



# USET

SOVEREIGNTY PROTECTION FUND

**Nashville, TN Office**  
711 Stewarts Ferry Pike, Suite 100  
Nashville, TN 37214  
P: 615-872-7900 | F: 615-872-7417

**Washington, DC Office**  
1730 Rhode Island Ave., NW, Suite 210  
Washington, DC 20036

## USET SPF Resolution No. 2023 SPF:008

### **SUPPORT FOR RECLASSIFICATION OF THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT 105(I) PROGRAM TO MANDATORY FUNDING**

- WHEREAS,** United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is an intertribal organization comprised of thirty-three (33) federally recognized Tribal Nations; and
- WHEREAS,** the actions taken by the USET SPF Board of Directors officially represent the intentions of each member Tribal Nation, as the Board of Directors comprises delegates from the member Tribal Nations' leadership; and
- WHEREAS,** the Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA) recognized the inherent sovereignty and self-determination of Tribal Nations by allowing the contracting and compacting of federal programs otherwise performed by the federal government; and
- WHEREAS,** ISDEAA requires the provision of adequate facilities in which to provide these services, and
- WHEREAS,** Section 105(l) of the Indian Self-Determination and Education Assistance Act requires the Secretary of the Department of the Interior or the Indian Health Service (IHS) to enter into a lease, if requested by the Tribal Nation, if the Tribal Nation or organization holds title to, a leasehold interest in, or a trust interest in a facility that is used to administer programs and services under ISDEAA; and
- WHEREAS,** the Section 105(l) program is being utilized at IHS to enter into leases for hospitals, diabetes facilities, elder care facilities, and health clinics, including construction of new facilities; and
- WHEREAS,** the Section 105(l) program is being utilized at the Department of the Interior to enter into leases, including construction of new facilities, for public safety and Tribal justice facilities, social services facilities, Tribal administration facilities, schools, natural resources facilities, roads facilities, cultural and museum facilities, facilities where Tribal Nations are implementing plans and programs that are approved by the Indian Affairs Division of Workforce Development under the authority of Public Law 102-477, and any other facilities where Tribal Nations are administering programs, functions, services and activities pursuant to their ISDEAA contract or compact; and
- WHEREAS,** as further provided under the ISDEAA and as established in *Maniilaq Association v. Burwell* (2016), IHS must compensate the Tribal Nation or organization fully for its use of such facility leased under Section 105(l); and

- WHEREAS,** in response to growing lease proposals and after failing to adequately project costs in both Fiscal Year (FY) 2018 and FY 2019, IHS chose to disregard Tribal recommendations, obtained through government-to-government consultation, by unilaterally reprogramming critical funding twice from other line items to fund these obligations; and
- WHEREAS,** in FY 2021, recognizing the importance and need for 105(l) leases, as well as in response to reprogramming, Congress passed statutory discretionary appropriations language in the 2021 Omnibus Appropriations bill that created a new indefinite spending account, whereby “such sums as may be necessary” are authorized to be appropriated on an annual basis for 105(l) leases; and
- WHEREAS,** although this mechanism insulates other federal budget lines from future reprogramming, the federal estimate of total funding for 105(l) obligations is funded as Congress provides appropriations for IHS and DOI; and
- WHEREAS,** the Section 105(l) program will continue to expand among Tribal Nations operating under self-determination contracts or self-governance compacts; and
- WHEREAS,** permanent mandatory appropriations for the Section 105(l) program are necessary to ensure reprogramming from other critical funding to Tribal Nations does not occur, as well as avoid detrimental impacts to overall funding increases for trust and treaty obligations during the federal appropriations process; and
- WHEREAS,** while USET SPF contends that all federal Indian agencies and programs should be subject to mandatory funding, in recognition of perpetual trust and treaty obligations, we support the immediate transfer of binding obligations, like the 105(l) program, to the mandatory side of the federal budget to ensure that funding increases are able to be allocated to service delivery, as opposed to the federal government’s legal obligations;
- WHEREAS,** the President of the United States has included a request for mandatory funding in the Administration’s Budget Request to Congress; and
- WHEREAS,** in its FY 2023 mark, the Senate Appropriations Subcommittee on Interior, Environment, and Related Agencies proposed to reclassify 105(l) lease costs as an appropriated entitlement beginning in FY 2024, though this proposal was not enacted; and
- WHEREAS,** in December 2010, the United States recognized the rights of its First Peoples through its support of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), whose provisions and principles support and promote the purposes of this resolution; therefore, be it
- RESOLVED** USET SPF calls upon the Administration to continue the Section 105(l) program and expand the program to include additional Tribal facilities and eligible programs; and
- RESOLVED** USET SPF calls on Congress to pass, and the Administration to support, permanent mandatory appropriations to fully fund Section 105(l) lease obligations under the Indian Self-Determination and Education Assistance Act.

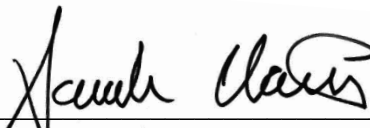
*Because there is Strength in Unity*

**CERTIFICATION**

This resolution was duly passed at the USET SPF Impact Week Meeting held in Arlington, VA at which a quorum was present on February 7, 2023.



Chief Kirk E. Francis, Sr., President  
United South and Eastern Tribes  
Sovereignty Protection Fund



Vice Chairwoman Sarah Harris, Secretary  
United South and Eastern Tribes  
Sovereignty Protection Fund

*Because there is Strength in Unity*