

# PROMISES NOT KEPT

## QUICK STATS

- ✘ **CONFERENCE:** Spending
- ✘ **TEAM:** Department of the Interior
- **FUMBLE:** Failure to adequately meet trust responsibilities to Indians
- **RECOVERY:** Through in-depth consultation with Tribes and American Indians, Congress should ensure federal trust responsibilities are met

Through the signing of treaties in the early 1800s and numerous commitments made over the last 100 years, the federal government has many trust responsibilities to Tribes and American Indians. From education, to health care, to economic development, countless federal programs and funding opportunities exist for Tribes and individual American Indians. Indeed, according to DOI, the entire federal government spent \$19.329 billion on programs impacting Indians just this year.<sup>107</sup>

The problem is the federal government fails to ensure federal programs for Indians actually make a difference, often placing a premium on quantity over quality. Programs are also divided, and many are duplicative with little to no coordination between DOI's BIA and every other cabinet-level department. Education programs for Indians are provided through DOI's BIE, DOEd, and HHS's housing programs are divided between BIA and HUD. Job programs for Indians are found within both BIA and the DOL. Funding for justice programs can be obtained from the BIA, DOJ, and even HUD. It is a convoluted mess with no coordination and in many cases very little oversight of program management or real evaluation for effectiveness.

The U.S. has an undeniable obligation to American Indians, and no one in the federal government can definitively say the federal government meets that obligation. It is easy to throw more money at a problem, create new programs, and claim success. It is quite another matter to actually fix the problem. Here are a few examples of inefficient use of federal taxpayer dollars through mismanagement and duplication:

### Education

BIE within DOI has an FY 2015 budget of \$810.531 million.<sup>108</sup> BIE is responsible for the funding of 183 elementary and secondary schools, 54 of which are directly operated by BIE.<sup>109</sup> BIE also operates two post-secondary institutions. All of the schools are on or near Tribal reservations. To be clear: BIE does focus almost exclusively on students who are not in a public school system. The only exception is the Johnson O'Malley program, which provides funding for Indian students in public schools.<sup>110</sup>

At the same time, DOEd, the federal department *actually tasked* with ensuring Americans have education opportunities, also has responsibilities to Indians. Of DOEd's FY 2015 budget, \$123.939 million goes to Indian children in schools—either public schools or BIE schools.<sup>111</sup> In fact 24 percent of BIE funding for BIE-operated schools actually comes from the DOEd.<sup>112</sup> HHS also has an education program focused on funding for Tribal language preservation. This year the program provided \$4.054 million in three-year grants to provide language preservation education.<sup>113</sup>

GAO recently released a report showing that while BIE schools spend 56 percent more per pupil than the average public school, its students are still in dilapidated schools, teachers are underpaid, and students are not given many opportunities for success.<sup>114</sup> GAO also points out that BIE lacks the trained staff to properly administer schools.<sup>115</sup> Indeed, BIE has struggled to even construct a bus barn correctly. BIE funded a \$1.5 million bus barn in South Dakota, but while a bus is serviced on the hydraulic lift, the doors

cannot shut because the barn is not long enough to properly house a full-size school bus.<sup>116</sup>

### **Housing and Community Development**

Anyone who has spent time on Indian reservations knows the desperate need for housing and community development. The compassion typical of reservation life helps decrease the number of homeless people in Indian Country. That compassion usually comes in the form of welcoming more and more people into homes, which leads to major overcrowding followed by HUD stepping in with a \$650 million housing block grant program for Indians, usually operated by Tribes.<sup>117</sup> An additional \$66 million is set aside for community planning and development in Indian Country.<sup>118</sup>

Within DOI, BIA also has an \$8 million housing program and receives \$2.2 million for “community development oversight.”<sup>119</sup> Admittedly, in a country with a multi-trillion budget each year, spending \$10 million is a drop in the bucket. However, this amount adds up. Having two offices in two departments work on the same issues is inefficient and is actually a disservice to American Indians.

### **Justice**

Law enforcement matters present a unique problem on reservations. Sometimes Tribal law enforcement has jurisdiction. Sometimes the state or local police have jurisdiction, but the federal government always has jurisdiction. The federal government also has an important interest to support the continued development of Tribal police and court systems. This is why DOJ provides \$30 million for Tribal law enforcement and has a \$33 million grant through the COPS Hiring Program to assist with hiring and training police officers.<sup>120</sup> DOJ also provides \$35.975 million in grants to Tribal governments to enforce the Violence Against Women Act (or VAWA), an additional \$6.2 million to support the creation of non-governmental coalitions to combat violence against women on reservations, and \$5 million for a Tribal youth program to combat delinquency.<sup>121</sup> Tribes can also utilize the funding from block grants offered by HUD or crime prevention and safety in the areas that benefit from the overall grant.<sup>122</sup>

BIA spends \$352,850,000 in public safety and justice programs, which includes \$4.7 million for an Indian police academy, \$5.2 million for Tribal justice support, and \$6.25 million for law enforcement program management.<sup>123</sup> Of that amount BIA law enforcement spends \$192.8 million in areas that lack Tribal law enforcement.<sup>124</sup> The problem with all of this is that more than \$400 million is spent between DOJ and BIA, and what is the result? Murders, sexual assaults, drugs, and other major crimes occur on a daily basis with little done to stop them. If all resources were strategically focused, more could be done.

### **Mismanagement of Energy Resources**

Tribes throughout the U.S. have tremendous potential for energy production. Together, Tribes and individual American Indians own the third-largest mineral resources, particularly coal, gas, and oil. Tribal land can also be utilized to produce 1.1 billion megawatt-hours of electricity from wind energy and 14 billion megawatt-hours of solar energy.<sup>125</sup> Unfortunately the federal government often stands in the way of reaching this potential.

Earlier this year GAO released a report entitled, “Poor Management by BIA Has Hindered Energy Development on Indian Lands.”<sup>126</sup> While acknowledging some Tribes lack the financial capacity to take advantage of resources, the report faults BIA for an inefficient and confusing system that slows down the resource exploration and development process. For instance GAO points out that those seeking permits for oil, gas, or wind energy projects could require permits from at least BIA, BLM, EPA, and FWS.<sup>127</sup> This is on top of the requirements found in the National Environmental Policy Act, which mandates that all federal environmental laws be followed during Tribal energy development because the land or resources are managed by the federal government and federal agencies are involved in the development process through permitting.<sup>128</sup>

Unfortunately BIA does not have a process to determine how long it takes to review applications and requests, but there is anecdotal evidence that the process is very lengthy. BIA

reportedly took 18 months to process one wind lease, more than eight years to review right-of-way applications, and more than three years to review and approve a different wind energy project.<sup>129</sup>

Even if a Tribe can get through the difficult permitting process, there are other roadblocks to energy development. GAO reports that BIA lacks “the data it needs to verify ownership of some oil and gas resources, easily identify resources available for lease, or easily identify where leases are in effect.”<sup>130</sup> This is generally because BIA has either lost the information or the information it does have is old and outdated.

### **Reform Needed**

DOL spends \$46 million on programs to assist American Indians (plus Alaska Natives and Native Hawaiians) to find jobs and job training.<sup>131</sup> BIA spends \$11.463 million on the same thing.<sup>132</sup> BIA provides more than \$26 million for tribal roads<sup>133</sup> while DOT spends \$450 million on the Tribal Transportation Program.<sup>134</sup> Both programs support the continued construction and maintenance of roads within Indian Country. There are many, many more examples.

These programs are not necessarily wasteful, and the work they intend to accomplish is important. However, the solution to problems in Indian

Country is not the creation of new programs or just additional funding. Congress, in thorough consultation with Tribal governments and all American Indians, needs to determine the best way to remove duplicative or inefficient services and ensure the U.S. meets its trust responsibilities in the best way possible. If BIA is indeed the best agency to provide all services and programs for Tribes, then other federal departments should eliminate duplicative programs, and BIA should be reformed to become truly capable of fulfilling all trust responsibilities. It is possible that each federal department, serving as experts for their respective fields, is best tasked to provide services to Tribes and individual Indians. If so, BIA should defer to these departments and take on the role of Tribal advocate. This would allow BIA to still ensure trust responsibilities are met by standing next to Tribes as they work directly with each department and agency.

No matter the best way forward, there should only be one place for assistance and funding for education of American Indian children, one place for assistance and funding for Tribal police and courts, and one place for assistance and funding for each Indian program. Congress should recognize the importance of getting this right. American Indians deserve the federal government’s best effort, and right now, they are not getting it.

***For more information on federal funding for tribes and American Indians, please visit:***

[DOI: FY2016 Federal Funding for Programs Serving tribes and Native American Communities](#)

[DOI: Budget Justifications and Performance Information Fiscal Year 2016 – Indian Affairs](#)

[HUD: Congressional Justifications FY2016](#)

[Department of Education: Indian Education Fiscal Year 2016 Budget Request](#)

[DOL: FY2016 Budget in Brief](#)

[DOJ: FY2016 DOJ Request – State, Local, and Tribal Law Enforcement Assistance](#)

[DOT: FHWA FY2016 Budget](#)

***For more information, please visit:***

[GAO Report: Indian Affairs: Bureau of Indian Education Needs to Improve Oversight of School Spending](#)

[GAO Testimony: Further Actions on GAO Recommendations Needed to Address Systemic Management Challenges with Indian Education](#)

[GAO Testimony: Further Actions on GAO Recommendations Needed to Address Systemic Management Challenges with Indian Education](#)

[GAO Report: Indian Energy Development: Poor Management by BIA Has Hindered Energy Development on Indian Lands](#)

[The New York Times: Higher Crime, Fewer Charges on Indian Land](#)