



July 12, 2023

The Honorable Patty Murray
 Chair
 Committee on Appropriations
 United States Senate
 S-128 Capitol Bldg.
 Washington, DC 20515

The Honorable Kay Granger
 Chair
 Committee on Appropriations
 United States House of Representatives
 H-307 Capitol Bldg.
 Washington, DC 20515

The Honorable Susan Collins
 Vice Chair
 Committee on Appropriations
 United States Senate
 S-128 Capitol Bldg.
 Washington, DC 20515

The Honorable Rosa DeLauro
 Ranking Member
 Committee on Appropriations
 United States House of Representatives
 H-307 Capitol Bldg.
 Washington, DC 20515

Re: Support for the President’s FY24 Proposal for Tribal Sovereignty Payments

Dear Chair Murray, Chair Granger, Vice Chair Collins, and Ranking Member DeLauro:

On behalf of the undersigned Tribal partner organizations and the 574+ sovereign federally recognized American Indian and Alaska Native (AI/AN) Tribal nations we serve, we write in strong support of the President’s fiscal year 2024 (FY24) proposal to reclassify Contract Support Costs (CSC) and Section 105(l) Tribal Lease Payments as mandatory appropriations and to

increase program administration staff. We respectfully urge you to include the proposal in the FY24 Interior, Environment, and Related Agencies Appropriations Bill (herein “Interior bill”).

The Appropriations Committees recognized as far back as 2014 that the mandatory nature of CSC obligations places the appropriators in an “untenable position.”¹ As they wrote in the Explanatory Statement that year, “[t]ypically obligations of this nature are addressed through mandatory spending, but in this case since they fall under discretionary spending, they have the potential to impact all other . . . equally important tribal programs.”² Similarly, appropriators stated in the FY 2021 Explanatory Statement for the Interior bill that 105(*l*) leases, as confirmed in the *Maniilaq* cases, appear to create an entitlement to compensation . . . that is typically not funded through discretionary appropriations.³ Tribal participation in ISDEAA programs has increased rapidly over the past decade, and Congress continues to struggle to meet CSC and Section 105(*l*) funding obligations through discretionary appropriations. In their Explanatory Statements, the Committees called on the agencies and Congress to find a sustainable solution including mandatory reclassification.⁴

The Fiscal Responsibility Act severely restricted discretionary appropriations for FY24 and FY25. The Act also provided new mandatory appropriations to offset cuts to discretionary appropriations for some agencies, but provided no such relief for the federal government’s treaty and trust obligations to Tribal nations. Agencies estimate that Tribal sovereignty payments will increase by almost \$392 million (27%) in FY24. Despite this increase, the House and Senate have proposed cuts to the Interior bill by 35 percent and 3 percent, respectively. Deeper cuts elsewhere in the bill to offset Tribal sovereignty payment increases are, thus, inevitable.

Immediately moving these two accounts to mandatory is good risk management for the United States because the amount is already mandatory in nature and there is a mechanism for controlling costs. If the goal or intent is better fiscal management or maintaining annual control over federal spending, then leaving accounts in the discretionary process with standing to sue that would also generate additional administrative or legal costs if any underpayment or delay were to occur is wasteful and misleading, at best, and intentionally reckless, at worst. Since the amount is already mandatory in nature, there is nothing added to the mandatory budget by moving this authority to the mandatory side of the federal ledger. It does not take away any new money or create any new authority. In fact, it would benefit those with a keen fiscal eye because it would properly classify the authority for scoring purposes. Both CSC and Section 105(*l*) Lease Agreement accounts are necessarily bound by the parameters of the authorizing law and amounts are determined through sophisticated negotiations and calculations between parties with administrative avenues for recourse prior to suit. This means that the amount is determinable each year and can be determined into the future with reliability and accuracy. Further, it means that costs are controlled and defined by the amount of resources provided for HHS and DOI programs, services, functions, or activities in the Interior bill, along with other quantifiable measures like employee pay costs.

There is a better way to manage and score this authority for the American people and that is by providing such sums as may be necessary for these accounts through mandatory spending. Reallocating base funding from discretionary to mandatory funding has a net zero impact on the Federal budget and would not undermine the Fiscal Responsibility Act. Moreover, as mandatory

¹ Page H975 at <https://www.govinfo.gov/content/pkg/CREC-2014-01-15/pdf/CREC-2014-01-15-bk2.pdf>.

² *Id.*

³ Page H11281 at <https://www.govinfo.gov/content/pkg/CREC-2019-12-17/pdf/CREC-2019-12-17-house-bk3.pdf>.

⁴ *Id.*

appropriations in the Interior bill, the Appropriations Committees would retain oversight of the programs. The President's proposal is sound, reasonable, and fair. Our organizations recognize and appreciate your strong leadership and support over the years for Tribal self-determination. For the sake of continuing to improve the federal government's commitments to meeting its trust and treaty obligations under your leadership, we urge you to include the President's Tribal sovereignty payments proposal in the FY24 Interior bill.

Sincerely,

Affiliated Tribes of Northwest Indians
Alaska Native Health Board
Albuquerque Area Indian Health Board
American Indian Higher Education Consortium
California Rural Indian Health Board
California Tribal Chairpersons' Association
Great Lakes Inter-Tribal Council
Intertribal Association of Arizona
Midwest Alliance of Sovereign Tribes
Makah Tribe
National American Indian Housing Council
National Association of Tribal Historic Preservation Officers
National Congress of American Indians
National Council of Urban Indian Health
National Indian Education Association
National Indian Health Board
Native American Finance Officers Association
Northwest Portland Area Indian Health Board
Rocky Mountain Tribal Leaders Council
Self-Governance Communication and Education Tribal Consortium
Southern Plains Tribal Health Board
Suquamish Tribe
United South and Eastern Tribes Sovereignty Protection Fund