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Testimony of the United South and Eastern Tribes Sovereignty Protection Fund Submitted for the Record of the Senate Committee on Indian Affairs Oversight Hearing on, “The President’s FY2020 Budget Request for Indian Programs”

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is pleased to provide the Senate Committee on Indian Affairs (SCIA) with testimony for the record of its continued oversight hearing on the President’s Budget Request for Fiscal Year (FY) 2020 for the Department of Justice (DOJ). While USET SPF appreciates several aspects of the Agency’s request, we are deeply concerned about its recent and continued administration of Tribal set-aside dollars from the Crime Victims Fund under the Victims of Crime Act (VOCA). We urge SCIA to ensure that DOJ takes appropriate steps to distribute the set-aside, as intended, including removing arbitrary and restrictive barriers to accessing funds.

USET SPF represents 27 federally-recognized Tribal Nations from Texas to Florida to Maine¹. USET SPF is dedicated to enhancing the development of Tribal Nations, to improving the capabilities of Tribal governments, and assisting the USET SPF Member Tribal Nations in dealing effectively with public policy issues and in serving the broad needs of Indian people.

DOJ Mishandled VOCA Tribal Set Aside Distribution

As this Committee well knows, Indian Country currently faces some of the highest rates of crime, with Tribal citizens 2.5 times more likely to become victims of violent crime and Native women, in particular, subject to higher rates of domestic violence and abuse. And yet, until FY 2018 appropriations were enacted, Tribal Nations did not have direct access to funding that would allow us provide victim services to our citizens. After years of advocacy from Tribal Nations, Congress enacted a 3% (or \$133 million) Tribal Set-Aside in FY 2018 within the Crime Victims Fund for the very first time.

Out of the 3% FY 2018 set-aside, \$110 million was made available to Tribal Nations and Tribal organizations through grants with a cap of \$720,000 per Tribal Nation, and with discretion for DOJ to include increases. While DOJ consulted with Tribal Nations on the distribution of these dollars and USET SPF, along with other Tribal Nations and organizations, urged maximum flexibility, the Agency’s outreach, solicitation, and grant requirements did not reflect this guidance. As a result, many Tribal Nations did not apply for the grant.

Moreover, rather than work with Tribal Nations to improve applications, DOJ opted not to fund a full 20% of applicants—with only 154 out of 195 receiving grant awards of just \$88 million. Rather than find a way to

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

distribute remaining funds, DOJ returned \$24 million in unobligated dollars to the Crime Victims Fund. There have been no efforts on the part of DOJ to reissue these funds to Tribal Nations.

Despite failures in the FY 2018 process, DOJ appears to be repeating these mistakes as it seeks to distribute FY 2019 funds. In February 2019, Crime Victims Tribal Set-Aside funding for FY 2019 was provided in the amount of \$167.5 million (a 5% increase from FY 2018) under the Coordinated Tribal Assistance Solicitation (CTAS). Despite the increase in funding, DOJ capped funding for each application at \$500,000. Due to the short deadline, stringent eligibility requirements, and small funding cap, many Tribal Nations did not seek this funding. As a result, only 59 Tribal Nations applied.

While we have been informed that an additional FY 2019 funding opportunity will be announced soon, USET SPF is deeply concerned that DOJ will again fail to obligate the entirety of funding. Again, this is not because these dollars are not critically important to Tribal Nations, but rather because DOJ is failing to recognize its obligations to Tribal Nations, including making every effort to ensure resources reach Indian Country.

Tribal Set-Aside for FY 2020 and Beyond

In the long-term, DOJ must be required to change its distribution methods in accordance with Tribal Nation guidance. This involves implementing this guidance following the conclusion of its Tribal consultation on the distribution of the VOCA set-aside in July. USET SPF continues to urge DOJ to provide maximum flexibility, both during the application process and in usage of funds, including, to greatest extent possible, relaxing and simplifying any application and reporting requirements associated with the funding.

The equitable distribution of funding to all interested Tribal Nations must be the guiding principle of the Department throughout the award process. It is with this in mind that USET SPF strongly urges Congress to support the distribution of these dollars via non-competitive formula-based funding. Grant funding fails to reflect the unique nature of the federal trust obligation and Tribal sovereignty by treating Tribal Nations as non-profits rather than governments. A non-competitive, formula-based methodology will provide each of the 573 federally-recognized Tribal Nations with the opportunity to access this set aside, ensuring the entirety of funds are obligated each year. We also call upon DOJ and Congress to consider how this funding might be delivered via Indian Self-Determination and Education Assistance Act contracting and compacting.

Conclusion

The VOCA set aside was designed to provide Tribal Nations and Tribal organizations, in parity with states, resources to deliver comprehensive services and compensation to crime victims within Tribal communities. However, since 2018, \$162.5 million in Tribal set aside funding has not been allocated to Tribal Nations. As an agency of the federal government, DOJ has a trust obligation to ensure Tribal Nations have access to resources to address crime in Indian Country. The failure in ensuring these critical funds are delivered to Tribal Nations is a violation of that obligation. USET SPF urges SCIA and Congressional appropriators to ensure DOJ takes the appropriate steps to distribute the total set-aside in Indian Country as intended.