

Honoring the Promises:

THE FEDERAL TRUST RESPONSIBILITY IN THE 21ST CENTURY



Congress and the Obama Administration will begin deliberations on the FY2012 federal budget following one of the most significant years of bipartisan accomplishments for Indian Country in recent memory. In 2010, the U.S. government took historic steps to address numerous long-standing challenges facing Indian Country. Last year, Congress made permanent the Indian Health Care Improvement Act (IHCIA) and President Obama signed into law the Tribal Law & Order Act (TLOA). But, like other laws, TLOA and IHCIA will not mean much if they are not implemented, and effective implementation is contingent upon adequate federal funding for the recently authorized programs. The U.S. Department of Agriculture settled the long-standing Keepseagle case and the president signed into law the Cobell Settlement, closing the chapter on more than a century of government mismanagement of Indian assets. This moment presents the federal government with an extraordinary opportunity to further tribal self-determination and honor the promises of the federal trust responsibility.

Tribal leaders look to the upcoming fiscal year with great anticipation for honorable fulfillment of federal trust, treaty, moral, and statutory obligations to tribes in the 21st century. *The FY2012 federal budget presents a fresh opportunity for the U.S. government to live up to the promises made to tribes in the treaties signed, statutes enacted, and contracts agreed to between the tribes and federal government over the centuries.*



Trust Responsibility

At the president's second annual Tribal Nations Summit in 2010, tribal leaders raised a recurring theme throughout the meeting. Indian Country leaders emphasized the importance of meeting the government's basic responsibilities in funding for trust, treaty, and statutory obligations to Indian tribes and programs in FY2012 and future fiscal years. The Administration must request and Congress must fund their trust obligations in a way that acknowledges the tribes' capabilities and enables tribes to meet their governmental responsibilities as important members of the American family of governments.

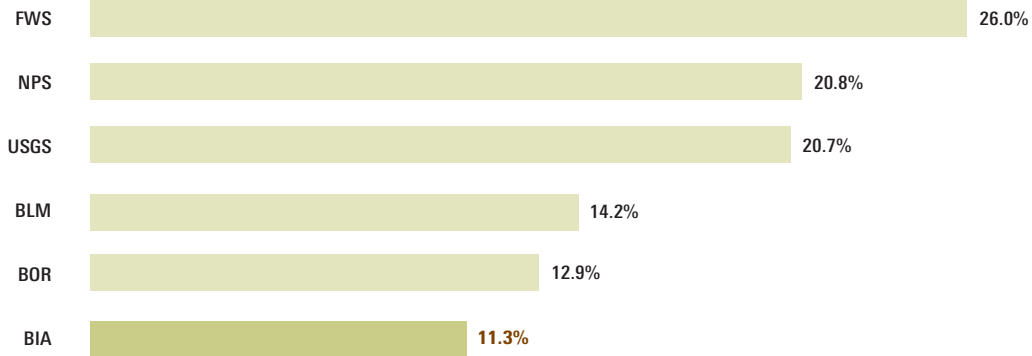
The relationship between the tribes and the federal government is based on legal promises and commitments. Through treaties, agreements, and a long history of dealings, vast regions of Indian lands were ceded to the United States, and in return the tribes received promises for protection of Indian lands; protection of tribal self-governance; and provision of social, medical, and educational services for tribal citizens. Federal investments to fulfill the trust responsibility are legal and moral commitments.

Tribal governments have the power and authority to determine their own governance structures, pass laws, and enforce laws through their police departments and tribal courts. The federal funding that goes to Indian issues in every relevant program area—from education and public safety to infrastructure and health care—lags behind the average for the rest of the United States. This trend was documented in the 2003 U.S. Civil Rights Commission report, "A Quiet Crisis." Tribes lack the same resources available to other governments to provide for the public safety and welfare of their citizens.

Recent trends in Indian program funding show that federal resources that fulfill the trust responsibility must be protected and exempt from cuts and rescissions. The core funding used by tribal governments to deliver services is provided through the Bureau of Indian Affairs (BIA) and Indian Health Service (IHS). Figure 1 shows that of the six largest agencies at the Department of the Interior, funding for the BIA increased the least from FY2004 to FY2011. The increase is so small that it actually represents a funding decrease after accounting for inflation.



Figure 1: Funding Percent Change for Interior Agencies, FY2004–FY2011



Key – FWS: Fish and Wildlife Service; NPS: National Park Service; USGS: United States Geological Survey; BLM: Bureau of Land Management; BOR: Bureau of Reclamation; BIA: Bureau of Indian Affairs

	FY2004 Enacted	FY2005 Enacted	FY2006 Enacted	FY2007 CR	FY2008 Enacted	FY2009 Enacted	FY2010 Enacted	FY2011 Request	FY04- FY11 % Increase
FWS	1,303,433	1,292,039	1,315,037	1,270,493	1,366,301	1,440,451	1,646,832	1,642,234	26.0%
NPS	2,258,580	2,314,881	2,256,293	2,102,611	2,390,488	2,525,608	2,750,530	2,728,865	20.8%
USGS	938,769	936,269	966,700	970,304	1,007,657	1,043,803	1,111,740	1,133,359	20.7%
BLM	999,781	989,260	998,859	984,970	1,007,897	1,038,596	1,133,604	1,141,572	14.2%
BOR	942,858	964,921	1,020,783	888,781	1,107,913	1,075,738	1,087,716	1,064,697	12.9%
BIA	2,305,814	2,295,702	2,274,270	2,229,896	2,291,279	2,376,131	2,619,560	2,566,001	11.3%

\$ IN THOUSANDS

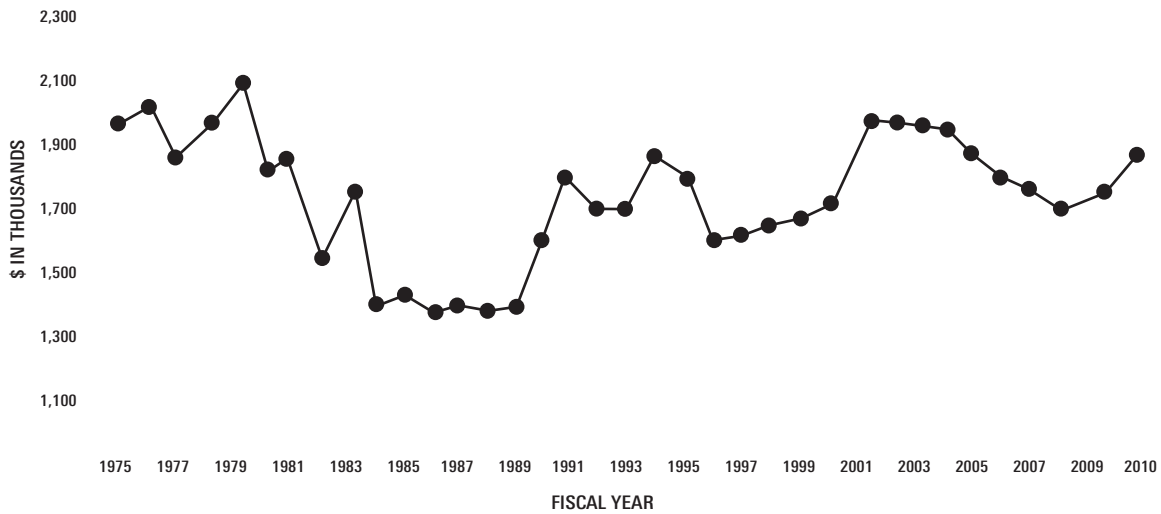
Key – FWS: Fish and Wildlife Service; NPS: National Park Service; USGS: United States Geological Survey; BLM: Bureau of Land Management; BOR: Bureau of Reclamation; BIA: Bureau of Indian Affairs.



Bureau of Indian Affairs Funding History

Figure 2 shows the funding provided for core tribal governmental programs through the BIA from FY1975 through FY2010 adjusted for inflation. The considerable fluctuations in federal funding that supports tribal governments and Indian programs have prevented tribes from taking full advantage of the Indian Self-Determination and Education Assistance Act.

Figure 2: BIA Funding, FY1975-FY2009, In Constant 1996 Dollars



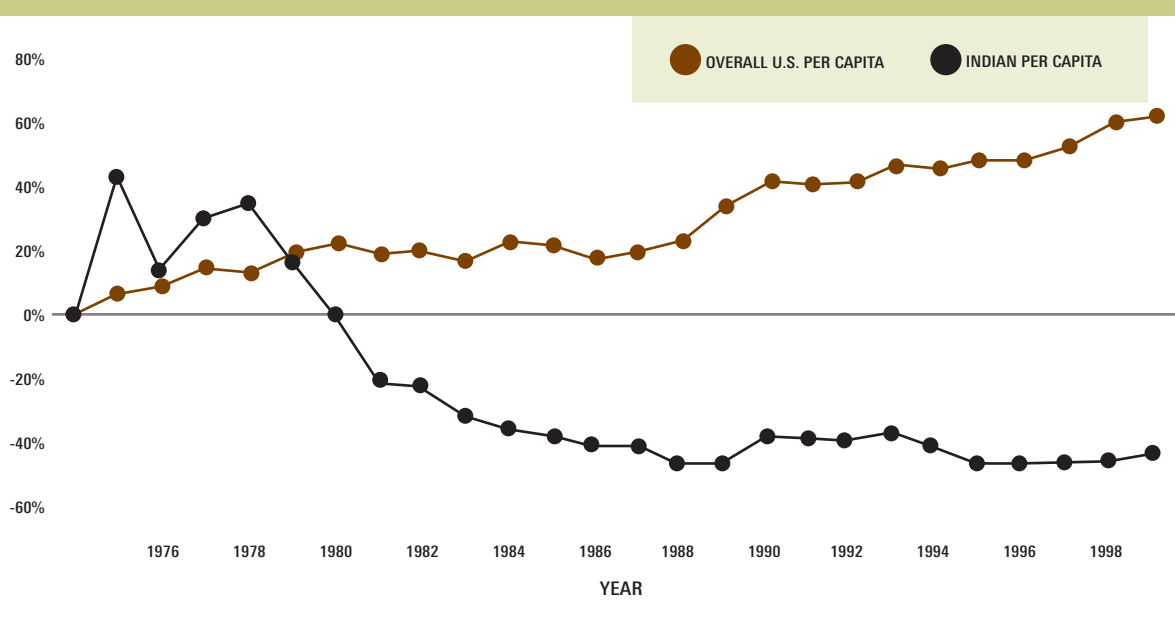
Data from: Walke, R. (1998). Indian-Related Federal Spending Trends, FY1975-FY1999. Washington, DC: Congressional Research Service, and U.S. Department of the Interior Ten-Year Budget History showing total and current appropriations levels (updated 5/20/2009). Retrieved from www.doi.gov/budget/budget_general/data/pdf/tenyear.pdf



Overall Per Capita vs. Indian Per Capita Expenditures

Tribes are eligible for other grant programs throughout the federal government, and, on a per capita basis, spending on American Indians and Alaska Natives has not increased at the same rate as for the overall population (see Figure 3).

Figure 3: Overall Per Capita vs. Indian Per Capita: Relative Budget Change from 1975 (inflation adjusted)



Source: Congressional Research Service - Library of Congress, March 2, 1999, "Indian-Related Federal Spending Trends, FY1975-FY2000"

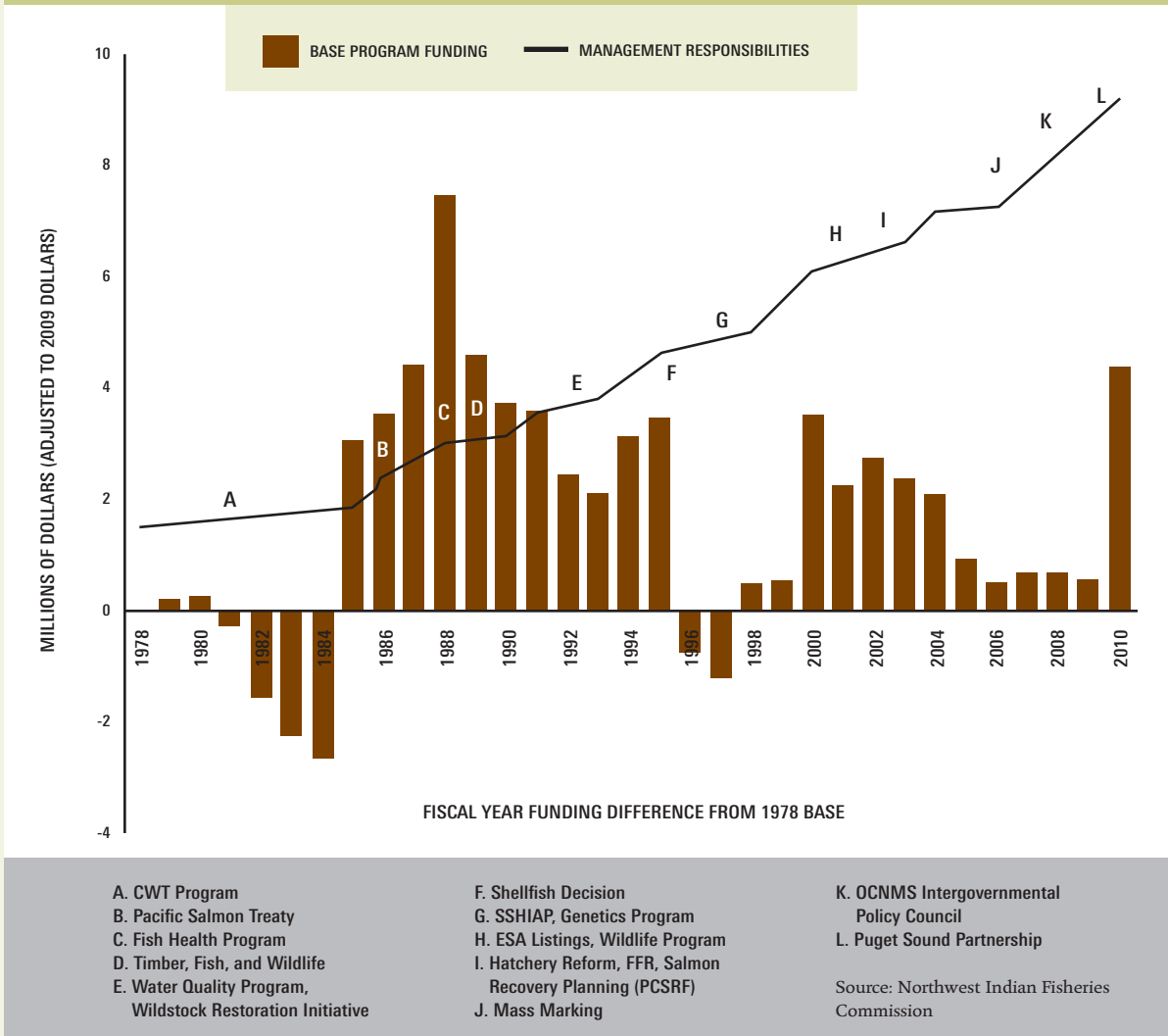
These factors, combined with the federal government's long-standing obligation and commitment to empower tribal governments to become self-governing and self-reliant, make it imperative that funding for essential core programs intended to advance and implement these statutory commitments to the 565 federally recognized tribes be protected and exempt from cuts and rescissions.



Example of Natural Resources Funding Trends

In one region, the Northwest Indian Fisheries Commission (NWIFC) and member tribes have undertaken more management responsibilities, but the corresponding federal funding has failed to match those responsibilities. Tribes perform basic management functions that are required under *U.S. v. Washington* to assure the protection of off-reservation fishing, hunting, and gathering rights. Tribes provide for enforcement, catch monitoring and accounting, fishermen and vessel identification, harvest management, and population monitoring and research. Figure 4 shows base funding for these activities from FY1978 to FY2010 and the corresponding management responsibilities for those years.

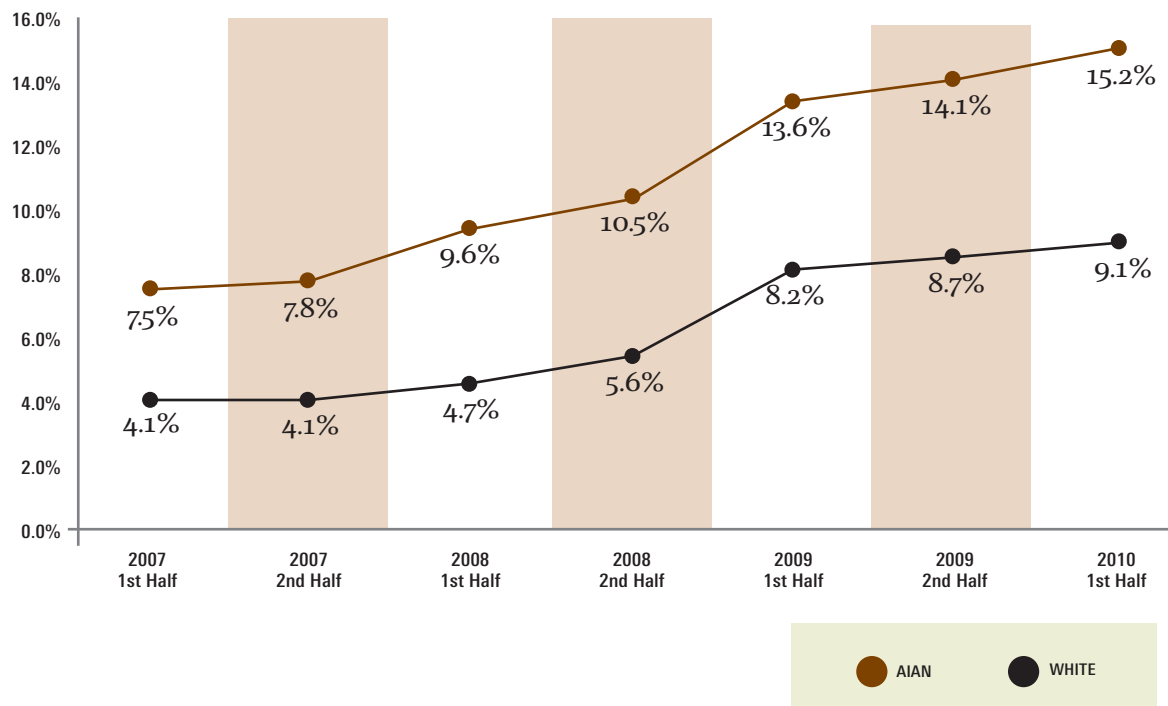
Figure 4: NWIFC & Member Tribes Base Funding (1978 to 2010)



Economic Conditions in Indian Country

Before the recession in 2007, tribes had made tremendous progress under the federal policy of Indian self-determination in reversing decades of poverty and unemployment. An analysis of socioeconomic change between 1990 and 2000 showed that Indian Country economies grew at a faster pace than the U.S. economy as a whole.ⁱⁱ Tribal leaders attribute this success to investments in self-government and the building up of such institutions as police departments, health clinics, education departments, infrastructure, and court systems. However, Indian Country has been hit especially hard by the recession, according to an analysis by the Economic Policy Institute (see Figure 5). From the first half of 2007 to the first half of 2010, the American Indian unemployment rate nationally increased 7.7 percentage points to 15.2 percent, which was an increase 1.6 times the size of the white increase. Indian people are still among the most vulnerable in tough economic times.

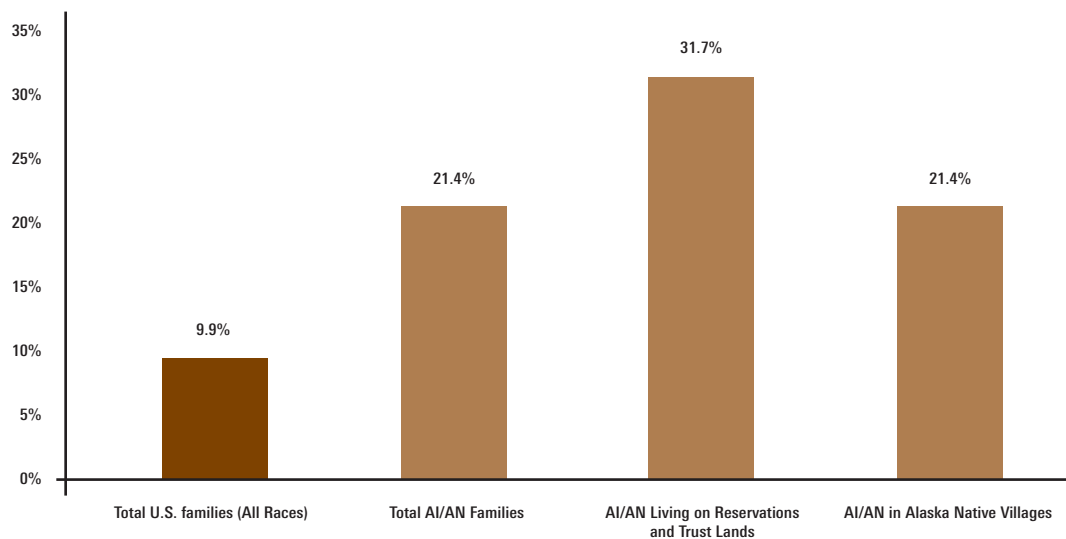
Figure 5: American Indian/Alaska Native (AI/AN) and White Unemployment Rates, 2007-2010



Source: Austin, Algernon (2010). *Different Race, Different Recession: American Indian/Alaska Native Unemployment in 2010*. Retrieved from the Economic Policy Institute Web site: <http://www.epi.org/publications/entry/ib289/>

According to the U.S. Census Bureau's most recent five-year estimates, the poverty rate for American Indian families living on reservations was more than three times the rate for the rest of the country. Figure 6 shows the percentage of American Indian and Alaska Native families living in poverty compared with the percentage of all families in poverty.

Figure 6: Percentage of American Indian and Alaska Native (AI/AN) Families Living in Poverty Compared to Total U.S. Families in Poverty: 2005-2009



Source: U.S. Census Bureau, 2005-2009 American Community Survey 5-Year Estimates, American FactFinder, accessed at <http://factfinder.census.gov>

Conclusion

The recommendations in this FY2012 Indian Country budget request are based on honoring the legal promises and commitments between American Indian and Alaska Native tribal governments and the United States through the federal trust relationship. Federal investment in tribal sovereignty and self-determination is an investment in the tribes' ability to work in partnership with the rest of the nation toward an equitable and robust recovery for all Americans. Below are government-wide recommendations followed by specific funding requests by program.



Government-Wide Recommendations

CREATE AN OFFICE OF INDIAN TRUST AND TREATY OBLIGATIONS WITHIN THE OFFICE OF MANAGEMENT AND BUDGET (OMB)

Tribal leaders emphasized at the 2010 White House Tribal Nations Conference that improving the relationship with OMB was a top concern. Even in tough budget times, funding for tribes must be held harmless. The lion's share of trust obligations are funded through the Department of the Interior, Bureau of Indian Affairs, and the Department of Health and Human Services, Indian Health Service. However, other programs serving Indian Country are administered through many other government agencies. The creation of an Office of Trust and Treaty Obligations within OMB would assist in coordinating federal funding for tribal trust obligations across the federal government.

HOST A GOVERNMENT-WIDE SUMMIT WITH TRIBES AND OMB

In December 2010, members of the Tribal/Interior Budget Council recommended a meeting or conference with tribal representatives and representatives from OMB and relevant government agencies to address government-wide federal funding for Indian programs in light of the federal trust relationship.

HOLD INDIAN PROGRAMS HARMLESS IN FY2012

Tribal programs have endured tremendous fluctuations in recent decades. Tribes should receive at least the same level of resources that are provided to state and local governments to meet the needs of their citizens and to fulfill the sacred trust responsibility. The FY2012 Indian Country Budget Request document contains specific recommendations for tribal programs, but NCAI requests that in FY2012, Indian programs should, at least, be held harmless and exempted from across-the-board rescissions.

