

The Beat in DC



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Budget

Omnibus Appropriations Bill Enacted for FY 2022

On March 15th, President Biden signed into law [H.R. 2741](#), the Consolidated Appropriations Act, 2022, a \$1.5 trillion omnibus appropriations bill containing discretionary funding for the federal government for the remainder of Fiscal Year (FY) 2022. The bill comes after months of partisan division over topline spending numbers leading to a series of four continuing resolutions to maintain government operations since the beginning of the FY on October 1st. Now, the federal government will be funded at increased levels for the remainder of the FY through September 30, 2022.

[Division G](#) of the omnibus, the Interior, Environment, and Related Agencies bill, contains funding for the Bureau of Indian Affairs (BIA), Bureau of Indian Education (BIE), and Indian Health Service (IHS).

For BIA, the bill provides a total of \$2.26 billion, which is an increase of \$104 million over FY 2021 enacted, but \$355 million below the President's request. This includes \$1.82 billion for the Operation of Indian Programs (an increase of \$204 million) and \$147 million for Construction (an increase of \$18 million).

Funding under the Operation of Indian Programs account includes the following Eastern Region Priorities:

- Social Services (TPA): \$53 million, \$2 million above FY 2021 enacted;
- Natural Resources (TPA): \$14.2 million, \$6.1 million above FY 2021; and
- Tribal Courts (TPA): \$43.2 million, \$4.2 million above FY 2021 and in line with the Request.
- In total, this account also includes \$355.4 million for the Tribal Government line, an increase of \$14.4 million over FY 2021 enacted and \$1 million below the President's Request. Within this sum, \$27.8 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 (a decrease of \$1.1 million).
- Finally, the bill allocates \$32 million for Tribal Climate Resilience, \$15 million above FY 2021 enacted and \$29 million below the President's Request.

The BIA construction account includes \$47.8 million for Eastern Region priority Public Safety & Justice Construction (\$5 million above FY 2021 and level with the Request).

Contract Support Costs (CSC) and 105(l) Leases would continue to be funded via a separate, indefinite appropriation at an estimated \$240 million (a \$95 million decrease) and \$36.6 million (a \$15 million increase), respectively. While the Senate's FY 2022 proposal expressed support for reclassifying these accounts as mandatory funding, language codifying this change did not make it into the final bill.

Further, regarding 105(l) leases, the bill contains the following language:

“The Committees are aware of recent litigation in Federal courts regarding what constitutes reasonable lease costs under the I 05(1) program. As part of the consultation required by language in Title IV of this Act, the Indian Health Service and the Department of the Interior are expected to consult with Tribes and Tribal organizations regarding agency regulations and policies that determine the amount of space and

other standards necessary to carry out Federal programs under a section 105(1) lease, and to ensure that such regulations and policies are consistent, transparent, and clearly communicated to affected Tribes. The Service and the Department are expected to periodically update the Committees on the status of the consultation.”

Finally, the joint explanatory statement indicates that, “land acquisitions for newly recognized or landless Tribes are fully funded at the authorized level of \$2,000,000. BIA is encouraged to work with the committees of jurisdiction to evaluate whether a change in the authorization is warranted.”

For BIE, the bill provides a total of \$1.28 billion, an increase of \$44.6 million over FY 2021 enacted and \$66 million below the President’s Budget Request. This includes \$40.5 million for Eastern Region priority Scholarships & Adult Education (TPA), which is \$5.7 million above FY 2021 and \$4.5 million below the President’s Request. In addition, the Committee provides \$7 million for DOI’s Indian Boarding School Initiative.

The bill also funds the IHS at a total of \$6.6 billion. This number is \$395 million above the FY 2021 enacted level, but \$1.6 billion below the President’s Request, \$1.5 billion below the House proposal, and \$990 million below the Senate proposal. Of this, \$4.6 billion would be allocated for the Indian Health Services Account and \$940.3 million for the Indian Health Facilities Account.

Funding under the Indian Health Services account includes the following Nashville Area priorities:

- Hospitals and Health Clinics: \$2.4 billion (a \$161 million increase over FY 2021 enacted);
- Purchased/Referred Care: \$984.9 million (a \$9 million increase);
- Electronic Health Records: \$145 million (a \$110.5 million increase);
- Dental Health: \$236 million (a \$21 million increase);
- Mental Health: \$122 million (an \$6.8 million increase); and
- Alcohol and Substance Abuse: \$258 million (a \$6.9 million increase).

As for 105(l) leases and CSC the bill maintains the separate, indefinite appropriations for both lines, at an estimated level of \$150 million and \$880 million, respectively.

In addition, the bill contains the following directive regarding CSC and the Cook Inlet decision:

“The Committees direct the Service to report 30 days after enactment of this Act explaining whether recent actions taken by the Service indicate a major shift in the way contract support costs are being calculated or if the Service interprets the Cook Inlet Tribal Council v. Dotomain decision and recent actions as a restatement of current law. The Committees direct the Service to clearly explain the rationale behind its interpretation of the Cook Inlet decision and articulate whether current practices for calculating contract support costs will change.”

Finally, despite strong advocacy from Indian Country and the Biden Administration, Advance Appropriations for IHS in FY 2023 is not included in the bill. USET/USEP staff reacted to this during an [interview](#) with NPR’s Marketplace on March 10th. While the Senate proposal would have provided Advance Appropriations for the Services and Facilities accounts for the first time, this authority was not included in the final bill. The House proposal’s [report language](#) indicated that the House Interior Appropriations Committee did not provide advance appropriations authority for IHS because of a lack of detail from the agency.

In our advocacy around FY 2022 appropriations, USET SPF submitted testimony to [the Senate Interior Appropriations Committee](#), [the House Interior Appropriations Committee](#), and the [Office of Management and Budget](#). We also signed onto [numerous letters](#) supporting Advance Appropriations for IHS.

While USET SPF welcomes the certainty provided by full year appropriations, we note that the modest increases authorized under the omnibus will do little to address and even exacerbate existing disparities facing Indian Country today. We will continue to monitor the implementation of FY 2022 appropriations and will provide further updates as they develop. For more information about the FY 2022 omnibus bill, including joint explanatory statements for other funding divisions, please click [here](#).

President Biden Issues FY 2023 Budget Request with Unprecedented Mandatory Appropriations for IHS

On March 28th, the Biden-Harris Administration released the first details of its FY 2023 Request to Congress, which contains historic policy and funding proposals for Indian Country. These proposals represent a dramatic shift in federal Indian policy and the delivery of trust and treaty obligations—for which USET SPF has consistently and passionately advocated. For the very first time, an Administration has issued a Budget Request that calls for mandatory, as well as substantially increased and predictable, funding for an agency charged with fulfilling sacred promises to Tribal Nations. In response, USET SPF issued a [statement](#) strongly supporting these changes, and USET/SPF Executive Director, Kitcki Carroll, advocated for their enactment during an [interview](#) with Bloomberg.

The Request would shift funding for the IHS from the discretionary to the mandatory side of the federal budget, a move that stabilizes the agency and is more representative of perpetual trust and treaty obligations. Further, a substantial request of \$9.1 billion for IHS in FY 2023 includes a 10-year plan to close funding gaps, increasing IHS funding to \$36.7 billion in FY 2032—a 296% increase over this period—and exempting agency funds from sequestration. This change makes meaningful inroads in the chronic underfunding of the IHS, while responding to the dangerous instability the Indian Health System faces during continuing resolutions and government shutdowns. Year after year, USET SPF has urged multiple Administrations and Congresses to request and enact budgets that honor the unique, Nation-to-Nation relationship between Tribal Nations and the United States, including providing full and mandatory funding. The Biden Administration has taken an unprecedented step forward in its proposal for the IHS.

The Request also contains \$2.8 billion for the Bureau of Indian Affairs and \$1.6 billion for the Bureau of Indian Education. For both agencies, Contract Support Costs and 105(l) Lease funding would also move to the mandatory side of the federal budget.

The chronic underfunding of federal Indian programs continues to have disastrous impacts upon Tribal governments and Native peoples. Native peoples experience some of the greatest disparities among all populations in this country, which have been brought into sharp relief during the COVID-19 pandemic. However, these systemic issues have existed for decades, across numerous Administrations and Congresses. Indeed, the U.S. Commission on Civil Rights' [Broken](#)



[Promises report](#) (and the [Quiet Crisis report](#) before that) found deep failures in the delivery of federal trust and treaty obligations, concluding that federal funding to Indian Country remains “grossly inadequate” and a “barely perceptible and decreasing percentage of agency budgets.” The Commission recommended that Congress provide “steady, equitable, non-discretionary funding” to Tribal Nations.

USET SPF strongly supports proposals in the FY 2023 President’s Budget Request that would provide mandatory and increased funding for IHS and other federal Indian budget lines. We are fully committed to working with the Administration and our allies on Capitol Hill to make this a reality and look forward to fully evaluating the FY 2023 Request when further details are available, including advocating for increases above the Request and additional policy change where necessary. We encourage our membership to do the same.

For more information on the President’s FY 2023 Budget Request:

- [President’s FY 2023 Budget Request](#)
- [HHS FY 2023 Budget in Brief](#)
- [DOI FY 2023 Budget in Brief](#)

For more information on USET SPF’s Advocacy for Full and Mandatory Funding:

- [USET SPF Comments to OMB on FY 2023 Budget Request](#)
- [USET SPF Comments on Mandatory Funding Approaches for the Indian Health Service](#)
- [USET SPF Letter to Biden Administration re: Initial Priorities](#)
- [USET SPF Testimony before the Senate Committee on Indian Affairs](#)
- [USET SPF Testimony Before the U.S. Commission on Civil Rights](#)
- [USET SPF Testimony Before House Committee on Natural Resources](#)
- [USET SPF Resolution 2020 SPF:005](#)
- [USET SPF Resolution 2016:031](#)
- [USET SPF Resolution 2016:004](#)
- [USET SPF Resolution 2014:011](#)

USET SPF Continues to Support Advance Appropriations for IHS

On March 3rd, a series of letters signed by numerous Tribal Nations and organizations, including USET SPF, were transmitted to Congressional leadership and various committees urging the inclusion of advance appropriations for the IHS services and facilities accounts in the FY 2022 appropriations measure. This would mean that these accounts would be automatically funded at the beginning of FY 2023, regardless of whether Congress has completed work on full year continuing appropriations or even if the government is shutdown. Regrettably, despite strong advocacy across Indian Country and from within the Biden Administration, advance appropriations for IHS were not included in final omnibus appropriations legislation for FY 2022. USET SPF continues to support advance appropriations as an important mechanism to provide short-term certainty in funding to Tribal Nations and urges that it be extended to IHS and all federal Indian programs.

- [House Committee on Appropriations](#) and [Appropriations Subcommittee on Interior](#)
- [House Committee on Natural Resources](#) and [Subcommittee for the Indigenous Peoples of the United States](#)



- [House Native American Caucus](#)
- [Speaker of the House and House Minority Leader](#)
- [Senate Committee on Appropriations](#) and [Appropriations Subcommittee on Interior](#)
- [Senate Committee on Indian Affairs](#)
- [Senate Majority Leader and Senate Minority Leader](#)

USET SPF Meets with OMB re: Improving Tribal Access to Federal Grants

In December 2021, President Biden signed an Executive Order (EO) [aimed at Transforming Federal Customer Experience and Service Delivery To Rebuild Trust in Government](#). The directive calls on the Office of Management and Budget (OMB) to collaborate with agencies to research and document customer experience challenges related to accessing grant programs to which Tribal governments are entitled—this includes funding under the American Rescue Plan Act (ARPA) and the Infrastructure Investment and Jobs Act (IIJA). As the states, “Tribal communities will be able to expect more streamlined and integrated grants application processes, rather than having to provide information over and over again to the Federal government and navigate across multiple agency websites.”

In February, USET SPF met with representatives from OMB and the Government Services Administration (GSA) to discuss barriers to accessing federal funding and provide recommendations on better delivering upon trust and treaty obligations. This was an opportunity for us to reemphasize our advocacy around the overall federal budget and appropriations process, including calling for OMB transparency, a move away from competitive grants, full and mandatory funding, and the expansion of Indian Self-Determination and Education Assistance Act (ISDEAA) contracting and compacting across the federal government. USET SPF will continue to monitor the progress of the EO’s implementation and provide additional information as it develops.

COVID-19

USET SPF Submits Comments to Treasury on ARPA Tribal Consistency Fund

On February 28th, USET SPF submitted [comments](#) to the Department of Treasury regarding Section 605 of the American Rescue Plan Act (ARPA), the Local Assistance and Tribal Consistency Fund (LATCF). USET SPF appreciates the flexibility extended to Tribal governments under Sec. 605. Our comments 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. Treasury must 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.”

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.

USET SPF Submits Comments to OSHA on Vaccine Mandate

On January 19th, USET SPF provided [comment](#) to the Occupational Safety and Health Administration (OSHA) regarding its COVID-19 Vaccination and Testing: Emergency Temporary Standard (ETS). Although enforcement of the ETS has been stayed by the Supreme Court, the ETS would require most employers with 100 or more employees to ensure their workers are fully vaccinated or tested for COVID-19 on a weekly basis. As we continue to contend with COVID-19, the mandate imposed by the ETS may be appropriate for non-Tribal entities. However, as an agency of the federal government, OSHA has an obligation to honor and uphold Tribal sovereignty and self-determination—an obligation which supersedes other interests. As such, any decisions to mandate vaccinations at Tribal Nation enterprises must rest solely with Tribal governments. Furthermore, OSHA has failed to properly consult with Tribal Nations on the ETS, including a failure to provide a comment period that aligns appropriately with Tribal consultation.

USET SPF called upon OSHA to confirm that the ETS does not apply to any Tribal enterprises (in addition to “traditionally governmental Tribal activities), in recognition of Tribal sovereignty and its diplomatic relationship with Tribal Nations. Instead, OSHA should focus on supporting Tribal Nations in taking whatever steps we deem appropriate to fight COVID-19, including the sovereign choice to impose a vaccine mandate upon our employees. We further urged OSHA to work to improve its consultative relationship with Tribal Nations, as well as prioritize the enactment of policies that uphold our status as sovereign governments, our right to self-determination and self-governance, and honor the federal trust obligation in full.

Culture & Heritage

USET SPF Submits Comments to NOAA on Tribal Consultation Handbook and TEK Guidelines

On February 24th, USET SPF submitted [comments](#) in response to a request for information (RFI) from the National Oceanic and Atmospheric Administration (NOAA) on its Tribal Consultation Handbook and Traditional Ecological Knowledge (TEK) Guidance policies and procedures. NOAA initiated this proceeding in response to President Biden’s, “Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships” (Presidential Memorandum), issued on January 26, 2021. This Presidential Memorandum directs federal agencies to submit to the Office of Management and Budget a detailed plan of actions agencies will take to implement the policies and directives of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments” (E.O. 13175). USET SPF welcomed the opportunity to provide input on NOAA’s 2021 draft Tribal Consultation Handbook and 2019 TEK Guidance policies and procedures. Our comments generally supported the proposed changes to these documents, as well as recommendations on the addition of certain language and removal of certain terms to strengthen effective government-to-government consultation and collaboration. USET SPF also supports the proposed agency-wide expansion of NOAA’s TEK Guidance.

USET SPF's comments on the NOAA 2021 Draft Tribal Consultation Handbook stressed the importance of evolving consultation to consent, early and ongoing consultation activities with advance notice and sufficient response timelines, and requirements for federal agencies to educate employees on the history of Tribal Nation-U.S. relations and Tribal sovereignty. NOAA's Tribal Consultation Handbook has not been revised since it was adopted on May 21, 2013. Therefore, we supported NOAA's proposed changes to include further detail and clarifications on definitions and terminology, as well as the addition of new language to strengthen Tribal consultation, collaboration, and communication. We also stressed the importance of sensitive Tribal Nation information being protected from Freedom of Information Act requests, establishment of Tribal Liaison positions in NOAA Offices and Regional Teams, and supported NOAA's proposal to expand its Traditional Ecological Guidance to all NOAA Offices. USET SPF will continue to monitor NOAA's response and actions to revise its Tribal Consultation Handbook and Traditional Ecological Guidance.

USET SPF Joins America250 Initiative

In a March 30th [resolution](#), the USET SPF Executive Officers approved USET SPF's participation in the America250 Foundation's Tribal Advisory Group. The America250 Foundation was created by the U.S. Semiquincentennial Commission (which was established by Congress) as a non-profit partner of the Commission and is charged with planning for the commemoration of the 250th anniversary of the founding of the United States. Over the next several years leading up to the anniversary, the America250 Foundation has pledged to work with Tribal Nations, communities, states, federal agencies, and cultural and educational institutions in its planning.

On February 17, 2022, the Semiquincentennial Commission and America250 Foundation issued a Dear Tribal Leader Letter announcing the creation of a Tribal Advisory Group to ensure that Tribal Nations are invited to meaningfully shape and provide input on the commemoration of the 250th anniversary of the founding of the United States. USET SPF agrees that Tribal Nations must have a voice in the planning of the commemoration for the 250th anniversary of the founding of the United States to ensure accurate representation of both our individual and shared histories. We plan to participate in on the Tribal Advisory Group to ensure that Tribal Nations and our relationship with the United States are reflected truthfully in Semiquincentennial celebrations. We are further advocating for Tribal leader representation on the America250 Foundation's full committee. USET SPF will share additional information with membership, including opportunities to participate, as it becomes available.

Economic Development

USET SPF Submits Testimony for the Record of SCIA 'Buy Native' Hearing

On March 30, 2022, USET SPF submitted [testimony for the record](#) to the Senate Committee on Indian Affairs (SCIA) in response to its March 16, 2022 oversight hearing, "[Buy Native American: Federal Support for Native Business Capacity Building and Success](#)." During the 2022 State of the Union Address, President Biden renewed his Administration's commitment to the 'Buy American' initiative, which was established by the January 2021 Executive Order 14005, "Ensuring the Future is Made in

All of America by All of America’s Workers” (EO 14005). EO 14005 was issued to ensure that the federal government would invest taxpayer funds to support American businesses, workers, and manufacturers. However, the ‘Buy American’ initiative has not necessarily recognized and supported the contributions and production of goods and services by Tribal Nations and our businesses. The federal government must support our self-determination and sovereign rights to pursue initiatives for economic development that rebuild Tribal Nation economies.

Furthermore, we emphasized that for the ‘Buy American’ initiative to be successful, federal departments and agencies must remove regulatory barriers that hinder our ability to create economic opportunity for our businesses and entrepreneurs. This can be accomplished by broadening Indian Self-determination and Education Assistance Act compacting and contracting opportunities for Tribal Nations and expanding ‘Buy Indian’ across the federal government to require the purchase of goods and services from Tribal Nations and businesses. We emphasized that these actions would support Tribal Nations and businesses in rebuilding our economies and expanding opportunity for our citizens. Additionally, USET SPF maintains that the federal government must support Tribal economic parity by protecting our businesses from dual taxation, the restoration of Tribal homelands, and provide accessible opportunities for energy production and distribution. USET SPF will continue to advocate for legislative and regulatory actions that empower Tribal Nations to pursue business and enterprise initiatives that support the economic, social, and health and well-being of our communities and citizens.

Environment & Natural Resources

USET SPF Submits Comments to EPA on WOTUS Revisions

On February 7, 2022, USET SPF submitted [comments](#) in response to the virtual Public Hearings held on a proposed rule to revise the definition of “Waters of the United States” (WOTUS). These Public Hearings were held by the Environmental Protection Agency and the Department of the Army (“the agencies”) on January 12, 13, and 18, 2022 to receive public input from “stakeholders” on a proposed rule to rescind a 2020 rule that revised the definition of WOTUS. USET SPF generally supported the agencies’ decision to rescind the January 23, 2020, “Navigable Waters Protection Rule: Definition of Waters of the United States” (NWPR), which has disproportionate impacts on Tribal Nations because it decreased the scope of the Clean Water Act (CWA). However, USET SPF strongly recommended that the agencies conduct Tribal consultation separate from these Public Hearings to seek and incorporate Tribal Nation guidance as they finalize the proposed rule to rescind the NWPR and revise the definition of WOTUS.

Additionally, USET SPF reminded the agencies to recognize that Tribal Nations are sovereign governments that pre-date the formation of the United States and are engaged in a diplomatic, nation-to-nation relationship with the federal government. USET SPF noted that instead of initiating Tribal consultation on the proposed rule to revise the definition of WOTUS, the agencies proceeded in hosting Public Hearings to receive input from the public and “stakeholders”. We emphasized that Tribal Nations should not be incorporated into the definition of “stakeholder” due to the federal government’s trust and treaty obligations. We also referenced our participation in several of the prior rulemakings to revise the definition of WOTUS. On September 27, 2017, we submitted [comments](#) in response to the Environmental Protection Agency’s (EPA) initial rulemaking to rescind and recodify

the definition of WOTUS consistent with the February 28, 2017 Executive Order 13778, “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule” (EO 13778). USET SPF submitted follow-up [comments](#) on March 19, 2018 in response to EPA’s, “Draft Summary of Potential Effects to Clean Water Act Programs for Tribal Waters.” The last set of [comments](#) submitted by USET SPF to EPA regarding the proposed rule to revise the definition and scope of WOTUS were sent on April 15, 2019. As evidenced by our past comments, USET SPF has consistently engaged with the agencies to ensure that any revisions to the definition of WOTUS support Tribal sovereignty and self-determination. While we support rescinding the NWPR to revert to the pre-2015 definition of WOTUS, we strongly recommend that the agencies hold Tribal consultations to receive recommendations from Tribal Nations on how to improve the administration of the CWA as well as the definition of WOTUS.

Health

USET SPF Writes to SCIA Regarding IHS Director Nomination

On March 9th, after more than a year-long vacancy, the Biden Administration [nominated](#) a candidate for Director of the IHS. The nominee is Ms. Roselyn Tso, a citizen of the Navajo Nation and long-time career employee of IHS who is currently serving as the Director of the Navajo Area IHS. A longer bio can be found at the above link.

The nomination has been transmitted to the Senate, where the SCIA will hold a confirmation hearing and will ultimately vote on whether to send the nomination to the full Senate for confirmation. The full Senate will need to confirm Ms. Tso before she can be seated as the permanent Director of the IHS.

In response to the nomination, USET SPF transmitted a [letter](#) to the SCIA supporting the steps being taken by the Administration to fill the position and indicating that we look forward to utilizing the confirmation process to learn more about the candidate and her priorities for the agency. Our letter also outlines the following professional qualities and policy priorities the incoming IHS Director must have in order to be successful in the position:

- A commitment to Tribal self-governance;
- Support for full and mandatory funding for IHS;
- A commitment to Tribal consultation;
- Acknowledgement of trust and treaty obligations;
- Strong relationship building skills; and
- The ability to act as a strong advocate for Tribal Nations.

USET SPF will continue to monitor developments as the confirmation process proceeds, and provide updates and further advocacy, as appropriate.

USET SPF Supports ISDEAA Clarification in Response to Cook Inlet CSC Decision

USET SPF has extended its support to legislation to clarify which activities conducted under the Indian Self-Determination and Education Assistance Act (ISDEAA) are eligible for Contract Support Cost (CSC) reimbursement.

As you may recall, a recent federal court decision has wrongly interpreted what costs qualify as Contract Support Costs (CSC)—an action that could affect CSC reimbursements for many other Tribal Nations. In *Cook Inlet Tribal Council v. Dotomain*, the United States Court of Appeals District of Columbia Circuit misinterpreted section 106(a)(2) of the Indian Self-Determination and Education Assistance Act (ISDEAA) and held that that Tribal overhead costs are disqualified from being reimbursed merely if the federal agency in question would “normally” incur that same cost in running the contracted program. Then, this past December, IHS cited this new court decision as it cut reimbursements to one Tribal organization by 90%.

Following our [previous update](#) on the Cook Inlet decision and its implications for CSC reimbursements, the IHS issued a [“Dear Tribal Leader” letter](#) addressing the decision, which did not fully address Tribal concerns.

In response to these concerns, USET SPF previously joined 14 partner organizations on letters to Congress (the [House Appropriations](#) and [House Natural Resources](#) Committees, as well as the [Senate Appropriations Committee and Senate Committee on Indian Affairs](#)) urging an amendment to ISDEAA that would reverse the *Cook Inlet* misinterpretation of the law by replacing the word “but” with the words “including activities” under section 106(a)(2). This will restore the longstanding understanding of the ISDEAA.

[H.R. 7455](#), sponsored by Rep. Tom Cole (R-OK) amends ISDEAA to confirm that activities will be reimbursed as contract support costs if they meet the definition and if:

- It is an activity unique to Tribal governments that is not normally carried out by the Secretary;
- It is an activity carried out by the Secretary using resources from other agencies; or
- It is an activity normally carried out by the Secretary, but not fully paid for in the Secretarial amount.

You can learn more about the bill [here](#), as well as view bill text [here](#). USET SPF encourages member Tribal Nations to reach out to their Representatives and request that they co-sponsor the bill. Interested co-sponsors can reach out to Sofia Deiro in Rep. Cole’s office at sofia.deiro@mail.house.gov.

As the legislative effort proceeds, USET SPF is joining others in urging the IHS to avoid taking any further action against Tribal Nations as a result of the *Cook Inlet* decision. We will continue to monitor this issue and will provide updates as they become available.



Infrastructure

USET SPF Submits Comments to NTIA on BEAD Program

On March 18, 2022, USET SPF submitted [comments](#) in response to a March 18, 2022 Tribal consultation hosted by the National Telecommunications and Information Administration (NTIA). This consultation focused on broadband funds allocated by the Infrastructure Investment and Jobs Act (P.L. 117-58), which was signed into law on November 15, 2021. Under the law, NTIA will administer \$42.45 billion for the Broadband Equity, Access, and Deployment (BEAD) Program, \$1 billion for the Middle Mile Broadband Infrastructure Program, \$2.75 billion for Digital Equity Act Programs, and an additional \$2 billion for the Tribal Broadband Connectivity Program. NTIA requested comments on how the agency should work with state governments to ensure Tribal Nation input and inclusion in the five-year state broadband deployment plans required under BEAD. USET SPF's comments stated that BEAD Program funds for broadband deployment, mapping, and adoption should not be awarded to states without expressly detailing plans to support these projects and activities on Tribal Lands.

USET SPF strongly recommended that NTIA exercise oversight as states are developing BEAD five-year buildout plans and require the inclusion of the following:

- State governments must fully document their consultation efforts and meetings with Tribal Nations prior to state governments receiving an award of BEAD funds. This must not be a 'check the box' process and Tribal Nations must certify that meaningful consultation has taken place.
- Tribal Nations must have the opportunity to review, edit, and approve the state five-year build out plans prior to the award of BEAD Program funds. This will ensure that Tribal Nations are fully aware of the five-year build out plan, verify that we have received meaningful consultation, and review what percentage of BEAD Program funds we will receive.
- State governments must detail the percentage of requested BEAD Program funds that will be distributed to Tribal Nations for broadband planning, deployment, and/or adoption of these critical services on our lands.
- State governments must detail plans to interconnect with Tribal infrastructure built, which includes both electric and telecommunications services. This will ensure that Tribal Nations are connected to appropriate backhaul and middle mile services and the electricity needed to power this infrastructure.
- State governments must not obstruct Tribal Nation efforts to protect cultural and sacred sites, including, but not limited to, the undertaking of reviews through Section 106 of the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA). States must clearly outline plans to comply with NHPA and NEPA, including deferring to Tribal expertise on cultural and sacred sites, including those outside of Tribal homelands.

USET SPF will continue to monitor this proceeding and continue to advocate that any IIFA funds, especially those awarded to the newly created BEAD Program, include the consideration and active broadband deployment on Tribal Lands.

USET SPF Submits Comments to DOI on IJA Implementation

On February 4th, USET SPF provided [comment](#) to the Department of the Interior (DOI) regarding its implementation of the Infrastructure Investment and Jobs Act (IIJA). As you know, for generations, the federal government – despite abiding trust and treaty obligations – has substantially under-invested in Indian Country’s infrastructure. Indeed, there are hundreds of billions of dollars in unmet infrastructure obligations across Indian Country to include housing, transportation, judicial, health care, and communication, among other forms of infrastructure. The IIJA presents an opportunity to begin to right these historic wrongs. At the same time, while infrastructure development is critical, in both Indian Country and nationwide, it cannot be at the expense of Tribal sovereignty or our interests. As DOI and the Biden Administration implement the IIJA, it must remember that it has legal and moral obligations to Tribal Nations, which supersede those it may have to other communities.

Recognizing the vast unmet infrastructure and nation rebuilding obligations that exist across Indian Country, we urged DOI to ensure the distribution of these dollars results in meaningful access and benefit for all Tribal Nations, while upholding Tribal sovereignty and self-determination. This includes This involves the enactment of policies that uphold our status as sovereign governments, our right to self-determination and self-governance, and honor the federal trust obligation in full— including support for a Marshall Plan that more fully addresses the federal government’s infrastructure obligations to Indian Country.

USET SPF Submits Comments to NTIA on Additional Funding for TBCP

On January 31, 2022, USET SPF submitted [comments](#) in response to a Tribal consultation held on January 14, 2022 by the National Telecommunications and Information Administration (NTIA). This consultation focused on the additional \$2 billion appropriated to the Tribal Broadband Connectivity Program (TBCP) through the Infrastructure Investment and Jobs Act (IIJA). NTIA was seeking Tribal guidance on whether to allocate the additional \$2 billion to existing applicants under the 2021 Notice of Funding Opportunity (NOFO) for the TBCP or issue a second NOFO. USET SPF supported allocating the full \$2 billion in additional TBCP funds to existing unfunded applications from the June 2021 NOFO due to application submissions exceeding initial funds availability. We recommended that the issuance of a second NOFO should be contingent upon all applications from the 2021 first round NOFO having been reviewed and considered.

During the January 14th Tribal consultation, there was general support for allocating the additional \$2 billion IIJA funding for the TBCP to Tribal Nations that applied for the June 2021 NOFO. USET SPF also supports the 100% allocation of the additional \$2 billion to Tribal Nations that submitted a response to the 2021 NOFO. This would ensure that vital broadband funds are disbursed expeditiously to Tribal Nations. During the consultation Tribal Leaders expressed concerns regarding the number of applications and funding requests that have yet to be reviewed and determined by NTIA. Although there was general support for issuing the additional \$2 billion in TBCP funds provided by the IIJA, we have been informed that NTIA plans to move forward with initiating a second NOFO. USET SPF will continue to monitor this proceeding.

USET SPF Celebrates VAWA Reauthorization with Tribal Provisions

On March 15th, as a part of the [Fiscal Year 2022 omnibus appropriations bill](#), President Biden signed into law [a reauthorization of the Violence Against Women Act \(VAWA\)](#). The reauthorization comes over three years after the expiration of VAWA's last authorization. After sustained advocacy across Indian Country, USET SPF celebrates the enactment of this historic legislation which better recognizes our inherent sovereignty and makes significant advancements in the fight against violent crime in Indian Country, as well as our nation-to-nation relationship with the United States.

"USET SPF member Tribal Nations envision a future in which our children, women, elders, and all Native people can live in healthy, just, vibrant communities free of violence," said USET SPF President, Kirk Francis. "With the 2022 Reauthorization of VAWA, and its reaffirmation of our sovereign authority to prosecute those who harm our citizens, we are closer than ever to making this a reality. We extend our sincere gratitude to VAWA's champions on Capitol Hill and in the Biden Administration for making this a priority."

The bill contains several long-sought [Tribal provisions](#) including:

- Reaffirmation of Tribal criminal jurisdiction in crimes against children and law enforcement, as well as sexual assault, stalking, and human trafficking;
- Clarification that all Tribal Nations in Maine can exercise Special Tribal criminal jurisdiction under VAWA;
- An increase in resources for Tribal Nations to exercise Special Tribal Criminal Jurisdiction and the establishment of a reimbursement program to cover Tribal costs;
- A requirement that non-Indian defendants exhaust all Tribal court remedies before appealing to federal court;
- Reauthorization of funding for and amending the [Tribal Access Program](#), to ensure that all Tribal Nations can access national crime information systems for criminal justice and non-criminal justice purposes; and
- Permanency for the 2010 [Bureau of Prisons Tribal Prisoner Program](#) and allowing Tribal Nations to place offenders in federal facilities that are sentenced to one year or more.

As we [previously alerted](#), the bill's Tribal title is the product of a discussion draft circulated in December 2021 by Sens. Murkowski and Schatz. USET SPF submitted [testimony for the record](#) of SCIA's December 8th hearing on VAWA Title IX in which we expressed support for the discussion draft, while noting that many of our other member Tribal Nations are subject to restrictive settlement acts that states may use to challenge the full application of VAWA and other laws. USET SPF also testified at a 2019 SCIA Hearing on Tribal public safety in which we supported many of these same provisions.

As sovereign governments, Tribal Nations have a duty to protect our citizens, and provide for safe and productive communities. USET SPF lauds the 2022 reauthorization of VAWA as it represents a major step in the right direction toward the United States recognizing Tribal Nations' inherent sovereign rights and authorities. We continue to call for a the full restoration of criminal jurisdiction

to our governments through a fix to the Supreme Court decision in *Oliphant* and will provide additional updates as the implementation of VAWA proceeds.

Land

USET SPF Leads Inter-Tribal Organization Letter to Senate Urging *Carcieri* Action

On April 11th, a [letter](#) led by USET SPF and signed by a total of 17 Tribal organizations was transmitted to the Senate Committee on Indian Affairs (SCIA) urging action on legislation that would address the deeply misguided Supreme Court decision in *Carcieri v. Salazar*. This decision has generated a wave of costly litigation, as well as caused significant direct negative economic, community, and cultural impacts in Indian Country. The chaos and confusion resulting from this decision must finally come to an end once and for all. *Carcieri* stands in direct conflict with the ability of ALL Tribal Nations to rebuild our nations and economies after years of direct federal action designed to deprive us of our lands and diminish our inherent sovereign rights and authorities.

The U.S. House of Representatives has passed legislation addressing the deep inequities resulting from *Carcieri* twice during the 117th Congress, including by a wide, bi-partisan margin of 302-127 on December 1, 2021. The time is long overdue for the Senate to also take action to right this wrong.

In light of this, our joint letter strongly urges the Senate Committee on Indian Affairs, as the Senate committee tasked with leading strong U.S.-Tribal Nation diplomatic relations and protecting the principles of our sovereign status, to work toward enactment of legislation that would reaffirm the status of existing Tribal trust lands and restore certainty and fairness to the Tribal land into trust process by fixing the flawed *Carcieri* decision. Such legislation must have two components: (1) restoring the Secretary's IRA authority to take land into trust for all federally recognized Tribal Nations; and (2) reaffirming existing Tribal trust lands. This includes S. 1901 (sponsored by Senator Jon Tester) and similar bills that will achieve these two goals.

In addition, while USET SPF firmly believes that the trust obligation supersedes responsibilities to other units of government, one opportunity to mitigate the impacts of trust land acquisition asserted by state and local governments lies within the Payment in Lieu of Taxes (PILT) program. Currently, state and local jurisdictions, citing lost tax revenue, frequently oppose the restoration of Tribal homelands (either indefinitely or until Tribal Nations agree to payments), hindering efforts to restore Tribal land bases, provide governmental services to Tribal citizens, and engage in economic development.

Since 1977, the Department of the Interior (DOI) has issued billions in PILT to local governments that help offset losses in property taxes due to the existence of nontaxable federal lands within their boundaries. However, while PILT payments are made for lands administered by the Bureau of Land Management, the National Park Service, the U.S. Fish and Wildlife Service, and the U.S. Forest Service (part of the U.S. Department of Agriculture) and for Federal water projects and some military installations, lands held in trust for Tribal Nations are not currently eligible. USET SPF [believes that PILT](#) (or a PILT-like mechanism) for lands put into trust could remove barriers to the restoration of Tribal homelands while also easing the perceived burdens of and impacts to local government as a result of lost tax revenue.

USET SPF remains focused on restoring and protecting the homelands of our member Tribal Nations and those across the country. We will continue to advocate for a *Carcieri* fix and other policy and legislative change aimed at this goal, and provide updates as they develop.

Litigation

\$590 Million Tribal Settlement in Opioid Litigation

On February 1st, Tribal plaintiffs in the years-long, nationwide multi-district litigation against manufacturers, distributors, and retailers of prescription opioid medications have achieved two major settlements : Opioid manufacturer Johnson & Johnson has agreed to pay up to \$150 million over a period of two years, while the three largest distributors of prescription opioids (AmerisourceBergen Corp., McKesson Corp., and Cardinal Health, Inc. (Distributors) have agreed to pay up to \$439,964,500 over six years to settle all filed and potential Tribal opioid-related claims against them.

All federally recognized Tribal Nations are eligible to participate in the proposed settlements and need not file a lawsuit in order to participate. The settlements will become effective when certain participation thresholds (discussed below) are met. Settlement funds are to be used by participating Tribal Nations and organizations for opioid abatement purposes, including “culturally appropriate activities, practices, teachings or ceremonies that may, in the judgment of a Tribe or Tribal Entity, be aimed at or supportive of remediation and abatement of the opioid crisis within a tribal community.”

Johnson & Johnson (J&J) Proposed Settlement Terms

J&J has agreed to pay a maximum of \$150 million to eligible Tribal Nations and Tribal organizations over two payments. The first payment of up to \$75 million will be paid 30 days after the effective date of the settlement, and the second payment of up to \$75 million will be paid on the one-year anniversary of the effective date.

The settlement will become effective when 95% of *litigating* Tribal Nations and Tribal organizations by allocation percentage (discussed further below) elect to participate. (Non-litigating Tribal Nations may also choose whether or not to participate, but that will not affect whether the proposed settlement becomes effective.) The total amount of settlement funds available will be decreased in proportion to the allocation share of any non-participating litigating Tribal Nations.

Distributor Proposed Settlement Terms

The Distributors have agreed to pay up to \$439,964,500 over a term of six years for a “global” Tribal settlement. The first payment of \$62,852,071.43 will be paid within thirty days after the settlement effective date, with additional payments to be paid on July 15 of each year.

The Distributor settlement will become effective when the following two conditions are met: (1) 95% of *litigating* Tribal Nations and Tribal organizations by allocation percentage elect to participate; and (2) at least fourteen non-litigating Tribal Nations with a population of at least 5,000 citizens elect to participate. If these thresholds are not met, the court-appointed Tribal Leadership Committee may ask the Distributors to enter into the settlement agreement

with just those Tribal Nations and Tribal organizations that wish to join, and the Distributors may, in their discretion, decide whether or not to do so.

As with the J&J terms, the total settlement amount will be decreased in proportion to the final allocation percentage of any *litigating* Tribal Nations that elect not to participate. With respect to non-litigating Tribal Nations, the Distributors agree to pay their shares into escrow for four years from the effective date. At that point, if at least 2/3 of the non-litigating Tribal Nations (by population) have joined the settlement, then the Distributors will continue to pay all non-litigating Tribal Nations' shares into escrow and, on the final payment date, any unclaimed shares up to \$20,000,000 will be reallocated to participating Tribal Nations and Tribal organizations. If at the four-year mark less than 2/3 of the non-litigating Tribal Nations have elected to participate, all unclaimed shares will revert to the Distributors and no further payments will be made for non-litigating, non-participating Tribal Nations.

For more information on these settlements, their terms, administration, and allocation, we pass along a [FAQ document](#) prepared by the court-appointed Tribal Leadership Committee. While member Tribal Nations are strongly encouraged to confer with legal counsel on this issue, we hope that this provides additional clarity as you consider whether to participate in the settlement. Additionally, settlement documents, information, and updates will be posted on a [public settlement website](#). The website will provide current information on an ongoing basis as the settlement implementation progresses.

Further, we enclose a [memo from Hobbs Straus Dean & Walker](#), as well as a [statement from the Tribal Leadership Committee](#) and the [order regarding settlement allocation and trust fund administration](#). These settlements do not fully resolve the Tribal litigation, as there are several remaining defendants, but they are the first major settlement of nationwide mass tort litigation to include Tribal Nations as a separate category of plaintiffs based on their sovereign governmental status. USET SPF will continue to monitor the settlement process and ongoing litigation, and will provide updates as they develop.

Other

USET/USET SPF Issues 2nd Edition of Organizational Education Book

USET/USET SPF has recently published the second edition of our [organizational education book](#). It provides an overview of USET and USET SPF's priorities and initiatives, as well as our history and membership. We plan to utilize it in our Washington, DC outreach and education efforts, and beyond. Hard copies of the book have been mailed to each member Tribal Nation. To request additional copies, please email Brandy Venuti at bvenuti@usetinc.org.

Trust Modernization

USET SPF Expresses Opposition to RESPECT Act Revisions that Undermine Tribal Sovereignty

On March 11th, USET SPF [wrote](#) to House Natural Resources Committee Chairman, Rep. Raul Grijalva (D-AZ) in response to a March 7th Tribal briefing regarding revisions to H.R. 3587, the Requirements, Expectations, and Standard Procedures for Effective Consultation with Tribes (RESPECT) Act. The



RESPECT Act would codify Tribal consultation requirements for all federal agencies, including independent agencies. As we have previously indicated, USET SPF strongly supports the spirit and intent of the RESPECT Act, including its application to independent agencies. However, we continue to believe that the bill requires additional refinement before it can receive further consideration.

In particular, we are concerned with the inappropriate status the revised bill would confer upon Alaska Native Corporations (ANCs). While the bill does take steps to reinforce that for-profit ANCs are not Tribal governments, it also places them on equal footing during the consultation process. While we do not dispute that ANCs play a critical role that is also complimentary to Tribal Nations that reside within the borders of Alaska, we feel as though this direct inclusion undermines the government-to-government relationship between Tribal Nations and the United States and dilutes consultation as a diplomatic tool.

At the same time, we do not believe the critical role of Tribal organizations is appropriately reflected in the most recent version of the RESPECT Act. Tribal organizations do play a unique, valuable, and complimentary role in Tribal consultation in support of our membership, including advocating the consensus positions of Tribal Nations from a particular region or across the country. The amended version of the bill would only permit Tribal organization participation in consultation if a Tribal Nation asks for organization participation on its behalf. This would inappropriately place Tribal organizations in a 'lobbying' space.

Finally, as currently written, the RESPECT Act provides Tribal Nations with the opportunity to seek judicial review when federal agencies fail to properly consult on actions affecting Tribal interests. However, legal action may only be possible after the agency action has already taken place. By this time, in the case of cultural resources in particular, irreparable damage may already be done. While legal action would certainly be appropriate, it cannot ever replace damaged or destroyed cultural resources. In order to avoid adverse impacts following an agency finding of no impact, there must be an opportunity for Tribal Nations to appeal a finding of no Tribal impact or intervene prior to agency action.

USET SPF maintains that these concerns must be addressed prior to a full Committee mark-up of the bill or any further consideration by Congress. We have continued to raise these concerns, including through discussions with partner organizations, resulting in the postponement of two attempted mark-ups over the last several weeks. Although we have long called for the codification of Tribal consultation requirements, this cannot come at the expense of Tribal sovereignty and our sacred, Nation-to-Nation, diplomatic relationship with the United States. We stand opposed to any legislative or regulatory effort that fails to honor these fundamental principles.

USET SPF Sends Letter to White House Council on Native American Affairs Regarding Laws of General Applicability

As discussed on our January DC Tribal Reps call, USET SPF remains concerned by recent efforts by the Biden Administration to condition receipt of federal funds on compliance with anti-discrimination laws and other instances of the application of 'laws of general applicability' to Tribal Nations. In



response, USET SPF sent a [letter](#) to Interior Secretary, Deb Haaland, in her role as Chair of the White House Council on Native American Affairs (WHCNAA).

While we understand and appreciate this Administration's focus on racial equity and justice, we underscore that the relationship between Tribal Nations and the United States is not race-based, but rather a political, diplomatic relationship. Compliance with certain laws of general applicability, including non-discrimination laws, that have never been applied to Tribal Nations due to our unique sovereign, political status, as a condition of receipt of federal funds is completely inappropriate.

Efforts must be made to ensure that all federal department and agency actions are consistent with the President's expectation that Tribal sovereignty is respected to the fullest extent. Our letter calls upon the Biden Administration to begin its consideration of whether to apply any laws and other requirements that are generally applicable to the public to Tribal Nations by first assuming they do not and should not apply to Tribal Nations.

In addition to our letter to WHCNAA, USET SPF has also [raised these concerns](#) with the White House Domestic Policy Council, as it seeks to implement the Infrastructure Investment and Jobs Act in a way that prioritizes racial justice and equity.

USET SPF will continue to monitor this issue and will provide further information as it develops.

Voting Rights

USET SPF Signs onto Tribal Partner Organization Letter in Support of Tribal Voting Rights Provisions

USET SPF joined 12 partner organizations on a [letter](#) to House and Senate Leadership urging the inclusion of Native American voting protections in any voting rights legislation considered by the Senate. The letter cited issues with state and local government officials and legislative efforts to undermine Native Americans' right to vote by establishing distant polling locations, limitations on early voting access, and requiring residential mail addresses for ballot collection and drop off within our jurisdictional boundaries.

Our letter calls for immediate, straightforward actions that can be taken to support access to the polls in Indian Country. These include federal mandates requiring on-reservation polling places and registration opportunities and empowering Tribes to designate buildings whose address can be used to register, pick up, and drop off ballots. The letter also recommended protections for the use of Tribally issued IDs and to make ballots available in Native languages at the request of Tribal governments as further protections for the voting rights of Native Americans.

The Joint Tribal Organization letter expressed support for recent legislative efforts, such as the bipartisan Native American Voting Rights Act (NAVRA). The letter also supported the bipartisan John Lewis Voting Advancement Act in the Senate (which includes NAVRA provisions), and the Freedom to Vote Act, which provides a minimum federal standard of access to the franchise. USET SPF will continue to monitor these critically important bills to protect the rights of Native Americans to vote and provide updates as they develop.