



USET

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October 29, 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 solicitation for feedback on its Strategic Plan for Fiscal Years (FY) 2022 through 2026. Treasury has conducted outreach on this Strategic Plan to assist "underserved" communities to access programs for climate-friendly investments and strengthen its coordination with non-governmental partners to advance equitable economic growth. However, the questions posed fail to recognize or prioritize Treasury's execution of trust and treaty obligations to Tribal Nations and are of little relevance to our Nation-to-Nation relationship. USET SPF strongly recommends that Treasury conducts Tribal consultation separate from this "public outreach" effort to seek and incorporate Tribal Nation guidance as it finalizes its Strategic Plan.

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.

Tribal Nations are sovereign governments that pre-date the formation of the United States and are engaged in a diplomatic relationship with the federal government. We are not "underserved" communities, non-governmental partners, or "the public." As an agency of the U.S. government, Treasury shares in its trust and treaty obligations to Tribal Nations, including an obligation to uphold Tribal sovereignty and self-

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

determination, as well as facilitate the rebuilding of our Tribal Nations. The three questions posed by Treasury for input on its Strategic Plan do not reflect this solemn charge, and instead are geared towards input from the general public. USET SPF will be providing comments in response to these three questions posed below, but we underscore that Treasury's final FY 2022 through 2026 Strategic Plan must emphasize and uphold the delivery of trust and treaty obligations to Tribal Nations.

To that end, we continue to call upon the Department to establish a high-level Office of Tribal Affairs at Treasury within the Office of the Secretary. The creation of such an office would have enormously positive impacts, in both the short- and long-term, on Treasury's relationship with Indian Country and consultation with Tribal Nations, as well as lead to improved guidance and regulations that better include our unique circumstances. Ultimately, it will assist Treasury in ensuring it delivers upon its trust and treaty obligations to Tribal Nations.

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

As stated, and will be reiterated throughout our comments, Tribal Nations are not merely "underserved" communities and must not be referenced by or included among any racial designation. Our relationship with the United States is political, and its accordant responsibilities are unique, separate from, and supersede any responsibilities the federal government has to "underserved" communities. We strongly urge Treasury to consult with Tribal Nations to receive our guidance and input on developing its 2022 through 2026 Strategic Plan due to our unique identity as sovereign governments. As Treasury crafts its Strategic Plan, its trust and treaty obligations should be paramount. Under the Strategic Plan, Tribal sovereignty should be honored fully, especially regarding decisions about climate-friendly and other development on our homelands.

Treasury must work to improve Tribal Nation access to financing for all programs and economic development, including climate-friendly development. 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. Additionally, there must be no cost match requirements imposed on federal funding and financing that Tribal Nations attempt to apply for and access. Treasury must also provide flexibility and deference to Tribal Nations in any program requirements, reporting, and compliance. There should also be no non-duplication restrictions so all federal funding and financing can be leveraged with other appropriated government funds.

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

Again, this question is framed in a manner that is less applicable to Tribal Nations. We are not non-governmental partners. 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. And Treasury has an obligation to promote our economic growth and financial stability. That said, 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.

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.

3. What steps can Treasury take to demonstrate and visualize progress on the strategic goals to the public?

As aforementioned, Tribal Nations are not members of the "general public". This question is again framed in a manner that does not appropriately recognize our status as sovereign governments and our government-to-government relationship with the United States. Before moving forward with adopting its 2022 through 2026 Strategic Plan, Treasury must identify strategic goals in consultation with Tribal Nations and should hold itself accountable to Tribal guidance in this space through ongoing engagement with Indian Country. Treasury must work to ensure our special and unique government-to-government relationship is upheld throughout the development, adoption, and implementation of its strategic plan.

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. 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.

Conclusion

An essential aspect of the federal trust responsibility and obligation to Tribal Nations is the duty to consult and communicate on issues affecting us. 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. 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 L.Malerba@usetinc.org or 615-838-5906.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Francis".

Kirk Francis
President

A handwritten signature in black ink, appearing to read "K. A. Carroll".

Kitcki A. Carroll
Executive Director