



# NATIONAL CONGRESS OF AMERICAN INDIANS

## Testimony before the U.S. Senate Committee on Indian Affairs Hearing on Contract Support Costs and Sequestration: Fiscal Crisis in Indian Country

November 14, 2013

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### Introduction

On behalf of the National Congress of American Indians (NCAI), I'd like to thank you for holding this timely and important hearing on contract support costs and sequestration. NCAI is the oldest and largest American Indian organization in the United States. Tribal leaders created NCAI in 1944 as a response to termination and assimilation policies that threatened the existence of American Indian and Alaska Native tribes. Since then, NCAI has fought to preserve the treaty rights and sovereign status of tribal governments, while also ensuring that Native people may fully participate in the political system. As the most representative organization of American Indian tribes, NCAI serves the broad interests of tribal governments across the nation.

### The Solemn Agreements

The federal government has trust, treaty and statutory obligations to Indian tribes. The underpinning of federal spending in Indian Country is based in the treaties that tribes' ancestors signed with the US government. This assistance and goodwill between nations derives from the trust relationship, and is engrained within Article I, Section 8, of the US Constitution. The sovereignty of Indian tribes is being compromised in part due to the lack of the federal government's duty to honor all of its obligations to Indian tribes. Many critical governmental services have been historically underfunded and have failed to meet the needs of tribal citizens as documented by the U.S. Commission on Civil Rights in the Quiet Crisis report, Broken Promises report, by Amnesty International's in their Maze of Injustice report, and gap reports from the Bureau of Indian Affairs and Indian Health Service.

### Threats to Fulfilling the Agreements

Tribes have shared with NCAI their alarm and objections over 1) ongoing sequester reductions to tribal programs as well as 2) the underfunding of contract support costs (CSC) and proposals to limit or to cut off the right of tribes to be paid their full CSC requirements, including the right to secure compensation for any contract underpayments. The FY 2013 sequester and future sequester cuts amount to unpaid bills in Indian Country, which hurt the people who need these services the most – the poorest of the poor throughout tribal communities. This testimony will outline some of those impacts. Underpayment of CSC results in the same impact in Indian Country: unpaid obligations that hurt not only those who rely on tribal services but also undermine the Indian self-determination policies that this Congress and Administration say they so strongly support.

## Contract Support Costs

As the Committee is well aware, the Indian Self-Determination Act requires the government to contract with Tribes to operate BIA and IHS programs, but it also requires that the contract price must include a negotiated amount to cover the tribes' anticipated fixed overhead costs. Those contract support costs cover everything from the cost of property or liability insurance to the costs of personnel management systems, legal costs and even the costs of the audits federal law requires Tribes to perform every year. These are fixed costs, and they are essentially the same thing that other government contractors call "general and administrative costs" (or "G&A costs"). These costs are fixed costs. That means if the BIA or IHS do not pay a Tribe what the contract requires them to pay, then the Tribe has no choice but to take money from somewhere else to cover the costs. Invariably, that means less money to provide the actual services being contracted, whether that be health care or law enforcement or employment and education assistance.

The ISDA system may seem complicated, but it isn't. The Act says that the negotiated contract support costs must be added in full and paid to the Tribe at the beginning of each year. The IHS Manual and a BIA National Policy Memorandum explain the rules for negotiating those costs. The Act then directs that each year the agencies must provide a report to Congress explaining each Tribe's situation and the amount (if any) by which each agency underpaid what was owed to the Tribe. Both agencies' manuals explain how that annual report is to be prepared, who is to certify its accuracy, and how it is to be transmitted to Congress.

For years, Tribes have had claims pending against both agencies over both agencies' failure to honor the contracts and to pay all of the negotiated contract support costs that were due. The Ramah v. Jewell class action lawsuit was filed in 1990, and while two early settlements for over \$100 million settled some early claims, for over a decade most claims for fiscal year 1994 and later years have remained in litigation. Then, in June 2012 the Supreme Court ruled that the government was liable for the unpaid costs over those years, and the Court explained that the liability would now have to be paid out of the permanent Judgment Fund. (That is the fund that Congress established long ago in the treasury to cover the payment of successful government contract claims.)

But payment has not happened. In fact, as far as NCAI can see, nothing has happened. The class action lawyers recently reported to NCAI on the lawyers discussions with the Justice Department. Although they couldn't share much information, they did explain that there are close to 9,000 claim years at issue involving about 500 Tribes and 19 years worth of contracts (1994-2013). The government wants to randomly sample all of those contracts. Then, the government wants to review the audits and books and records of each sampled Tribe, and scrutinize what the Tribe spent. (That assumes the up to 20-year-old records even exist.) Then, the government will figure out the difference between what was spent and what the paid.

This kind of process is guaranteed to take years and years and is simply unacceptable. But just as importantly, it also makes no sense. The Supreme Court looked at just a few of these years (1994-2001). The Court explained that the government and the Tribes agreed that the Tribes had been underpaid by "between 77% and 92% of tribes' aggregate contract support costs" during those years. Ramah, 132 S. Ct. 2181, 2187. Obviously, the Court expected that the remainder of those unpaid amounts would now be paid through the Judgment Fund. That kind of math isn't rocket science, and it doesn't require years and years of trying to sample hundreds of contracts in search of non-existent payment records.

The Supreme Court made it perfectly clear that the issue was what did the BIA fail to pay. And the answer to that question--“between 77% and 92% of tribes’ aggregate contract support costs”—has absolutely nothing to do with how the Tribes spent anything else. The government needs to simply step up and accept the Supreme Court decision and secure from the Judgment Fund the remainder of the “between 77% and 92% of tribes’ aggregate contract support costs” that the BIA failed to pay. That is what the Supreme Court said.

The situation on the IHS side is even worse, if that is possible. According to the IHS Director’s answers to recent questions posed by this Committee, close to 1,600 claim years are currently pending against the agency involving about 200 Tribes and seeking \$2 billion. These include hundreds of unsettled claims that had piled up before the June 2012 Supreme Court decision in the Ramah case, plus hundreds more that were filed after the Ramah decision and before September 30, 2012.

NCAI has learned that of all these claims, over the past 16 months IHS has settled only 16. That’s 16 claims settled in 16 months, or 1% of the 1,600 claims. (These settlements resolved one or more claims filed by the Arctic Slope, Wampanoag, Colville and Poach Band Tribes.) At this rate, it will take 1,600 months to settle them all—well over 130 years. If IHS goes 10 times faster it will still take over 13 years to settle them all. And if the definition of lunacy is continuing to do something that doesn’t work, and just doing it more, this is lunacy.

The IHS Director recently stated in a public meeting that 54 settlement negotiations were underway. I am disappointed to have to report that this is not accurate. Of 20 cases pending in a federal court here in Washington, D.C., only one case is actually headed into a settlement negotiation (next month). The rest are only in the document exchange process. Of 23 cases pending in the U.S. Civilian Board of Contract Appeals, it is true that 19 have been listed by IHS as being in a “settlement” stage, but actual settlement negotiations have only occurred in 6. IHS may have plans to engage in 54 settlement negotiations sometime in the coming year, but nothing close to that volume of negotiations is underway now.

And what about the other 150 Tribes? Are they supposed to wait to 2015? 2016?

Justice delayed truly is justice denied. This kind of obstructionism is justice denied. When the Supreme Court has spoken, not just once but *three* times—in the Cherokee case, the Ramah case, and the Arctic case—then it is time to accept the decision, to deal honestly with the Tribes, and to swiftly wind up the claims.

Just as with the Ramah BIA situation, swift resolution is easily within reach. I say this because IHS and the Secretary have regularly provided the Senate President and this distinguished Committee with IHS-certified and Department-certified data detailing precisely how much of the negotiated contract amounts were, and were not, paid to each Tribe, each year. With the benefit of hindsight, did some of the Tribes negotiate too low? Probably. Did IHS sometimes negotiate too high? Probably. But the amounts were negotiated, and they were negotiated pursuant to IHS’s very strict guidelines. A deal is a deal, and those amounts were then reported to this Committee and to Congress in certified reports. They were then used for government budgeting purposes. And, they were in turn used for the actual distribution of contract support cost appropriations the following year. It is far too late in the day for IHS to start retroactively renegotiating these amounts.

The issue here, plain and simple, is what did IHS fail to pay. The issue is not how the tribes spent the lesser amounts that they were paid. After all, ***you cannot spend what you were not paid.*** Both IHS and the BIA seem unable to understand this simple proposition.

But this Committee understands this precise point, because this Committee made it 25 years ago. In 1988 this Committee enacted the contract support cost provisions of current law, and that is when it also added remedies authorizing the Tribes to recover damages from Treasury's Judgment Fund if those contract support cost amounts were not paid. The Committee explained it was doing this because it was "unacceptable" for the BIA to have successfully argued in the past "that since the contractor had not received the funds it was entitled to receive, it had also not spent them and, therefore, had not incurred any costs which could be recovered as an indirect cost under the contract." S. Rep. 100-274 at p. 37 (1987).

What the IHS and the BIA are doing today in the settlement process is directly contrary to what this Committee intended and what Congress wrote in the Indian Self-Determination Act a quarter century ago. As nearly 100 Tribal leaders have stated to the President, it is time that this litigation was brought to a firm, final and prompt conclusion. In far more contested situations, the Administration has settled historic Indian claims, be it the *Cobell* allotment cases, the *Nex Perve* tribal trust cases, or the *Keepsseagle* Indian farmer cases. There is no excuse for being less cooperative and more obstructive when the matter has received multiple Supreme Court decisions definitively establishing the government's liability.

Just as the stalled settlement process is contrary to the Indian Self-Determination Act, so too is OMB's effort in the FY 2014 budget process to cut off tribal contract rights. As this Committee is aware, OMB is now pressing for an "anomaly" in the continuing resolution or omnibus measure that will fund the rest of fiscal year 2014. The Administration's proposal, first announced last April, is to cap individual contract payments at levels that are lower than the negotiated contract price that is required to carry out these contracts. The purpose behind OMB's proposal: simply to save money by cheating the Tribes.

This action has infuriated Indian country. Two months ago over 50 Tribal leaders wrote to the Appropriations Committees to urge that this misguided proposal be rejected. Last month, 13 Senators led by Senator Begich called upon OMB to withdraw the proposal. Over 80 Tribes wrote the President two weeks ago making a similar call, as has NCAI by Convention Resolution.

Even the U.S. Chamber of Commerce has objected to OMB's proposal, recognizing the dangerous precedent that would be set if the budget is balanced by underpaying government contractors for services duly rendered the United States. Nothing less than the federal government's full faith and credit is on the line when the government looks to save money by underpaying contractors who are performing services.

The current situation cries out for justice, and it cries out for action from Congress.

1. Congress should direct the appointment of a Special Master to promptly resolve all outstanding claims in the Ramah and IHS cases. Ken Feinberg served effectively as a master in far more complicated and tragic settings, including the September 11 Victims Compensation Fund and the BP Horizon Gulf Oil Spill claims, and he or someone else of his stature should be appointed with the necessary authority to resolve the claims.

2. Congress should direct that all claims will be settled before June 2014, the 2 year anniversary date of the Ramah decision. Last July 31st, a bipartisan group of 8 Senators led by Senator Begich urged that these claims be resolved at once. With little to show since then, Congress needs to make this happen now.

3. Congress should amend the ISDA to remove any possible debate over what Congress said 25 years ago: that the issue in all these cases is the amount agencies failed to pay out of the original negotiated contract price. As it did 25 years ago, Congress should reject the agencies' "unacceptable" argument that if the money wasn't paid, it wasn't spent and is therefore no longer due.

4. Congress should reject OMB's counter-attack on the Tribes. As the U.S. Chamber of Commerce has noted, America is not a place where the government cheats its contractors for services duly performed. America does not default on its international obligations, and it must not default on its obligations to the Tribes either. As 13 Senators noted to Director Burwell on September 30th, these contract caps should be withdrawn at once.

To the contrary, now that the Supreme Court has spoken, and now that the Supreme Court has reiterated that tribal contractors are entitled to be paid in full for the work they do for the United States, appropriations must be provided sufficient to pay them. If underpayments persist, a remedy through the Judgment Fund must remain in place. That is the way it is for other government contractors, and there is no basis in law, policy or morality for treating Indian tribal contractors differently.

5. Congress should direct the BIA and IHS to maintain an open process for addressing contract support cost and related issues with Tribes and tribal representatives and experts. Consultation must be meaningful, open, detailed and accountable. Tribal department heads and experts must be part of the process, just as government experts and manager are part of the process. Tribal government representatives must not be forbidden to speak or participate. And if, as IHS has increasingly claimed, the Federal Advisory Committee Act limits how tribal consultation can occur, this Committee should secure immediate amendments to that Act so that full and open and productive consultation is possible.

I have called the "contract support cost" issue a crisis because that is truly what it is. Behind those three words are real services for real people in dire need—services that are being cut off because the agencies have not honored their contract obligations; services that have been reduced because the agencies have treated our contracts as if they were discretionary grants; services that have suffered because the agencies prefer to protect their own internal bureaucracies (as the Supreme Court noted in the 2005 Cherokee case) than to budget what is due under our contracts. The impact upon the Tribes is even worse when those impacts are added on top of the sequester, and when the sequester represents a cut to what is already only one-half of what is required to meet the health care needs of Indian country, and but a fraction of what is needed to deal with housing, education and law enforcement on Indian lands.

NCAI appreciates that some things cannot be fixed in the near term, and that some issues may never get the attention they need. But the contract support cost crisis is not one of them. The Supreme Court has spoken, and the time for firm and swift action is now. NCAI respectfully calls upon Congress to do everything in its power to see that these challenges are met and to see that justice is finally done. The time for delay and injustice is over.

## Common Ground on Sequestration

On Oct. 17, the President signed legislation that avoided a dangerous default and reopened the government after the third-longest government shutdown in history, a shutdown that in itself caused much disruption and pain in Indian Country. The government was funded through Jan. 15, 2014, and the debt limit was extended until Feb. 7, 2014. The law directed negotiators to develop a budget framework by Dec. 13, which would give Congress a month to finish FY 2014 spending bills before government funding authority ends and new sequester cuts take effect on Jan. 15.

Comparing the budget proposals in the House and Senate, both budget resolutions call for changes to the Budget Control Act and to replace sequestration. The House fully replaces the defense cuts, but pays for it by cutting even more deeply from domestic investments. However, the Senate budget replaces all of the sequester cuts. A majority of tribal trust and treaty obligations are funded in the domestic discretionary budget. These treaty and trust investments are throughout the federal budget in the Departments of Interior, Health and Human Services, Housing and Urban Development, Agriculture, Justice, Environmental Protection Agency, and others. Sequestration is handicapping all of these agencies in their ability to fulfill their duties to tribes. In FY 2014, non-defense discretionary funding will be nearly 18 percent below FY 2010 levels adjusted only for inflation as a result of cuts made in the FY 2011 appropriations process and the Budget Control Act, including sequestration.

***Tribes urge Congress to replace sequestration and avoid cutting even more deeply from key domestic investments, which include the solemn duty to fund the trust responsibility. If Congress cancels sequestration cuts to defense spending, the same dollar-for-dollar protection must be provided to non-defense discretionary programs. Congress must not simply replace defense sequestration cuts with cuts to non-defense programs. Absent specific exemptions for BIA, IHS, and other tribal programs, Congress must reach a deal to turn off sequestration entirely because it breaks trust and treaty obligations.***

The United States should be a nation that meets its promises, not only to veterans and elders, but also to Indian tribes. Tribal programs are not charity or an entitlement: tribes prepaid for these services. Tribes have made some progress in addressing unacceptably inadequate public services that most Americans routinely take for granted, like law enforcement, education, and infrastructure development.

Federal appropriations for Indian Country programs did not create the national debt. Imposing ongoing sequester cuts on tribal programs will not balance the federal budget. What continuing sequester level funding in FY 2014 will do is set back by decades tribal and national goals and objectives for Indian Country to improve health care, public safety, housing, education, infrastructure and economic development.

## Loss of Critical Governmental Services

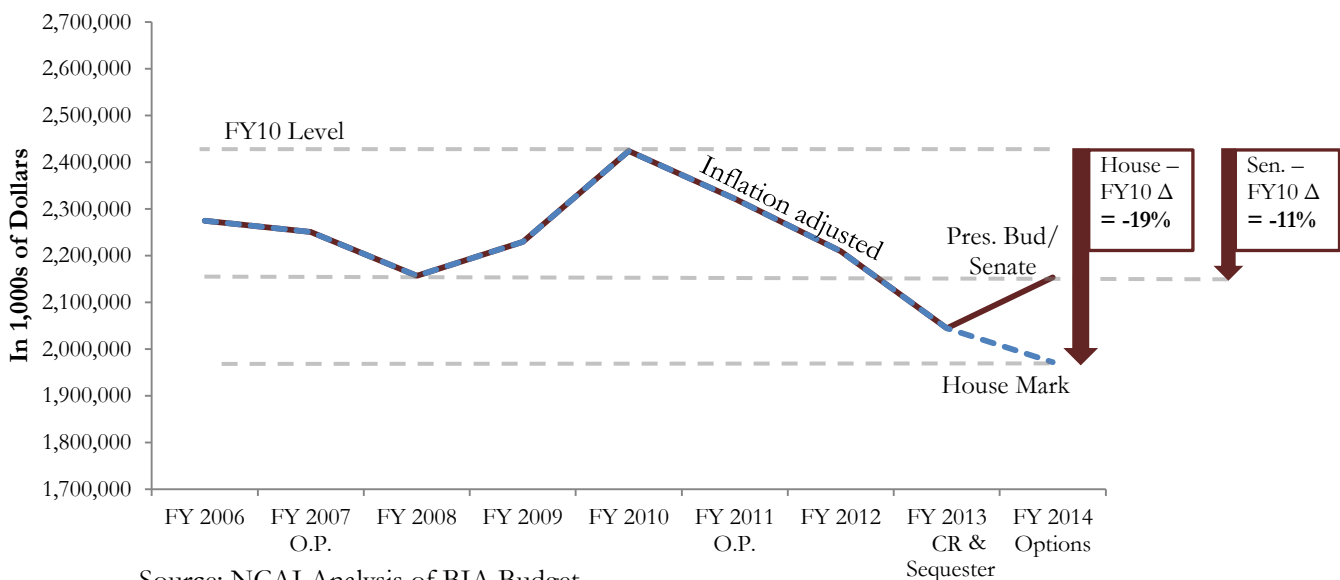
In their role as governments, tribes deliver all the range of services that other governments provide. Tribal governments maintain the power to determine their own governance structures and enforce laws through police departments and tribal courts. Tribes provide social programs, first-responder services, 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.

## A Closer Look at the Bureau of Indian Affairs

The BIA provides funding for core tribal governmental operations. These government funds provide much-needed investments in tribal physical, human, and environmental capital. The amount that was provided for non-defense discretionary programs in the House budget resolution was simply way too low for Congress to invest in Indian Country the way policy makers in the House have said they would like to for FY 2014. The trend in BIA funding is similar for many other agencies that meet trust and treaty obligations to Indian tribes.

Accounting for inflation, the House proposed level would drop critical tribal governmental services to 19 percent below the FY10 level (see figure 1). BIA funding even at the Senate proposed level of the draft FY 2014 Interior appropriations bill would still be lower than the FY 2008 or FY2006 level. Adjusting for inflation, the Senate level is still 11 percent below FY10. ***These reductions completely erase the gains that have been made in the last few years that have been supported by both the Congress and Administration.***

**Figure 1. Bureau of Indian Affairs, FY 2006 – FY 2014, House versus Senate**



Sequestration should not be the status quo. The FY 2013 sequester already reduced BIA by \$119 million. If the conference committee does not find any agreement, the status quo of a FY2014 full year Continuing Resolution will result in another 2.2 percent reduction to BIA funding beyond the current 5.04 percent cut in FY 2013 (according to BIA projections under a year-long CR in which sequestration is not cancelled or replaced for FY 2014). This means that in FY 2014, BIA would be cut another \$52 million on top of the \$119 million already cut in FY 2013.

Under the House budget, the FY 2014 House Interior appropriations bill would fully fund contract support costs (which is very strongly supported across Indian Country), and construction would increase. But under the House allocations, those increases come at the expense of a 19 percent across the board cut to all the other BIA programs. This is clearly unacceptable, unsustainable, and unrealistic.

## Sequestration and Education

Head Start: Impacts to Indian education are some of the most tragic results of reductions already imposed by FY 2013 sequestration to tribal programs. 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.

The impact on families will be substantial due to the lack of important services provided by Indian Head Start programs across Indian Country. Most of the families served by Head Start meet the income guidelines of being at or below the poverty level. For many children and families, Head Start provides access to resources beyond the educational benefit of being in a learning environment with their three and four year old peers. How each child is doing in all phases of their cognitive, social, emotional, and physical wellbeing, and how well they relate to their overall environment are critical in future success. Head Start also provides preschoolers with breakfast and lunch, and teaches them basic hygiene, such as brushing their teeth.

### ***Sequester Impacts on Indian Head Start***

- The September 2013 start date for all Tlingit & Haida Head Start Classrooms will be delayed due to sequestration that went into effect March 1, 2013. The delayed start date will also impact the return to work for all Tlingit & Haida Head Start employees by a total of three weeks. Other options included possibly closing a center, reducing the number of children and families served, or reducing hours worked per week by all employees. All employees are impacted by the cuts including administrative staff who will be taking leave without pay over the summer months and between now and the end of December.
- The budget cuts will reduce classroom days by close to 10 percent. It will also lower hours – and pay – for Tlingit-Haida 55 staffers.
- At the Catawba Indian Nation Head Start in South Carolina, the sequester is devastating their Head Start program. The program is downsizing from five days of service to four days for the summer. The director is concerned about meals. The program serves two meals a day. On Fridays, will the children have a meal? Will they be watched by siblings or adults? Every weekend this summer will be a three-day weekend and we're not sure the children's basic health and safety needs will be met.
- The Confederated Tribes of Siletz Indians Head Start program closed one week early this year and start two days later next, and they will need to cut supplies to classrooms and teacher training dollars. If the cuts continue in FY14, it could impact enrollment.
- Head start is the largest tribal program on the Rosebud Reservation and serves more than 300 children. To cope with a cut of nearly \$130,000, the tribe's head start administration will take a two week furlough this summer. Teachers in Rosebud's 16 classrooms will also be on leave for seven days during the 2013-2014 school year.

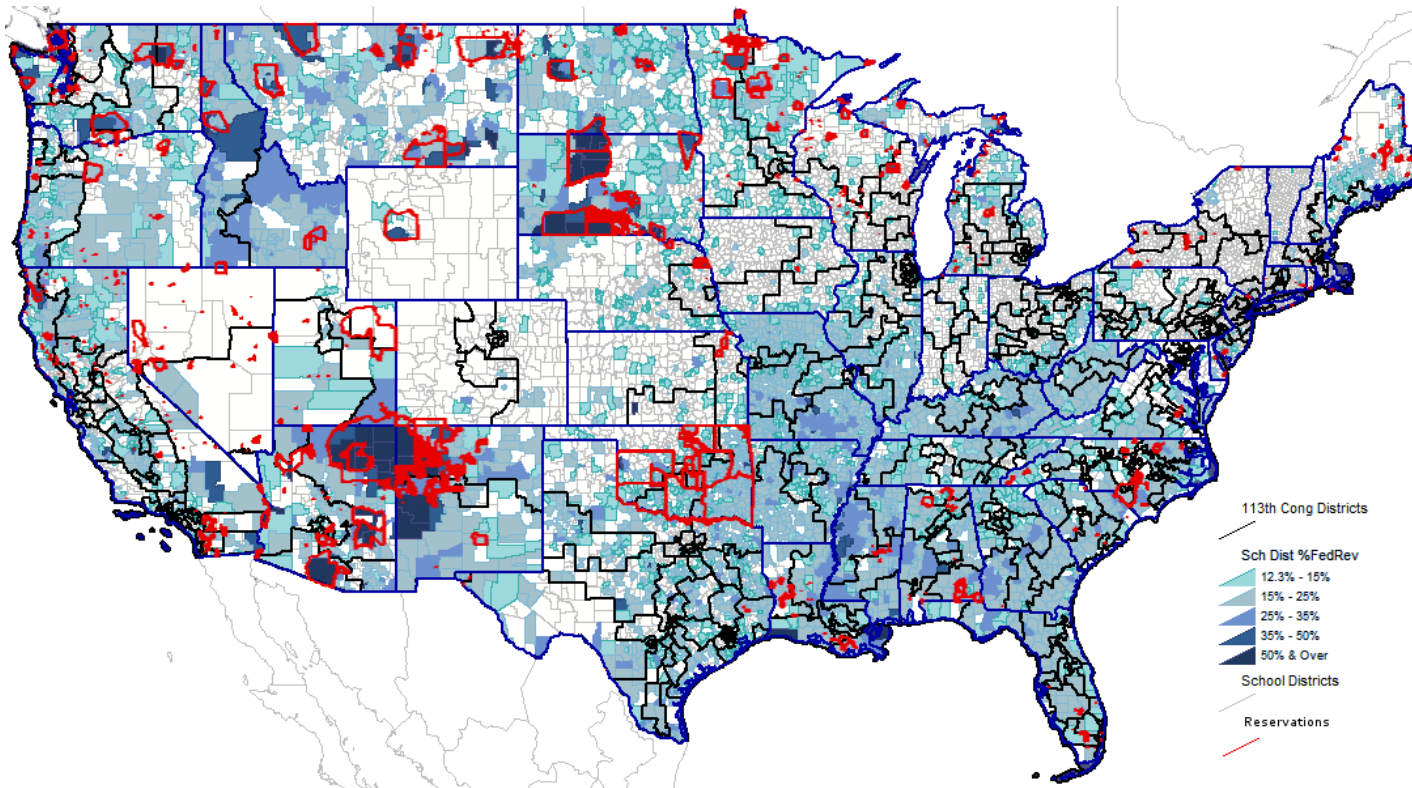
Impact Aid: Federal dollars help pay for education in Indian Country — a major function that makes up a basic building block of the economy. A majority of Native students attend public schools. During the 2010-11 school year, there were 378,000 AI/AN (alone) students in the U.S. public school system. During the same period, there were 49,152 students in Bureau of Indian Education Schools.

The impact of sequestration will vary district to district and state to state for school districts. Federal revenues vary in proportion for overall school operating budgets. Those districts where the federal



revenues are a larger portion of their overall operating budget will feel a deeper impact. Figure 2 shows a map of school districts nationally and their respective proportions of federal revenue for their school budgets, with the darker blue districts having federal revenues chipping in more than 50 percent of their budgets.

**Figure 2. School Districts: Federal Funding as a Percentage of Total Revenue**



Across the nation, federal dollars represented 12.3 percent of school revenues in FY10, on average. In most school districts, education is funded largely by state and local governments, with the federal government contributing between 10 to 20 percent. However, schools on Indian reservations and military bases are on tax-exempt land. Unable to raise funds from taxes, Indian reservation and military schools depend more heavily on federal aid. In addition to funds for poor and disabled children, schools on federal land also receive Impact Aid, intended to make up for the lack of property-tax revenue. Nearly the entire top 25 districts nationally who are most reliant on federal funding are on or adjacent to Indian reservations, which is largely due to the funding received through Impact Aid. Unlike other Department of Education programs, Impact Aid is not forward funded, meaning the funding cuts will take effect in the middle of the current 2012-2013 school year. The over \$60 million in cuts to Impact Aid will directly affect the operation of 710 schools and the services provided to approximately 115,000 Native students.

Many of these schools are counting on those funds to meet the basic needs of students and to pay teacher salaries this spring, potentially forcing districts to make wrenching, mid-year adjustments. In New Mexico for example, the Gallup McKinley County Public Schools would lose about \$2 million of the funds from Impact Aid, which could affect as many as 6,700 students who live on tribal lands. Impact Aid funds make up 35 percent of that district's total budget.

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.

### ***Impact Aid Cuts in Indian Country***

#### Navajo, Arizona – cutting 65 staff positions

- The Window Rock Unified School District in Arizona gets just under 60 percent of its funding from federal aid. This year it eliminated about 65 staff positions through attrition and cut down its buildings from seven to four. If sequestration continues, it will have to close schools, many of which are in areas of high unemployment and poverty.

#### Blackfeet Tribe, Montana – No Repairs, May Layoff Teachers

- Heart Butte in Montana, which gets over half of its funding from the federal government, cuts have forced the district to hold off on all repairs this school year. That means that there are leaks, no hot water, roofs that need patching, buses in neglect, and a playground that doesn't comply with regulations. The school needs to install new doors and safety gates, but that is also on hold. If sequestration continues, they may have to lay off teachers.

#### Fort Belknap, Montana – Vacant Counseling Spots, Cut Paraprofessionals, Secretaries, Cooks

- The Hays/Lodge Pole school district in Montana is unable to fill a counseling spot even as youth suicides are on the rise. It also had to cut paraprofessionals, all secretaries but one, and cooks' helpers. After next year, school officials say there will be nothing left to cut.

#### Standing Rock Sioux, South Dakota – Staff Cuts and Cuts to Music Program, P.E. and Admin

- The McLaughlin Independent School District in South Dakota, which gets two-thirds of its budget from federal funding, has already implemented changes for the current school year: reducing staff to one teacher per classroom for grades three through five and cuts to the music program, P.E., and administrative positions.
- The school also used to have a bus to take students home after sports practice -- some children live 20-25 miles away -- but that service is now also gone.
- Until last year, the district offered summer school, like so many others do around the country. But McVay just doesn't have the resources to do so anymore, thanks to sequestration, and the program has been eliminated.

#### Fond du Lac Ojibwe School in MN – staff layoffs, limited salaries, difficult to hire quality teachers

- Even in the best of times, hiring quality employees is difficult because the school is limited in what it can offer for salaries; sequestration is compounding that problem.

### 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.

### ***Sequester Impacts on Public Safety***

- 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?”<sup>1</sup>

### Federal Bureau of Investigation (FBI)

The federal government plays a major role in prosecuting crimes committed in Indian country, which 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.<sup>2</sup> 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.<sup>3</sup>

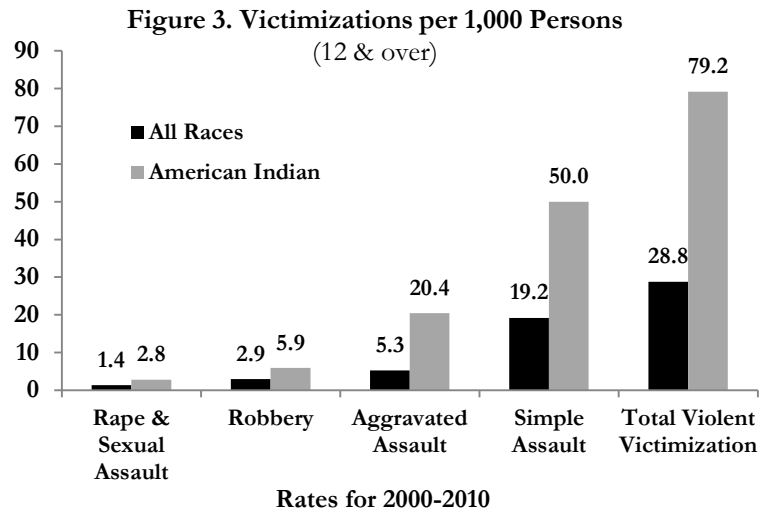
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<sup>1</sup> April 24, 2013, U.S. House of Representatives Committee on Appropriations Subcommittee on Interior, Environment and Related Agencies Testimony on American Indian/Alaska Native Programs By Kevin C. Keckler, Tribal Chairman

<sup>2</sup> U.S. Government Accountability Office, U.S. Department of Justice Declinations of Indian Country Criminal Matters, REPORT NO. GAO-11-167R, at 3 (2010).

<sup>3</sup> May 31, 2013, Associated Press, "US attorney says sequester may hurt Indian safety"

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.



### ***Sequester Impacts on FBI in Indian Country***

- Training has stopped for recruits at Quantico and the FBI is not planning on bringing in any new agents next year, all because of sequestration. Moreover, new intelligence investigations are not being opened; criminal cases are being closed; and informants cannot be paid. There is not enough funding for agents to put gas in their cars.
- According to news reports, rationing gas for agents has especially dire consequences in Indian Country. “No gas means cases don’t get worked — period,” said an agent who investigates crimes on an Indian reservation. “Nothing is close to anything on the reservation. Witnesses and victims don’t have phones. We have to drive to them. Fewer guys — fewer cases get worked. That is the cruel truth.”<sup>4</sup>

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.

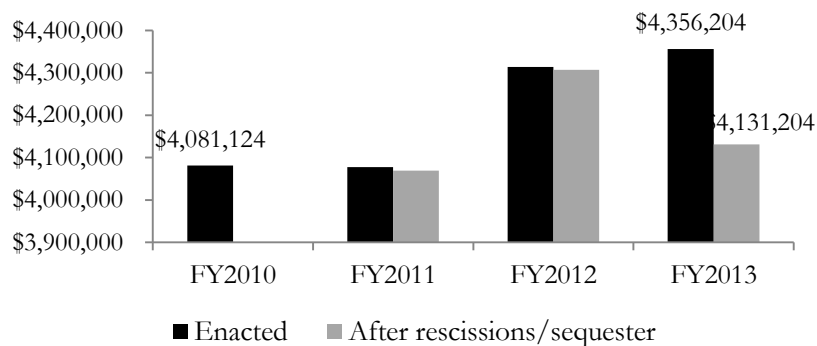
### Sequestration and Health Care

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.***

<sup>4</sup> September 27, 2013, Washington Post, “New FBI Director James B. Comey stunned by impact of sequestration on agents in the field”

Tribes across the country are forced to subsidize the federal trust responsibility to make up for these draconian cuts. Tribes everywhere are cutting services to their health systems and closing operating hours. The IHS is already only funded at 56 percent of total need, and American Indians/Alaska Natives already experience greater health disparities than other parts of the country.

**Figure 4. IHS Funding FY 2010-2013**  
(Dollars in Thousands)



### ***Sequester Impacts on IHS***

#### Yukon-Kuskokwim Health Corporation

- The Yukon-Kuskokwim Health Corporation (YKHC) administers a comprehensive health care delivery system for 58 rural communities in southwest Alaska. The system includes community clinics, sub-regional clinics, a regional hospital, dental services, mental health services, substance abuse counseling and treatment, health promotion and disease prevention programs, and environmental health services. The Region is approximately 58,000 square miles (roughly the size of Oregon) and encompasses 58 federally recognized tribes. Residents practice a subsistence-based lifestyle, with hunting, fishing and gathering providing the vast majority of their food. The region is larger than 25 states in the nation combined. It is also one of the most economically challenged regions in Alaska and the United States.
- YKHC lost approximately \$4.3 million as a result of the FY 2013 sequester. For our next fiscal year, unless Congress eliminates the budget sequester, YKHC expects to lose additional \$3.4 million for a total of \$7.7 million over the last two fiscal years.
- Sequestration resulted in laying off nearly 50 employees. About half of the 50 laid off workers may be transferred. YKHC is also eliminating 44 positions that were vacant and considered non-essential. The corporation eliminated its summer hire program which often employed college students wanting to make seasonal money.

#### Klamath Tribes

- Five Directions, an alcohol and drug treatment center for Native American teens run by the Klamath Tribes, is closing. It was one of 11 such centers nationwide serving Natives from Oregon, Washington and Idaho.
- Without Five Directions, the closest treatment center for local youth is in Spokane, Wash.
- Klamath Tribal Health will have to lay off six to eight employees. The rest of the staff will be absorbed into the health center, some to the Youth and Family Guidance Center, the outpatient clinic that will be expanded to compensate for Five Directions' closure.

#### Spokane Urban Clinic

- The NATIVE Project in Spokane, Washington (a Native American Urban Clinic) will implement three furlough days a month. This will mean the elimination of roughly 150 doctor visits.

### South East Alaska Regional Health Consortium

- The South East Alaska Regional Health Consortium announced it will close the Bill Brady Healing Center that provides alcohol and drug treatment to Native Alaskans.

### Pine Ridge

- The health education program will cut a full time physical fitness aid to part time – this will dramatically affect prevention of heart disease and diabetes. Topics where there is no additional money – HIV, teen pregnancy, suicide prevention, bullying, chronic care and case management
- Hearing tests for elders and babies have cut days for hearing testing and screening as well as supplies for patients
- Health Administration will start the new Fiscal year with no funds for outreach and there will be no case management for chronically ill
- Alcohol management program (Anpetu Luta Otipi) is assessing how they will continue full time treatment cycles

### Natural Resources

Land and natural resources have always been central to tribal cultures and economies. The federal government has fiduciary trust responsibilities to protect the productivity of the trust corpus and ensure fair value and a full accounting of proceeds from utilization. There are trust and legal responsibilities to protect the rights of Indians in their trust property and those rights affecting trust property that are afforded by tribal sovereignty (water rights, land titles, boundary disputes, trespass, hunting and fishing, zoning and land use).

Funding for natural resource management has long been inadequate. Even without sequestration, \$100 million is needed annually to provide the minimum base level funding needed to fulfill trust responsibilities for Indian forestry; 800 staff positions are needed, vacancies can't be filled; threats of wildfire, insects, and disease are increasing; costs of fractionation (administration and difficulty of productively using trust resources) are accelerating; lack of funding to manage fee lands that have been returned to trust status.

Failing to properly manage natural resources results in costly consequences. \$1 billion has been spent on Cobell-like trust settlements with tribes, at least partially due to the failure to fulfill fiduciary trust obligations for natural resources. This is but one of a host of settlements resulting from litigation over mismanagement of trust resources. Improper management also results in lost jobs and diminishment of natural resource health and productivity. This leads to loss of access and use of traditional foods and medicines, which in turn increase health care and costs of living. Sequestration will make matters worse, making current funding and staffing shortfalls to widen.

There are also insidious impacts of sequestration. The impact to the workforce will be early retirements and loss of expertise. Reductions in force and positions, hiring freezes, furloughs, pay cuts, and inability to provide pay cost increases or provide compensation for required overtime will cause services to suffer. Staff are being exhausted from added physical, financial, and emotional stress due to increased workloads. The uncertainty of stable funding increases the difficulty of recruitment and retention of qualified staff. Sequestration is making worse the lack of funding needed (IFMAT stated that an additional \$12.7 million needed annually) to develop and maintain workforce capability through training and education.

Funding uncertainty reduces the ability of tribes to undertake long-term programs and make investments to protect and develop natural resources. Tribes are being forced to try to support natural resource programs by piecing together funding sources and projects, which increases costs of administration and adversely affects program effectiveness and continuity.

Sequestration is resulting in lost opportunities. Inability to secure administrative and environmental clearances reduces the ability of tribes to take advantage of market opportunities. Sequestration reduces the ability to develop resource-based enterprises (e.g., projects that would contribute to US objectives of energy independence and security). Travel restrictions are reducing the ability to provide on-the-ground services and work with tribes.

Sequestration is resulting in deteriorating infrastructure. Loss of commodity production from federal forestlands is contributing to the loss of harvesting, transportation, and manufacturing infrastructure, reducing the ability to defray costs of management (income and forest management deductions), values of materials harvested to generate income and provide governmental services, and employment and business opportunities. Tribes may have to increase reliance on natural resource extraction. Reductions in jobs, income, and community assistance programs increase demands to harvest natural resources to meet daily needs.

## **Economic Conditions**

### Employment Sectors

Sequester reductions in FY 2013 and beyond will likely affect employment in Indian Country more harshly than for other communities. 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.

### 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.

### 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

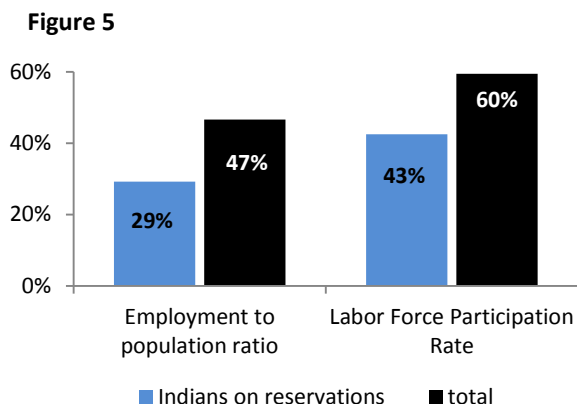
Alaska, representing more than 27,000 tribal citizens, attracted between \$25 million and \$27 million in annual funding to the region to support 200 programs and services that enhance the lives and well-being of tribal citizens, families, and communities. These services affect employment, health, education, 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.<sup>5</sup> 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.<sup>6</sup> 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.”<sup>7</sup>

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.



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.

<sup>5</sup> McDowell Group, *Contributions of Central Council Tlingit and Haida Indian Tribes of Alaska*, (Juneau, AK), March 2010

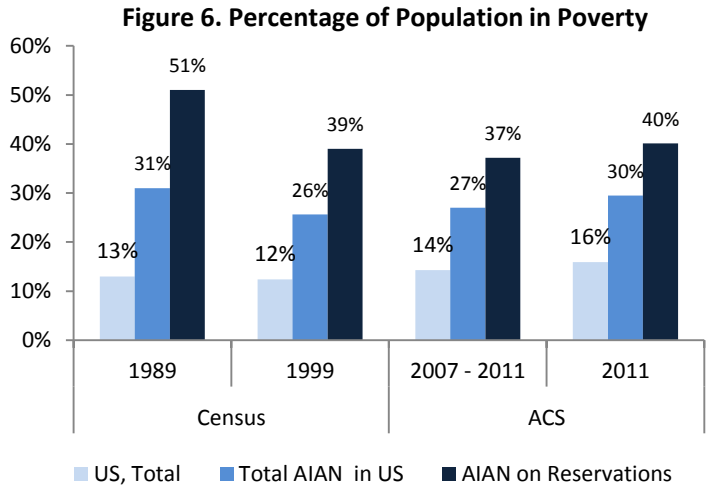
<sup>6</sup> Steven Peterson, *2010 Economic Impacts of the Five Tribes of Idaho On Idaho's Economy*, 2010

<sup>7</sup> Peterson, 2010



## 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.



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

***Absent specific exemptions for BIA, IHS, and other tribal programs, Congress must reach a deal to turn off sequestration entirely because it breaks trust and treaty obligations. Tribes urge Congress to replace sequestration and avoid cutting even more deeply from key domestic investments, which include the solemn duty to fund the trust responsibility. If Congress cancels sequestration cuts to defense spending, the same dollar-for-dollar protection must be provided to non-defense discretionary programs.*** 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.