



The Beat *in DC*

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Budget

Deal Reached on Full-Year Funding for FY 2020

Following two Continuing Resolutions (CRs), disagreement over numerous issues, and compressed work after a late summer topline spending agreement, it appears that a deal has been reached to provide full-year appropriations for the remainder of Fiscal Year (FY) 2020. Assuming the President signs the legislation into law prior to the current CR's expiration at midnight on Friday, December 20th, the threat of a government shutdown is avoided until October 1, 2020.

With the broader deal for two-year topline spending numbers reached during the final weeks of July, the Senate spent much of the fall working to draft its own appropriations bills. Meanwhile, high-level negotiations occurred between chambers regarding the discrepancy between House-approved spending levels and the levels ultimately agreed to in the larger budget deal. This resulted in a lower allocation for the Interior, Environment, and Related Agencies bill, an increase of \$2.68 billion to spread vs. an increase of \$3.98 billion in the House-approved bill. In addition to differences in topline spending, the chambers differed on whether and how to fund a border wall, and how much to spend on domestic vs. defense priorities. The protracted negotiations over funding levels and priorities lead to concern that another CR would be necessary to fund the government into the New Year. Ultimately, however, a last-minute compromise was reached.

The agreement provides a total of \$1.4 trillion in funding to the federal government in FY 2020. This sum is split between defense and non-defense priorities at \$738 billion and \$632 billion, respectively. The vehicles for passage are two 'mini-bus' bills—one containing four appropriations bills and one containing eight. The legislation largely rejects the cuts proposed in the President's FY 2020 Budget Request and includes 'flat funding' at \$1.4 billion

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- SDPI on 3rd Temporary Extension as Negotiations on Larger Package Continue
- USET SPF Asserts that Tribal Sovereignty be at Forefront of VAWA Reauthorization
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for a wall at the southern border (rather than the requested \$8.6 billion), along with a host of other compromises and trade-offs between Democrats, Republicans, and the White House.

Importantly, the deal includes funding for many of Indian Country's priorities. The Indian Health Service is funded at \$6.04 billion, an increase of 4% or \$242 million. The increase includes: \$125 million for the growing and legally-mandated 105(l) lease costs under the Indian Self-Determination and Education Assistance Act, \$8 million for Electronic Health Records, \$5.4 million for Tribal Epidemiology Centers, \$11.5 million for newly recognized Tribal Nations, and \$6 million for Urban Indian Health. The Purchased/Referred Care program is flat-funded at \$964 million and Contract Support Costs are funded separately and indefinitely at an estimate of \$820 million. The President's proposals to eliminate the Health Education and reduce the Community Health Representative programs in order to fund the expansion of the Community Health Aid Program (CHAP) are rejected. Instead, Congress opted to fund the CHAP expansion separately at \$5 million.

Together, the Bureau of Indian Affairs (BIA) and the Bureau of Indian Education (BIE) also receive a 4% increase for a total of \$3.22 billion. Of that amount, \$2.03 billion is allocated for BIA and \$1.19 billion for BIE. While the President's Budget Request would have resulted in deep cuts to a number of lines in the BIA budget, a majority of these are rejected in the final bill. However, many lines are still seeing reductions over FY 2019 levels, including some Eastern Region priorities, such as Aid to Tribal Government, Social Services, and Indian Child Welfare Act. Contract Support Costs continue to be funded separately and indefinitely at an estimate of \$266 million. BIE, meanwhile receives increases to nearly every line, including a \$5.4 million increase for Johnson O'Malley, but a slight decrease to Scholarships and Adult Education.

The deal also includes report language providing instruction to the Department of Interior (DOI) and Health and Human Services (HHS) regarding the steadily increasing costs for 105(l) leases for facilities used to carry out Indian Self-Determination and Education Act contracts and compacts. Congress writes:

The uncertainty surrounding the 105(l) lease agreement estimates has inserted a high level of unpredictability into the budget process and has placed the House and Senate Committees on Appropriations in the difficult position where rapidly escalating requirements for lease costs are negatively impacting the ability to use discretionary appropriations to support core tribal programs, including health, education and construction programs, or provide essential fixed cost requirements...The Department of the Interior and the Department of Health and Human Services are directed to consult with Tribes and work with the House and Senate committees of jurisdiction, the Office of Management and Budget, and the Committees on Appropriations to formulate long-term accounting, budget, and legislative strategies to address the situation, including discussions about whether, in light of the Maniilaq decisions, these funds should be reclassified as an appropriated entitlement.

The \$125 million appropriation for 105(l) leases at IHS represents over 50% of the total increase for the agency in FY 2020, an increase that already does not fully account for medical inflation. While the appropriation will mostly avoid any reprogramming of other lines of the IHS budget, it impacts the IHS budget overall by consuming a majority of new monies. USET SPF continues to advocate for a separate, indefinite appropriation

for 105(l) lease costs, much like Contract Support Costs, in order to avoid impacts to other lines in the BIA, BIE, and IHS budgets.

Other highlights for Indian Country in the agreement include: the continued funding of the Centers for Disease Control and Prevention's Good Health and Wellness in Indian Country program at \$21 million, the \$50 million set-aside for Tribal Opioid Response Grants, \$77 million for Office of Violence Against Women grants to Tribal Nations, and the continuation of a 5% set-aside for Tribal Nations within the Crime Victims Fund.

In addition to federal funding for FY 2020, the agreement contains another short-term extension of the Special Diabetes Program for Indians and other 'health extenders' while negotiation continues on the larger legislative vehicle that will ultimately reauthorize the programs. We discuss SDPI more below. It also extends certain tax breaks ('tax extenders') through 20, including the Indian Employment Credit, Accelerated Depreciation, Indian Coal Production, and the New Markets Tax Credit. Finally, it permanently repeals several Affordable Care Act tax provisions, including the 'Cadillac' tax on high value insurance plans and a medical device tax.

At press time, both the House and Senate have cleared the deal. It will now go to the President, who is expected to sign ahead of the midnight December 20th deadline. We will continue to analyze the FY 2020 funding agreement, and its implementation, and will provide updates as they become available.

- [H.R. 1865](#) – Minibus for Labor-HHS, Agriculture, Energy and Water, Interior, Leg Branch, Military Construction-VA, State, and Transportation/Health Extenders
- [H.R. 1158](#) – Minibus for Defense, CJS, Financial Services, and Homeland Security
- [FY 2020 Joint Explanatory Statement on Interior Bill](#)
- [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 during House Oversight Hearing on Broken Promises Report

On November 19th, USET SPF, represented by Secretary Chief Lynn Malerba, testified at a House Natural Resources Subcommittee on Indigenous Peoples of the United States oversight hearing, entitled, *Reviewing the Broken Promises Report: Examining the Chronic Federal Funding Shortfalls in Indian Country*. The hearing came after nearly a year's worth of advocacy from USET SPF calling for action on the Broken Promises Report including the need for oversight hearings in both chambers of Congress.

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.

USET SPF’s testimony calls for a comprehensive, dramatic overhaul of federal Indian policy in response to *Broken Promises*. While USET SPF endorses and supports many of USCCR’s recommendations, we are also seeking fundamental and lasting change to U.S.-Tribal Nation relations in order to truly improve the delivery of federal trust and treat obligations. This includes full and mandatory funding for all federal Indian programs, reforms to the Office of Management and Budget and the Tribal consultation process, the expansion of Tribal Self-Governance, prioritizing the restoration of Tribal homelands, and full criminal jurisdiction for Tribal Nations.

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.

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.

- [USET SPF Written Testimony for HNR Hearing](#)
- [HNR Hearing Recording](#)
- [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](#)

Education

USET SPF Supports Reauthorization of the Esther Martinez Language Program in the 116th Congress

On October 31st, USET SPF sent a letter to House leadership expressing our strong support for S. 256, the Esther Martinez Native American Languages Preservation Act and requesting the House pass the legislation as soon as possible.

The legislation is named in honor of the late Esther Martinez, a citizen of the Ohkay Owingeh Pueblo, who taught the Tewa language to generations of students in her community. S. 256 provides for expanded uses under the Native American Programs Act of 1974, which is administered by the U.S. Department of Health and Human Services' Administration for Native Americans, allowing specifically for Native American language immersion programs. The reauthorization under S. 256 provides increased flexibility by allowing more Tribal Nations, schools, and organizations to become eligible to apply for language immersion grants, extending the possible length of grants, and extending the authorization under the Native American Programs Act.

On December 9, 2019, the House passed S.256, marking the final step necessary before the bill is sent to the President for signature. At press time, the bill has yet to be signed into law.

- [USET SPF Support Letter](#)

Election 2020

USET SPF Board of Directors Approves First-Ever Candidate Platform

During the USET SPF Annual Meeting at Mississippi Choctaw, the USET SPF Board of Directors approved an organization first—the USET Sovereignty Protection Fund Candidate Position Checklist. This document, which has been distributed to all 2020 Presidential candidates, lays out the policy principles and priorities that provide a foundation for the modern-day U.S.-Tribal Nation relations envisioned by our Tribal leadership. These include:

- Recognize, Promote, and Advance Tribal Sovereign Rights and Authorities;
- Commitment to Meaningful and Evolved Trust Relationship;
- Uphold and Defend our Political Status;
- Prioritize and Increase Funding for Federal Fiduciary Obligations;
- Restore Tribal Homelands;
- Remove Barriers to Economic Development;
- Invest in and Rebuild Tribal Infrastructure; and
- Promote Truthful Narratives About Tribal Nations and Native People.

It is our expectation that federal partners, including those seeking office, will pledge not only to honor the solemn promises of the government's trust and treaty obligations, but also support an evolved trust model that reflects a true nation-to-nation partnership built upon diplomacy. Each candidate for President will receive an invitation to the USET SPF Impact Week 2020 meeting to describe how these priorities will be implemented if they are elected.

- [USET SPF Candidate Platform](#)

Energy and Environment

USET SPF Comments on EPA Proposed Changes to CWA Section 401 Certification

On October 21st, USET SPF submitted comments to the Environmental Protection Agency (EPA) regarding the agency's proposed rule changes that would drastically alter

the water quality certification authority of Tribal Nations under Section 401 of the Clean Water Act (CWA). The proposed rule seeks to prevent, or limit, Tribal Nations and states from considering issues other than water quality in their certifications which have resulted “in the incorporation of non-water quality related considerations into their certification review process.” In addition, the proposed rule seeks to shorten deadlines for approval of certification requests as well as provide the authority of the federal permitting agencies to reject Tribal and state certification conditions and/or denials.

Under EPA’s designation of “Treatment as a state,” or TAS designation, Tribal Nations are able to exercise our inherent sovereignty over our land and water by administering important regulatory programs to protect the environment for generations to come. Currently, under Section 401 of the CWA, Tribal Nations (acting under TAS designation) and states have the authority to certify that water quality standards, including issuing permits for discharge, are in compliance with the federal law and Tribal/state water quality standards. As a result, projects permitted by federal permitting and licensing agencies including the EPA, the Army Corps of Engineers, or Federal Energy Regulatory Commission, also must be approved or denied by state or Tribal regulators.

Recently, certain states have exercised their authority under this certification process by denying permits for activities that contribute to water quality standards. This includes permits for non-discharge activities, such as the contribution of air pollution and climate change to water quality standards, including pipelines and coal initiatives. These interpretations of Section 401 CWA authority have been disadvantageous to industry, which has advocated for deregulation of implementation of the CWA.

Under the proposed rule, the scope of a Section 401 certification review for Tribal Nations and states will be limited to only “water quality impacts” resulting from a potential point source discharge into navigable waters. As a result, Tribal Nations will be not be authorized to consider activities that may indirectly lessen water quality, as well as the environments that depend on water quality, including subsistence hunting, fishing, and farming, other than the point source discharge that an applicant has submitted.

In our comments to EPA, we highlight that point source discharge is only one of many factors that can negatively impact water sources. By diminishing the certifying authority, Tribal Nations will no longer be able to deny a multitude of existing activities that affect Tribal waters. This undermines the ability for Tribal Nations to exercise our sovereign rights and authority over our land and water as these activities may fall outside of the proposed limited certification authority.

The proposed rule would also limit how much time Tribal Nations and states have to consider permit applications by requiring one-year to approve or disapprove an application that starts when a “certification request” has been made, even if those applications are incomplete. Should the Tribal Nation or state fail to meet the arbitrary deadline, the certification requirement will be determined to have been waived. Finally, the proposed rule would require Tribal or state certifying authorities to act on a certification request within the year deadline even when National Environmental Policy Act (NEPA) reviews, which can often take longer than a year, have not yet been completed.

In addition, the proposed rule would allow granting federal permitting and licensing agencies the authorization to reject (or veto) Tribal certification conditions should they be determined “inconsistent” with the agency’s interpretation of the CWA.

In our comments to EPA, USET SPF contends that Congress deliberately did not intend that EPA, or other federal licensing and permitting agencies, to subjectively interpret the law to have any authority to override or diminish a Tribal Nation’s decision under Section 401. We further stress that the proposed rule undermines Tribal Nations’ ability to exercise sovereign rights and authority over land and water, particularly those operating under TAS designation by EPA. When coupled with the dangerously diminished jurisdiction of the Waters of the United States recently finalized by the Administration, this proposal is deeply troubling.

USET SPF asserts that the proposal is contrary to both the intention of the CWA and the federal trust obligation, as it undermines our inherent sovereign authority to determine what does and does not violate Tribal law and code on our lands. EPA has trust responsibility to ensure the protection of environmental and cultural resources of Tribal Nations. The one month of consultation that EPA alleges it undertook is completely inadequate for a rule of this magnitude.

USET SPF and Tribal Nations across the country are deeply disturbed at how broadly EPA is proposing to limit Tribal self-determination under Section 401 of the CWA within the proposed rule. The limitations in the proposed rule undermine the Congressional intent of the CWA, as well as the federal trust responsibility and obligation to ensure the protection of Tribal resources in perpetuity. Any changes in the implementation of the CWA must be done in a manner that upholds and respects Tribal sovereignty. As an agency of the federal government, it is incumbent upon EPA to ensure all regulatory actions are reflective of the federal treaty and trust responsibilities. The EPA must immediately withdraw the proposed rule, and instead promulgate policy that promotes Tribal sovereignty and the protection of our communities.

- [USET SPF Comments on EPA Proposed Rule Undermining Tribal Water Quality Certification](#)

Health

SDPI Extended for a Third Time in FY 2020, Advocates Continue to Seek Reauthorization

The Special Diabetes Program for Indians (SDPI) continues to operate via short-term extensions, so that work can continue on the larger legislative vehicle that will provide a full reauthorization. Since the expiration of the current authorization on September 30, 2019, the program has been extended three times, with the most recent extension, until May 22, 2020, attached to a year-end spending package.

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 negotiations associated with the expected legislative vehicle. Reauthorization continues to be tied to legislation that seeks to protect patients from “surprise” medical bills in both the House and Senate. However, a lack of consensus on how to address surprise

medical billing has stalled movement of the legislation. Though the House Energy and Commerce and Senate Health, Education, Labor and Pensions (HELP) Committee announced an agreement in early December, that agreement has not yet been endorsed by HELP Ranking Member, Sen. Patty Murray (D-WA). The agreement did contain a five-year reauthorization at a flat funding level of \$150 million/year. 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.

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.

That the potential agreement on "surprise" billing contains 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.

- [House Energy and Commerce Agreement on Surprise Billing Announcement](#)

USET SPF Submits Comments on Tennessee Medicaid Block Grant Proposal

On December 20th, USET SPF provided comment to the Centers for Medicare and Medicaid Services (CMS) regarding the state of Tennessee's proposal to amend its current Medicaid demonstration program, TennCare, into a hybrid block grant program. The proposal seeks to amend the state's current 1115 demonstration waiver to authorize the conversion of the federal share of its Medicaid to a lump sum block grant. According to the state's proposal, the block grant amount will be calculated based on CMS's projected cost of providing care to the TennCare member population, with per capita adjustments in future years to reflect TennCare enrollment growth.

If the block grant proposal is approved, it would be the first of its kind in the U.S. and will therefore have large implications for the provision of Medicaid throughout the nation, particularly for American Indians and Alaska Natives (AI/ANs) who access Medicaid as a part of the federal trust obligation to provide health care. Block granting the Medicaid program would disrupt Medicaid's traditional fee-for-service model, which could result in reduced eligibility, as well as negative impacts to the 100% federal match percentage and the Medicaid reimbursements collected by the Indian Health System. USET SPF registers our opposition to Medicaid block grant models, including Tennessee's proposal, that do not provide an exemption for AI/ANs. We further underscore to the agency that it is wholly inappropriate for an agency of the federal government to place access to a federal program that is delivered to AI/ANs solely in the hands of states.

CMS has yet to consult with Indian Country on the TennCare proposal or Medicaid block grants in general. 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 any potential state block grant models do not pose a barrier to access to Medicaid for AI/ANs. 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 reverse course and work with Tribal Nations to not just preserve but expand access to Medicaid for AI/ANs.

- [USET SPF Comments to CMS on TennCare Proposal](#)

USET SPF Comments on IHS FY 2021 Distribution of SDPI Funding

On December 2nd, USET SPF submitted comments to the Indian Health Service (IHS) regarding the distribution of funding for the Special Diabetes Program for Indians (SDPI) in fiscal year (FY) 2021 in response to a Dear Tribal Leader Letter (DTLL) initiating consultation. The DTLL posed several questions to Tribal Nations and Tribal organizations, including whether there should be any changes in the funding distribution, as well as how funds should be utilized if SDPI receives a funding increase.

In our comments to IHS, we underscore the importance of distributing funding in a manner that ensures all Tribal Nations (regardless of size, date of federal recognition, etc.) can access life-saving treatment and prevention programs. Because of current restrictions, eight USET SPF member Tribal Nations who were recently federally recognized, do not currently have access to the grant program. We further underscore that funding must be directed toward Tribal Nations, including the Tribal organizations supporting their efforts, to the greatest extent possible. Further, as IHS seeks to accommodate incoming grantees we urge IHS to ensure that existing SDPI grantees must be held harmless.

Additionally, while SDPI has been an enormous benefit to Indian Country, flat funding of the program continues to impede both the provision of services and access to the program. In accordance with the trust obligation and in partnership with Tribal Nations, we urge IHS to join Indian Country in supporting a much needed funding increase from Congress. Medical costs, especially costs associated with diabetes treatment and prevention, will only continue to rise in the coming years. The continued success of SDPI is dependent upon an IHS that is willing to fight for program resources and support Tribal sovereignty.

- [USET SPF Comments on Distribution of SDPI Funding for FY 2021](#)
- [IHS DTLL Initiating Consultation on SDPI Funding Distribution for FY 2021](#)

USET SPF Provides Comments to IHS on NTAC Recommendations for Distribution Mechanism for Behavioral Health Initiative Funding

On October 1st, USET SPF provided comments to the Indian Health Service (IHS) regarding the IHS National Tribal Advisory Committee on Behavioral Health's (NTAC) recommendations concerning the distribution mechanism for behavioral health initiative funding. In our comments, we highlight certain priority issues as well as remaining questions and clarifications with regard to NTAC's recommendations.

We note that it is unclear in the recommendations whether NTAC is supportive of the distribution of behavioral health dollars via contracts and compacts operating under the Indian Self-Determination and Education Assistance Act (ISDEAA), per the Congressional directive under the Consolidated Appropriations Act of 2018. Language within the law encourages IHS to transfer behavioral health initiative funding through ISDEAA compacts and contracts rather than through grants. With this in mind, we urge clarification and continue to highlight our strong support for the delivery of behavioral health funding, and all federal funding, through ISDEAA contracts and compacts.

USET SPF additionally previously expressed our [support](#) to IHS on the distribution of behavioral health funding through non-competitive formula or base funding under a contracting and compacting model (as well as allowing the current grant cycle to complete prior to formula changes). In our comments regarding NTAC's recommendations, we further remind IHS of its consultative responsibilities both at the headquarters and Area levels. IHS must consult on any proposed changes to the funding formula in FY 2020 and beyond.

Consistent with our ongoing advocacy for all federal funding to be distributed to Tribal Nations via ISDEAA contracts and compacts, including all lines in the IHS budget, we further urge IHS to explore opportunities to better recognize and promote Tribal self-governance and self-determination.

- [USET SPF Comments re: NTAC Recommendations on IHS Behavioral Health Funding](#)
- [IHS DTLL Requesting Input on NTAC Recommendations for IHS Behavioral Health Funding Distribution](#)

USET SPF Provides Testimony to House and Senate Veterans' Committees on AI/AN Veteran Health

On October 8th, USET SPF was invited by the House Committee on Veterans' Affairs Health Subcommittee to provide a statement for the record of the Subcommittee's oversight hearing entitled, "Native Veterans' Access to Healthcare." Similarly, on December 4th, USET SPF provided testimony for the record to the Senate Committee on Indian Affairs (SCIA) for the oversight hearing "Recognizing the Sacrifice: Honoring A Nation's Promise to Native Veterans" and legislative hearing to receive testimony on S.1001 & S.2365. These hearings were intended to examine the unique barriers American Indian and Alaska Native (AI/AN) veterans continue to face when seeking access to healthcare.

In both statements, we urge the Committees to consider the significant disparities that AI/AN veterans face in seeking quality, culturally competent healthcare, when compared to other veterans. In the USET SPF region, AI/AN veterans are often faced with access to only either the limited services provided by chronically underfunded IHS and Tribally-operated facilities or no services at all. Whether delivered through IHS or the VA, AI/AN veterans have pre-paid for their healthcare, both through the cession of Tribal homelands and the defense of our nation. We remind the Committees of the unique federal trust responsibility to Tribal Nations and urge the Committees, as well as Congress, to improve access to quality and culturally competent healthcare for AI/AN veterans.

Additionally, we discuss the implementation of the 2010 memorandum of understanding (MOU) between the VA and IHS and provide the Committees with recommendations on improving the agreement. The reimbursement agreement must be expanded to include reimbursement for care delivered via the PRC program. We further recommend upholding and preserving the terms of existing reimbursement agreements, including the IHS All-Inclusive rate on reimbursements for outpatient services for AI/AN veterans delivered through the Indian Health System.

In our testimony to SCIA regarding S.1001, the Tribal Veterans Health Care Enhancement Act, we convey our opposition to the legislation that would allow IHS to cover the cost of a copayment of an AI/AN veteran receiving medical care or services from the VA. While we support the intent of S.1001, we cannot support legislation that would shift the cost of care for AI/AN veterans from the VA to the severely underfunded IHS and Tribally-operated health clinics, as well as violate current law naming IHS as the payer of last resort. We contend that the Indian Health System and AI/AN veterans are best served through a waiver of cost-sharing entirely.

On S.2365, the Health Care Access for Urban Native Veterans Act, we convey our support for the legislation would include Urban Indian Organizations (UIOs) in existing statute that requires the VA to reimburse IHS and Tribal health facilities for critical services they provide to AI/AN veterans. As a part of the Indian Health System, UIOs are well-positioned to play a vital role in closing the gap in service to AI/AN veterans.

USET SPF will continue to monitor Congress for action on Native veterans' issues and provide updates as they develop.

- [USET SPF Statement for the Record the House Hearing](#)
- [USET SPF Testimony for the Record of SCIA Oversight Hearing](#)

USET SPF Supports the Confirmation of RADM Michael Weahkee for Permanent IHS Director

On December 11th, the Senate Committee on Indian Affairs (SCIA) held a confirmation hearing on the nomination of Rear Admiral (RADM) Michael Weahkee as permanent Director of the Indian Health Service (IHS). During the hearing, discussion between Committee members and RADM Weahkee was mostly favorable – Members and RADM Weahkee discussed the agency's work thus far to improve conditions within IHS, including staff recruitment and retention efforts, efforts to address Section 105(I) funding obligations, abuse-reporting processes, and others.

RADM Weahkee, a citizen of the Pueblo of Zuni, has served as the Principal Deputy Director of IHS where he previously, and formally, served as IHS's Acting Director since 2017. On October 22nd, RADM Weahkee was formally nominated by the President to be permanent IHS Director. At the 2019 USET SPF Annual Meeting in November, the USET SPF Board of Directors passed a resolution supporting the confirmation of Mr. Weahkee as IHS Director. This resolution was included in SCIA's confirmation hearing record.

To move RADM Weahkee's confirmation forward, SCIA will need to vote on whether to favorably report RADM Weahkee's nomination to the full Senate for consideration.

- [2020 SPF:011 Support for Nomination of Michael Weahkee for IHS Director](#)

OMB Approves Exception Apportionment to IHS Under Continuing Resolutions

On November 27th, the Indian Health Service (IHS) issued a Dear Tribal Leader Letter (DTLL) regarding an approved special authority regarding short-term continuing appropriations for fiscal year (FY) 2020. This special authority – known as an exception apportionment – is when an agency seeks an amount for an account from the Office of Management and Budget (OMB) that is more than the amount automatically apportioned under a continuing resolution (CR). Agencies are typically only able to request this type of funding mechanism in extreme circumstances.

OMB's approval of this exception apportionment authorized IHS to provide higher levels of funding to Tribal Health Programs operating under Indian Self-Determination and Education Assistance Act contracts and compacts on with performance periods starting within the CR period from October 1, 2019, through December 20, 2019. According to the DTLL, IHS is authorized to directly pay Tribal Health Programs as expeditiously as possible with performance periods starting within the CR period up to the full FY 2019 amount provided for the operation of the programs, or base Secretarial amount. For program funding that the IHS distributes based on a formula, the DTLL states that the agency will make payments after it receives a final FY 2020 appropriation and completes distribution decisions. If the final FY 2020 appropriation differs from FY 2019 funding levels as allocated under the CR, IHS will adjust funding for Tribal Health Programs accordingly.

At press time, Congress approved full year appropriations for FY 2020, including funding for IHS. It is unclear how this will affect the exception apportionment.

- [IHS DTLL on Exception Apportionment](#)

Justice

USET SPF Asserts that Tribal Sovereignty be at Forefront of VAWA Reauthorization

In November, competing bills to reauthorize the Violence Against Women Act (VAWA) were introduced in the Senate along party lines. The first, S. 2843, introduced November 13th by Sen. Dianne Feinstein (D-CA), mirrors H.R. 1585, the VAWA reauthorization bill that passed the House with bi-partisan support in April. The Tribal title of the bill contains a number of Indian Country's public safety priorities, including the expansion of Tribal special domestic violence criminal jurisdiction to include crimes against law enforcement and children, as well as crimes of sexual violence, trafficking, and stalking. It also increases Tribal access to federal crime information databases, reauthorizes VAWA's Tribal grant programs, and works to address cases of missing and murdered Indigenous women.

On November 20th, Sen. Joni Ernst (R-IA) introduced S. 2920, the Republican VAWA reauthorization bill. S. 2920 would also expand special domestic violence criminal jurisdiction and respond to cases of missing and murdered Indigenous women. However, as a condition of the jurisdictional expansion, the bill would undermine Tribal sovereignty and existing law, and place restrictions on the Tribal judicial system that are

not imposed on any other unit of government. While the bill also includes the reauthorization of the Tribal Law and Order Act, the Securing Urgent Resources Vital for Indian Victim Empowerment (SURVIVE) Act, Savanna's Act, the Bridging Agency Data Gaps and Ensuring Safety (BADGES) for Native Communities Act, and the Tribal Labor Sovereignty, these cannot come at the expense of Tribal sovereignty and judicial parity with other units of government.

The Senate is currently at an impasse on VAWA reauthorization. Due to a number of controversial provisions in the Democratic version, including those related to guns and the LGBTQ community, the Feinstein bill cannot pass the Senate in its current form. However, the Ernst bill is equally a non-starter. Ernst and Feinstein had been working to craft a bi-partisan VAWA reauthorization before talks fell apart in early November. On December 19th, the bi-partisan leadership of the House Native American Caucus wrote to Senate leadership to urge the adoption of the Tribal provisions contained in S. 2843/H.R. 1585.

Meanwhile, the public safety crisis continues in Indian Country, a crisis that 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. The Senate must set partisanship aside and act to provide parity to Tribal Nations in the exercise of our inherent sovereign rights and authorities. While we ultimately seek the restoration of full criminal jurisdiction over our lands, the expansion of special domestic violence criminal jurisdiction and increased resources represent important advancements toward that goal.

On December 20th, USET SPF transmitted a letter to Senate leadership urging the passage of a VAWA reauthorization Tribal title that is reflective of both Tribal priorities and our inherent sovereignty. USET SPF will continue to oppose restrictions on the rights and authorities of Tribal governments, and will provide VAWA reauthorization updates as they become available.

- [USET SPF Letter to Senate Leadership](#)
- [House Native Caucus Letter to Senate Leadership](#)
- [S. 2920](#)
- [S. 2843](#)
- [USET SPF Testimony for SCIA Public Safety Hearing](#)
- [SCIA Hearing on Public Safety Bills](#)

USET SPF Supports Tribal Public Safety Legislation During SCIA Mark-up

On November 20th, USET SPF transmitted a letter to the Senate Committee on Indian Affairs (SCIA) in support of manager's amendments to S. 227 Savanna's Act, and S. 982, the Not Invisible Act slated for mark-up later that day. Savanna's Act is designed to enhance the use of crime databases, increase cooperation and standardization across law enforcement agencies with overlapping jurisdiction, and facilitate gathering data on missing and murdered Native people in furtherance of the United States' trust responsibility to provide the resources necessary to keep our people safe. This includes requiring the Department of Justice (DOJ) to collect information related to missing and murdered Native people, as well as increase the prosecution of crimes occurring in Indian Country. DOJ would also be directed to develop, in consultation with Tribal

Nations, standardized guidelines for responding to cases of missing and murdered Native people.

The Not Invisible Act would increase coordination within the federal government in furtherance of the United States' trust responsibility and obligations to provide for public safety in Indian Country. It would also provide a mechanism for Tribal Nations, Native people, and others with relevant expertise to advise the federal government on combatting violent crime within Indian Country and against Native people, addressing some of the historical trauma that leads to crime in Indian Country.

Both bills were successfully reported out of Committee during the mark-up on a bipartisan basis. USET SPF continues to support their passage and inclusion in any final Violence Against Women Act reauthorization.

- [USET SPF Letter to SCIA](#)
- [S. 227](#)
- [S. 982](#)

Land

USET SPF Continues to Advocate for Equity in Tribal Homelands Restoration, Participates in Productive Meeting with Senate Minority Leader

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 a strategy to move a companion bill through the Senate. S. 2808, which was introduced on November 7th by Sens. Jon Tester (D-MT) and Jerry Moran (R-KS) 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.

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.

To that end, USET SPF President, Kirk Francis, and Vice President, Robert McGhee, were invited to participate in a small Tribal leader meeting with Senate Minority Leader, Chuck Schumer (D-NY). USET SPF was joined by representatives from the Gila River Indian Community, the Pechanga Band of Luiseño Indians, and the National Congress of American Indians. While the meeting addressed a variety of topics, its primary focus was Schumer's position on a Carcieri fix. Historically, Schumer, has been a prominent voice in opposition to the legislation. However, in a very positive development, during the Tribal leader meeting, Minority Leader Schumer indicated that he would support a "compromise" supported by Indian Country. Importantly, he committed to ensuring the leadership of the Senate Committee on Indian Affairs and others were informed of his change of heart and willingness to see S. 2808 advance through the Senate.

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.

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 S. 2808, and will continue to work to educate those in opposition to the bill.

- [S. 2808](#)
- [USET SPF Action Alert](#)
- [USET SPF Testimony for the Record](#)
- [Inter-Tribal Sign-on Letter](#)
- [H.R. 375](#)

Litigation

USET SPF Continues to Defend ICWA Against Constitutional Challenges After Rehearing Granted in 5th Circuit

Following a decision in the Fifth Circuit to uphold the constitutionality of the Indian Child Welfare Act (ICWA), the plaintiffs in *Brackeen v. Bernhardt* (formerly *Brackeen v. Zinke*) have succeeded in a motion for an *en banc* rehearing before the full 17-member panel of judges.

When the Fifth Circuit held that ICWA and its implementing regulations are constitutional in August, it 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). If ICWA were to be struck down, the effects on federal Indian law would be catastrophic.

USET continues to join a massive coalition of Tribal Nations and Tribal organizations in submitting an amicus brief to the Fifth Circuit Court of Appeals in *Brackeen v. Bernhardt*, defending the constitutionality of ICWA and its implementing regulations. The brief submitted for the *en banc* rehearing included 486 Tribal Nations and 59 Tribal organizations as signatories. USET SPF will continue to monitor this case and work to defend ICWA and our status as political entities in the courts.

- [Amicus Brief to 5th Circuit for Rehearing](#)
- [Fifth Circuit August decision summary](#)
- [Previous 5th Circuit Amicus brief](#)

ACA Individual Mandate Deemed Unconstitutional by Fifth Circuit

On December 18th, the Fifth Circuit Court of Appeals issued a ruling in *Texas v. United States*, the case concerning whether the Affordable Care Act's (ACA) Individual Mandate to carry insurance, and by extension, the entire law, is constitutional. In a split

panel 2-1 decision, the Court held that the individual mandate is unconstitutional because when Congress reduced the financial penalty for not carrying health insurance to zero as a part of the Tax Cuts and Jobs Act in 2017, the mandate ceased to be a tax. Because of this change, the Fifth Circuit ruled that the Supreme Court holding that the individual mandate is constitutional because it is a legitimate exercise of Congress' taxing power is no longer valid.

Though the ruling struck down the individual mandate, it did not strike down the entire ACA. Rather, it remanded the case back to the District Court to determine whether the Individual Mandate is 'severable' from the rest of law and which parts of the law are able to function independently of the Individual Mandate. This is a critical issue for Indian Country, since the permanent reauthorization of the Indian Health Care Improvement Act (IHCIA), the statutory foundation of the Indian Health System, is contained in the ACA.

Earlier this year, USET 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 (meaning they can stand on their own) and must be preserved. The loss of the IHCIA and Indian-specific provisions would have devastating impacts on both the health of American Indian and Alaska Natives (AI/ANs) and the Indian health system as a whole. We will continue to monitor this case and will likely join subsequent amicus briefs supporting the IHCIA's severability.

- [5th Circuit Opinion](#)
- [Hobbs Straus Memo](#)
- [Amicus Brief](#)
- [USET SPF Testimony for the Record of House Hearing](#)
- [DOJ Letter](#)

Tax

Treasury Tribal Advisory Committee Holds Final 2019 Meeting

The Treasury Tribal Advisory Committee (TTAC) has convened three times this year 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 the most recent TTAC meeting on December 3rd, the body worked to appoint each member's individual technical advisor, adopt operating procedures for the TTAC's three established subcommittees, and select individuals to serve on the TTAC

subcommittees. USET SPF Director of Policy and Legislative Affairs, Liz Malerba, was appointed as Chief Malerba's technical advisor, while Mashantucket Pequot former Financial Advisor, Jean Swift, and Hobbs Straus Dean & Walker partner, Michael Willis, were appointed to the TTAC Subcommittee on Dual Taxation. The TTAC continues to seek issue experts from Indian Country to serve on the General Welfare Exclusion and Tribal Pension subcommittees.

The body's next meeting will occur on March 25, 2020. The body's priorities for 2020 include:

- Broad outreach and dialogue with Tribal Nations throughout Indian Country;
- An in-person meeting with the Secretary of Treasury; and
- Designing and implementing training for IRS Field Agents.

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

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

USET SPF Continues to Support Kiddie Tax Fix

On December 3rd, USET SPF joined a group of 33 Tribal Nations and organizations on a letter urging the inclusion of 'kiddie tax' relief provisions in any year-end legislative package. The so-called "kiddie tax" penalty, first enacted in 1986, was solely intended to discourage wealthy taxpayers from shifting income-producing family wealth to their children with lower tax rates. It was never intended to apply to Tribal transfers of tribal funds to young tribal members. Unlike rich parents, tribal transfers can have no tax avoidance purpose since tribes, like all governments, are not taxed. Nevertheless, the statutory language inadvertently subjects tribal citizens under 24 years of age to the penalty-level rates of the "kiddie tax"— 37% on distributions over \$12,750 a year.

USET SPF has consistently supported legislation to fix the 'kiddie tax', which has been introduced for several Congresses. Unfortunately, despite advocacy from Indian Country, the provisions were not included in their entirety to the end-of-year-legislation. However, because the package includes the SECURE Act, there will be partial relief for some Tribal youth depending upon the amount of their per-capita payments and their parents' income. We will continue to monitor this issue, lending support and providing updates as they become available.

- [Joint Letter](#)
- [USET Resolution](#)

Transportation

USET SPF Submits Comments to DOT on Establishment and Implementation of TTSGP

On December 4th, USET SPF provided comments to the U.S. Department of Transportation (DOT) regarding the Notice of Proposed Rulemaking (NPRM) for the Tribal Transportation Self-Governance Program (TTSGP). The NPRM was published on

October 2, 2019 to gather input regarding a proposal to implement an Indian Self-Determination and Education Assistance Act (ISDEAA) self-governance program within the DOT pursuant to the Fixing America's Surface Transportation (FAST) Act. The publication of the NPRM followed an extensive, and sometimes conflicted, negotiated rulemaking process with a committee of Tribal leaders, Tribal transportation experts, as well as DOT and Bureau of Indian Affairs (BIA) officials. In our comments we note that previous actions by DOT were not in line with federal trust obligation to consult with Tribal Nations and thus lead to discord early in the process. Since that time, however, the rulemaking process has moved forward in an inclusive manner and is a significant step forward in fully implementing the TTSGP.

USET SPF conveys our strong support for the Tribal views within the proposed rule and urge DOT to adopt changes in line with those views. These include:

1. The importance of establishing an Office of Self-Governance and a Self-Governance Advisory Committee;
2. Ensuring the federal government is paying Contract Support Costs and Facility Lease Costs under the TTSGP; and
3. Removing provision requiring Tribal Nations to exhaust all administrative remedies regarding pre-award decisions before filing a suit in federal court.

We further urge DOT to implement the TTSGP as Congress intended and in a manner that is reflective of the unique relationship between Tribal Nations and the federal government.

- [USET SPF Comments on DOT NPRM for Tribal Transportation Self-Governance Program](#)



HAPPY HOLIDAYS

From all of us at USET Sovereignty Protection Fund.
Our deepest thanks for your support in 2019.
We look forward to a productive and rewarding New Year.

