



USET

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November 30, 2021

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Ave NW
Washington, DC 20220

Dear Secretary Yellen,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the U.S. Department of the Treasury's Tribal Consultation on its Strategic Plan (Plan) for Fiscal Years (FY) 2022 through 2026. Though the consultation period was quite short, we appreciate Treasury's swift action in initiating consultation in response to our October 29th letter and are pleased that senior Treasury officials attended today's Tribal consultation session. As an agency of the federal government, Treasury shares in trust and treaty obligations to Tribal Nations, including the obligation to uphold Tribal sovereignty and self-determination, as well as facilitate the rebuilding of our Tribal Nations. With this in mind, the final Plan should reflect the execution of this solemn charge, as well as recognize our Nation-to-Nation relationship.

USET SPF is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

As a part of the consultation, Treasury has posed three questions to Tribal Nations and we provide USET SPF's answers below. We join others in requesting the opportunity to comment directly on the draft Strategic Plan prior to its publication.

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), Nansmond 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

1. How can Treasury help Tribal communities better access incentives or programs for climate-friendly investments?

Treasury must work to improve Tribal Nation access to financing for all programs and economic development, including climate-friendly development. While we understand that climate-friendly development is a priority of this Administration and agree that Climate Change is a pressing emergency, all Tribal economic development, including deference to Tribal Nation priorities, should be supported by Treasury in recognition of its obligation to support Tribal Nation rebuilding. This should be its own objective under the final Plan.

Treasury should ensure that Tribal Nations are not forced to compete with other units of government or with each other for programs and incentives administered by the Department to the greatest extent possible. Instead, Treasury should focus on providing equitable access for Tribal Nations across the country to all incentives and programs through set asides or otherwise separate funding opportunities. Treasury must also provide flexibility and deference to Tribal Nations in any application or program requirements, reporting, and compliance. The Department should further avoid imposing non-duplication restrictions so all federal funding and financing can be leveraged with other appropriated government funds. Finally, cost match requirements must not be imposed on federal funding and financing that Tribal Nations attempt to apply for and access.

USET SPF also strongly urges Treasury to advocate for Tribal Nation set asides in any federal funding and financing for climate adaptation or resiliency. This must also apply beyond federal funding and financing to address climate change and must be reflected in the overall federal budget.

2. How can Treasury strengthen coordination with Tribal governments and partners in advancing equitable economic growth and/or promoting financial stability?

We have a government-to-government, Nation-to-Nation relationship with the United States due to the unique recognition of our status under the U.S. Constitution and federal laws. With this in mind, Treasury must prioritize the execution of its trust and treaty obligations through targeted goals and objectives within the final Plan. Treasury must clearly articulate strategic goals and metrics that align with its obligations to Tribal Nations. The Plan should be clear and consistent in what is being measured and how measures will indicate performance. Treasury should establish metrics that measure its actions as trustee and how well it is fulfilling its funding obligations to and investments in Indian Country, as opposed to granular “widget-counting” metrics. The Department should hold itself accountable to Tribal guidance in this space through ongoing engagement with Indian Country.

Treasury has an obligation to promote our economic growth and financial stability. However, insufficient access to capital serves as a primary barrier to economic development in Indian Country. In recognition of its obligation to promote economic development in Indian Country, Treasury must work with banks and other non-governmental entities to assist Tribal Nations in accessing capital. Further, for Tribal Nations that don't have the capacity to pursue Treasury or other governmental funds, all programs should empower, but not require, Tribal Nations to seek out non-governmental partners.

As a matter of economic fairness and in recognition of its obligation to rebuild Tribal Nation economies, USET SPF further urges Treasury to ensure that the final Plan includes directives to support and advance initiatives that would bring certainty in tax jurisdiction to Tribal lands by confirming the exclusive authority of Tribal governments to assess taxes on all economic activities occurring within our borders. This includes

the implementation of the recommendations of the Treasury Tribal Advisory Committee (TTAC) Dual Tax Subcommittee, which include proposed agency actions by the Departments of the Treasury and Interior to clarify and improve regulations and administrative guidance, as well as work with Congress to establish legislation clarifying Tribal tax jurisdiction over economic activity taking place on Tribal homelands.

The Treasury Tribal Advisory Council (TTAC) has been vital in providing important recommendations regarding the impacts of the Department's decisions on Indian Country. However, since its creation the TTAC has been relegated to providing input on only tax issues. There are many economic development issues beyond taxation that are important to Indian Country that require Treasury's attention and the TTAC is one mechanism Treasury should utilize to better understand these issues. Additionally, as important as the meetings and recommendations of TTAC have been, Treasury has still not taken further action on TTAC's Dual Taxation Report that was adopted by the Committee on December 9, 2021. Treasury held a Tribal Consultation on the TTAC Dual Taxation Report on April 28, 2021, yet no further activity has been announced or conducted by Treasury to formally accept and adopt the report or implement its recommendations.

One of the recommendations we have for Treasury to improve its Tribal consultation efforts, as well as the development and implementation of its Strategic Plan, is to establish a Tribal Affairs Office. This Office must have the unfettered ability to communicate and relay recommendations directly to the Secretary on issues affecting Tribal Nations. This Office should also take the lead on communication and coordination with Tribal Nations regarding Treasury's actions and activities prior to Treasury enacting rules and regulations that affect us. Treasury's Internal Revenue Service (IRS) should also communicate and coordinate with the Tribal Affairs Office to ensure that any IRS rules and regulations that may affect Tribal Nations are appropriately communicated to us.

Additionally, Treasury should require mandatory education for all its employees on U.S.-Tribal Nation relations. 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. A lack of education and understanding regarding the fiduciary trust and treaty obligations has existed at Treasury for decades, but has become more evident during the U.S. response to the COVID-10 pandemic. 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.

3. How would you recommend that Tribal communities be reflected in Treasury's published Strategic Plan?

As stated during the consultation, federally recognized Tribal Nations are not "stakeholders" or "customers." The terminology used by Treasury during this conversation, including "underserved", "non-governmental partners", and "public" are representative of a lack of appropriate understanding of the uniqueness of our relationship. We are sovereign governments to which Treasury has trust and treaty obligations. Our diplomatic Nation-to-Nation relationship must be explicitly acknowledged and upheld throughout the final Plan. The Plan must reflect a clear and respectful understanding of our governmental status and the uniqueness of the trust and treaty obligations.

Similarly, we remind Treasury that the Nation-to-Nation relationship exists between Tribal Nations and the federal government only. While Treasury may have reason to seek guidance from and partner with other entities, Tribal consultation should only be reserved for representatives of federally recognized Tribal Nations and Treasury.

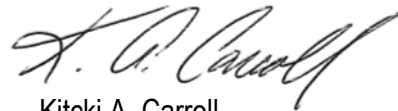
Conclusion

As a part of Treasury's Strategic Plan for FY 2022 through 2026, the Department must focus on improving coordination and communication with, as well as better upholding its obligations to Tribal Nations in reflection of our sacred relationship with the federal government. We welcome the opportunity, through consultation, to review and further refine Treasury's draft Strategic Plan. Going forward, Treasury must enact policies that uphold our status as sovereign governments, our right to self-determination and self-governance, and honor the federal trust obligation in full. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 615-838-5906.

Sincerely,



Kirk Francis
President



Kitcki A. Carroll
Executive Director