



USET

SOVEREIGNTY PROTECTION FUND

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Shalanda Young
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Director Young,

We write on behalf of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) to provide comment to the Office of Management and Budget (OMB) in response to its August 12, 2022 “Dear Tribal Leader” letter initiating consultation on the President’s Fiscal Year (FY) 2024 Budget Request. As we have noted in response to other recent OMB consultations, the agency’s consultations with Tribal Nations on the federal budget are a long-awaited and welcome development. With the release of the President’s FY 2023 Request and its historic proposals for the Indian Health Service (IHS) and binding obligations, as well as the appointment of OMB’s first-ever Tribal Affairs advisor, we are seeing the voices and guidance of Tribal Nations raised to new heights within the Administration’s priorities. We celebrate this achievement and attribute it, in large part, to OMB’s commitment to meaningful dialogue with Indian Country. As you work to formulate the President’s Budget Request for FY 2024, we expect that you will continue to make strides in improving the delivery of federal trust and treaty obligations.

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.

Introduction

As we have indicated previously, inadequate funding to Indian Country needs to be viewed as unfilled trust and treaty obligations. This funding is not delivered on the basis of poverty or for social welfare purposes. The federal government’s trust obligations are the result of the millions of acres of land and extensive

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), 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), Mi’kmaq Nation (ME), 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

resources ceded to the U.S.—oftentimes by force— in exchange for which it is legally and morally obligated to provide benefits and services in perpetuity. At no point has the government fully delivered upon these obligations.

The chronic underfunding of federal Indian programs continues to have disastrous impacts upon Tribal Nations and our citizens, with the COVID-19 crisis bringing this reality into horrifyingly sharper focus. Native Americans experience some of the greatest disparities among all populations in this country. Indeed, the U.S. Commission on Civil Rights' *Broken Promises* report found deep failures in the delivery of federal fiduciary trust and treaty obligations, concluding that the funding of the federal trust responsibility and obligations remains “grossly inadequate” and a “barely perceptible and decreasing percentage of agency budgets.”

While we unequivocally support budget stabilization mechanisms, such as Advance Appropriations, in the long-term, USET SPF is calling for a comprehensive reexamination of federal funding delivered to Indian Country across the federal government. Because of our history and unique relationship with the United States, the trust obligation of the federal government to Native peoples, as reflected in the federal budget, is fundamentally different from ordinary discretionary spending and should be considered mandatory in nature. Payments on debt to Indian Country should not be vulnerable to year to year “discretionary” decisions by appropriators. As the primary agency in the federal budgeting process and with key regulatory and oversight responsibilities, OMB must work with Indian Country to address chronic shortfalls and federal failures to live up to promises once and for all.

With this in mind, the FY 2024 Request should build upon the FY 2023 Request while advocating for even bolder change. With the FY 2023 Request, this Administration took unprecedented steps to include mandatory funding for the Indian Health Service (IHS) and binding obligations. After years of requests that neglected trust and treaty obligations, we welcomed the meaningful policy change proposed by this Administration. It is also important to remember, however, that centuries of neglect and hostile federal policies cannot be undone in a single request. In addition to our advocacy for the highest discretionary increases possible each FY, we are seeking a long-term commitment to federal fulfillment of trust and treaty obligations—including full and mandatory funding for **all** federal agencies and programs serving Tribal Nations.

Funding for the Bureau of Indian Affairs

We continue to note the historic and continued unmet funding obligations with regard to BIA's diverse line items. It is our expectation that, after years of Budget Requests proposing deep cuts to BIA, the Biden Administration Requests will continue to propose substantial increases across the agency. In the longer-term, the Administration should commit to exploring mandatory funding for the BIA, in addition to the Indian Health Service (IHS).

Working in partnership with the BIA, the yearly budget formulation process now offers a much more comprehensive look at the priorities of Tribal Nations across the many lines and accounts found within the BIA budget. However, we remain focused on the addition of a component or calculation of BIA's unfunded obligations in order to measure performance. We offer the Eastern Region's top priorities for FY 2023 in eight different strategic funding categories:

- Strengthening Tribal Communities: **Social Services (TPA)**
- Trust-Natural Resources Management: **Natural Resources (TPA)**
- Trust-Land & Water Rights Management: **Real Estate Services Program (TPA)**
- Public Safety & Justice: **Tribal Courts (TPA)**
- Economic Development: **Economic Development (TPA)**

- Education: **Scholarships & Adult Education (TPA)**
- Construction: **Education Facilities Improvement and Repair**
- Resource Management Construction: **Federal Power Compliance [FERC]**

In addition to the above priorities, USET SPF remains focused on the restoration of Tribal homelands as a top priority. We continue to work to reacquire our homelands, which are a fundamental to our existence as sovereign governments and our ability to thrive as vibrant, healthy, self-sufficient communities. The federal government's objective in the trust responsibility and obligations to our Nations must be to support healthy and sustainable self-determining Tribal governments, which fundamentally includes the restoration of lands to all federally-recognized Tribal Nations, as well as the legal defense of these land acquisitions. With this in mind, we are pleased to see the Administration's support for a fix to the Supreme Court Decision in *Carcieri v. Salazar*, and we look forward to the opportunity to work on this and other land restoration priorities, as well as improvements to the land-into-trust process.

With this in mind, we would like to reiterate a funding request that we believe will have positive impacts on efforts to increase the amount of land going into trust for Tribal Nations. 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. We urge the inclusion of this funding in the FY 2024 Request.

Funding for Tribal Historic Preservation

Due to chronic underfunding, many Tribal Historic Preservation Offices (THPOs) are currently operating without the necessary personnel to conduct National Historic Preservation Act Section 106 reviews. THPOs are the protectors of irreplaceable resources: our cultures and spirituality. The explosion in infrastructure development that will be funded by the Bipartisan Infrastructure Law is likely to overwhelm THPOs without additional funding and other resources. While we recognize a modest increase THPO funding is proposed under FY 2024 Request, we urge the Administration to request and provide additional, increased resources for THPOs, so that we may protect our cultural and sacred sites.

Mandatory Funding for the Indian Health Service and Binding Obligations

For the very first time, the FY 2023 Request proposed a shift in 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. In addition, the Request proposed a 10-year plan for providing substantial increases to the agency. 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. While we firmly believe all Indian Country funding should be fully funded today, including the IHS, we recognize that the Biden Administration has taken an unprecedented and positive step forward in its proposal to move us closer to that reality.

In addition to doing so as a part of the IHS proposal, the Request proposes mandatory funding for Contract Support Costs and 105(l) leases—binding obligations—at BIA and the Bureau of Indian Education. While

we contend that all federal Indian agencies and programs should be subject to mandatory funding, in recognition of perpetual trust and treaty obligations, we support the immediate transfer of these lines to the mandatory side of the federal budget. This will ensure that funding increases are able to be allocated to service delivery, as opposed to the federal government's legal obligations.

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. Never before has an Administration issued a Budget Request that calls for mandatory funding, as well as a plan to substantially increase funding for an agency charged with fulfilling sacred promises to Tribal Nations. We now call upon the Administration to fulfill its responsibilities and work with Tribal Nations and Congress to ensure that these proposals are, once again, included in the President's Request and that sufficient detail on their operationalization is communicated to Congress. This includes working with Tribal Nations and IHS to draft legislation that reflects our guidance for implementing these changes.

IHS Nashville Area Funding Priorities

In addition to supporting full and mandatory funding for IHS, Nashville Area Tribal Nations identified the following top 10 priority line items for increases in FY 2024:

- 1. Hospitals & Health Clinics**
- 2. Purchased/Referred Care**
- 3. Alcohol & Substance Abuse**
- 4. Mental Health**
- 5. Electronic Health Record System**
- 6. Dental Health**
- 7. Community Health Representatives**
- 8. Maintenance and Improvement**
- 9. Health Education**
- 10. Self-Governance**

Nashville Area priorities and hot issues also include funding for telehealth resources, recurring funding for Public Health Education, impacts of COVID-19 on user pop and workload data, funding for aftercare and housing programs, funding to reduce the influx of Hepatitis C, continued funding for Community Health Representatives, resources to modernize health information technology, and parity in group payor authorities when sponsoring patients on insurance plans.

Special Diabetes Program for Indians (SDPI)

We continue to be frustrated by the persistent flat funding of SDPI, in spite of a wealth of reliable data showing both its efficacy and continued necessity, as well as rising medical inflation. We note that the Administration continues to request only flat funding for the program. With medical costs only expected to rise, the Biden Administration and IHS must do more to ensure that existing programs are not further impacted by our declining purchasing power. Further, despite considerable objection over the impacts to existing grantees, IHS recently issued an 'open competition' Notice of Funding Opportunity for SDPI during the 2023-2027 grant cycle. It is unfair to both existing grantees and new grantees to promote open competition without additional resources. Since the current funding authorization for SDPI expires in FY 2023, we urge this Administration to request an increase in funding to the program as a part of the FY 2024 Request, both to ensure access for all federally recognized Tribal Nations and to account for medical inflation. We further ask that you join us in supporting modernization for SDPI in the form of Indian Self-Determination and Education Assistance Act authorities as opposed to the continuation of a regressive grant model.

Other Selected Lines and Programs. Though not an exhaustive list, USET SPF strongly supports the continued funding and urges increases for the following lines and programs, with a goal of reaching full and mandatory funding for each: Good Health and Wellness in Indian Country (CDC), Rural Community Facilities (ACF), Tribal Opioid Response Grants (SAMHSA), Community Development Financial Institutions Fund grants, the Indian Community Development Block Grant, USDA Rural Business Development grants, EPA state and Tribal assistance grants, BIA Tribal Climate Science Centers, the Tribal set aside from the Crime Victims Fund, and Native American Housing Block Grants.

Funding for Treasury's Office of Tribal and Native Affairs

We would also like to register our support for initial and sustained funding for Treasury's newly established Office of Tribal and Native Affairs. Tribal Nations have long advocated for the creation of an Office of Tribal Affairs within the Treasury to improve the Department's delivery of federal trust and treaty obligations to Tribal Nations. Providing dedicated funding will assist Treasury with fulfilling this directive and ensure that the full array of Treasury's programs will help support Tribally driven economic development and investment in Indian Country.

Funding for the White House Council on Native American Affairs

Presently, and throughout its short history, the White House Council on Native American Affairs (WHCNAA) has operated with virtually no dedicated staffing or financial resources. Traditionally, the work of the Council has been coordinated by an executive director on detail from the Department of the Interior (DOI). And under the Executive Order establishing the Council, DOI "shall provide funding and administrative support for the Council to the extent permitted by law and within existing appropriations." In practice, this has resulted in a lack of substantive support for the work of the body and the executive director, along with a restricting of the WHCNAA's scope and ability to provide meaningful contact between the Cabinet and Indian Country. We note that under the Obama Administration, WHCNAA's major focus appeared to be planning and facilitating the White House Tribal Nations Conference, which, while an important development in the Nation-to-Nation relationship, does not necessarily provide Tribal Nations or the Administration with a more intimate understanding of one another.

USET SPF envisions a WHCNAA that engages in transformative policymaking and, at a minimum, makes several visits to Tribal homelands annually. This cannot be accomplished without direct and dedicated funding for the WHCNAA. Given the potential for WHCNAA to play a significant role in advancing the delivery of the federal government's delivery of trust and treaty obligations, as well as our diplomatic relationship, we urge this Administration to designate a dedicated funding stream for WHCNAA—through the President's Budget Request or other means. It is our belief that this will allow the WHCNAA's work to be more substantive, productive, and meaningful for our evolving U.S.-Tribal Nation relationship.

Invest in and Rebuild Tribal Infrastructure—A Marshall Plan for Tribal Nations

For generations, the federal government – despite abiding trust and treaty obligations – has substantially under-invested in Indian Country's infrastructure. While the United States faces crumbling infrastructure nationally, there are many in Indian Country who lack even basic infrastructure. Following insufficient levels of funding for Tribal Nations in the Infrastructure Investment and Jobs Act, the United States must commit to supporting the rebuilding and restoration of the sovereign Tribal Nations that exist within its domestic borders. Much like the U.S. investment in the rebuilding European nations following World War II via the Marshall Plan, the legislative and executive branches should commit to the same level of responsibility to assisting in the rebuilding of Tribal Nations, as our current circumstances are, in large part, directly attributable to the shameful acts and policies of the United States. In the same way the Marshall Plan acknowledged America's debt to European sovereigns and was utilized to strengthen our relationships and security abroad, the United States should make this strategic investment domestically. Strong Tribal

Nations will result in a strengthened United States. At the same time, any infrastructure build-out, in Indian Country and beyond, must not occur at the expense of Tribal consultation, sovereignty, sacred sites, or public health.

Correct Failures in the Federal Budget Process and Funds Administration

As a part of OMB's renewed commitment to delivering upon its trust and treaty obligations to Tribal Nations through its dedicated Tribal Affairs Advisor, USET SPF continues to urge the agency to make structural reforms to the budget formulation process, the delivery of federal funding to Tribal Nations, and its ongoing engagement with Indian Country. To this end, we continue to underscore the necessity of the following changes:

- **OMB Must Produce a Detailed Crosscut of Federal Indian Funding**

The agency asserts that over \$20 billion in federal dollars is appropriated to Indian Country annually. From the perspective of Tribal advocates, including those who serve on budget formulation committees for federal agencies, this number seems to be widely inflated, with far less actually reaching Tribal Nations and Tribal citizens. We suspect that OMB arrives at this figure by tallying the amount for which Tribal Nations and entities are eligible, regardless of whether these dollars actually reach Indian Country. While OMB has provided a high-level crosscut of this funding in the past, both USET SPF and the Tribal Interior Budget Council (TIBC) have asked for a full, detailed accounting of federal funding distributed to Indian Country. This should include details such as how many Tribal Nations accessed funding under each line, how the funding was delivered, and whether the funds were accessed directly through the federal government or through states. USET SPF firmly believes that this information is absolutely essential to consultation around federal budget formulation, as well as the measurement of the federal government's own success in meeting its obligations and the work of Tribal Nations.

- **Presidential Budget Requests Must Contain Full Funding Figures**

Several federal agencies engage in a Tribal budget formulation process, via Tribal consultation, which is then supposed to influence the Administration's request. Yet, it is typical for any Tribal recommendations that appear in the President's budget request to be significantly scaled back. While we recognize that the Administration may be unable to incorporate all of our recommendations into the official request, Congress should, at the very least, be informed of what Tribal Nations are requesting. In addition, OMB must work with federal agencies and Tribal Nations to determine and reflect shortfalls, both total and by agency/program, in the overall funding of trust and treaty obligations.

Similarly, OMB should require departments/agencies to provide annually a full and complete picture of unfulfilled trust and treaty obligations. The only way the United States can effectively measure how well it is fulfilling its obligations is in comparison to a full funding for Indian Country budget number. Each department/agency should be required to work in partnership with Indian Country to determine complete budgetary fulfillment of trust and treaty obligations.

- **Reduce Burdens for Tribal Nations**

A primary function of the agency is to help improve administrative management, to develop better performance measures and coordinating mechanisms, and to reduce any unnecessary burdens on the public. In fulfilling this responsibility, OMB must approach its dealings with Indian Country in a manner that works to significantly diminish unnecessary burdens placed on Tribal Nations. Moving away from a grants-based mentality is an initial step toward a more appropriate approach. In addition to measuring the performance of Tribal Nations with appropriated federal dollars, OMB

must also work to measure how well federal entities are performing in carrying out their trust duties and functions.

The sacred trust obligation to Tribal Nations transcends measurements, outputs, data, and statistics. While these things are important, the obligations due to Tribal Nations should not be based on this understanding. Rather, these are things that Tribal Nations concern themselves with as an internal matter to ensure they are providing strong services to their citizenship. We must explore a new approach together that better respects Tribal sovereignty. This includes providing guidance to federal agencies that upholds the directives of Executive Order 13175, especially Section 6, which encourages the waiver of statutory and regulatory requirements with a goal of promoting Tribal sovereignty and self-determination.

- **Invest in Diplomacy**

The federal government must fully recognize and uphold our Nation-to-Nation diplomatic relationship. This directive extends to ensuring both federal agencies and Tribal Nations have access to resources that support diplomatic activities. True diplomacy, as evidenced by activities conducted by the U.S. Department of State, would involve U.S. ambassadors appointed to liaise with each federally recognized Tribal Nation on behalf of the federal government, rather than facilitating this relationship through national or regional consultations. While we recognize retooling the consultative relationship to allow for a truly diplomatic relationship involves many steps, funding for these activities is certainly one of them. We encourage OMB to consider how it might include diplomacy in future budget requests. This would include funding for federal agencies to build and sustain diplomatic infrastructure, as well as increased funding for Tribal Nation participation in these processes.

- **Promote Self-Governance through Interagency Transfer Authority**

USET SPF is working toward a future in which all federal dollars are eligible to be contracted or compacted under the Indian Self-Determination and Education Assistance Act (ISDEAA). In the short-term, we urge OMB to ensure all federal Indian funding can be transferred between federal agencies, so that it may be received through contracts and compacts. We cite the unnecessary delays and barriers to the receipt of urgently needed COVID-19 relief funding as an example of why this authority must be confirmed.

- **Expansion and Evolution of Tribal Self-Governance**

Despite the success of Tribal Nations in exercising authority under ISDEAA, as well as the recently enacted Practical Reforms and Other Goals to Reinforce the Effectiveness of Self-Governance and Self-Determination (PROGRESS) for Indian Tribes Act, the goals of self-governance have not been fully realized. Many opportunities still remain to improve and expand upon its principles. An expansion of Tribal self-governance to all federal programs under ISDEAA would be the next evolutionary step in the federal government's recognition of Tribal sovereignty and reflective of its full commitment to Tribal Nation sovereignty and self-determination. Department of Health and Human Services (HHS) agencies and programs outside of the Indian Health Service are particularly well-positioned for ISDEAA expansion. Tribal Nations have worked over multiple Congresses and Administrations to demonstrate that this expansion is feasible and introduce necessary legislation. We ask the OMB join us in supporting this evolution. Broadly, OMB must treat Tribal Nations in a manner befitting our government status, not as grant funded entities or special interest groups. Far too many dollars are only accessible via competitive grants. Forcing Tribal Nations to compete for grants utilizes a process that does not respect the sacred and unique diplomatic relationship that exists between Tribal Nations and the United States.

- **Establish an OMB Tribal Advisory Committee**

A Tribal advisory committee (TAC) would provide the agency with the opportunity for direct communication with and guidance from Tribal leaders on a regular basis. The TAC would complement OMB's consultation with all Tribal Nations, as well as its Indian Desk, by providing specialized guidance on agency initiatives and functions. The TAC should provide broad regional representation reflective of the diverse circumstances facing Indian Country and members should be selected by the Tribal Nations of each region.

- **Ensure Adequate Funding for Inherent Federal Functions**

While we firmly believe that the United States must fully honor its promises and obligation to Indian Country, including direct programmatic funding, we recognize that there are federal functions and services that we cannot contract and compact. When these functions and services are not adequately funded, it is to the direct detriment of Indian Country.

Conclusion

We view the President's Budget Request as a statement on each Administration's regard for its trust and treaty obligations to Tribal Nations. As OMB crafts the President's FY 2024 Budget Request, we are seeking greater positive structural, systemic change 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. USET SPF asks that you 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. Should you have any questions or require additional information, please do not hesitate to contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at (615) 838-5906 or by e-mail at lmalerba@usetinc.org.

Sincerely,



Kirk Francis
President



Kitcki A. Carroll
Executive Director