



USET

SOVEREIGNTY PROTECTION FUND

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*Transmitted Electronically
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February 28, 2022

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

Dear Secretary Yellen,

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) submits these comments in response to Tribal consultations held on Sec. 605 of the American Rescue Plan Act (ARPA), the Local Assistance and Tribal Consistency Fund (LATCF). These consultations were held February 8, 9, and 10, 2022 to receive input from Tribal Leaders on how to allocate the \$250 million annual set-aside for Tribal governments. USET SPF appreciates the flexibility extended to Tribal governments under Sec. 605. We urge Treasury to maintain this flexibility, as it implements this provision. Considering the deep and wide-ranging impacts COVID-19 has had on Tribal Nations, as well as chronically unmet federal obligations that have existed for centuries, we continue to advocate for the rapid, equitable distribution of ARPA resources in a manner reflective of Tribal sovereignty and the diverse circumstances that exist across Indian Country.

USET Sovereignty Protection Fund (USET SPF) is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.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.

Section 605 was Written with Flexibility for Tribal Nations

As Treasury implements Section 605, USET SPF underscores that while the provision contains language establishing programs for both counties and Tribal Nations, requirements and restrictions for each unit of

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

government differ. While the counties served under this provision are subject to statutory restrictions against “lobbying” and required reporting on the use of funds, it appears as though Congress did not intend for these requirements to apply to Tribal Nations. Indeed, Senate Finance Committee Chairman, Ron Wyden, addressed Congressional intent in a statement for the record², in which he applies these requirements to counties only. Conversely, on the Tribal language, Chairman Wyden states simply, “this language is intended for the Department of Treasury to work with the Tribal Governments defined in the bill to determine a formula ensuring equitable distribution of the funding each year.” With this in mind, we strongly urge Treasury to avoid overly prescriptive restrictions or requirements for these funds and instead distribute them according to Congressional intent, ensuring that Tribal Nations have broad flexibility to utilize them, “for any governmental purpose deemed necessary.”

All Tribal Nations Have Experienced Economic Impacts Due to COVID-19

We acknowledge that the statute requires Treasury to take, “into account economic conditions of each eligible Tribe.” However, we urge Treasury to use its discretion in this space to avoid placing burdensome data submission and reporting requirements on Tribal Nations. The pandemic continues to affect all Tribal Nations, our citizens, our economies and our service delivery, and these effects will likely be felt long after the pandemic ends. Rather than painstakingly collecting economic data from each Tribal Nation, we urge Treasury to focus on ensuring that funds are distributed in the most equitable, expeditious way possible, using a methodology that acknowledges and accounts for the diversity of conditions and experiences we face as a result of our individual interactions with the U.S. government. This should involve presuming all Tribal Nations are facing economic impacts. We note a similar situation under Treasury’s Fiscal Recovery Fund in which the Department presumes that all households receiving services from Tribal governments are disproportionately impacted by the pandemic. If the Department feels as though it must collect economic data from Tribal Nations, Treasury should accept Tribal Nation self-certified data on ‘economic conditions’ within our jurisdictional boundaries as it has done with the FRF. As Treasury well knows, Tribal Nations are the only authority regarding our data and circumstances.

While we defer to our member Tribal Nations for recommendations on a formula for distribution, USET SPF is generally opposed to a methodology that relies on Tribal land base. In particular as we enter the recovery phase of the pandemic, Land base fails to reflect the depth of actual COVID-19-related expenses and impacts for a majority of Tribal Nations, and it unfairly penalizes those Tribal Nations who, like our membership, have experienced centuries of extreme land loss from which we continue to recover. Utilizing land base as a part of this formula would result in a deeply inequitable distribution of FRF resources to Tribal Nations.

Streamline Reporting Requirements

As stated above, Treasury should not adopt and implement burdensome reporting requirements on Tribal Nations receiving LATCF funds in accordance with Congressional intent, as well as the Office of Management and Budget (OMB) March 19, 2021 memorandum [M-21-20](#) , which directs federal agencies to provide reporting flexibility and alleviate reporting burdens for ARPA recipients. Tribal Nations must not be subject to burdensome administrative requirements for use of these funds. This includes application, reporting, audit, or other types of compliance requirements. Any reporting requirements mandated by law must be streamlined and only the minimum required that Tribal Nations may continue to focus on recovery and rebuilding.

² See www.finance.senate.gov/imo/media/doc/Statement%20for%20the%20Record%20on%20Sec.%20605.pdf

Provide Maximum Deference to Tribal Nations

Whenever possible, Treasury should defer to Tribal Nations to set standards for the expenditure of LATCF funds. This would uphold Treasury's directives under Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments", to provide Tribal Nations with the "maximum administrative discretion possible" and "defer to Indian Tribes to establish standards" that promote self-governance and deliver upon trust and treaty obligations. Therefore, we urge Treasury to ensure that Tribal Nations are fully empowered to determine how best to spend funding under the LATCF. We continue to urge Treasury to avoid imposing a prescriptive list of allowable "governmental purpose" expenses for Tribal Nations. This strategy would undermine Tribal sovereignty and the broad language of Section 605, as well as fail to account for the unique circumstances Tribal Nations are facing. Instead, Treasury should promote Tribal Nation self-determination and ensure that LATCF funds can be used broadly in response to our individual circumstances.

Conclusion

ARPA was enacted by Congress to provide economic and public health recovery and relief to governments and people affected by the COVID-19 pandemic. Therefore, Treasury should not adopt and implement restrictive policies on Tribal Nations applying for ARPA funds. The LATCF should be structured in a manner that respects Tribal Nation sovereignty and self-determination in accordance with Treasury's trust and treaty obligations to Tribal Nations. We look forward to working with you on the continued distribution of ARPA funds. 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