



Tribes Urge Congress to Honor Treaty Promises and Stop Sequestration

September 2013

- Stop and replace sequestration, which unfairly breaks treaty promises to tribal nations.
- The FY2013 sequester and potential FY 2014 sequester cuts harm critical services to American Indian/Alaska Native children, students, families, and the most vulnerable in our communities.
- The trust responsibility is a federal commitment that should be honored in good budget times as well as in difficult budget times.

The budget and appropriations choices before Congress now are of much consequence to the fulfillment of trust and treaty obligations due to tribes. The FY 2013 sequestration was triggered when the Joint Select Committee on Deficit Reduction failed to develop a framework called for in the Budget Control Act of 2011 (BCA) to reduce the nation’s deficit by \$1.2 trillion. The FY 2013 sequester cut over \$500 million from federal programs in Indian Country. The remaining yearly targets required by the BCA will be met by lowering the discretionary spending caps. Current and upcoming cuts to tribal programs undermine Indian treaty rights and obligations – treaties which were ratified under the Constitution and considered the “supreme law of the land.” The underpinning of federal spending in Indian Country is based in the treaties that tribes’ ancestors signed with the US government. The FY 2013 reductions to tribal programs have hurt the most vulnerable in tribal communities: young people, the elderly, the poor, and the sick. Some of the major federal programs that fulfill trust and treaty obligations to Indian Country are listed below.

Key Tribal Programs	FY13 Sequester Cut
Indian Health Service	\$220M
BIA Operation of Indian Programs	\$119M
BIA Construction	\$6M
Native American Housing Block Grant	\$33M
Indian Student Education	\$7M
Indian Head Start	\$12M
Impact Aid to School Districts	\$67M

"The last thing you want your teachers to do is be concerned about getting a paycheck," said Mike Rabideaux, superintendent of the Fond du Lac Ojibwe School in Minnesota, who has already had to lay off staff.¹

At the Tuba City High School gym, sun shines through the holes in the ceiling. At the nearby primary school one wing and a cafeteria have already been condemned. That building is in desperate need of new bathrooms and safe playground equipment. But those upgrades will have to wait.²

Education

Head Start: The Indian Head Start program, which provides education, nutrition, health and parental involvement services, saw cuts of nearly \$12 million in FY 2013. Twenty-five thousand Native children from 26 states are experiencing losses in these much-needed services.

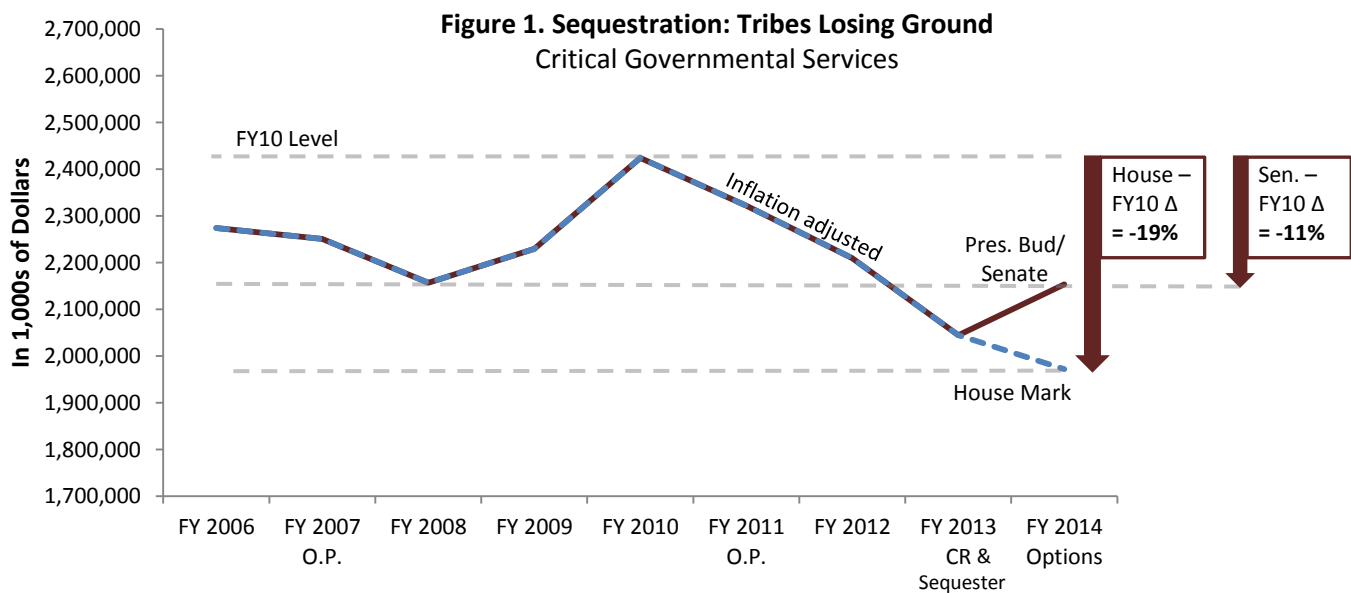
Public School Reductions: School districts absorbed \$67 million in sequester cuts to Impact Aid. The National Association of Federally Impacted Schools asked the top district recipients of Impact Aid how the FY13 cuts were implemented. The most common effects were deferred maintenance and technology purchases, elimination of instructional and non-instructional staff, increased class sizes, and reduced professional development. Other areas where cutbacks occurred were to academic programs, extra-curricular activities and summer programs, and transportation routes. The Impact Aid program is being reduced for the upcoming school year, but now all other education programs are subject to sequestration, including the cornerstone federal K-12 programs, Title I and the Individuals with Disabilities Education Act (IDEA). Tribes urge Congress to find a better way achieve deficit reduction than on the backs of these schools in tribal communities serving approximately 115,000 Native students.

¹ May 20, 2013, Amanda Terkel, "Sequestration Forces Indian Land, Military Base Schools To Make Drastic Cuts"

² May 23, 2013, Laurel Morales, "Money even tighter as Indian Country schools face sequestration"

Loss of Critical Governmental Services

In their role as governments, tribes deliver all the range of services that other governments provide. Tribal governments maintain the power to determine their own governance structures and enforce laws through police departments and tribal courts. Tribes provide social programs, first-responder services, education, workforce development, and natural resource management. They also build and maintain a variety of infrastructure, including roads, bridges, housing, and public buildings. Yet, tribes need adequate resources to exercise their self-determination and serve as effective governments. Government funds provide much-needed investments in tribal physical, human, and environmental capital. Indian Affairs funding in the Department of the Interior at the Senate proposed level of the draft Interior appropriations bill will still be lower than the FY 2008 or FY2006 level. Accounting for inflation, the Senate level is 11 percent below FY10. The House proposed level would drop critical tribal governmental services to 19 percent below the FY10 level.



Public Safety – Tribal and BIA Law Enforcement

A basic governmental service, public safety and justice, is funded in the Bureau of Indian Affairs. Sequestration is harming the ability of tribes to enforce laws in their communities. The public safety problems that plague tribal communities are the result of decades of gross underfunding for tribal criminal justice systems and a centuries-old failure by the federal government to fulfill its public safety obligations on tribal lands. Law enforcement infrastructure and basic police protection on tribal lands are a fundamental function of government, and if they are not provided at the highest quality, no one will be willing to invest in tribal economies.

On Pine Ridge, the reservation often has only nine patrol cars on duty to cover an area the size of Connecticut and the police force absorbed 6 percent in cuts this year, more than a million dollars in cuts. On the Cheyenne River Sioux reservation, Chairman Keckler testified: “We have experienced a Hobson’s choice with respect to law enforcement and our criminal justice system on the reservation. Faced with a desperate shortage of patrol officers to cover all shifts over our vast land base, our chief of police recently asked the Tribal Council for additional funding to hire three patrol officers. Our 638 contract funding for law enforcement is already insufficient to cover even the current expenses for the remainder of the fiscal year, so the police chief’s request was denied. Now what alternative does the Tribe have? Turn away helpless calls for assistance from terrified victims of domestic violence? Tell car accident victims that they are on their own for emergency medical care?”³

³ April 24, 2013, U.S. House of Representatives Committee on Appropriations Subcommittee on Interior, Environment and Related Agencies Testimony on American Indian/Alaska Native Programs By Kevin C. Keckler, Tribal Chairman

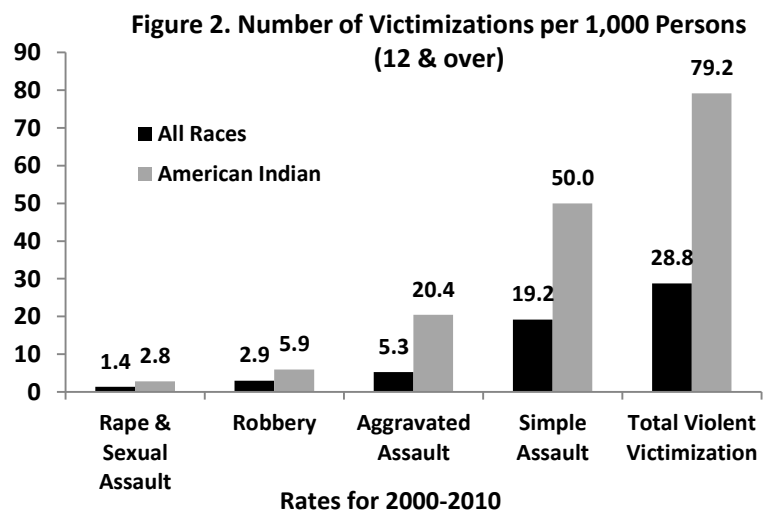
Federal Bureau of Investigation (FBI)

The federal government plays a major role in prosecuting crimes committed in Indian country and is a responsibility of the FBI. More than 100 special agents from 20 different field offices investigate cases on over 200 reservations nationwide. The FBI works closely with tribal police and federal agents from the Bureau of Indian Affairs. They are generally responsible for the most serious crimes—such as murder, child sexual and physical abuse, violent assaults, drug trafficking, gaming violations, and public corruption matters. Unless a federal statute has granted the state jurisdiction, the federal government has exclusive jurisdiction to prosecute non-Indians who commit crimes against Indians in Indian country, while the federal government and tribal governments both have jurisdiction to prosecute Indian offenders who commit crimes in Indian country. Federal prosecution also carries the possibility of greater terms of imprisonment, as tribal courts are statutorily limited to a maximum of 3 years imprisonment per offense. Because of such jurisdictional and sentencing limitations, tribal communities rely on the federal government to investigate and prosecute a variety of crimes in Indian country.

Despite the Federal Government's primary enforcement responsibility on Indian reservations, between FY 2005-2009, U.S. Attorneys declined to prosecute nearly 52 percent of violent crimes that occur in Indian country; and of those declined, 67 percent of the cases were sexual abuse related.⁴ U.S. Attorney Tim Purdon says federal prosecutors have started to address crime on American Indian reservations in the last few years, but he worries sequestration will slow the progress. The updated 2013 Department of Justice declination report shows that the number Indian Country cases charged in federal court has increased by 54 percent between FY 2009 and 2012, from 1,091 to 1,677 cases. But U.S. Attorney Purdon also reports that the ability of prosecutors to keep building on that work is "being thwarted" by the sequester cuts.⁵

According to updates at the Affiliated Tribes of Northwest Indians in September 2013, the FBI has shut down training of new agents. Generally, new agents staff the rural field offices (which includes Indian Country), then they receive contracts to serve a certain number of years and then receive the office of their choice. Dozens of rural FBI field offices are in Minot, ND and Yuma, AZ and places near Indian country. Basically all of the small rural resident agencies are likely to close. When the existing agents move on, they cannot be replaced – because there are no new agents. This will be terrible for law enforcement in Indian country.

Sequestration and the ongoing lack of resources for tribal and BIA law enforcement exacerbate crime rates that are already disproportionately high. Rates of assault among American Indians and Alaska Natives are roughly twice that of the country as a whole (figure 2). The average violent crime rate from 2000 to 2010 was more than two and a half times the rate for all races.



⁴ U.S. Government Accountability Office, U.S. Department of Justice Declinations of Indian Country Criminal Matters, REPORT NO. GAO-11-167R, at 3 (2010).

⁵ May 31, 2013, Associated Press, "US attorney says sequester may hurt Indian safety"

Health Care

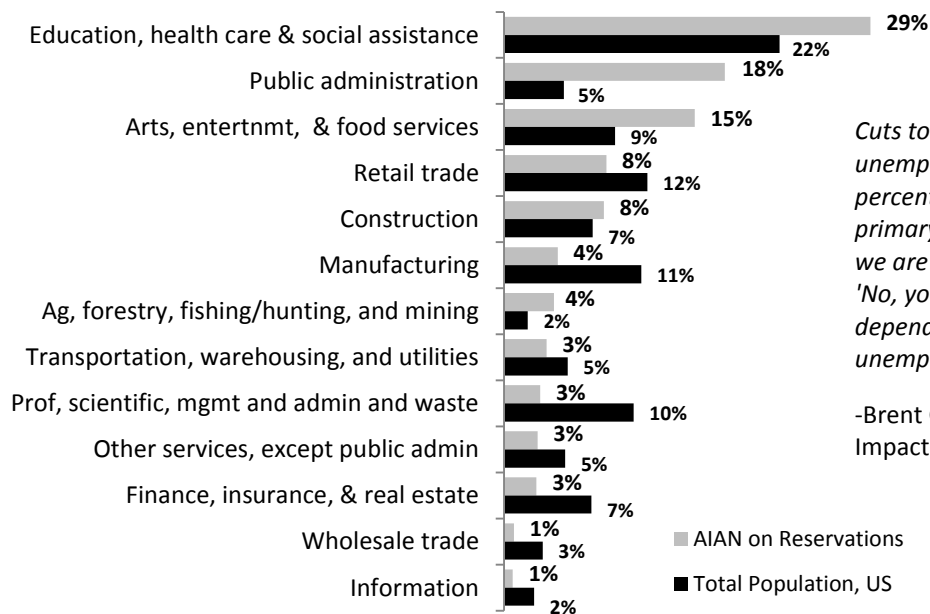
In the Indian Health Service, sequestration is estimated to result in about 3,000 fewer inpatient admissions and 804,000 fewer outpatient visits provided in IHS and tribal hospitals and clinics. IHS may lack resources to pay for staffing and operations of five health care facilities that tribes have built with their own resources, with a total investment of almost \$200 million. All other federal programs that serve the health of our nation's populations with the highest need, such as Social Security, Medicare, Medicaid, the Children's Health Insurance Program, and Veterans Administration, will be exempt from funding reductions. But not the Indian Health Service. IHS should be exempt as well.

Economic Conditions

Employment Sectors

Sequester reductions in FY 2013 and beyond will likely affect employment in Indian Country more harshly. Figure 3 shows industry sector of people who are employed for the entire population compared to the Native population on reservations. A third of Native people are employed in education, health care, and social services delivery. Many of the health, education, and social services in Indian Country receive federal funds, including through the Indian Health Service, Bureau of Indian Education, Impact Aid and through the Bureau of Indian Affairs.

Figure 3. Industry for the Civilian Employed Population



Cuts to support staff are exacerbating an unemployment rate that often exceeds 50 percent. "Many times these support staff are the primary breadwinner in the families," he said. "So we are taking an independent family and saying, 'No, you're unemployed, and you've become dependent on this other system [federal unemployment benefits]."

-Brent Gish, executive director, National Indian Impacted Schools Association

Source: 2006-2010 American Community Survey

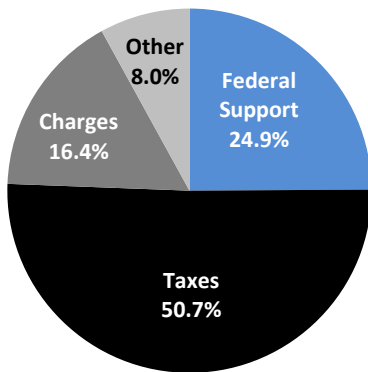
Federal Cuts Disproportionately Impact Indian Country

For many tribes, a majority of tribal governmental services is financed by federal sources. Tribes lack the tax base and lack parity in tax authority to raise revenue to deliver services. If federal funding is reduced sharply for state and local governments, they may choose between increasing their own taxes and spending for basic services or allowing their services and programs to take the financial hit. On the other hand, many tribes have limited ability to raise substantial new revenue, especially not rapidly enough to cover the reduction in services from the across the board reductions of the FY 2013 sequestration.

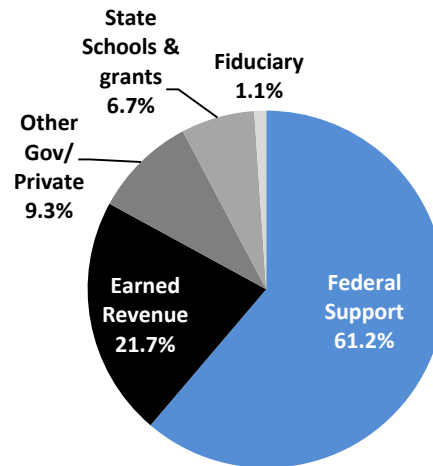
States and localities finance their own areas of spending and state and local taxes provide the majority of the funding for most of their services. The Census of Governments shows that half of state and local government revenue is from their own taxes, while a quarter of their revenues come from the federal government. Like other governments, there is much diversity among tribes and regions in the proportion of federal sources of revenue to tribal taxes and tribal enterprise profits. As an example, Figure 4 shows tribal revenue sources for Montana's reservations compared to the average state and local government revenue sources. More than 60 percent of the revenue for tribal governmental services in Montana is from federal sources, 2.5 times higher than for state and local governments.

Figure 4

Sources of State and Local Government
General Revenue: 2010



Sources of Reservation Government Revenue, MT



Cuts Will Impact Regional Economies

Not only will reductions to discretionary programs violate the trust obligations to tribes, but cuts will hurt the regional economies in which tribes are major players. A tribal government in Southeast Alaska, representing more than 27,000 tribal citizens, attracted between \$25 million and \$27 million in annual funding to the region to support 200 programs and services that enhance the lives and well-being of tribal citizens, families, and communities. These services affect employment, health, education, and cultural identity. The \$22.5 million in direct expenditures generated an additional \$9 million in indirect and induced economic activity, for an estimated total regional impact of \$31.6 million.⁶ Reductions to Bureau of Indian Affairs, Head Start, as well as to Departments of Justice and Education will exact a heavy toll on the region's economy.

In 2009, the five tribes of Idaho provided total employment statewide for 10,676 jobs, including multiplier effects.⁷ The tribes report that they "receive federal government revenues to support tribal government operations, health services, education, fish and wildlife projects, law enforcement, environmental quality, economic development programs and projects, and other activities. U.S. federal agencies serving as funding sources include the Bureau of Indian Affairs, U.S. Fish and Wildlife Service, U.S. Department of Health and Human Services, U.S. Department of Energy, U.S. Department of Agriculture, Bonneville Power Administration, U.S. Environmental Protection Agency, and U.S. Department of Transportation. Those federal funds represent "high powered" spending when they enter the local economies, and provide a relatively large economic impact."⁸

⁶ McDowell Group, *Contributions of Central Council Tlingit and Haida Indian Tribes of Alaska*, (Juneau, AK), March 2010

⁷ Steven Peterson, *2010 Economic Impacts of the Five Tribes of Idaho On Idaho's Economy*, 2010

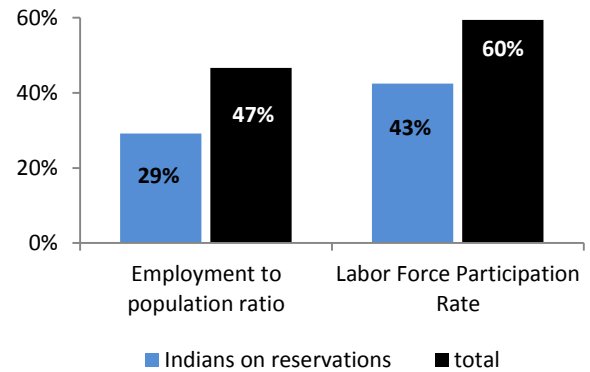
⁸ Peterson, 2010

In Oklahoma, 38 tribal nations have a \$10.8 billion impact on the state every year, supporting an estimated 87,000 jobs, or five percent of all jobs in the state. Interrupting tribal revenue flow is likely to increase unemployment for the region. In Washington State, a recent economic analysis showed that, in total, \$3.5 billion of the total gross state product can be attributed to the activity on American Indian reservations. Also, tribes paid \$1.3 billion in payroll to more than 27,000 Washington residents, many of whom were non-Indian. Although some tribes have implemented strategies that enhance economic development for their communities to *supplement* federal sources, that does not *supplant* the federal government’s duty to fulfill its trust responsibility.

Labor Force Participation

The sequester cuts pose particular hardship for Indian Country and the surrounding communities who rely on tribes as employers, where the recession has struck especially hard. Census Bureau data show that each employed American Indian supported more than three others who were not employed. By contrast, the proportion for the entire US population is about one to one. Tribal leaders and planners have been working to address the economic inequity represented in the employment-to-population ratio.

Figure 5

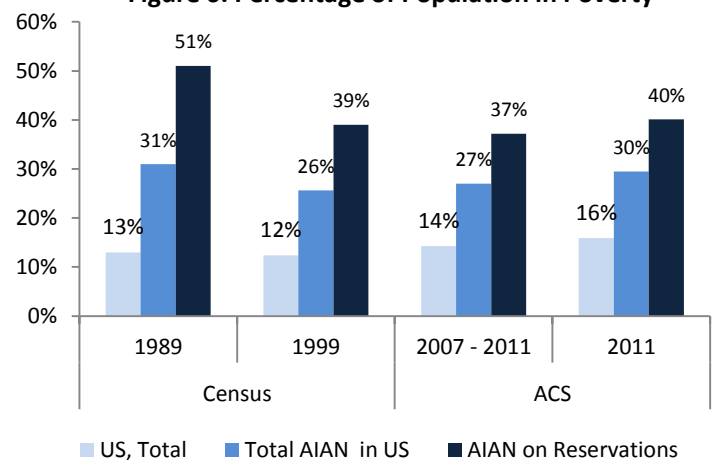


The labor force participation rate—the proportion of able-bodied civilians of working age that are working—also shows much unmet potential for tribal citizens to enter into the economy. Four out of 10 American Indians receive a paycheck, versus nearly two-thirds of total population.

Impeding Recovery

Examining the trends in poverty rates on and off tribal lands is informative to the debate on how to address fiscal challenges. From 1990 to 2007, tribes reduced the percentage of tribal citizens in poverty on tribal lands by more than one-third. The poverty rate for all reservation American Indians and Alaska Natives (AIAN) in 1990 was 51 percent (see figure 6). That dropped to 39 percent in 2000, and was recently lowest at 33 percent in the 2008 Census American Community Survey (ACS) estimate. That has gone back up to 40 percent in the 2011 ACS 1-year estimate. The poverty rate for AIAN nationally, on and off reservation lands, was 20 percentage points lower in 1990 than the on-reservation rate, 10 percentage points lower in 2000, and 10 percentage points lower in 2010. Tribes markedly narrowed the gap between reservation and total AIAN poverty, but the recession halted the narrowing of the gap.

Figure 6. Percentage of Population in Poverty



Source: U.S. Census Bureau, 2011 American Community Survey 1 and 3 year estimates, 1990 Census, 2000 Census

Tribes were reversing what were once considered insurmountable challenges, due to increased self-determination, but the recession undermined some of those gains. Tribes want to continue improving economic conditions so that young Native people will want to return to economies that provide work on their homelands.

Conclusion

Reductions in funding to meet trust obligations to tribal nations – public safety, education, health care, social services, and tribal governmental services – are reductions to “high powered” spending for local economies, which will impede economic recovery in addition to causing increased poverty and hardship for Indian Country.

The stakes are high for tribal governmental services and programs in the federal budget that support the trust responsibility, only some of which are highlighted here, and trust obligations should be protected from further reductions. Tribal programs, as part of the discretionary budget, have already done their part to reduce the deficit through the bipartisan Budget Control Act. Continued cuts will have severe consequences for every tribal citizen. Tribes urge the President and Congress to uphold the solemn promises of the trust responsibility throughout the federal budget in FY 2014 and future years.

For more information on sequestration impacts on other tribal programs, visit www.ncai.org. NCAI staff contact is Amber Ebarb, aebarb@ncai.org.