



# USET

SOVEREIGNTY PROTECTION FUND

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July 2, 2021

Bryan Newland  
Principal Deputy Assistant Secretary – Indian Affairs  
U.S. Department of the Interior  
1849 C Street NW  
Washington, DC 20240

Dear Principal Deputy Assistant Secretary Newland,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Bureau of Indian Education's (BIE) listening sessions regarding the Johnson O'Malley (JOM) Program. Given our regional circumstances, including that over 90% of USET SPF member Tribal Nation youth attend public school, USET SPF is particularly interested in the implementation of the JOM Modernization Act. USET SPF member Tribal Nations have been especially impacted by BIE's historic failure to update the annual student count, as well as a funding methodology that under-resources schools without high Native American populations. We urge BIE to ensure that all eligible Native American students and Tribal Nations have the opportunity to meaningfully participate and benefit from the JOM program.

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.<sup>1</sup> 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.

The JOM program was created by law in 1934 to tend to the social welfare of Native American people, eventually evolving to focus exclusively on providing educational support to Native American public school students from preschool through grade twelve. Utilizing JOM funding, Tribal Nations, public schools, and other contractors receive federal assistance to provide cultural and academic services to eligible Native

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<sup>1</sup> 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*

American students. The formula for distribution of JOM resources, as well as appropriations for the JOM program, are dependent upon an accurate count of eligible students. However, for decades, BIE has failed to conduct a complete and accurate count of eligible Native American students. Instead, the BIE has continued to rely on a long-outdated count from Fiscal Year (FY) 1995. Because of this, the current number of eligible Native American students is, by some estimates, undercounted by at least 50%. This is a failure on the part of BIE to honor trust and treaty obligations to Tribal Nations. As a result, and after decades of advocacy, in December 2018, Congress passed the JOM Modernization Act, which, among other provisions, requires BIE to update its annual student count.

### **Meaningful Inclusion for All Tribal Nations—including Newly Recognized**

Despite repeated calls from USET, our membership, Congressional partners, and others, the BIE has, since FY 1995, consistently failed to update its annual student count. This has resulted in a de facto freeze to JOM program participants and eligibility. Since the student count forms the basis for the formula distribution of and appropriations for JOM funding, the use of severely outdated data has failed Tribal Nations and Native American students over the last several decades. For those Tribal Nations participating in the program as of FY 1995, the count fails to reflect the current number of eligible students, which, for many USET SPF member Tribal Nations, has likely grown significantly. Further, Tribal Nations not participating as of FY 1995, particularly the Tribal Nations that have since become federally recognized, have been deprived of the right to participate in the JOM program entirely. Ultimately, the count freeze has denied thousands of eligible Native American students, and Tribal Nations, access to funding and support to which they are entitled.

We urge BIE to commit to a complete and accurate count of all eligible Native American students even if that means providing technical and other assistance to Tribal Nations who are working to build capacity in this area and/or designing a count methodology, in consultation with Tribal Nations, that accounts for varying levels of capacity. In addition, we note that the JOM Modernization Act provides BIE with the option of using existing data sets, like the U.S. census, to compile its count. We remind BIE that existing data may be inaccurate or incomplete, especially for newly recognized Tribal Nations, and, most importantly, that Tribal Nations are the final arbiters of any population counts for our people. Any existing data that will inform the JOM student count must, at the very least, be certified by Tribal Nations. Ensuring that all Tribal Nations and our students are able to benefit from this funding is a core aspect of BIE's trust and treaty obligations.

### **Request and Advocate for Necessary JOM Funding**

Compounding and intertwined with an inaccurate count is the historic and continued underfunding for the JOM program. According to 2017 Congressional testimony by the National Johnson O'Malley Association, in 1995 when JOM was frozen, the per student allocation amount funded was approximately \$125.00 per student, based on the then 272,000 counted students. Now, due to consistent underfunding, today's JOM per student allocation is effectively \$43.00 per student. Without an increase in the student count, these figures represent an extreme loss of purchasing power over the last several decades due to a failure to increase funding for the program. While this shortchanges all students and contractors currently participating in the program, it results in particularly negative impacts to those students attending schools with low Native populations, as \$43/per student does not provide any semblance of a sufficient baseline for meaningful services. While the JOM Modernization Act provides the Secretary of the Interior with the option to make recommendations for legislation to logically increase the amount of funds available per eligible Indian student and to identify additional sources of funding, the efficacy of the JOM program depends upon an increase in funding. With an accurate and up-to-date count on the horizon, it is equally important that BIE request and advocate for increased funding for the JOM program—both to reflect an updated student count and to ensure that the per student allocation is meaningfully increased.

### **Equitable JOM Resource Distribution**

As noted above, the JOM program currently offers a substandard per student allocation, which has a particularly negative impact on services for students attending schools with smaller Native American populations and Tribal Nations with small populations generally. This typically results in an inability to provide any meaningful academic or culturally-relevant services at all for these populations—despite their eligibility for the JOM program. BIE must seek to rectify this inequity as it considers implementation of a distribution methodology. While we recognize that there exists a statutory requirement to hold harmless a Tribal Nation's current base funding, it remains important that all eligible Native American students are able to benefit from JOM resources. BIE should examine all options within its authority to ensure equitable access to JOM funding, including establishing a meaningful baseline for funding allocation, in the event of an increase in overall funds.

### **Conclusion**

USET SPF welcomes the updated JOM student count as required by the JOM Modernization Act. It is our hope that BIE will take this opportunity to not only improve and update the count, but to ensure the JOM program is modernized in such a way that allows funding to substantively reach all eligible Native American students in fulfillment of trust and treaty obligations. Through the JOM program, all eligible students, including those who are citizens of USET SPF member Tribal Nations, should have access to culturally-relevant academic support. We hope that BIE will keep this in mind as it implements the JOM Modernization Act. 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](mailto:LMalerba@usetinc.org) or 615-838-5906.

Sincerely,



Chief Kirk Francis  
President



Kitcki A. Carroll  
Executive Director