

The Beat in DC



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Biden Administration

USET SPF Provides Further Comments to Federal Agencies on Updating Tribal Consultation Policies

On January 26, 2021 President Biden issued “[Presidential Memorandum on Tribal consultation and Strengthening Nation-to-Nation Relationships](#).” President Biden’s Memorandum emphasized the Administration’s commitment to the directives of [Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments” \(E.O. 13175\)](#), and the [November 5, 2009 Presidential Memorandum](#) requiring federal agencies to prepare and periodically update plans to implement E.O. 13175.

President Biden’s Memorandum directed federal departments and agencies to reevaluate their current Tribal consultation policies and develop a plan of action to improve regular, meaningful, and robust Tribal consultation and communication. The Memorandum also emphasized the Administration’s commitment to respect Tribal Nation sovereignty and self-governance and acknowledged that honoring the federal government’s trust and treaty obligations to Tribal Nations is vital due to current crises related to health, the economy, social justice, and climate change.

Following issuance of President Biden’s Memorandum federal departments and agencies across the Administration initiated consultations to reevaluate its protocols and procedures for Tribal consultation, communication, and engagement. USET SPF attended several of these consultations and submitted comments to federal departments and agencies with recommendations to improve their existing consultation policies. [USET SPF’s Tribal Consultation Principles](#) were included in these letters while also highlighting department and agency specific recommendations to improve their current policies and plans for implementation.

USET SPF welcomes the opportunity to provide recommendations on how federal departments and agencies can improve their consultation and coordination efforts with Tribal Nations. We see the value in the spirit of the January 26th Executive Memorandum, which is to recommit and refocus federal agencies to engaging in meaningful Tribal consultation. However, these actions alone are not sufficient to address systemic failures in the various consultation processes across the federal government. Broadly, the U.S. must work to reform the Tribal consultation process—to “build back better,” in a way that truly modernizes our relationship with the federal government.

USET SPF’s Tribal Consultation Principles emphasize the following as key issues federal departments and agencies should address for consultation reform:

- Evolve consultation to gain our free, prior, and informed consent.
- Standardize and codify consultation requirements.
- Tribal consultation should occur on a Nation-to-Nation, leader-to-leader basis.
- Invest in establishing a diplomatic relationship, include in annual Presidential budget requests.
- Never delegate federal consultation obligations.
- Consultation should be early and ongoing, with advance notice and sufficient response timelines.
- Defer to Tribal Nations and apply the Indian Canons of Construction through all before, during, and following consultation.
- Encourage flexibility for Tribal waivers of statutory and regulatory requirements.

- Ensure transparency and follow-up in decision-making.
- Educate federal employees on Tribal sovereignty and U.S.-Tribal Nation Relations.

USET SPF has provided comments to the following federal departments with recommendations to improve their consultation policies with the USET SPF Tribal Consultation Principles as well as department and agency-specific recommendations. We will continue to monitor upcoming department and agency announcements to update their consultation policies and plans.

- March 8, 2021: [USET SPF Comments to the Department of Defense](#)
- March 19, 2021: [USET SPF Comments to the Department of the Interior](#)
- March 22, 2021: [USET SPF Comments to the U.S. Department of Agriculture](#)
- March 31, 2021: [USET SPF Comments to the Department of Transportation](#)
- March 31, 2021: [USET SPF Comments to the Environmental Protection Agency](#)
- April 5, 2021: [USET SPF Comments to the U.S. Department of Housing and Urban Development](#)
- April 9, 2021: [USET SPF Comments to the Office of Management and Budget](#)
- April 15, 2021: [USET SPF Comments to the Joint Inter-Agency Consultations held by the Departments of Treasury and Veterans Affairs, and the Small Business Administration Social and Social Security Administration](#)
- April 15, 2021: [USET SPF Comments to the U.S. Department of State](#)
- April 21, 2021: [USET SPF Comments to the U.S. Department of Labor](#)
- April 23, 2021: [USET SPF Comments to the Federal Energy Regulatory Commission](#)
- April 28, 2021: [USET SPF Comments to the U.S. Department of Commerce, Economic Development Administration](#)
- May 25, 2021: [USET SPF Comments to the U.S. Department of Homeland Security](#)
- June 15, 2021: [USET SPF Comments to the Indian Health Service](#)
- June 28, 2021: [USET SPF Comments to the Equal Employment Opportunity Commission](#)
- August 31, 2021: [USET SPF Comments to the National Institutes of Health](#)
- September 7, 2021: [USET SPF Comments to the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry](#)

USET SPF-Supported AS-IA and USDA GC Nominees Confirmed by Senate Voice Votes

On Saturday, August 7th, the U.S. Senate [confirmed](#) Bryan Newland, a citizen of the Bay Mills Indian Community (Ojibwe), to be the Biden Administration's Assistant Secretary for Indian Affairs (AS-IA) by voice vote. USET SPF strongly supported AS-IA Newland's nomination, leading a [letter](#) to the Senate Committee on Indian Affairs joined by 16 partner organizations.

AS-IA Newland has spent his career fighting for Tribal rights, becoming a trusted voice in the field of federal Indian law. He will bring a wealth of experience to the role of Assistant Secretary, having served most recently as the President of the Bay Mills Indian Community, as well as Chief Judge of the Bay Mills Tribal court and counselor and Senior Advisor to a previous AS-IA.

AS-IA Newland's intimate understanding of both Tribal and federal service will be an asset to the Department of the Interior and its role in Nation-to-Nation diplomacy with Indian Country. He holds a full appreciation for our history and relationship with the United States, as well as an indigenous sensibility for the stewardship of our lands, environment, and cultural resources. We are confident

that AS-IA Newland’s service in this role will bring significant progress in Tribal sovereignty, self-governance, and self-determination.

Additionally, we are pleased to report that Ms. Janie Hipp was also recently [confirmed](#) by voice vote to serve as General Counsel of the U.S. Department of Agriculture (USDA). As a citizen of the Chickasaw Nation, Janie represents America’s first farmers. And as a world-renowned food and agriculture legal mind with more than 35 years of experience, Janie’s legal experience and expertise in food and agriculture law is unparalleled. In May, USET SPF joined a [letter](#) led by the Intertribal Agriculture Council and signed by 177 Tribal Nations, individuals, and Tribal & partner organizations supporting her nomination.

“The Nation-to-Nation relationship between Tribal Nations and the United States is best served when our voices are represented at the highest levels of government,” said USET SPF President, Chief Kirk Francis. “As Native people who have dedicated their careers to achieving justice for Indian Country, Assistant Secretary Newland and Ms. Hipp carry lived experience and ancestral knowledge into these roles. USET SPF celebrates their respective confirmations and looks forward to working together to protect and advance Tribal sovereignty, self-governance, and the trust obligation.”

USET SPF congratulates AS-IA Newland and Ms. Hipp on their appointments and we look forward to working closely as the federal government seeks to uphold the Nation-to-Nation relationship and better execute its trust obligation.

Budget

FY 2022 Begins with a Continuing Resolution

As has become routine for this time of year, Fiscal Year (FY) 2022 has begun under a [Continuing Resolution](#) (CR), which will continue to provide discretionary funding for the government at FY 2021 levels through December 3, 2021. The President signed [H.R. 5305](#), the Extending Government Funding and Delivering Emergency Assistance Act, into law on September 30th, just hours before FY 2021 funding was set to expire. This mechanism allows the government to continue operating—avoiding a shutdown—while Congress works to enact the 12 annual appropriations bills required to provide updated funding to federal agencies for FY 2022. Thus far, no FY 2022 appropriations bills have been passed by both chambers of Congress and signed into law by the President.

You may recall that on July 29th, the full House of Representatives passed a consolidated appropriations bill, [H.R. 4502](#), containing seven appropriations bills for Fiscal Year (FY) 2022, including the Interior, Environment, and Related Agencies bill and the Labor-Health and Human Services bill. This will be a starting point for eventual negotiations with the Senate for full year FY 2022 appropriations. The House Interior bill funds the Indian Health Service (IHS) at a total of \$8.1 billion, which is an increase of \$1.9 billion over FY 2021 enacted and \$400 million less than [President Biden’s request](#) of \$8.5 billion. Of this, \$5.8 billion would be allocated to Indian Health Services and \$1.3 billion for Indian Health Facilities. Within the Indian Health Services account, Hospitals and Health Clinics would be funded at \$2.7 billion (a \$483 million increase over FY 2021 enacted) Purchased/Referred Care would be funded at \$1.2 billion (a \$216 million increase), Electronic Health Records would receive \$284.5 million (a \$250 million increase), Dental Health would be funded at \$287 million (a \$73 million increase), Mental Health would be funded at \$124.6 million (a \$9.5



million increase), and Alcohol and Substance Abuse would receive \$268 million (a \$17 million increase). Tribal epidemiology centers would receive an additional \$14 million under the bill.

The Interior bill also continues language prohibiting IHS from obligating or expending funds to select or implement a new IT infrastructure system unless IHS notifies the Committee at least 90 days before such funds are obligated or expended. The Committee also directs IHS to ensure that any new EHR system must have full interoperability with Tribal, urban, and VA EHR systems. The Committee further acknowledges that Tribal Nations have incurred significant costs to purchase commercial-off-the-shelf EHR systems and asks IHS to consult with Tribal Nations and consider whether a special appropriation for EHR is necessary.

In addition, the bill's [report language](#) indicates that the Committee is not providing advance appropriations authority for IHS in FY 2023, as the Administration had requested. However, it is also important to note that the \$3.5 trillion budget resolution recently approved by Senate Democrats (and discussed further below) does include IHS' Services and Facilities accounts on the list of eligibility for advance appropriations for the first time. This is a positive step toward enactment of advance appropriations for IHS.

Contract Support Costs (CSC) and Section 105 (l) leases for IHS, the Bureau of Indian Affairs (BIA), and the Bureau of Indian Education (BIE) would continue to be fully funded under a separate, indefinite appropriation. However, the Appropriations Committee does not provide any language transferring these lines to the mandatory side of the budget in FY 2023, as requested by the Biden Administration and supported by USET SPF.

The bill would fund the BIA, BIE, and the Office of the Special Trustee at a total of \$4 billion, which is an increase of \$507 million above FY 2021 enacted and \$65 million below the President's Request. This includes \$1.9 billion for BIA's Operation of Indian Programs—an increase of \$308 million above FY 2021 enacted and \$8 million over the [President's Request](#). This includes \$789 million for Tribal Priority Allocation (TPA) programs, such as USET SPF priorities Social Services, Tribal Courts, Natural Resources and Economic Development. Within this, funding levels for Eastern Region priorities are the following: Social Services (TPA): \$63 million, \$12 million above FY 2021 enacted; Natural Resources (TPA): \$19.8 million, \$11.6 million above FY 2021 and \$1.5 million above the President's Request, to include \$2.5 million to acquire lands for landless and recently recognized Tribal Nations; Trust Services (TPA): \$10.5 million; Tribal Courts (TPA): \$47 million, \$8.2 million above FY 2021 and \$4 million above the Request; Economic Development (TPA): \$9 million. This account also includes a total of \$355 million for the Tribal Government line, an increase of \$13 million over FY 2021 enacted and \$2 million below the President's Request. Within this sum, \$28 million is reserved for Aid to Tribal Government (\$571,000 above FY 2021 and in line with the President's Request), with \$480,000 allocated to newly recognized Tribal Nations. Finally, the House bill allocates \$60 million for Tribal Climate Resilience, \$44 million above FY 2021 enacted and in line with the President's Request. This would include \$23 million for Tribal climate adaptation grants and \$11 million (to be split evenly between Tribal Nations in AK and the lower 48) for Tribal Nations in coastal areas, "who are at risk of damage from tsunamis or where relocation is necessary due to climate change."

In addition, at the request of Assistant Secretary for Indian Affairs, Bryan Newland, the President's Budget Request contained \$10 million under BIA's Natural Resources line for land acquisition for newly recognized and landless Tribal Nations. In response, the House Interior Appropriations bill

provided \$2.5 million for this purpose. USET SPF strongly supports this funding and hopes to see it increased in final FY 2022 appropriations legislation.

For the BIA Construction account, the House bill would provide a total of \$188 million, which is \$59 million over FY 2021 enacted and level with the President's Request. This includes \$51 million for Eastern Region priority Public Safety & Justice Construction (\$8 million above FY 2021 and \$3 million above the Request). Finally, the bill would fund the BIE at a total of \$1.08 billion, an increase of \$110 million over FY 2021 enacted and \$171,000 below the [President's Budget Request](#). This includes \$46 million for Eastern Region priority Scholarships & Adult Education (TPA), which is \$11 million above FY 2021 and \$1 million above the President's Request.

In April, the House Appropriations Interior, Environment, and Related Agencies Subcommittee accepted written testimony from Tribal Nations and Tribal organizations for [FY 2022 American Indian and Alaska Native Public Witness Day Hearings](#). In response, USET SPF submitted [testimony for the record](#) to the Subcommittee. Within our testimony, we elevate the FY 2022 funding priorities identified by Nashville Area Budget Formulation representatives, as well as highlight how the COVID-19 crisis underscored the urgent need to provide full and guaranteed federal funding to Tribal Nations in fulfillment of the trust obligation.

As a reminder, the consolidated appropriations bill passed by the House is a starting proposal, as the Senate will ultimately have to agree to these (or propose new) funding levels and the President will need to sign the bill into law. The Senate Appropriations Committee has not yet drafted its own version of the Interior bill, though it did accept Public Witness Testimony on the bill through June 25th. USET SPF submitted [testimony](#) in support of our regional priorities and providing our impressions of the President's Request.

As December 3rd approaches, full year FY 2022 appropriations or a Continuing Resolution must be enacted by this date or the government risks a shut down. Further complicating year-end appropriations action is a concurrent December 3rd expiration of an extension on the federal debt limit, permitting the United States to continue borrowing in order to meet financial obligations. This could have negative implications for USET SPF will continue to monitor the FY 2022 appropriations process and provide further updates as they develop.

USET SPF Submits Comments to OMB on FY22 President's Budget Request

On July 23rd, USET SPF submitted [comments](#) 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.

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. In our comments, USET SPF asked that OMB 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.

Congress

USET SPF Sends Introductory Letter to SCIA Vice Chair Murkowski

On August 17th, USET SPF [wrote](#) to Senate Committee on Indian Affairs (SCIA) Vice Chair, Lisa Murkowski (R-AK) to initiate further dialogue regarding the future of our government-to-government diplomatic relationship, as well as the unique priorities, circumstances, and vision of USET SPF member Tribal Nations. As a part of SCIA Leadership, Vice Chair Murkowski plays a critical role in elevating the voices of Indian Country—particularly among her Congressional colleagues—as well as delivering upon the federal government's trust responsibility and obligations.

Coming from Alaska, it is important to recognize that the interests, requirements, and priorities of Tribal Nations from the USET SPF region, and across the country, are often different from those of the Alaska Native community. With this in mind, it is critical that SCIA Leadership work toward a more complete understanding of and appreciation for the rich diversity that exists across Indian Country, including in the USET SPF region.

COVID-19

COVID-19 Recovery Legislation Stalls; USET SPF, Partners Advocate for Tribal Priorities

Partisan politics continue to impede further Congressional action on both the bipartisan physical infrastructure and partisan reconciliation bills. House Democratic Leadership had previously planned for the bills to be voted upon together in late September/early October, but differences within the party threw the prospects of both packages into jeopardy. At least 45 progressive House Democrats insisted that their votes for the Senate-approved [infrastructure package](#) were contingent on a reconciliation package deal. Meanwhile, moderate Democrats in both chambers urged an immediate vote on the physical infrastructure bill and suggested that the \$3.5 trillion price tag for the reconciliation bill was much too high. Ultimately, House Democratic Leadership was forced to cancel a planned vote on the physical infrastructure bill, because it would fail without progressive votes, in order to continue intraparty negotiations on the funding level and scope of the reconciliation bill.

Negotiations are ongoing between Congressional Democrats and the White House, with a revised deadline for passage of October 31st. This involves reducing the cost of the reconciliation bill by at least \$1.5 trillion. Currently, it remains to be seen how this will be accomplished; options include reducing the number of proposed social programs (such as universal pre-K or Medicare expansion) or reducing the length of funding for these programs (from ten years to five, for example). There is also the possibility that income eligibility provisions will be used in order to cut costs. With this in mind, USET SPF recently joined a [Tribal partner organization letter](#) focused on maintaining funding for



Indian Country in the Budget Reconciliation bill—health funding, in particular—as negotiations around lowering the overall cost of the measure proceed.

USET SPF is continuing to advocate around infrastructure and reconciliation recovery legislation. Prior to the August recess, the Senate approved a \$1.2 trillion bipartisan physical infrastructure package that authorizes approximately \$15 billion in direct funding for Tribal Nations. This includes \$2 billion in additional funding for the Tribal Broadband Connectivity Grant Program, \$216 million to address climate change affecting Tribal Nations, and \$3.5 billion over five years for improvements and construction of Indian Health Service sanitation facilities. Tribal Nations are also eligible to apply for an additional \$146 billion through competitive grant processes—a mechanism that USET SPF has long opposed—to address infrastructure issues in Indian Country.

In addition, the Senate drafted and passed a [budget resolution](#) that contains \$3.5 trillion in budget authority, which the House passed late last month. This lays the foundation for the partisan budget reconciliation bill that will require the support of all Senate democrats to pass and will fund the White House and Congressional Democrat’s remaining recovery priorities, including investments in ‘human infrastructure,’ such as education, childcare, and paid leave. The resolution provides \$20.5 billion in budgetary authority to the SCIA and \$25.6 billion for House Natural Resources, which houses the Subcommittee on Indigenous Peoples of the U.S. It also provides, for the first time, advance appropriations authority for IHS services and facilities.

USET SPF’s primary focus for both of these packages is more meaningful inclusion for Indian Country. Direct funding to Indian Country represents slightly more than 1% in the infrastructure package and less than 1% in reconciliation package so far. While we appreciate the direct inclusion, these sums are insufficient. We note that American Rescue Plan contained 1.63% of the total in direct funding for Indian Country and we feel this should be the starting point for Indian Country’s advocacy in large packages. Our advocacy centers around increasing the total amount in direct funding for Tribal Nations and ensuring that funding mechanisms reflect our sovereignty and the trust obligation. In pursuit of these goals, joint letters were transmitted to the [House](#) and the [Senate](#) on behalf of 20 Tribal organizations, including USET SPF, outlining Indian Country’s remaining priorities for recovery legislation.

In addition, in early September, we became aware of a House proposal to close the Medicaid coverage gap for individuals living in states that have yet to expand Medicaid (to cover the adult population up to 138% of the Federal Poverty Level) under the Affordable Care Act (ACA). More than a decade after the ACA’s passage, 12 states, 11 of which include Tribal Nations and all of which include American Indian and Alaska Native (AI/AN) people, have yet to expand. The House proposal would federalize Medicaid for individuals in the new expansion group in non-expansion states. Under this approach, Congress would create a new federal Medicaid program to provide minimum essential health benefits to individuals in the new expansion group beginning in 2025. As a bridge, they would provide those same individuals increased ACA subsidies in 2022-2024. This would close the coverage gap for all eligible Americans residing in these states by creating a federally administered program for the expansion population.

If enacted, this would undoubtedly have positive impacts on Tribal Nation health systems and the AI/AN expansion population in these states, though we would need to be sure that any third-party management of the program includes existing AI/AN managed care protections.

However, significant gaps would still remain in access to Medicaid for AI/AN, including substantially different eligibility and access to services based on where we reside, as states have significant discretion over the program's administration, including covered services and reimbursement rates. Fixing this coverage gap, which is broader than the gap that exists in non-Medicaid expansion states, has been a long-standing Tribal priority.

In pursuit of health equity for all AI/AN, in fulfillment of trust and treaty obligations, USET SPF and other partner organizations have supported [amendments](#) designed provide equal access to the Medicaid program, regardless of the state in which we reside. These include authorizing Medicaid reimbursements for all qualified Indian Health Care Provider services and ensuring that services delivered beyond the 'four walls' are eligible for reimbursement. In addition, we note that the possibility of a fully federal Medicaid program presents an opportunity to ensure that the administration of Medicaid better reflects the trust obligation to AI/AN, while fixing some issues with inequitable access.

In response to the House proposal, USET SPF led a [letter](#), joined by six partner organizations, that supports closing the Medicaid expansion gap and urges Congress to ensure all AI/AN managed care protections are maintained in any program managed by a third party. It also makes the case to include one or more of our priority Medicaid amendments in this bill in order provide health equity to all AI/ANs under the federal trust responsibility, and says that if Congress is going to create a separate federal health program for individuals in non-expansion states, it should create a separate federal program for AI/ANs, which would better reflect the federal trust obligation and provide baseline equity in the program.

We encourage our member Tribal Nations to reach out to your respective Congressional delegations in support of Tribal priorities. Please feel free to utilize our recent letters in your outreach. For additional background on these bills, we also enclose the following:

- [WH Fact Sheet on Bi-Partisan Infrastructure Legislation](#)
- [WH Fact Sheet on Reconciliation Bill](#)
- [SCIA Section-by-Section on Bi-Partisan Infrastructure Bill](#)
- [NCAI Full Legislative Analysis of INVEST in America Act](#)
- [Senate Democrats Memo on Budget Resolution](#)

USET SPF Submits Comments to Treasury on Interim Final Rule on Coronavirus Fiscal Recovery Funds

On July 16th, USET SPF submitted [comments](#) to the Department of the Treasury (Treasury) in response to an Interim Final Rule (IFR) to implement the American Rescue Plan Act's ([P.L. 117-2](#)) Fiscal Recovery Fund (FRF). Published in the Federal Register on May 17, 2021, the IFR acknowledged the disproportionate impacts of the COVID-19 pandemic on Tribal Nations and our citizens. However, USET SPF expressed concern that the IFR did not reflect a full understanding of the federal government's trust and treaty obligations, including the obligation to promote Tribal sovereignty and self-determination. USET SPF urged Treasury to uphold its obligations to Tribal Nations by ensuring that FRF reporting is streamlined, compliance requirements reflect our sovereign, political status, and that maximum

deference is given to Tribal decision-making as we seek to recover from the devastating effects of COVID-19 and build a better future for our people.

The FRF was enacted to provide economic relief and recovery to Tribal Nations following the devastating impacts of COVID-19 on our communities, economies, and public health. Treasury must draft an IFR that confirms the broadest authority possible for Tribal Nations to administer and determine the best use of FRF funds. Specifically, our comments urge that Treasury confirm the ability of Tribal Nations to use FRF funds to support Tribal citizens residing outside of Tribal jurisdictional boundaries, along with including additional language in the IFR to support public facilities construction, as well as language to support expenses for medical services and Tribal insurance premium sponsorships. We also recommended that employees of Tribal enterprises be added to the definition of “eligible workers for premium pay,” since these enterprises serve an essential governmental function.

USET SPF reminded Treasury that, as an agency of the federal government, it is obligated to support Tribal self-determination and self-governance, as well as Nation rebuilding. To this end, we urged Treasury to reexamine the IFR, as well as its Compliance and Reporting Guidance, and consider whether these burdensome and restrictive limits and requirements are emblematic of this sacred charge. Recently, Treasury has extended the deadline for reporting on the FRF from October 31, 2021 to January 31, 2022 in response to comments received from Tribal Nations. USET SPF is continuing to monitor activity regarding the implementation of FRF.

President Takes Executive Action on COVID Vaccine Mandates

On September 9th, President Biden issued two Executive Orders: one requiring [all federal employees](#) to be vaccinated against COVID-19 and one requiring the same of [federal contractors](#). In addition, he directed the Department of Labor’s Occupational Safety and Health Administration (OSHA) to issue an emergency temporary standard (ETS) requiring all companies with more than 100 employees to mandate that employees be vaccinated or tested weekly.

At present, the scope and impact of these actions is not yet fully known. It is important to note that programs operated under Indian Self-Determination and Education Assistance Act (ISDEAA) contracts and compacts are exempt from the federal contractor mandate. In addition, USET SPF has been informed that the Department of Health and Human Services (HHS) has determined that the contractor mandate also does not apply to provider agreements between Tribal Nations and the Centers for Medicare and Medicaid Services in connection with Tribal healthcare facilities.

However, it is not clear whether the contractor mandate will apply to other types of federal contracting, such as the Small Business Administration’s 8a contracting program. In addition, USET SPF continues to seek clarification on whether the employer mandate will affect other Tribal entities, including the hospitality industry. We have been informed that there will be a public comment period following OSHA’s release of its ETS on the employer mandate, which is expected to be published shortly. USET SPF plans to submit comments on the ETS and will provide updates as they become available.

- [Vaccine Mandate Guidance for Federal Contractors](#)



USET SPF Produces COVID-19 Individual Benefits Summary

While the various coronavirus relief aid packages enacted by Congress each contain relief and recovery funds and programs designed to be administered by Tribal Nations, there are also a variety of assistance programs administered by the federal and state governments available to our citizens on an individual basis. We know that many USET SPF Member Tribal Nations seek to assist their citizens in identifying and navigating all available benefits and relief. With this in mind, USET SPF provides a summary of currently available COVID-19 relief and recovery resources for individuals and families. We will offer periodic updates to this list as further information becomes available. Click [here](#) to view USET SPF's summary.

OMB Update on COVID-19 and IDC Rates

USET SPF would like to pass along an update on our efforts to request assistance from the Office of Management and Budget (OMB) in ensuring the influx of critical COVID-19 relief does not negatively impact the future Indirect Cost (IDC) rates of Tribal Nations. As you know, USET SPF transmitted a [letter](#) to OMB in May seeking guidance permitting the exclusion of COVID-19 relief funding from IDC rates. Since then, USET SPF, along with others in Indian Country, has engaged in direct advocacy with OMB and cognizant agencies around this issue.

At an August 11th meeting of the Bureau of Indian Affairs (BIA) Contract Support Costs Workgroup, OMB indicated that it has concluded it has the authority to provide this exception and plans to issue a decision soon. In addition, representatives from the Interior Business Center (IBC) said that agency is currently delaying action on rate proposals based on 2020 data pending OMB approval of the exception. USET SPF member Tribal Nations that have submitted proposals including COVID-19 relief funds in the base should follow up with IBC (or the Cost Allocation Services office in Health and Human Services) and inform the agency that you wish to exclude those funds. OMB has further recommended that Tribal Nations not miss any submission deadlines waiting for OMB's decision, but that they should exclude CRF funds from the base in their proposals.

Culture & Heritage

USET SPF Submits Comments to DOI on Proposed Draft Revisions and Updates to NAGPRA Regulations

On September 30, 2021, USET SPF submitted [comments](#) to the Department of the Interior (DOI) on proposed revisions to the Native American Graves Protection and Repatriation Act (NAGPRA) regulations. While our comments deferred to our member Tribal Nations and historic preservation partners with greater NAGPRA expertise for granular level commentary on the proposed revisions, our comments focused on issues regarding consultation, comprehensive agreements, and the confirmation of existing collections.

USET SPF's comments stated that further Tribal consultation on the proposed revisions, given the new developments in the decade since any previous Tribal consultations on NAGPRA were held. Prior

to the initiation of a formal rulemaking process, there must be serious consideration and input provided by Tribal Nations, their historic preservation officers, and their technical experts. We also asserted that further consultation was needed on a proposed revision to the regulations to relocate the NAGPRA Program from the National Park Service to the Office of the Assistant Secretary – Indian Affairs.

In addition to requesting further Tribal consultation, several sections of our comments focused on specific proposed revisions to the NAGPRA regulations that we believed would be important to empowering Tribal Nation decision-making for the return of our ancestors and sacred items. Specifically, USET SPF recommended that comprehensive agreements must first be signed by Tribal Nations, notices in the Federal Register on repatriation must be timely, and federal agencies and museums must publish itemized lists and summaries of collections containing our ancestors and sacred items. USET SPF will continue to work with DOI and monitor its activity on updating regulations for the NAGPRA Program.

USET SPF Continues to Support Indian Boarding School Truth and Healing Commission

On September 30th, Senators Elizabeth Warren (D-MA) and Ed Markey (D-MA), along with Representatives Sharice Davids (D-KS) and Tom Cole (R-OK) reintroduced [*The Truth and Healing Commission on Indian Boarding School Policies in the United States Act*](#), legislation that seeks healing for stolen Native American children and their Tribal Nations. Originally introduced with then Rep. Deb Haaland, the bill would establish a formal commission to investigate and document U.S. Indian Boarding School policies, as well as develop recommendations for the federal government to acknowledge and heal the ongoing historical and intergenerational trauma passed down in Native families and communities and provide a forum for survivors to speak about these human rights violations. The commission would further make recommendations to prevent the continued removal of Native American children from their families through modern-day assimilationist policies, including the foster care system.

“USET SPF continues to insist that the United States atone for centuries of sins against Tribal Nations and Native people,” said Chief Kirk Francis, President of USET SPF. “Our hearts remain heavy with the weight of lasting intergenerational trauma caused by the horrors our ancestors faced at U.S.-run boarding schools. Hundreds of thousands of Native children were forcibly removed from their people and lost their culture, language, innocence—even their lives—at the hands of the federal government. The time is long overdue for the federal government and the American people to engage in honest reconciliation with the atrocities of the past, so that we can all move forward as citizens of a more just and honorable nation. Congresswoman Davids’ and Senator Warren’s bill would not only provide an opportunity for this reckoning, but it would also provide for the examination of modern-day assimilationist policies resulting in the continued theft of Native children from their Tribal communities. We offer our full support to this legislation.”

USET SPF will continue to monitor the progress of this legislation and will provide updates as they develop.

- [Press Release](#)
- [One-pager](#)



Education

USET SPF Submits Comments on BIE JOM Listening Session

On July 2nd, USET SPF submitted [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 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.

Health

USET SPF Sends Comments to HHS on Mandatory Funding Options for the Indian Health Service

On September 1st, USET SPF submitted [comments](#) to the Department of Health and Human Services (HHS) in response to a ["Dear Tribal Leader" letter](#) issued on August 12th initiating Tribal consultation on mandatory funding approaches for the Indian Health Service (IHS). Currently, IHS is funded via the discretionary appropriations process, subjecting it to the political whims of Congress, government shutdowns, and discretionary spending caps. USET SPF has long advocated for mandatory funding for all federal Indian programs, which is more consistent with perpetual federal trust and treaty obligations. We strongly support full and mandatory funding for IHS as a critical step forward in better delivering upon these obligations.

In addition to other feedback on options to provide "adequate, stable, and predictable" funding for IHS, HHS sought input on the following questions:

1. What is the appropriate funding level for a mandatory funding proposal?
2. What is the appropriate growth pattern for a mandatory funding proposal?
3. What is the appropriate appropriations structure for a mandatory funding proposal?

Our comments strongly advocate for the move to mandatory funding for IHS. We urge HHS to immediately convene a joint Tribal-federal workgroup to examine how to fully fund the agency, discuss appropriate economic growth patterns, and determine the best model for an open-ended entitlement.

USET SPF Leads Partner Org Letter on Medicaid Equity for AI/AN

In early September, we became aware of a House reconciliation bill proposal to close the Medicaid coverage gap for individuals living in states that have yet to expand Medicaid (to cover the adult population up to 138% of the Federal Poverty Level) under the Affordable Care Act (ACA). More than a decade after the ACA's passage, 12 states, 11 of which include Tribal Nations and all of which include American Indian and Alaska Native (AI/AN) people, have yet to expand. The House proposal would federalize Medicaid for individuals in the new expansion group in non-expansion states. Under this approach, Congress would create a new federal Medicaid program to provide minimum essential health benefits to individuals in the new expansion group beginning in 2025. As a bridge, they would provide those same individuals increased ACA subsidies in 2022-2024. This would close the coverage gap for all eligible Americans residing in these states by creating a federally administered program for the expansion population.

If enacted, this would undoubtedly have positive impacts on Tribal Nation health systems and the AI/AN expansion population in these states, though we would need to be sure that any third-party management of the program includes existing AI/AN managed care protections.

However, significant gaps would still remain in access to Medicaid for AI/AN, including substantially different eligibility and access to services based on where we reside, as states have significant discretion over the program's administration, including covered services and reimbursement rates. Fixing this coverage gap, which is broader than the gap that exists in non-Medicaid expansion states, has been a long-standing Tribal priority.

In pursuit of health equity for all AI/AN, in fulfillment of trust and treaty obligations, USET SPF and other partner organizations have supported [amendments](#) designed provide equal access to the Medicaid program, regardless of the state in which we reside. These include authorizing Medicaid reimbursements for all qualified Indian Health Care Provider services and ensuring that services delivered beyond the 'four walls' are eligible for reimbursement. In addition, we note that the possibility of a fully federal Medicaid program presents an opportunity to ensure that the administration of Medicaid better reflects the trust obligation to AI/AN, while fixing some issues with inequitable access.

In response to the House proposal, USET SPF led a [letter](#), joined by six partner organizations, that supports closing the Medicaid expansion gap and urges Congress to ensure all AI/AN managed care protections are maintained in any program managed by a third party. It also makes the case to include one or more of our priority Medicaid amendments in this bill in order provide health equity to all AI/ANs under the federal trust responsibility, and says that if Congress is going to create a separate federal health program for individuals in non-expansion states, it should create a separate federal program for AI/ANs, which would better reflect the federal trust obligation and provide baseline equity in the program.

Homeland Security & Emergency Services

USET SPF Submits Comments to FEMA re: Climate Change EOs

On July 21st, USET SPF submitted [comments](#) to the Federal Emergency Management Agency (FEMA) in response to a Request for Information on FEMA programs, regulations, and policies for the agency

to consider modifying, streamlining, expanding, or repealing in light of President Biden’s Climate Change Executive Orders (EOs) [13985](#), [13990](#), and [14008](#).

EOs 13985, 13990, and 14008 acknowledge the climate crisis has exposed and exacerbated inequities within communities of “people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.” The EOs include Native American communities, which do face systematic barriers and limited access to opportunities and benefits. Some Native American communities also do experience extreme and lingering poverty. However, the Executive Orders address Native American communities as an underserved population within the United States and not as sovereign Tribal Nations for which the United States and its agencies have a Trust and Treaty Obligation. The acknowledgement of inequities regarding Native American communities often fails to recognize that these inequalities persist due to a lack of understanding and the fulfillment the United States trust and treaty obligation to Tribal Nations.

As FEMA works to implement the EOs, USET SPF recommends the following:

- FEMA employees should receive training on the United States Trust and Treaty Obligation to Tribal Nations, the Tribal Nations within the region of their service area and on policies and procedures that support the implementation of FEMA’s Tribal Policy;
- FEMA should build its capacity to provide support to Tribal Nations responding to the climate crisis and extreme weather events impacting our communities; and
- FEMA must work to make its funding opportunities as accessible as possible for Tribal Nation governments, departments, and agency personnel.

We further note the increasing frequency of extreme weather events and related destruction due to climate change. With this in mind, FEMA must modify its administration of Tribal Nation emergency declaration requests under the Stafford Act in order to comply with the Executive Orders. FEMA must immediately eliminate any agency-imposed non-federal match requirement for Tribal Nations to receive federal assistance, which includes any existing or proposed regulations, policies, grant applications, or other guiding documents. And in the spirit of a transparent Nation-to-Nation relationship, we further urge FEMA to immediately establish a policy to forward any and all Tribal emergency or major disaster declaration requests without cumbersome administrative requirements or any other complex application processes imposed, and to submit these requests to the President with a recommendation of the FEMA Administrator within 10-working days and forward a copy of the recommendation to the submitting Tribal Nation.

Litigation

USET SPF Submits Amicus Brief in Seneca Rights-of-Way Case

On July 20th, USET SPF submitted an [amicus brief](#) in the case of Seneca Nation v. Cuomo et al, which concerns the state’s use of a thruway over Seneca’s homelands. USET SPF’s amicus curiae brief supports the Seneca Nation of Indians in their claims against the state of New York that federal law was violated in 1954 when the state acquired an easement for a 300-acre parcel of the Nation’s restricted fee lands. We assert that grants of rights-of-way across Tribal Nation lands require federal approval due to the federal government’s trust and treaty obligations to Tribal Nations and, therefore, the state of New York had no authority to negotiate this easement in 1954. USET SPF urges

the Court to deny the appeal of the state of New York and allow the Seneca Nation's claims to proceed and be heard on their merits.

En Banc Decision in Penobscot River Case

On July 8th, the First Circuit (en banc) [held](#) that the Penobscot Reservation consists only of the island uplands, and not of any submerged lands beneath or territorial waters of the Penobscot River. The case concerns whether USET SPF member, the Penobscot Indian Nation, has the authority to regulate activities occurring on the Main Stem of the Penobscot River as a part of its reservation under settlement acts with the state of Maine and prior treaties. The state asserts that no part of the river falls within Penobscot's reservation, despite the river running through Penobscot's lands and its islands being considered part of the reservation. Meanwhile, state-sanctioned pollution of the river is impeding Penobscot's sustenance fishing rights, among other issues.

In partnership with the National Congress of American Indians (NCAI) and the Native American Rights Fund (NARF), USET SPF filed a joint [amicus brief](#) in the case on July 15, 2020. The joint amicus brief laid out the legal argument to support a reading of the settlement acts to include the Penobscot River. The brief addresses 4 of the 12 questions posed by the Court, including on the applicability of the Indian canons of construction. Specifically, we identify three distinct Indian canons of construction that this Court must employ in interpreting the Settlement Acts in order to comport with "the unique trust relationship between the United States and the Indians." Ultimately, we argue that the Court must hold the government to its word in recognizing the Penobscot Nation's sovereignty over its lands and resources, including the river and the submerged lands beneath it.

USET SPF understands that Penobscot intends to appeal this decision. We are continuing to monitor the progress of this case and will provide updates as they develop.

Federal Magistrate Ruling in Alabama Coushatta Case, SCOTUS Grants Cert in Ysleta Case

On August 31st, Federal Magistrate Judge, Keith Giblin, ruled in favor of the continued operation of the Alabama-Coushatta's Naskila Gaming facility, saying that the Ysleta del Sur Pueblo and Alabama Coushatta Indian Tribes of Texas Restoration Act, a law designed to restore the federal trust relationship and obligations for these Tribal Nations, does not subject the facility to Texas regulation. The National Indian Gaming Commission found in 2015 that Alabama Coushatta was eligible under the Indian Gaming Regulatory Act to be approved for Class II Bingo Gaming. Alabama Coushatta and Ysleta del Sur Pueblo have been in litigation with the state of Texas for several years now over whether the Restoration Act recognizes the Tribal Nations' sovereign authority to regulate non-prohibited gaming on their own homelands.

In late 2020, USET SPF joined an [amicus effort](#) supporting the [petition for writ of certiorari](#) to the U.S. Court of Appeals for the Fifth Circuit in the case of Ysleta del Sur Pueblo v. State of Texas, which was [granted](#) by the Supreme Court on October 18, 2021. The case concerns whether the Restoration Act recognizes the Ysleta del Sur Pueblo's sovereign authority to regulate non-prohibited gaming activities (such as bingo) or subjects it to Texas' gaming regulations. Ysleta del Sur Pueblo is petitioning the Supreme to overturn the Fifth Circuit's April 2020 [decision](#) in the case, which held that under the Restoration Act, Texas governs Ysleta del Sur Pueblo's gaming activity.

USET SPF has consistently supported the right of our member Tribal Nation, the Alabama Coushatta Tribe, to conduct gaming on its homelands without state interference, including through a previous [amici effort](#). Because the two Tribal Nations are both subject to the Restoration Act, a positive ruling in *Ysleta del Sur Pueblo v. State of Texas* is likely to assist Alabama Coushatta in its gaming efforts.

We are likely to engage in another amici effort in this case in further support of Alabama Coushatta. USET SPF will continue to monitor the case's progress and will provide updates as they become available.

USET SPF Signs onto Amicus Brief in CSC Case

On September 27th, a [Tribal Nations and Tribal Organizations amicus brief](#), to which USET SPF is a signatory, was filed in the U.S. Court of Appeals for the 9th Circuit in the case of *San Carlos Apache Tribe v. Xavier Becerra et al.* The case concerns whether the San Carlos Apache Tribe is owed Contract Support Costs (CSC) from the Indian Health Service (IHS) for Indian Self-Determination and Education Assistance Act (ISDEAA) contracted programs funded with third-party revenue. The amicus brief seeks to support the San Carlos Apache in its efforts to overturn a lower court decision which held that Tribal contractors are not entitled to CSC on the portion of their contracted programs funded with third-party revenues, essentially because the statutory provisions requiring CSC do not reference those revenues by name or explicitly state that they are part of the "Federal program." However, third-party revenues do not need special mention, because Congress has always viewed them as a necessary part of the "Federal program" carried out by the IHS and, therefore, by Tribal contractors under the ISDEAA.

The Tribal Nation/Organization brief seeks to ensure the Court recognizes the integral role that Congress has given third-party revenues as one of multiple funding streams for these federal programs. The context and legislative history are clear on this point, so our brief endeavors to aid the Court in understanding that context and how this case implicates Congress's dual goals in the ISDEAA and the IHCA to uplift the health status of Indian people while also promoting Tribal self-determination and self-governance.

USET SPF will continue to monitor progress on this and a related case (*North Arapaho Tribe v. Becerra*) and will provide updates as they become available.

Other

USET/ USET SPF Produces Synopsis of Tribal Nation—U.S Diplomatic Relations

In an effort to provide further education and awareness around the history of Tribal Nation-United States diplomatic relations and our efforts to modernize this relationship, USET/ USET SPF has produced a [booklet](#) for use by member Tribal Nations and our partners across Indian Country. The booklet provides an historical to present day synopsis of our relationship with the U.S. government, as well as a timeline of significant events and several relevant historical documents. USET/ USET SPF member Tribal Nations should feel free to utilize this piece in your own education and outreach efforts.

USET SPF Continues to Support the Remove the Stain Act

On September 17th, a Tribal partner organization joint letter, which USET SPF signed, was transmitted to the House of Representatives in support the [Remove the Stain Act](#) [bill text linked]. The legislation would revoke the Medal of Honor from the soldiers who perpetrated the Wounded Knee massacre on December 29, 1890, when U.S. soldiers slaughtered hundreds of Lakota men, women, and children—most of them unarmed—on the Pine Ridge Reservation in South Dakota. Twenty soldiers in the regiment received the Medal of Honor—the highest military decoration—for their actions at Wounded Knee.

On March 26th, Senators Elizabeth Warren (D-MA) and Jeff Merkley (D-OR), as well as Representative Kai Kahele (D-HI), reintroduced.

USET SPF has consistently supported this legislation and offered the following quote on behalf of President Kirk Francis for the bill sponsors' [press release](#):

“USET SPF stands with our Lakota relatives and countless others across Indian Country in extending our unequivocal support to the Remove the Stain Act. The 7th Calvary committed unspeakable atrocities against hundreds of unarmed Lakota during the Wounded Knee Massacre. To memorialize these inhumane acts with the nation's highest military honor defiles all for which it stands, while perpetuating the historic and continued trauma felt by the Lakota people—and all Native American people—at the hands of the U.S. government. We call upon Congress for the bill's immediate passage.”

Following the Tribal partner organization letter of support, Rep. Kahele offered the bill's language as an amendment to the National Defense Authorization Act (NDAA), which was agreed to by voice vote in the House. While the NDAA has passed the House, it has yet to see action in the Senate. USET SPF, along with our partners, will continue to urge the preservation of this provision as the Senate considers the NDAA and will provide more information as it becomes available.

- [Remove the Stain Act One-Page Summary](#)