



# USET

SOVEREIGNTY PROTECTION FUND

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July 20, 2023

Bryan Newland  
Assistant Secretary – Indian Affairs  
U.S. Department of the Interior  
1849 C Street NW  
Washington, DC 20240

Dear Assistant Secretary Newland,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the June 20, 2023 Department of the Interior (DOI) Tribal consultation on Tribal data priorities. This consultation was held to gather feedback and recommendations on how to improve data quality to inform policy making, equitable resource distributions, effective program management, and honor Tribal sovereignty. DOI also stated that it is part of an Indian Country Data Working Group comprised of nine federal departments that hold monthly meetings to discuss data opportunities, challenges, and areas for collaboration. This Indian Country Data Working Group is focused on clarifying policies and developing best practices, such as standard data sharing agreements, and establishing a Tribal Data Advisory Board. USET SPF appreciates DOI's focus on improving Tribal Nation data quality and that one of the priorities of the Indian Country Data Working Group is to establish a Tribal Data Advisory Board. USET SPF supports these efforts, but we remind the Department must protect Tribal data from being shared publicly or with other agencies without Tribal Nation consent. Furthermore, we strongly recommend that the federal government reimagine how it collects Tribal Nation data, especially when it consistently relies on inaccurate and incomplete data to inform fiscal year budget requests and funding allocations for Tribal Nation programs and services.

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***

## **DOI and the Indian Country Data Working Group Must Reimagine How the Federal Government Collects Tribal Nation Data**

USET SPF has consistently stated that the federal government operates on an archaic, antiquated model of collecting and using data to justify funding in fulfillment of basic trust and treaty obligations. The federal government must move away from using inaccurate and incomplete federal data sets to inform funding allocations. This continued reliance on these federal data sets has also compounded the failure of the federal government to uphold its trust and treaty obligations to provide the necessary appropriations to fully fund Tribal programs and services. Due to these funding shortfalls, the federal government has been and continues to be unable to equitably allocate funds for across Tribal programs and services. Therefore, the federal government must move towards embracing Tribal Nation data to influence a fiscal budget that embraces the true extent of full federal funding required to support Tribal Nation rebuilding, not to justify fulfillment of trust and treaty obligations. Tribal Nations have consistently witnessed federal efforts to collect the proper Tribal Nation data, only to have the final analyses of such data result in the failure of the federal government to appropriate the necessary dollars required to fully fund Tribal programs and services. Federal departments must rely on Tribal Nation self-certified data to accurately represent these funding shortfalls and emphasize these issues in the Administration's annual fiscal year budget requests to Congress.

Furthermore, USET SPF has consistently raised the issue of how data is used to inform the Office of Management and Budget's (OMB) Native American Funding Crosscut. In the past OMB has asserted that over \$20 billion in federal dollars is appropriated to Indian Country annually. From the perspective of Tribal advocates, including those who serve on budget formulation committees for federal agencies, this number was viewed to be widely inflated, with far less actually reaching Tribal Nations and Tribal citizens. We suspect that OMB arrives at this figure by tallying the amount for which Tribal Nations and entities are eligible, regardless of whether these dollars actually reach Indian Country. While OMB has provided a high-level crosscut of this funding in the past, Tribal Nations have asked for a full, detailed accounting of federal funding distributed to Indian Country.

USET SPF firmly believes that this information is absolutely essential to consultation around federal budget formulation, as well as the measurement of the federal government's own success in meeting its obligations and the work of Tribal Nations. Further, as the Executive Department with the longest history of engagement with Tribal Nations, DOI is consistently relied upon to assist other federal departments and agencies in consultation and coordination efforts with Tribal Nations. For this reason, DOI is positioned to provide significant, meaningful recommendations to the Administration on how to promote, protect, and collect Tribal Nation data, especially in the areas of data supporting appropriations requests for Tribal programs and services. In evaluating and reimagining how the federal government collects data to inform its annual budget requests and budget allocations, these issues must be at the forefront of consideration at DOI. Additionally, DOI should provide full funding figures in annual fiscal year budget requests that are developed in consultation with Tribal Nations and Tribally self-certified data to provide a full and complete picture of unfulfilled trust and treaty obligations. Further, the Administration should require all federal departments and agencies, including independent agencies, to provide full funding numbers on dollars reaching Indian Country, as opposed to those for which we are merely eligible or those that are expected to be passed through states.

## **Accept Self-Certified Tribal Nation Data and Respect Tribal Nation Data Sovereignty**

The federal government must recognize the authority and sovereign right of Tribal Nations to self-certify our own data when submitting it to the federal government. This action will ensure that the use of Tribal Nation data for allocating federal funds is streamlined and not unduly burdensome on our Tribal governments, and

that accurate data is used to direct the equitable allocation of vital DOI and other federal funds for Tribal Nations. In support of these efforts, the federal government must provide the resources and technical assistance required for Tribal Nations to maintain data collection efforts and database procurement. A key pillar of data sovereignty is the ability of Tribal Nations to collect, maintain, and utilize our own data to guide the decisions of our Tribal governments, and our enterprises, utilities, and public safety and social services to promote and protect the well-being of our communities and citizens. Therefore, in furtherance of advancing and securing our data sovereignty, the federal government must fully fund and allocate the necessary resources for Tribal Nations to pursue our goals and priorities to serve our citizens and communities. This coincides with the federal government's trust and treaty obligations to promote and protect the general welfare of Tribal Nations. Furthermore, supporting Tribal Nation data sovereignty translates into support for the federal government's efforts to obtain Tribally self-certified data to ascertain how to allocate full funding for Tribal programs and services across all areas of the federal government.

For too long, Congress and the Administration have failed to uphold trust and treaty obligations to Tribal Nations and fully fund these programs and services. Rather, the federal government has continued to rely upon and use inappropriate funding mechanisms that devalue the trust relationship by treating us like grant recipients. Upholding proper Nation-to-Nation, diplomatic relations between the U.S. and Tribal Nations is not a difficult task and does not need to be approached from the perspective of needing to establish new protocols and procedures. Rather, in re-imagining its trust and treaty obligations through a Nation-to-Nation, diplomatic lens, the U.S. can look to its already established international diplomatic relations as a starting point for how Tribal Nation sovereign diplomatic relationships should be structured. Furthermore, the White House Council on Native American Affairs (WHCNA) could serve as a resource to assist with this re-imagination and provide support in moving the federal government away from its antiquated practices and processes that do not honor and respect our Nation-to-Nation diplomatic relationship.

### **Tribal Nation Data Should Not Be Shared Without Tribal Nation Consent**

USET SPF does not support the public sharing of our data in the absence of individual Tribal Nation consent and firmly holds that only Tribal Nations should determine whether data should be shared publicly or across the federal government. While we understand that some Tribal Nations publish certain data and information on their websites, such as enrollment numbers, this should not empower DOI to publish our data on its website without our consent (e.g., for use in 'Best Practices' publications). Furthermore, USET SPF recommends that DOI and the federal agency members of the Indian Country Data Working Group, in consultation with Tribal Nations, produce guidance for informing Tribal Nations when a federal agency requests our data, why they are requesting such data, and a process for us to approve or disapprove of the sharing of such data. This will ensure that DOI and the other agency members of the Indian Country Data Working Group, as well as Tribal Nations, have a clear understanding of proper protocols and procedures for the sharing of our data within the federal government. Similarly, this guidance should also include a process for Tribal Nations to approach DOI and other federal agencies to request the sharing of our data if it is pertinent and necessary to share with another federal agency when applying for federal programs and funds. This will ensure that federal agencies are not relying on inaccurate data sets when reviewing funding applications if a Tribal Nation is aware that a considerably more reliable Tribal Nation data set has been provided to another federal agency.

### **Tribal Nation Data Should Be Protected from FOIA Requests**

The federal government must protect Tribal Nation data from Freedom of Information Act (FOIA) requests, especially when FOIA requests are being made by non-Tribal entities attempting to gain access to sensitive, confidential, and economic information. Federal departments and agencies must inform Tribal Nations of these FOIA requests and let us determine whether such requests should be withheld or redacted. As a matter of upholding the federal government's trust and treaty obligations, Tribal government

information and data should never be released without first seeking the consent of the relevant Tribal Nation(s). Concerns regarding the FOIA process have been raised in other Tribal consultation proceedings and USET SPF has consistently recommended that the Office of Management and Budget (OMB) and relevant federal agencies, such as DOI, address this as soon as possible. This includes the recommendation that OMB consult with Tribal Nations on this issue and publish blanket guidance to federal agencies on how FOIA requests on our information are handled. We will continue to raise these concerns until they are addressed by the federal government because we are aware of non-Tribal entities, such as industry, universities, and state and local governments, submitting FOIA requests to various federal agencies to gain access to Tribal Nation government, cultural, and economic information.

### **Support for Establishing a Tribal Advisory Board to Provide Direct Input on Improving Federal Data Collection Efforts**

USET SPF supports the priority of the Indian Country Working Group to establish a Tribal Advisory Board to provide targeted input and recommendations to its member federal agencies. We strongly recommend that the Tribal Advisory Board should be comprised of Tribal Leaders and Tribal data experts and discussions and meetings held by this Advisory body must be protected and not subject to FOIA and Federal Advisory Committee Act requirements. The Tribal Advisory Board should be established in consultation with Tribal Nations and its members should be representative of the diversity of Tribal Nations, such as, but not limited to, demographics representative of population and economic metrics, service areas, and small land base and landless Tribal Nations. Additionally, we also recommend coordination with the WHCNAA as a potential subject matter resource in these conversations since its federal representatives have first-hand experience in working with Tribal Nations in the areas of Tribal program and service funding and delivery. WHCNAA could provide information from the federal perspective on how Tribal Nation data sets inform and determine funding allocations and service delivery of Indian and other federal programs.

### **Conclusion**

During the COVID-19 public health emergency the issues of Tribal data accuracy and reliability became highly apparent when the federal government used certain incomplete data sets, such as those from the Indian Housing Block Grant program. This led to the development and use of an inaccurate allocation methodology of relief dollars from the Coronavirus Relief Fund in 2020 and many Tribal Nations either received inadequate funds or no funds at all to respond to the outbreak of COVID-19. While this public health emergency brought the issue of inequitable allocation of federal funds for Tribal programs and services to the forefront, the federal government has historically and consistently failed to uphold its trust and treaty obligations to fully fund and allocate these programs and services for Tribal Nations and citizens.

Following the disastrous misallocation of CARES Act funding, DOI has since collected, and proposed to continue to collect, Tribal Nation enrollment data on an annual basis to prevent future misallocations of vital federal resources to Tribal Nations. USET SPF continues to encourage DOI to consult frequently with Tribal Nations on this issue and other data issues to ensure internal and external policies and procedures can be refined and updated as necessary. We appreciate DOI's effort to host initial consultations on determining the data priorities of Tribal Nations, as well as informing us on the priorities of the Indian Country Data Working Group. However, the June 2023 consultation was only meant to be an initial consultation to gather feedback and direction from Tribal Nations on our data priorities.

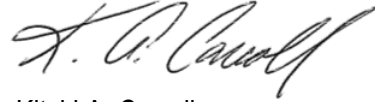
USET SPF encourages DOI and the Indian Country Data Working Group to continue these discussions and consultations with Tribal Nations. We also encourage the establishment of a Tribal Data Advisory Board in consultation with Tribal Nations and comprised of Tribal Leaders and Tribal data experts that are representative of the diversity of Tribal Nations. These actions would uphold the federal government's trust

and treaty obligations and respect our status as sovereign governments to self-determine our data priorities required for Nation rebuilding. We look forward to continued dialogue on these important issues. 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,



Chief Kirk Francis  
President



Kitcki A. Carroll  
Executive Director