



USET

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*Transmitted Electronically
To ilfr@dol.gov*

April 9, 2021

Director Wayne Gordon
Division of Research and Evaluation
Office of Policy Development and Research
Employment and Training Administration
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Dear Director Gordon,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to Tribal consultations held by the Department of Labor (DOL) on March 8, and 9, 2021 regarding the "American Indian Labor Force Report" (AILFR). Initially, the Department of the Interior (DOI) collected and published data for the AILFR until that responsibility was transferred to DOL in 2017 under Public Law 115-93 (P.L. 115-93). The most recent AILFR produced by DOL was published in 2013 and relied on data estimates of Tribal Nations from the American Community Survey, as well as geographic approximations for Tribal Nation jurisdictional areas and counties adjacent to our jurisdictional boundaries. We have concerns regarding these methodologies, which were used previously by DOL to publish the AILFR, especially since Tribal Nation input was not requested for the report. DOL should not continue to use these methodologies for its publication of the AILFR. Rather, this process should be guided by Tribal Nations and the data we supply.

USET Sovereignty Protection Fund (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.¹ USET 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.

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

As DOL looks toward the next publication of the AILFR, USET SPF strongly encourages DOL to provide technical assistance funds and training to Tribal Nations to support data accuracy and reliability. DOL should defer to Tribal Nations on data collection, provide technical assistance training, and establish a 'Tribal Affairs' position within the Secretary's Office.

Under the Indian Employment, Training and Related Services Act of 1992 the AILFR is required to report on five data elements: total service population; total service population under age 16 and over age 64; population available for work, including those not actively seeking work; the employed population, including those employed and below the poverty line; and the numbers employed in private and public sector positions. While these required reporting elements provide a foundation for the report, there remains a lack of clarity in intent and scope, as well as in how these elements are defined. DOL must work with Tribal Nations to provide consistency, specificity, and standardization to the AILFR, while acknowledging and accounting for the diverse circumstances across Indian Country.

DOI must address several outstanding points of clarification related to the AILFR such as whether the intent of the report is to provide an employment and workforce snapshot for all of Indian Country, regional profiles, and/or tailored individual Tribal Nation reporting. Issues regarding population and how it is being counted for report purposes must also be addressed to ensure that data is consistent and inclusive. These points of clarification should be answered through proper consultation with Tribal Nations, while keeping in mind that the report content will evolve over time due to the changing demographics and workforces of Indian Country. Similarly, DOL must be transparent and inform Tribal Nations how the report is being used and shared with others in the federal government and other stakeholders, as well as confirm that our Tribal Nation data is secure and protected. To improve data reporting and consistency, DOL should also work with its federal partners to pool available data and resources to ensure the AILFR's accuracy.

Sources of Data for the "American Indian Labor Force Report" Should be Determined by Tribal Nations

DOI previously published AILFRs between 1992 and 2013 based on data collected from the Bureau of Indian Affairs (BIA). This process better recognized our inherent sovereign authority and empowered Tribal Nations to self-certify data submissions to BIA. A similar process should be adopted and implemented by DOL for the publication of future AILFRs and DOL should work with Tribal Leaders and technical experts to develop data collecting and reporting standards that will ensure consistent, accurate data. Tribal Nations and our elected or appointed Leaders are the sole authority on our populations and for decision-making in our communities. DOL should accept data collected by our own Tribal Nation departments and workforces, rather than relying upon inaccurate federal data sources. Tribal Nation authority should be recognized to define our own geographic areas for reporting, since current restrictions do not fully include our citizens or accurately depict the reach of our governmental authorities and actions.

Additionally, any non-Tribal data sets used by DOL for the AILFR, such as Census data, should be reviewed and approved by Tribal Nations for inclusion and reporting in the AILFR. In addition to ongoing concerns related to Census and other federal data sets, there have been particular concerns from Indian Country regarding the accuracy of the upcoming publication of 2020 Census data. The COVID-19 pandemic contributed to Tribal government shutdowns, stay-at-home orders, and Tribal governmental functions directed to COVID-19 response in our communities. These impacted the capability of both Tribal Nations and Census workers to do door-to-door visits and provide assistance with filling out 2020 Census forms.

Methods for Sharing Data Across the Federal Government Should be Determined by Tribal Nations

While DOL must recognize our sovereign authority to collect and provide our own data, Tribal Nations that do not want, or cannot, submit data should not be penalized. In particular, this includes avoiding a 'zero' population designation as this could negatively influence the formula distribution methods of other agencies for funding allocations and programmatic services to Indian Country. While DOL must make every effort to collect data, Tribal Nations that do not submit employment data should be reported with a 'not available' or 'not reported' data designation so they are not zeroed out or excluded from other agency programmatic and funding allocations. DOL must work with other agencies using the AILFR to ensure they understand what this designation means.

As we seek to protect, regulate, and maintain ownership over the data of our citizens and Nations, DOL must inform Tribal Nations on how data is being shared with other agencies to inform the development of formulas for programmatic and funding allocations, and other federal functions. These processes should not be developed and implemented without Tribal Nation consultation. It is critically important that AILFR data is not inaccurately or inappropriately used by federal agencies and Congress to inform funding allocations and programmatic services to Tribal Nations.

It was also mentioned during the March 8, 2021 Tribal consultation that DOL is meeting with an 'Advisory Group' to discuss and gather input on the AILFR. With respect to transparency, DOL should inform Tribal Nations what 'Advisory Group' this is and if it is comprised of or includes representatives from Tribal Nations. This transparency is especially important since DOL is approaching Tribal Nations for data and we are not informed on how this data is being shared across the federal government. Nonetheless, DOL should consult with Tribal Nations on the creation of a Tribal Working Group to further inform data collection and publication of the AILFR. This working group should be comprised of Tribal Leaders, or their designees and technical experts, and should be regionally representative to ensure equitable representation.

DOL Should Consult with Tribal Nations on Workforce and Employment Definitions

Given the diversity of circumstance across Indian Country and the federal government's tendency to apply a one-size-fits-all approach, definitions, as well as the use and interpretation of definitions, continue to be a problematic issue across federal programs and activities. Going forward, DOL should consult with Tribal Nations to define definitions correctly and accurately for 'Tribal workforce', 'Tribal labor workforce', 'unemployed', and 'seasonal workers.' Definitions regarding 'seasonal workers' are particularly important, since many Tribal Nations operate enterprises that employ seasonal workers and Tribal citizens have occupations in seasonal fishing, hunting, farming, and gathering. These definitions differ across Tribal Nations and could, therefore, affect measures in the AILFR. Since federal agencies are also using the AILFR for reference purposes or to directly inform how they determine funding and programmatic allocations in their respective agencies, DOL must provide clarity and further detail regarding its definitions and what they represent. This is already an issue DOL has highlighted through its use of 'discouraged workers' and how this definition is used to identify unemployment in the AILFR.

DOL Should Provide Technical Assistance to Tribal Nations to Support Data Collection

USET SPF recommends that DOL develop technical assistance protocols and training for Tribal Nations interested in collecting our own workforce data. DOL should include line items for technical assistance to Tribal Nations for the AILFR in its annual budget requests and consult with Tribal Nations on how to establish technical assistance and training protocols for data collection. We also recommend that DOL conduct training and outreach to Indian Country regarding technical assistance programs and funding currently available to Tribal Nations that could assist with AILFR data collection.

We recognize that DOL currently provides assistance to Tribal Nations, organizations, and other Tribal entities regarding the implementation of programs under the Workforce Innovation and Opportunity Act (WIOA). DOL also has a Native American Employment and Training Council to provide recommendations to the Secretary of Labor on the overall operation and administration of Native American programs under WIOA. DOL should seek Tribal Nation input on how these functions can provide assistance to Tribal Nations, and if other mechanisms must be put in place to provide further support in developing the AILFR. Many Tribal Nations will have capacity challenges to produce reliable data for submission to the AILFR due to the ongoing lack of federal investment in this area, as well as the current COVID-19 pandemic. Since DOL is statutorily required to produce the AILFR on a biennial basis, it must invest in the quality of the data informing its publication. Some Tribal Nations will require assistance from DOL to ensure reported population samples are of sufficient size and representativeness that translate into accurate reporting results.

DOL Should Establish a 'Tribal Affairs' Position Within the Secretary of Labor's Office

To better fulfill its trust and treaty obligations to Tribal Nations, as well as provide coordination over all its activities and programs, DOL should create a 'Tribal Affairs' position within the Office of the Secretary. It is also critically important that all DOL employees receive comprehensive training on working with and communicating effectively with Tribal Nations. Federal actions impact Tribal Nations and our citizens. Funding for workforce development and training as well as federal contracting compliance are particularly important and relevant areas to Tribal Nations and therefore DOL employees operating in these areas must have a comprehensive understanding of the federal trust and treaty relationship with Tribal Nations. USET SPF has long recommended mandatory training on U.S.-Tribal relations and the trust obligation for all federal employees, which should be designed in consultation with Tribal Nations. This, along with the establishment of a 'Tribal Affairs' position within the Secretary's Office, would prove beneficial to both DOL and Tribal Nations.

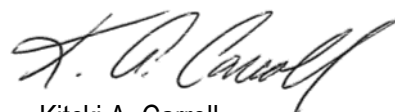
Conclusion

As Indian Country looks to "build back better" under the Biden Administration, DOL has an opportunity to work with Tribal Nations, our enterprises, and our diverse workforces to develop methodologies and reporting metrics that better represent and acknowledge our economic and workforce contributions to the overall U.S. economy. USET SPF encourages DOL to engage in consistent and meaningful consultation and coordination with Tribal Nations to establish a solid foundation for addressing workforce development and reporting in Indian Country in the AILFR. DOL must uphold its trust and treaty obligations to Tribal Nations. These consultations are a starting point, but DOL must support annual appropriations requests for technical assistance and training in its annual budget requests to Congress. USET SPF looks forward to continuing to work with DOL to develop appropriate protocols and methods for working with Indian Country on the development of the AILFR and other programmatic and funding opportunities. 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