

ANALYSIS OF BUDGET EQUITY FOR SELF-GOVERNANCE TRIBES

Summary of Issue:

Tribal Shares

Self-Governance Tribal Shares have been threatened on multiple fronts; including Self-Governance inequitable access to BIA funds for new programs, programmatic increases, and one-time distributions. Some examples include:

1. Past disproportionate shares of Law Enforcement funding increases (see Figure 1);
2. Exclusion of Self-Governance Tribes from one-time funding because of failure of BIA staff to process the paperwork and comments that Self-Governance Tribes already fared better than 638 Tribes funding-wise; and,
3. Exclusion of Self-Governance Tribes from programmatic increases.

One recent accomplishment involves the BIA Trust Natural Resources program, Tribal Management Development (TMD). The FY 2013 Greenbook justified a programmatic increase and cost amounts for Tribes who operate TMD programs, but excluded those Self Governance Tribes who operate TMD programs. Tribes notified BIA that it could not exclude Self-Governance Tribes, and the BIA responded that it wouldn't, but then turned around and did the exact same thing in the FY 2014 Greenbook. When an actual increase occurred, \$1.5 million in FY 2013, BIA admitted it was excluding the Self-Governance Tribes from the increase. Swift intervention on the part of affected Tribes and the Department of the Interior (DOI) Office of Self-Governance (OSG) finally resulted in Self Governance Tribes being included in the distribution for both FY 2013 and 2014. Although the outcome was a success, it's clear that even today, Self-Governance Tribes are sometimes discriminated against by the BIA, and other examples probably exist which weren't "caught". On March 18, 2014 SGAC Chairman Ron Allen sent a letter to Assistant Secretary Washburn requesting confirmation that Self-Governance Tribes would be treated equitably in the distribution of the numerous FY 2014 BIA Spending Plan increases. Although Assistant Secretary Washburn responded on October 17, 2014, that "All tribes share in increases to TPA programs, including Self-Governance Tribes", there are still concerns. Assistant Secretary Washburn also responded "...individual program offices are responsible for determining criteria or eligibility requirements for any TPA increases...". There is inconsistency in process among BIA offices, with some offices notifying tribes and the Office of Self Governance of the availability of additional funding while some offices do not. Also, some FY 2014 funding increases were not distributed according to the Greenbook justification.

Protecting Indian Country Funding

Within the DOI, funding for BIA and Tribes has not kept pace with other Interior agencies. This inequity has been perpetrated by both the Congress (see Figure 2) and the Administration (see Figure 3). Congress did however, improve the situation in FY 2014 and 2015 (see Figure 4). Sequestration cuts in FY 2013 caused severe damage to tribal programs, and the BIA did not restore those cuts in its FY 2014 Spending Plan (except for a portion of Law Enforcement). Therefore Tribes and BIA must strongly advocate for a larger portion of the funds allocated for Interior. One accomplishment through the efforts of the National Congress of American Indians (NCAI), individual Tribal leaders, the Tribal Interior

Budget Council (TIBC), and TIBC Budget Subcommittee is that Assistant Secretary Washburn has stated recently that he understands the Interior funding inequity issue better, and has raised the issue with DOI Secretary Jewel. One Tribal leader recently commented that, with sequestration a done deal, pushing the Administration and Congress for a larger portion of the Interior budget may be our only hope right now. Unfortunately, Tribes and BIA suffered another setback with release of the President's FY 2015 budget request. The Administration again requested a very small increase for BIA compared to other Interior agencies (Figure 3), and the Administration requested that the FY 2013 sequestration cuts stay in place in FY 2015, which Congress adopted. The only thing Tribes can do now for FY 2016 is to appeal to Congress for additional funds to offset the sequestration cuts, and to appeal to the Administration that FY 2017 will be the President's last budget submission, and strengthening the BIA request represents our final opportunity with this Administration to improve BIA funding.

In addition to receiving some of the smallest percentage increases in DOI funding over the last decade, BIA and Tribes have been subject to numerous across the board rescissions since FY2000. These permanent cuts to the Self-Governance Tribal Base programs total about 8% (see Table 1). With the addition of the partial sequestration in FY2013, the total reductions to Base programs since FY2000 equals about 13% (see Figure 5). Further, there was also a massive General Reduction in Tribal Priority Allocation (TPA) funding back in 1996, which totaled an additional 16%.

Self-Governance Tribes need to increase efforts to educate the Administration and Congress that BIA and Tribes have been treated unfairly and have experienced dramatic cuts, even before sequestration.

Increased Access to and Stability of Funding

Since FY 1996, most TPA budget line items have been frozen (except for Law Enforcement which is no longer TPA, and tiny increases for Courts and Scholarships). The only way that TPA increases occur now is through annual Pay Cost additions. Unfortunately, the current and previous Administration sharply reduced Pay Cost additions to the budget, and Congress enacted those reductions. Because annual Pay Cost additions are cumulative, these reductions have cost Tribes and BIA literally hundreds of millions of dollars.

This is an area of the budget that Tribes can impact. For instance, from FY 2011-2013, most non-military Pay Cost accounts were zeroed. But because of efforts by the TIBC:

In FY 2011 - Pay Costs were frozen, but Tribes received \$2 million

In FY 2012 - Pay Costs were frozen, but Tribes received \$6 million

In FY 2013 - Pay Costs were frozen, but Tribes received \$5.4 million

Although these Pay Cost amounts were much less than they should have been, the net effect of these efforts is a \$13 million annual TPA Base increase for Tribes.

However, additional work is needed. In his FY 2014 budget request, the President requested only \$3 million for Pay Costs, and a similar tiny amount in his FY 2015 budget request. What's worse, the Administration described Pay Costs as "Fully Funded" in both FY 2014 and 2015. This is simply not

true, and it shows an ongoing disregard for this critical TPA Base account by the Administration and OMB.

Tribal Interior Budget Subcommittee-How to Best Advance Self-Governance Priorities

The TIBC formed a Budget Subcommittee a number of years ago to assist with improving budget outcomes for Tribes. An important function of the Subcommittee has been to meet with the BIA in between regularly scheduled TIBC meetings. This has proved very important, especially during the Spring, because the BIA normally submits its budget to the Department in between TIBC meetings. The Spring meeting typically includes two full days, in which Tribal and BIA representatives go line by line through the entire BIA budget, generating various scenarios as required by OMB. The end result is two or three budget scenarios, each with a Tribal version and a BIA version. The meeting concludes on the third day, with a presentation to the Assistant Secretary by Tribal representatives.

This meeting has afforded the kind of hands-on interaction with BIA budget staff and the Assistant Secretary that could not be accomplished in a regular TIBC meeting. It should be noted that the degree of close consultation on development of the BIA budget is greater with the current Administration than with any other. Several of the Subcommittee members are from Self-Governance Tribes.

Objectives/Goals:

Tribal Shares

- Provide education to BIA staff and Indian Affairs leadership, computer-based and in-person, that Self-Governance Tribes must be considered for any new programs, programmatic increases, and special and one-time funds on the same basis as all other Tribes. This is important because BIA officials continue to exclude Self-Governance Tribes from funding opportunities, either from a lack of understanding, or from a belief that once a Tribe is Self-Governance, BIA no longer has to serve them.
- Extract from existing laws and regulations, language supporting Self-Governance Tribes' eligibility for equitable access to BIA funds. For instance, there is language in 25 USC 458cc(b)(8), "...that such Tribe shall be eligible for new programs on the same basis as other Tribes...". But what other language exists? This is important because BIA staff could misinterpret this language, and we need to make it clear that Self-Governance Tribes must be treated fairly.

Protecting Indian Country Funding

- Continue and expand on research to develop tools that demonstrate BIA and Tribes should be exempt from Sequestration and any other budget cuts. This should include an analysis of the 1996 General Reduction. A good picture can be worth a thousand words.
- Work harder to get the message to the Administration and Congress that they are failing in their Trust responsibility to Tribes. Sequestration cuts in FY 2013, which were retained in FY 2014 and 2015 prove this, as does the weak funding request for BIA in FY 2015.
- Work to expand press coverage of the damage to Tribes from Sequestration. This may be our best hope in undoing Sequestration on BIA and Tribes.

Increased Access to and Stability of Funding

- Obtain historical Tribal Pay Cost data from the BIA going back to FY 2002. This should include the total amount of Pay Costs actually allocated to Tribes for each year, as well as the total Tribal Pay Cost amounts the BIA actually requested each year. This is important because the data could assist Tribes in documenting how much was lost from Pay Cost shortfalls.
- Determine true Pay Costs needs of Tribes without a ceiling imposed by the Administration.

Tribal Interior Budget Subcommittee-How to Best Advance Self-Governance Priorities

- Continue to advocate for Budget Subcommittee participation in BIA's budget process.
- Continue to include representatives from Self-Governance Tribes on the Budget Subcommittee.

Strategy & Actions:

Tribal Shares

- Identify programs, possibly through BIA Greenbook analysis, that are proposed for funding increases, to ensure Self-Governance Tribes are included.
- Advocate for consistency among BIA program offices in how tribes are notified about the availability of additional funds, and ensure the Office of Self Governance is notified timely.
- Advocate for a change to the Greenbook structure, which better identifies Self-Governance programs and activities within the various budget categories, as opposed to the current structure, where Self-Governance Tribes are essentially an appendix in the back.

Protecting Indian Country Funding

- Continue to strengthen Tribal advocacy efforts and messaging to the Administration and Congress that they are failing in their Trust responsibility to Tribes.
- Engage regional and national press outlets to get the message out on the impacts of Sequestration.
- Analyze 1996 budget cut to determine how much Tribal programs lost as a percent of their Base funding.

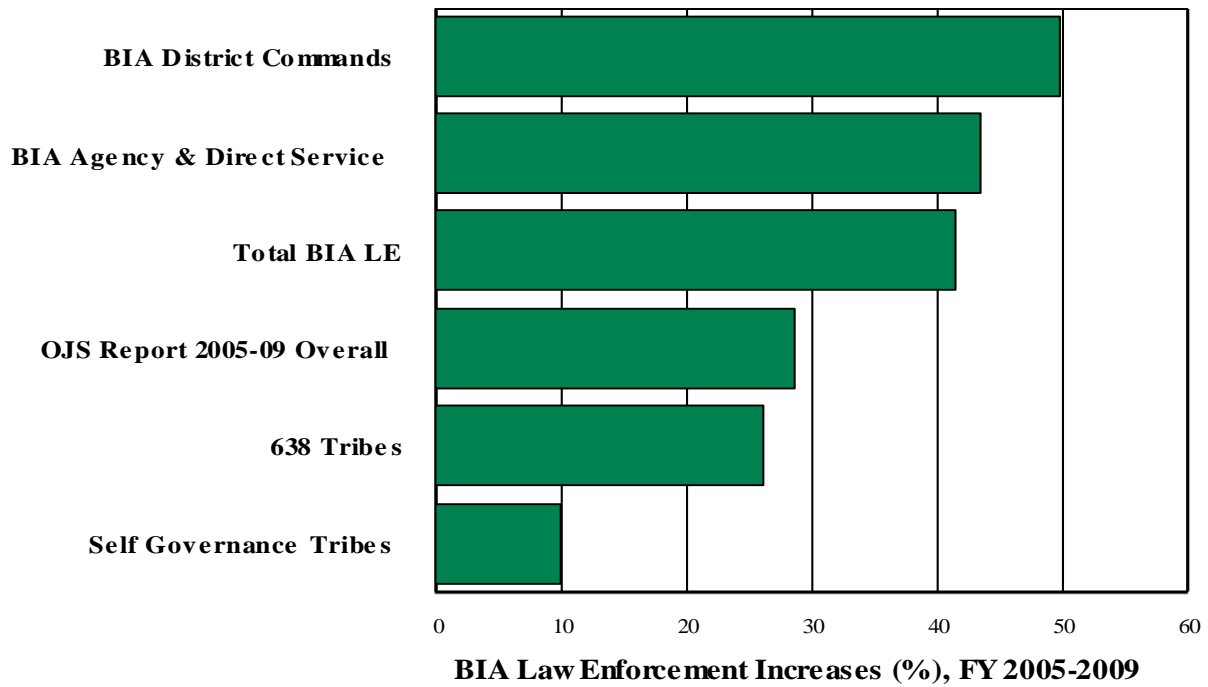
Increased Access to and Stability of Funding

- Continue to press the BIA for an historical Pay Cost accounting. This has been done as recent as last year, but BIA has not been responsive.
- Enlist a Tribal Pay Cost committee to develop a strategy to ensure Fixed Costs and Pay Costs are fully funded in future years. This has been previously proposed but not implemented.
- Press the Administration about the damage to Tribes (past, present, and future) from the failure to fully fund Pay Costs, and hold the Administration accountable when it inaccurately claims that it Fully Funds Pay Costs.

Tribal Interior Budget Subcommittee-How to Best Advance Self-Governance Priorities

- Tribal Interior Budget Subcommittee representatives actively engage in the BIA budget process and ensure Self-Governance Tribes' interests are served.

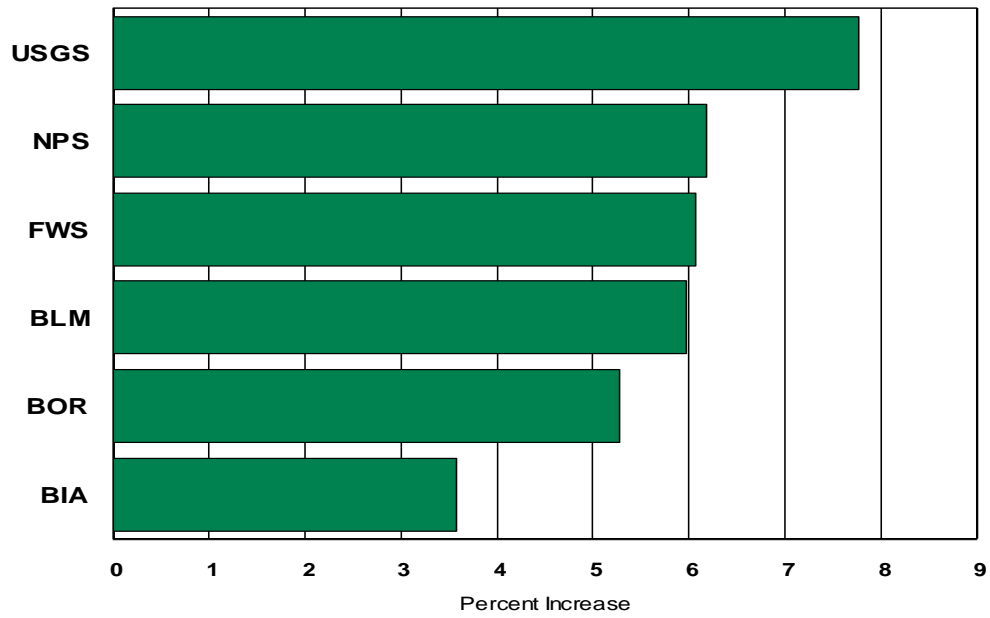
Figure 1. Percent increase in funding, FY 2005 - 2009, for BIA District Commands, BIA Agency/Region and Direct Service operations, Total BIA Law Enforcement, total from OJS report on 2005 – 2009 appropriated funds, 638 tribes, and Self Governance tribes.



Note: The total amount of the FY 2005-2009 Law Enforcement funding increases that Self-Governance tribes were inequitably considered for was \$75 million.

Figure 2. Congressionally enacted Budget Increases for the 6 Largest Interior Agencies

FY 2004 to FY 2013 (after Sequestration):



FY 2004 to FY 2015 (after FY 2015 Cromnibus):

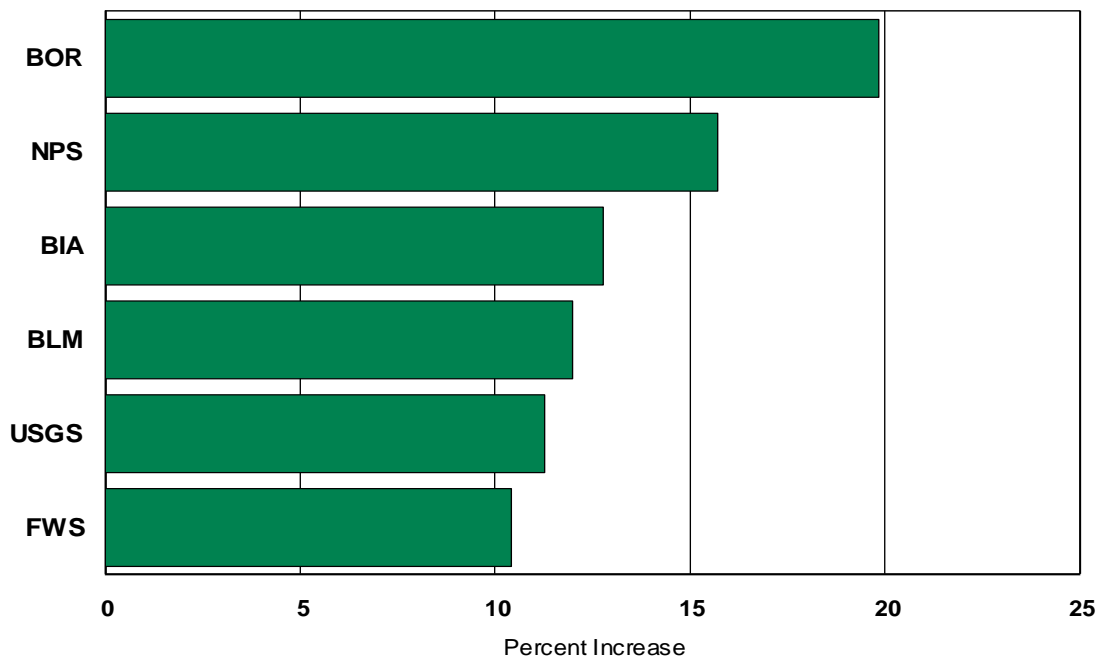


Figure 3. President's Requested Budget Increases: All of Interior (except BIA) vs Just BIA

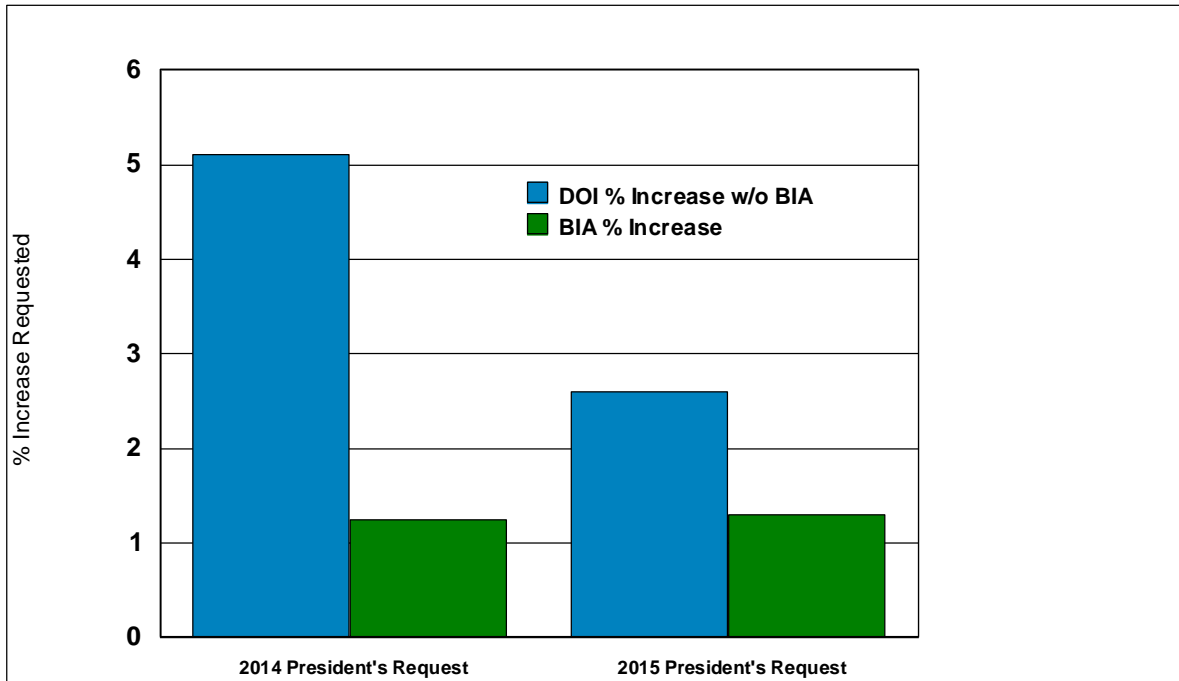


Figure 4. Congressionally enacted Budget for the BIA, FY 2004-2015.

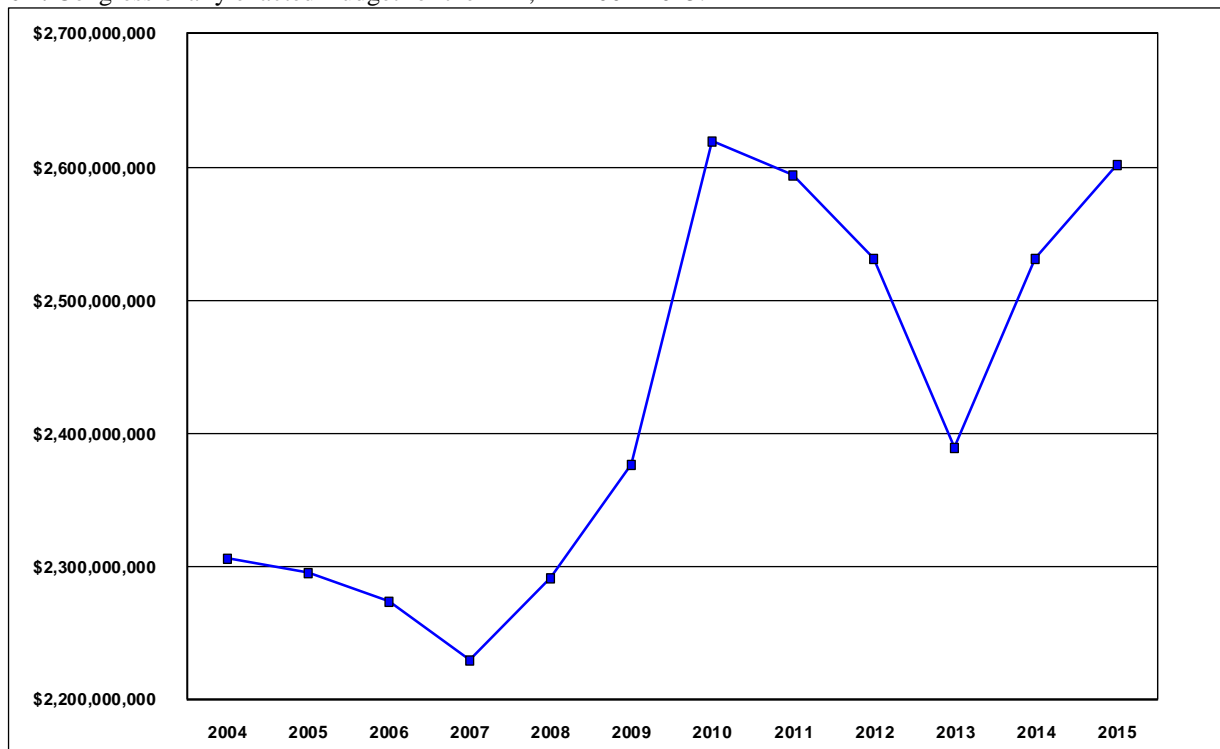
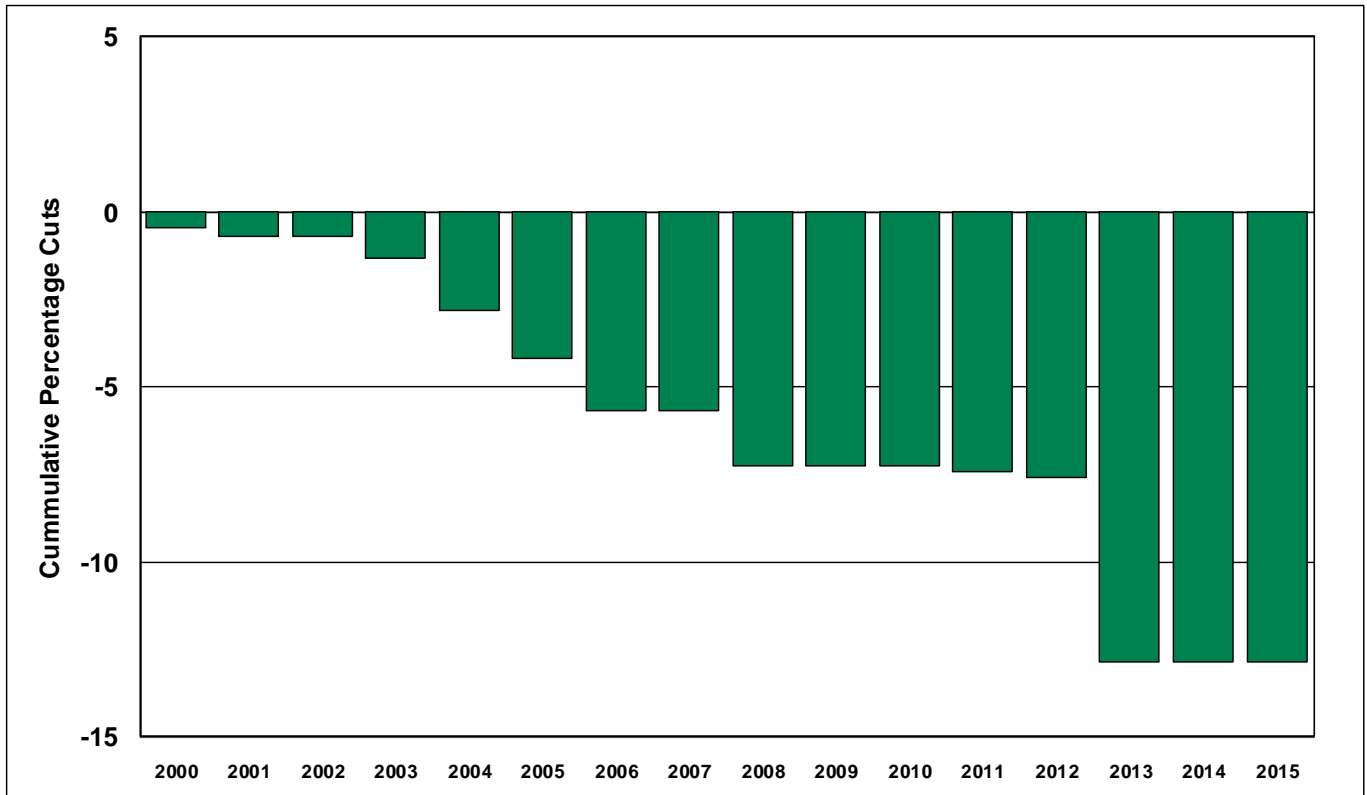


Table 1. List of Across the Board Rescissions and Other Permanent Reductions Imposed on BIA and Tribes, FY 2000-2013 (Shown as Percentage Cut).

Year	Description	Individual	Total
2000	General Reduction	0.4685	0.4685
2001	ATB	0.22	0.22
2002	No Rescission	0	0
2003	ACB	0.65	0.65
2004	BIA-IT	0.24	
2004	Omnibus ATB	0.59	
2004	ATB	0.646	1.476
2005	Omnibus ATB	0.8	
2005	Interior ATB	0.594	1.394
2006	ATB	0.476	
2006	ATB Hurricane & Other	1	1.476
2007	No Rescission	0	0
2008	ATB	1.56	1.56
2009	No Rescission	0	0
2010	No Rescission	0	0
2011	ATB	0.2	0.2
2012	ATB	0.16	0.16
2013	ATB	0.2	0.2
	Rescissions Subtotal	7.8045	7.8045
2013	Sequester	5.04	5.04
	Total	12.8445	12.8445

* Language and acronyms for rescissions in appropriations bills have varied by year and bill type. Terms used included General Reduction and Across the Board Rescission (ATB & ACB). There have been specialized rescissions for things like hurricanes & war, and ones unique to Interior and BIA. But all of the above Rescissions represent permanent cuts to tribal Base programs. The FY 2013 Sequestration cuts stayed in place in FY 2014 and 2015, but it should be noted that the BIA Office of Justice Services did provide some additional one-time funding in FY 2014 to soften the blow of Sequestration to tribal and BIA law enforcement.

Figure 5. Cumulative Effect of Rescissions on Tribal Program Funding, FY 2000-2015, Shown as Total Percentage Cuts Each Year from Rescissions (Includes the FY 2013 Sequester cuts)



Note: In FY 2014 the BIA Office of Justice Services did provide some additional one-time funding to soften the blow of Sequestration on tribal and BIA law enforcement operations, so the effect on tribal programs shown above was lessened in FY 2014 for law enforcement.