



USET

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Transmitted Electronically
To tribalconsultation@omb.eop.gov

April 27, 2023

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

Re: USET SPF Comments to OMB on Revising Statistical Policy Directive No. 15, Docket ID No. OMB-2023-0001-0001

Dear Director Young,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Tribal consultation held on March 16, 2023 to revise the Office of Management and Budget's (OMB) Statistical Policy Directive No. 15 (SPD No. 15). Last revised in 1997, SPD No. 15 is a data standard for federal agencies to collect, maintain, and present consistent data on race and ethnicity in areas such as the decennial Census, household surveys, and federal administrative forms, and the SPD No. 15 questions have also been adopted into other questionnaires the public is regularly asked to complete. The answers to these questions generate important data that is used to allocate federal funding amounts to Tribal Nations and our people in furtherance of trust and treaty obligations, and these questions also affect the public's perception of what it means to be Native.

USET Sovereignty Protection Fund (USET SPF) is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

⁽¹⁾ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe–Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mi'kmaq Nation (ME), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

In 2022, OMB established a Federal Interagency Technical Working Group on Race and Ethnicity Standards to develop recommendations to revise and update the 1997 SPD No. 15. Some of the proposed revisions have implications for how data on those self-identifying as American Indian or Alaska Native is collected under the Directive, which, in turn, will affect federal data collection efforts in the U.S. Census and other areas. USET SPF's comments address this concern, but ultimately, we strongly recommend further dialogue and consultation on this issue due to the wide-spread implications that changes in definitions will have on federal data collection efforts on Native peoples to whom the federal government has trust and treaty obligations.

Tribal Nations and Our People Have an Inherent Political Status

Under the 1997 SPD No.15, federal agencies are directed to collect data on race and ethnicity through two separate questions and, among the proposals to revise SPD No. 15, OMB is proposing to combine these into a single question. Currently, federal agencies collect data on ethnicity by posing the question, "Are you Hispanic or Latino", with "yes", or "no", response options. Following this question, federal agencies collect data on race by posing the question, "What is your race? *Select one or more*", with the options of "American Indian or Alaska Native", "Asian", "Black or African American", "Native Hawaiian or Other Pacific Islander", or "White". The Federal Interagency Technical Working Group on Race and Ethnicity Standards (Working Group) is proposing to change the American Indian/Alaska Native (AI/AN) category to include, "all individuals who identify with any of the original peoples of North, Central, and South America", as well as removing from the current AI/AN definition the language, "maintain[s] tribal affiliation or community attachment", for a respondent identifying as AI/AN. Additionally, the Working Group is proposing to combine the ethnicity and race questions into a single question due to concerns that a respondent may not understand the distinction between "race" and "ethnicity", as well as inclusion of more race-based selection options to increase granular data collection efforts within racial groups (e.g., for a respondent selecting "Asian", are they Japanese, Chinese, Hmong, Cambodian, etc.?).

Regardless of our racial backgrounds, Tribal Nations, our citizens, community members, and others eligible for federal Indian programs and services have a unique political status due to the centuries-long trust and treaty relationship established with the federal government and Tribal Nations' status as inherently sovereign political entities. This political status and relationship has been recognized by and embedded in the U.S. Constitution, treaties, federal statutes, and a body of federal Indian law. However, too often we are categorized and combined with various ethnic or racial initiatives, especially in the areas of the federal government's pursuit of social justice, that do not recognize or acknowledge the inherent political status and identity of Tribal Nations and our people. AI/AN population data is often used for these programs or funding initiatives to determine both targeted and broad funding allocations of federal programs and services. For these reasons, the federal government has an obligation to ensure federal data collection efforts are accurately and meaningfully collecting AI/AN population data to measure who is eligible for federal programs and services delivered in fulfillment of trust and treaty obligations. This runs counter to the federal government's focus on collecting "racial" or "ethnic" specific data under SPD No. 15, which does not acknowledge or recognize the inherent political status and identity of Tribal Nations and our people.

USET SPF takes issue with the current questions posed in SDP No. 15 and is also concerned regarding proposed changes to the definition of AI/AN in SPD No. 15 and the implications it will have on population data collection efforts across the federal government. Any change to the AI/AN definition will inevitably inform and affect funding formulas and allocations for Tribal-specific and other federal programs and services that Tribal Nations and Native people are eligible to access. This is particularly important for data collection efforts by the U.S. Census, which is guided by SPD No. 15. Many federal agencies use Census

data to inform programmatic funding allocations and service area eligibility metrics. As the federal government is extremely deficient in its data-collection with regard to the United States' unmet obligations to Tribal Nations, it is imperative that the federal government ask the right questions when it does collect data. While OMB is proposing a general overhaul of SPD No. 15, especially in the racial and ethnic definitions in its questionnaires, the AI/AN specific issue necessitates a larger dialogue and consultation with Tribal Leaders. Unlike other populations in the United States, we should not be combined with proposals to revise SPD No. 15 based on a racial or ethnic designation—this runs counter to fulfillment of the federal government's trust and treaty obligations and our political status. OMB must solicit direct input and recommendations from Tribal Nations on how to revise and update the AI/AN definition in SPD No. 15 due to the inherent political identity and status of our Nations and Native people.

Establish a Tribal Advisory Group to Provide Direct Input on Revising AI/AN Definitions

During the Tribal consultation held on March 16, 2023 on proposed revisions to SPD No. 15, it was stated that the Working Group representatives were selected by the participating federal agencies based on the representative's technical expertise, and not based on being or identifying as Native American. While USET SPF understands that this decision was made because of the broader race and ethnicity questions and definitions in SPD No. 15, we strongly recommend that further discussion and consultation occur on revising the specific definitions of AI/AN due to its implications to the trust and treaty relationship and our inherent sovereignty. The Working Group and OMB may decide to move forward with revising SPD No. 15 on a broader scale, but we strongly recommend that a Tribal Advisory Group comprised of Tribal Leaders and Native data experts be established to provide direct input and recommendations for revising SPD No. 15 as it relates specifically to the AI/AN definition.

Any revisions to the AI/AN definition will certainly impact federal data collection efforts that determine how federal funds are allocated to Tribal Nations and how our people access federal services, such as the Indian Health Service. Further dialogue and consultation must be held on revising the AI/AN definition in SPD No. 15 since the Working Group developed its recommendations for revising the Directive without direct input from Tribal Leaders and Native data experts. Additionally, we recommend inclusion of the White House Council on Native American Affairs (WHCNA) in these conversations since its federal representatives have first-hand experience in working with Tribal Nations in the areas of Indian program and service funding and delivery. WHCNA could provide information from the federal perspective on how AI/AN population data sets inform and determine funding allocations and service delivery of Indian and other federal programs.

Conclusion

The federal government has trust and treaty obligations to uphold, protect, and promote the inherent sovereignty of Tribal Nations as well as the general welfare of our citizens. These obligations have been recognized by and embedded in the U.S. Constitution, treaties, federal statutes, and an extensive body of federal Indian law, and they exist in perpetuity. Therefore, it is critically important that any revisions to federal data collection standards regarding American Indians and Alaska Natives receives appropriate and direct input from Tribal Leaders. Federal data collection efforts impact every facet of funding allocation to Tribal Nations and the federal services accessed by our citizens and Native people. These questions also shape public perception of what it means to be Native. Although the revision and update of the 1997 SPD No. 15 includes broader proposals regarding non-Native race and ethnicity, OMB must make an exception for proceeding forward in revising definitions of American Indian and Alaska Native. Tribal Nations and our people have a political identity and relationship with the United States, which necessitates direct dialogue and further consultation with Tribal Leaders when proposing to change the definition of American Indian and Alaska Native in federal data collection standards. We strongly urge OMB to convene a Tribal Advisory

Group to further discuss and provide recommendations on this specific issue related to updating SPD No. 15. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 615-838-5906.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Francis', with a long horizontal stroke extending to the right.

Kirk Francis
President

A handwritten signature in black ink, appearing to read 'Kitcki A. Carroll', written in a cursive style.

Kitcki A. Carroll
Executive Director