



National
Congress of
American
Indians

Honoring the Trust Responsibility in the Federal Budget¹

September 18, 2012

Introduction

Congress will soon debate how to avoid the "fiscal cliff," the term for a series of deadlines at the end of 2012 when tax cuts expire and automatic spending cuts – known as sequestration - will take effect. The Congressional Budget Office warned Congress that doing nothing could lead to another recession. Decision-makers should avoid any more harmful cuts to Indian programs which would threaten the health and welfare of Indian people. Under the Budget Control Act (BCA), most federal programs will face a destructive across-the-board cut of 8.2 percent in January 2013 if Congress fails to enact a plan before then to reduce the national debt by \$1.2 trillion. As the nation faces critical choices about how to address the deficit while preventing another recession, tribal leaders urge decision-makers to sustain funding in ways that honor our trust, support our people, and strengthen America.

Overall Recommendations

The federal trust obligation to Indian tribes must be honored and vital tribal programs must be sustained in any deal to reduce the national debt. The obligations to tribal citizens funded in the federal budget are the result of treaties negotiated and agreements made between Indian tribes and the U.S. in exchange for land and resources, known as the trust responsibility. At the heart of the budget debate is the role and size of government. However, the authority to fund programs that fulfill the trust responsibility is founded in the Constitution, specifically the Indian Commerce Clause, the Treaty Clause and the Property Clause. This historic duty should not be sacrificed in any of the budget options or ultimate solutions.

Congress must enact a plan to reduce the deficit through a balanced approach that includes new revenues and not only rely on domestic spending cuts.

Tribal Self-Determination Supports Economic Recovery

Maintaining support for effective tribal self-determination is essential as our nation considers the budget choices before us. As the country emerges from the recession, we must invest in the foundation necessary for a strong economy in Indian Country and provide opportunity for all. Education is fundamental to long-term economic opportunities. Investments in tribal infrastructure must be made to address the inadequate roads, housing, and broadband systems that are all essential to commerce. Bolstering public safety is also a prerequisite for long-term economic development. Support for energy and industry must be ramped up. All of these investments hold immense promise to contribute to regional economies, which serves to strengthen the American economy and build a better future for all Americans. Before the Great Recession arrived in December 2007, most tribes had made tremendous progress under the policy of Indian self-determination in reversing decades of poverty and unemployment. A Harvard University analysis of socioeconomic change in the 1990s showed that Indian Country economies grew at a faster pace than the US economy as a whole.² Tribal leaders attribute this success to investments in self-government. When tribes are acknowledged as sovereign governments and equipped with the tools for governing, they can build strong, healthy tribal communities. The

¹ This analysis was produced by the National Congress of American Indians to support tribal leaders participating in Tribal Unity Week, an event co-hosted with the California Association of Tribal Governments, Great Plains Tribal Chairman's Association, Inter Tribal Council of Arizona, United South and Eastern Tribes, and Navajo Nation.

² Kalt, J. & Taylor, J. (2005). *American Indians on reservations: A databook of socioeconomic change between the 1990 and 2000 Censuses*. Cambridge, MA: Harvard Project on American Indian Economic Development.

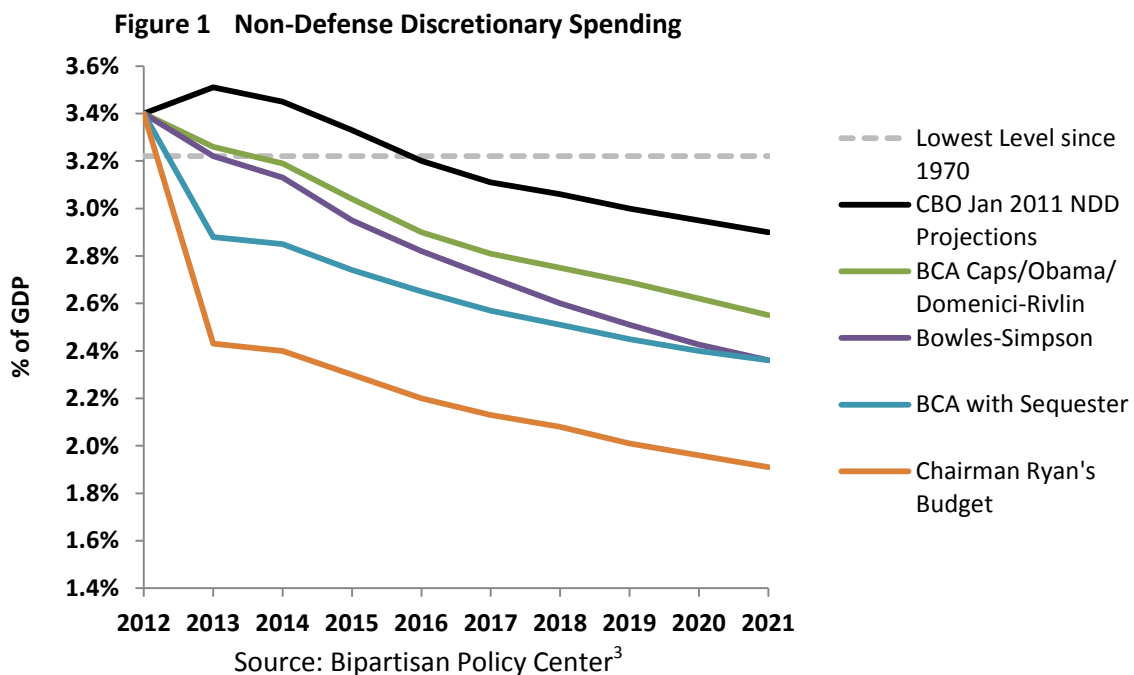
federal government’s trust obligation to fund tribal programs is not only a solemn historic and legal duty, but the revitalization of Indian Country is a wise investment that contributes to the prosperity of the nation as a whole.

Types of Approaches

The alternative budget proposals would affect Indian programs differently, and this document highlights some of those differences. Some of the major proposals include:

1. **Accepting the deal reached in the Budget Control Act of 2011**, with deficit reduction achieved through spending caps on most discretionary programs until 2021 and allowing the sequester to start in January 2013. This approach would devastate funding for federal tribal programs with blunt across-the-board cuts of 8.2 percent in FY 2013 to most Indian programs, including the Indian Health Service, Bureau of Indian Affairs, Indian housing, job training, Indian education, and others.
2. **Modifying the Budget Control Act** only to protect the defense budget at the expense of non-defense domestic programs. This approach would exacerbate the impact of sequestration on the trust responsibilities to tribes in the federal budget.
3. **The House Republican leadership’s budget proposal:** The House-passed plan would cut non-defense discretionary programs nearly \$1.2 trillion below the already tight Budget Control Act budget caps. Funding for non-defense discretionary programs would be cut by about 22 percent beyond cuts needed to meet the BCA caps, starting in 2014. The domestic cuts would be three times as deep as under sequestration in FY 2014.
4. **The President’s budget proposal:** this proposal replaces the deep discretionary spending cuts in the sequester with a budget package that includes new revenues. The budget starts with a cap on appropriations that will cut nearly \$1 trillion over the next 10 years as enacted in the Budget Control Act. However, it replaces the sequester with smaller, targeted cuts and at least \$1.1 trillion in new revenues raised from those with the higher incomes and from corporations.

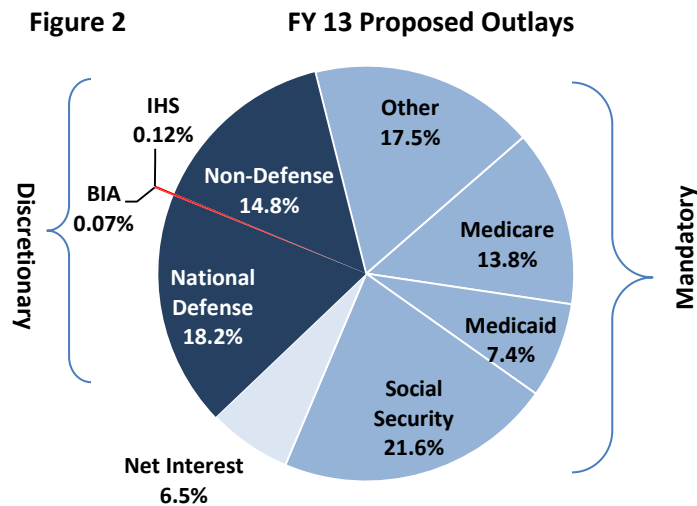
The impact of the various proposals on non-defense discretionary spending varies. Figure 1 below shows non-defense spending as a percentage of gross domestic product (GDP) under various budget proposals as compiled by the Bipartisan Policy Center.



³ Bipartisan Policy Center, “Paul Ryan’s Fiscal Year 2013 Budget: The Details.” Retrieved on September 6, 2012 from: <http://bipartisanpolicy.org/blog/2012/03/paul-ryan%E2%80%99s-fiscal-year-2013-budget-details>

Indian Programs in the Discretionary Budget

A significant number of programs funding trust responsibilities are in the non-defense discretionary portion of the federal budget, and the resolution to the current fiscal conflict could considerably impact resources to tribal governmental services and Indian programs for years to come. Figure 2 shows how federal tax dollars would be spent in FY13. About one-third of spending is discretionary (funded through the annual appropriations bills) and 60 percent is entitlement spending, such as Social Security, Medicare, Medicaid, and SNAP. Non-defense discretionary spending comprises 14.8 percent of the proposed outlays in FY 2013. *The total budgets for the Bureau of Indian Affairs (.07 percent of proposed outlays) and Indian Health Service (.12 percent of federal spending) are highlighted in the figure for comparison.*



Most of the budget funds Defense, Social Security and health programs.

Federal agencies that provide important funding for Indian Country include:

- Department of the Interior: Bureau of Indian Affairs and Bureau of Indian Education (Interior appropriations bill)
- Department of Health and Human Services: Indian Health Service, Administration for Children and Families, (Interior appropriations bill)
- Department of Education (Labor, HHS, Education appropriations bill)
- Department of Justice: Office of Justice Programs, State and Local Law Enforcement, Office of Violence Against Women, Community Oriented Policing Services (Commerce, Justice, Science appropriations bill)
- Housing and Urban Development: Indian Housing Block Grant, Indian Community Development Block Grant (Transportation, Housing appropriations bill)

Potential Budget Proposals and Scenarios

Impact of the Sequester on Non-Defense Discretionary Spending

The BCA consisted of a two-stage deficit-reduction process: funding caps for annual appropriations bills through 2021 to save about \$1 trillion, and it set up a bipartisan Super Committee to work out a deficit-reduction package to save at least another \$1.2 trillion, which could include a combination of spending cuts to discretionary and mandatory spending, or revenue increases. The failure of a Super Committee agreement triggered sequestration, which consists entirely of spending cuts. Non-defense discretionary

spending already has absorbed significant reductions through the 10-year spending caps in the Budget Control Act. By 2021, this category of spending will reach its lowest level in more than 50 years and account for just 2.8 percent of the U.S. gross domestic product. The sequester cuts will occur over a decade and the cumulative impact will be intolerable. Using the estimate of 8.2 percent reductions just for the first year of sequestration, many Indian programs will face reductions of 20 percent or more below FY2010 levels, when adjusted for inflation.

The table at the end of this report shows what will happen to FY 2013 funding by Indian program with estimated sequestration cuts compared to FY 2010 levels adjusted for inflation. For example, Native American Job Training received about \$52.8 million in FY 2010 and \$47.6 million in FY 2012. But if the 8.2 percent sequester cut goes into effect January 2013, the program would face a cut of 23 percent below the FY 2010 enacted level, adjusted for inflation.

(In millions of dollars)	FY 2010	FY 2011	FY 2012	FY 2013 President's Budget	FY13 Funding After Cuts (-8.2%)	FY 2013 Cuts (-8.2%)	% Cut, FY10-13 (adj for inflation)
Native American Job Training	52.8	52.7	47.6	52.6	43.7	3.9	-23%

If sequestration is implemented, examples of the percentage cut from FY 2010 when adjusted for inflation include:

- Low Income Home Energy Assistance Program (LIHEAP), Tribes, cut by 35%;
- Vocational Rehabilitation State Grants, Tribes, cut by 25%;
- Indian Housing Block Grant cut by 21%;
- Indian Student Education cut by 13%;
- Tribal Community Oriented Policing Grants cut by 25%;
- Total, Bureau of Indian Affairs, Operation of Indian Programs cut by 14%;
- BIA, Trust Natural Resources cut by 24%;
- Special Education--Grants to States, Indian Set-Aside, cut by 14%.

Some spending reductions are necessary to target inefficiencies, but lawmakers should make thoughtful decisions to avoid disrupting important governmental responsibilities such as the trust obligations to tribes and addressing the public safety crisis throughout Indian Country. The abrupt and arbitrary nature of the across-the-board cuts from sequestration will have damaging effects on the progress made in addressing the serious problems facing Indian Country. Recently, the U.S. government took historic steps to address numerous long-standing challenges facing tribal communities. Congress made permanent the Indian Health Care Improvement Act and the President signed into law the Tribal Law & Order Act. But, like other laws, they will not mean much if not implemented, and effective implementation requires adequate federal funding for the recently authorized programs. The blunt mechanistic savings from sequestration is not good public policy and should be averted.

“The levels for discretionary defense and [non-defense] spending set by the Budget Control Act of 2011, before any action triggered by the looming sequester in January, 2013, are approximately what our Task Force recommended. In short, we believe that further significant cuts in discretionary spending will do little to improve long run fiscal sustainability and risk harming investment, recovery, and future growth. So far, Congress has imposed virtually 100 percent of deficit reduction on less than 37 percent of the budget.”

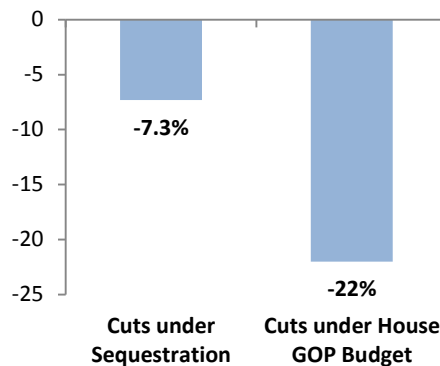
– Senator Pete Domenici and Dr. Alice Rivlin, Co-Chairs, Bipartisan Policy Center Debt Reduction Task Force (June 19, 2012)

House Republican Leadership Proposal

The House passed a budget proposed by House Budget Committee Chairman, whose package takes an approach to deficit reduction that lacks significant revenues and imposes deeper cuts to non-defense discretionary spending than enacted in the Budget Control Act. The Congressional Budget Office finds that the House budget plan specifies a long-term spending path under which, by 2050, most of the federal government aside from Social Security, health care, and defense would cease to exist.⁴

The House budget would impose massive federal spending reductions of \$5.3 trillion over the next ten years. Those cuts include repealing the Affordable Care Act (ACA), cutting non-defense discretionary programs, Medicaid, the Children’s Health Insurance Program and others. The House-passed plan would cut non-defense discretionary programs nearly \$1.2 trillion below the already tight Budget Control Act budget caps. Funding for non-defense discretionary programs would be cut by about 22 percent beyond cuts needed to meet the BCA caps, starting in 2014 (see Figure 3).⁵

Figure 3
Percent Cuts in Non-defense Discretionary Funding in FY 2014
(Relative to BCA Funding Caps)



Source: Center on Budget and Policy Priorities

In 2014 the overall cuts under the House Republican budget in funding for non-defense discretionary programs, including Indian trust responsibilities, would be three times as deep as the cuts scheduled under sequestration. In later years the difference is even starker.

The House Budget Plan also:

- Extends the 2001/2003/2010 Tax Cuts: reduces the top tax brackets to 25 percent from the current rates of 35 percent, 33 percent, and 28 percent; condenses the rate structure of the individual income tax to just two rates of 10 and 25 percent; and lowers the top corporate tax rate to 25 percent.
- Sets funding for defense above the BCA cap, while non-defense discretionary programs in 2013 would be cut below the BCA caps by almost three-quarters as much as if sequestration took effect.
- Restructures Medicare and Medicaid: the plan would turn Medicaid into a block grant, raise the age for Medicare eligibility from 65 to 67, and convert Medicare from a public insurance program to a voucher program to help people buy private insurance.

Proposals to Protect Military Spending from Sequestration

Proposals are pending in Congress to modify the sequester to protect military spending, shifting the burden to domestic spending. It is difficult to predict how severe the cuts would be to Indian programs because proposals vary in how they would affect domestic spending. But if defense spending is protected, and the additional funds were taken across the board from all other programs subject to automatic cuts, the reductions could be much more detrimental to Indian Country.

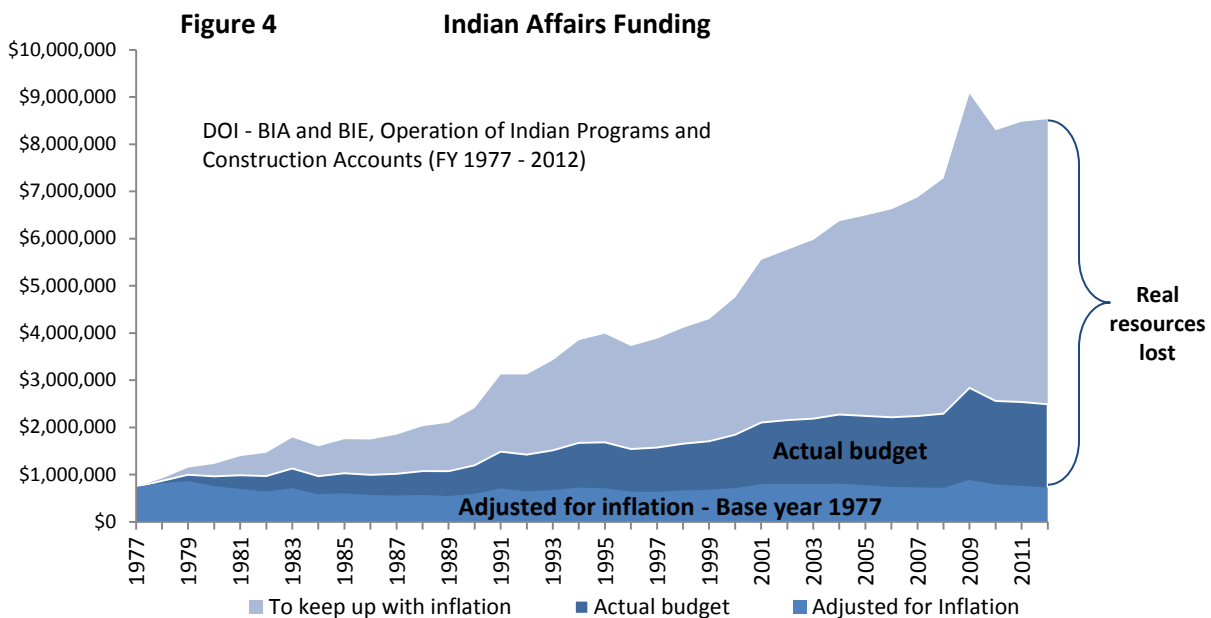
⁴ Congressional Budget Office, “The Long-Term Budgetary Impact of Paths for Federal Revenues and Spending Specified by Chairman Ryan,” March 2012.

⁵ Michael Leachman, Richard Kogan, Vincent Palacios, and Kelsey Merrick “Deficit-Reduction Package That Lacks Significant Revenues Would Shift Very Substantial Costs to States and Localities,” Center on Budget and Policy Priorities, August 8, 2012

Trends in Indian Affairs Funding

The core funding to tribal governments flows through the Bureau of Indian Affairs. Table A at the end of this document shows the estimated sequestration cuts to Indian Affairs programs as well as the estimated percent cut compared to the FY2010 levels when adjusted for inflation. Overall, Operation of Indian Programs would see a 14 percent reduction in FY 2013 compared to FY 2010 levels. This cut would be on top of the historical trend of Indian Affairs funding failing to keep pace with inflation, much less address strategic policy objectives.

Figure 4 below shows a 35-year look at the Operation of Indian Programs and BIA Construction Accounts. It compares actual expenditures adjusted for inflation and to lost purchasing power. The amounts provided to Operation of Indian programs and construction together are less than the amount in 1977.



Indian Affairs provides services directly or through contracts, grants, or compacts to a population of about 1.9 million American Indians and Alaska Natives. In response to a greater emphasis on Indian self-determination, programs are highly decentralized, with about 90 percent of all appropriations expended at the local level, and approximately 63 percent of appropriations provided directly to tribes and tribal organizations through grants, contracts, and compacts. Tribes still look to Indian Affairs for a broad spectrum of services.

Indian Health Service

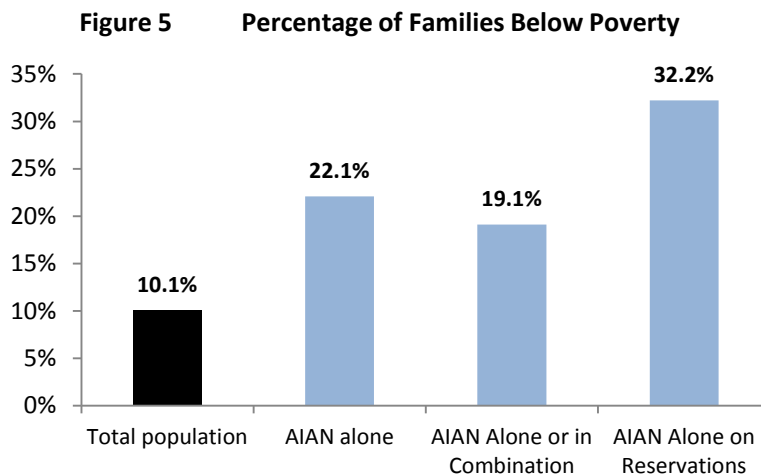
The budget for IHS should carry forward the trust responsibility and support tribal self-determination as a key element of health care reform while continuing the government’s partnership with tribes to improve Indian health. Although the Congressional Research Service reported that, “under Section 256(e) of BBEDCA, sequestration may only reduce funding appropriated to the two IHS accounts by 2 percent in any fiscal year...”, OMB’s report on sequestration subjects the IHS discretionary accounts to the 8.2 percent across-the-board cut.⁶ The IHS mandatory account of the Special Diabetes Program for Indians is subject to a 2 percent cut.

Indian Health Service (dollars in millions)	FY 2010	FY 2011	FY 2012	FY 2013 Pres. Budget	FY 2013 Funding After Cuts (est - 8.2% or 2%)	FY 2013 Cuts
Indian Health Services	3,657.6	3,665.3	3,866.2	3,979.0	3,549.2	317.0
IHS Facilities	394.8	403.9	440.3	443.5	404.2	36.1
SDPI	150	150	150	150	147	3

The IHS provides comprehensive primary health care and disease prevention services to approximately 2.1 million American Indians and Alaska Natives through over 650 hospitals, clinics, and health stations on or near Indian reservations. Facilities are predominantly located in a rural primary care setting and managed by IHS, Tribal, and urban Indian health programs. The IHS provides a wide range of clinical, public health and community services primarily to members of 565 federally recognized Tribes. The IHS has approximately 15,700 employees, including 2,700 nurses, 900 physicians, 400 engineers, 600 pharmacists, 300 dentists, and 300 sanitarians.

Protect the Truly Disadvantaged

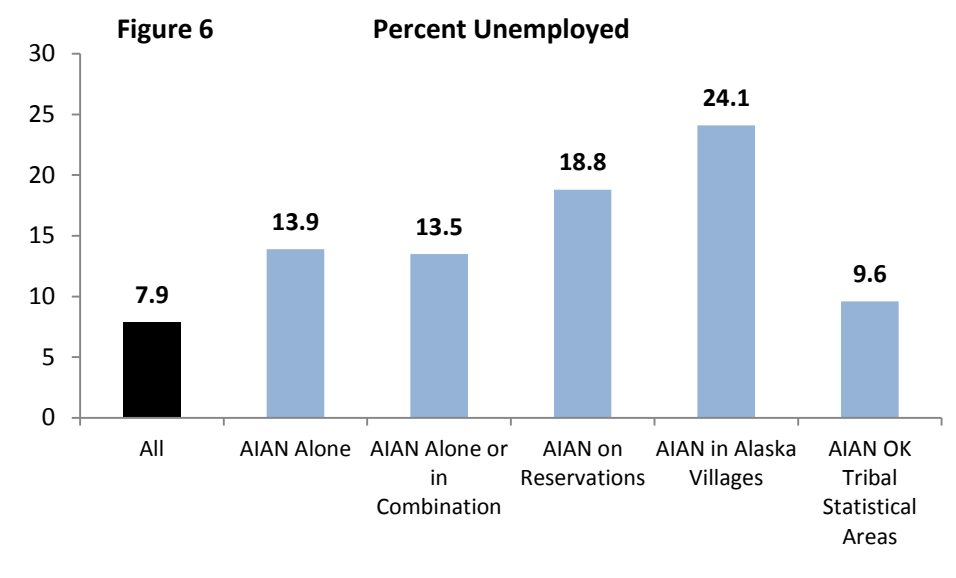
One of the guiding principles of the Commission on Fiscal Responsibility and Reform’s Bowles-Simpson plan was “to protect the truly disadvantaged.” Recent data on the economic conditions in Indian Country show ongoing and considerable economic disparities. The percentage of tribal families in poverty (figure 5) is more than twice as high as the percentage of total families in poverty. One third of American Indian/Alaska Native (AIAN) families are in poverty on reservation lands, more than three times as high as the national percentage.



U.S. Census Bureau, 2006-2010 American Community Survey

⁶ Congressional Research Service, “Budget “Sequestration” and Selected Program Exemptions and Special Rules” April 27, 2012

According to the Census 2006-2010 ACS estimates, nearly 19 percent of American Indians/Alaska Natives on reservations were unemployed, compared to 8 percent of all Americans. Lack of jobs was even higher among AIAN living in Alaska Native villages, where unemployment was 24 percent.



Across-the-board cuts at the sequester level of 8.2 percent, or deeper, to investments in education, housing, roads, law enforcement, tribal courts, energy development, job training, and health care would deal a devastating blow to the economic conditions in Indian Country.

Conclusion

If policymakers enact a deficit reduction plan that relies entirely or almost entirely on spending cuts, the damage to Indian programs will be much more severe than sequestration. Domestic programs cannot continue to bear the brunt of deficit reduction, nor can continued cuts balance the budget. These programs represent a relatively small and shrinking share of the federal budget—already reduced to levels not seen since President Eisenhower held office. They are not the drivers of the debt. Completely eliminating all domestic discretionary programs would still not balance the budget. Yet to date they have borne the brunt of deficit reduction efforts. If sequestration is allowed to take effect, core services for American Indians, and all Americans, will be greatly curtailed or even eliminated.

The historic Constitutional duty of the trust responsibility should not be sacrificed in any of the budget options or ultimate solutions. Tribes urge lawmakers to avoid cuts as deep as sequestration and to sustain funding in ways that honor our trust, support our people, and strengthen America.

Table A: Impact of Sequester on Selected Indian Programs

Data in this table are from the President's FY 2013 Budget and from federal agency budget documents. The reductions are based on 8.2 percent cuts as estimated by the Office of Management and Budget.

If the law is not changed, sequestration will be applied to non-defense appropriations starting in January 2013. These reductions are estimates based on FY 2012 funding levels. The table shows cuts of 8.2 percent. Also this table shows the percentage reduction for each program compared to FY 2010 funding levels, adjusted for inflation (in FY2013 dollars).

(In thousands of dollars)	FY 2010	FY2011	FY2012	FY2013 Pres. Budget	FY2013 Funding After Cuts (est -8.2%)	FY13 Cuts	% Cut, FY10 to FY13 (inflation adjusted)
Bureau of Indian Affairs							
Operation of Indian Programs	2,336.0	2,329.8	2,367.7	2,379.4	2,173.6	194.2	-14%
Tribal Government	429.8	509.6	519.3	529.2	476.7	42.6	3%
Human Services	137.0	136.6	136.4	135.2	125.2	11.2	-15%
Trust - Natural Resources Mgt	175.6	156.1	157.2	162.1	144.4	12.9	-24%
Trust - Real Estate Services	152.5	145.8	126.8	127.8	116.4	10.4	-29%
Public Safety and Justice	328.9	334.1	346.2	353.9	317.8	28.4	-11%
Community & Economic Dev	44.9	36.9	34.8	34.3	32.0	2.9	-34%
Executive Dir/Admin Services	267.9	258.1	251.5	239.6	230.9	20.6	-20%
BUREAU OF INDIAN EDUCATION	799.4	752.7	795.5	796.1	730.3	65.2	-15%
Construction	225.0	209.6	123.6	105.9	113.5	10.1	-53%
Tribal Priority Allocations	829.3	884.2	891.1	897.4	818.0	73.1	-9%
Indian Health Service							
Indian Health Services	3,657.6	3,665.3	3,866.2	3,979.0	3,549.2	317.0	-10%
IHS Facilities	394.8	403.9	440.3	443.5	404.2	36.1	-5%
Department of Energy							
Tribal Energy Program	10.0	7.0	10.0	7.0	9.2	0.8	-15%
Housing							
Indian Housing Block Grant	700.0	650.0	650.0	650.0	596.7	53.3	-21%
Indian CDBG	65.0	65.0	60.0	60.0	55.1	4.9	-21%
Job Training and Employment							
Native American Job Training	52.8	52.7	47.6	52.6	43.7	3.9	-23%
YouthBuild	102.5	79.7	79.7	79.7	73.2	6.5	-34%
Administration on Aging							
Native American Nutrition and Supportive Services	27.7	27.7	27.6	27.6	25.3	2.3	-15%
Administration for Children and Families							
Child Care & Dev Block Grants (Tribes)	42.5	43.5	44.6	44.8	40.9	3.7	-11%
Native American Programs	48.8	48.7	48.6	48.6	44.6	4.0	-15%
Community Service Block Grants (Tribes)	5.0	4.9	5.1	0.0	4.6	0.4	-14%
LIHEAP, Formula Grants (Tribes)	50.1	51.2	38.4	31.3	35.3	3.2	-35%

(In thousands of dollars)	FY 2010	FY2011	FY2012	FY2013 Pres. Budget	FY2013 Funding After Cuts (est -8.2%)	FY13 Cuts	% Cut, FY10 to FY13 (inflation adjusted)
Education							
Indian Student Education	127.3	127.0	130.8	130.8	120.1	10.7	-13%
Indian Head Start	207.5	214.9	224.6	225.9	206.2	18.4	-8%
Special Ed-Grants to States, Indian Set-Aside	92.0	92.0	92.9	92.9	85.3	7.6	-14%
Voc Rehab State Grants (Indian Set-Aside)	42.9	43.6	37.9	38.2	34.8	3.1	-25%
College- & Career-Ready Students (Title I, LEA Grants) Indian Set-Aside	100.7	101.5	98.9	98.9	90.8	8.1	-16%
Homeless Children/Youth Ed (Indian Set-Aside)	0.7	0.7	0.7	0.7	0.6	0.1	-15%
Special Ed, Infants/Families (Indian Set-Aside)	5.6	5.3	5.3	5.7	4.9	0.4	-19%
Career/Technical Ed (Indian Set-Aside)	14.5	14.0	14.0	12.8	12.9	1.2	-18%
Impact Aid	1,276.2	1,273.6	1,291.2	1,224.2	1,185.3	105.9	-14%
Strengthening tribally controlled colleges and universities	30.2	26.8	25.7	25.7	23.6	2.1	-28%
Strengthening AN/NH-serving institutions	15.1	13.4	12.9	12.9	11.8	1.1	-27%
Tribally controlled postsecondary & tech inst	8.2	8.1	8.1	8.1	7.5	0.7	-15%
Department of Justice							
DOJ Tribal COPS	40.0	40.0	35.0	20.0	32.1	2.9	-25%
DOJ Indian Assistance (Includes Construction, Courts, Alc/Subs Abuse)	50.0	50.0	38.0	81.4	34.9	3.1	-35%
DOJ Tribal Youth	25.0	25.0	10.0		9.2	0.8	-66%
Environmental Protection							
EPA Tribal General Assistance Pgm	62.9	67.7	67.6	96.4	62.1	5.5	-8%
EPA Tribal Air Quality	13.3	13.3	13.3	13.6	12.2	1.1	-15%