



USET

SOVEREIGNTY PROTECTION FUND

711 Stewarts Ferry Pike
Suite 100
Nashville, TN 37214
P: (615) 872-7900
F: (615) 872-7417
www.usetinc.org

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Office of Management and Budget Tribal Consultation on Fiscal Year 2022 President's Budget Request *USET SPF Tribal Leader Talking Points*

Summary

On July 1st, the Office of Management and Budget (OMB) announced that it will host a Tribal consultation on the [President's Fiscal Year \(FY\) 2022 Budget](#). This is a historic announcement since OMB has never consulted with Tribal Nations on a Presidential Budget Request. Despite the level of authority OMB has over federal Indian programs and its decision-making power in determining the Administration's priorities for federal spending, as well as other Administration policy, it has historically and consistently taken the position that it does not have consultative responsibilities to Tribal Nations. USET SPF has continually called upon OMB to fulfill its trust and treaty obligations and consult with Tribal Nations on all matters related to in the delivery of the trust obligation, including Presidential Budget Requests. We are encouraged to see that OMB is pursuing this historic, first-ever Tribal consultation on the President's FY 2022 Budget, as well as seeking further Tribal guidance for the formulation of the upcoming FY 2023 Budget. Additionally, we are pleased to see that OMB will be consulting on how it can improve Tribal funding transparency. USET SPF has long called for improvements to the federal budget process, including the production of a detailed crosscut of federal Indian funding from OMB.

Talking Points

- **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.
- **The chronic underfunding of federal Indian programs continues to have disastrous impacts upon Tribal Nations and our citizens.** 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." As the primary agency in the federal budgeting process, OMB must work with Indian Country to address these chronic shortfalls.
- **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.

Because there is Strength in Unity

- **Above all, the COVID-19 crisis is highlighting the urgent need to provide full and guaranteed federal funding to Tribal Nations in fulfillment of the trust obligation.** 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.
- **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.
- **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. 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 should contain full funding figures developed in consultation with Tribal Nations.** Several federal agencies engage in a Tribal budget formulation process, 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.
- **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.
- **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.

- **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.
- **OMB's role in government efficiency must extend to reducing burdens and improving the delivery of trust obligations for Indian Country.** 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.
- **Establish a dedicated OMB Indian desk within the Director's Office.** Recognizing OMB's current staffing limitations (approx. 400 FTEs), it is necessary to invest in new resources to 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 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.
- **Establish an OMB Tribal Advisory Committee.** 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 Indian Desk, 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.

- **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 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.
- **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.
- **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.
- **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.
- **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.