.S.C. § 3006(c)(5) is advisory only — meaning the Department lacked authority to adopt, by regulation, changes of the significance and scope reflected in the 2024 rule. Where before *Loper Bright* a court might have deferred to the Department's reading of NAGPRA's ambiguous provisions on this point, a reviewing court is now free to substitute its own judgment for the Department's. Should the court agree with the plaintiffs, the resulting decision could unwind or narrow the very regulatory mechanism responsible for the increase in published notices and repatriation activity documented elsewhere in this report — an outcome that would not occur, or would be far less likely to occur, had Congress itself enacted the underlying policy changes through statutory amendment rather than leaving the Department to accomplish them by regulation. The Committee views *WAPA v. Burgum* as a concrete illustration of the exposure created by relying on regulatory interpretation, rather than statutory text, to carry out significant elements of NAGPRA policy, and renews its recommendation that Congress act on the Committee's proposed statutory amendments.

8. Funding gaps. Museums are not statutorily required to fund the full cost of culturally

¹⁴ *Loper Bright Enterprises v. Raimondo and Relentless, Inc. v. Department of Commerce*, 603 U.S. ____ (2024).

¹⁵ *Wyoming Association of Professional Archaeologists v. Burgum*, No. 2:26-cv-00222 (D. Wyo., filed July 24, 2026).

appropriate repatriation, reburial, or ceremonial logistics. As a result, tribes absorb costs that arise solely because institutions retained possession of ancestors, which produces unequal access to repatriation. In instances when institutions do offer funding, there is often a set funding limit per tribe without regard to the size or scope of the transfer. In addition, institutions often impose administrative or logistical barriers on travel, with no consideration of traditional practices or beliefs. The lack of realistic funding opportunities that incorporate all components of repatriation including the size of the inventory/summary, tribal travel distance, traditional religious protocols, and the time to complete reburial is a significant barrier to repatriation.

Proposed changes to Section 106 of the National Historic Preservation Act (NHPA) specifically target a tribe's ability to consult on a federal undertaking while there is still time to identify reasonable alternatives. It is anticipated that a significant burden will be shifted from preventative Section 106 consultation into reactive NAGPRA work as well as compliance in the form of drafting Plans of Action and Comprehensive Agreements. The Committee recognizes that this will shift time and additional cost onto NAGPRA implementation and burden tribes already struggling with capacity. The inadequate support of all aspects of NAGPRA work is a significant barrier to repatriation.

Recommendations to Congress

Based on its experience with both examples of progress and barriers, the Review Committee recommends the following Congressional actions (proposed revisions of statutory text shown with **redline** and **strikeout**).

1. Definitions (25 U.S.C. § 3001)

A. **Sacred Objects (25 U.S.C. § 3001 (3)(C))**. The Act defines “sacred objects” in terms of traditional Native American religions only. There is a need to expand the definition to acknowledge that while some practices are religious in nature others are familial spiritual practices and not organized formally amongst the larger community or considered stately religions. For Hawaiians, these are *‘aumākua* practices, which are *ike pāpālua* (spiritual communications) with deceased family members that were not considered part of the stately religion that were overthrown in circa 1819-1820 following the defeat of *‘aikapu* (sacred eating). We request the Congress to amend the definition of “sacred objects” by adding this simple language as follows:

(C) “sacred objects” which shall mean specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions or family spiritual practices by their present day adherents, and

B. **Federal lands (25 U.S.C. 3001 (5))**. Section 3 of the Act requires Federal agencies to protect Native American grave sites located on Federal lands. In order to maximize

coverage of these provisions, we request that the Congress amend the definition of Federal lands as follows:

(5) "Federal lands" means any lands other than tribal lands which are controlled or owned by the United States, including

(A) lands selected by but not yet conveyed to Alaska Native Corporations and groups organized pursuant to the Alaska Native Claims Settlement Act of 1971 [43 U.S.C. 1601 et seq.], and

(B) lands located within the boundary of any Federal or Federally assisted undertaking permitted pursuant to the National Historic Preservation Act of 1966 [54 U.S.C. 300101 et seq.].

C. **Native American (25 U.S.C. § 3001 (9)).** The most problematic definition in the Act is that of "Native American." NAGPRA defines the term to mean "of, or relating to, a tribe, people, or culture that is indigenous to the United States." However, in 2004, the United States Court of Appeals for the Ninth Circuit interpreted the term "Native American" to require that human remains and other cultural items "must bear a significant relationship" to a **presently existing** Tribe, people, or culture to be considered Native American.¹⁶ Not only was this incorrect opinion antithetical to the purpose and policy underlying NAGPRA, it necessitated passage of separate legislation to enable reburial of the 9,000-year-old human remains at issue in the case, and it created ambiguity which, in at least one case, has led to an acquittal in a NAGPRA trafficking case.¹⁷ In order to address this issue, the Review Committee recommends that Congress amends NAGPRA's definition of "Native American" to read as follows:

(9) "Native American" means of, or relating to, a tribe, people, or culture that is or was indigenous to any geographic area that is now located within the boundaries of the United States.

D. **Hui Malama I Na Kupuna O Hawai'i Nei (25 U.S.C. § 3001 (6)) .** NAGPRA names and defines "Hui Malama I Na Kupuna O Hawai'i Nei" as a Native Hawaiian organization qualified to conduct repatriation on behalf of Native Hawaiians. In January 2015, the organization voluntarily and formally dissolved itself under the laws of the State of Hawai'i, as directed by the organization's founder. The organization was succeeded by the Native Hawaiian organization Hui Iwi Kuamo'o whose leadership and membership is the same as the leadership of Hui Malama I Na Kupuna O Hawai'i Nei. We request that the Congress repeal all references to this organization from the NAGPRA and replace it with "Hui Iwi Kuamo'o," its successor organization.

The definition should read as follows:

(6) "Hui Iwi Kuamo'o" means the nonprofit, Native Hawaiian organization incorporated under the laws of the State of Hawai'i by that name on July 21,

¹⁶ *Bonnichsen v. United States*, 367 F.3d 864, 878 (9th Cir. 2004) (emphasis in original).

¹⁷ *U.S. v. Deluca*, No. 00 CR 387 (N.D. Ill. Mar. 6, 2002).

2022, for the purpose of succeeding to Hui Mālama I Nā Kūpuna O Hawai‘i Nei and thereby providing guidance, expertise and ceremonial practice in Native Hawaiian cultural issues, particularly repatriation and reburial issues.

E. **Native Hawaiian Organization (25 U.S.C. § 3001 (11)).** We request the Congress amend this definition to replace “Hui Malama I Na Kupuna O Hawai‘i Nei” with “Hui Iwi Kuamo‘o,” and add a provision prohibiting any museum or government agency from asserting itself as a Native Hawaiian organization, as follows:

(11) "Native Hawaiian organization" means any organization which—
(A) serves and represents the interests of Native Hawaiians,
(B) has as a primary and stated purpose the provision of services to Native Hawaiians, ~~and~~
(C) has expertise in Native Hawaiian Affairs, and shall include the Office of Hawaiian Affairs and ~~Hui Malama I Na Kupuna O Hawai‘i Nei~~ Hui Iwi Kuamo‘o, and
(D) does not include any museum or agency or subdivision of the State of Hawai‘i or the United States.

F. **Right of Possession (25 U.S.C. § 3001 (13)).** The Act defines “right of possession” to apply to unassociated funerary objects, sacred objects, and objects of cultural patrimony and limits its application to human remains and associated funerary objects. There is a need to recognize that a funerary status is perpetual and cannot change. As long as an object is funerary, it cannot be owned by the living. It is also *haumia* (defiled) given its prior association with the dead. We request the Congress to amend the definition of “right of possession” to extend the limitation to unassociated funerary objects in addition to human remains and associated funerary objects, as follows:

(13) "right of possession" means possession obtained with the voluntary consent of an individual or group that had authority of alienation. The original acquisition of a Native American ~~unassociated funerary object~~, sacred object or object of cultural patrimony from an Indian tribe or Native Hawaiian organization with the voluntary consent of an individual or group with authority to alienate such object is deemed to give right of possession of that object, unless the phrase so defined would, as applied in section 3005(c) of this title, result in a Fifth Amendment taking by the United States as determined by the United States Court of Federal Claims pursuant to 28 U.S.C. 1491 in which event the "right of possession" shall be as provided under otherwise applicable property law. The original acquisition of Native American human remains, ~~and associated funerary objects~~, and unassociated funerary objects which were excavated, exhumed, or otherwise obtained with full knowledge and consent of the next of kin or the official governing body of the appropriate culturally affiliated Indian tribe or Native Hawaiian organization is deemed to give right of possession to those remains.

3. **Ownership (25 U.S.C. § 3002)**

The ownership provisions apply to the discovery, removal, or excavation of Native American cultural items on Federal lands and Tribal lands after 1990. NAGPRA and its implementing regulations require persons who discover Native American human remains or other cultural items on Federal or Tribal lands to immediately stop any ongoing activity and provide immediate telephone notification of the inadvertent discovery, with written confirmation, to the responsible Federal land manager. The Federal land manager then must notify the appropriate Indian Tribes or Native Hawaiian organizations and begin consultation about the disposition of cultural items and complete a plan of action. The activity that resulted in the inadvertent discovery may resume thirty days after certification by the Federal land manager of receipt of the written confirmation of notification, or sooner if a written, binding agreement is executed between the Federal agency and the appropriate Indian Tribes or Native Hawaiian organizations. Discovered human remains or other cultural items may only be removed or excavated after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, or, in the case of Tribal lands, with the consent of the appropriate Indian Tribe or Native Hawaiian organization. The excavation or removal of cultural items must also comply with the requirements of the Archaeological Resources Protection Act (ARPA). NAGPRA provides a detailed priority listing to determine the ownership or control of discovered or excavated Native American human remains and other cultural items based on lineal descent, Tribal land, cultural affiliation, and aboriginal land,¹⁸ indicating that NAGPRA has been somewhat successful in fulfilling its grave protection mandate.

NAGPRA sets standards for the disposition of human remains and other cultural items discovered on Federal lands that are recognized by a final judgement of the Indian Claims Commission or the United State Court of Federal Claims.¹⁹ This Review Committee adopted this standard in its recommendations regarding the disposition of culturally unidentifiable human remains in museum or Federal agency collections, but elaborated on the basis for determining aboriginal lands. The current regulations allow aboriginal lands to also be determined by a treaty, Act of Congress, or Executive Order.²⁰

A. In order to bring the ownership and repatriation provisions in line, we request that the Congress amend the provisions of 25 U.S.C. § 3002 (a)(2)(C) to read as follows:

if the cultural affiliation of the objects cannot be reasonably ascertained and if the objects were discovered on Federal land that is recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims, or a treaty, Act of Congress, or Executive Order as the aboriginal land of some Indian Tribe—

The ownership section has proved the most prone to litigation, due in part to the brevity

¹⁸ National NAGPRA Program, Fiscal Year 2025 Report.

<https://irma.nps.gov/DataStore/DownloadFile/711020> (accessed Sept. 2, 2026)

¹⁹ 25 U.S.C. § 3002 (a)(2)(c).

²⁰ 43 CFR § 10.11 (c)(1)(ii).

of the statutory provisions as well as the lack of any institutionalized form of alternative dispute resolution. The Review Committee has heard that in many cases Federal agency officials are failing to adequately consult with Indian Tribes following inadvertent discoveries and are failing to complete the plans of action required by regulation. In the new regulations, the Department of Interior eliminated these requirements in the face of strong opposing commentary to retain these requirements.²¹

B. In order to ensure full transparency in the disposition of Native American human remains and other cultural items excavated or discovered on Federal lands, or tribal lands where an Indian Tribe has not assumed responsibility for NAGPRA compliance, we request that the Congress add the following section at the end of 35 U.S.C. 3002:

(f) Notification

(1) If the ownership or control of any particular Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony is determined pursuant to this section, the Federal agency or Indian tribe shall notify the affected lineal descendants, Indian tribes or Native Hawaiian organizations.

(2) The notice required by paragraph (1) shall include information—

(A) which identifies each Native American human remain, funerary object, sacred object, or object of cultural patrimony and the circumstances surrounding its excavation or discovery;

(B) which lists the basis for determining ownership or control as specified in this section.

(3) A copy of each notice provided under paragraph (1) shall be sent to the Secretary who shall publish each notice in the Federal Register.

C. To get a better grasp of Federal compliance with NAGPRA's provisions protecting Native American graves and cultural items, we ask the Congress to:

request the Government Accountability Office to complete an evaluation of Federal agency compliance with the requirements of 25 U.S.C. § 3002 and its implementing regulations. In particular, the evaluation should explore whether all Federal land managing agencies have in place appropriate administrative procedures; whether the existing procedures are being followed regarding consultation, completion of plans of action and comprehensive agreements, and publication of notices of intended disposition, and whether all agencies have administrative procedures to fully implement 25 U.S.C. 3002, particularly focusing on: consultation; completion of plans of action and comprehensive agreements; publication of notice of intended disposition; the disposition of so-called "unclaimed" cultural items; the protection of burial sites and cultural items located on private lands within the exterior boundary of an Indian

²¹ National Park Service, Response to Tribal Consultation on revisions to 43 CFR Part 10 Native American Graves Protection and Repatriation Act Regulations (Aug. 2022).
<https://www.regulations.gov/document/NPS-2022-0004-0004>, at 30. (accessed Sept. 22, 2025).

Reservation or on lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, 1920, and section 4 of Public Law 86–3, including the required issuance of ARPA permits; and whether establishing a dedicated position to ensure compliance with these provisions at each agency would be beneficial.

4. Repatriation of Cultural Items in Federal Agency and Museum Collections (25 U.S.C. §§ 3003-3008)

The repatriation provisions of NAGPRA require Federal agencies and museums that receive Federal funds to prepare written summaries of cultural items and more detailed inventories of Native American human remains and associated funerary objects in their possession or control, consult with Indian Tribes and Native Hawaiian organizations and, upon request, repatriate cultural items.²² One of the responsibilities of the Review Committee was to compile an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommend specific actions for developing a process for disposition of such remains. After long discussions, development of several drafts, and extensive public consultation, this committee issued its recommendations in 2000.²³ The Review Committee noted that although the legal standing of funerary objects associated with culturally unidentifiable human remains is not addressed in NAGPRA, the statute does not prohibit their voluntary repatriation by museums or Federal agencies to the extent allowed by Federal law. Regulations implementing the Review Committee’s recommendations were promulgated in 2010.²⁴ The regulations require museums and Federal agencies that cannot prove right of possession to offer to transfer control of culturally unidentifiable human remains to the Indian Tribe or Native Hawaiian organization from whose Tribal land, at the time of the excavation or removal, the human remains were removed, or to the Indian Tribe or Tribes that are recognized as aboriginal to the area from which the human remains were removed. The regulations also recommend that a museum or Federal agency transfer control of funerary objects that are associated with culturally unidentifiable human remains if Federal or State law does not preclude it. The Review Committee feels strongly that Native American funerary objects in museum or Federal agency collections should be returned along with Native ancestors with which they were lovingly buried.

We request that the Congress amend the Review Committee’s responsibilities at 25 U.S.C. § 3006 (c) as follows to explicitly authorize a requirement that human remains

²² National Park Service, 2025 Native American Graves Protection and Repatriation Act. https://public.tableau.com/app/profile/nationalnagpra/viz/2024NativeAmericanGravesProtectionandRepatriationAct/1_Reported (hereinafter NAGPRA Tableau 2024) (accessed Sept. 2, 2026).

²³ Recommendations Regarding the Disposition of Culturally Unidentifiable Native American Human Remains, 65 Fed. Reg. 36462 (June 8, 2000). <https://www.federalregister.gov/documents/2000/06/08/00-14487/recommendations-regarding-the-disposition-of-culturally-unidentifiable-native-american-human-remains> (accessed Sept. 22, 2025).

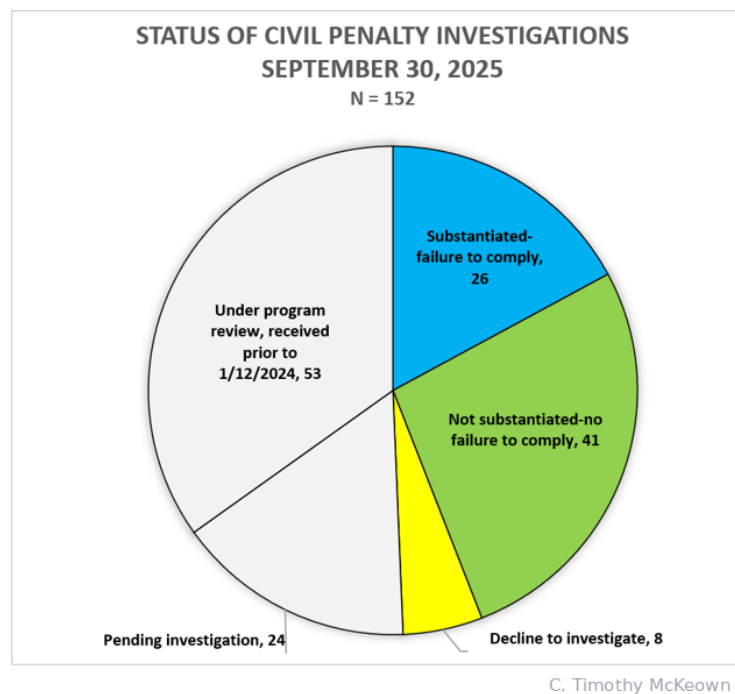
²⁴ See 43 CFR § 10.11- Native American Graves Protection and Repatriation Act Regulations—Disposition of Culturally Unidentifiable Human Remains; Final Rule, 75 Fed. Reg. 12377 (Mar 15, 2010).

and associated funerary objects be returned together:

(5) compiling an inventory of culturally unidentifiable human remains and associated funerary objects that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains and objects;

4. Civil Penalties

NAGPRA authorizes the Secretary of the Interior to assess civil penalties on museums that fail to comply with the repatriation provisions of the Act. Regulations providing a required appeal process were first promulgated in 1997, and between then and 2016 the Department of the Interior substantiated 26 allegations of failure to comply against ten institutions of higher learning (two twice), six private museums (two twice), three local government entities, and one state entity. Thirteen civil penalties or financial settlements were assessed totaling \$302,980.34, with the penalties being waived in ten cases and one penalty currently being under appeal.²⁵



²⁵ National NAGPRA Program, Fiscal Year 2025 Report. <https://irma.nps.gov/DataStore/Reference/Profile/2318544> (accessed Sept. 1, 2026). One penalty of \$257,369 was assessed in 2024 but was later characterized as “pending assessment” in the program report.

While NPS does not provide information on institutions that are currently under investigation, complainants have in some cases made their allegations public.²⁶

Civil Penalty Allegations			
	Confirmed	Not Confirmed	Pending
Private museum	5	7	
Institution of higher education	13	11	1
Local government entity	4	9	5
State government entity	1	11	26*
Not a museum		1	
Declined to investigate		6	
Unknown			41
Total	23	45	73

* Some allegations include one or more non-state government entities

While the data available on the pending allegations is incomplete, the disproportionate number of pending allegations from this one sample involving state government institutions is striking.

The NPS Cultural Resources, Partnerships, and Science Directorship is authorized to provide Federal financial assistance to States, Tribes, local governments, and other partners to advance the national historic preservation program. As part of that effort, the NPS cultural resources financial assistance programs proposed a Nationwide Programmatic Agreement with the Advisory Council for Historic Preservation and the National Conference of State Historic Preservation Officers to establish a consistent process to meet their responsibilities under Section 106. An April 19, 2023, draft of that agreement includes a stipulation implying that compliance with NAGPRA was discretionary for recipients of NPS funds.²⁷ This matter was raised by the Review Committee, and the Designated Federal Officer “concurred that if an institution that receives both Federal funds and state funds encounters Native American human remains they need to comply with both NAGPRA and their relevant state law up until the point that there is a conflict between the two.”²⁸ The language of the draft programmatic agreement along with the large number of allegations of failure to comply with NAGPRA by state government entities that remain unresolved gives an appearance of conflict of interest. Recent communication shows that allegations of failure to comply are being withheld from decision-makers in the Department of the

²⁶ <https://www.facebook.com/profile.php?id=100062985413894> (accessed Sept. 2, 2026).

²⁷ Proposed Nationwide Programmatic Agreement for Cultural Resources Financial Assistance for compliance with Section 106 of the National Historic Preservation Act (April 19, 2023). “All human remains encountered as a result of Federal financial assistance provided by the NPS shall be treated in accordance with NAGPRA, its regulations, or the applicable laws and regulations of the State, Tribe, and/or municipality in which the project is located” (emphasis added).

²⁸ Materials 2024-05 Meeting 88/1_Program Report/Other Business 2024-0322. <https://irma.nps.gov/DataStore/Reference/Profile/2304832> (accessed Sept. 22, 2025). Materials 2024-09 Meeting 89/3_Written Comments/Email from NATHPO <https://irma.nps.gov/DataStore/Reference/Profile/2306083> (accessed Sept. 22, 2025).

Interior with the knowledge of senior career NPS officials.

The Review Committee is very concerned that civil enforcement of NAGPRA has been carried out without any degree of public scrutiny, that the penalties assessed are typically mitigated or unknown, and that since 2016 it appears to have completely stopped. We ask the Congress to:

request the Government Accountability Office to complete an evaluation of the implementation of the civil enforcement provisions of NAGPRA and its implementing regulations, particularly focusing on ensuring that all allegations are adequately investigated in a timely manner, that the full range of penalties detailed in statute are considered, whether the alternative method for calculation and mitigation of penalties outlined in the current regulations has been effective, that the results of these investigations are publicly known, and that the Department is not systematically shielding some museums from investigation.

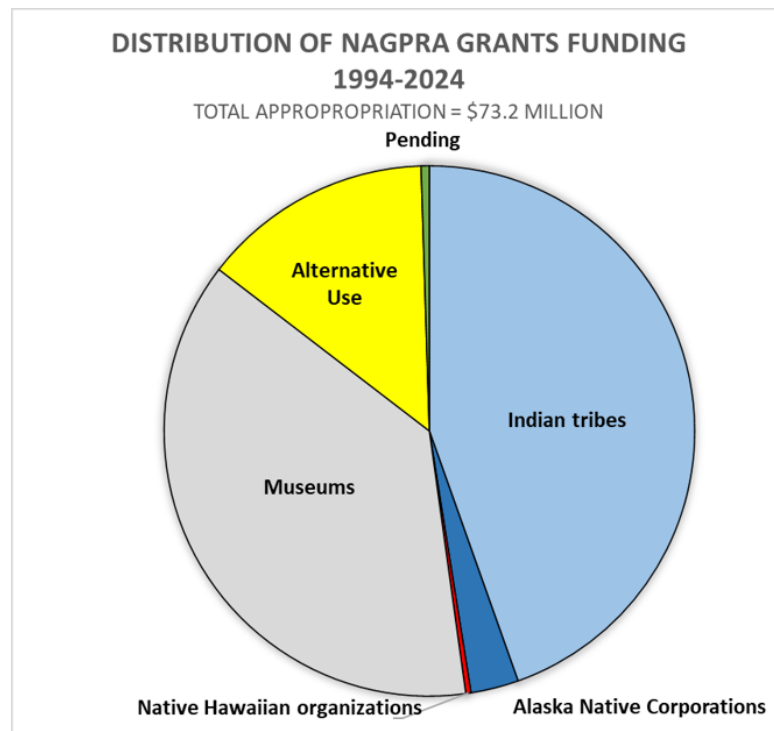
5. Grant Funding

NAGPRA authorizes the Secretary of the Interior to make grants to Indian Tribes and Native Hawaiian organizations for the purpose of assisting such Tribes and organizations in the repatriation of Native American cultural items, and to museums for the purpose of assisting the museums in conducting the inventories and summaries.²⁹ NAGPRA further stipulates that “this Act shall not be construed to be an authorization for the initiation of new scientific studies of such remains and associated funerary objects or other means of acquiring or preserving additional scientific information from such remains and objects.”³⁰ In 1990, the Congressional Budget Office estimated that NAGPRA would cost the Federal Government between \$20 and \$50 million over five years.³¹

²⁹ 25 U.S.C. § 3008.

³⁰ 25 U.S.C. § 3003 (b)(2).

³¹ Letter from Robert D. Reischauer, director, Congressional Budget Office to Representative Morris Udall (October 15, 1990).



C. Timothy McKeown

The Review Committee has consistently recommended in its Report to Congress that funding for NAGPRA grants be increased. Indian tribes, Native Hawaiian organizations, and museums assert that the actual cost of complying with NAGPRA far exceed the available grant appropriation and the maximum grant cap ensures that progress towards repatriation is piecemeal and slow. Starting in FY2023, the Review Committee specifically asked museums with large remaining collections of Native American human remains to estimate how much it is expected to cost to comply with the proposed regulations.

The cost information the Review Committee obtained from these museums stands in sharp contrast with estimates compiled by the Department of the Interior to support the final regulations. It is clear that the Department of the Interior grossly underestimated the cost of implementing the new regulations. This situation was exacerbated in FY2026 when the Department failed to issue a Notice of Funding Opportunity for the \$3.4 million appropriated by Congress for NAGPRA grants.

Some tribes have expressed concern that museums may be using grant money to acquire and preserve additional scientific information on human remains and associated funerary objects. In 2022, the National Park Service confirmed these suspicions by stating that a Notice of Funding Opportunity allowing the acquisition and preservation of additional scientific information on human remains and associated funerary objects and destructive analysis, with some restrictions, somehow overcomes Congress' clear statutory restriction.³² The Review Committee also heard from one museum that

³² Response to Tribal Consultation on revisions to 43 CFR Part 10 Native American Graves Protection and Repatriation Act Regulations (Aug. 2022), at 42. <https://www.regulations.gov/document/NPS-2022-0004-0004> (accessed Sept. 22, 2025).

received nearly \$450,000 in grant funding from FY2017-FY2023 but has published only one notice of inventory completion (for the remains of a single individual and 207 associated funerary objects) during the same period.

In order to get a better grasp of the true costs of complying with NAGPRA and to ensure that funds appropriated by Congress for NAGPRA grants are actually used for that purpose, the Review Committee recommends that the Congress take the following actions:

- A.** Request that the Government Accountability Office complete a comprehensive evaluation of the NAGPRA grant program, particularly, reviewing: whether all grants were awarded to appropriate recipients and exploring reasons why some Indian tribes, Native Hawaiian organizations, and museums are not applying for these grants; whether the activities carried out under each grant were consistent with the statutory authorization as well as whether the statutory prohibition precluded funding of any activities; and whether the administration of the grant program has resulted in unnecessary delays or other impediments to the timely expenditure of appropriated funds. This evaluation should consider whether the statutory authorization and the administration of the program should be amended to make the grant program more effective and efficient.
- B.** Request that the Government Accountability Office compile data from all Indian tribes, Native Hawaiian organizations, museums, and Federal agencies to develop a realistic estimate of the actual costs of implementing the new regulations promulgated on January 12, 2024.
- C.** Direct the Secretary of the Interior to issue, within 30 days of enactment, a Notice of Funding Opportunity for any fiscal year 2026 funds appropriated for NAGPRA grants that remain unobligated. Congress should further direct the Secretary to ensure that such funds remain available for NAGPRA grants and are not transferred, reprogrammed, or otherwise made available for other purposes without specific authorization from Congress
- D.** Provide that any fiscal year 2026 NAGPRA grant funds that remain unobligated at the end of fiscal year 2026 because of administrative delay shall remain available for obligation for NAGPRA grants during fiscal year 2027. The Secretary should be directed to include such funds in the fiscal year 2027 grant cycle, separately accounting for fiscal year 2026 and fiscal year 2027 appropriations
- E.** Establish a date certain for the fiscal year 2027 NAGPRA Notice of Funding Opportunity and require the Secretary to report to the appropriate

congressional committees on the status of the grant program until all funds appropriated for NAGPRA grants for fiscal years 2026 and 2027 have been obligated. The report should identify the amount appropriated, the amount available, the amount obligated, the number and type of grant recipients, and any unobligated balance, together with an explanation for any failure to obligate appropriated funds

F. Add a third NAGPRA grant funding opportunity, specifically for tribes, to include staffing expenditures for compliance activities under 43 CFR 10 Subparts B and C. Funding for NAGPRA compliance is specifically prohibited under the THPO Historic Preservation Fund (HPF) grant program. This leaves a significant gap in funding for NAGPRA compliance activities that are projected to increase due anticipated changes in the implementation of Section 106 of the National Historic Preservation Act (NHPA).

The Review Committee is particularly concerned that the failure to issue a Notice of Funding Opportunity for the \$3.4 million appropriated for NAGPRA grants in FY2026 has occurred at the same time that museums and Federal agencies face a substantial increase in work necessary to comply with the January 12, 2029 deadline for revising their inventories under the 2024 regulations. As of September 1, 2026, 31.0 percent of Native American human remains and 9.3 percent of associated funerary objects held by museums and Federal agencies had not yet been the subject of a published notice. The remaining work concerning human remains would require institutions to more than triple their recent rate of publication to complete the inventory by the 2029 deadline. Funds appropriated by Congress to assist Tribes, Native Hawaiian organizations, and museums in carrying out these statutory responsibilities should therefore be made available in a timely manner.

Congress has appropriated funds for NAGPRA grants because it has determined that Federal financial assistance is necessary to assist Indian Tribes, Native Hawaiian organizations, and museums in carrying out the purposes of the Act. Administrative delay should not defeat that congressional determination. The Review Committee therefore recommends that Congress establish clear deadlines, preserve appropriated funds for their intended NAGPRA purposes, and require sufficient congressional oversight to ensure that appropriated funds are actually obligated and expended.”

6. Native Hawaiian Traditional Religious Leaders (25 U.S.C. 3006 (b)(1))

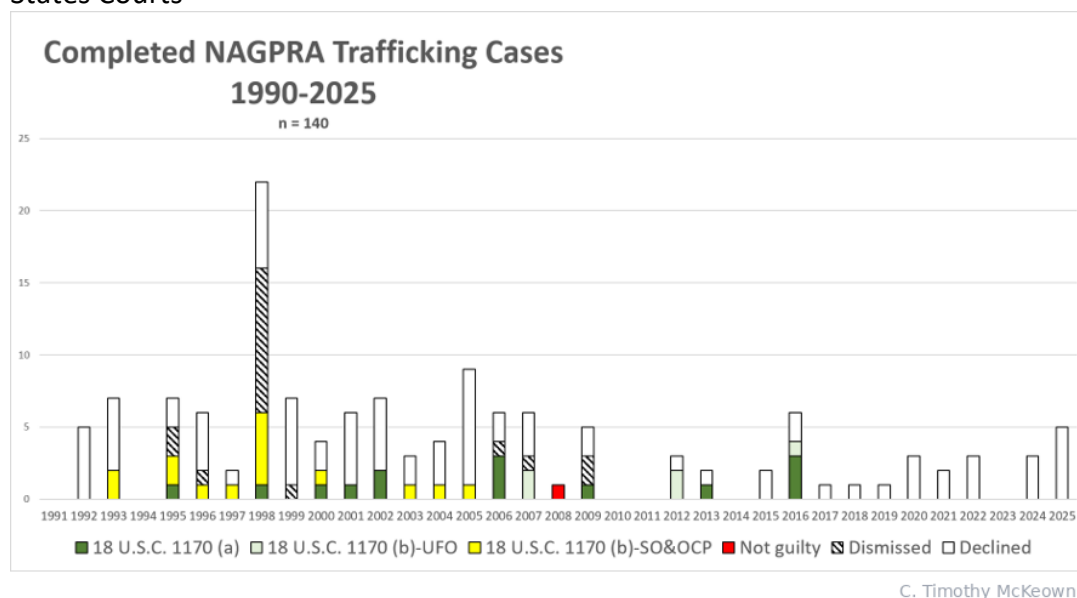
NAGPRA mandates the Secretary of the Interior to establish a committee to monitor and review the implementation of the inventory and identification process and repatriation activities and sets criteria for nominations to come from Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders; national museum organizations and scientific organizations; and from the Review Committee members themselves. An apparent drafting error has been interpreted by the Department of the Interior to yield the absurd result that Native Hawaiian organizations may nominate

traditional religious leaders from Indian tribes, but not their own Native Hawaiian traditional religious leaders. We request that the Congress amend the criteria at 25 U.S.C. § 3006 (b)(1)(A) to allow Native Hawaiian traditional religious leaders to be considered by the Secretary for appointment to the Review Committee:

(b) Membership. (1) The Committee established under subsection (a) shall be composed of 7 members, (A) 3 of whom shall be appointed by the Secretary from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders with at least 2 of such persons being traditional ~~Indian~~ Native American religious leaders;

6. Illegal Trafficking in Native American Human Remains and Cultural Items (18 U.S.C. § 1170)

The criminal provisions of NAGPRA make it a crime to knowingly sell, purchase, use for profit, or transport for sale or profit Native American human remains or cultural items under certain conditions. For human remains, law enforcement must prove beyond a reasonable doubt that the financial incident occurred without the right of possession, meaning that the defendant cannot show that the human remains were obtained with the voluntary consent of an individual or group that had authority of alienation. Proving illegal trafficking of cultural items is more complicated. Law enforcement must prove beyond a reasonable doubt that the financial incident violated NAGPRA, meaning that the cultural items were either removed from Federal or Tribal lands without a permit, or were obtained from a Federal agency or museum that failed to comply with the repatriation provisions of NAGPRA. Data from the Department of Justice and the United States Courts³³



³³ Data compiled by C. Timothy McKeown from the Office of the United States Attorneys, National Caseload Data, FY2025 Data Files, and Pacer.gov.

These data indicate that convictions for trafficking of Native American human remains under 18 U.S.C. 1170 (a) and funerary objects under 18 U.S.C. § 1170 (b) are relatively infrequent but have continued since NAGPRA was enacted. Convictions for trafficking of Native American sacred objects and objects of cultural patrimony under 18 U.S.C. § 1170 (b) are limited to 1993 to 2005, and further all were convicted in the United States District Courts for the Districts of New Mexico, Arizona, and Utah. The single not guilty verdict in 2004 stands out. Several factors seem to be responsible for this pattern. First, 18 U.S.C. § 1170 (b) convictions requiring proof that the cultural items were obtained in violation of NAGPRA are just more difficult. Second, the not guilty verdict in 2004 seems to reflect a chilling effect of the Ninth Circuit's interpretation of the definition of "Native American" in *Bonnichsen*. Third, the localization of convictions for illegal trafficking of Native American sacred objects and objects of cultural patrimony correlates with the activities of the Four Corners Interagency ARPA Task Force in the early 1990s and the continued activities of the law enforcement personnel involved in that project into the early 2000s. Last, during the 2010s, auctions of Native American sacred objects and objects of cultural patrimony appear to have moved outside of the United States, primarily to France. Addressing this pattern requires a multi-faceted approach. We note that Congress has already taken the first step in addressing this issue by passing the Safeguard Tribal Objects of Cultural Patrimony Act which increases penalties for both first time and repeat traffickers and implements export restrictions to stop the illegal export of Native American sacred objects and objects of cultural patrimony.

- A. We recommend that Congress include the \$3 million in the FY2027 and subsequent budgets for implementation of the STOP Act, as estimated by the Congressional Budget Office.
- B. Second, we ask the Congress to amend the definition of "Native American" as previously shown to provide a uniform and clear standard for the prosecution of trafficking cases.
- C. Third, we request the Congress to amend 18 U.S.C. § 1170 requiring the government to show beyond a reasonable doubt that trafficked human remains and other cultural items were obtained without right of possession:

~~(a)~~ Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit, the human remains or other cultural items of a Native American without the right of possession to those remains or items as provided in the Native American Graves Protection and Repatriation Act shall be fined in accordance with this title, or imprisoned not more than 1 year and 1 day, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, or imprisoned not more than 10 years, or both.

~~(b) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit any Native American cultural items obtained in violation of the Native American Grave Protection and Repatriation Act shall be fined in accordance with this title, imprisoned not more than 1 year and 1 day, or both, and in the~~

~~case of a second or subsequent violation, be fined in accordance with this title, imprisoned not more than 10 years, or both.~~

D. Fourth, we request that the Congress establish and fund an interagency investigative effort like the Four Corners ARPA Task Force that will focus specifically on stopping illegal trafficking of Native American human remains and cultural items domestically and abroad. The interagency group should include investigators to focus on both the cultural and financial aspects of trafficking of Native American human remains and cultural items, and include the Bureau of Indian Affairs, Office of Justice Services, Cultural Resources Division, and other land managing agencies; Federal Bureau of Investigations Art Crime Team; Department of Homeland Security Investigations, and attorneys from the Department of Justice Environmental Crimes and Money Laundering and Asset Recovery Sections and United States Attorneys Offices. We request that Congress appropriate \$50,000 per year to support this taskforce.

E. Fifth, we request that the Congress establish and fund capabilities within the Department of Justice, Environmental Crimes Section (ECS) to coordinate prosecution of violations of the NAGPRA, ARPA, and the STOP Act. Given the Department of the Interior's lack of response to the Government Accountability Office's recommendation to centralize information on violations of these laws, we recommend that the Congress enact legislation requiring all Federal agencies to provide the ECS each year with information on all criminal and civil violations of NAGPRA, ARPA, and the STOP Act which ECS will analyze to assess risks to Native American cultural resources. We request that Congress appropriate \$150,000 per year to support this position.

Taken together, these five actions will clarify the statutory prohibition, provide the necessary expertise to investigate offenses, and chill the overseas market for Native ancestors and sacred objects.

8. Exemption from Disclosure of Culturally Sensitive Information

Many tribes have expressed concern that culturally sensitive information they provide to Federal agencies and museums during the consultation process must be disclosed upon request under provisions of the Freedom of Information Act. The Review Committee strongly recommends amending NAGPRA to protect culturally sensitive information identified by traditional religious leaders, lineal descendants, Indian tribes, or Native Hawaiian organizations as provided under exemption (b)(3) of the Freedom of Information Act.

7. Administrative Placement of NAGPRA Implementation Responsibilities

In 2020, then-Representative Haaland introduced H.R. 8298 to amend NAGPRA. One of her key proposals was to redelegate enforcement and other activities previously assigned to the National Park Service to the Office of the Assistant Secretary for Indian Affairs. NAGPRA is clearly Indian law, not only is it enshrined under Title 25 of the

United States Code, but Indian Tribes are the obvious and primary beneficiaries. Implementation of NAGPRA should be administered accordingly and not under the rubric of “cultural resources.” When the question was formally asked by the Department in 2021, the majority of 85 written responses supported changing placement of the program (38) or would consider changing it pending additional consultation (10), while only six supported retaining the program within the National Park Service.³⁴ The NPS’s central role in funding state government entities coupled with the large number of allegations of failure to comply against state government entities that remain unresolved give the appearance that NPS is systematically shielding State Historic Preservation Officers and other state agencies from accountability. We recognize that Secretary Burgum has the authority to redelegate administrative placement of NAGPRA implementation responsibilities by means of Secretarial Order with follow-up revision of the Departmental Manual, however he has chosen not to do so. We request that the Congress amend 25 U.S.C. § 3013 specifically designate either the Office of the Assistant Secretary for Indian Affairs as the office responsible for implementation and enforcement.

8. NMAI Act

We also request that Congress consider amending the process by which the Smithsonian Institution returns Indian and Native Hawaiian human remains, funerary objects, sacred objects, and objects of cultural patrimony under the National Museum of the American Indian Act. In such a situation under NAGPRA, an Indian Tribe is able to challenge the failure to repatriate such cultural items to the United States District Courts (25 U.S.C. § 2013). However, the NMAI Act does not include a similar grant of jurisdiction. The Review Committee recommends amending the NMAI Act to add the following provision:

20 U.S.C. § 80 q-16. Jurisdiction and Enforcement. The United States district courts shall have jurisdiction over any action brought by any person alleging a violation of this Act and shall have the authority to issue such orders as may be necessary to enforce the provisions of this Act.

To address these shortcomings, and to bring the Smithsonian process more in line with that required by all other Federal agencies and institutions receiving Federal funding, the Review Committee further recommends amending the NMAI Act as follows:

20 U.S.C. § 80 q-9 (a) Inventory and identification

(1) The Secretary of the Smithsonian Institution, in consultation and cooperation with traditional Indian religious leaders and government officials of Indian tribes, shall-

(A) inventory the Indian human remains and Indian funerary objects in the possession or control of the Smithsonian Institution; and

(B) using ~~the best available scientific and historical documentation~~ information possessed by the Smithsonian Institution, identify the

³⁴ Freedom of Information Act request DOI-NPS-2022-000473.

- ~~origins~~ geographical and cultural affiliation of such remains and objects.
- (2) The inventory made by the Secretary of the Smithsonian Institution under paragraph (1) shall be completed not later than ~~June 1, 1998~~ [date 36 months following enactment].
- (3) For purposes of this subsection, the term "inventory" means a simple, itemized list that, ~~to the extent practicable, identifies, based upon available information held by the Smithsonian Institution, the geographic and cultural affiliation of the remains and objects referred to in paragraph (1).~~ summarizes the information called for by this section.

20 U.S.C. § 80 q-9 (b) Notice in case of identification of ~~tribal origin~~ geographical or cultural affiliation.

If the ~~tribal origin~~ geographical or cultural affiliation of any Indian human remains or Indian funerary object is identified by a preponderance of the evidence, the Secretary shall ~~so notify any affected Indian tribe at the earliest opportunity.~~

shall, not later than 6 months after the completion of the inventory, notify the affected Indian tribes.

(2) The notice required by paragraph (1) shall include information—

(A) which identifies each Indian human remains or associated funerary objects and the circumstances surrounding its acquisition;

(B) which lists the human remains or associated funerary objects that are clearly identifiable as to cultural or geographic affiliation; and

(C) which lists the Indian human remains and associated funerary objects that are not clearly identifiable as being culturally or geographically affiliated with that Indian tribe, but which, given the totality of circumstances surrounding acquisition of the remains or objects, are determined by a reasonable belief to be remains or objects culturally affiliated with the Indian tribe.

(3) A copy of each notice provided under paragraph (1) shall be published by the Secretary in the Federal Register.

11. Report to Congress.

NAGPRA requires the Review Committee to submit an annual report to Congress on the progress made, and any barriers encountered, in implementing the Act during the previous year. 25 U.S.C. § 3006(h). The Review Committee has become increasingly concerned about the length of time between the Committee's approval of its annual report and its transmission to Congress by the Department of the Interior. The Department's initial distribution of the Review Committee's FY2023 Report to Congress took nearly six months. At the time this report was prepared, the FY2025 Report to Congress, which the Review Committee approved on September 30, 2025, had not been transmitted to Congress and remained under Departmental administrative review eleven months after its approval.

The Review Committee recognizes that the Department may have legitimate administrative responsibilities with respect to reports prepared by Federal advisory committees. Those

responsibilities, however, should not permit an executive department to delay indefinitely the transmission to Congress of a report that Congress has expressly directed the Review Committee to submit. The Committee's annual report is intended to provide Congress with an independent assessment of progress and barriers in implementing NAGPRA, including matters concerning the Department itself.

The Review Committee therefore recommends that Congress amend 25 U.S.C. § 3006(h) to establish a date certain for submission of the annual report and to make clear that submission is the responsibility of the Review Committee itself. Specifically, the Committee recommends that § 3006(h) provide:

(h) Annual report

The committee established under subsection (a) shall ~~submit~~ , not later than December 31 of each year, transmit directly to the appropriate committees of the Senate and House of Representatives an annual report to the Congress on the progress made, and any barriers encountered, in implementing this section , the Act, and related matters during the previous year. The report shall be considered submitted when approved by the Committee and transmitted by the Chair or the Chair's designee to the appropriate committees of Congress. The Secretary may provide administrative and technical assistance to the Committee in preparing and transmitting the report but shall not withhold, delay, alter, or condition the transmission of a report approved by the Committee.

The Review Committee further recommends that Congress require the Secretary to transmit to the Committee, within 30 days after the Committee's approval of an annual report, any written comments that the Secretary wishes Congress to consider concerning the report. Any such comments should be transmitted to Congress separately from the Committee's report and should not delay its submission.

This amendment would preserve the Department's legitimate administrative role while ensuring that the statutory reporting function remains with the body Congress established for that purpose. It would also ensure that Congress receives the Review Committee's assessment while the matters addressed in the report remain current and capable of congressional action.

12. Reburials within National Parks and other federally owned lands

During the June 2023 meeting, the Review Committee received comments indicating that one of the major struggles impeding repatriation is identifying safe lands for the reburial of ancestors and their cultural belongings. Current National Park Service (NPS) management guidance currently only allows reburial within park lands if the remains were originally removed from that specific park.³⁵ Management Policy 6.3.8 specifically prohibits the creation of new cemeteries within a park unless authorized by federal statute. The Review Committee recommends that the Congress specifically authorize

³⁵ NPS Management Policies 2001, 5.3.4 and 6.3.8.

the NPS to:

1. Allow reburial of Native American human remains and funerary objects on NPS lands regardless of original location of removal;
2. Allow the creation of new cemeteries for the specific purpose of reburial of Native American human remains and funerary objects;
3. Incorporate reburial areas and newly created cemeteries into long-term park management plans, with appropriate documentation, protection, and confidentiality measures; and
4. Develop specific policy guidance to facilitate the reburial process for Park managers and Tribes.

13. Section 106 of the National Historic Preservation Act (NHPA) and its potential impact on NAGPRA implementation

In order to avoid placing additional burden on the implementation of NAGPRA regulation, the Committee recommends that Congress direct the Office of Information and Regulatory Affairs (OIRA) to reject the current proposed regulations for Section 106 of the NHPA, or any potential revision that limits a tribe's ability to meaningfully consult on a federal undertaking. Section 106 must preserve the requirements to consult with tribes and develop accurate Areas of Potential Effect (APE) to proactively avoid burial disturbances and the statutory burden on NAGPRA.

14. Congress Exercising Oversight over Federal Agency NAGPRA Compliance

The Committee recommends congress ensure that all federal agencies are complying with mandated trainings, the observance of traditional cultural practices on federal lands, and the requirements of NAGPRA including when human remains and funerary objects are buried on federal lands.