



USET

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Transmitted Electronically

September 14, 2020

Chairman W. Ron Allen
Councilor Sharen Edenfield
Co-Chairs
GWE Subcommittee
Treasury Tribal Advisory Committee

Dear Co-Chairs Allen and Edenfield,

We write on behalf of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) to provide comment to the Treasury Tribal Advisory Committee's (TTAC) Subcommittee on General Welfare Exclusion (GWE) regarding its letter to Tribal leadership seeking input on the development of recommendations for GWE guidance. Passage of the Tribal General Welfare Exclusion Act (TGWEA) at the end of the 113th Congress was an important step forward in recognizing and affirming the sovereign governmental rights and authorities of Tribal Nations to provide for the general welfare needs of our respective citizenry. Since then, USET SPF has urged that implementation of the law be in accordance with Congressional intent and in consultation with Tribal Nations. We appreciate the efforts of the GWE Subcommittee in soliciting Tribal comment in the development of the TTAC's recommendations to the U.S. Department of Treasury. In addition to ensuring that Treasury's interpretation of the law upholds Tribal sovereignty and self-determination, the TTAC must ensure that Treasury conducts formal Tribal consultation as GWE guidance is developed and finalized.

USET SPF is a non-profit, inter-Tribal organization advocating on behalf of thirty (30) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico¹. USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations, and assisting our membership in dealing effectively with public policy issues. Collectively, our member Tribal Nations represent diverse cultures, backgrounds, structures, and socio-economic interests—much like those found more broadly throughout Indian Country.

GWE Subcommittee's Proposed Core Principles

While we are generally supportive of the GWE Subcommittee's proposed core principles for guidance, there are some concepts we would like to see expanded upon and/or modified to better reflect the importance of upholding self-governance and self-determination as the law is implemented. First, we note

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

Because there is strength in Unity

that a top priority of the Subcommittee is flexibility for Tribal Nations in the design and administration of GWE programs. We wholeheartedly agree that flexibility is critical to the implementation of the TGWEA. However, we would argue that it is not simply flexibility that should be extended to Tribal Nations. Rather, Tribal self-determination should be supported and upheld in any program guidance issued by Treasury. Tribal Nations should have the opportunity to administer GWE programs in any way they see fit and in accordance with the unique circumstances of our communities. We would like to see this more clearly articulated in the Subcommittee's recommendations to TTAC.

In addition, while we also agree that the phrase, "lavish and extravagant," is relative, it is USET SPF's position that deference be extended to Tribal Nations in determining these standards as each administers its respective GWE programs. As sovereign governments with accountability to our citizens, Tribal Nations are well-versed in responding to local conditions and needs via program administration. Deferring to Tribal governments to develop individual guidelines around the definition of "lavish and extravagant," would support our inherent sovereignty and self-determination, in addition to providing a mechanism for accommodating the great diversity found in Indian Country—our unique customs, traditions, history, and circumstances. We urge the Subcommittee to include this directive in its core principles.

Continued Emphasis on Tribal Consultation

The TTAC, including its subcommittees, provides an unprecedented opportunity to advise and educate Treasury on Tribal governments and Indian Country. However, as the TTAC has consistently acknowledged, the TTAC is a complement to formal Tribal consultation and must not be viewed as supplanting this vital aspect of the federal trust obligation. In addition to receiving guidance from the TTAC, Treasury must consult with Tribal Nations every step of the way as it implements the TGWEA. We note the absence of Tribal consultation from the core principles and encourage the Subcommittee to include it, as yet another opportunity to remind Treasury of this sacred charge in all policymaking with implications for Tribal Nations.

IRS Field Agent Training Must be Developed via Tribal Consultation

While we recognize this solicitation is just the first step in the development of recommendations, we note that there is no mention of the Internal Revenue Service (IRS) Field Agent Training, which Treasury is required to develop under the law. A major impetus for the TGWEA was the IRS' inconsistency in approach to Tribal Nations, as well as a clear lack of familiarity with and understanding of the federal trust obligation, federal Indian law, and Tribal culture and tradition. With this in mind, USET SPF stresses the importance of ensuring this training is designed thoughtfully and in a way that addresses these issues. This cannot happen without the input of Tribal Nations. We hope that the Subcommittee prioritizes this piece of implementation as it finalizes the recommendations.

GWE Benefits Should Not Impact Eligibility for Other Federal Programs

In the years since the passage of the law and as Tribal Nations have worked to implement our own GWE programs, it has become clear that there is a need for clarification regarding the impact of general welfare benefits on eligibility for state and federal assistance. More specifically, Treasury should work with other Departments and Agencies to ensure that just as Tribal general welfare benefits are not taxable income, they are excluded in eligibility determinations for assistance like Supplement Security Income or the Supplemental Nutrition Assistance Program. To leave this issue unaddressed would run counter to the purpose of the TGWEA by further penalizing Tribal citizens for the assistance provided by Tribal governments. The Subcommittee should remain cognizant of this problem and ensure solutions are reflected in final recommendations.

Departmental Guidance on Other Programs Should Comport with GWE

We would also like to highlight Treasury's failure to incorporate its own existing guidance and the principles of TGWEA as it issues guidance to Tribal Nations on benefits provided using Coronavirus Relief Fund (CRF) resources. Treasury's CRF guidance, issued on June 24, 2020, suggests that a Tribal Nation must make a showing that the economic relief payments under the CRF are made to Tribal citizens based on an individual assessment of the citizen's need for the assistance (i.e. means-testing). This runs counter to both the TWGEA and IRS Revenue Procedure 2014-35, under which , payments made pursuant to Tribal government general welfare programs) are "conclusively presumed" to comply with the financial need requirement so that the payment is not subject to tax or tax reporting. Once the Tribal Nation puts a qualified general welfare program in place, including the determination of a particular general welfare need of the Tribal community, benefits payments under that program are not taxable to the recipient and do not require an individual to demonstrate need. Rather, the IRS defers to the inherent sovereignty of Tribal Nations as we determine what actions to take for the general welfare of our communities.

This is the framework the Treasury should have relied upon for Tribal payments made under the CRF for economic relief. Instead, Treasury's guidance delayed the distribution of critical funds to Tribal families and is an example of precisely the type of means-testing that the TGWEA sought to address. With this in mind, we ask that the Subcommittee include in its final recommendations the need to ensure that all guidance and policymaking issued by Treasury reflects the TGWEA and any supporting guidance.

Conclusion

Six years after passage of the TGWEA, USET SPF is pleased to see the work of the TTAC finally begin in earnest. The GWE Subcommittee's Core Principles represent important steps toward an implementation of the law that supports the sovereign decisions of Tribal Nations. We hope that the Subcommittee, through TTAC, will stand firm in communicating Indian Country's expectations and priorities to Treasury, including the need for consistent, meaningful Tribal consultation. Please count USET SPF partner in your efforts to advance Tribal sovereignty through Treasury's improved understanding of its obligations to Tribal Nations. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 615-838-5906.

Sincerely,



Kirk Francis
President



Kitcki A. Carroll
Executive Director