

The Beat in DC



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Biden Administration

Elizabeth Carr Appointed as First-Ever OMB Tribal Affairs Advisor

The White House has [announced](#) the creation of the first-ever Tribal Advisor position within the Office of Management and Budget (OMB). This position will report directly to OMB Director Shalanda Young and will be responsible for coordinating Tribal Nation priorities across OMB's budgetary, management, and regulatory functions. The Tribal Advisor will also be responsible for coordinating with leaders in the White House and across the Administration and serve as a key point of contact for Tribal Nations. Elizabeth Carr, a citizen of the Sault Ste. Marie Tribe of Chippewa Indians and formerly a Senior Advisor to the Director of the Indian Health Service, has been chosen as the inaugural Tribal Advisor to the Director of OMB.

USET SPF has consistently advocated for the establishment of a Tribal presence at OMB. In USET SPF comments submitted to OMB in [April 2021](#), [July 2021](#), and [May 2022](#) we stressed the importance of establishing a dedicated Tribal Affairs Department within the Director's Office as well as the establishment of an OMB Tribal Advisory Committee. With this in mind, we applaud this historic decision and look forward to working with Ms. Carr on improving the federal government's delivery of trust and treaty obligations, including through the federal budget.

"USET SPF applauds the Administration's continued commitment to improving its execution of trust and treaty obligations by establishing the first-ever Tribal Advisor at OMB," said USET SPF President, Chief Kirk Francis. "While OMB serves a powerful oversight function within the Executive Branch, it has historically failed to ensure that all federal actions are the result of Tribal consultation, uphold trust and treaty obligations, and promote Tribal sovereignty and self-governance. This includes producing a budget request that delivers upon these sacred obligations. We support the appointment of Tribal Advisor Carr and look forward to partnering with her as she seeks to implement long overdue and necessary change at OMB."

USET SPF will continue to advocate for additional Tribal resources and personnel at OMB to support meaningful change and inclusion of Tribal Nation priorities in OMB's budgetary, management, and regulatory functions. We look forward to working with Tribal Advisor Carr in the annual budget formulation process, the OMB crosscut, and the continued review of OMB's regulatory and policy procedures concerning Tribal Nations.

Budget

Congress Passes Continuing Resolution to Begin FY 2023

As has become routine for this time of year, Fiscal Year (FY) 2023 has begun under a [Continuing Resolution](#) (CR), which will continue to provide discretionary funding for the government at FY 2022 levels through December 16, 2022. The President signed [H.R. 6833](#), the Continuing Appropriations



and Ukraine Supplemental Appropriations Act, into law on September 30th, just hours before FY 2022 funding was set to expire. This mechanism allows the government to continue operating—avoiding a shutdown—while Congress works to enact the 12 annual appropriations bills required to provide updated funding to federal agencies for FY 2022. Thus far, no FY 2022 appropriations bills have been passed by both chambers of Congress and signed into law by the President.

In addition to continued flat funding for the federal government, the bill also provides a higher level of funding to the Indian Health Service for the staffing and operation of new facilities, an additional \$1 billion for the Low-Income Home Energy Assistance Program (LIHEAP), various Department of Health and Human Services extensions, and another \$12.35 billion in aid to Ukraine, among other provisions.

On July 20th, the House of Representatives voted to approve a [six bill appropriations package](#) containing its version of the Interior, Environment, and Related Agencies appropriations bill for Fiscal Year (FY) 2023. This bill contains funding for the Bureaus of Indian Affairs (BIA) and Indian Education (BIE), as well as the Indian Health Service (IHS). For BIA, the bill would provide a total of \$2.75 billion, which is an increase of \$489.6 million over FY 2022 enacted and \$12.6 million above the President's request. For BIE, the bill provides a total of \$1.58 billion, an increase of \$295 million over FY 2022 enacted and \$2 million above the President's Budget Request. This includes \$45.6 million for Eastern Region priority Scholarships & Adult Education (TPA), which is \$5 million above FY 2022 and \$534,000 above the President's Request. In addition, the Committee provides \$108 million for Education Facilities improvement and repair, which is an increase of \$12.7 million over FY 2022 enacted and in line with the President's Request.

The bill would fund IHS at a total of \$8.1 billion. This number is \$1.5 above the FY 2022 enacted level, but \$1 billion below the President's Request. Of this, \$5.7 billion would be allocated for the Indian Health Services Account and \$1.3 billion for the Indian Health Facilities Account. Notably, despite continued advocacy from all corners of Indian Country and the Biden Administration, the bill does not include Advance Appropriations for IHS or contemplate mandatory funding for the agency, as was included in the President's Budget Request. The House Appropriations Committee remains an impediment to the approval of Advance Appropriations for IHS, as we discuss further in a subsequent article below.

While it has not taken further action, the Senate Appropriations Subcommittee on Interior, Environment, and Related Agencies released its [mark](#) on July 28th. BIA and BIE are collectively funded at \$4.022 billion, an increase of \$422 million (11.7 percent) above the FY 2022 level. This funding provides increases aimed at tackling the effects of climate change, boosting public safety and justice programs, supporting the Indian Boarding School Initiative, and accelerating new school construction across the BIE school system.

The Senate draft bill currently includes a total discretionary budget authority of \$7.38 billion for IHS, an 11% increase over FY 2022 enacted levels, but below the House mark of \$8.1 billion. Within this total, \$2.7 billion is provided for hospitals, clinics, personnel and health services, \$2.2 billion is provided for Purchased/Referred Care, \$260 million is provided for dental health, and \$127 million for mental health programs and telehealth behavioral programs. The Senate draft bill also includes a 15% increase, or \$1.08 billion, for new hospital construction, equipment purchases and replacement, and water and waste infrastructure improvements.

Importantly, the Senate bill includes an advance appropriation of \$5.577 billion for the IHS in FY 2024. This amount is equal to the FY 2023 amount, with the exception of the funding provided for Electronic Health Record modernization, Sanitation Facilities Construction, and Health Care facilities construction. According to the Senate Interior Appropriations Subcommittee, these accounts are exempt from the advance appropriation because of their project-based nature.

This is the second time that advance appropriations for IHS have been included in a Senate Interior Appropriations mark. For FY 2022, the Senate Appropriations Committee had included a proposal for IHS to begin receiving Advance Appropriations in FY 2023, which was ultimately not adopted as a part of final FY 2022 appropriations legislation. As you are aware, USET SPF has consistently supported Advance Appropriations for IHS (and all federal Indian agencies and programs) as a critical mechanism to provide certainty in the short-term. In the long-term, we continue to advocate for mandatory funding for IHS and all federal Indian agencies and programs.

In addition to Advance Appropriations for IHS, the Senate has included an important provision to transition Contract Support Costs and 105(l) Lease Payments for IHS, BIA, and BIE to an appropriated entitlement (mandatory spending) in FY 2024—another proposal for which we have consistently advocated. This would allow these vital programs to continue in perpetuity without interruption and without drawing down discretionary funds.

As a reminder, the Senate and House versions of the Interior bill are starting proposals, as the two chambers will ultimately have to agree to final funding levels and the President will need to sign the bill into law. As December 16th approaches, full year FY 2023 appropriations or a Continuing Resolution must be enacted by this date or the government risks a shut down. Further complicating year-end appropriations action are several items of unfinished business that Congress must complete before adjourning for the year. These include the National Defense Authorization Act, disaster relief funding for Hurricane Ian, and others. USET SPF will continue to monitor the FY 2023 appropriations process and provide further updates as they develop.

- [USET SPF Testimony Before House Interior Appropriations for FY 2023](#)
- [USET SPF Comments to OMB on FY 2023 Budget Request](#)
- [USET SPF Statement on Mandatory Funding for IHS](#)
- [President's FY 2023 Budget Request](#)
- [USET SPF Comments on Mandatory Funding Approaches for the Indian Health Service](#)

USET SPF President Francis Testifies in Support of IHS Advance Appropriations

On July 28th, USET SPF President Kirk Francis [testified before the House Natural Resources Subcommittee for Indigenous Peoples](#) of the United States in support of [H.R. 5549, the “Indian Health Service Advance Appropriations Act.”](#) In our testimony, USET SPF President Francis reiterated USET SPF’s historic and continued support for IHS advance appropriations as an important mechanism to bring certainty to funding for the Indian Health System in the short-term. He spoke to the chronic underfunding of the IHS and how that underfunding has contributed to rampant health disparities and destabilization within the agency. President Francis spoke to the devastating effect government shutdowns and funding lapses have had on the IHS and its beneficiaries. He condemned the US government for its continued failure to meet its trust and treaty obligations to Tribal Nations,

and urged Congress to right these wrongs by providing, at minimum, advance appropriations for the IHS and the Bureau of Indian Affairs.

However, despite consistent advocacy and growing support for this common-sense reform, advance appropriations for both agencies remain elusive. Together, Indian Country and the Biden Administration spent the last appropriations cycle advocating for this change and yet Advance Appropriations for IHS in Fiscal Year (FY) 2023 was not included in FY 2022 omnibus appropriations legislation. While the Senate proposal for FY 2022 would have provided Advance Appropriations for the IHS Services and Facilities accounts for the first time in FY 2023, this authority did not carry over as the final bill was negotiated. The House proposal's report language indicated that the House Interior Appropriations Committee did not provide advance appropriations authority for IHS because of a purported lack of detail from the agency. However, it remains unclear what information is being sought and whether House appropriators are

Advance appropriations for IHS (and all federal Indian agencies and programs), and the certainty it would bring, is long overdue. USET SPF's testimony, once again, urges this Congress to act swiftly to bring the destabilizing effects of its own inaction to an end for Indian Country. We urged the Subcommittee to work with its colleagues to ensure enactment of these bills, to facilitate the provision of any necessary information from IHS to appropriators and/or to urge appropriators to take independent action to provide advance appropriations to IHS.

In addition to Advance Appropriations, President Francis's written testimony also called for a full and comprehensive overhaul of the funding mechanisms in Indian Country, including our strong support for transitioning all federal Indian agencies and funds to the mandatory side of the budget in the long-term, as well as expanding self-governance across the government. We further reiterate our call for a Marshall Plan for Tribal Nations aimed at rebuilding and restoration of the sovereign Tribal Nations that exist within the domestic borders of the United States.

USET SPF will continue to support Advance Appropriations for IHS as the FY 2023 appropriations process proceeds. We will provide updates as they become available.

- [USET SPF 2019 Testimony Before House Natural Resources](#)
- [USET SPF 2014 Testimony Before the Senate Committee on Indian Affairs](#)

COVID-19

USET SPF, Partners Urge Extension of Treasury COVID-19 Programs

On September 23rd, the Department of the Treasury (Treasury) [communicated](#) to Tribal Leaders that technical assistance operations for COVID-19 recovery programs are in danger of being scaled back if Congress does not enact a Continuing Resolution (CR) that includes language permitting Treasury to repurpose funds from other pandemic programs (e.g., unallocated pandemic funding for the airline industry). Treasury has been working with Congress to seek flexibility in how administrative funds can be used across recovery programs, which would preserve its ability to provide support across recovery programs without affecting any of Treasury's operations. These programs include the Coronavirus State and Local Fiscal Recovery Funds, the Coronavirus Capital Projects Fund, the

Emergency Rental Assistance Program, the Homeowner Assistance Fund, and the Local Assistance and Tribal Consistency Fund.

On September 16, 2022, USET SPF joined an [Inter-Tribal Partner Organization Letter](#) urging Congress to support increased flexibility for recovery fund use by Treasury by repurposing certain unallocated pandemic funds to continue to provide technical assistance to Tribal Nations and citizens to navigate the various COVID-19 recovery programs. We also urged Congress to include a one-year extension of the first tranche of Treasury’s Emergency Rental Assistance (ERA1) funding in the Continuing Resolution (CR) to provide continued government funding beyond the expiration of the Fiscal Year on September 30, 2022. The Consolidated Appropriations Act, 2021 appropriated \$25 billion for the delivery of emergency rental assistance to eligible households facing unemployment or other financial hardship due to COVID-19. Treasury allocated these funds to Tribal governments in January 2021, but many Tribal governments needed to build rental assistance programs before dollars could be obligated. As of September, approximately 65% of ERA1’s Tribal government recipients had remaining funds that would be recouped by the federal government if they were not obligated by September 30th.

Despite concerted advocacy from Treasury and Tribal Nations, as well as assurances from some in Congressional leadership, these provisions were not ultimately included in the CR. Because of this, Treasury is preparing to adjust its operations in ways that will impact Tribal Nation recovery fund recipients. Regarding the recovery programs listed above, Treasury is in the process of—

- Ending its call center support, which has provided an entry point for questions from recipients facing issues, including around payments and reporting. This shutdown will begin going into effect in October.
- Sharply curtailing e-mail response operations, limiting Treasury’s ability to respond to most questions that arrive in the recovery program inboxes.
- Reducing reporting and recipient monitoring footprint, slowing Treasury’s responses to incoming questions from jurisdictions and potentially impacting resolution of Single Audits.
- Instituting a hiring freeze of federal staff for these programs, limiting Treasury’s ability to participate in direct engagement with recipients or resolve ongoing policy questions that arise.

We will continue to monitor the situation, including additional updates from Treasury and opportunities for further advocacy.

Economic Development

Congress Strikes Deal on ‘Inflation Reduction Act,’ USET SPF Urges Greater Funding for Tribal Nations

After months of negotiation between Senate Democrats, Congress has approved and the President has signed into law, the Inflation Reduction Act—the party’s top domestic priority, an economic



package that provides hundreds of billions of dollars for clean energy programs, raises taxes on corporations and lowers health care costs. However, despite an initial allocation of at least \$20.5 billion under earlier Build Back Better Act proposals, direct funding to Tribal Nations under the Inflation Reduction Act was drastically reduced. And although Tribal Nations are eligible for a much larger portion of total spending under the bill, given the large number of barriers that exist under these funding models, we expect access to this additional funding to be limited, at best.

With this in mind, we sent letters to Congressional leadership as the Senate and then the House considered the bill to urge an increase in direct funding for Indian Country and the addition of other Tribal provisions. While we acknowledged the bill represented a significant departure from Build Back Better, we ask that leadership prioritized trust and treaty obligations as federal officials as the proposal moved forward.

However, due to the strong desire to move the bill while it had enough Democratic support for passage via a partisan mechanism known as budget reconciliation, the reduction in direct funding for Tribal Nations remained. [Less than \\$700 million in direct funding](#) is available for Tribal Nations, which is 0.16% of \$437 billion, the total spending under the bill. Following a 2% set aside in direct funding for Tribal Nations under the American Rescue Plan Act, we have been advocating for at least that level of direct funding in subsequent spending packages. Although additional investments in Tribal climate resilience are positive, we are extremely disappointed in the overall lack of proportionate inclusion for Tribal Nations and our priorities. We will monitor the implementation of the Inflation Reduction Act, as well as continue to advocate for meaningful Tribal Nation inclusion in all federal spending.

USET SPF Submits Comments on Community Reinvestment Act Modernization

On August 5, 2022, USET SPF submitted [comments](#) in response to a Joint Notice of Proposed Rulemaking (JNPRM) to amend regulations for the Community Reinvestment Act of 1977 (CRA). This JNPRM was issued by the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (the agencies). The agencies proposed to amend CRA regulations to modernize how CRA activities qualify for consideration, what CRA activities should be considered, and how CRA activities are evaluated. Among the amendments included proposals to define Native Land Areas, qualifying community development activities on Native Land Areas, and reviewing the impact of community development activities. USET SPF recommended that the agencies adopt regulations that are inclusive of Tribal Nations and our citizens, adopt broad considerations for what constitutes qualifying community development activities on Tribal Lands, and support impact-review metrics that capture investments benefiting Tribal communities and citizens.

USET SPF emphasized that access to capital and other financial resources has long remained a challenging and complex issue for Indian Country. Unlike other units of government, Tribal Nations are prevented from implementing a conventional and comprehensive tax system to capture resources that foster economic growth. Additionally, despite our sovereign governmental status, Tribal Nations continue to lack many of the same benefits and flexibility offered to other units of government under current tax law. USET SPF recommended that the agencies empower Tribal Nations to designate our own Native Land Areas to attract banking community development activities under the CRA. This

action would ensure that Tribal Nation citizens residing outside of our jurisdictional boundaries could benefit from Native Land Area designations and CRA banking investments. We also recommended that the agencies defer to Tribal Nations to determine what constitutes a ‘qualifying community development activity’ for the purposes of CRA investment. This would ensure broad authority for Tribal Nations to determine what type of community development activity would best serve our people, which aligns with the sovereign government operations and decision-making that Tribal Nations engage in daily. USET SPF will continue to monitor the agencies’ proposals to update the CRA and advocate for increased inclusion of Tribal Nation priorities.

Environment & Natural Resources

USET SPF Submits Comments on Administration’s Nature-Based Solutions Report

On September 15, 2022, USET SPF submitted [comments](#) submit these comments in response to the White House Council on Environmental Quality, the Office of Science and Technology Policy, and the Domestic Climate Policy Office (“Executive Offices”). The Executive Offices issued a [Dear Tribal Leader Letter](#) in response to President Biden’s Executive Order 14072, “Strengthening the Nation’s Forests, Communities, and Local Economies”, which directed the Executive Offices to produce a Nature-Based Solutions Report. This included actions on protection, restoration, sustainable management, and climate regulation or adaptation.

USET SPF recommended that the Executive Offices regularly consult with Tribal Nations to identify and support Nature-Based Solutions, particularly due to the dangerous impacts of climate change on our cultures, environments, and public health. This continued engagement and Tribal consultation will ensure that new practices and solutions to identify and integrate Indigenous Traditional Ecological Knowledge (ITEK) and other Tribal-specific practices are shared with the federal government. We also recommended that the Executive Offices should engage with federal agencies to reform methods of partnering with Tribal Nations on Nature-Based Solutions, support for Tribal Self-Governance in food and nutrition programs, and support Tribal efforts for prescribed burning practices. Furthermore, we recommended that federal agencies should request increased funding from Congress to support the use of Native plants in federal programs and educate federal employees on the beneficial use of Native plants in coordination and consultation with Tribal Nations. USET SPF will continue to monitor the development of the Nature-Based Solutions Report and advocate for Tribal Nation priorities in food and nutrition sovereignty.

Health

Roselyn Tso Confirmed as IHS Director, USET SPF Sends Priorities Letter

On September 22nd, the Senate voted under Unanimous Consent to confirm Roselyn Tso as the Director of the Indian Health Service (IHS). Tso was nominated to the position by President Biden on March 10, 2022 and appeared before the Senate Committee on Indian Affairs (SCIA) on May 25, 2022.

Tso is a citizen of the Navajo Nation and has served in professional roles with the IHS since 1984. She currently serves as the Director of the Navajo Area of IHS.

“We appreciate the efforts that were made to fill this important position and are anxious to discuss our priorities with Director Tso. The absence of an IHS Director has inhibited our ability to effectively advocate for our priorities and concerns,” said USET SPF President Kirk Francis. “We look forward to working together to advance and protect Tribal sovereignty and self-governance, as well as improve the federal government’s execution of trust and treaty obligations.”

In an effort to begin discussions and collaboration with Director Tso, on October 7th, USET SPF transmitted a [letter](#) outlining initial priorities and items for dialogue. This letter is similar to another [USET SPF letter](#) sent to the leadership of Senate Committee on Indian Affairs (SCIA) ahead of her confirmation hearing, USET SPF believes strongly that an effective IHS Director will maintain a commitment to Tribal self-governance, Tribal Consultation and fully delivering upon federal trust and treaty responsibilities and obligations.

On May 25th, the Senate Committee on Indian Affairs (SCIA) held a [hearing](#) to consider the nomination of Ms. Roselyn Tso for Director of the Indian Health Service (IHS). The hearing lasted a brief 40 minutes and did not provide much information concerning Ms. Tso’s commitment to working in partnership with Tribal Nations to deliver upon federal trust and treaty obligations. Notably, as SCIA Chairman, Brian Schatz, indicated, Ms. Tso’s questionnaire submitted to the Committee contained no mention of Tribal sovereignty or self-governance. Further, her priorities for the IHS, as outlined in her [testimony](#), are as follows: 1. Strengthening and streamlining IHS’ business operations; 2. Developing systems to improve accountability, transparency, and patient safety; and 3. Addressing the workforce needs and challenges to provide quality and safe care.

It is vital that the IHS Director keep Tribal Nations and their priorities at the forefront of her upcoming work. While the Biden Administration has made historic progress on Tribal Consultation, Tribal Nations continue to push for comprehensive changes to the way the IHS is both funded and operated.

FY 2023 will provide historic opportunities to affect some of these changes, including efforts to transition the IHS to advance appropriations. In the long term, USET SPF remains committed to seeing that all federal Indian programs be funded on a mandatory basis and in full. USET SPF looks forward to working with Director Tso on these vital policy priorities.

USET SPF Submits Comments to NIH on IMPROVE Initiative

On July 15th, USET SPF submitted [comments](#) in response to the National Institutes of Health’s (NIH) virtual rapid-response Tribal Consultation on the NIH Implementing a Maternal health and Pregnancy Outcomes Vision for Everyone (IMPROVE) Initiative Maternal Health Research Centers of Excellence. While we strongly agree that there must be a focus on maternal health and mortality in Indian Country, we urge NIH to tailor this effort to the unique circumstances facing Tribal Nations throughout the United States, as well as ensure it is upholding its trust and treaty obligations to support Tribal sovereignty and self-determination in all areas of its work. With this in mind, we question the necessity and value of a rapid consultation and encourage NIH to take the time to ensure this initiative better reflects Tribal Nation guidance and priorities. Toward that end, we offer the following responses to NIH’s framing questions.



While USET SPF recognizes the importance and necessity of maternal health initiatives, NIH has a legal and moral trust obligation to uphold the sovereign status of Tribal Nations that supersedes all other interests. With this in mind, it is critical that NIH seek Tribal guidance before implementing new initiatives or models in Indian Country, as well as to implement policies and protections that will prevent ethical violations against our communities and our people. Tribal Nations must direct and oversee any research that occurs on our homelands or with our citizens and NIH must ensure necessary policies are in place to protect the sovereignty, ownership, privacy, and use of our data. In the absence of these policies and guidance, NIH-funded research should not be conducted in Indian Country.

USET SPF Submits Comments on the Administration’s National Strategy on Hunger, Nutrition, and Health

On July 14, 2022, USET SPF submitted [comments](#) to the Department of Health and Human Services (HHS) in response to a Tribal consultation held on June 28, 2022 to prepare for the upcoming White House Conference on Hunger, Nutrition, and Health. This Conference was held on September 28, 2022 as part of the Biden-Harris Administration’s initiative to end hunger and increase healthy eating and physical activity by 2030. A Framing Paper for this consultation was released for this Tribal consultation and identified five pillars that the Conference will focus on. These included improving food access and affordability, integrating nutrition and health, empowering consumers to access healthy choices, support for physical activity, and enhancing nutrition and food security research. USET SPF emphasized in our comments that many of these issues affect Tribal Nations frequently and to greater degrees than other jurisdictions and communities in the United States.

We expressed support for the Administration’s effort to include Tribal Nations in this initiative, recognizing that the federal government has a complicated history with food and nutrition policy in Indian Country. We also emphasized the importance of including Tribal Nations in this initiative and to support our sovereign right to directly administer food assistance programs, as well as our efforts to cultivate traditional foods. Specifically, we recommended that the Administration support self-governance for food and nutrition programs like the Food Distribution Program on Indian Reservations (FDPIR) and the Supplemental Nutrition Assistance Program (SNAP), and support for self-governance in U.S. Department of Agriculture (USDA) forestry programs as an essential part of any solution to food insecurity in Indian Country.

Leading up to the White House Conference on Hunger, Nutrition, and Health, the White House issued its National Strategy on Hunger, Nutrition, and Health in September 2022. The White House committed that USDA would continue to expand FDPIR Self-Determination projects, partner with Tribal Nations on enhancements to food packaging, expand the number of Indigenous and traditional foods in the Food Buying Guide for Child Nutrition Programs, and provide training and resources to school meal program operators on incorporating more Indigenous and traditional foods into school meals. However, there was no mention of providing Tribal Nations with self-governance authority to manage SNAP programs. USET SPF will continue to advocate for expanded self-governance authority for programs across the federal government, either through revisions to existing regulations or through legislative action.

Infrastructure

USET SPF Submits Comments to U.S. Army Corps of Engineers re: Modernization of Army Civil Works Priorities

On August 2, 2022, USET SPF submitted comments to the U.S. Army Corps of Engineers (USACE) in response to proposals to modernize its Civil Works Program priorities. This effort was announced on June 3, 2022 through a Notice and Request for Comments in the Federal Register. USACE announced proposals to inform decision-making regarding consultation with Tribal Nations, as well as USACE's programs to implement regulations for Section 106 of the National Historic Preservation Act (Sec. 106 NHPA) under the Appendix C regulations. Throughout June and July 2022, USACE held several public and Tribal Nation meetings to provide an overview of the Federal Register Notice. USET SPF attended several of these meetings and we expressed our concern with USACE's proposals to modernize its Civil Works Programs, especially regarding proposed language to update its Tribal Consultation Policy as well as the continued use of the Appendix C regulations for Sec. 106 NHPA reviews.

Specifically, we recommended that USACE conduct Tribal consultation on a Nation-to-Nation level with federally recognized Tribal Nations, protect our sensitive cultural information from Freedom of Information Act (FOIA) requests, and protect sensitive cultural information in USACE public written responses to Tribal Nations on final decision-making processes from Tribal consultation proceedings. USET SPF also recommended additional updates to USACE's Tribal Consultation Policy that weren't proposed in the Notice and Request for Comments. These included recommended updates to specific sections of its Tribal Consultation Policy to define 'sufficiently early' when informing Tribal Nations of scheduled consultation proceedings. We expressed our concern that district or division level USACE Commands can interpret 'sufficiently early' in ways that best suit USACE's mission and goals for project completion instead of focusing on the priorities and concerns of Tribal Nations. We also emphasized that the continued use of the Appendix C regulations undermines USACE's Tribal Consultation Policy since they do not explicitly recognize the authority of Tribal Nations to attach religious and cultural significance to sacred sites. USET SPF will continue to advocate for rescission of the Appendix C regulations.

USET SPF Opposes Manchin Bill to Streamline Energy Permitting

On September 26th, USET SPF sent a [letter](#) to Senate Leaders Schumer and McConnell, Speaker Pelosi, and House Republican Leader McCarthy expressing our deep concern and opposition to energy permitting provisions that were been advanced by Senator Joe Manchin (D-WV) for inclusion in the Fiscal Year 2023 Continuing Resolution (CR) as part of an agreement to pass the Inflation Reduction Act. [The Energy Independence and Security Act of 2022](#) seeks to expedite the environmental review process under the National Environmental Protection Act (NEPA), enhance federal permitting authority for interstate electric transmission facilities, and require Tribal Nations to publish requirements for water quality certification requests or else default to federal standards. Despite there being clear Tribal implications, this legislation has not received Tribal consultation and we strongly opposed its inclusion in the CR. Our letter asked Congressional Leadership to prioritize their trust and treaty obligations as federal officials and ensure that Tribal Nations have the opportunity to fully vet any legislative changes to the permitting process.



Ultimately, the proposal did not receive enough support from the Senate for inclusion in the CR. However, there is the strong possibility that efforts will continue on this bill for the remainder of this Congress. We will continue to oppose the inclusion of this legislation in any legislative package until the legislative language respects Tribal Nation sovereignty and does not threaten environmental and cultural review processes on Tribal homelands and beyond. These processes are vital to protecting our sacred sites from environmental degradation as well as safeguarding the public health of our communities. Streamlining the review process without Tribal input may cause irreparable harm to our lands, our sacred sites, and our public health. Tribal Nations should not have to bear the brunt of these harms so the nation can further develop and transport its energy resources. We have already sacrificed so much of our lands and natural resources so that the United States could become the most powerful and economically successful country in the world.

- [Energy Independence and Security Act Section-by-Section](#)

USET SPF Issues White Paper Advocating for Tribal Nations Marshall Plan

For several years now, USET SPF had included in its budget and infrastructure advocacy support for 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.

In an effort to intensify our advocacy around a Marshall Plan for Tribal Nations, as well as spur Congressional action to make this proposal a reality, USET SPF has drafted a white paper articulating the necessity and our vision for this investment. Following our presentation on this visionary proposal at our 2022 Annual meeting, USET SPF will be pursuing endorsements from partner organizations, as well as conducting outreach and education with Congress and the Administration. We will provide updates and opportunities to elevate this concept as they become available.

Interior

USET SPF Submits Comments to DOI on Tribal Enrollment Data Collection

On July 8, 2022, USET SPF submitted [comments](#) in response to a June 8, 2022 Tribal consultation held by the Department of the Interior (DOI) on a proposal to continue collecting Tribal Nation self-certified enrollment data on an annual basis. In April 2021, DOI collected Tribal Nation self-certified

enrollment data to inform funding allocations for programs authorized and appropriated through the American Rescue Plan Act (ARPA). This effort was done to ensure that past mistakes would not be repeated in the allocation of vitally important dollars to Tribal Nations, such as those that occurred during the allocation of the Coronavirus Relief Fund (CRF) in 2020. The allocation methodology for the CRF utilized by the federal government relied on flawed and inaccurate federal population data sets of Tribal Nations, such as the Indian Housing Block Grant (IHBG) program, and many Tribal Nations either received inadequate funds or no funds at all to respond to the outbreak of the COVID-19 public health emergency.

The focus of the June 2022 Tribal consultation was whether DOI should continue the practice of collecting Tribal Nation self-certified enrollment data to determine how DOI funds should be allocated equitably to Tribal Nations. USET SPF expressed our support for this practice but urged DOI to protect this information from being shared publicly (e.g., through Freedom of Information Act requests) or with other agencies without Tribal Nation consent. We also recommended that DOI, in consultation with Tribal Nations, produce guidance for informing Tribal Nations when a federal agency requests our enrollment data, why they are requesting such data, and a process for us to approve or disapprove of the sharing of such data. Although there was resounding support for the annual collection of Tribal Nation self-certified enrollment data,

USET SPF will continue to monitor DOI's response and continue to advocate for similar Tribal-centric policy solutions for equitable allocation of federal funds.

International

USET SPF Submits Comments to U.N. Special Rapporteur re: Freedom of Religion/Belief on the Doctrine of Discovery

On July 11th, The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) submitted comments in response to the United Nations (UN) Special Rapporteur on Freedom of Religion or Belief's call for input regarding "Indigenous Peoples and the right to freedom of religion or belief" for your upcoming report to be delivered to the 77th session of the UN General Assembly. USET SPF welcomes the Special Rapporteur's thematic report and appreciates the visit and listening sessions in the United States of America (US). As our comments describe, the US has used, and continues to use, the Doctrine of Discovery (or Doctrine) to justify the unjust and inhumane taking of Indigenous lands and resources and to impose limitations on Indigenous rights to self-determination and self-governance. When invoked, the Doctrine is used to support the absolute right of the sovereign--whether that be through Congress or the courts--to alter or diminish Tribal Nations' rights based on their status as colonized peoples.

The Doctrine of Discovery is, and always has been, a tool of religious supremacy that has been used to justify colonialism. It is past time for the US to disclaim the Doctrine of Discovery. The perpetuation of the Doctrine of Discovery in US law is itself a violation of Indigenous Peoples' religious freedoms. Additionally, this violation is at the core of a legal framework that leads to numerous other violations of Indigenous rights. UNDRIP articulates rights including, but not limited to: self-determination (art. 3) and self-government (arts. 4, 5, 20); freedom from forced assimilation, destruction of culture, or removal (arts. 8,10); participating in decision-making in accordance with

Indigenous institutions (art. 18) and providing free, prior, and informed consent (art. 19); maintaining and strengthening a distinctive spiritual relationship with lands, territories, waters, and resources "and to uphold ... responsibilities to future generations" (art. 25); having and protecting traditional lands, territories, and resources (arts. 26, 29); effective legal processes and remedies (arts. 27, 28) and observance and enforcement of treaties (art. 37).

The Doctrine of Discovery has been used by US courts to justify systematic violations of Indigenous rights. Dispossession of Indigenous Peoples' lands, upon which they depend spiritually and culturally, violates Indigenous religious freedoms as articulated in domestic and international law. Similarly, infringement on political rights based on the Doctrine has had disastrous consequences, for example by fueling the Missing and Murdered Indigenous Persons crisis by depriving Indigenous Nations of jurisdiction over non-Indigenous persons. Meanwhile, the Doctrine of Discovery has served to make legal remedies to violations of Indigenous rights elusive.

USET SPF's comments request that the Special Rapporteur recommend to the UN General Assembly that:

1. the General Assembly renounce the Doctrine of Discovery through resolution; and
2. that all States that have not yet done so repudiate the Doctrine of Discovery and eliminate it from their domestic laws, policies, and jurisprudence.

We will continue to monitor any progress made on this issue and will provide updates as they develop.

Land

USET SPF Leading Partner Letter Supporting Carcieri Fix, Land Reaffirmation Bill

On October 7th, USET SPF circulated a sign-on [letter](#) to our partner organizations that will be sent to Senate Majority Leader, Chuck Schumer, urging Senate action on [H.R. 4352](#), which passed the House in December 2021 and is pending in the Senate Indian Affairs Committee before the end of the 117th Congress. This legislation fixing the wrongful decision in *Carcieri v. Salazar* necessarily includes two components: (1) a restoration to the Secretary's authority to take land into trust for all Tribal Nations; and (2) a reaffirmation of existing Tribal government trust lands and actions of the Secretary to take land into trust. As legal challenges have mushroomed due to the Carcieri decision, our organizations recognize that H.R. 4352 is critically necessary to stop these legal challenges that seek to erode and dismantle Tribal sovereign authorities and rights.

Further, our letter supports the enactment of [S. 4830](#), recently introduced by Senators Jerry Moran and Jon Tester. This bill would reaffirm existing Tribal government trust lands and actions of the Secretary to take land into trust, as one part of the aforementioned two-part fix. S. 4830 would enable Tribal Nations and the Department to move forward in restoring Tribal homelands. Passage of this bill would put an end to frivolous litigation surrounding existing trust lands. USET SPF has an [existing resolution](#) supporting a nationwide land reaffirmation bill.

We plan to send this partner organization letter to Senate leadership before the end of October. 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

Tribal Opioid Settlement Allocation Process and Comment Period Announced

Earlier this year, Johnson & Johnson and the three largest distributors of prescription opioids—Cardinal Health, AmerisourceBergen, and McKesson Corp—announced settlements with Tribal Nations and Tribal health organizations totaling approximately \$565 million (see [USET SPF alert](#)). The settlements arise from the ongoing nationwide litigation against manufacturers, distributors, and retail dispensers of prescription opioids for their role in the national opioid crisis. All Tribal Nations are eligible to participate in the settlements, regardless of whether or not they are participating in the litigation.

In mid-September, Special Master David Cohen and the Honorable Judge Layn Phillips released a proposed process for determining the inter-Tribal allocation formula for the distribution of settlement funds. Their memorandum to Tribal Nations and counsel can be viewed [here](#).

Special Master Cohen and Judge Phillips are starting from the [inter-Tribal allocation formula](#) approved by two federal bankruptcy courts in separate proceedings involving Purdue Pharma, the manufacturer of Oxycontin, and Mallinckrodt plc, a major manufacturer of generic opioids. That formula weighs the following six factors: (1) the morphine milligram equivalents imputed to each Tribal Nation for the years 2006-2014 (in other words, the volume of prescription opioids shipped to each Tribal Nation's geographic area for that period); (2) drug and prescription opioid overdose rates imputed to each Tribal Nation from county and state data for the years 2003-2017; (3) Indian Health Service user population for each Tribal Nation, based on 2018 data; (4) citizenship population for each Tribal Nation, based on the CARES Act population list and other sources (as verified or updated by Tribal Nations that participated in the verification process); (5) relative poverty rates imputed to each Tribal Nation based on Census data for 2018; and (6) the relative cost of living imputed to each Tribal Nation, based on the C2ER Cost of Living Index for Health Care expenses for 2020.

Special Master Cohen and Judge Phillips are soliciting comments on the use of these factors, and are receiving suggestions regarding additional or alternative metrics or allocation formulas. Tribal Nations that wish to comment must submit their opening briefs on allocation by **November 14, 2022**. Tribal Nations may submit an additional brief responding to other Tribal Nations' opening submissions by **December 5, 2022**.

Additional information about the proposed formula and its development, as well as all pertinent deadlines, can be found in the attached memorandum. For more about these and other tribal opioid settlements, visit www.tribalopioidsettlements.com. Additional details regarding the Purdue allocation formula can be found [here](#).

USET SPF Signs onto ICWA Amicus Brief

USET SPF continues to join a critical mass of Tribal Nations and partner organizations in efforts to defend the constitutionality of the Indian Child Welfare Act (ICWA) and its implementing regulations. Most recently, we joined 497 Tribal Nations and 62 Tribal organizations in signing onto an [amicus brief](#) in [Brackeen v. Haaland](#), the case before the Supreme Court challenging ICWA's constitutionality by arguing that the law discriminates on the basis of race by stipulating that, whenever possible, Native American children in foster care be placed with Native American families.

As you are aware, the nation-to-nation relationship between the United States and Tribal Nations is political in nature. As such, laws and policy directed specifically at Tribal Nations and Native American people do not implicate the constitution's equal protection clause. The Tribal Nation and organization brief argues that ICWA is an appropriate exercise of the federal government's trust and treaty obligations and that ICWA's political classifications are an appropriate exercise of Congressional authority that directly support Tribal sovereignty and further the best interests of Native American children.

If the Supreme Court is persuaded by race-based arguments, a decision could have disastrous consequences for both ICWA and other federal Indian law and policy that is based on our political relationship with the United States. With this in mind, we remain vigilant and committed to defending ICWA, Tribal sovereignty, and our unique relationship with the federal government. [Brackeen v. Haaland](#) is [scheduled](#) for argument before the Supreme Court on November 9th, with a decision expected in the New Year. We will provide further information as it becomes available.

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, Partners Express Continued Opposition to RESPECT Act Revisions that Undermine Tribal Sovereignty

On September 2nd, a [joint Tribal organization letter](#), to which USET SPF is a signatory, was transmitted to House Natural Resources Committee Chairman, Raul Grijalva (D-AZ), in opposition to an [Amendment in the Nature of a Substitute](#) (ANS) 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 has repeatedly raised these concerns with the Chairman, including through a [comment letter](#) earlier this year. 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 express these concerns, including through discussions with partner organizations, resulting in the postponement of two attempted mark-ups. 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.