



USET

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Transmitted via email to
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July 23, 2021

Shalanda Young
Acting Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Acting Director Young,

We write on behalf of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) to provide comment to the Office of Management and Budget (OMB) in response to its July 1st "Dear Tribal Leader" letter initiating consultation on the President's Fiscal Year (FY) 2022 Budget Request. As with OMB's consultation on Tribal consultation earlier this year, OMB's consultation with Tribal Nations on the President's Budget Request is an historic and welcome development. USET SPF has long called for OMB to consult on the budget in accordance with trust and treaty obligations. We celebrate this consultation and are hopeful that it leads to improved Budget Requests and increased appropriations, as well as improvements in the execution of trust and treaty obligations across the Executive Branch.

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. 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.

Broadly, the President's Budget Request for FY 2022 is positive for USET SPF member Tribal Nations and Indian Country generally. After years of requests that neglected trust and treaty obligations, we welcome the more substantial increases, as well as the policy change proposed by this Administration. It is also important to remember, however, that centuries of neglect and hostile federal policies cannot be undone in a single request. In addition to our advocacy for the highest discretionary increases possible each FY, we

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

are seeking a long-term commitment to federal fulfillment of trust and treaty obligations—including full and mandatory funding for federal agencies and programs serving Tribal Nations. This further includes commitment to improvements in the federal budget formulation process, as well as OMB’s consultation and coordination with Tribal Nations as a part of that process.

Correct Failures in the Federal Budget Process and Funds Administration

Inadequate funding to Indian Country needs to be viewed as unfilled treaty and trust obligations. This funding is not delivered on the basis of poverty or for social welfare purposes. The federal government’s trust obligations are the result of the millions of acres of land and extensive resources ceded to the U.S.—oftentimes by force— in exchange for which it is legally and morally obligated to provide benefits and services in perpetuity. At no point has the government fully delivered upon these obligations.

The chronic underfunding of federal Indian programs continues to have disastrous impacts upon Tribal Nations and our citizens, with the COVID-19 crisis bringing this reality into horrifyingly sharper focus. Native Americans experience some of the greatest disparities among all populations in this country. Indeed, the U.S. Commission on Civil Rights’ *Broken Promises* report found deep failures in the delivery of federal fiduciary trust and treaty obligations, concluding that the funding of the federal trust responsibility and obligations remains “grossly inadequate” and a “barely perceptible and decreasing percentage of agency budgets.”

While we unequivocally support budget stabilization mechanisms, such as Advance Appropriations, in the long-term, USET SPF is calling for a comprehensive reexamination of federal funding delivered to Indian Country across the federal government. Because of our history and unique relationship with the United States, the trust obligation of the federal government to Native peoples, as reflected in the federal budget, is fundamentally different from ordinary discretionary spending and should be considered mandatory in nature. Payments on debt to Indian Country should not be vulnerable to year to year “discretionary” decisions by appropriators. As the primary agency in the federal budgeting process and in order to “build back better,” OMB must work with Indian Country to address chronic shortfalls once and for all.

- **OMB Must Produce a Detailed Crosscut of Federal Indian Funding**

The agency asserts that over \$20 billion in federal dollars is appropriated to Indian Country annually. From the perspective of Tribal advocates, including those who serve on budget formulation committees for federal agencies, this number seems to be widely inflated, with far less actually reaching Tribal Nations and Tribal citizens. We suspect that OMB arrives at this figure by tallying the amount for which Tribal Nations and entities are eligible, regardless of whether these dollars actually reach Indian Country. While OMB has provided a high-level crosscut of this funding in the past, both USET SPF and the Tribal Interior Budget Council (TIBC) have asked for a full, detailed accounting of federal funding distributed to Indian Country. This should include details such as how many Tribal Nations accessed funding under each line, how the funding was delivered, and whether the funds were accessed directly through the federal government or through states. USET SPF firmly believes that this information is absolutely essential to consultation around federal budget formulation, as well as the measurement of the federal government’s own success in meeting its obligations and the work of Tribal Nations.

- **Presidential Budget Requests Must Contain Full Funding Figures**

Several federal agencies engage in a Tribal budget formulation process, via Tribal consultation, which is then supposed to influence the Administration’s request. Yet, it is typical for any Tribal recommendations that appear in the President’s budget request to be significantly scaled back. While we recognize that the Administration may be unable to incorporate all of our recommendations into the official request, Congress should, at the very least, be informed of what

Tribal Nations are requesting. In addition, OMB must work with federal agencies and Tribal Nations to determine and reflect shortfalls, both total and by agency/program, in the overall funding of trust and treaty obligations.

Similarly, OMB should require departments/agencies to provide annually a full and complete picture of unfulfilled trust and treaty obligations. The only way the United States can effectively measure how well it is fulfilling its obligations is in comparison to a full funding for Indian Country budget number. Each department/agency should be required to work in partnership with Indian Country to determine complete budgetary fulfillment of trust and treaty obligations.

- **Reduce Burdens for Tribal Nations**

A primary function of the agency is to help improve administrative management, to develop better performance measures and coordinating mechanisms, and to reduce any unnecessary burdens on the public. In fulfilling this responsibility, OMB must approach its dealings with Indian Country in a manner that works to significantly diminish unnecessary burdens placed on Tribal Nations. Moving away from a grants-based mentality is an initial step toward a more appropriate approach. In addition to measuring the performance of Tribal Nations with appropriated federal dollars, OMB must also work to measure how well federal entities are performing in carrying out their trust duties and functions.

The sacred trust obligation to Tribal Nations transcends measurements, outputs, data, and statistics. While these things are important, the obligations due to Tribal Nations should not be based on this understanding. Rather, these are things that Tribal Nations concern themselves with as an internal matter to ensure they are providing strong services to their citizenship. We must explore a new approach together that better respects Tribal sovereignty.

- **Invest in diplomacy.**

The federal government must fully recognize and uphold our Nation-to-Nation diplomatic relationship. This directive extends to ensuring both federal agencies and Tribal Nations have access to resources that support diplomatic activities. True diplomacy, as evidenced by activities conducted by the U.S Department of State, would involve U.S. ambassadors appointed to liaise with each federally recognized Tribal Nation on behalf of the federal government, rather than facilitating this relationship through national or regional consultations. While we recognize retooling the consultative relationship to allow for a truly diplomatic relationship involves many steps, funding for these activities is certainly one of them. We encourage OMB to consider how it might include diplomacy in future budget requests. This would include funding for federal agencies to build and sustain diplomatic infrastructure, as well as increased funding for Tribal Nation participation in these processes.

- **Promote Self-Governance through Interagency Transfer Authority.** USET SPF is working toward a future in which all federal dollars are eligible to be contracted or compacted under the Indian Self-Determination and Education Assistance Act (ISDEAA). In the short-term, we urge OMB to ensure all federal Indian funding can be transferred between federal agencies, so that it may be received through contracts and compacts. We cite the unnecessary delays and barriers to the receipt of urgently needed COVID-19 relief funding as an example of why this authority must be confirmed.

- **Expansion and Evolution of Tribal Self-Governance.** Despite the success of Tribal Nations in exercising authority under ISDEAA, as well as the recently enacted Practical Reforms and Other Goals to Reinforce the Effectiveness of Self-Governance and Self-Determination (PROGRESS) for

Indian Tribes Act, the goals of self-governance have not been fully realized. Many opportunities still remain to improve and expand upon its principles. An expansion of Tribal self-governance to all federal programs under ISDEAA would be the next evolutionary step in the federal government's recognition of Tribal sovereignty and reflective of its full commitment to Tribal Nation sovereignty and self-determination. Department of Health and Human Services (HHS) agencies and programs outside of the Indian Health Service are particularly well-positioned for ISDEAA expansion. Tribal Nations have worked over multiple Congresses and Administrations to demonstrate that this expansion is feasible and introduce necessary legislation. We ask the OMB join us in supporting this evolution. Broadly, OMB must treat Tribal Nations in a manner befitting our government status, not as grant funded entities or special interest groups. Far too many dollars are only accessible via competitive grants. Forcing Tribal Nations to compete for grants utilizes a process that does not respect the sacred and unique diplomatic relationship that exists between Tribal Nations and the United States.

Establish Tribal-Specific Functions and Education

The proper execution of federal trust and treaty obligations is an expansive and momentous task, touching every federal agency and a high number of federal actions. Recognizing OMB's current staffing limitations (approx. 400 FTEs), it is necessary to invest in new resources to fully honor the agency's trust and treaty obligations. This includes creating a new department to serve as an advocate for Tribal Nations and coordinate within the agency on the development, oversight, and management of policies and budgets impacting Tribal Nation interests. Currently, examiners assigned to specific federal agencies or programs and housed in different departments are the only OMB personnel dedicated to Indian Country. The creation of a higher-level, more comprehensive department would assist the agency in fulfilling its obligations to Tribal Nations and be more representative of the sacred duty to our governments. In an effort to provide more complete guidance, support, and oversight, we also recommend the inclusion of a Tribal law expert within OMB's Office of General Counsel. This will ensure consistency in OMB's oversight and execution of trust obligations.

Similarly, a Tribal advisory committee (TAC) would provide the agency with the opportunity for direct communication with and guidance from Tribal leaders on a regular basis. The TAC would complement OMB's consultation with all Tribal Nations, as well as its Tribal affairs department, by providing specialized guidance on agency initiatives and functions. The TAC should provide broad regional representation reflective of the diverse circumstances facing Indian Country and members should be selected by the Tribal Nations of each region.

Finally, it is critically important that all employees of federal departments and agencies receive comprehensive training on working with and communicating effectively with Tribal Nations. Federal actions impact Tribal Nations and our citizens. Every right-of-way permit, application for land into trust, and environmental and cultural review document are reviewed by federal employees. However, many of the same federal employees engaging in decision-making that impacts our interests do not fully understand the history of U.S.-Tribal Nation relations and the federal trust obligation. This lack of education and understanding regarding the fiduciary trust and treaty obligations contributes, at least in part, to federal failures to properly consult. USET SPF has long recommended mandatory training on U.S.-Tribal relations and the trust obligation for all federal employees. This training should be designed in consultation with Tribal Nations and overseen by OMB.

FY 2022 Funding and Policy Requests

- **Bureau of Indian Affairs (BIA).** USET SPF is pleased to note that President Biden's request for the BIA is \$2.7 billion, which is a \$610 million increase over the FY 2021 enacted level. We support

the targeted investments the proposal makes in for teachers and students in Tribal schools, clean energy development, and tribal law enforcement and court programs to improve safety. We also note the historic and continued unmet funding obligations with regard BIA's diverse line items and are encouraged by the nearly across-the-board increases provided under the FY 2022 request. Working in partnership with the BIA, the yearly budget formulation process now offers a much more comprehensive look at the priorities of Tribal Nations across the many lines and accounts found within the BIA budget. However, we remain focused on the addition of a component or calculation of BIA's unfunded obligations in order to measure performance. As a result of our participation in the Tribal Interior Budget Council Budget Formulation process, we offer the Eastern Region's top priority in eight different strategic funding categories, all of which have received increases, many substantial, under the President's FY 2022 proposal:

- Strengthening Tribal Communities: Social Services (TPA) - +\$12 million or a 23% increase
- Trust-Natural Resources Management: Natural Resources (TPA) - +\$10 million or a 125% increase
- Trust-Land & Water Rights Management: Trust Services (TPA) - +\$274,000 or a 3% increase
- Public Safety & Justice: Tribal Courts (TPA) - +\$4.2 million or an 11% increase
- Economic Development: Economic Development (TPA) - +\$7 million or a 213% increase
- Education: Scholarships & Adult Education (TPA) - +\$10 million or a 29% increase
- Construction: Public Safety & Justice Facilities Replacement/New Construction - +\$5 million or a 20% increase
- Resource Management Construction: Federal Power Compliance [FERC] - +\$9,000 or a 1% increase

In addition to the above priorities, we would also like to register our strong support for funding in order to establish homelands for recently federally recognized or landless Tribal Nations. The Tribal land base is a core aspect of Tribal sovereignty, cultural identity, and represents the foundation of our Tribal economies. The Tribal Nations located in the south and eastern part of what is now the United States have a lengthier history when it comes to the systematic dispossession of our lands as a result of hundreds of years of federal (and before that, colonial) policies. In the wake of these policies, a majority of USET SPF Tribal Nations hold only a fraction of their homelands and some remain landless. We continue to work to reacquire our homelands, which are a fundamental to our existence as sovereign governments and our ability to thrive as vibrant, healthy, self-sufficient communities. The federal government's objective in the trust responsibility and obligations to our Nations must be to support healthy and sustainable self-determining Tribal governments, which fundamentally includes the restoration of lands to all federally-recognized Tribal Nations, as well as the legal defense of these land acquisitions. With this in mind, we are pleased to see the Administration's support for a fix to the Supreme Court Decision in *Carciari v. Salazar*, and we look forward to the opportunity to work on this and other land restoration priorities, as well as improvements to the land-into-trust process.

- **Indian Health Service (IHS).** USET SPF is similarly pleased to see the proposed funding amount of \$8.5 billion, a substantial increase of \$2.2 billion over FY 2021 enacted. In addition to providing a robust funding stream for current operations that reflects medical inflation, Nashville Area Tribal Nations identified our top 6 priority line items for increases in FY 2022, all of which receive increases under the President's proposal. We are further encouraged that, for the first time, the President has included an Advance Appropriation request for IHS in FY 2023. We support advance appropriations as an important mechanism to provide certainty in funding to Tribal Nations and

urge the Administration to support this mechanism for all federal Indian programs. Recognizing that this policy change was not included in the House version of the FY 2022 and Congressional appropriators have requested additional action/information from the Administration, we urge OMB to collaborate with Tribal Nations and IHS to ensure it is better positioned to be included in final FY 2022 appropriations legislation.

In addition to advocating for a robust funding stream for current operations that reflects medical inflation, Nashville Area Tribal Nations identified our top 6 priority line items for increases in FY 2022, all of which receive increases under the President's proposal. We urge Congress to maintain or exceed these increases: **Hospitals and Clinics** (+ \$465 million or 21% increase), **Purchased/Referred Care (PRC)** (+\$216 million or 22% increase), **Alcohol and Substance Abuse Program** (+\$16 million or 6% increase), **Mental Health Services** (+\$9.5 million or 8% increase), **Dental Health** (+\$73 million or 34% increase), and **Electronic Health** (+\$250 million or 726% increase). Nashville Area priorities and hot issues also include funding for Maintenance & Improvement, Sanitation Facilities Construction, Health Education, Urban Indian Health Program Support, continued support for newly federally recognized Tribal Nations, culturally appropriate substance abuse treatment aftercare and housing programs, Hepatitis C prevention and treatment, constitutionality challenges, increases in SDPI funding, and parity in group payor authorities when sponsoring patients on insurance plans.

- **Mandatory Funding for Binding Obligations.** While USET SPF celebrates the achievement of separate, indefinite appropriations for both 105(l) leases and Contract Support Costs, we note that likely continued growth in these areas threatens future increases for other IHS and Bureau of Indian Affairs (BIA) lines. While we contend that all federal Indian agencies and programs should be subject to mandatory funding, in recognition of perpetual trust and treaty obligations, we strongly support the Administration's proposal to transfer these lines to the mandatory side of the federal budget. This will ensure that funding increases are able to be allocated to service delivery, as opposed to the federal government's binding legal obligations. OMB must work with Tribal Nations, IHS, BIA, BIE, and Congress to ensure obligations for these lines are properly estimated and any necessary technical support is provided in order to achieve this policy change.
- **Other Selected Lines and Programs.** Though not an exhaustive list, USET SPF strongly supports the continued funding and increases for the following lines and programs: Good Health and Wellness in Indian Country (CDC), Rural Community Facilities (ACF), Tribal Opioid Response Grants (SAMHSA), Community Development Financial Institutions Fund grants, the Indian Community Development Block Grant, USDA Rural Business Development grants, EPA state and Tribal assistance grants, BIA Tribal Climate Science Centers, Tribal Historic Preservation funding, the 5% Tribal set aside from the Crime Victims Fund, and Native American Housing Block Grants. We also strongly support the Biden Administration's proposed \$450 million investment to facilitate climate mitigation, resilience, adaptation, and environmental justice projects in Indian Country.

Conclusion

We view the President's Budget Request as a statement on each Administration's regard for its trust and treaty obligations to Tribal Nations. While the FY 2022 Budget Request is a marked improvement over those offered by the last Administration, we are seeking greater positive structural, systemic change at OMB in order to more fully deliver upon sacred promises. We are strongly encouraged by OMB's historic efforts to approach Tribal Nations with diplomacy, respect and transparency, and are excited by the potential these efforts hold. USET SPF asks that you join us in working toward a legacy of transformation for Tribal Nations, Native American people, and the sacred trust relationship. This includes the proposal of

budget requests that uphold our status as sovereign governments, recognize our right to self-determination and self-governance, and honor the federal trust obligation in full. Should you have any questions or require additional information, please do not hesitate to contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at (615) 838-5906 or by e-mail at lmalerba@usetinc.org.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Francis", with a long horizontal stroke extending to the right.

Kirk Francis
President

A handwritten signature in black ink, appearing to read "K. A. Carroll", written in a cursive style.

Kitcki A. Carroll
Executive Director