

NATIONAL CONGRESS OF AMERICAN INDIANS

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Introduction

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On behalf of the National Congress of American Indians, I would like to thank the U.S. Commission on Civil Rights for its original 2003 report, [*A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country*](#). It is important to assess efforts taken by the federal government to better meet its obligations to tribes since the release of this pivotal report. This report documented the unconscionable inequity faced by American Indian and Alaska Native people in a range of basic public services promised under the federal trust responsibility.

Due to fluctuations in federal funding and the uncertain budget process each year, many tribes have faced continued emergencies in meeting the basic public service needs of their citizens. Effective tribal governments that can meet the essential needs of their citizens requires the fulfillment of the federal trust responsibility as well as respect for tribal self-determination.

The authority to fund programs that fulfill the federal trust responsibility is founded in the Constitution. In the course of American history, Indian tribes lost millions of acres of land through treaties and agreements, causing devastating losses through displacement and disruption of culture and religion. Tribal nations, however, continue to remember their treaties and agreements that made the United States what it is today. Tribal leaders continue to defend their rights and assert their powers of government, which emanate from the U.S. Constitution, treaties, acts of Congress, and presidential executive orders. At its most basic level, the economic success of the United States is built upon the land and natural resources that originally belonged to tribal nations.

As a part of tribes' responsibility to their people, tribal governments provide a range of governmental services on tribal lands, including education, law enforcement, judicial systems, health care, environmental protection, natural resource management, and basic infrastructure. In the current era of self-determination and self-governance, tribes are assuming greater levels of government responsibility to meet their citizens' needs in culturally appropriate ways, but receive exceptionally inadequate federal funding to do so.

Tribes' abilities to govern effectively remain a defining challenge for the revitalization of Indian Country. Indian Country continues to face tremendous economic need, the result of adverse policies, which affects not only employment, income, and poverty, but also the ability of tribes to raise revenues to finance their government services. While tribal leaders pursue solutions for tribal authority to raise tribal government revenue, the fulfillment of trust and treaty obligations remains of utmost importance to the well-being of American Indian and Alaska Native people.

Since 2003, we have seen recent support in Congress and from the Administration for upholding federal trust obligations, but we have also experienced intense budget battles that constrain the ability of Congress to do so. Heated budget disagreements led to the Budget Control Act of 2011 and the challenges of a government shutdown and sequestration, which fell indiscriminately on all discretionary programs, even though we know trust and treaty promises should not be discretionary to begin with.

Political deadlock led to the sequester, which hindered the US government's ability to fulfill its trust and treaty promises to tribal nations. The promises that were broken affected our most vulnerable -- children and elderly, via cuts to early childhood education, school systems, health care, welfare assistance, governmental services, and law enforcement. Such cuts also have economic ripple effects throughout our communities.

Not only do tribes suffer from the unpredictability of the Congressional budget process and its constraints, tribal programs do not always see the same increases that their non-Indian counterparts see during better budget times.

Comparing budget items across the federal budget shows that most Indian-related spending areas continue to lag behind their non-Indian counterparts. This trend generally holds true over the FY1977 to FY2016 time period as well as over the FY2000 to FY 2016 time period. Even for tribal budgets that saw the most support in Congress, such as the Indian Health Service, it did not keep pace with the overall Health budget function in terms of percentage change.

In recent years, the IHS budget and BIA budgets have received increased investments compared to the discretionary budget for the departments in which they are housed (DOI and HHS, respectively). However, BIA's budget did not increase proportionally as much as the overall Natural Resource budget function from FY 2000 to now.

Looking at BIA's budget from FY 2003 to FY 2016 enacted will highlight some of tribal leader's frustrations with the core funding for governmental services. Funding in this agency provides for a broad array of government functions, such as tribal law enforcement and courts, Indian child welfare programs, social services, Indian education, road maintenance, and energy development. Since FY 2003, BIA funding has increased in nominal dollars by about 24 percent, but when adjusted for inflation, this budget is below its FY 2003 level by about 5 percent. Taking another step back, from FY1977 to the levels proposed in the FY2016 President's budget, the BIA budget trend has been very irregular, with declines in the mid-1980s, gains in the early 1990s, reductions again in the mid-1990s, and high points in FY2004 and FY2010. Sequestration erased many of the gains BIA's budget made in FY2009 and FY2010, taking the budget back to FY2001 levels and lower than FY1977 in constant dollars.

Tribes are eligible for other grants, state pass-through funding, and set-asides, but BIA and IHS provide the stable base funding for governmental services for self-governance tribes, 638 contracting tribes, as well as direct service tribes. Other agencies provide important funding, such as the Department of Justice, but often are time-limited and may be competitive, so that the neediest tribes may not win grant funding.

The Administration has stated that about \$20 billion is available to Indian Country. However, the type of funding matters a great deal to the ultimate impact on the ground. For instance, more than \$4 billion of

that amount is indirect support for individuals such as student loans. Tribal leaders have requested more information and detail on the cross cutⁱ of federal funding for Indian tribes and their citizens across the federal government.ⁱⁱ Specifically, tribal representatives identified the need for data on the most highly accessed and important programs that tribes depend on as “base funding,” the number of tribes accessing the programs and funding opportunities, whether tribes must compete with other entities such as state and local governments, whether the funding passes through states, whether a match is required, and whether indirect costs are allowed. Other questions include why tribes have challenges accessing new funding opportunities and what action agencies could take to address those challenges.

These requests align with some of the recommendations made in the *Quiet Crisis* report on assessing unmet need, gaps in service delivery, and tracking spending on Indian programs. We also are seeking more coordination across agencies, as requested in the original report. Program and evaluation data continues to impede effective and efficient federal investment in Indian Country. Many tribal leaders see this as necessary for documenting unmet obligations, as opposed to proving justification. NCAI and tribal leaders believe the justification for the spending is the federal trust responsibility, not performance. However, improving the assessments of how well agencies are meeting their obligations to Indian country remains pivotal to continued progress in Indian country.

ⁱ Native American Crosscut, FY 2016 Federal Funding for Programs Serving Tribes and Native American Communities, accessed at <http://www.doi.gov/budget/budget-data.cfm>

ⁱⁱ Tribal Interior Budget Council. (2015). Action Tracking Document, Motion passed on May 22, 2014 for a subgroup to work with OMB on Crosscut Document