



USET

SOVEREIGNTY PROTECTION FUND

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*Transmitted Electronically
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June 4, 2021

Jeffrey Stout
Director
Office of Federal Program Finance
U.S. Department of the Treasury
1500 Pennsylvania Ave. NW
Washington, DC 20220

Re: TREAS-DO-2021-0009-0001, Notice and Request for Information on the Small Business Credit Initiative Program

Dear Director Stout,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Notice and Request for Information (RFI) on the Small Business Credit Initiative (SBCI) program. Additionally, our comments reflect issues highlighted during Treasury's Information Session for Tribal Governments held on May 13, 2021, and the subsequent Treasury Tribal consultation held on May 27, 2021. The SBCI Program was recently reauthorized under Sec. 3301 of the American Rescue Plan Act (P.L. 117-2) to provide \$10 billion for financing small businesses and technical assistance to small businesses applying to SBCI and other government programs. Sec. 3301(a)(1) of P.L. 117-2 provided a \$500 million set-aside for Tribal Nations to assist in increasing the availability of small business capital in Indian Country. However, we are concerned that the current SBCI program limits the ability of Tribal Nations to fully access and utilize the program's benefits, especially since private capital is required to fulfill the program's matching fund requirements. Requiring Tribal Nations to invest their own dollars, or seek private capital investment, to access SBCI funds completely undermines the intent of the program to stimulate economic growth in 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.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),

Although the SBCI program was reauthorized by P.L. 117-2 to include a Tribal Nation set-aside, the original 2010 Small Business Jobs Act (P.L. 111-240) that created the SBCI program was structured specifically for state governments that could access and leverage private capital required for matching funds. P.L. 111-240 did not include Tribal governments and, therefore, did not recognize the challenges and barriers of private capital investment in Indian Country. Under the Tribal set-aside in P.L. 117-2 Treasury is attempting to distribute funds based on a distribution model that does not work for Indian Country. We would encourage Treasury to inform Congress of these issues with the 2010 SBCI statute in any future congressional reauthorization of the SBCI program. As it moves to implement the reauthorization of the program, Treasury must exercise flexibility in structuring and allocating SBCI funds to best serve the unique business, entrepreneur, and job creation initiatives of Tribal Nations. Treasury must examine how it can uphold its trust and treaty obligations to Tribal Nations and examine ways it can improve its impact in Indian Country, including through waivers of statutory and regulatory limitations in the SBCI program, as exemplified by Section 6 of Executive Order 13175.

SBCI Equitable Funding Methodology

The SBCI's \$500 million Tribal set-aside will provide a critical source of COVID-19 relief and recovery for Native businesses and entrepreneurs. While we defer to our member Tribal Nations for recommendations on a formula for distribution, USET SPF is generally opposed to a distribution methodology that relies on Tribal Land base or population size. In particular, land base and population size fail to reflect the depth of actual COVID-19-related expenses and the pandemic's impact on Tribal Nation economies and jobs. It also unfairly penalizes Tribal Nations that have witnessed centuries of extreme land loss from which we continue to recover. Distribution of SBCI funds should consider the employment and business development priorities of Tribal Nations and our citizens. These actions will ensure equitable distribution of SBCI funds and support Tribal Nation business development and job creation within our communities and for our citizens.

Use of Tribally-Certified Data

USET SPF calls upon Treasury to utilize only those data points that have been provided and certified by Tribal Nations in allocating resources from the American Rescue Plan Act (ARPA). Tribal Nations are the sole authorities on our demographics, including enrollment/population, employees, revenue loss, COVID-19 impacts, and others. In recognition of our inherent sovereign authorities and Nation-to-Nation relationship with the United States, Treasury should continue to respect, acknowledge, and accept the veracity of our self-certified data, while providing limited guidance on content to offer consistency across communities. In addition, Treasury and other federal agencies must ensure our data is protected from public release and unauthorized use.

Flexibility in Funding Use with Technical Assistance

Broadly, Tribal Nations must have maximum flexibility in the use of all funding allocated for the SBCI program, as intended by Congress and the Biden Administration. This includes ensuring Tribal Nations have broad authority in allowable costs and activities. Flexibility in use of SBCI funds will ensure that Tribal Nations can utilize COVID-19 funds in manner that best suits our individual circumstances and communities, especially as it relates to the criteria in 1:1 private capital leveraging. We continue to urge Treasury to avoid imposing a prescriptive list of allowable expenses for Tribal Nations. This strategy would

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).

undermine Tribal sovereignty and the intent of ARPA, as well as fail to account for the unique circumstances Tribal Nations have and continue to experience with the COVID-19 pandemic.

In addition, it is important to note that access to capital remains a barrier for economic development in Indian Country. Due to the lack of private investment in Indian Country Treasury must provide technical assistance to Tribal Nations if a private banking institution denies a Tribal application for capital. This is especially important since the SBCI statute does not allow the use of other federal funds to fulfill the program's matching requirement and private capital must be leveraged instead. Additionally, USET SPF recommends that Treasury provide technical, legal, accounting, and financial advisory assistance to Tribal Nations seeking private capital to fulfill the requirements of the SBCI program. 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 mitigation and economic recovery.

Tribally-Chartered Corporations Should Be Eligible to Receive SBCI Funds

Many of our Tribal governments have established Tribally chartered corporations to provide essential jobs and generate economic growth. These Tribally chartered corporations operate at the direction of Tribal governments and, therefore, should be eligible to receive pass through SBCI funds from Tribal governments to support business and entrepreneur development within our communities. USET SPF recommends that Treasury develop guidance in consultation with Tribal Nations to facilitate this process to ensure the immediate and equitable distribution of SBCI funds to duly authorized Tribally chartered corporations. In addition, as a matter of sovereignty and governmental parity, Tribal Nations should be the sole determinant regarding the allocation of SBCI funds to appropriate business entities, just as states and other units of government will do in administering this program.

Conclusion

The SBCI program was initially created to facilitate and stimulate economic recovery following the economic downturn of 2008. We are pleased that the reauthorization of the SBCI program includes a specific Tribal Nation set aside for Tribal small businesses. However, further consideration regarding the program's current limitations, especially with the requirement that Tribal Nations must leverage private capital to fulfill matching requirements, requires Treasury to exercise administrative flexibility to the fullest extent possible. This will ensure that SBCI funds will appropriately fulfill its congressional intent to stimulate economic growth and recovery for Tribal Nations. We look forward to our continued work with Treasury regarding the distribution of SBCI programmatic funds and other financial investments in Indian Country. 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,



Chief Kirk Francis
President



Kitcki A. Carroll
Executive Director