

The Beat in DC



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Biden Administration

Biden Administration Hosts In-Person White House Tribal Nations Summit

On November 30th and December 1st, the White House hosted its 2022 Tribal Nations Summit (WHTNS) at the Department of the Interior in Washington, D.C. This first in-person WHTNS for the Biden Administration featured new Administration announcements and efforts to implement key policy initiatives supporting Tribal communities. It also provided for direct dialogue between top federal officials and Tribal leaders.

Among the Administration's announcements was a [Presidential Memorandum on Uniform Standards for Tribal Consultation](#), which seeks to establish minimum Tribal consultation standards across all federal agencies. This is an action for which USET SPF has long advocated. We are particularly appreciative of the Memorandum's efforts to reinforce that consultation is a diplomatic tool between Nations. We will continue to monitor its implementation throughout the federal government.

Announcements also included a new [Best Practices Report for Tribal Treaty and Reserved Rights](#), the implementation of [Tribal Co-Management and Co-Stewardship of Federal Lands and Waters](#), new [Indigenous Knowledge Guidance for federal agencies](#), a federal initiative on [Access to Capital in Indian Country](#), and a commitment to improved implementation of the Buy Indian Act.

Many USET SPF Tribal leaders were called upon to occupy central roles during the Summit, including participation on discussion panels with cabinet officials, offering prayers, and asking questions. To support the leaders of our member Tribal Nations, USET SPF prepared a series of [talking points](#) for Tribal leader use during dialogue with both Administration officials and Members of Congress over the course of the WHTNS and related events. For more information on the WHTNS, as well as recordings, photos, and links to key documents, please visit our [webpage](#).

Budget

Congress Passes Full Year Continuing Appropriations for FY 2023

Following two continuing resolutions to begin Fiscal Year (FY) 2023, President Biden signed into law [H.R. 2617, the Consolidated Appropriations Act of 2023](#) on December 29, 2022. The bill provides full-year appropriations for the federal government through September 30, 2023.

In an historic first, the bill provides \$5.129 billion in advance appropriations for the Indian Health Service (IHS) in Fiscal Year (FY) 2024. That amount is equal to the FY 2023 amount with the exception of funding provided for Electronic Health Records, Sanitation Facilities Construction, and Health Care Facilities Construction, which are provided only an annual appropriation in recognition of the project-based nature of those accounts. This provision is the result of nearly a decade of advocacy from USET SPF and our partner organizations.

In addition to advance appropriations for IHS, the bill provides the following:



- A total of \$6.928 billion for IHS in FY 2023, an increase of 5.6% or \$297 million over FY 2022, including:
 - \$2.5 billion for Hospitals & Clinics (+\$104 million);
 - an additional \$10 million for Tribal Epidemiology Centers
 - \$248 million for Dental Health (+\$12 million);
 - \$127 million for Mental Health (+\$5 million);
 - \$266.4 million for Alcohol & Substance Abuse (+\$8.1 million); and
 - \$997 million for Purchased/Referred Care (+\$12 million);
 - \$218 million for Electronic Health Records (+\$72.5 million);
 - \$65.2 million for Community Health Representatives (+\$1.5 million);
 - \$24.4 million for Health Education (+\$1.1 million);
 - \$6.2 million for Self-Governance (+\$324,000); and
 - \$170.6 for Maintenance & Improvement (+\$931,000).
- A total of \$3.842 billion for Indian Affairs programs at the Department of Interior, an increase of 7% or \$297 million over FY 2022, including:
 - \$2.44 billion for the Bureau of Indian Affairs (+\$177 million)
 - \$29 million for Aid to Tribal Government (+\$1.2 million);
 - \$55 million for Social Services (+\$1.6 million);
 - \$17 million for Natural Resources (+\$2.7 million);
 - \$159 million for Real Estate Services (+\$8.8 million);
 - \$71.8 million for Tribal Courts (+\$28.6 million);
 - \$31.2 million for Economic Development (+\$1.8 million); and
 - \$75.2 million for Resource Management Construction (+\$1.2 million).
 - \$1.4 billion for the Bureau of Indian Education (+\$119.5 million)
 - \$43.5 million for Scholarships & Adult Education (+\$3 million); and
 - \$96.4 million for Facilities Improvement and Repair (+\$1.1 million).
- Contract Support Costs and 105(l) Leases are fully funded via separate, indefinite appropriation, but not in a mandatory basis, as USET SPF and the Biden Administration had advocated.
- An authorization of \$80 million annually from FY23-27 for Native Behavioral Health Resources, with the opportunity for ISDEAA contracting and compacting, as well as a requirement that the funding formula and reporting requirements be developed in consultation with Tribal Nations. USET SPF led a [joint letter](#) on this issue, and is pleased with the progress made. We urge Congress to fund this provision.

For more information on the FY 2023 omnibus bill, please see joint explanatory statements and summaries [here](#). This includes a [joint explanatory statement](#) and [summary](#) on Division G of the bill, which includes funding for Indian Affairs and IHS. The Senate Committee on Indian Affairs has also prepared a [summary](#). Additional information around USET SPF's appropriations and budget advocacy can be found [here](#).

- [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](#)

IHS Receives Advance Appropriations for the First Time

In an historic first, H.R. 2617, [the Consolidated Appropriations Act of 2023](#) provides \$5.129 billion in advance appropriations for the Indian Health Service (IHS) in Fiscal Year (FY) 2024. This provision is the result of nearly a decade of advocacy from USET SPF and our partner organizations. More recently, the Biden Administration joined advocacy efforts, as well, with many top federal officials taking to the halls of Congress in support of this change. USET SPF has a lengthy history of advocating for advance appropriations for the IHS and all federal Indian programs as a critical mechanism to provide certainty in the short-term to critical federal funding as continuing resolutions and government shutdowns become more and more common.

"We celebrate this achievement, which will provide budget certainty to IHS regardless of whether the rest of the federal government is operating under a CR or is shut down, said USET/ USET SPF President, Chief Kirk Francis. "We are especially appreciative of strong advocacy from the Biden Administration and Congressional allies in support of this top priority for Indian Country. Now, we turn to our longer-term priority for IHS: full and mandatory funding. We look forward to continuing to partner with the Executive and Legislative branches to achieve this goal."

Advance appropriations is funding that becomes available one year or more after appropriations bill in which it is contained. In the case of the recently approved IHS advance appropriations, the agency will have access to its full \$5.129 billion appropriation at the start of FY 2024, regardless of whether or not Congress has acted to provide full year appropriations for the rest of the federal government. The amount appropriated for FY 2024 is equal to the FY 2023 amount with the exception of funding provided for Electronic Health Records, Sanitation Facilities Construction, and Health Care Facilities Construction, which are provided only an annual appropriation in recognition of the project-based nature of those accounts.

With the inclusion of the advance appropriation, the IHS will receive an appropriation of \$5.129 billion on October 1, 2023 for the 2024 fiscal year. This will provide a level of funding certainty for the IHS and will protect the agency from government shutdowns. While the funding for FY 2024 is flat at this time, it is still subject to change. During the next appropriation cycle, Congress could choose to provide an additional discretionary appropriation to the IHS, in addition to the \$5.129 billion in flat funding.

On December 27, 2022, USET SPF President Kirk Francis was [interviewed by NPR's Marketplace](#) on the need for advance appropriations for IHS. He had previously [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. 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.

On November 30, 2022, USET SPF also joined a [joint letter](#) with Tribal Nations and partner organizations urging President Biden to support advance appropriations for the IHS to provide an initial step forward toward funding stability for the Indian health care system. USET SPF partnered on similar joint letters in the past, including a [joint letter to the Senate Committee on Indian Affairs](#), a [joint letter to the Senate Appropriations Subcommittee on Interior](#), and a letter to [House Leadership](#).

USET SPF will continue to monitor the implementation of advance appropriations for IHS, and advocate for its continued inclusion in future appropriations bills. 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](#)

USET SPF Submits Comments to OMB on the President’s FY 2024 Budget Request

On October 14, 2022, USET SPF provided [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 OMB works to formulate the President’s Budget Request for FY 2024, USET SPF indicated our expectation that the agency will continue to make strides in improving the delivery of federal trust and treaty obligations. USET SPF views the President’s Budget Request as a statement on each Administration’s regard for its trust and treaty obligations to Tribal Nations. For 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.

In addition to advocating for a Budget Request that includes funding increases for regional priority budget line items at the Bureau of Indian Affairs and Indian Health Service (IHS), USET SPF comments continue to urge OMB to request increased funding for Tribal Historic Preservation,

increased funding and self-governance authority for the Special Diabetes Program for Indians, funding for the White House Council on Native American Affairs, and funding and permanency for Treasury’s Office of Tribal and Native Affairs, among other priorities. We also call upon OMB and the Administration to work with Tribal Nations on a more detailed mandatory funding proposal for the IHS, correct longstanding failures in the federal budgeting process, and support a Marshall Plan for Tribal Nations.

The Administration is expected to release the President’s Budget Request for FY 2024 on March 9th. USET SPF will continue to monitor the upcoming appropriations cycle and provide strong advocacy on behalf of our regional priorities as it proceeds.

COVID-19

GAO Publishes Report on Lessons Learned from Disbursement of COVID-19 Funds to Tribal Nations

On December 15th, the Government Accountability Office (GAO) issued Report [GAO-23-105473](#), “Lessons Learned Could Improve Future Distribution of Federal Emergency Relief to Tribal Recipients.” A provision of the CARES Act of 2020 ([P.L. 116-136](#)) required GAO to conduct monitoring and oversight related to the COVID-19 public health emergency. GAO selected a sample of five federal agencies that administered 12 programs involving a range of funding amounts, eligibility requirements, and methods for providing assistance to Tribal recipients of COVID-19 funds. Tribal recipients included Tribal Nations, Tribal citizens, and Tribal organizations.

GAO identified lessons learned from the selected agencies’ administration of COVID-19 relief funding that could improve future federal relief for Tribal recipients. For example, GAO determined that using existing mechanisms, such as Indian Self-Determination and Education Assistance Act (ISDEAA) contracts and compacts, can enable agencies to distribute funds and mitigate administrative burden for agencies and Tribal recipients more quickly. Based on GAO’s analysis, it recommended that Congress should consider enabling agencies to use existing mechanisms and structures, ISDEAA contracts and compacts, to distribute emergency relief to Tribal recipients. During this analysis, GAO reviewed federal agency documents and interviewed agency officials, Tribal recipients, and representatives of Tribal organizations.

On December 21st, NPR’s Marketplace [covered](#) the report, interviewing USET SPF Director of Policy and Legislative Affairs, Liz Malerba, about COVID-19 relief distribution missteps in Indian Country.

USET SPF hopes to utilize the conclusions and recommendations contained in the report as it advocates for expanded ISDEAA contracting and compacting in the coming year.

Culture & Heritage

STOP Act Signed into Law

The [Safeguard Tribal Objects of Patrimony Act of 2021](#) (STOP Act) was signed into law by President Biden on December 21, 2022. This law prohibits the exportation of Native American cultural items and increases the penalty of violations of the Native American Graves Protection and Repatriation Act (NAGPRA). The law also establishes a working group comprised of Tribal Nations to assist in implementing the STOP Act, NAGPRA, the Archaeological Resources Protection Act of 1979 ([16 USC 470aa et seq](#)), and other relevant laws.

USET SPF has consistently supported passage of the STOP Act. [USET Resolution No. 2015:007](#) called on the United States to address the issue of international repatriation of Tribal cultural heritage. Despite protections in current law, the illicit trade in Native American tangible cultural heritage poses a grave threat to tribal cultural survival. Sacred and cultural items are illegally taken from USET SPF member Tribal Nations, threatening the maintenance of our cultures and traditions and depriving us of the legacy we seek to leave our future generations. Meanwhile, a lucrative black market in our tangible cultural heritage thrives, and without explicit export restrictions many of our sacred and cultural items end up abroad.

We support the STOP Act's increased penalties for violations of the Native American Graves Protection and Repatriation Act (NAGPRA) and its explicit prohibition on exporting items obtained in violation of NAGPRA, the Archaeological Resources Protection Act (ARPA), and the Antiquities Act. In addition to our advocacy on the Hill for passage of the STOP Act, USET SPF also sent letters of support to Congressional Leadership for enacting the STOP Act in [July 2016](#), [July 2019](#), and [June 2022](#). We applaud enactment of the STOP Act into law and the advocacy of Tribal Leaders, Tribal citizens, and others that have supported the protection of our ancestral remains and cultural items. We will continue weigh in as the law is implemented, as well as support other efforts to return our cultural items and ancestors.

USET SPF Submits Comments to DHS on the Handling of Sacred Items

On December 15, 2022, USET SPF submitted [comments](#) to the Department of Homeland Security (DHS) response to a Tribal Listening Session held on the handling of Tribal sacred items. This Listening Session was for DHS agencies, such as the Customs and Border Protection, Transportation, Transportation Security Administration, and the Federal Emergency Management Agency, to receive input on how agency personnel can respectfully handle sacred, ceremonial, and cultural items. We stressed that our Tribal Leaders and cultural and religious leaders and the sacred items they carry are treated with respect when traveling is a significantly important issue. USET SPF emphasized that strict protocols must be adhered to regarding the handling of our sacred, ceremonial, and cultural items and that, unfortunately, federal agency employees are often ignorant or outright offensive when it comes to respecting these protocols.

While USET SPF expressed appreciation for DHS' consideration of this vitally important issue, upon conclusion of the Listening Session it was apparent that more guidance and education is needed for DHS personnel that encounter our leaders and the sacred items they carry while in transit. We recommended that formal Tribal consultation be conducted by DHS on this issue on a Nation-to-



Nation level with Tribal governments. USET SPF will continue to monitor this issue and urge DHS to take further action to conduct Tribal consultation to receive input from Tribal Nations on developing guidance for its agencies on the handling of our sacred cultural and ceremonial items.

USET SPF Submits Comments to WHCNAA on its Tribal Treaty and Reserved Rights Interagency MOU

On October 20, 2022, USET SPF submitted [comments](#) in response to the White House Council on Native American Affairs' (WHCNAA) Tribal consultation on the implementation of the Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Tribal Treaty and Reserved Rights (TTR MOU). While our comments applauded this Administration's focus on the protection of Tribal Nation treaty and reserved rights during any federal action, we also highlighted some regional nuances and concerns that should be incorporated into final materials. These included recognizing treaties that pre-date the United States, as well as ensuring the TTR MOU is applied equally to all federally recognized Tribal Nations.

The time is long overdue for the U.S. to work to honor its treaty and other obligations to Tribal Nations. USET SPF supports WHCNAA as it seeks to better integrate these solemn duties into the federal decision-making process. This is consistent with our efforts to modernize the federal trust relationship, including ensuring that Tribal Nations are full and equal participants in the shaping of federal policy, and that federal trust and treaty obligations are honored in full. Our comments urged WHCNAA to ensure that the implementation of the TRR MOU is reflective of the diverse histories and circumstances of Tribal Nations across Indian Country and expressed optimism that this initiative will result in a more diplomatic, respectful, and just Nation-to-Nation relationship.

USET SPF Provides Comments to the White House on Indigenous Knowledge Guidance

On October 11, 2022, USET SPF submitted [comments](#) to the White House's Office of Science and Technology Policy (OSTP) and the Council on Environmental Quality (CEQ) in response to a Tribal consultation held on September 22, 2022. This consultation was held to provide an update on Guidance being developed by OSTP and CEQ for federal agencies on integrating Indigenous Knowledge (formerly addressed as Indigenous Traditional Ecological Knowledge) into federal decision-making. USET SPF initially extended its support to this effort via an [op-ed](#) from President, Chief Kirk Francis, Sr. published in Indian Country Today on December 13, 2021. This op-ed was penned following the announcement of this initiative on integrating Indigenous Knowledge into federal decision-making during the 2021 White House Tribal Nations Summit. Additionally, USET SPF previously submitted [comments](#) to OSTP and CEQ in May 2022 to provide initial recommendations on how federal agencies should respectfully integrate Indigenous Knowledge into decision-making.

Our comments expressed our appreciation for the thorough draft Guidance that was developed by OSTP and CEQ in follow-up to the Tribal consultations held in April 2022. However, we offered additional recommendations to the draft Guidance that was released for comment. We recommended that federal employees receive education on the federal trust and treaty obligation as a foundation

for integrating Indigenous Knowledge into federal decision-making, protecting sensitive Tribal cultural knowledge, increased funding for Tribal Historic Preservation Officers, and establishing a standing, permanent Tribal Advisory Committee on Indigenous Knowledge. Following the 2022 White House Tribal Nations Summit, on December 1, 2022, OSTP and CEQ [announced the release](#) a its new government-wide Guidance for federal agencies to recognize and include Indigenous Knowledge in federal research, policy and decision making. This announcement was accompanied by an [implementation Memorandum](#) to all heads of federal departments and agencies, which requires agencies to submit a progress report within 180 days of the Memorandum’s release to a newly established Subcommittee on Indigenous Knowledge. This Subcommittee is established within the Committee on the Environment, Natural Resources, and Sustainability at the National Science and Technology Council and is comprised of agency representatives with expertise or roles that intersect with Indigenous Knowledge. Unfortunately, USET SPF’s recommendation to establish a standing, permanent Tribal Advisory Committee on Indigenous Knowledge comprised of Tribal Leaders and our expressly identified and recognized spiritual/cultural leaders was not adopted in the final Guidance. USET SPF will continue to monitor the implementation of this Guidance and advocate for greater Tribal Nation representation in these matters.

Economic Development

USET SPF Submits Comments on Treasury FY 2022-2026 Strategic Plan

On December 15, 2022, USET SPF submitted [comment](#) to U.S. Department of Treasury (Treasury) in response to its Tribal consultation on its [Fiscal Year \(FY\) 2022-2026 Strategic Plan \(Plan\)](#). USET SPF previously submitted comments to Treasury regarding the Strategic Plan in both [October](#) and [November](#) of 2021. Our comments noted that while Treasury has taken steps to more meaningfully include Tribal Nations in the Plan, it still does not fully reflect an understanding of or commitment to the Department’s trust and treaty obligations to Tribal Nations. As an agency of the federal government, Treasury shares in trust and treaty obligations to Tribal Nations, including the obligation to uphold Tribal sovereignty and self-determination, as well as facilitate the rebuilding of our Tribal Nations. However, we do not feel as though the final Plan reflects the execution of this solemn charge or includes proper recognition of our Nation-to-Nation relationship.

USET SPF appreciates Treasury’s efforts to better incorporate Tribal Nations into the FY 2022-2026 Strategic Plan. However, our comments continued to urge Treasury to work to better demonstrate its commitment to upholding trust and treaty obligations under this and other strategic documents. The establishment of the Office of Tribal and Native Affairs provides Treasury with an opportunity institutionalize and imbue these solemn agreements into the Department’s broader policy and procedures. We asked that the Department utilize this opportunity to its fullest extent.

USET SPF Submits Comments on Opportunities and Challenges in Federal Community Investment Programs

On December 15, 2022, USET SPF submitted [comments](#) in response to a Request for Information (RFI) regarding effective approaches for supporting access to affordable capital and financial services for Tribal Nations. This RFI was issued by the Department of the Treasury, Small Business Administration, Department of Commerce, Department of Transportation, Department of Housing and Urban Development, and the Department of Agriculture (“Agencies”). These Agencies comprise a newly created Interagency Community Investment Committee (ICIC), which was established by Vice President Harris on October 4, 2022 as part of an overall initiative to increase delivery of capital and financial resources to underserved small businesses and communities. Although this initiative is not Tribal-centric, USET SPF expressed several concerns regarding the historic and ongoing limitations of Tribal Nations to access capital and financial resources from the federal government and the private sector. These concerns included the lack and difficulty Tribal Nations have in accessing capital funds, the use of grant-based models that do not uphold trust and treaty obligations and deter private investment and holding banks accountable for underinvestment in Indian Country.

USET SPF recommended maximum deference to Tribal Nations to set our own standards for the expenditure of programmatic funds, elimination of matching fund requirements, use of Tribally certified data to attract private capital investment, streamlining programmatic reporting requirements, and educating federal employees on Tribal sovereignty and U.S.-Tribal Nation relations. USET SPF will continue to monitor ICIC’s consideration and efforts to implement these recommendations to increase federal and private capital investment in Indian Country.

Environment & Natural Resources

USET SPF Submits Comments to CEQ/OSTP on Ocean Climate Action Plan

On December 15, 2022, USET SPF submitted [comments](#) in response to the Dear Tribal Leader Letter (DTLL) issued by the Council on Environmental Quality, the Office of Science and Technology Policy, and the Domestic Climate Policy Office (“Executive Offices”) on October 14, 2022. The Executive Offices issued this DTLL on behalf of the Ocean Policy Committee (OPC), which is co-chaired by the White House Office of Science and Technology Policy and the White House Council on Environmental Quality, and serves as the Congressionally mandated, Cabinet-level body charged with coordinating ocean policy across federal agencies regarding the development of an Ocean Climate Action Plan (OCAP). The OCAP will promote Ocean, coastal, and Great Lakes-based activities that can provide climate solutions and will focus on topics like conservation, green shipping, marine renewable energy, and marine carbon dioxide removal.

Our comments focused on emphasizing that Tribal Nation cultural spaces include contemporary and historic landscapes that may be submerged or have the potential for future inundation. And the federal government has a trust and treaty obligation to promote our sovereignty and facilitate the protection of our cultures and sacred sites. As such, Indigenous Knowledge and understanding of how to live with water and Ocean connections that survive today must be accounted for and valued in the

development of climate action solutions. What is ultimately needed are Ocean-based climate solutions that are not only inclusive of Indigenous input but are actually designed by Tribal Nation agencies and Indigenous peoples. As OSTP works to draft the OCAP, the approach taken may be how to “use the Ocean” while not exacerbating climate change; however, Tribal Nations take the approach of how to live with the Ocean as a relative and as a place of connection. Just because we can does not mean we should. In this way, the OCAP should emphasize a precautionary approach and utilize Ocean-centered governance asking instead “What does the Ocean need?”

USET SPF appreciates the Administration’s and the Executive Offices’ efforts to include Indian Country in these important discussions on the development of the Ocean Climate Action Plan and we plan to continue to engage as this initiative proceeds.

Health

USET SPF Leads Joint Letter to Senate HELP Committee re: Native Behavioral Health Provision in Mental Health Package

On November 29, 2022, USET SPF lead a [joint letter](#) to urge the inclusion of a meaningful Native behavioral health provision as the Senate Health Education Labor and Pensions Committee drafted a mental health and substance use disorder package. Tribal Nations and our citizens continue to face high rates of behavioral health issues, caused by myriad factors, including centuries of generational trauma resulting from colonization and hostile acts of the United States government. Yet, in violation of federal trust and treaty obligations to provide comprehensive health care to Tribal Nations, we continue to lack substantial and sustained funding to address these challenges for current and future generations. As the collective trauma of living through the COVID-19 public health crisis only exacerbates and intensifies these issues, it is critical that Tribal Nations and the Indian Health System are equipped with the resources necessary to bring healing and recovery to our communities.

To combat the opioid epidemic and the broader behavioral health crisis in Indian Country, Tribal Nations and facilities across the Indian Health System require flexible and substantial funding to create behavioral health programs that are responsive to the unique circumstances facing our communities. Toward that end, we requested that any mental health and substance use disorder package include a Native behavioral health provision that contains the following:

- A funding authorization of no less than \$125 million annually over a minimum of four fiscal years;
- A mandate to deliver funding on a non-competitive basis and the opportunity to receive funding through Indian Self-Determination Act contracts or compacts;
- A requirement that any funding formulas be developed in consultation with Tribal Nations and conference with Urban Indian Health Organizations; and
- A requirement that reporting requirements be developed through a negotiated rulemaking process between the federal government, Tribal Nations, and Urban Indian Health Organizations.

Ultimately, [the Health Extenders and Strengthening Public Health Act of 2022](#) was included in the omnibus appropriations package Congress approved in late December 2022. Among other provisions, it includes an authorization of \$80 million annually from Fiscal Year 2023-2027 for Native Behavioral Health Resources, with the opportunity for ISDEAA contracting and compacting, as well as a requirement that the funding formula and reporting requirements be developed in consultation with Tribal Nations. While this provision is not perfect, USET SPF is pleased with the progress made. We now turn toward Congressional appropriators to fund this provision.

USET SPF Submits Comments on VA Tribal PRC Reimbursement Agreement

On November 1, 2022, USET SPF [submitted comments to VA](#) regarding the VA’s requirement to reimburse the Indian Health Service (IHS) for Purchased and Referred Care (PRC) Services delivered to Native veterans through the IHS. Most importantly, USET SPF reminded the VA of its obligation to reimburse PRC services under section 2 of the Proper and Reimbursed Care for Native Veterans Act, [Public Law 116-311](#), which amended section 405(c) of the Indian Health Care Improvement Act (codified at [25 U.S.C. 1645](#)) by clarifying the authority to reimburse for direct care services provided by the Indian Health System regardless of whether the services are provided directly by facilities, through purchased/referred care, or through a contract for travel described in [25 U.S.C. 16211\(b\)](#). As a statutory requirement, VA must provide reimbursements to the IHS in a timely manner and may not make the reimbursement contingent on the signing of a rate agreement not required by statute.

USET SPF also asserted that the VA, in many cases, may not need to create additional PRC agreements, as PRC is already regulated by Medicare-like rules. In the comments, USET SPF also urged the VA to base non-PRC agreements on a determination of “reasonable and customary” charges unless/until a specific rate agreement is negotiated. While a rate agreement for non-Medicare like rate charges is preferable, the VA may not deny the reimbursement entirely pending rate negotiations.

The comments to VA also urged VA to consider and implement the “Tribal payer of last resort” rule in these negotiations and asked that VA commit to the “Indian canon of construction” when interpreting federal statutes. The canon of “Tribal payer of last resort” asserts that the federal government must exhaust all other funding resources for a particular cost before requiring payment by a Tribal Nation or its members. The Indian canon of construction asserts that statutes are to be “construed liberally in favor of [Tribal Nations], with ambiguous provisions interpreted to their benefit.”

Overall, USET SPF maintained in our comments that proper reimbursement of PRC from the VA to IHS is part of the federal government’s dual obligation to Native veterans who have pre-paid for their healthcare, both through the cession of Tribal homelands and resources, as well as the defense of our nation.

USET SPF Submits Comments on HHS Data Sharing Policy

On September 28, 2022, the Department of Health and Human Services (HHS) announced it was [initiating consultation on the possible creation of an HHS Tribal Data Sharing Policy](#). This action was based on a report the Government Accountability Office (GAO) published in March 2022, entitled



["Tribal Epidemiology Centers: HHS Actions Needed to Enhance Data Access,"](#) which found that access to epidemiological data amongst the 12 Tribal Epidemiology Centers (TECs) varied greatly. While federal law authorizes TECs to access data from HHS and its affiliate agencies like the Indian Health Service (IHS) and the Centers for Disease Control and Prevention (CDC), the GAO found that access to non-public data (particularly COVID-19 related data) varied among the TECs. In the report, the GAO recommended five Executive Actions that the HHS should take to develop a policy that clarifies data access for Tribal partners. HHS concurred with these recommendations and initiated consultation with Tribal and Urban partners.

Following the Tribal Consultation held on October 13th and 19th, 2022, USET SPF [submitted comments](#) outlining our concerns and recommendations for the policy. The USET Tribal Epidemiology Center (USET TEC,) like many others, has experienced difficulty in accessing data at both the state and federal levels. USET SPF strongly supports the creation of a Tribal Data Sharing policy, as parity in data access among the TECs and codification of data sovereignty is long overdue. However, the policy must not increase administrative burdens on Tribal Nations, nor should it disempower the work of TECs. In line with our continued position regarding data sovereignty, USET SPF agrees that no Tribal Nation-specific data should be included in any level of access without explicit consent from Tribal Nations. This includes the data shared with TECs. However, this consent may take many forms, and may vary among the regions and TECs. USET SPF cautions against requiring time-limited data sharing resolutions from each individual Tribal Nation (as was suggested during the October 19th consultation), as this could hinder real-time response to pressing issues or emergencies, as well as create administrative burdens for Tribal Nations and TECs, alike.

Additionally, many TECs serve smaller Tribal Nations that lack the capacity to maintain their own public health workforce. For these Nations, TECs provide critical services at all times, but particularly during public health emergencies. In order to maintain the level of service they provide to the Tribal Nations they serve, TECs must have timely and accurate data.

Importantly, USET SPF's comments spoke to the need for incorporating protections in the policy for data shared on an interagency basis or with external entities like research institutions. USET SPF understands the value of scientific inquiry in its myriad forms, but Tribal Data Sovereignty must remain paramount in consideration of a Tribal Data Sharing policy. Under all circumstances, the data produced by, for and of Tribal Nations belongs to those Nations, and must remain protected.

Parity access to federal public health data for TECs is vital and long overdue. Although TECs continue to provide invaluable support and services to Tribal Nations, the lack of data provided to TECs has led to severe gaps in understanding and addressing public health issues in our communities. Once and for all, HHS must ensure that TECs have access to critical public health data from federal and state governments. We will continue to monitor HHS' efforts to draft a data-sharing policy and provide updates as they become available.

USET SPF Submits Comments on to HHS on ACA Section 1557 NPRM

In late July 2022, the Department of Health and Human Services (HHS) [released a Notice of Proposed Rulemaking](#) (NPRM) revising implementing regulations for Section 1557 of the Patient Protection and Affordable Care Act (ACA) related to nondiscrimination in health programs and activities. Section 1557 prohibits discrimination on the basis of race, color, national origin, sex, age or disability in certain health programs and activities. Some examples of this are protections against gender

discrimination, and enhanced language and communication services for people with limited English proficiency or those with disabilities. The new Rule would be applied broadly to all health programs and activities receiving federal assistance from the Department, state and federally facilitated exchanges, and all HHS health programs and activities, including the Indian Health Service (IHS.)

In our October 2nd [comments](#), we note that while USET SPF understands and appreciates HHS's interest in expanding the scope and reach of Section 1557 outside of the IHS, each agency of the federal government, including HHS, has a unique diplomatic and political relationship with Tribal Nations, as well as its trust and treaty obligations to uphold and promote Tribal sovereignty. With this in mind, USET SPF took the position that Tribally operated health care facilities, with their discrete and limited populations, should not be subject to this rule.

Tribal Nations' status as inherently sovereign political entities and our unique relationship with the United States permits the United States to treat us differently from others. Thus, the federal government must not apply laws and requirements of general applicability that it creates for the public to Tribal Nations. Accordingly, there are numerous examples of similar laws and regulations exempting or otherwise not applying to Tribal Nations.

USET SPF understands that the NRPM may be applied to IHS hospitals and clinics, as they are federally operated facilities, but holds that Tribal Nations should not be subject to this rule. In addition to its impingement on Tribal sovereignty, it contains a number of requirements, such as reporting, language assistance, and others, that are likely to be administratively burdensome and costly for Tribal Nations at a time when the Indian Health System continues to be chronically underfunded.

Instead of broadly applying a rule that would be inappropriate for Tribal Nations or our health facilities, HHS should defer to Tribal Nations to exercise our inherent sovereignty in choosing whether to implement such requirements for their people, lands, and enterprises. USET SPF will continue to monitor this issue for important updates.

Infrastructure

USET SPF Submits Comments to WHCNAA on Build America, Buy America Act Requirements

On October 20, 2022, USET SPF submitted [comments](#) to the White House Council on Native American Affairs (WHCNAA) in response to the Tribal consultation on the Build America, Buy America (BABA) Act. Included in the Infrastructure Investment and Jobs Act (IIJA), BABA established a new purchasing preference for American-made products to be utilized in all federally funded infrastructure projects—including those outside of IIJA. While Tribal Nations with Indian Self-Determination and Education Assistance Act (P.L. 93-638) agreements with the Department of the Interior (DOI) for Tribal infrastructure projects are exempt from BABA purchasing requirements, we expressed our concerns that Tribal Nations will be affected disproportionately by implementation of BABA. Some federal agencies have sought, and some have received, BABA waivers for specific programs. However, USET SPF strongly recommended that all Tribal Nations receive a blanket exemption from BABA, which would be consistent with the federal government's stated commitment to uphold Executive Order 13175.

In addition to addressing the centuries of neglect in fully funding Tribal Nation services, USET SPF stated that adopting a waiver for Tribal Nations from the requirements of BABA would also benefit federal agencies since they won't have to submit specific budget line items for Tribal programs to the Office of Management and Budget. We noted that the application of BABA purchasing requirements is likely to undermine the overall goals of advancing Tribal Nation sovereignty, self-determination, and infrastructure deployment on our lands. While Tribal Nations may purchase a product or supply consistent with the requirements of BABA if they are widely available and affordable, USET SPF recommended that we should not be subject to these requirements if they would delay an infrastructure project or go over established budgets for a project. USET SPF will continue to monitor the implementation of BABA and advocate for all federal agencies to adopt waivers to BABA requirements for Tribal Nations.

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 has been pursuing endorsements from partner organizations. We also plan on conducting outreach and education with Congress and the Administration this year. We will provide updates and opportunities to elevate this concept as they become available.

Justice

USET SPF Sends Letter to President Biden in Support of Clemency for Leonard Peltier

On October 25, 2022, USET SPF [wrote](#) to President Biden to urge that executive clemency be granted to Leonard Peltier by commuting the remainder of his sentence. Mr. Peltier is now 77 years old and has been in prison for over 46 years. His conviction is now widely recognized as having been the



result of constitutional violations and prosecutorial misconduct – the time is now to correct this injustice. USET SPF continues to join with national and international human rights organizations and dignitaries from around the world in calling for clemency for Leonard Peltier.

Land

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

On November 14th, USET SPF, joined by 15 of our partner organizations, transmitted a [joint letter](#) 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 supported the enactment of S. 4830, introduced by Senators Jerry Moran and Jon Tester at the end of the 117th Congress. 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.

Though neither of these bills received Senate action prior to Congressional adjournment in December 2022, 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 during the 118th Congress, and provide updates as they develop.

Litigation

Supreme Court Hears Oral Arguments in Haaland v. Brackeen

On November 9, 2022, the U.S. Supreme Court heard oral arguments in the case of *Brackeen v. Haaland*. This case challenges the constitutionality of the Indian Child Welfare Act of 1978 (ICWA), which is a federal law that was enacted in response to the disgraceful history and practice of separating Native American children from their families during adoption proceedings. *Brackeen v. Haaland* was filed in federal court in Texas by the state and seven individuals. These individuals included three couples who are not Native American and had tried to foster or adopt children with Native American ancestry, as well as the biological mother of a Native American child whom one of the couples eventually adopted.

Hobbs Straus Dean & Walker has provided a [detailed overview](#) of the oral arguments heard in this case. To listen to a recording of the oral arguments during the Supreme Court proceeding, please [click here](#).



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. The Supreme Court is expected to issue its opinion in this case shortly. USET SPF will monitor the situation carefully and provide further information as it develops.

USET SPF Joins Amicus Brief in Seminole Gaming Compact Case, Oral Arguments on Appeal at DC Circuit

On August 26, 2022, USET SPF joined 3 partner organizations and 10 Tribal Nations on a [Tribal amicus brief](#) in *West Flagler Associates v. Haaland*, which is now on appeal before the U.S. Court of Appeals for the District of Columbia Circuit.

In August 2021, the Secretary of the Interior approved a gaming compact between USET SPF member Tribal Nation, the Seminole Tribe of Florida, and the state of Florida authorizing the Tribal Nation to offer online sports betting throughout the state, including to bettors located off Tribal lands. West Flagler and others challenged the validity of the Compact and the District Court for the District of Columbia invalidated the Compact in its entirety.

The 2021 Compact is an example of an innovative agreement between a Tribal Nation and a state to facilitate online sports betting under the Indian Gaming Regulatory Act's (IGRA) unique regulatory framework designed specifically for Tribal gaming. The need for this kind of agreement between Tribal Nations and states is a reality of the modern digital age. Through this cooperative approach, a Tribal Nation can regulate its internet gaming under one seamless regulatory structure and do so for the purpose of providing Tribal government funding, just as Congress intended in enacting IGRA.

Oral arguments in this case were heard on December 14, 2022 and a decision is expected soon. We will continue to follow the case and will provide further updates as they develop.

Trust Modernization

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

On December 7, 2022, USET SPF joined partner organizations on a [second joint Tribal organization letter](#) expressing our continued concerns and opposition to revised versions of [H.R. 3587](#), the Requirements, Expectations, and Standard Procedures for Effective Consultation with Tribes (RESPECT) Act, sponsored by House Natural Resources Committee Chairman, Raul Grijalva (D-AZ).

The most [recent version](#) of the bill that USET SPF obtained included a provision providing for 'tri-lateral' negotiations between the federal government, Alaska Native Tribal Nations, and for-profit Alaska Native Corporations (ANCs). This does not address the [concerns](#) that USET SPF and our partners have previously raised with Chairman Grijalva.

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.

In addition to the inappropriate inclusion of ANCs, 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](#) in March 2022. 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 at least three 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.