



**DOI/Promoting the Rule of Law Through Improved Agency Guidance Documents**

**[USET SPF Comments to DOI re: Interim Final Rule on Promoting the Rule of Law Through Improved Agency Guidance Documents from October 26 - December 18](#)**

SUMMARY: While we can appreciate the need to standardize guidance procedures, USET SPF is concerned that DOI determined it was not required to consult with Tribal Nations prior to the adoption of the IFR. Federal guidance documents serve an essential role in the organization, disbursement, and deployment of services to Indian Country through DOI agencies—the delivery of the federal trust obligation. Tribal Nations should have been consulted and provided the opportunity to comment on DOI’s regulatory procedures for issuing guidance documents prior to the issuance of an IFR.

In order to better uphold its responsibilities and obligations to Indian Country, USET SPF urges DOI to revise the IFR to incorporate an additional subsection under 43 CFR § 51.5. This additional subsection would require that DOI guidance documents affirm the federal trust obligation to Tribal Nations and cite all relevant statutes and regulations upholding Tribal Nation sovereignty and self-determination. This would conform to EO 13175, “Consultation and Coordination with Indian Tribal Governments”, which already directs the federal government to consult on policies that have implications for Tribal Nations. We note that the circumstances surrounding the adoption of this IFR in the absence of Tribal consultation further underscore the need for the inclusion of this additional subsection. Incorporation of this language would serve as a reminder that DOI is obligated to act in the best interests of Tribal Nations when reviewing guidance documents.

**Indian Loan Guarantee Program / Consultation**

**[USET SPF Comments re: Consultation on the Indian Loan Guarantee Program December 15](#)**

SUMMARY: The purpose of this consultation was to receive recommendations on how the ILGP could further encourage business lending to fully meet Tribal Nation business priorities. While the purpose of the consultation sought comments on how DCI could further engage lenders to serve Tribal Nation businesses and to identify barriers to participation, we are concerned with the lack of transparency and notification methodology used during this Tribal consultation. USET SPF includes these concerns in our comments, as well as ways to improve the ILGP for greater participation by USET SPF member Tribal Nations.

In addition to increased funding for the ILGP, USET SPF recommends that DCI expand its outreach and consultation with Eastern Zone Tribal Nations to ensure financing and lending opportunities are understood, accessible, and available to USET SPF member Tribal Nations. USET SPF also recommends that DCI conduct more education and outreach on how Native-owned LLCs and private businesses can participate in the ILGP. Additionally, due to programmatic decisions made by DOI the ILGP doesn’t allow Tribal Nations to take advantage of as many economic development programs as possible, such as the New Markets Tax Credit program. Other challenges for USET SPF member Tribal Nations to participate in ILGP include the lack of program scalability and the 20 percent equity requirement, which have proven to be barriers to participation.

Expanding the finance capabilities of the ILGP will provide yet another dedicated and successful financing tool for Indian Country. As Tribal Nations continue to deal with the harsh economic impacts brought by COVID-19, the federal government must create funding and financing solutions that will support Indian Country. USET SPF supports expanding and improving upon the ILGP, which the federal government has done in the past, to support economic recovery and the continued restoration of Tribal economies.

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**HHS / SUNSET Rule****[USET SPF Comments to HHS Re: SUNSET Proposed Rule](#)  
December 4**

SUMMARY: USET SPF finds it deeply troubling that HHS would seek to promulgate a rule that would threaten to eliminate regulations necessary to carrying out the trust and treaty obligations to Tribal Nations. HHS must take immediate action to rescind the Proposed Rule in its entirety.

Our member Tribal Nations operate in the Nashville Area of the Indian Health Service, which contains 36 IHS and Tribal health care facilities. Our patients receive health care services both directly at IHS facilities, as well as in Tribally-operated facilities under contracts with IHS pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA), P.L. 93-638.

Not only does it remain deeply concerning that this sweeping effort at deregulation is being promulgated with zero outreach and consultation to Tribal Nations (despite impact the rule would have on the continued operation of HHS and the Indian Health System), but we are troubled that HHS would release such a rule in the midst of an international pandemic. If implemented, the Proposed Rule would threaten the regulatory underpinnings of the Indian Health System and completely disrupt HHS' ability to fulfill its trust and treaty obligation to provide care to Tribal Nations and Native people. In fulfillment of its obligations to Indian Country, USET SPF strongly urges HHS to immediately rescind this indiscriminate and ill-advised Proposed Rule.

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**IHS / Consultation****[USET SPF Comments on IHS Buy Indian Act Consultation](#)  
November 20**

SUMMARY: The purpose of these consultations was to receive input and guidance on implementing the Buy Indian Act of 1910 regulations in IHS contracting policies and procedures. While these consultations sought to identify challenges that Tribal Nations and organizations experience when pursuing Buy Indian contracts, the IHS Buy Indian Act proposed regulations were published in the Federal Register in the middle of the consultation period on November 10th. In light of this, USET SPF is concerned that the Administration plans to move forward with these changes in the absence of meaningful Tribal guidance and input.

While we agree that the federal government must improve its enforcement of the provisions within the Buy Indian Act, hastily implementing these regulations could have adverse effects for Tribal Nations. IHS must act on the consultation recommendations outlined in this letter prior to finalizing any Buy Indian Act regulations, and the final rule must incorporate the advice and guidance of Tribal Nations.

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**Health / Rural Classification****[USET SPF Comments to HRSA re: Definition of Rural](#)  
October 23**

SUMMARY: In Health Resources and Services Administration (HRSA) Federal Office of Rural Health Policy (FORHP) request, the agency is seeking input on proposed changes to the rural classification methodology for designating areas eligible for rural health grant programs. Due to HRSA's current narrow definition of "rural," many Tribal Nations have been unable to access HRSA rural health resources. This has been particularly problematic for Tribal Nations who sought, but were ultimately rejected from, HRSA's targeted rural allocations within COVID-19 relief funding. Barriers in access to HRSA funding must be viewed as a violation of the federal trust and treaty obligations to provide health care to Tribal Nations and Native peoples. With this in mind, USET SPF strongly recommends that FORHP work closely with Indian Country to ensure that Tribal communities have equal access to all federal resources to which we are entitled by designating all Tribal Nations as "rural" under HRSA's final rule. In addition, we join our partner

organizations in expressing concern over the impact of expanding the definition to include additional non-Tribal entities.

USET SPF reminds HRSA that its trust and treaty obligations to Tribal Nations are unique from its responsibility all other populations it serves. These legal and moral obligations require the agency to prioritize our access to its programs and resources. That this access is not available to us equally and is further hindered by the competitive grant process is a violation of these sacred promises, contributing to and exacerbating the deep health disparities faced by our communities.

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**Health / COVID-19 Vaccine**

[USET SPF Comments on IHS COVID-19 Pandemic Vaccine Draft Plan October 21](#)

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SUMMARY: As viable COVID-19 vaccines are developed and deployed, it is critical that Indian Country is prioritized during each phase of distribution, given the federal trust obligation and the high rate of the disease in our communities. In addition, the federal government must acknowledge and uphold the sovereignty of Tribal Nations in vaccine distribution and allocation. As the federal government continues to pursue emerging options, Tribal Nations must be consulted on all deployment strategies and guidelines, as well as fully briefed on the results of clinical trials and other testing. Given its participation in Operation Warp Speed (OWS) and as the primary federal agency charged with the provision of health care to Tribal Nations and Native people, IHS must advocate to ensure the trust obligation to Tribal Nations is upheld during the vaccine allocation process, by ensuring we receive equitable allocations of vaccine during all phases of distribution, and that the sovereign decision-making exercised by Tribal Nations in this process is honored and supported.

While we understand the United States has a duty to each of its citizens, its obligation to Indian Country is unique. A failure to deliver upon this obligation as a vaccine is allocated will be detrimental to Indian Country and the nation as a whole. We encourage you to keep this in mind, as you craft and finalize a federal allocation and distribution strategy in the coming months.

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**Health / COVID-19 Vaccine**

[USET SPF Comments to HHS on COVID-19 Vaccine Distribution in Indian Country October 9](#)

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SUMMARY: As viable COVID-19 vaccines are developed and deployed, it is critical that Indian Country is prioritized for distribution, given the federal trust obligation and the high rate of the disease in our communities. In addition, the federal government must acknowledge and uphold the sovereignty of Tribal Nations in vaccine distribution and allocation. As the Department of Health and Human Services (HHS) and the Trump Administration continue to pursue emerging options, Tribal Nations must be consulted on all deployment strategies and guidelines, as well as fully briefed on the results of clinical trials and other testing.

All units of government must come together amid the extraordinary circumstances posed by the COVID-19. As we collectively seek to eradicate the disease domestically, once and for all, the equitable and thoughtful allocation of safe and effective vaccines is of paramount importance. With this in mind, it is critical that the trust obligation to Tribal Nations and Native people be prioritized as essential to any federal distribution plan. While we understand the United States has a duty to each of its citizens, its obligation to Indian Country is unique. A failure to deliver upon this obligation as a vaccine is allocated will be detrimental to Indian Country and the nation as a whole. We encourage you to keep this in mind, as you craft and finalize a federal allocation and distribution strategy in the coming months.

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**General Welfare Exclusion (GWE)**

[USET SPF Comments on TTAC GWE Subcommittee Solicitation September 14](#)

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SUMMARY: 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.

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. We also offer several additional items for inclusion in the Subcommittee’s recommendations, including Tribal consultation and the need to address the Internal Revenue Service (IRS) Field Agent Training, as well as ensuring that TGWEA benefits do not impact eligibility for other programs and the law is applied consistently across the Department of Treasury.

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 as a partner in your efforts to advance Tribal sovereignty through Treasury’s improved understanding of its obligations to Tribal Nations.

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**Health - COVID Vaccine****[USET SPF Comments to NAS re: Draft Framework for COVID-19 Vaccine Allocation](#) September 4**

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SUMMARY: As viable COVID-19 vaccines are developed and deployed, it is critical that Indian Country is prioritized for distribution, given the federal trust obligation and the high rate of the disease in our communities. However, any vaccine or therapeutic must receive appropriately thorough and scientifically rigorous vetting and clinical trials prior to reaching Tribal Nations and the general public. In addition, the federal government must recognize and uphold our sovereign status in all aspects of vaccine allocation and distribution, including by allocating vaccine supply directly to Tribal Nations and ensuring Tribal governments are able determine how it is allocated within our communities. As the Department of Health and Human Services and the Trump Administration continue to pursue emerging options, Tribal Nations must be consulted on all deployment strategies and guidelines, as well as fully briefed on the results of clinical trials and other testing.

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**Health - Special Diabetes Program for Indians****[USET SPF Comments re: Distribution of \\$30 Million in SDPI Funding](#) August 28**

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SUMMARY: According to IHS, due to recent changes in the current SDPI grant cycle, the agency is seeking recommendations for a new plan for both Fiscal Year (FY) 2020 offset funds originally intended to be distributed for FY 2021, as well as some carryover funds, totaling approximately \$30 million. Recognizing that these are surplus resources and that there has been an historic lack of access to the program for several Tribal Nations, USET SPF asserts that this funding should be dedicated to ensuring that all Tribal Nations (regardless of size, date of federal recognition, etc.) can access SDPI’s life-saving treatment and prevention programs.

USET SPF has consistently advocated that SDPI be accessible to all Tribal Nations and urged that as long as current grantees are held harmless, program eligibility be expanded. While we understand that inequitable access to the program is due, in part, to continued flat funding, it is fundamentally unjust and a violation of the trust obligation that any Tribal Nations have been barred from SDPI because of the circumstances they faced (lack of federal recognition, didn’t apply, etc.) decades ago. USET SPF strongly recommends that IHS utilize the \$30 million in one-time funds to bring equity to SDPI and finally provide access for Tribal Nations who are not current grantees. In addition, while IHS has been unable to provide USET SPF with an estimate of Tribal Nations that may be newly eligible should the program be opened to new grantees, we suspect the number is relatively small. With this in mind, USET SPF recommends that any remaining funding be directed to existing grantees using the existing distribution formula. With the additional \$30 million in available funds, IHS has the opportunity to expand the benefit of SDPI across Indian Country. USET SPF reminds IHS that its trust obligation extends to all federally-recognized Tribal Nations, regardless of circumstance. We urge that this be more fully recognized as SDPI is administered. Longer-term, IHS must join Indian Country in supporting a much needed funding increase for the program. We reiterate that medical costs, especially

costs associated with diabetes treatment and prevention, will 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.

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**Consultation - Coronavirus**

[USET SPF Comments re: NIH Tribal Consultation on COVID-19 Research](#) **June 5**

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SUMMARY: During the consultation, NIH representatives discussed the agency’s desire to fast-track COVID-19 research in Indian Country, which would have major implications for Tribal communities during the COVID-19 pandemic and beyond. As the agency seeks to expedite COVID-19 research, USET SPF remains deeply concerned with the continued lack of NIH policies and procedures in place to protect our data, our communities, and our sovereignty. We underscore that all research, including that related to COVID-19, in Tribal communities and with Native individuals must contain protocols for integrating Tribal consent and oversight, as well as protections for Tribal data ownership and Native participants. Without these protections in place, USET SPF contends that NIH-facilitated or funded research, including on COVID-19, should not occur in our communities or with our people.

On May 21, 2020, NIH issued a Dear Tribal Leader Letter (DTLL) announcing the initiation of Tribal consultation to gather input from Tribal leaders on NIH’s COVID-19 research initiatives, with a digital consultation held on May 28<sup>th</sup>. The subjects of the consultation include the Rapid Acceleration of Diagnostics (RADx) initiative and a study to identify COVID-19 antibodies in samples previously collected under the *All of Us* research program. While the nature of the virus is largely unknown, it is evident that COVID-19 has had a disproportionate impact on Tribal Nations across the country, who have been using already limited resources to mitigate the spread and treatment of COVID-19 in our communities. As such, USET SPF recognizes that research is critical in both understanding how the virus causes disease and developing strategies to mitigate illness and death in all communities. However, USET SPF and others in Indian Country are deeply concerned about the premature deployment of these initiatives within Tribal communities as an attempt to respond to the pandemic. Specifically, RADx would not only fast-track the deployment of unvetted COVID-19 laboratory tests in Indian Country, but the proposal itself is coercive and unethical in nature as it promotes access to COVID-19 testing for Tribal communities within a research project. In addition, we deeply disagree with the proposal to open access to *All of Us* data prior to the conclusion of the *All of Us* consultation.

The accelerated deployment of these, and other initiatives proposed by NIH, within Indian Country are premature, disingenuous, ill-advised, and dangerously blur the line between research and ethical practices. While it is critical that we understand how COVID-19 has uniquely affected Indian Country, it is inappropriate to propose NIH research in our communities in the absence of policies that honor, protect and uphold Tribal sovereignty. Until these policies are in place, USET SPF cannot support NIH’s proposals for COVID-19 research.

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**Funding - Coronavirus**

[USET SPF Comments re: Provider Relief Fund](#) **May 8**

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SUMMARY: These funding authorizations were secured by Congress in order to provide broad relief to the American healthcare system, including the Indian Healthcare System, which has been facing deep economic impacts due to both losses in revenue and additional expenses associated with caring for COVID-19 patients. While Indian Country welcomes the \$400 million Tribal set-aside within the relief fund, this amount is far from adequate in covering the revenue shortfalls that Tribal Nations are facing. In spite of this, as well as assurances of Tribal provider eligibility, it appears that Tribal Nations were not meaningfully included in any of the other distributions from the PRF thus far. This is unacceptable, and IHS and HRSA must work to ensure that the Indian Health System has substantially increased access to current and future distributions under the PRF.

Decades of neglect, underfunding, and inaction on behalf of the federal government have left Indian Country severely under-resourced and at extreme risk during this COVID-19 crisis. Our existing systems of service delivery and infrastructure, including our health care delivery systems, are experiencing greater stress than those of other units of government, as we seek to maintain essential services and deliver upon our commitments, as well as dedicate resources to the unique circumstances of COVID-19 response. While the crisis is impacting all health care providers, Tribal Nations are the only providers to which the federal government has a trust obligation. With this in mind, Tribal Nations must have substantially greater access to relief under the PRF. As always, USET SPF stands ready to assist IHS and HRSA in ensuring that the Indian Healthcare System is meaningfully included in all funding disbursements.

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**Funding - Coronavirus**

[USET SPF Comments on the Implementation of Section 1102 of the CARES Act--The Paycheck Protection Program](#) **April 17**

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SUMMARY: USET SPF urges SBA to ensure that Indian Country has broad, flexible access to relief under the PPP, as intended by Congress, so that we may continue to support our employees and local economies during this time of great uncertainty.

The purpose of the PPP, and all of Title I of the CARES Act, is to provide certainty and support to workers during the COVID-19 emergency. As businesses of all sizes and industries are forced to temporarily close their doors or otherwise experience steep reductions in revenue, it is critically important that employees be offered the stability of continued pay and/or economic relief. In establishing the PPP, Congress sought to ensure that small businesses of all types had access to forgivable loans to maintain payroll. In acknowledgement of the role that our businesses play in supporting economies across the country and the federal trust obligation, Congress explicitly included Tribal Business Concerns (TBCs), without regard for industry, as eligible for these loans.

As SBA and Treasury seek to implement the PPP in fulfillment of Congressional intent and the spirit of the law, TBCs must be meaningfully and broadly included. This involves removing all arbitrary barriers to access that have been imposed during interim rulemaking. These barriers serve no valid purpose. Rather, they unfairly disadvantage Tribal Nations and our employees during a time of economic crisis. To continue to apply the PPP in this way represents a failure to uphold obligations to Tribal Nations, as well as American wage earners. USET SPF urges that these barriers be removed immediately.

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**Funding - Coronavirus**

[USET SPF Comments on Distribution of CARES Act Title V Tribal Set Aside](#) **April 8**

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SUMMARY: The Coronavirus Relief Fund was established to provide relief to all units of government across the United States, including Tribal governments, as they seek to respond to the current public health crisis. In administering and distributing the \$8 billion set aside for Tribal governments, we urge you to ensure there is both equity and flexibility as the funds are dispersed. Because we are making the reasonable assumption that all Tribal Nations will face financial impacts as a result of the COVID-19 pandemic, this process must be inclusive of all Tribal Nations and reflect the great diversity found across Indian Country.

If distributed fairly, the funding available under Title V of the CARES Act will be a critical source of relief for all federally-recognized Tribal Nations. Like other units of government, Tribal Nations are responsible for the provision of governmental services to our citizens (and oftentimes, the surrounding community), including public safety and justice, emergency management, health, housing, education, and social services. Unlike other units of government, Tribal Nations lack access to many resources that the U.S. family of government enjoys, including certain funds, supplies, and infrastructure, capital and tax revenue, many direct federal programs, housing, and others, despite federal trust and treaty obligations. Decades of neglect, underfunding, and inaction on behalf of the federal government have left Indian Country severely under-resourced and at extreme risk during this COVID-19 crisis. Our existing systems of service delivery and infrastructure are likely to experience greater stress than those of other units of government, as we seek to maintain essential services and deliver upon our commitments, as well as dedicate resources to the unique circumstances of COVID-19 response.

In providing a set aside for Tribal Nations, the law recognizes that Tribal government revenue has been significantly diminished and that there will be unanticipated expenses that Tribal Nations will experience while working to manage the impacts of this crisis. In addition, by clearly including Tribally-owned entities, the CARES Act acknowledges the role that economic entities play in supporting governmental purposes. It is critical, then, that the funding distribution methodology and allowable expenses reflect this reality, and not rely on an oversimplified process that does not reflect the intent of the law. With this in mind, USET SPF provides the attached recommendations in order to ensure relief reaches all Tribal Nations and is flexible enough to ensure Tribal governments are able to determine its best use. USET SPF urges the equitable and expeditious disbursement of the Tribal set aside in keeping with Tribal sovereignty, the diversity of Indian Country, and Congressional intent. These funds will do more than provide critical resources and

certainty to Tribal governments during this unprecedented crisis; they will also be a vital part of ensuring a comprehensive, all-of-government response to COVID-19. An incomplete response will be detrimental to Indian Country and the nation as a whole.

- [Follow Up: RE: USET SPF Comments on Distribution of CARES Act Title V Tribal Set Aside FOLLOW UP: Treasury Guidance April 22](#)

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**Housing**

[USET SPF Comments re: HUD Two-Year Notices of Funding Availability for ONAP Competitive Programs](#)  
**March 13**

SUMMARY: According to HUD, ONAP is moving to a new funding cycle which would “encourage long-term planning,” “further support the development of larger projects,” and would relieve the workload of Tribal applicants who may have limited resources for submitting grant applications. USET SPF underscores that changes in funding cycles and awards would have an impact on the amount and timeliness of resources available to Tribal housing programs. We further note that these changes were made without Tribal consultation and that the agency is seeking input after implementation during recent funding cycles.

As an agency of the federal government, HUD has treaty and trust obligations to Tribal Nations, which include ensuring equitable access to funding intended to support housing and other infrastructure within our communities. While we appreciate HUD’s interest in alleviating Tribal Nation workloads as we seek ONAP program grants, USET SPF underscores that extending the funding cycle to two years could hinder current processes, as well as the award and distribution of funds for successful proposals. We strongly recommend HUD work closely with Tribal Nations through meaningful and ongoing consultation to determine appropriate funding mechanisms. We urge that any changes avoid arbitrary caps or funding limits, and reflect the diversity of government structures, priorities, and planning across Indian Country. USET SPF looks forward to our continued work with HUD on this and other issues facing Indian Country.

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**National Environmental Policy Act**

[USET SPF Comments on Proposed NEPA Revisions](#)  
**March 10**

SUMMARY: While USET SPF is pleased to see that the NPRM endeavors to be more inclusive of Tribal Nations and our areas of concern, we remain concerned about other proposed revisions that will affect Tribal Nations, our communities, and our cultural resources. In addition, we note the complete lack of Tribal consultation on the proposed update. The proposed update is touted as the most significant update to NEPA since 1978. With this in mind and in accordance with federal trust and treaty obligations, the promulgation of the proposed rule should be executed in a manner that ensures the opportunity for meaningful consultation with all 574 federally recognized Tribal Nations.

As an agency of the federal government, it is incumbent upon CEQ to ensure all regulatory actions are reflective of the federal trust and treaty obligations. CEQ must conduct a meaningful consultation process with Tribal Nations and comply with the fundamental principles articulated in E.O. 13175. To that end, we request an extension of the comment period for an additional 60-day comment period.

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**Economic Sovereignty**

[USET SPF Comments on OCC Proposed Rule Modernizing the Community Reinvestment Act](#) **March 9**

SUMMARY: The proposed regulations provide financial institutions with clarity as to the types of activities that count for CRA credit and how those activities will be measured. We are especially supportive of the express inclusion of Indian Country after decades of uncertain standing.

Economic sovereignty is essential to Indian Country’s ability to be self-determining and self-sufficient. Rebuilding our Tribal Nations includes rebuilding our Tribal economies as a core foundation of healthy and productive communities. USET SPF has identified and seeks action on number of barriers to economic development in Indian Country, including

access to capital, lack of parity in the tax code, and the indeterminate status of trust lands. Limited access to capital often serves as our greatest challenge and interferes with our ability to pursue economic development opportunities. The NPRM clarifies qualifying activities, develops a transparent formula for determine CRA compliance, and gives banks the clarity they need to understand their CRA status. By including the prominent role that technology will have in the banking sector, the proposal is forward looking. We are pleased the proposed regulations are inclusive and urge that these provisions remain in the Final Rule. USET SPF strongly supports CRA modernization efforts that seek to drive more capital toward Tribal Nations and our communities, so that we so that we may achieve our own revenue generating potential.

<b>Health / CMS Scope of Practice</b>	<a href="#"><u>USET SPF Comments to CMS - Scope of Practice Medicare regulations January 17</u></a>
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SUMMARY: USET SPF provides comment to the Centers for Medicare and Medicaid Services (CMS) on the agency’s request for input and recommendations regarding the elimination of specific stringent Scope of Practice Medicare regulations, including supervision and licensure requirements. According to CMS, the agency is seeking feedback on part of President Trump’s Executive Order (EO) #13890, “Protecting and Improving Medicare for Our Nation’s Seniors.” The EO directs HHS to propose regulations that would eliminate a number of burdensome regulatory requirements of the Medicare program. As CMS considers the elimination of burdensome regulatory requirements, it must, in consultation with Tribal Nations, work to identify those that act as barriers to the exercise of Tribal sovereignty and the execution of the federal trust responsibility and obligations. This includes the requirement for physician supervision of mid-level practitioners.

Despite the critical role that 3rd party billing has in the Indian Healthcare System, Tribal health programs must meet stringent requirements under 42 CFR part 405, subpart X, and 42 CFR part 491 in order to bill Medicare under current regulations as a Federally Qualified Health Center (FQHC). These regulations mandate that services rendered by Tribal health programs as an FQHC must be provided under the supervision of a physician.

In order to meet these statutory requirements, some of our member Tribal Nations have turned to contracting the services of locum tenens, or temporary physicians. While locum tenens serve a valuable purpose in covering gaps in patient care during short-term and usual circumstances, Tribal Nations have been faced with contracting locum tenens as a long-term and expensive solution due to lack of available options. This requirement has placed an unfunded mandate on Tribal Nations by requiring Tribal health programs to use limited resources to essentially pay to bill Medicare; a violation of the trust obligation.

While USET SPF appreciates CMS’s efforts to reduce regulatory burdens within Medicare, the agency must ensure these efforts include Tribal Nations and the Indian Health System as full partners. This includes removing barriers to accessing the resources and health care to which we are entitled. As always, USET SPF stands ready to assist CMS in endeavors that would improve the agency’s delivery of its trust responsibility and obligations.

<b>Health / Data Management &amp; Sharing</b>	<a href="#"><u>USET SPF Comments to NIH Draft Policy for Data Management and Sharing and Supplemental Guidance January 10</u></a>
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SUMMARY: USET SPF recognizes that sharing data among the scientific community is imperative for scientific discovery and advancement. However, as NIH advances its policy regarding data management and sharing, the agency must recognize the historical relationship between scientific study and Tribal Nations, where researchers committed ethical violations against our communities and our people. We underscore that NIH must seek to prevent these violations from ever occurring again by ensuring all NIH policies are reflective of the federal government’s obligation to honor, protect and uphold Tribal sovereignty by requiring explicit consent from Tribal Nations.

Native people and Tribal communities continue to face negative impacts from previously unauthorized and unpermitted use of genomic data without Tribal Nation informed consent (Arizona Board of Regents v. Havasupai Tribe). Despite Tribal efforts to require informed consent regarding the use of Tribal data, NIH has continued to advance certain initiatives, including a Tribal Consultation Policy, without engaging in meaningful consultation with

Tribal Nations. In August 2018, USET SPF provided comments to NIH regarding the agency's inadequate Tribal consultation on three initiatives, including proposed provisions for the Draft NIH Data Management and Sharing Policy. In our comments, we note NIH's ineffective and insufficient consultation practices with Tribal Nations which are in violation of the U.S. Department of Health and Human Services (HHS) Tribal Consultation Policy. While we recognize some improvement with the addition of clear deadlines and a request for broader guidance on research with our population, we remain focused on the results of these efforts. As stated in past communications, we expect NIH to engage in consultation with Tribal Nations in a transparent and meaningful manner to resolve outstanding concerns from Indian Country to ensure sovereignty is upheld and past abuses never happen again. This includes taking active steps to implement the recommendations and guidance of Tribal Nations.

Within the Draft NIH Policy for Data Management, the 'Effective Date' seems to include only research to be conducted in the future. Because of the historical research abuses outlined above, USET SPF believes that ALL projects, current and future, be required to submit a Data Management Plan. There is an opportunity to ensure that data currently being collected and utilized is protected. Under the 'Compliance and Enforcement' section, USET SPF insists that an oversight mechanism, specific to Tribal Nation data, designed consultation with Tribal Nations, be included. This mechanism would detail Tribal Nation data protection best practices, procedures, ensure researcher compliance, and recommend consequences for violations.

In addition, No Tribal Nation data should be included in any level of access without explicit Tribal Nation consent. The consent mechanism varies from Tribal Nation to Tribal Nation and may take the form of Tribal Nation Council resolutions, signed memorandums of understanding with a designated Tribal Nation leader, etc. In addition to documented Tribal Nation consent, the plan must address additional considerations between the researcher and the Tribal Nation. USET SPF believes that such a required element for all NIH-funded research proposals will integrate Tribal Nation protection and sovereignty concerns into common research practice.