



USET

SOVEREIGNTY PROTECTION FUND

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Catherine Wolfram
Acting Assistant Secretary Economic Policy
Point of Contact for Tribal Consultation
Office of Economic Policy
U.S. Department of the Treasury
1500 Pennsylvania Ave. NW
Washington, DC 20220

Dear Acting Assistant Secretary Wolfram,

We write on behalf of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) in response to the U.S. Department of Treasury's Tribal consultations regarding the distribution of \$20 billion reserved for Tribal Nations in the Coronavirus Fiscal Recovery Fund (FRF) under the American Rescue Plan Act of 2021 (ARP). USET SPF and our membership welcome the substantial investment this level of funding makes in COVID-19 response, relief, and recovery across Indian Country. Considering the deep and wide-ranging impacts COVID-19 has had on Tribal Nations, as well as chronically unmet federal obligations that have existed for centuries, we continue to advocate for the rapid, equitable distribution of ARP resources in a manner reflective of Tribal sovereignty and the diverse circumstances that exist across Indian Country.

USET SPF is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico. ¹USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

Equitable Funding Methodology

If distributed fairly, the \$20 billion in funding available under the FRF will be a critical source of relief and recovery for all federally-recognized Tribal Nations. Due to the federal government's chronic failure to fully fund trust and treaty obligations, as well as ongoing failures to provide necessary funding and assistance,

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), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), 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), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is Strength in Unity

Tribal Nations have been forced address the impacts of COVID-19 with limited and diminishing resources. Now, there is hope on the horizon, both with the deployment of effective vaccines and through the significant allocation of resources to Indian Country under the ARP.

However, it is important to recognize that all Tribal Nations have felt the devastating impacts of COVID-19. The pandemic continues to affect Tribal Nations, our citizens, and our service delivery, and its effects will likely be felt long after the pandemic ends. With this in mind, we urge Treasury to focus on ensuring that funds are distributed in the most equitable way possible, using a methodology that acknowledges and accounts for the diversity of conditions and experiences we face as a result of our individual interactions with the U.S. government.

While we defer to our member Tribal Nations for recommendations on a formula for distribution, USET SPF is generally opposed to a methodology that relies on Tribal land base. In particular as we enter the recovery phase of the pandemic, Land base fails to reflect the depth of actual COVID-19-related expenses and impacts for a majority of Tribal Nations, and it unfairly penalizes those Tribal Nations who, like our membership, have experienced centuries of extreme land loss from which we continue to recover. Utilizing land base as a part of this formula would result in a deeply inequitable distribution of FRF resources to Tribal Nations.

Use of Tribally-Certified Data

USET SPF calls upon Treasury to utilize only those data points that have been furnished and certified by Tribal Nations in allocating Fiscal Recovery Fund resources. Recognizing the vast inequities, as well as litigation, resulting from the use of IHBG data for the distribution of Coronavirus Relief Fund (CRF) resources, USET SPF hopes that Treasury will avoid compounding the mistakes of the past Administration. Tribal Nations are the only authorities on our demographics, including enrollment/population, employees, revenue loss, COVID-19 impacts, and others. To dismiss our expertise concerning our own communities and instead utilize the flawed and restrictive federal data set, such as Indian Housing Block Grant (IHBG) data, is an insult to our governmental status. In recognition of our inherent sovereign authorities and Nation-to-Nation relationships with the United States, Treasury should respect, acknowledge, and accept the veracity of our self-certified data, while providing only some limited guidance on content to offer consistency across communities and to achieve optimum fairness in treatment. In addition, Treasury and other federal agencies must ensure our data is protected from public release or unauthorized use.

Flexibility in Funding Use with Technical Assistance

Broadly, Tribal Nations must have maximum flexibility in the use of all funding allocated under the FRF, as intended by Congress and the Biden Administration. This includes ensuring Tribal Nations have broad authority in allowable costs and activities, unless expressly prohibited by law. Flexibility in use of funds will ensure Tribal Nations have the ability to utilize COVID-19 funds in manner that best suits our individual circumstances and communities. We continue to urge Treasury to avoid imposing a prescriptive list of allowable expenses for Tribal Nations. This strategy would undermine Tribal sovereignty and the broad language of the ARP, as well as fail to account for the unique circumstances Tribal Nations are facing.

However, it is important to note that many Tribal Nations are seeking guidance to ensure our use of funds will withstand any future Office of Inspector General audits. USET SPF asserts that governmental flexibility and additional clarity on CRF expenditures and processes are not mutually exclusive. It is with this in mind that we request consider the establishment of a hotline to address specific questions related to FRF expenditures, in addition to guidance that provides an appropriate level of certainty as we seek to expend these resources.

Finally, in recognition of our sovereign status and the trust obligation, as well as the current strain on resources posed by COVID-19, Tribal Nations must not be subject to burdensome administrative requirements for use of these funds. Reporting should be limited to that which is required by law, so that Tribal Nations may continue to focus on COVID-19 prevention, mitigation, vaccination and recovery.

'Costs Incurred' Should Focus on Flexibility

Recognizing the scale of FRF funds being allocated to Tribal Nations, the lengthy deadline for expenditures, and the potential for great breadth and scope in allowable projects, USET SPF urges that Treasury employ the most flexible interpretation possible in defining 'costs incurred' under the FRF. The diversity in circumstance that Tribal Nations experience extends to access to supplies, human capital, and other resources for potential infrastructure projects utilizing FRF funds. We ask that you fully commit to "building back better" for Indian Country as we recover from the pandemic and ensure that Tribal Nations are able to utilize these funds in a way that accounts for centuries of unmet obligations.

Address Growing Concerns Over COVID-19 Funding Impacts to IDC Rates

There is growing legitimate concern within Indian Country regarding how the large influx of funding intended to assist Tribal Nations as we address and recover from the COVID-19 crisis will impact Indirect Cost Rate (IDC) calculations in the coming years. Given that there are a number of funding streams to which IDC rates cannot be applied, or are severely restricted, there is a strong possibility of extreme fluctuations in Tribal Nations' otherwise stable IDC rates over the next several years. While the COVID-19 response and relief funds are one-time monies, the inability to recover IDC while still being required to reflect and calculate these funds as part of the base will have a detrimental impact to IDC rates, unless the COVID-19 funds that deny or limit IDC recovery can be excluded from the calculations. Ultimately, if not remedied, this would have an unintended disastrous impact on grant activity over the next few years for Tribal Nations. Recognizing that both CRF and FRF resources have the potential to drive much of this instability, we ask that Treasury work with OMB, and others across the Biden Administration, on a solution—perhaps guidance stating that Tribal Nations have the option to exclude any COVID-19 funding that denies and/or limits IDC recovery from IDC negotiation calculations.

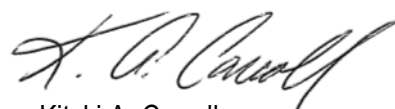
Conclusion

USET SPF reminds Treasury that the unique devastation experienced by Tribal Nations as a result of the COVID-19 pandemic is, in many ways, directly attributable to generations of federal neglect and inaction. This was further compounded as urgently needed CRF resources were allocated in a demonstrably inequitable manner. Under this new Administration and as we turn toward recovery from this once-in-a-generation public health emergency, we are hopeful that Treasury's distribution of FRF funding will employ a more just and thoughtful approach in recognition of its trust and treaty obligations to Tribal Nations. We look forward to continued partnership as Treasury seeks to implement policies that uphold our status as sovereign governments, our right to self-determination and self-governance, and honor the federal trust obligation in full. 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