



The Beat *in DC*

June—September 2019

A publication of the USET Sovereignty Protection Fund

Budget

Government Operating Under CR for FY 2020 While Congress Works to Pass Appropriations Bills, Additional CR possible

In what is now a typical beginning to the Fiscal Year (FY), the federal government is operating under a Continuing Resolution (CR) through November 21st so that

Congressional appropriators can continue work on final spending legislation for FY 2020. The deal for the CR came after a broader deal for 2-year topline spending numbers was reached between Congressional leadership and the President during the final weeks of July.

The Senate had been postponing action on appropriations, pending the deal, in order to have an understanding of total discretionary spending authority for FY 2020. Under the Budget Control Act of 2011 (BCA), discretionary spending was subject to increasingly less generous annual spending caps, which would trigger the automatic across-the-board cuts known as sequestration. Since passage of the BCA, sequestration cuts have been triggered only once—in FY 2013. In every other FY, Congress and the Administration have negotiated cuts to other spending that allow for increases to the statutory caps. In the most recently enacted deal, topline non-defense discretionary spending was increased \$78 billion for FY 2020 and \$72 billion for FY 2021. With Congress and the Administration agreeing to these increased caps, it is highly unlikely that sequestration cuts will be triggered for the next two FYS. In addition, since the statutory spending limits imposed by the BCA expire in FY 2021, the threat of sequestration cuts has been lifted for the foreseeable future.

Earlier this year, the House passed ten of the twelve FY 2020 appropriations bills, including the Interior, Environment, and Related Agencies bill, which contains funding for the Indian Health Service (IHS) and Bureau of Indian Affairs (BIA). As it has in previous years, the House rejected all of the President's proposed cuts and program eliminations for IHS and BIA, and opting to provide

Issue Highlights:

- Government Operating Under CR for FY 2020 While Congress Works to Pass Appropriations Bills
- USET SPF Testifies in Support of Advance Appropriations for IHS and BIA
- USET SPF Continues Advocacy, Provides Guidance as Broken Promises Legislation is Drafted
- USET SPF Seeks to Protect Tribal Sovereign Immunity in Torts Claims, Patent Cases
- SDPI on Temporary Extension as Negotiations on Larger Package Continue
- USET SPF Testifies in Support of VAWA Legislation
- USET SPF Continues to Advocate for Equity in Tribal Homelands Restoration, Focuses on Senate
- Treasury Tribal Advisory Committee Meets After Nearly 5 Year Wait

increases. It would fund BIA at a total of \$2.1 billion, \$288 million more than the President's Request. It provides a separate appropriation for BIE at a level of \$1 billion, \$133 million above the Request. Finally, IHS would be funded at a total of \$6.3 billion, \$431 million more than the Request. It is important to note, however, that the House was working with a topline spending level that was higher than ultimately agreed to in the July deal.

Following approval of the larger deal, Senate appropriators, using smaller topline numbers than the House, worked to draft and move appropriators bills through the Committee process, ten of which have been approved in Committee. At press time, the full Senate had voted to approve a package containing four appropriations bills, including the Interior, Environment, and Related Agencies bill. Though the Senate version of the bill provides overall increases to both IHS and BIA, these increases are much smaller, with the agencies funded at totals of \$1.53 billion (an increase of \$23 million) and \$6.04 billion (an increase of \$237 million), respectively. The bill also proposes some reductions to certain line items over FY 2019 enacted appropriations.

As the Senate works to pass its versions of appropriations bills, high-level negotiations will need to occur between Congressional leadership regarding the discrepancy between House-approved spending levels and the levels ultimately agreed to in the larger budget deal. Until spending levels for each of the twelve appropriations bills are agreed to by the leadership of both chambers, the House and Senate will be unable to go to conference to reconcile differences between their respective bills and vote on full year continuing appropriations for FY 2020. In addition to differences in topline spending, the chambers differ in whether and how to fund a border wall, and how much to spend on domestic priorities like the Labor-Health and Human Services bill.

At press time, 5 weeks remain until the CR expires and there are still many issues to resolve before the appropriations process can move forward. With this in mind, there is a very real chance that another CR will be necessary in order to avoid a government shutdown prior to the Thanksgiving holiday. We will continue to monitor the appropriations process for FY 2020 and will provide updates as they become available.

- [S. 2580](#)
- [Senate Report for S.2580](#)
- [H.R. 3052](#)
- [House Report for H.R. 3052](#)
- [USET SPF Testimony for the Record for SCIA Hearing on DOJ FY20 Appropriations](#)
- [USET SPF Testimony for the Record of SCIA Hearing on BIA and IHS FY20 Appropriations](#)
- [USET SPF Testimony for the Record of House Interior Appropriations AI/AN Public Witness Hearings for FY20](#)
- [President's Budget Request for FY 2020](#)

USET SPF Testifies in Support of Advance Appropriations for IHS and BIA

On September 25th, USET SPF, represented by Wampanoag of Gay Head (Aquinnah) Chairwoman, Cheryl Andrews-Maltais, testified before the House Natural Resources

Subcommittee on Indigenous Peoples of the United States in favor of extending advance appropriations to the Indian Health Service (IHS), the Bureau of Indian Affairs (BIA), and all federal Indian funding.

Following the longest federal government shutdown in history, Indian Country has renewed calls for legislative action to insulate the federal fiduciary trust responsibility and obligations from Congressional inaction and political stalemates. On top of chronic underfunding, funding for federal Indian agencies and programs is almost always delayed and is frequently subject to government shutdowns.

The vast majority of funding for Indian programs appears on the discretionary side of the budget. Discretionary funding is funding that is appropriated on an annual basis at the discretion of Congress. It requires Congressional action each year, unlike mandatory funding, which is authorized for several years at a time or indefinitely.

However, since Fiscal Year (FY) 1998, there has only been one year (FY 2006) in which appropriated funds for the IHS and BIA were released prior to the beginning of the new fiscal year. This is largely due to partisan disputes over spending and other issues unrelated to federal Indian programs. Nonetheless, funding for the trust responsibility and obligations constantly falls victim to partisan battles and continues to be impacted by the pursuit of deficit reduction.

That our funding is vulnerable to Congressional inaction and political bickering is a failure of the legislative branch to honor its sacred duty to Tribal Nations. In the short-term, all federal Indian funding must be protected from shutdowns and continuing resolutions through advance appropriations legislation. Advance appropriations is funding that becomes available one year or more after the year of the appropriations act in which it is contained, allowing for increased certainty and continuity in the provision of services.

Amid calls for action during the shutdown this winter, the Indian Programs Advance Appropriations Act (IPAAA) (S. 229/H.R. 1128) was introduced. Led by Sen. Tom Udall (D-NM) on the Senate side and Rep. Betty McCollum on the House side, the legislation would extend advance appropriations to both IHS and BIA. In addition, Rep. Don Young introduced H.R. 1135, the IHS Advance Appropriations Act, which would provide advance appropriations for IHS only. Sen. Lisa Murkowski introduced a Senate companion bill, S. 2541, on September 24th. **USET SPF supports and continues to urge advance appropriations for both IHS and BIA, and all federal Indian funding, as a more complete recognition of the federal trust responsibility and obligations.**

In the long-term, USET SPF continues to call for full and mandatory funding for all federal Indian programs and services, inclusive of and beyond IHS and BIA. Federal funding and services provided to Indian Country are the result of trust and treaty obligations, which are not discretionary.

- [USET SPF Testimony](#)
- [HNR Hearing](#)
- [Press Release Supporting IPAAA](#)
- [S.229/H.R. 1128](#)
- [S. 2541/H.R. 1135](#)

USET SPF Continues Advocacy, Provides Guidance as Broken Promises Legislation is Drafted

On December 20, 2018, the U.S. Commission on Civil Rights (USCCR) issued a report titled, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans*. The Report comes after years of advocacy from Tribal Nations and organizations seeking an update to the 2003 *Quiet Crisis* report, which found deep failures in the delivery of federal fiduciary trust and treaty obligations. *Broken Promises* confirms what we in Indian Country already know—with the exception of some minor improvements, the U.S. continues to neglect to meet its “most basic” obligations to Tribal Nations. Notably, the Report found that the funding of the federal trust responsibility and obligations remains “grossly inadequate” and a “barely perceptible and decreasing percentage of agency budgets.” Though these chronic failures have persisted throughout changes in Administration and Congress, it is time that both the legislative and executive branches confront and correct them.

Since the issuance of the *Broken Promises* report, USET SPF has been calling for action on its findings and recommendations, including legislative action. On June 5th, USET SPF President, Kirk Francis, was one of three Tribal leaders invited to appear on a Congressional panel to begin to take action on the findings and recommendations of the Report. He was joined by National Congress of American Indians President, Jefferson Keel, Affiliated Tribes of Northwest Indians President, Fawn Sharp, as well as members of Congress, USCCR Commissioners, and BIA and IHS leadership.

USET SPF Director of Policy and Legislative Affairs, Liz Malerba spoke to USET SPF’s advocacy on this issue during an episode of Native America calling on June 24th, entitled, “The Continuing Failure of U.S. Funding Promises.” She was joined Rep. Deb Haaland, USCCR commissioner, Karen Narasaki, and National American Indian Housing Council Executive Director, Tony Walters.

As a result of Tribal advocacy, there is a current effort, lead by Senator Elizabeth Warren and Rep. Haaland to draft and introduce ambitious and wide-ranging legislation to begin to improve the delivery of federal trust and treaty obligations to Tribal Nations. Tentatively titled, *Honoring Promises*, the proposal seeks to implement USCCR and Tribal recommendations in a variety of areas, including health, public safety, education, housing, and economic development. As the Senator and Representative work to craft this bill, USET SPF has been providing comment and guidance to ensure the final product includes the kinds of visionary proposals supported by our Tribal Nations. While USET SPF endorses and supports many of USCCR’s recommendations, we are seeking bold and systemic change in order to truly improve the delivery of federal trust and treat obligations

USET SPF will continue to work to provide comment on draft legislation, as well as call for action in response to the *Broken Promises* Report. We will provide updates as they develop.

- [Honoring Promises Proposal 1-pager](#)
- [Native America Calling Episode](#)
- [Broken Promises Congressional Panel Video](#)
- [USET SPF Letter to IPUS Subcommittee](#)
- [USET SPF Letter to SCIA](#)

- [USET SPF Secretary Chief Lynn Malerba Participation in Webinar on Broken Promises](#)
- [Broken Promises Report and Other Resources](#)

Culture and Heritage

USET SPF Supports the STOP Act

In July 2019, USET SPF wrote letters of support for the House and Senate reintroduction of the Safeguard Tribal Objects of Patrimony (STOP) Act for the 116th Congress. In our letters, we highlight our support for legislation that would help ensure the protection of our sacred items, which are often illegally obtained then sold abroad.

Passage of the STOP Act would make it possible for Tribal Nations to access other countries' domestic laws and law enforcement mechanisms to regain our cultural heritage. Specifically, the legislation creates an explicit prohibition on exporting cultural heritage obtained in violation of existing law and puts in place an export certification system to accompany the prohibition. The STOP Act additionally confirms the President's authority to enter into agreements under a 1970 international treaty in order to request return of a Tribal Nations' cultural heritage from other countries. Lastly, the legislation includes important provisions that would facilitate more internal coordination with the federal government and coordination with Tribal Nations in facilitating the return of cultural heritage items.

On September 19, 2019, the House Natural Resources Subcommittee for Indigenous Peoples of the U.S. (SCIP) held a legislative hearing on H.R. 3846, the House version of the STOP Act, which is a first step toward passage of the legislation.

- [USET SPF Support Letter to Senate - STOP Act 2019](#)
- [USET SPF Support Letter to House - STOP Act 2019](#)

Economic Development

USET SPF Seeks to Protect Tribal Sovereign Immunity in Torts Claims, Patent Cases

Sovereign immunity from suit is an aspect of sovereignty possessed by federal, state, and Tribal Nation governments. The purpose is to provide protection against loss of assets held in common for many people for the performance of vital government functions. However, while the U.S. Supreme Court has repeatedly acknowledged that Tribal sovereign immunity is a "core aspect of" and a "necessary corollary to" Tribal sovereignty, Tribal Nations have been subject to an increasing number of challenges and attempts to limit this foundational government authority, both through the courts and in Congress.

These challenges include attempts to erode sovereign immunity as a result of off-reservation and other economic activity, as well as tort-based lawsuits against Tribal Nations and their government-owned entities.

In support of an Impact Week 2019 Board resolution, USET SPF is helping to organize partnership work with the legal representatives of Tribal Nations and organizations to devise risk management strategies for tort victims in an effort to protect Tribal sovereign immunity more broadly. The effort focuses on action from both the legislative and executive branches to support this bedrock sovereign authority. USET SPF recently produced a briefing paper summarizing the current threat to Tribal Nations' sovereign immunity from tort claims, especially arising from off-reservation commercial activities, and providing broad strokes methods for addressing the threat.

In August, USET SPF joined and helped to draft an Inter-Tribal organization letter to Members of Congress serving on the House and Senate appropriations committees urging the inclusion of a funded directive in the FY 2020 Interior and Commerce Justice Science Appropriations bills to that would facilitate the protection of Tribal sovereign immunity. This language directs the Secretary of the Interior and Attorney General to develop, in consultation with Tribal Nations, best practices that Tribal Nations may employ in continuing to take risk management measures. Through risk management measures, Tribal Nations take proactive steps to reduce the likelihood of injuries that could take place in association with our economic activity. Risk management measures can also ensure that, if an injury occurs, a potential tort plaintiff has recourse available through compensation or, when the Tribal Nation chooses to exercise its sovereign authority to do so, through a limited waiver of the Tribal Nation's sovereign immunity from suit.

In addition to increasing tort claims, Tribal Nations are also facing challenges to our inherent governmental authority as we seek to exercise our sovereign immunity in acquiring patents. Just prior to Congress' August recess, USET SPF became aware of an effort to move legislation in the U.S. Senate that would abrogate Tribal sovereign immunity for all patent infringement actions. S. 440, the Preserving Access to Cost-Effective Drugs (PACE) Act would apply not only to drug patents, but would prevent Tribal Nations from asserting sovereign immunity in any type of patent infringement proceeding regardless of the patent involved. S. 440 expressly exempts both state governments and public universities from this restriction.

Senate leadership attempted to use a process for expedited consideration of legislation, known as a "hotline," which seeks approval from each Senator to move a bill or set of bills via unanimous consent. The PACE Act was packaged with three other bills, which were non-controversial in nature. In response, USET SPF alerted both our membership and partner organizations to contact Senators and ask that they object to moving S. 440 via unanimous consent and place it on hold. As a result of this advocacy, the effort to hotline the bill prior to the August recess was thwarted by the holds of several senators.

USET SPF strongly opposes any legislative attempt to abrogate Tribal sovereign immunity in any proceeding or forum. The federal government has a longstanding obligation under the Constitution, treaties, and hundreds of court cases to protect Tribal self-government. Any federal abrogation of Tribal immunity runs sharply counter to this

obligation, and would substantially interfere with Tribal self-governance, and place Tribal assets and funds at risk. It would be a further violation of our inherent sovereignty to preserve sovereign immunity for other units of government and public universities—and not Tribal Nations.

USET SPF will continue to lead and participate in efforts to protect and defend Tribal sovereign immunity. We will provide further information as it develops.

- [USET SPF Sovereign Immunity White Paper](#)
- [USET SPF Alert on PACED Act](#)
- [PACED Act](#)
- [USET SPF Resolution SPF 2019:016](#)
- [USET SPF Resolution SPF 2018:007](#)

Energy and Environment

USET SPF Comments on NPS Draft Programmatic Agreement

On August 30, 2019, USET SPF submitted comments to the National Park Service (NPS) regarding the Draft Programmatic Agreement (PA) on Emergency Supplemental Funding for Hurricanes Harvey, Irma, and Maria. In February 2019, NPS announced the availability of \$48.5 million in Emergency Supplemental funding from the Historic Preservation Fund (ESHPF) for historic properties damaged by Hurricanes Harvey, Irma and Maria – including support for Tribal Historic Preservation Offices (THPOs) of the Coushatta Tribe of Louisiana and Seminole Tribe of Florida. Funding under this program is intended to support the stabilization, rehabilitation, and repair of historic properties damaged by storms that are listed in, or considered eligible for listing in, the National Register of Historic Places. Following the announcement, NPS began the development of the PA to determine Tribal protocols as, according to the agency, NPS does not have a consistent way to include Tribal Nations and their concerns about cultural sites.

In our comments, we express our support for the development a draft agreement that directs the way forward for THPOs to evaluate the effects to historic properties with the use of ESHPF, as this is a central function of the trust responsibility and obligations. However, we voice our serious concerns regarding the Tribal Consultation section of the PA and the development of Tribal Protocols. Despite a proposed finalization date of October 1, 2019, it is unclear whether NPS has consulted with Tribal Nations in the development of Tribal Protocols. A draft was not included in the draft PA, nor was this document discussed on an August 22nd conference call regarding the PA. The Tribal Protocols cannot and should not be finalized in the absence of Tribal advice and guidance. In our comments, we urge the NPS to extend the deadline for the finalization and to conduct consultation with Tribal Nations on the Protocols.

- [USET SPF Comments](#)

Health

USET SPF Submits Testimony for Record of House Hearing on ACA Lawsuit

On July 24th USET SPF submitted testimony for the record to the House Committee on Oversight and Reform regarding the hearing, “*The Trump Administration’s Attack on the ACA: Reversal in Court Case Threatens Health Care for Millions of Americans*” held on July 10th. During the hearing, Committee members and witnesses examined the decision by the Trump Administration to take the position that the entirety of the Patient Protection and Affordable Care Act (ACA) is unconstitutional, and therefore, must be repealed. In May 2019, the U.S. filed a brief with the 5th Circuit Court of Appeals reversing its original position to defend the ACA and concurring with the U.S. District Court of the Northern District of Texas ruling in *Texas v. United States*. The District Court ruled that the repeal of the tax penalty, the “individual mandate” enacted as part of ACA, is both unconstitutional and inseverable from the remainder of the law and must be struck down in its entirety. Oral arguments in the lawsuit began the week of July 8th. It's unclear exactly when the appeals court will rule, however it is almost certain that whichever side loses will appeal to the Supreme Court.

In our testimony, we express our deep concern regarding the U.S.’s decision to reverse its original position as the ACA contains the permanent reauthorization of the Indian Health Care Improvement Act (IHCIA). The IHCIA is the cornerstone legal authority for the delivery of health care to American Indians and Alaska Natives (AI/ANs) in accordance with federal trust and treaty obligations. We urge the House Committee on Oversight and Reform to use its authority to ensure the vital IHCIA and other AI/AN provisions of the ACA are upheld and protected.

Earlier this year, USET SPF joined an [amicus brief](#) arguing that in the event the ACA is struck down by the 5th circuit, the IHCIA and Indian-specific provisions are severable from the larger law and must be preserved. The loss of the IHCIA and Indian-specific provisions would have devastating impacts on both the health of AI/ANs and the Indian Health System as a whole.

- [USET SPF Testimony for the Record](#)
- [DOJ Letter](#)

SDPI on Temporary Extension as Negotiations on Larger Package Continue

The Special Diabetes Program for Indians (SDPI) has been extended through a recent Continuing Resolution through November 21, 2019, so that work can continue on a full reauthorization. Congress is expected to address reauthorization for the remainder of Fiscal Year 2020, though the amount and length of authorization is unknown at this time due to spending negotiations associated with the expected legislative vehicle. USET SPF and Tribal Nations and organizations across the country are currently advocating for an increase in both funding and the length of the reauthorization.

On the Senate side, the Senate Committee on Health, Education, Labor & Pensions committee approved S.1895, the Lower Health Care Costs Act. The bill includes a five-year reauthorization of SDPI at current funding levels of \$150 million. The House

Energy and Commerce proposal would reauthorize SDPI at \$150 million for four years, which reduced funding from an original proposal of \$200 million for five years, due to the lack of an offset.

SDPI is a lifesaving initiative for the treatment and prevention of type-2 diabetes in Indian Country. In order to continue to make progress on the devastating effects of diabetes in Tribal communities and provide certainty to SDPI programs, Congress must provide a multi-year reauthorization of SDPI. The short-term reauthorizations provided over the last several Congresses, Indian Country has been forced to focus on advocating for SDPI's continued funding rather than patient care and programmatic expansion. Further, the Funding for SDPI has been flat since 2004, despite inflation and rising medical costs. Tribal Nations and Congress have made significant investments in preventing and managing the disease. An increase in funding will assist Tribal Nations in preventing more costly complications of the disease in the long-term.

In order to continue making progress in the fight against diabetes in Indian Country, SDPI must be reauthorized before the end of the year to avoid the loss of Tribal programs. Any lapse in reauthorization will cause costs of diabetes and its complications to increase again for Tribal communities, and precious jobs created by this program will cease.

That both House and Senate legislation contain a longer reauthorization of SDPI is a positive development. USET SPF will continue to advocate for an increase in funding for the program and provide updates as they become available.

- [S.1895](#)
- [H.R. 2328](#)

USET SPF Submits Comments on South Carolina Medicaid Work Requirements Waiver

On July 10th, USET SPF provided comment to the Centers for Medicare and Medicaid Services (CMS) regarding the Community Engagement Section 1115 Demonstration Waiver Application submitted by the state of South Carolina on May 8th. Among other provisions within the application, the state of South Carolina is seeking to implement work requirements as a condition for accessing Medicaid. Though the application includes an exemption for citizens of the only federally-recognized Tribal Nation in South Carolina – the Catawba Indian Nation – the exemption fails to include the entire Catawba population served by the Indian Health System, as well as the citizens of other Tribal Nations living in South Carolina. In our comments, we highlight that it is troubling that CMS continues to consider a state-by-state optional exemption for “members of federally recognized Tribes” to have satisfied its trust and treaty obligations to Tribal Nations. This state-by-state approach is deeply flawed for two reasons: 1. It fails to capture the entire population of American Indians and Alaska Native (AI/ANs) eligible for care through the Indian Health Service and 2. It inappropriately places access to a federal program in the hands of states.

Additionally, we express our deep concern regarding the overall lack of Tribal consultation with the Catawba Indian Nation on the formulation and submission of the application to CMS. Despite assertions within the application that the state of South Carolina consulted with Catawba, USET SPF was informed by the Tribal Nation that no

such consultation occurred. As of print date, South Carolina's application is still pending with CMS.

USET SPF opposes, in the strongest possible terms, any action taken by the federal government that fails to recognize its sacred duty to Tribal Nations. CMS has clear authority to make blanket accommodations to ensure that work requirements imposed by all 1115 Demonstration waivers do not pose a barrier to access to Medicaid for AI/ANs. As such, we have opposed all state applications that do not provide an AI/AN exemption. By not providing a blanket exemption for AI/ANs, CMS is continuing to refuse to acknowledge Tribal sovereignty, the federal trust responsibility and obligations, and the unique government-to-government relationship between the federal government and Tribal Nations. We continue to urge CMS to retract its deeply flawed legal interpretation and work with Tribal Nations to not just preserve but expand access to Medicaid for AI/ANs.

- [USET SPF Comments to CMS](#)

USET SPF Supports member Tribal Nations during HHS Regional Consultations

In support of our member Tribal Nations attending the U.S. Department of Health and Human Services (HHS) Regional Tribal Consultations in HHS Regions 1-4 during September 2019, USET SPF provided talking points to help guide discussions. Our talking points address the following issue areas:

- HHS Fiscal Year (FY) 2020 Appropriations;
- Indian Health Care Improvement Act and Affordable Care Act Repeal;
- Auto-Health Professional Shortage Areas;
- Challenges to Constitutionality of Tribal Political Status;
- Distribution of Substance Abuse and Mental Health Services Administration (SAMHSA) Opioid Funding;
- Indian Health Service (IHS) FY 2020 Appropriations;
- Reauthorization of the Special Diabetes Program for Indians;
- Section 105(l) Leasing Obligations;
- “All of Us” Research Program, Data Sharing and Management, and Intellectual Property Consultation; and
- Good Health and Wellness in Indian Country.

Consultations in the USET SPF region occurred from September 18-24, and included varied consultations with HHS operating divisions, including SAMHSA, IHS, the Health Resources and Services Administration, and others. USET SPF will continue to provide this type of support to member Tribal Nations as we seek the federal government's delivery of its trust obligations.

- [USET SPF Talking Points for HHS Regional Consultations](#)

USET SPF Submits Comments to IHS on FY 2019 Opioid Grant Funds

On September 3rd, USET SPF provided comment to the Indian Health Service (IHS) regarding the \$10 million increase in the Alcohol and Substance Abuse Program. This increase to the IHS budget line was provided for Fiscal Year (FY) 2019 within the Consolidated Appropriations Act of 2019. Among other instructions for distribution of

these funds, IHS was directed to develop a grant-based opioid addiction Special Behavioral Health Pilot Program (SBHPP) to be modeled after the Special Diabetes Program for Indians (SDPI).

In our comments, USET SPF highlights that while we are glad to see IHS initiate consultation to distribute additional FY 2019 program funding, we note the limited amount of resources available under this line. With this in mind, we question whether SDPI is an appropriate model for funding distribution. Much like SDPI, Tribal governments require a robust, steady stream of resources to create and sustain culturally appropriate opioid prevention, treatment, and aftercare services. In our comments, we urge IHS and Congress to strongly consider these factors as future budget requests are developed.

In addition, USET SPF urges IHS, as well as Congress, to explore opportunities to deliver this funding to Tribal Nations through self-governance contracting and compacting. Though we are aware that IHS is carrying out instructions from Congress in distributing the \$10 million through SBHPP grants, USET SPF continues to convey our opposition to the grant-based model of funding. USET SPF recommends IHS distribute funding to each IHS Area where the Area Directors can consult with Tribal Nations to determine the best method of allocation, including through Tribal shares and other formula-based methods.

We further remind IHS to remember the federal trust obligation when seeking to address the opioid epidemic in Indian Country, and to distribute critical funding in a manner that upholds the sovereign status of Tribal Nations.

- [USET SPF Comments](#)
- [IHS DTLL on Distribution of FY 2019 Opioid Grant Funding](#)

USET SPF Writes to NIH Regarding Consultation and Data Protection Concerns on Recent Initiatives

On August 27th, USET SPF provided comments to the National Institutes of Health (NIH) regarding three initiatives including:

- [All of Us](#);
- [Proposed Provisions for a Draft NIH Data Management and Sharing Policy](#); and
- [Intellectual Property, Inventions, and Patent Rights in Biomedical Research](#).

Dear Tribal Leader letters (DTLLs) from NIH dated as early as April 2019 for all three initiatives convey that the agency wished to engage in Tribal consultation. The DTLLs further detailed how the agency sought input from Tribal Nations on how these initiatives may affect Tribal communities. However, the DTLL's failed to include important consultation timelines as well as comment submission deadlines that are critical to the provision of Tribal advice and guidance. Frustratingly, those within Indian Country were made aware that consultation would soon conclude for two of these initiatives in August 2019, and that consultation on the third had already concluded without announcement.

In our comments, USET SPF highlights the actions of NIH which have been of great concern not just to USET SPF, but to Tribal leaders, and members of the NIH Tribal Advisory Committee (TAC). To date, NIH has failed to adhere to existing Tribal

consultation policies as it seeks input on the three initiatives. As a result, we are concerned that NIH will finalize the three initiatives without meaningful input from Indian Country. USET SPF continues to underscore that NIH must recognize the critical importance of meaningful engagement with Tribal Nations and move forward in a manner that is inclusive and transparent.

While USET SPF recognizes the importance of scientific discovery and advancement, we stress to NIH that the agency must prevent ethical violations against our communities and our people. USET SPF urges NIH to work with Tribal Nations and the NIH TAC to resolve outstanding concerns from Indian Country before finalizing these three initiatives.

- [USET SPF Letter to NIH](#)

USET SPF Submits Comments to IHS on CHAP Expansion

On June 7th, USET SPF submitted comments to the Indian Health Service (IHS) on the agency's request for input on the draft policy that would "implement, outline, and define a National Community Health Aide Program (CHAP)" outside of Alaska as authorized under amendments to the Indian Health Care Improvement Act (IHCIA). The establishment of a national CHAP would expand access of the program to mid-level providers, including community health aides, behavioral health aides, and dental health aide therapists to Tribal Nations in the lower 48 states. When IHS consulted with Tribal Nations on creating a draft policy that would expand CHAP in June 2016, USET SPF supported the nationalization of the program with maximum flexibility for Tribal Nations. In our most recent letter, we express our continued support for an expansion of CHAP that would provide flexibility for Tribal Nations to implement programs in a manner that is representative of our inherent sovereignty.

Additionally, we underscored that an expansion must not come at the expense of other vital IHS services. The Fiscal Year 2020 President's Budget Request proposed to fund a CHAP expansion by eliminating funding for the Health Education program as well as drastically cutting funding for Community Health Representatives by \$39 million. This proposal did not receive any Tribal consultation prior to appearing in the President's Budget Request. In order for a truly "seamless transition" toward a nationalized CHAP, the agency must not look to eliminate existing programs and funding. Rather, CHAP should be integrated as a compliment to current community health infrastructure, with its own separate funding.

In September 2019, the IHS CHAP Tribal Advisory Group (TAG) met to finalize recommendations on the policy for agency-wide review. At press time, IHS is reviewing those recommendations.

- [USET SPF Comments](#)

Interior

USET SPF Supports PROGRESS for Indian Tribes Act in House Hearing

On July 30th, USET SPF submitted testimony for the record the House Natural Resources Subcommittee on Indigenous Peoples of the United States (SCIP) for the Legislative Hearing on H.R. 2031, the “Practical Reforms and Other Goals to Reinforce the Effectiveness of Self-Governance and Self-Determination for Indian Tribes Act of 2019” or the “PROGRESS for Indian Tribes Act.” In our testimony, we convey our strong support for the PROGRESS for Indian Tribes Act as the legislation would enhance Tribal self-governance by aligning the U.S. Department of Interior self-governance program to be consistent with its Indian Health Service counterpart in Title IV.

We urge the Subcommittee, as well as Congress as a whole, to continue to improve and expand upon Tribal self-governance to in fulfillment of the federal trust obligation. This includes expanding Tribal self-governance to all federal programs under the Indian Self-Determination and Education Assistance Act (ISDEAA), as well as working to improve and expand upon its principles.

USET SPF additionally recommends the Subcommittee consider modifications to reporting requirements under ISDEAA and other methods of funding distribution. We highlight the administrative burden of current reporting requirements including site visits, “means testing,” and other inapplicable standards developed unilaterally by Congress or federal officials. Finally, we call upon the Subcommittee to ensure legislation fully supports inter-agency transfers through self-governance contracts and compacts. USET SPF urges that clarity be provided to ensure the use and promotion of the collaborative, inter-agency model in support of the continued expansion of self-governance.

- [USET SPF Testimony for the Record](#)

Justice

USET SPF Testifies in Support of VAWA Legislation

On June 19th, USET SPF, represented by USET SPF Secretary, Chief Lynn Malerba, testified before the Senate Committee on Indian Affairs in support of five public safety bills:

- [S. 227, Savanna's Act](#)
- [S. 288, Justice for Native Survivors of Sexual Violence Act](#)
- [S. 290, Native Youth and Tribal Officer Protection Act](#)
- [S. 982, Not Invisible Act of 2019](#)
- [S. 1853, Bridging Agency Data Gaps and Ensuring Safety \(BADGES\) for Native Communities Act](#)

These bills, if enacted, would address critical gaps in the exercise of special domestic violence criminal jurisdiction under the Violence Against Women Act (VAWA) and ensure that the United States fulfills more of its obligation to Indian Country by providing necessary resources. In doing so, we envision a future in which our children, women,

elders, and all Native people can live in healthy, vibrant communities without fear of violence knowing that justice will be served.

Some of the bills re-recognize our inherent sovereign criminal jurisdiction, while others facilitate information collection and sharing and cooperation across law enforcement agencies in furtherance of the United States' trust responsibility. USET SPF supports these bills as opportunities to support Tribal self-determination, better deliver upon the trust responsibility and obligations, and ultimately serve as pieces to the puzzle that lead to safer and stronger communities. While we ultimately seek the restoration of full criminal jurisdiction over our lands, these bills represent important advancements toward that goal.

The public safety crisis facing Tribal Nations and our people is directly attributable, at least in part, to U.S. policies of colonialism, termination, and assimilation, as well as the chronic failure to deliver upon the trust responsibility and obligations. These policies stole our homelands, tried to steal our cultures, and limited our ability to exercise our inherent sovereign rights and authorities. The United States, including all branches of government must act to provide parity to Tribal Nations in the exercise of our inherent sovereign rights and authorities.

The most recent authorization of VAWA expired on December 21, 2018. This past April, the House of Representatives passed H.R. 1585, which would reauthorize VAWA until 2024 and, among other things, would expand Tribal special domestic violence criminal jurisdiction over non-Natives to include sexual violence, sex trafficking, stalking, child abuse and violence against tribal law enforcement attempting to execute these provisions. Due to a number of controversial provisions in the House version, including those related to guns and the LGBTQ community, the House version of the bill cannot pass the Senate in its current form.

As the Senate works to draft its version of VAWA, USET SPF is calling for the inclusion of these five bills. The majority on the Senate Judiciary Committee recently released a discussion draft of the Senate VAWA Tribal Title. While the draft included the restoration of Tribal criminal jurisdiction to the crimes outlined above, the conditions associated with that jurisdiction were not reflective of our sovereign status. Conditions of restored jurisdiction included concurrent jurisdiction with the federal and state governments, exceptions for cases where both the victim and defendant are non-Indians or where the defendant does not have sufficient ties to a Tribal Nation, and the ability of defendants to file writs of habeas corpus before exhausting all legal remedies available via a Tribal Nation's court system. These conditions are not imposed on the judicial systems of other units of government. USET SPF is unlikely to support the provisions of the discussion draft without major changes. We look forward to the opportunity for further conversations with the leadership of both parties on the Senate Judiciary and Indian Affairs Committees to draft a Tribal title that is reflective of both Tribal priorities and our inherent sovereignty.

- [USET SPF Testimony](#)
- [SCIA Hearing on Public Safety Bills](#)
- [Judiciary Committee Majority Discussion Draft](#)

USET SPF Comments on Future Crime Victims Fund Tribal Set-Aside Funding

On July 1st, USET SPF submitted comments in response to the Department of Justice's (DOJ) Office of Justice Programs (OJP), Office for Victims of Crime (OVC) Tribal consultation regarding how potential future Tribal set-aside funding from the federal Crime Victims Fund should be programmed. USET SPF is deeply concerned about DOJ's previous and continued administration of this funding. Despite receiving guidance from USET SPF, and Tribal Nations and organizations across Indian Country, that DOJ should provide maximum flexibility in the award of these dollars, DOJ's outreach, solicitation, and grant requirements have not yet honored this expectation. This has resulted in the return of precious funding designated and intended for victims' services in Indian Country. We urge DOJ to implement Tribal guidance and expectations in order to distribute the set-aside, as intended, including removing arbitrary and restrictive barriers to accessing funds.

DOJ's goal and chief priority with the Victims of Crime Act (VOCA) Tribal set aside and other funds must be to do everything in its power to ensure their full and equitable distribution in Indian Country. This includes working to remove any requirements or limitations acting as barriers to the receipt of dollars by any Tribal Nation/organization applicant. As an agency of the federal government, DOJ has trust and treaty obligations to Tribal Nations, including fiduciary obligations. Subjecting Tribal Nations to onerous application and reporting requirements—treating them as non-profits—in order to access these dollars runs counter to that obligation, as well as the intent of Congress in establishing the set aside.

USET SPF urges DOJ to take the appropriate steps to distribute the total set-aside in Indian Country as intended. We will provide additional information on this funding as it becomes available.

- [USET SPF Comments](#)

USET SPF Supports House Introduction of BADGES for Native Communities Act

On September 11th, Representative Deb Haaland, along with Representative Tom Cole and a bi-partisan group of co-leads introduced H.R.4289, the House version of the Bridging Agency Data Gaps and Ensuring Safety (BADGES) for Native Communities Act, legislation aimed at addressing barriers to efficient law enforcement agency data sharing and officer recruitment and retention. USET SPF extended its support via quote for the Congressional press release announcing the bill's introduction. USET SPF President, Kirk Francis, said of the BADGES for Native Communities Act:

“The United States, in partnership with Tribal Nations, must do more to address the shameful rates of missing and murdered Native people. This includes ensuring parity for Tribal law enforcement--both in access to crime information, as well as opportunities for recruitment and retention of personnel. USET SPF supports the BADGES for Native Communities Act as a strong step toward more fully delivering upon the trust responsibility and obligations, as well as better supporting the exercise of our inherent sovereign rights and authorities to protect our people and communities.”

The BADGES for Native Communities Act would address inefficiencies in federal criminal databases, increase Tribal Nations' access to those databases, and improve public data on crimes and staffing. The legislation would also promote more efficient recruitment and retention of Bureau of Indian Affairs law enforcement personnel, provide resources to Tribal Nations for improved coordination with other law enforcement agencies, and mitigate federal law enforcement mishandling of evidence. USET SPF will continue to urge the passage of this and other bills seeking to improve public safety and end the crisis of missing and murdered Native people through the promotion of Tribal self-determination, sovereignty, and the restoration of criminal jurisdiction.

- [BADGES for Native Communities Act Press Release](#)
- [H.R. 4289](#)

USET SPF Supports House Introduction of Justice for Native Survivors Act

On July 25th, Representative Deb Haaland, along with Representatives Paul Cook, Ruben Gallego, Tom Cole, and Sharice Davids, introduced the House version of the Justice for Native Survivors Act. Like the Senate version, the bill would extend Tribal Nations' restored jurisdiction over non-Native people, as authorized under the Violence Against Women Act (VAWA), to include crimes related to sexual violence. In a press release announcing the bill's introduction, USET SPF stated:

“As a result of the shameful policies of the United States and despite the limited restoration of Tribal criminal jurisdiction, our people continue to experience some of the highest rates of sexual violence. USET SPF supports the Justice for Native Survivors of Sexual Violence Act as an opportunity for this Congress to fix a dangerous oversight in the Violence Against Women Act through the affirmation of inherent Tribal sovereignty and authority.”

This legislation would address a critical gap under VAWA, which Tribal Nations, DOJ, and others have reported as an oversight in the drafting of the law, by confirming Tribal criminal jurisdiction over crimes including sex trafficking, sexual violence, and stalking. USET SPF will continue to urge the passage of this and other bills seeking to improve public safety and end the crisis of missing and murdered Native people through the promotion of Tribal self-determination, sovereignty, and the restoration of criminal jurisdiction.

- [Justice for Native Survivors Act Press Release](#)
- [H.R. 3977](#)

Land

USET SPF Continues to Advocate for Equity in Tribal Homelands Restoration, Focuses on Senate

Following passage of Carcieri fix legislation in the House this past May, USET SPF, along with Tribal Nations and partner organizations, has been focused on the introduction of companion legislation in the Senate. At press time, USET SPF is expecting that Sens. Jerry Moran (R-KS) and Jon Tester (D-MT) will be introducing a

Senate companion bill on Tuesday, November 5th. Like the House version, the Senate bill contains the two features necessary to restore parity to the land-into-trust process: (1) a reaffirmation of the status of current trust lands; and (2) confirmation that the Secretary has authority to take land into trust for all federally recognized Tribal Nations.

As you know, USET SPF has been advocating for a fix to the Supreme Court decision in *Carcieri v. Salazar*, since it was handed down in 2009. *Carcieri* has created a deeply inequitable 2-class system, in which some Tribal Nations have the ability to restore their homelands and others do not. This 2-class system serves to deny these Tribal Nations a critical component of the trust relationship, vital aspects of the exercise of inherent sovereignty, and the opportunity to qualify for several government programs.

It is important to note that there continue to be small, but influential pockets of opposition to a *Carcieri* fix in the Senate. While the fix previously passed the House in 2010, it has never passed the Senate, due to this opposition and the nature of Senate procedure, which allows for any Senator to hold up consideration of a bill. USET SPF has been working to meet with Senators known to be opposed in an effort to assess and remove barriers to support. With this in mind, continued advocacy and a unified voice from our member Tribal Nations and all of Indian Country is more important than ever.

We must achieve a clean fix once and for all. USET SPF calls upon the Senate to immediately take up and pass a *Carcieri* fix, and will continue to work to educate those in opposition to the bill.

- [Most recent USET SPF Action Alert](#)
- [Draft Senate Bill Text](#)
- [USET SPF Testimony for the Record](#)
- [Inter-Tribal Sign-on Letter](#)
- [H.R. 375](#)

Litigation

ICWA Constitutionality Upheld at Circuit Court Level

In a major victory for Indian Country, on August 9th, the United States Court of Appeals for the Fifth Circuit in *Brackeen v. Bernhardt* (formerly *Brackeen v. Zinke*) held that the Indian Child Welfare Act (ICWA) and its implementing regulations are constitutional, including finding that ICWA is not race-based for purposes of the equal protection clause. In doing so, the Fifth Circuit overturned a grant of summary judgment by the United States District Court for the Northern District of Texas in favor of the plaintiffs that struck down the Indian Child Welfare Act as unconstitutional and also found its implementing regulations unconstitutional and in violation of the Administrative Procedure Act (APA).

USET joined a massive coalition of Tribal Nations and Tribal organizations in submitting an amicus brief to the Fifth Circuit Court of Appeal in *Brackeen v. Bernhardt*, defending the constitutionality of ICWA and its implementing regulations.

The Fifth Circuit disagreed with a District Court ruling that ICWA's definition of "Indian child" is based solely on tribal ancestry or race, instead concluding it is "a political classification subject to rational basis review." In explaining its holding, the Fifth Circuit discussed the relevance of the ties established between an individual Tribal citizen and a federally recognized Tribal Nation—which it described as a "distinct political society" with a "government-to-government relationship" with the federal government. In response to the plaintiff's argument that Tribal Nation sovereignty does not extend outside Indian country, the Fifth Circuit noted that 78 percent of Indians lived outside Indian country as of 2016 and said: "For a tribe to exercise its authority to determine tribal membership and to regulate domestic relations among its members, it must necessarily be able to regulate all Indian children, irrespective of their location."

As expected, the *Brackeen* Plaintiffs filed petitions for rehearing en banc on October 1st. Respondent briefs, including those of the intervening Tribal Nations and the U.S., were filed on October 23rd. Neither the Tribal Nations nor the U.S. sought amici support in opposing the petition for en banc review. USET SPF will continue to monitor this case and work to defend ICWA and our status as political entities in the courts.

- [Fifth Circuit decision summary](#)
- [Amicus brief](#)

USET SPF and Tribal Nations Win in Challenge to FCC Rule

For the last fifteen years, USET has been at the forefront of working with the Federal Communications Commission (FCC) and tele-communication companies to assure the protection of Tribal cultural heritage and respect for Tribal cultural expertise—including negotiating a voluntary Best Practices Agreement [linked] with the FCC. Unfortunately, in 2018, the FCC reversed its support for Tribal Nations and adopted an order that exempted "small cell" wireless facilities (also known as 5G) from historic-preservation review under the National Historic Preservation Act (NHPA) and environmental review under the National Environmental Policy Act (NEPA). If allowed to stand, this would have meant that telecommunications companies could construct hundreds of thousands of cell deployments without seeking Tribal Nation input or review.

USET, along with several Tribal Nations (including USET member, the Seminole Tribe) and Tribal organizations, filed suit to vacate the FCC Order. On August 9th, the United States Court of Appeals for the DC Circuit rejected the FCC's 2018 Order finding that exempting small cell infrastructure from Tribal review and consultation would have undermined federal laws that Congress put in place to protect this country's irreplaceable cultural heritage, including Native heritage. Please see the attached summary for more information.

The FCC may appeal or it may choose to develop a new policy going forward. Although the DC Circuit did not go as far as Tribal petitioners requested (related to the payment of fees for initial Tribal reviews and the timeframes for Tribal responses under the Tower Construction Notification System), the court's opinion provides important clarifications of law that will provide leverage to Tribal Nations as the FCC undertakes a new rulemaking process. We will be providing additional information as the FCC begins its remand process and as other developments arise regarding this matter.

- [USET Brief](#)
- [DC Circuit Decision](#)

USET SPF Joins Amicus Brief in Further DAPL Litigation

In June of 2017 a decision from the DC District Court held that the Army Corps of Engineers “did not adequately consider the impacts of an oil spill on fishing rights, hunting rights, or environmental justice, or the degree to which the pipeline’s effects are likely to be highly controversial” when it approved the permits to the Dakota Access Pipeline.

The Judge subsequently sent the case back to the Army Corps of Engineers to conduct this analysis. The Corps has completed this process, and the case is now before the DC District Court once again. On August 16th, the Standing Rock Sioux and Cheyenne River Sioux Tribes filed a motion for summary judgement, arguing the Corps’ subsequent determination that the environmental impacts of the pipeline were adequately considered is “a sham.” In support of further Tribal litigation on this issue, USET SPF joined other Tribal Nations and organizations on an amicus brief in support of the Tribal Nations that focuses on the importance of tribal consultation in the environmental review process, and the lack of meaningful tribal consultation in this case.

With litigation ongoing, USET SPF is monitoring this issue carefully and will provide updates as they develop.

- [Amicus Brief](#)

USET SPF Issues Statement in Cayuga Lawsuit Against Showtime

On August 13th, USET SPF was quoted in a press release announcing member Tribal Nation, the Cayuga Nation’s, defamation lawsuit against the Showtime television network and the writers and producers of its popular television series Billions. Filed in NY County Supreme Court, the lawsuit alleges that an episode of Billions that first aired on May 5, 2019 defamed the Cayuga Nation and federal representative Clint Halftown by using their names and by a “deliberate and intentional resort to an offensive stereotype of Native Americans as irresponsible, corruptible, and even criminal, thereby exposing the Cayuga Nation and Mr. Halftown to public contempt, aversion, and disgrace.” USET SPF issued a supportive statement for the press release, saying, in part:

“This sort of narrative further perpetuates societal ignorance and lends itself to even greater misunderstanding and unawareness about America’s first people. Our story and our relationship with America is long and complicated and deserves greater recognition and respect.”

USET SPF will continue to advocate for a more truthful and accurate depiction of Tribal Nations and Native people in the media and beyond. We will provide additional information on the litigation as it moves forward.

- [Press Release](#)
- [Cayuga Complaint](#)

Office of Management and Budget

USET SPF Joins Inter-Tribal Effort to Exempt Tribal Advisory Committees from Elimination Under New Executive Order

On June 14th, President Trump issued Executive Order (EO) 13875, *Evaluating and Improving the Utility of Federal Advisory Committees*. The EO mandates that federal agencies terminate 1/3 of advisory committees established under the Federal Advisory Committee Act (FACA), but not authorized by statute, by September 30, 2019. The EO further institutes a government-wide cap on new FACA committees not authorized by statute, requiring agencies that wish to breach the cap of 350 to request a waiver from the Office of Management and Budget (OMB). Finally, the EO requires that each agency make a recommendation for the continuation or termination all existing FACA committees, including those established by statute.

Federal advisory committees are critical to the execution of our nation-to-nation relationship because they educate agencies on their trust obligations; increase agency compliance with congressional support for Tribal self-governance; and because they advise on Tribal rights and resources. Though the EO would unquestionably have implications for Tribal Nations, neither the White House nor any federal agencies initiated consultation prior to the issuance of the EO or during its implementation. In response to the EO, USET SPF worked with partner organizations to raise awareness of the issue and also signed onto an Inter-Tribal organization letter that urges consultation on the EO, as well as an exemption from the EO for:

1. All committees that are expressly tribal;
2. All committees involving a tribal representative; and
3. All committees that impact or may impact a Tribal right, resource, asset or that specifically affect AI/ANs.

The letter was transmitted to the White House, OMB, and the heads of all federal departments on July 30th. There has been no official response from the Administration to these letters, though some federal officials have indicated that because many Tribal advisory committees are exempt from FACA and/or statutorily required, they will be spared from the initial cuts. On September 27th, a subsequent Executive Order entitled [Executive Order on the Continuance of Certain Federal Advisory Committees](#) was issued, outlining a list of Presidential commissions and advisory committees that will be continued through Fiscal Year 2021.

- [Inter-Tribal Letter](#)
- [EO 13875](#)

USET SPF Comments on Proposed Changes to Consumer Inflation Measures

On June 21st, USET SPF submitted comments to the Office of Management and Budget's (OMB) regarding the solicitation notice for "Comment on the Consumer Inflation Measures Produced by Federal Statistical Agencies." Under the solicitation, OMB announced the agency is seeking to change the consumer price index used to estimate the Official Poverty Measure (OPM). This proposal, which received no Tribal

consultation, is deeply concerning to USET SPF as it will have far reaching implications for accessing all federal programs that use the federal poverty line for eligibility determinations.

In our comments, we underscore that the failure to engage in Tribal consultation prior to issuing the proposal/solicitation is a failure of OMB to fulfill its trust and treaty obligations owed to Tribal Nations. Further, it is unclear whether the OMB has the authority to consider an action with such far-reaching, long-term consequences outside of the formal notice and comment rulemaking process. USET SPF strongly urges the OMB to rescind the proposed changes and engage in Tribal consultation on the impacts that any alteration in the use of consumer price indices may have on Tribal Nations. We also recommend OMB establish a dedicated Indian desk within the agency in order to better address budget and policy matters affecting Tribal Nations going forward. Finally, USET SPF calls upon OMB to immediately issue a full and transparent accounting of federal funding distributed to Indian Country. Despite repeated requests for this information by Congress, USET SPF, and others, OMB has yet to provide a detailed analysis on how the agency has determined that over \$21 billion is appropriated to Indian Country on an annual basis in execution of trust obligations.

- [USET SPF Comments](#)

Tax

Treasury Tribal Advisory Committee Meets After Nearly 5 Year Wait

The Treasury Tribal Advisory Committee (TTAC) has convened twice in the last quarter after a nearly five-year wait to begin its work. The TTAC was created by the Tribal General Welfare Exclusion Act (PL 113-168) (GWE), a law that passed in September of 2014. In addition to establishing the TTAC to advise on the taxation of Tribal Nations, GWE ensures that certain benefits provided by Tribal Nations to their citizens for the “general welfare” are tax exempt, temporarily suspends audits related to general welfare benefits, and requires that Internal Revenue Service (IRS) field agents receive training on Indian Country and federal Indian law.

A number of factors resulted in a delayed beginning for the TTAC, including a lengthy appointment process on the part of both the Administration and Congress, as well as changes in Administration and Treasury staff. The seven member TTAC includes USET SPF Secretary, Chief Lynn Malerba.

During a June 20th meeting between all seven TTAC members and officials from Treasury, IRS, and other agencies, a number of procedural and organizing items were discussed, as well as several top Tribal priorities. This include state dual taxation, implementation of GWE, opportunity zones, the IRS field agent training, and tax exempt bond financing. The TTAC also decided it would form subcommittees to examine some of these priority issues. TTAC members voted to select the Native American Finance Officers Association (NAFOA) as the body’s main technical advisory coordinating organization.

The next meeting of the TTAC, on September 19th, saw the committee adopt bylaws (which Treasury will still have to approve), amend its charter, and further discuss

implementation of GWE. The charter amendment will allow TTAC members to serve staggered terms. The TTAC also heard several comments from the public and directed NAFOA to draft a priority policy and issues matrix. Notably, the TTAC also elected to establish several of its informal subcommittees and their leadership. They are as follows:

- **General Welfare Exclusion:**
Chairman Ron Allen and Councilwoman Sharon Edenfield
- **Dual Taxation:**
Chief Lynn Malerba and Rebecca Benally
- **Tribal Pensions:**
Vice-Chairman Eugene Magnuson and Treasurer Patricia “Trish” King

TTAC is currently seeking issue experts from Indian Country to serve on the Subcommittees. Its next meeting will be on Tuesday, December 3rd.

USET SPF will continue to monitor the progress of the TTAC and report on new developments as they become available.

- [NAFOA Summary of September Meeting](#)
- [TTAC Proposed Bylaws](#)
- [NAFOA Summary of June TTAC Meeting](#)
- [USET SPF Tax Platform](#)