



# USET

SOVEREIGNTY PROTECTION FUND

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## USET SPF Resolution No. 2020 SPF:014

### **URGING CONSULTATION PRIOR TO PROCEEDING WITH RULEMAKING ON TRIBAL DOWN PAYMENT ASSISTANCE PROGRAMS**

- WHEREAS,** United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is an intertribal organization comprised of thirty (30) federally recognized Tribal Nations; and
- WHEREAS,** the actions taken by the USET SPF Board of Directors officially represent the intentions of each member Tribal Nation, as the Board of Directors comprises delegates from the member Tribal Nations' leadership; and
- WHEREAS,** the federal government has a trust and treaty obligation to consult with Tribal Nations on decisions which significantly impact them; and
- WHEREAS** Executive Order (EO) 13175 sets forth a policy mandating executive agency consultation with Tribal Nations for any policies that have Tribal implications; and
- WHEREAS,** EO 13175 defines "policies that have Tribal implications," as "regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes[;]" and
- WHEREAS,** the Indian Reorganization Act (IRA) of 1934 facilitates the ability of Tribal Nations to operate in their own governmental capacity on or off Tribal homelands to engage in certain activities, including economic development activities; and
- WHEREAS,** certain Tribal Nations have used the authority and flexibility afforded under Section 17 of the IRA to both provide housing mortgage assistance to their communities and to generate supplemental income to support Tribal government programs through engaging in economic development both on and off Tribal homelands; and
- WHEREAS,** the U.S. Department of Housing and Urban Development (HUD) issued Mortgagee Letter 19-06, dated April 18, 2019, that dramatically affected the ability of all Tribal Nations and instrumentalities of Tribal Nations, including those organized under Section 17 of the IRA, to engage in activities off of Tribal homelands in a governmental capacity by limiting these activities to within the boundaries of a reservation and with Tribal citizens; and
- WHEREAS,** the Mortgagee Letter was withdrawn by HUD in consequence of a lawsuit brought by a Tribal Nation, the Cedar Band of Paiutes, and as a result, the lawsuit was dismissed; and
- WHEREAS,** HUD indicated in court filings in connection with the dismissal of the lawsuit that it intended to proceed to rulemaking that would authorize HUD to adopt the previously sought provisions of the Mortgagee Letter, and limit the ability of a Tribal Nation to operate in a governmental capacity when providing down payment assistance to only include working

within the boundaries of its reservation or with enrolled citizens. These provisions would dramatically affect the ability of all Tribal Nations and instrumentalities of Tribal Nations, including those organized under Section 17 of the IRA, to engage in activities off of the reservation in a governmental capacity for the benefit of their people; and

**WHEREAS,** through Mortgagee Letter 19-06, HUD took actions that would have substantial direct effects on one or more Tribal Nations without Tribal consultation in violation of HUD's own policies on consultation with Tribal Nations as set forth in HUD's Tribal Government-to-Government Consultation Policy found at 81 Federal Register 40893 (June 23, 2016) (HUD's Consultation Policy); and

**WHEREAS,** HUD's exclusion of Tribal Nations and their instrumentalities from servicing otherwise eligible HUD program participants using down payment assistance is antithetical to the federal government's longstanding policy of promoting Tribal sovereignty, self-government and self-sufficiency, as well as the federal trust obligation; and.

**WHEREAS,** in December 2010, the United States recognized the rights of its First Peoples through its support of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), whose provisions and principles support and promote the purposes of this resolution; therefore be it

**RESOLVED** USET SPF hereby calls upon the U.S. Department of Housing and Urban Development to engage in meaningful government-to-government consultation as part of rulemaking or any other action that would undermine the inherent sovereignty of Tribal Nations to act in a governmental capacity, including governmental actions related to Tribal down payment assistance; and be it further

**RESOLVED** that this resolution shall be the policy of USET SPF until it is withdrawn or modified by subsequent resolution.

### CERTIFICATION

This resolution was duly passed at the USET SPF Annual Meeting held on the Sovereign Territory of the Mississippi Band of Choctaw Indians at which a quorum was present on November 7, 2019.



Chief Kirk E. Francis, Sr., President  
United South and Eastern Tribes  
Sovereignty Protection Fund



Chief Lynn Malerba, Secretary  
United South and Eastern Tribes  
Sovereignty Protection Fund

*Because there is Strength in Unity*