



# USET

SOVEREIGNTY PROTECTION FUND

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June 9, 2023

The Honorable Chief Lynn Malerba  
Treasurer of the United States  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Dear Chief Malerba,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to Treasury's proposed State and Local Fiscal Recovery Fund (SLFRF) and Capital Projects Fund (CPF) Supplementary Broadband Guidance for Tribal Governments (Supplementary Guidance). It is well known and documented that Tribal Lands have been consistently overlooked for the deployment of reliable and affordable broadband internet services. However, the COVID-19 pandemic further exacerbated this issue as the internet capabilities in speed and bandwidth needed for remote work and education were severely inadequate in our communities. We appreciate Treasury issuing this Supplementary Guidance to further clarify the Uniform Guidance ([2 CFR 200](#)) rules on how SLFRF and CPF funds can be utilized by Tribal Nations for broadband infrastructure projects. In clarifying the Uniform Guidance, internet service providers (ISPs) and Tribal Nations have a clearer understanding of how to utilize SLFRF and CPF funds to expeditiously deploy critical broadband services on Tribal Lands and ensure project proposals are not delayed due to confusion in the rules. However, we would recommend that the Supplementary Guidance be extended to consider all infrastructure projects on Tribal Lands to address delays with expending SLFRF and CPF funds.

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.<sup>1</sup> 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.

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

*Because there is Strength in Unity*

The Supplementary Guidance is a follow up to “Frequently Asked Questions” (FAQ) documents issued by Treasury in April 2023 on the use of SLFRF and CPF funds. In the FAQ documents issued by Treasury, the Department confirmed SLFRF and CPF recipients may provide subawards or contracts to other entities for the construction of eligible projects and that the Uniform Guidance (2 CFR 200.331) specifies as to when to consider entities as contractors or subrecipients. The Supplementary Guidance provides further clarification on when to consider an ISP as a subrecipient or a contractor. It also provides clarification on when the Uniform Guidance applies to program income; cost principles, procurement practices, and fixed subawards; the ownership of infrastructure; and audit and monitoring requirements. This additional clarification will assist Tribal Nations in determining if ISPs selected by Tribal Nations to install broadband infrastructure should be considered as subrecipients or contractors under the Uniform Guidance.

### **Treasury Must Exercise Administrative Flexibility for Tribal Nations to Expend SLFRF and CPF Funds**

Due to the current budget climate and the possibility of further unexpended COVID-19 funding rescissions by Congress, Tribal Nations must be empowered to expeditiously receive and expend SLFRF and CPF funds. We have heard from Tribal Nations about the administrative barriers to apply for and utilize these funds. We have also heard that some Tribal Nations have already had to return COVID-19 relief funds to Treasury because project proposals were delayed due to administrative burdens, supply chain issues, and inflationary costs. Treasury must uphold its trust and treaty obligations to ensure that COVID-19 relief funds are expeditiously awarded to Tribal Nations, and the ISPs we choose to work with, so that we may properly address the broadband infrastructure issues prevalent in our communities. Furthermore, we hope that Treasury expands the Supplementary Guidance to include all infrastructure projects, not just broadband. The current infrastructure challenges that exist on Tribal Lands are the direct result of the failure of the federal government to uphold its trust and treaty obligations and fully fund these programs for Tribal Nations. Treasury should exercise its discretion under Section 3 of Executive Order 13157 (EO 13175), which extends maximum administrative discretion to Tribal Nations to develop our own policies and standards, and Section 6 of EO 13175, which encourages the federal government to facilitate and streamline Tribal applications for waivers of statutory and regulatory requirements. These actions are in line with Treasury’s objective to expend SLFRF and CPF funds to Tribal Nations and would uphold its trust and treaty obligations to address the infrastructure disparities on our lands.

### **Conclusion**

The COVID-19 pandemic has exacerbated current service delivery and infrastructure deficits throughout Indian Country. While the deployment of broadband service has been subsidized by the federal government, there continues to exist a lack of reliable and affordable broadband services in Indian Country. The SLFRF and CPF programs provide yet another funding opportunity to address the pervasive digital divide that exists in Indian Country. However, these programs will not be successful in connecting Tribal Lands to critical broadband services if there are continued statutory and regulatory barriers to Tribal participation. Treasury must exercise administrative flexibility to remove these barriers to Tribal Nations applying for, receiving, and implementing these funds.

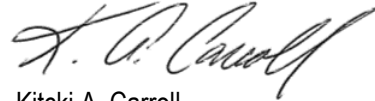
We have been pleased with Treasury’s active work, collaboration, and consultation with Tribal Nations on these issues. However, more work must be done to ensure that vital COVID-19 relief funds for infrastructure projects are utilized and expended. This is especially important due to the current political climate and actions by Congress to decrease the federal deficit through reallocation of these funds. We look forward to our continued dialogue and engagement on these important matters and hope that this Supplemental Guidance can be extended to all SLFRF and CPF infrastructure projects. 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](mailto:LMalerba@usetinc.org) or 615-838-5906.

Sincerely,

A handwritten signature in black ink, appearing to read "Kirk Francis", with a long horizontal flourish extending to the right.

Chief 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