



NATIONAL CONGRESS OF AMERICAN INDIANS

OVERSIGHT HEARING on the President's Fiscal Year 2013 Budget for Native Programs

Thursday, March 8, 2012
2:15PM
Senate Dirksen Building 628

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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 2013 budget. Full funding of the federal government's trust, treaty and statutory obligations to tribes remains a bipartisan goal for Indian Country. Tribal leaders and NCAI urge investments in the programs that promote government efficiency and more program flexibility for tribes, in addition to low- and no-cost solutions for strengthening tribal and rural economies in this period of fiscal challenges. Congress must sustain funding for tribal self-determination, which is critical to the economic foundation of Indian Country. That fact that most tribal programs fall into the category of discretionary domestic funding has no bearing on the United States' trust responsibility to tribes and should not stop Congress from adequately funding them.

In preparation for the President's budget, some agencies have consulted with tribes about programs in the budget. Recommendations from Indian Country that were included in the President's FY 2013 proposal include increases for contract support costs, some natural resource and environmental protection programs, public safety initiatives, and contract health services. While the Administration's budget proposal maintains support for many critical programs, some cuts proposed represent significant setbacks to progress in Indian Country, such as for education construction.

NCAI looks forward to working with this Committee to ensure that the federal programs that fulfill the trust responsibilities to tribes receive bipartisan support in the appropriations process. Tribes look forward to contributing to the economic recovery, but to do so, tribes must assume their rightful place as full partners in the American family of governments. Given the historic disparity in resources for tribal governments compared to similarly situated governments, now is not the time to retreat from fulfilling the promises made to tribes.

Overarching Recommendations

Indian Country recognizes the state of the economy, the pressures on government at all levels, and the related challenges for job seekers. Tribes have been doing more with less for generations. We take over responsibility to manage federal funds as seriously as we do the federal trust responsibility to provide them, and we propose the following general recommendations for the FY 2013 budget.

- 1) Continue to promote the successful and efficient initiatives in Indian Country that work, such as Self-Determination programs. Critical to implementing these policies are the Bureau of Indian Affairs (BIA) funding streams for Tribal Priority Allocations, Contract Support Costs at BIA and the Indian Health Service (IHS), and Tribal Grant Support Costs for tribal schools.
- 2) NCAI urges support for programs that maximize the federal tax dollar, such as the 477 program. In the administration of the 477 Act, tribes urge the continuation of funding through Indian Self-Determination and Education Assistance Act agreements and contracts and relief from the reporting obligations instituted by the Office of Management and Budget Circular A-133.
- 3) Tribes urge Congress to support legislation that will fully restore the Secretary of the Interior's authority to take land into trust for tribes.

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 2013 appropriations process and exempted from across-the-board rescissions. NCAI also requests that the Indian Country FY 2013 Budget Request document be entered into the record.

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 made 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

Although they have taken various forms, the public safety problems that plague tribal communities are not new. They are the result of decades of gross underfunding for tribal criminal justice systems, a painfully complex jurisdictional scheme, and a centuries-old failure by the federal government to fulfill its public safety obligations on American Indian and Alaska Native lands. In recent years, tribal leaders from across the nation have highlighted the shortcomings in the current justice system in numerous formal consultations, informal dialogues, conference calls, meetings, and Congressional hearings surrounding issues of public safety and justice in Indian Country. At every turn, they have emphasized that the current lack of resources for law enforcement on tribal lands poses a direct threat to Native citizens and the future of Indian Country. However, these words seem to have fallen on deaf ears. Even the 2010 passage of the Tribal Law & Order Act (TLOA) has not prompted Congress to invest more money in public safety on reservations. In fact, in the recently passed FY 2012 Consolidated and Further Continuing Appropriations Act, making appropriations for Agriculture, Commerce, Justice, Science (CJS) and Transportation-Housing and Urban Development, lawmakers not only removed the proposed 7 percent tribal set-aside from discretionary Office of Justice Programs (OJP) programs—which has previously been supported by both the House and Senate CJS Committees—but they slashed funding for tribal justice programs across the board.

Department of Justice

The President's FY 2013 Budget requests approximately \$345 million for public safety initiatives in Indian Country, with a total of \$156.8 million set aside for tribal grant programs within the Department of Justice (DOJ). While this is a significant overall decrease compared to the President's FY 2012 DOJ request, the tribal grant program funding numbers are still more than the approximate \$123.9 million FY 2012 enacted level, demonstrating the Administration's continued commitment to improving the criminal justice system on tribal lands.

Similar to last year's request, the Department again proposes bill language for a **7 percent tribal set-aside** from all discretionary **Office of Justice Programs (OJP)** programs to address Indian country public safety and tribal criminal justice needs. Under the FY 2013 request, the 7 percent set-aside totals \$81,375,000—more than a \$20 million decrease from last year's request. 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. The Department proposes to eliminate bill language contained in prior years' Appropriations Acts that outlined 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 percent 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.**

Approximately \$40.5 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 women for the crimes of domestic violence, sexual assault, dating violence, and stalking on tribal lands. Of these funds, \$35,320,000 (a \$50,000 increase over FY 2012 enacted levels) is requested for disbursement through the VAWA Tribal Government Grants Program, while \$3,605,000 would 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 an Indian Country Sexual Assault Clearinghouse that will offer a one-stop shop for tribes to request free on-site training and technical assistance. The FY 2013 budget request also sustains funding for Analysis and Research on Violence Against Indian Women at \$1 million.

Unfortunately, the FY 2013 budget request for tribes under the **Community Oriented Policing Services (COPS)** program to fund tribal law enforcement expenses is funded at \$20 million, the same as the FY 2012 enacted amount but much lower than it was just two years ago. Moreover, the \$42 million that the President requested for tribes under the COPS Hiring Program in FY 2012 has been reduced to just \$15 million for FY 2013. These funds are critical for the hiring and retention of tribal law enforcement officers.

While the DOJ FY 2013 Budget Request may total less than last year's request, it still provides tribes with more flexibility in how they spend their DOJ grant dollars. **NCAI commends the Justice Department's continued commitment to tribal self-determination and the improved administration of justice on Indian lands.**

Public Safety Resources at the Department of Interior

NCAI also supports the Department of Interior's Protecting Indian Country Initiative and the Priority Goal to reduce violent crime in Indian communities. Last year, the Department of the Interior launched the Safe Indian Communities Initiative, a two-year program that included targeted community policing on four reservations, and the program has achieved successful and encouraging results. Since its inception, there has been a 35 percent overall decrease in violent crime across the four tribal communities. With an initial target of reducing violent crime by at least 5 percent, the initiative far exceeded this goal, achieving a 68 percent decrease in violent crime at the Mescalero Reservation in New Mexico, a 40 percent reduction at Rocky Boy in Montana, and a 27 percent reduction in violent crime at Standing Rock in North and South Dakota. The successful program is now being expanded to two additional reservations: the Rosebud Sioux Reservation in South Dakota and the San Carlos Apache Reservation in Arizona. Indian Country would like to see it expanded even further—to reach even more tribes—and we would like to see Congress appropriate adequate funding to ensure the Initiative's continued success. **This Initiative has been a proven success, and these are the types of efforts that can make a real difference on the ground level, provided there is funding available to pursue them.**

Law enforcement infrastructure, including basic police protection and tribal courts on tribal lands, is 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. Tribes have some of the most valuable resources in the nation— natural and human—and tribal lands are prime locations for new business ventures and economic development. Yet, issues of perceived safety on the reservation continue to hinder successful growth of tribal economies. Increased and targeted funding in tribal law enforcement and tribal court development will not only have a huge impact on safety in tribal communities, it will help attract new business to tribal lands and will ensure that tribal law enforcement officers, emergency responders, and justice personnel are able to find work in the communities that most need their services.

Department of Homeland Security

Tribes have daunting responsibilities to protect their lands and people from homeland security threats and initiate protective measures similar to the states. Although the states have received billions of federal program dollars, tribes have only in the last 4 years made progress in accessing bare minimum grants. The Department of Homeland Security (CHS) Tribal Homeland Security Grant Program (THSGP) administered by the Federal Emergency Management Agency (FEMA) was created to provide tribal direct funding to implement preparedness initiatives to help strengthen the nation against risk associated with potential terrorist attacks and other hazards.

The enacted FY 2012 budget for the DHS Tribal Homeland Security Grant Program (THSGP) was cut 40 percent and the level of funding proposed for FY 2013 THSGP is unclear as this grant is proposed to be part of a National Preparedness Grant Program (NPGP). NCAI also is concerned as the NPGP was developed without tribal consultation and will use revised grant criteria which is more favorable to states. **The NCAI recommends that no further action be taken on the proposed FY 2013 National Preparedness Grant Strategy until DHS has provided, under Executive Order 13175, outreach and consultation with tribal governments.**

The FY 2013 budget proposes to eradicate the THSGP and there are no other grants that specifically acknowledge tribal government eligibility in any DHS programs. Previous grant programs for which tribes have been eligible will be absorbed into the National Preparedness Grant Program (NPGP) and contain state-favored criteria and a state-managed process. THSGP grant criteria is more focused on Threat Hazard Identification Risk Assessment (THIRA) and hazard specific assessments on a regional basis. The administration's FY 2013 budget strategy and the accompanying grant eligibility criteria was developed in consultation with state governors and state emergency managers to the exclusion of tribal leaders and tribal emergency managers. The proposed changes are an affront to tribal sovereignty and even more detrimental to tribes as the states also will be administering the grants.

FEMA will base funding allocations on prioritized core capabilities. The tribes have not had the same opportunities to increase homeland security capacity-building that the states have had through several years of DHS funding to increase and enhance their homeland security program infrastructure. Another portion of DHS funding that will be competitive states that all jurisdictions applying for these funds must affirm membership in the Emergency Management Assistance Compacts (EMAC). Few tribes are signatories of these compacts created by and primarily for states. Although forming EMAC-like collaborative partnerships are beneficial in providing resources and assistance which governments can use during emergencies the majority of tribes have yet to enter into these compacts for various reasons related to capacity, jurisdiction and sovereignty.

Human Services

Indian Health Service

The President's budget request demonstrates the Administration's ongoing commitment to Indian Country – and in the case of health care – the recognition of the trust responsibility for providing health care in perpetuity to all American Indian and Alaska Native people. The increase of \$116 million in the Indian Health Service (IHS) budget request was a confirmation of that commitment.

Tribal leaders annually, through the National IHS Tribal Budget Formulation Workgroup, provide IHS with tribal leader priorities for the upcoming Fiscal Year. We applaud the Administration for including targeted funding increases that have long been a priority for the Workgroup. For example:

- \$20 million increase in Contract Health Services. Contract Health Services funds are necessary to purchase health care services where direct IHS and tribal health care is non-existent or unavailable and supplemental funds are needed to provide comprehensive care. IHS estimates that this increase will provide an additional 848 inpatient admissions, 31,705 outpatient visits, and 1,116 one-way transportation services.
- \$49 million increase in Staffing and Operating Costs for New Facilities. This request will fund the staffing and operating costs for six newly constructed health centers scheduled to open in FY 2013, including three Joint Venture projects. In addition, the request will complete the funding requirements to staff and operate two Joint Venture projects scheduled to open in FY 2012.

- \$5 million increase in Contract Support Costs. The increase will be applied to the Contract Support Costs shortfall associated with ongoing contracts and compacts with tribes and tribal organizations under the Indian Self Determination and Educational Assistance Act. A recent estimate of the shortfall for Contract Support Costs at IHS is between \$70 and 80 million. Tribes and NCAI continue to urge the agency to provide the full amount required to pay these costs.

While these increases are much needed, we must be clear that the IHS budget remains woefully short of providing full funding to the IHS system; and only full funding will ensure that parity is achieved in our healthcare system. Providing funding increases that takes into account population growth and inflation so that current services can still be provided is an important budget principle.

Tribal leaders provided Congress and the Administration a blueprint to bring parity to Indian people. The Indian Health Care Improvement Act (IHCIA) includes programs and services designed to bring the IHS into the 21st century. However, as we all know, authorization only creates the program, appropriations are needed to fulfill its promise. Currently, there are twenty-three unfunded provisions in the IHCIA. Provisions that will provide opportunities for tribes to build tribal capacity, infrastructure, and most importantly – access to health care services.

Bureau of Indian Education

The FY 2013 budget request for the Construction program is a reduction of \$17.7 million below FY 2012. The request cuts \$17.8 million, eliminating new school construction funding. Indian Affairs will focus on improving existing school facilities as part of the Department's strategic approach to not fund new construction in FY 2013. The total FY 2013 request for Education Construction is \$52.9 million. NCAI urges this Committee to help us restore funding for new school construction.

All students in America deserve a safe, secure, and culturally appropriate environment in which to attend school. As cited in the draft No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee Report, numerous research studies have noted the link between inadequate facility conditions and poor performance by students and teachers. The Report also underscored the fact that the quality of the school environment impacts student behavior, test scores, and teacher retention, among other issues.

As of December 31, 2009, an estimated \$1.34 billion was needed to bring 64 schools ranked in "poor" condition, meaning in significant need of repair, up to "fair" condition. Continued inadequate support for school facilities will cause the unmet need for construction and repair funds to balloon. Equally disconcerting is that the FY 2013 budget directives could result in the continued elimination of funding for replacement school and replacement facilities. Delaying the replacement and repair of existing facilities not only jeopardizes student and staff safety, but also increases the amount of school funds that must be diverted to emergency repairs and other facilities maintenance—accounts which are also extremely underfunded. **NCAI urges this Committee to help us restore funding for new school construction.**

Natural Resources

The vitality and sustainability of natural resources is integral to the health of American Indian and Alaska Native peoples, communities, cultures, and economies. It also has demonstrable positive impacts on surrounding communities. The ecological practices tribal peoples have cultivated for millennia are inherently sustainable and practical.

Environmental Protection Agency

Although the Environmental Protection Agency's (EPA) FY 2013 budget decreased approximately \$105 million overall from FY 2012, much of the tribal set asides received increased funding. Recognizing tribes and states as the primary implementers of environmental programs the EPA continued funding its State and Tribal Assistance Grants program, which accounts for 40 percent of the EPA's budget request and is the largest percentage of the EPA's budget request. Tribes received an increase of approximately \$29 million over FY 2012 appropriations to the Tribal General Assistance Program. These additional funds will assist tribes in capacity building and promote protections for the environment and human health. **NCAI strongly supports the increase proposed for the Tribal General Assistance Program.**

Bureau of Indian Affairs, Natural Resources

Tribes have voiced support for increased funding for natural resources programs in the Bureau of Indian Affairs through the Tribal Interior Budget Council, which provides input to the Department of Interior on tribal budget concerns. The President's FY 2013 budget includes some of the recommendations for natural resources. Under trust land management, the FY 2013 budget would provide increases in Trust Natural Resources of \$3.5 million for the Rights Protection Implementation program and \$2 million for the Tribal Management and Development program to support fishing, hunting, and gathering rights on and off reservations. The budget request would provide program increases of \$1 million for the Forestry program and \$500,000 for the Invasive Species program. An increase of \$800,000 supports greater BIA and tribal participation in the Landscape Conservation Cooperatives, for a total of \$1 million. **NCAI urges Congress to retain these proposed increases in the final FY 2013 appropriations bill.**

Supporting Tribal Governments

The best illustrations of tribal innovation and efficiency came with the passage of the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638) in 1975, which unleashed the power of tribal control and revolutionized the delivery of Indian services. Program flexibility has allowed tribes to determine internal priorities, redesign programs, and reallocate financial resources to effectively and efficiently address the needs of their respective communities. In this time of a constrained federal budget, NCAI notes that many recommendations from tribes during tribal budget consultations have been considered in the FY 2013 President's budget. The President's budget does not provide the amounts required to meet the full need for Indian programs, but the proposal does address important funding areas for tribal governments, outlined below.

Bureau of Indian Affairs

The FY 2013 President's budget includes \$2.5 billion in current appropriations for Indian Affairs, which is \$4.6 million or 0.2 percent below the FY 2012 enacted level. The budget proposes a total of \$897.4 million in Tribal Priority Allocations. Critical to implementing the Indian Self-Determination policy is the Bureau of Indian Affairs (BIA) funding streams for Tribal Priority Allocations, Contract Support Costs at BIA, and Tribal Grant Support Costs for tribal schools. NCAI supports the programmatic increases in Indian Affairs, which follow the recommendations from tribes. However, NCAI would note that the President's budget includes rather large reductions due to streamlining measures in the BIA. These reductions include \$19.7 million in streamlining measures and \$13.8 million in administrative savings. Although tribes appreciate that the Administration is proposing increases to programs, NCAI would urge caution when cutting so deeply into BIA functions – administrative and streamlining reductions that are larger than proposed for most other bureaus and agencies. **NCAI would encourage the BIA to consult with tribes on the how the proposed streamlining and administrative reductions would impact the delivery and operation of Indian programs.**

Office of Special Trustee for American Indians

The FY 2013 budget request for the Office of Special Trustee (OST) focuses on continuing efforts in trust management reform, oversight, daily operations, and historical accounting. The request for OST totals \$146 million and reflects a \$6.1 million decrease from the FY 2012 enacted.

In past years tribal leadership has been critical of the OST, largely because of the reorganization of traditional Bureau of Indian Affairs (BIA) functions into a separate bureaucracy. At the same time, tribes have seen improvements, particularly in the accounting for trust funds. In general, tribes have supported a plan to sunset the OST, reintegrate its functions with BIA under the high level guidance of a Deputy Secretary for Indian Affairs, the creation of an independent oversight function, and have urged that more resources should be focused at the reservation level to support tribal resource management.

Last week, the new National Commission on Indian Trust Administration and Reform held its first meeting and began its work. At the same time, we began to see some fruit bear from the long efforts at historical accounting, with an announcement that more than 50 tribes have received settlement offers, and offers have been accepted by the Confederated Tribes of the Colville Reservation, the Fort Peck Tribes, and previously the Osage Nation. We expect that more settlements will be finalized in the coming weeks and months.

Given the progress on tribal trust settlements and the newly started work of the Commission, we would strongly encourage Congress to continue its funding of OST at the requested levels. We would also urge Congress to provide additional funds for appraisals because of the significant delays caused by a lack of appraisal services. In addition, there are concerns that the probate caseload is growing and additional resources may be needed.

In the future, we hope to see a diminishing need for historical accounting as tribal trust fund cases are resolved and the Cobell settlement is put to rest. We are optimistic that the Commission will develop a plan for the future of OST that focuses on reservation management of trust resources and will continue to improve the administration of Indian trust land and trust funds.

Economic Development

Department of Energy

The Department of Energy overall FY 2013 budget request of \$27.2 billion is a small increase over the FY 2012 enacted level. Part of this increase requires a significant restructuring of programs to streamline and cut those that are not working or no longer needed. For tribally specific programs, the Department of Energy requested a 25.3 percent increase for the Office of Indian Energy Policy and Programs. This increase brings the OIEPP closer to the statutory maximum of \$20 million, a request included in the NCAI FY 2013 Tribal Budget Request document. The Tribal Energy Program request included a 30 percent cut and will seek to develop tools for leveraging existing public and private financing for deployment of tribal energy projects.

Indian Guaranteed Loan Program

The FY 2013 proposed budget would provide \$5 million for the Indian Guaranteed Loan program, a reduction of \$2.1 million from the 2012 enacted level. The Department of Interior's Office of Indian Energy and Economic Development (OIEED) Division of Capital Investment oversees the Indian Loan Guarantee Program that is the only federal guarantee program that enables eligible borrowers to obtain conventional lender financing to develop Native businesses and eligible construction, while also enabling other companies to obtain supplemental surety bond guarantees. In the last several years, significant tightening of the credit markets made loans more difficult to obtain, reducing demand for loan guarantees. As lending conditions improve, the revolving credit facility of the OIEED Loan Guarantee Program can greatly assist Native borrowers seeking guarantees for lines of credit for: working capital, payrolls for hiring new employees, and assurances sufficient for sureties to provide performance bonds to tribal- and other Native-owned contractors. The OIEED's Loan Guarantee Program is the most appropriate and urgently needed source of financing for business, energy, and other economic development in Indian Country. With the promises of a broadband-enabled economy in Indian Country looming on the horizon, an expanded investment in the OIEED Loan Guarantee Program would enable operating businesses to build their technological capacity as well as to provide seed financing for new businesses to begin operations. **NCAI encourages Congress to restore funding for the Indian Guaranteed Loan Program.**

Transportation

The Indian Reservation Roads (IRR) system comprises over 140,000 miles of public roads with multiple owners, including the Bureau of Indian Affairs, Indian tribes, states and counties. Indian Reservation Roads are the most underdeveloped road network in the nation—yet this is the primary transportation system for all residents of and visitors to American Indian and Alaska Native communities. Over 66 percent of the system is unimproved earth and gravel. Approximately 24 percent of IRR bridges are classified as deficient. These conditions make it very difficult for residents of tribal communities to travel to hospitals, stores, schools, and employment centers.

The Department of Transportation (DOT) President's budget request for FY 2013 envisions critical investments in infrastructure that are vital to the nation's economic success. Included in the budget is a new six-year \$476 billion surface transportation reauthorization proposal to improve the nation's transportation infrastructure. The President's budget also seeks to fully pay

for the transportation investment through gas tax and other revenues and from the savings from the Overseas Contingency Operation reductions, a decrease of military operations.

Additional changes included in the DOT's FY 2013 budget is the consolidation of 55 surface transportation programs within the Federal Highway Administration to five core programs: (1) Highway Safety Improvement Program; (2) National Highway Program; (3) Livable Communities Program; (4) Federal Allocation Program; and (5) Research, Technology and Education Program. A major change has also been to rename the Indian Reservation Roads Program (IRR) and has been changed to the **Tribal Transportation Program (TTP)**, this will encompass the former IRR Bridge Program, planning, and a new safety program for TTP roads. The amount requested for FY 2013 for Tribal Transportation Program is \$600 million with gradual step increases for each fiscal year up to \$785 million for FY 2018.

NCAI supports the increase to \$600 million for the Tribal Transportation Program, however NCAI would want to ensure that the consolidation of these TTP funds for tribal transportation infrastructure adequately addresses construction and maintenance needs for roads and bridges.

NCAI also urges an increase for the BIA roads maintenance program in FY 2013, which services 29,000 miles of Indian Affairs-owned roads. As of 2011, the backlog in deferred maintenance was approximated to be \$285 million, yet the funding level for BIA roads maintenance has been at about \$25 million for the last ten years.

Conclusion

Thank you for inviting NCAI to share our views with you today and thank you for making Indian nations a priority. We look forward to working with the Committee to continue to build upon our successes. Tribal leaders urge Congress to uphold its solemn promises to tribes, even as policymakers seek to reduce the deficit through spending reductions and revenue generation. The obligations to tribal citizens funded in the federal budget are the result of treaties negotiated and agreements made between tribes and the United States in exchange for land and resources, known as the trust responsibility. The fulfillment of this trust responsibility is a solemn historic and legal duty.