



# USET

SOVEREIGNTY PROTECTION FUND

1730 Rhode Island Avenue, NW  
Suite 210  
Washington, DC 20036  
P: (615) 872-7900  
F: (615) 872-7417  
www.usetinc.org

September 2023

## Office of Management and Budget Tribal Consultation on Fiscal Year 2025 President's Budget Request *USET SPF Tribal Leader Talking Points*

### Summary

On August 25, 2023 the Office of Management and Budget (OMB) issued a ["Dear Tribal Leader" letter](#) initiating Tribal consultation to provide input to inform the formulation of the President's Fiscal Year (FY) 2025 Budget. The purpose of this Tribal consultation is for Tribal Nations to share views with OMB Leadership on the funding delivered to us in fulfillment of trust and treaty obligations as part of the President's FY 2025 Budget process. As we have consistently stressed, OMB's commitment to Tribal consultation is a long-awaited and welcome development under the current Administration. We encourage the robust participation of USET SPF member Tribal Nations and all of Indian Country to ensure the President's Request reflects our priorities.

### Talking Points

#### General

- **The chronic underfunding of federal Indian programs continues to have disastrous impacts upon Tribal Nations and our citizens.** Native Americans experience some of the greatest disparities among all populations in this country. Indeed, the U.S. Commission on Civil Rights' *Broken Promises* report found deep failures in the delivery of federal fiduciary trust and treaty obligations, concluding that the funding of the federal trust responsibility and obligations remains "grossly inadequate" and a "barely perceptible and decreasing percentage of agency budgets." As the primary agency in the federal budgeting process, OMB must work with Indian Country to address these chronic shortfalls.
- **Inadequate funding to Indian Country needs to be viewed as unfilled treaty and trust obligations.** This funding is not delivered on the basis of poverty or for social welfare purposes. The federal government's trust obligations are the result of the millions of acres of land and extensive resources ceded to the U.S.—oftentimes by force— in exchange for which it is legally and morally obligated to provide benefits and services in perpetuity. At no point has the government fully delivered upon these obligations.
- **Tribal Nations must be treated in a manner befitting our government status, not as grant funded entities or special interest groups.** Far too many dollars are only accessible via competitive grants. Forcing Tribal Nations to compete for grants utilizes a process that does not respect the sacred and unique diplomatic relationship that exists between Tribal Nations and the United States.
- **The sacred trust obligation to Tribal Nations transcends measurements, outputs, data, and statistics.** While these things are important, the obligations due to Tribal Nations should not be

*Because there is Strength in Unity*

based on this understanding. Rather, these are things that Tribal Nations concern themselves with as an internal matter to ensure they are providing strong services to their citizenship. Together, we must explore a new approach that better respects Tribal sovereignty.

- **Ensure Adequate Funding for Inherent Federal Functions.** While we firmly believe that the United States must fully honor its promises and obligation to Indian Country, including direct programmatic funding, we recognize that there are federal functions and services that we cannot contract and compact. When these functions and services are not adequately funded, it is to the direct detriment of Indian Country.
- **Invest in and Rebuild Tribal Infrastructure—A Marshall Plan for Tribal Nations.** For generations, the federal government – despite abiding trust and treaty obligations – has substantially under-invested in Indian Country’s infrastructure and engaged in hostile actions against Tribal Nations. While the United States faces crumbling infrastructure nationally, there are many in Indian Country who lack even basic infrastructure. Much like the U.S. investment in the rebuilding European nations following World War II via the Marshall Plan, the legislative and executive branches should commit to the same level of responsibility to assisting in the rebuilding of Tribal Nations, as our current circumstances are, in large part, directly attributable to the shameful acts and policies of the U.S. In the same way the Marshall Plan acknowledged America’s debt to European sovereigns and was utilized to strengthen our relationships and security abroad, the U.S. should make this strategic investment domestically.
- **Promote Self-Governance through Interagency Transfer Authority.** USET SPF is working toward a future in which all federal dollars are eligible to be contracted or compacted under the Indian Self-Determination and Education Assistance Act. In the meantime, we urge OMB to support policy that would ensure all federal Indian funding can be transferred between federal agencies, so that it may be received through contracts and compacts. We cite the unnecessary delays and barriers to the receipt of urgently needed COVID-19 relief funding as an example of why this authority must be confirmed, as well as a recent [Government Accountability Office Report](#).
- **Expansion and Evolution of Tribal Self-Governance.** Despite the success of Tribal Nations in exercising authority under ISDEAA, as well as the recently enacted Practical Reforms and Other Goals to Reinforce the Effectiveness of Self-Governance and Self-Determination (PROGRESS) for Indian Tribes Act, the goals of self-governance have not been fully realized. Many opportunities still remain to improve and expand upon its principles. An expansion of Tribal self-governance to all federal programs under ISDEAA would be the next evolutionary step in the federal government’s recognition of Tribal sovereignty and reflective of its full commitment to Tribal Nation sovereignty and self-determination. Department of Health and Human Services (HHS) agencies and programs outside of the Indian Health Service are particularly well-positioned for ISDEAA expansion. Tribal Nations have worked over multiple Congresses and Administrations to demonstrate that this expansion is feasible and introduce necessary legislation. We ask the OMB join us in supporting this evolution.

## FY 2025 Regional Priorities

- **Mandatory Funding for the Indian Health Service (IHS).** The Biden Administration’s FY 2023 and FY 2024 Requests proposed a shift in funding for the Indian Health Service (IHS) from the discretionary to the mandatory side of the federal budget, including a 10-year plan to close funding

gaps and an exemption from sequestration, a move that would provide even greater stability for the agency and is more representative of perpetual trust and treaty obligations. While we firmly believe all Indian Country funding should be fully funded today, including the IHS, we continue to strongly support this proposal, recognizing that additional detail and planning is necessary to provide a fully developed plan to fund IHS on a full and mandatory basis. We urge OMB to continue to include this proposal in its FY 2025 Request and to work with Tribal Nations and IHS on draft legislation that reflects our guidance for implementing these changes.

- **Mandatory Funding for Binding Obligations.** While USET SPF celebrates the achievement of separate, indefinite appropriations for both 105(l) leases and Contract Support Costs, we note that likely continued growth in these areas threatens future increases for other IHS and Bureau of Indian Affairs (BIA) lines. While we contend that all federal Indian agencies and programs should be subject to mandatory funding, in recognition of perpetual trust and treaty obligations, we strongly support the Administration's proposal to transfer these lines to the mandatory side of the federal budget. This will ensure that funding increases are able to be allocated to service delivery, as opposed to the federal government's binding legal obligations. OMB must work with Tribal Nations, IHS, BIA, BIE, and Congress to ensure obligations for these lines are properly estimated and any necessary technical support is provided in order to achieve this policy change.
- **IHS Nashville Area Priorities.** In addition to supporting full and mandatory funding for IHS, Nashville Area Tribal Nations identified the following top priority line items for increases in FY 2025:
  1. Purchased/Referred Care
  2. Hospitals and Clinics
  3. Mental Health
  4. Alcohol/Substance Abuse
  5. Dental Health
  6. Health care Facilities Construction

Nashville Area priorities and hot issues also include funding for telehealth resources, recurring funding for Public Health Education, impacts of COVID-19 on user population and workload data, funding for Substance Use Disorder aftercare and housing programs, funding to reduce Hepatitis C, continued funding for Community Health Representatives, resources to modernize health information technology, parity in group payor authorities when sponsoring patients on insurance plans, long-term care services and support, and workforce recruitment and retention.

- **Bureau of Indian Affairs.** We continue to note the historic and continued unmet funding obligations with regard to BIA's diverse line items. It is our expectation that, after years of Budget Requests proposing deep cuts to BIA, the Biden Administration Requests will continue to propose substantial increases across the agency. In the longer-term, the Administration should commit to exploring mandatory funding for the BIA, in addition to the Indian Health Service (IHS).

Working in partnership with the BIA, the yearly budget formulation process now offers a much more comprehensive look at the priorities of Tribal Nations across the many lines and accounts found within the BIA budget. However, we remain focused on the addition of a component or calculation of BIA's unfunded obligations in order to measure performance. We offer the Eastern Region's top priorities for FY 2025 in eight different strategic funding categories:

- Strengthening Tribal Communities: Social Services (TPA)

- Trust-Natural Resources Management: **Natural Resources (TPA)**
  - Trust-Land & Water Rights Management: **Trust Services (TPA)**
  - Public Safety & Justice: **Tribal Courts (TPA)**
  - Economic Development: **Economic Development (TPA)**
  - Education: **Scholarships & Adult Education (TPA)**
  - Construction: **Education Facilities Improvement and Repair**
  - Resource Management Construction: **Federal Power Compliance [FERC]**
- **Tribal homelands restoration and PILT.** USET SPF remains focused on the restoration of Tribal homelands as a top priority. We continue to work to reacquire our homelands, which are a fundamental to our existence as sovereign governments and our ability to thrive as vibrant, healthy, self-sufficient communities. The federal government's objective in the trust responsibility and obligations to our Nations must be to support healthy and sustainable self-determining Tribal governments, which fundamentally includes the restoration of lands to all federally-recognized Tribal Nations, as well as the legal defense of these land acquisitions.

With this in mind, we would like to reiterate a funding request that we believe will have positive impacts on efforts to increase the amount of land going into trust for Tribal Nations. Since 1977, the Department of the Interior (DOI) has issued billions in Payments in Lieu of Taxes (PILT) to local governments that help offset losses in property taxes due to the existence of nontaxable federal lands within their boundaries. However, while PILT payments are made for lands administered by the Bureau of Land Management, the National Park Service, the U.S. Fish and Wildlife Service, and the U.S. Forest Service (part of the U.S. Department of Agriculture) and for Federal water projects and some military installations, lands held in trust for Tribal Nations are not currently eligible. USET SPF believes that PILT (or a PILT-like mechanism) for lands put into trust could remove barriers to the restoration of Tribal homelands while also easing the perceived burdens of and impacts to local government as a result of lost tax revenue. We urge the inclusion of this funding in the FY 2025 Request.

- **Funding for Tribal Historic Preservation.** Due to chronic underfunding, many Tribal Historic Preservation Offices (THPOs) are currently operating without the necessary personnel to conduct National Historic Preservation Act Section 106 reviews. THPOs are the protectors of irreplaceable resources: our cultures and spirituality. The explosion in infrastructure development that will be funded by the Inflation Reduction Act and Bipartisan Infrastructure Law is likely to overwhelm THPOs without additional funding and other resources. We urge the Administration to request and provide additional, increased resources for THPOs, so that we may protect our cultural and sacred sites.

## **Preserving Biden Administration Gains**

- **Funding and Permanency for OMB's Tribal Affairs Advisor.** With the appointment of OMB's first-ever Tribal Affairs advisor, we are seeing the voices and guidance of Tribal Nations raised to new heights within the Administration's priorities and its Budget Requests. We celebrate this achievement and attribute it, in large part, to OMB's commitment to meaningful dialogue with Indian Country. Now, as the Administration enters its final year, it is critical that this progress be preserved. We ask OMB to include dedicated funding and permanency for this position in the FY 2025 Request, so that Tribal Nations can continue to guide the agency in delivering upon trust and treaty obligations.

- **Funding and Permanency for Treasury’s Office of Tribal and Native Affairs.** We would like to register our support for dedicated funding and permanency for Treasury’s newly established Office of Tribal and Native Affairs. Tribal Nations have long advocated for the creation of an Office of Tribal Affairs within the Treasury to improve the Department’s delivery of federal trust and treaty obligations to Tribal Nations. Providing dedicated funding will assist Treasury with fulfilling this directive and ensure that the full array of Treasury’s programs will help support Tribally driven economic development and investment in Indian Country.
- **Funding for the White House Council on Native American Affairs.** Presently, and throughout its short history, the White House Council on Native American Affairs (WHCNAA) has operated with virtually no dedicated staffing or financial resources. Traditionally, the work of the Council has been coordinated by an executive director on detail from the Department of the Interior (DOI). And under the Executive Order establishing the Council, DOI “shall provide funding and administrative support for the Council to the extent permitted by law and within existing appropriations.” In practice, this has resulted in a lack of substantive support for the work of the body and the executive director, along with a restricting of the WHCNAA’s scope and ability to provide meaningful contact between the Cabinet and Indian Country.

USET SPF envisions a WHCNAA that engages in transformative policymaking and, at a minimum, makes several visits to Tribal homelands annually. This cannot be accomplished without direct and dedicated funding for the WHCNAA. Given the potential for WHCNAA to play a significant role in advancing the delivery of the federal government’s delivery of trust and treaty obligations, as well as our diplomatic relationship, we urge this Administration to designate a dedicated funding stream for WHCNAA—through the President’s Budget Request or other means. It is our belief that this will allow the WHCNAA’s work to be more substantive, productive, and meaningful for our evolving U.S.-Tribal Nation relationship.

## **Reforms to Federal Budget Process/OMB**

- **OMB must produce a detailed crosscut of federal Indian funding.** The agency asserts 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 seems 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, both USET SPF and the Tribal Interior Budget Council (TIBC) 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.
- **Presidential budget requests should contain full funding figures developed in consultation with Tribal Nations.** Several federal agencies engage in a Tribal budget formulation process, which is then supposed to influence the Administration’s request. Yet, it is typical for any Tribal recommendations that appear in the President’s budget request to be significantly scaled back. While we recognize that the Administration may be unable to incorporate all of our recommendations into the official request, Congress should, at the very least, be informed of what

Tribal Nations are requesting. In addition, OMB must work with federal agencies and Tribal Nations to determine and reflect shortfalls, both total and by agency/program, in the overall funding of trust and treaty obligations.

- **OMB should require departments/agencies to provide annually a full and complete picture of unfulfilled trust and treaty obligations.** The only way the United States can effectively measure how well it is fulfilling its obligations is in comparison to a full funding for Indian Country budget number. Each department/agency should be required to work in partnership with Indian Country to determine complete budgetary fulfillment of trust and treaty obligations.
- **OMB's role in government efficiency must extend to reducing burdens and improving the delivery of trust obligations for Indian Country.** A primary function of the agency is to help improve administrative management, to develop better performance measures and coordinating mechanisms, and to reduce any unnecessary burdens on the public. In fulfilling this responsibility, OMB must approach its dealings with Indian Country in a manner that works to significantly diminish unnecessary burdens placed on Tribal Nations. Moving away from a grants-based mentality is an initial step toward a more appropriate approach. In addition to measuring the performance of Tribal Nations with appropriated federal dollars, OMB must also work to measure how well federal entities are performing in carrying out their trust duties and functions.
- **Establish an OMB Tribal Advisory Committee.** A Tribal advisory committee (TAC) would provide the agency with the opportunity for direct communication with and guidance from Tribal leaders on a regular basis. The TAC would complement OMB's consultation with all Tribal Nations, as well as its Indian Desk, by providing specialized guidance on agency initiatives and functions. The TAC should provide broad regional representation reflective of the diverse circumstances facing Indian Country and members should be selected by the Tribal Nations of each region.