



NATIONAL CONGRESS OF AMERICAN INDIANS

Oversight Hearing on Tribal Programs and Initiatives Proposed in the President's Fiscal Year 2012 Budget

March 14, 2011

Introduction

On behalf of the National Congress of American Indians, thank you for the opportunity to provide our views on tribal programs and initiatives proposed in the President's FY 2012 budget. Despite reductions for many federal agencies and programs, the President's FY 2012 budget proposal largely protects funding for many Indian programs, and even contains some proposed increases for Indian health and public safety. NCAI commends the Administration for these proposed increases, especially given diminished federal resources. But as Congress deliberates over the FY2012 budget, and the remaining FY2011 fiscal year as well, we ask that you remember that funding for Indian programs supports the trust responsibility—and that trust responsibility is not a line item—it is a solemn duty.

Although Congress will begin deliberations on the FY2012 federal budget in a very tight budget atmosphere, it also follows one of the most significant years of bipartisan accomplishments for Indian Country in recent memory. As you know, in 2010, the U.S. government took historic steps to address numerous long-standing challenges faced by tribal nations. Congress made permanent the Indian Health Care Improvement Act (IHCA) and President Obama signed into law the Tribal Law & Order Act (TLOA). But, like other laws, TLOA and IHCA will not mean much if they are not implemented, and effective implementation is contingent upon adequate federal funding for 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.

A key theme of the last election was that Congress and the federal budget should focus on programs that are unquestionably the constitutional role of the federal government. The federal obligations to tribal citizens—largely funded by 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. These obligations are better known as the trust responsibility. The authority to fund programs that fulfill this responsibility is founded in the Constitution, specifically the Indian Commerce Clause, the Treaty Clause, and the Property Clause.

Meeting this constitutional responsibility and empowering citizens and communities to meet the challenges that they face is a priority tribal communities share with many new members of Congress. In this context, NCAI commends the Administration for including language for the *Carciere* fix in the FY 2012 budget request and urges immediate passage of a clean *Cariciere* fix.

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NCAI has compiled recommendations on many specific programs and agencies that affect Indian Country, but, in general, NCAI urges Congress to at least hold Indian programs harmless in the FY 2012 appropriations process and exempted from across-the-board rescissions. Tribal programs have endured tremendous fluctuations in recent decades, making it difficult for tribes to achieve community stability. Each year, tribes should receive resources at least equal to those appropriated to state and local governments so tribal governments may meet the critical needs of their citizens and the federal government may fulfill its sacred trust responsibility. As members of Congress begin considering the nation's federal budgetary priorities, the debate should acknowledge the solemn agreements made with Indian tribes that are backed by the Constitution.

Public Safety and Justice

In recent years, tribal leaders from across the nation have highlighted the shortcomings of the current system of justice administered on tribal lands in numerous formal consultations, informal dialogues, conference calls, meetings, and congressional hearings surrounding issues of public safety and justice in Indian Country. They have emphasized that the current lack of resources for law enforcement on Indian lands poses a direct threat to Native citizens and the future of Indian Country.

The recent passage of the Tribal Law & Order Act (TLOA) is proof that their words have not fallen on deaf ears. Congress and the Obama Administration have heard the concerns of Indian people and attempted to address them in this new law. The intended ends of the TLOA cannot be achieved unless tribes have the means to implement them. This requires adequate federal funding for TLOA-authorized programs, as well as full funding of other critical tribal justice programs that will support the overarching TLOA vision of comprehensive law enforcement reform. Increased and targeted funding in the following program areas will help combat the violent crime epidemic on Indian lands and strengthen tribal justice systems for future generations. Native Americans—like all Americans—deserve to live free of fear in their communities, where their basic rights are protected and they can trust the justice system that serves them.

Department of Justice

The President's FY 2012 Budget requests a total of \$424.4 million for public safety initiatives in Indian country, a 29 percent increase over the FY 2010 enacted level, and demonstrates the Administration's continued commitment to improving the criminal justice system on tribal lands.

Office of Justice Programs

Similar to last year's request, the Department again proposes bill language for a **7% tribal set-aside** from all discretionary **Office of Justice Programs (OJP)** programs to address Indian country public safety and tribal criminal justice needs. This 7% set-aside totals \$113.5 million, and although the details of how these funds will be administered are yet to be determined, the goal is to provide a more flexible grant structure for tribes. To offset this new policy, the Department proposes to eliminate bill language contained in prior years' Appropriations Acts that had specific funding amounts for traditional tribal justice programs – such as tribal prison construction, tribal courts initiative, tribal alcohol and substance abuse reduction assistance, and tribal youth.

NCAI supports the creation of a 7% tribal set-aside of OJP programs, but at the same time urges that those funds are allocated in an equitable manner and that each formerly separate

program area receives funding at or above FY2010 funding levels, including tribal courts and jails construction, legal assistance, juvenile delinquency prevention, and substance abuse prevention.

DOJ funding levels to support tribal justice systems and improve reservation public safety have not met these solemn obligations. For example, FY2000 funding for tribal justice programs relating to courts, police hiring and equipment, jails, and juvenile justice was \$91.5 million. Funding levels for these programs from FY2001 to FY2009 was below, and at times far below, the FY2000 level, reaching a low of \$42 million in FY2006. Not until FY2010 did Congress appropriate funding above the FY2000 levels when it granted \$159 million for these critical justice programs.

For FY2010, the Department of Justice for the first time issued a single Coordinated Tribal Assistance Solicitation (CTAS) for 10 of its tribal grant programs. This new solicitation attempted to streamline the application process for tribes, enabling them to submit a single application and select multiple purpose areas (ranging from juvenile justice to violence against women), as opposed to previous years in which they would have been required to submit multiple grant applications. However, this streamlined application model will not achieve its intended success unless and until it is accompanied by a streamlined funding mechanism.

Federal Bureau of Investigation

In an effort to help tribes combat illegal drug use, trafficking, and violent crime, the President's request contains an increase of \$9 million to support 40 new **Federal Bureau of Investigation** (FBI) positions (24 agents) assigned to investigate violent crimes in Indian country.

NCAI supports the requested increase for FBI agents assigned to Indian Country. The federal government's failure to make addressing crime in tribal communities a priority has compounded the problem. Given the complex jurisdictional scheme on Indian lands, a disproportionate number of Indian Country cases are investigated and prosecuted by federal law enforcement officials. Funding for additional FBI agent positions, whose sole job would be to focus on investigating crimes on Indian reservations, would go a long way toward addressing both the perception and the reality of lawlessness that exist in some tribal communities. The BIA and DOJ Native American Issues Subcommittee have already indicated that adding more agents is a priority. This personnel enhancement would enable the FBI to be more proactive in its approach to addressing crime on reservations.

Office of Violence Against Women

Approximately \$44 million is requested for tribal initiatives within the **Office of Violence Against Women** (OVW) and aimed at addressing the high victimization rates of American Indian and Alaska Native victims of domestic violence, sexual assault, dating violence, and stalking on tribal lands. Of these funds, \$39,275,000 will be disbursed through the VAWA Tribal Government Grants Program, while \$3,626,000 will be funneled to tribal coalitions through the VAWA Tribal Coalitions Grants Program. Also within these OVW funds, the President has requested that \$500,000 be available for establishment and maintenance of a new Sexual Assault Clearinghouse in Indian Country that will offer a one-stop shop for tribes to request free on-site training and technical assistance. While the FY 2012 budget sustains funding for Analysis and Research on Violence Against Indian Women at \$1 million, it eliminates funding for the national tribal sex offender registry. *NCAI supports funding programs intended to end violence against Native women, and it urges Congress to continue funding the national tribal sex offender registry mandated by the Violence Against Women Act of 2005.*

Community Oriented Policing Services

The FY 2010 funds available to tribes under the **Community Oriented Policing Services** (COPS) program to fund tribal law enforcement expenses have been reduced by 50% under the President's request, from \$40 million to \$20 million. However, the Administration has requested an additional \$302 million for the COPS Hiring Program, \$42 million of which is to be used for the hiring and rehiring of tribal law enforcement officers.

In addition to these major initiatives, \$5 million will be set aside for a comprehensive tribal grants pilot program that aims to reduce gun crime and gang violence through competitive and evidence-based programs. Tribes will also be eligible for a portion of the \$12 million proposed for grants to assist state and tribal governments in improving the automation and transmittal of criminal history dispositions and records under the **NICS Improvement Amendments Act of 2007**.

Finally, the President's Budget contains a \$3 million request for research on the nature and extent of crime in Indian country and an additional \$500,000 request for improving Indian country crime statistics, including data collection on tribal jails, tribal justice agencies, prosecution and adjudication of Indian country crime, and Indian victimization.

NCAI supports the significant increase over the FY 2010 funding levels for DOJ tribal grant programs. This demonstrates the Justice Department's continued commitment to improving the administration of justice on Indian lands and protecting Native peoples across the nation.

Department of the Interior

Under Public Safety and Justice activities in the Bureau of Indian Affairs, the President has proposed a net \$25.8 million increase from the FY 2010 level, which includes \$20 million in programmatic increases and \$10.6 million for fixed costs. ***NCAI supports the continued support for Indian Affairs Public Safety and Justice programs.***

Housing and Infrastructure

Department of Housing and Urban Development

The President's FY 2012 Budget request for the Department of Housing and Urban Development (HUD) **Indian Housing Block Grant (IHBG)** is \$700 million. The Department recognizes that tribal communities are most in need of housing infrastructure. IHBG funding is the means of support for housing development, construction, infrastructure, maintenance, and repair in Native communities. ***NCAI supports President's Request level, which maintains the FY 2010 level of \$700 million for the IHBG and encourages Congress to fund the IHBG at or above the President's requested level.***

The FY 2012 proposed budget also would provide \$65 million for the **Indian Community Development Block Grant**, which NCAI supports. Community Development Block Grant funds are dedicated to improving not only housing but the overall economic and community development of tribal communities. The ICDBG funds are essential to tribal economies and community development efforts, such as a variety of commercial, industrial, and agricultural projects.

Human Needs and Human Services

Indian Health Service

The FY 2012 Request for the Indian Health Service is \$4.6 billion in discretionary budget authority – a significant increase of \$571 million, or 14.1 percent, over the FY 2010 enacted level. Indian Country won a substantial victory in 2010 with the passage and permanent reauthorization of the Indian Health Care Improvement Act (IHCIA) as part of the Patient Protection and Affordable Care Act (PPACA). American Indians and Alaska Natives realized a number of positive provisions in the overall PPACA legislation. As such, Indian Country seeks to ensure that the Indian health care delivery system is strengthened so that Indian people and Indian health programs benefit from reformed systems. In order to achieve these results, fundamental components are necessary to fully implement IHCIA and PPACA in Indian Country. *In the current fiscal environment, NCAI and tribal leaders are encouraged to see strong support in the FY 2012 Budget Request for the Indian Health Service and urge Congress to enact the 14.1 percent increase for IHS overall.*

Contract Support Costs (CSC) – The FY 2012 request for IHS contract support costs is \$461.8 million, an increase of \$63.3 million and 16 percent. Year after year, CSC has not been fully funded. The last increase was in FY 2010, which reduced the CSC by about one-half. A more than \$100 million shortfall remained in FY 2010. The IHS recently projected that the shortfall in FY 2012 will be \$153 million, which would result in a cut of \$153 million in tribally-contracted programs, not IHS-administered programs. *NCAI recommends the IHS CSC line item be increased to \$615 million, which does not include CSC for new or expanded IHS programs.*

Department of Education

Many programs in the Department of Education for Indian Country are level funded in the FY 2012 budget request. However, in the debate over the remaining FY 2011 appropriations, many education programs that benefit Indian students have been slated for elimination due to mistaken designations as earmarks. Many of these are recurring programs, such as the **Tribally-Controlled Postsecondary Career and Technical Education** program that provides core funding to the United Tribes Technical College (UTTC) in North Dakota and Navajo Technical College (NTC). A similar issue arose for the **Alaskan Native Education Equity program** and the **Native Hawaiian Education Program**, existing programs that have been improperly considered earmarks and targeted for elimination. NCAI urges Congress to provide continued funding for longstanding programs for Indian students—make no mistake, funding for Indian education is not an earmark, it is an integral component of the federal trust responsibility, and congressional leaders should guard against any attempts to eliminate or decrease it.

Natural Resources

The health and maintenance of natural resources – forestlands, water, fisheries, wildlife, and outdoor recreation – is vital to tribal economies, culture, and subsistence practices.

Environmental Protection Agency (EPA)

The President's FY 2012 budget request for the Environmental Protection Agency includes proposed funding for a **Multimedia Tribal Implementation Grants** program to support on-the-ground implementation of environmental protection on tribal lands. These grants, for which \$20

million is requested, are tailored to address an individual tribe's most serious environmental needs. This new grant program will advance negotiated environmental plans, measures, and results as agreed upon by tribes and EPA, thus ensuring that tribal environmental priorities are addressed to the fullest extent possible. An additional \$2.9 million is requested for tribal capacity building and implementation of this new grant program. *NCAI supports this initiative and the proposed FY 2012 levels for grants and implementation.*

The Multimedia Tribal Implementation Grants program will complement the environmental capacity developed under EPA's **Indian Environmental General Assistance Program (GAP)**, for which the Administration requests an \$8.5 million increase, for a proposed FY 2012 level of \$71.4 million. This requested increase will assist tribal environmental programs that have been able to build capacity and mature to take on additional responsibilities. *NCAI supports this requested increase.*

The Administration also requests a 0.5 percent increase – from 1.5 percent to up to 2 percent - for the existing tribal set-asides under both the **Clean Water and Drinking Water State Revolving Funds**. Incremental funding increases will be necessary to meet the overall \$1.2 billion needed to address the reality that over 12 percent of tribal homes lack access to safe drinking water and/or basic sanitation. *NCAI supports the proposed percentage increase for the tribal set-asides under both the Clean Water and Drinking Water State Revolving Funds, and the Administration's proposal to allow tribes the same flexibility that states have to request that the EPA Administrator transfer funds between those accounts for tribal drinking water and wastewater projects.*

Bureau of Indian Affairs

After years of natural resources program cuts, several meaningful increases were provided in FY 2010. An increase of \$12 million was provided for **Rights Protection Implementation**, and \$4 million for **Fish Hatchery Operations and Maintenance**.

Several modest but helpful increases are requested in the FY 2012 budget request. These include \$1 million for Rights Protection Implementation, \$1 million for **Tribal Management/Development**, \$1 million for **Forestry**, \$1 million for **Water Management Planning and Pre-Development**, \$1 million for **Wildlife and Parks**, \$1 million for Wildlife and Parks fish hatchery maintenance projects, and \$500,000 for **Invasive Species**. Even with these increases, the base TPA programs that fund tribes' day-to-day conservation responsibilities: Tribal Management/Development; Natural Resources TPA; Wildlife and Parks TPA; and Forestry are funded at levels lower than they were funded a decade ago. *NCAI also supports these requested increases, and urges sustained and increased in future years, especially given level funding over a number of years for BIA natural resources programs.*

In FY 2012, there is a provision of \$200,000 for **Cooperative Landscape Conservation** to address climate change adaptation in the Northwest. Compared to the \$131 million provided to Interior in FY 2010 and the \$175 million requested in FY 2012 for climate change adaptation, the \$200,000 is woefully inadequate. This amount of funding must be increased as it is well established that tribes are disproportionately impacted by climate change, and tribal lands make up 4 percent of the entire land area of the United States, and 16 percent of the lands managed by Interior. *NCAI supports a significant increase proportionate to the climate impacts on tribal lands and the size of the Indian Country land base to enable tribes to address the impacts of climate change.*

Department of Agriculture

The **Federally Recognized Tribes Extension Program** (FRTEP) supports extension agents who establish programs in agriculture, community development, families and societal issues facing Native Americans. 96% of counties in the nation have an extension program, compared to less than 10% of tribal governments. The budget proposes an increase of \$5 million that would more than double the number of tribes being served by extension services, providing among other things technical assistance to Native American farmers and ranchers, whose numbers have increased over 88% since 2002, and tribal youth in careers and opportunities in agriculture. *NCAI supports this increase.*

Additionally, the budget proposes an increase of \$1 million for **Extension Services at the 1994 Institutions** to conduct an Expanded Food and Nutrition Education Program (EFNEP) pilot in a number of Native American communities through a competitive grant process. Also, an increase of \$300,000 is requested for the **Tribal Colleges Education Equity Grants Program** which is designed to promote and strengthen higher education instruction in the food and agricultural sciences at the 34 Tribal Colleges. The budget proposes \$2.4 million in order to strengthen tribal relations. FY2012 proposes \$250,000 for communication and outreach on tribal land, \$125,000 for the Advisory Council on Native American Farming and Ranching and an additional \$2 million to open additional sub-offices on tribal reservations. *NCAI also supports these increases.*

Support for Tribal Governments

Every tribe in the United States, directly or through intertribal consortia, operates one or more contracts with the IHS or the BIA under the Indian Self-Determination and Education Assistance Act (ISDA, P.L. 93-638). ISDA establishes a critical mechanism to maximize tribal self-determination by moving essential governmental functions from federal agency administration to tribal government administration. The statute requires that IHS and BIA fully reimburse every tribal contractor for the “contract support costs” that are necessary to carry out the transferred federal activities. Cost-reimbursable government contracts similarly require payment of “general and administrative” costs. Full payment of fixed contract support costs is essential. Without this support, offsetting program reductions must be made, vacancies cannot be filled, and services are reduced, all to make up for the shortfall.

For the past 15 years, the Administration has failed to request full funding for contract support cost payments, and the resulting shortfalls have grown. A meaningful increase occurred in FY2010, when Congress made a \$116 million increase for IHS CSC payments and a \$19 million increase for BIA CSC payments. Even still, these increases left a net shortfall of \$100 million in IHS CSC requirements and approximately \$50 million in BIA CSC requirements. NCAI Resolution #ABQ-10-005 calls upon Congress “to finally close the gap in funding contract support cost requirements.”

The FY2010 funding level for BIA contract support costs was \$147 million. The president recommended, and the House appropriations subcommittee approved, an increase of \$15 million in this line-item to \$162 million. *NCAI recommends an increase in this line-item for FY2012 of \$50 million, bringing the total line-item to \$212 million.*

Tribal Grant Support Costs (TGSC) for Tribally Operated Schools

The operation of schools by tribes or locally elected tribal school boards is a major exercise of tribal self-determination, encouraged by federal Indian policy for the last 35 years. Tribes and tribal organizations that exercise this option are entitled by law to receive Tribal Grant Support Costs or TGSC (formerly known as Administrative Cost Grants) to cover the administrative or indirect costs incurred when they take over a school. Currently, 124 of the 183 BIE-funded schools are operated by tribes or tribal school boards. In FY2010 the funding available for TGSC met only 60 percent of need, the lowest rate to date. Given this reality, schools are required to reduce staff to bare bones levels and to divert funds from educational programs to meet their statutorily mandated administrative requirements. *For current contract and grant schools, \$70.3 million should be appropriated to fully fund TGSC need, with an additional \$2 million to fund the administrative needs of those schools that convert to contract or grant status in FY2012, to avoid diverting funds from existing tribally operated schools.*

Bureau of Indian Affairs

The Administration and Congress have listened to the calls from tribes to provide meaningful increases to BIA overall in FY 2010. Efforts have also been made to address tribal priorities in the FY 2012 budget in the face of overall budget constraints. The FY 2012 budget request includes increases for natural resources, law enforcement and courts, and contract support costs. However, from a broader view, BIA and tribes continue to receive less funding increases relative to other bureaus and agencies in the Department of the Interior. For instance, the President's FY 2012 budget requests an increase of \$138 million for the National Park Service (NPS), an increase of \$48 million for the Fish and Wildlife Service (FWS), and a decrease of \$119 million for the BIA. Additionally, over the last nine fiscal years the budget for the FWS has grown by 30 percent; NPS by 28 percent; U. S. Geological Survey by 19 percent; Bureau of Land Management by 13 percent. The BIA has seen the lowest increase of only 8 percent. *NCAI and tribal leaders appreciate that reductions to Indian Affairs funding could have been steeper, but urge this committee and appropriators to reverse this trend and provide an increase to the overall BIA budget to support tribal self-determination and communities throughout Indian Country.*

Conclusion

I thank the Senate Indian Affairs Committee for the opportunity to provide views on behalf of NCAI regarding the President's FY 2012 budget for Indian programs. We understand the very difficult choices that will have to be made to address the soaring budget deficit but would also recommend Congress make alternative efforts to reduce the deficit, not solely by decreasing non-security discretionary funding, which is about 16 percent of federal spending and under which funding for Indian programs falls. Thank you and we look forward to working with this Committee to ensure the federal budget honors the trust responsibility to tribes in the FY 2012 appropriations process.