



# USET SPF Policy and Legislative Affairs Updates

USET SPF Annual Meeting

October 23, 2023

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# Budget and Congressional Year-end/Admin-end Priorities

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# Debt Ceiling Agreement



Fiscal Responsibility Act of 2023 signed into law by President Biden on June 3, 2023

- Suspends limits on U.S. borrowing power through January 1, 2025
- Caps most discretionary funding for FY 2024 (flat) and 2025 (+1%)
  - If full-year appropriations not enacted by Jan 1, 2024, all funding reduced by 1%
- Rescinds certain unobligated COVID-19 funds
- Modifies work requirements for SNAP and TANF, and
- Rescinds certain funds provided to the IRS.

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# FY 2024 Appropriations – Political Divison



- Different topline funding levels between chambers
  - Senate: per agreement
  - House: below statutory cap → FY 2022 funding levels
- Continuing Resolution necessary to avoid govt shutdown after Sept. 30<sup>th</sup>
  - House conservatives refuse CR without concessions, slim majority = only 4 votes
  - Speaker McCarthy could face ouster with bipartisan bill
    - McCarthy to conservatives: Govt needs to remain open for Biden impeachment

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# FY 2024 Appropriations – Political Division



- WH and Senate: requested addtl \$24B for Ukraine, \$12B for disaster relief (HI wildfires and Hurricane Idalia), and \$4B for southern border issues
  - House GOP opposition to Ukraine aid, desire for more action on border
- McCarthy says no omnibus
  - Each chamber must move 12 approps bills individually and then conference

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# Continuing Resolution



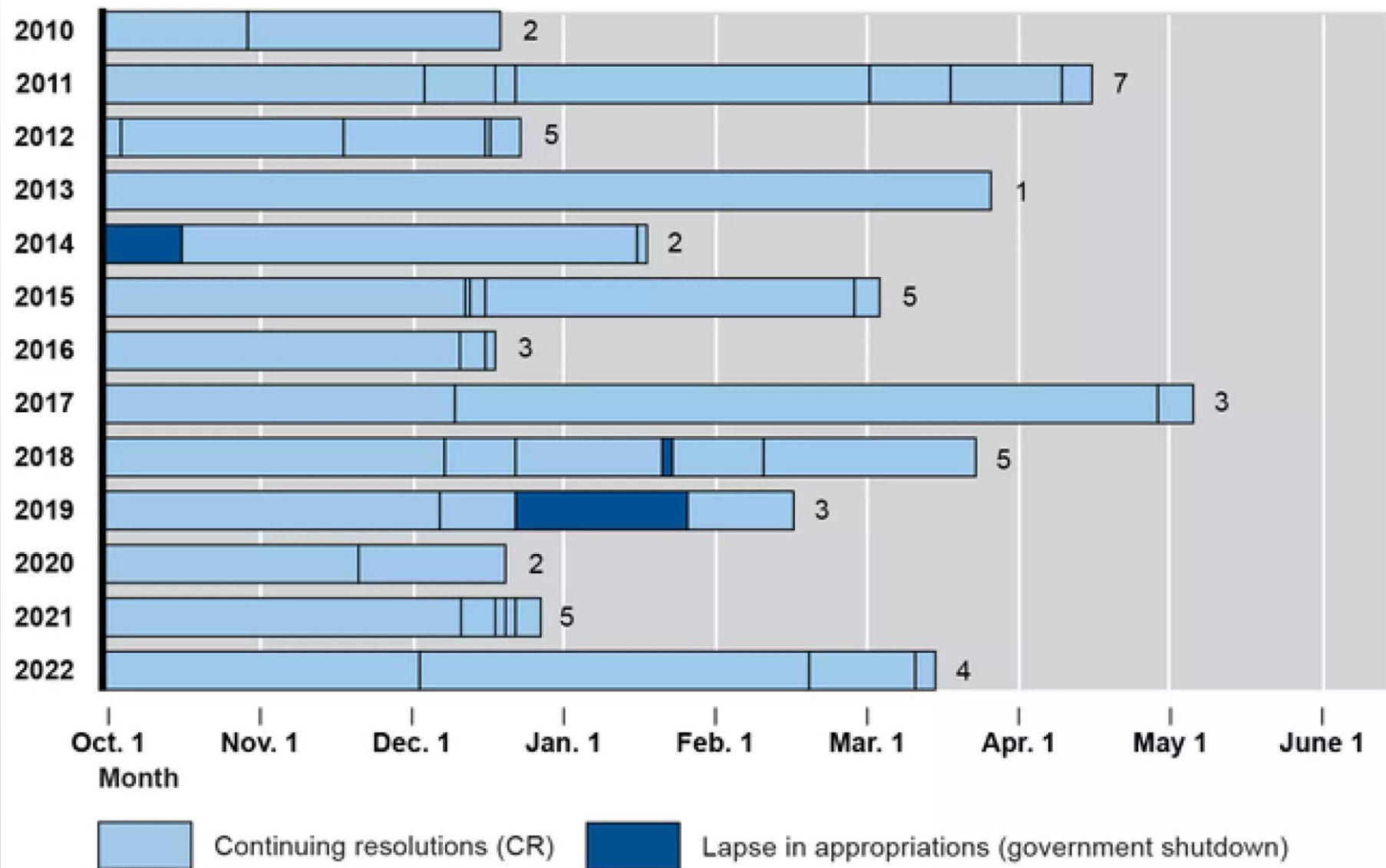
September 30, 2023: following attempts at partisan bills, Speaker Kevin McCarthy brings 'clean' CR to the House floor

- Passes both House and Senate on wide bipartisan margins
- Funds federal agencies through November 17, 2023
- \$16 billion for FEMA disaster relief

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### Fiscal year



Source: GAO analysis of applicable laws. | GAO-22-104701

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# House Leadership Dispute



October 7, 2023: Rep. Matt Gaetz (R-FL) brings a successful 'motion to vacate' against Speaker Kevin McCarthy

Current status: Rep. Patrick McHenry (R-NC) is acting speaker and several unsuccessful votes held on replacements

Additional Speaker candidates making calls

House cannot act on legislation without speaker



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# Possible Funding Cliff

Fiscal Responsibility Act: If any part of the federal government is operating under a CR on January 1, 2024, a 1% across-the-board cut is triggered

- Defense and non-defense discretionary spending
- Would apply to all IC discretionary funding, including IHS
- Cuts do not go into effect until April 1, 2024
  - Rep. Jim Jordan has suggested CR through 4/1

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# Where does IHS and BIA funding stand?



## Indian Health Service (IHS)

- Senate Bill: \$7.176B, +\$218.6M
  - Advance for FY25: \$5.228B
- House Bill: \$7.078B, +149.4M
  - Advance for FY25: \$5.878B

## Bureau of Indian Affairs (BIA)

- Senate Bill: \$2.519B, \$78.2M
- House Bill: \$2.582B, \$141.4M

Neither chamber has passed the Interior, Environment, and Related Agencies bill

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# Advance Appropriations for IHS in FY24



*“The [bill] provides advance appropriations for the Indian Health Services and Indian Health Facilities accounts totaling **\$5,129,000,000** for fiscal year 2024. That amount is equal to the fiscal year 2023 Committee recommendation for those accounts with the exception of funding provided for Electronic Health Records, Sanitation Facilities Construction, and Health Care Facilities Construction which are provided only an annual appropriation in recognition of the project-based nature of those accounts. ...The Committee recognizes that budget uncertainty due to temporary lapses of appropriations and continuing resolutions have an effect on the orderly operations of critical healthcare programs for Native American communities. ...This budgetary change will enable IHS to continue to provide health services without interruption or uncertainty, improving the quality of care and providing peace of mind for patients and medical providers.”*

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# Advance Appropriations Basics



- Funding that becomes available 1-year or more after appropriations bill in which it is contained—ex. funding level for FY24 identified in FY23, but drawn down in FY24
- Protects funds from delays in appropriations process—i.e. Shutdowns, CRs
- Other entities receiving: VA Health Administration, Corporation for Public Broadcasting, Education Title I grants

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# Mandatory Funding for IHS



8/12/21: [HHS DTLL](#) initiating consultation on mandatory funding approaches

- USET SPF Comments on Mandatory Funding for IHS
  - Strongly support full and mandatory funding for all federal Indian programs, including IHS
  - IHS should convene a joint federal-Tribal workgroup to:
    - Determine full funding number;
    - Examine appropriate growth patterns; and
    - Recommend appropriate appropriations structure

November 2021: IHS seeks participants for Budget Formulation Sub-Workgroup re: IHS full and mandatory funding

President's FY 2022-23 Budget Requests: Contain mandatory funding for IHS with no legislative proposals

March & August 2023: First and second Sub-Workgroup meetings

- Progress??

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# Treatment of Binding Obligations



- Senate FY 2024 Bill: *“payments for contract support costs and 105(I) leases appear to create a type of budgetary entitlement that is typically not funded through discretionary appropriations.”*
  - Neither chamber moves these lines to mandatory spending
- July 12, 2023: USET SPF signs joint letter urging mandatory status for binding obligations

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# Special Diabetes Program for Indians



- Slated to expire September 30, 2023 → Extended to November 17, 2023
- House Energy & Commerce and Senate HELP Committees have approved first increase in 20 years: \$170M/yr for 2 years
- SDPI was extended on a short-term basis **9 times** during last reauthorization
  - Typically reauthorized on larger ‘extenders’ packages

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# Farm Bill Reauthorization



- Authorizes agricultural programs every 5 years
- Expired on September 30, 2023
  - Mandatory Farm Bill programs unfunded
  - Discretionary programs operational
  - Crop subsidy and dairy support programs expire on 12/31
- Possible that reauthorization will occur next year
- Tribal priorities:
  - Expansion of 638 and addition of self-governance for FDPIR, SNAP, and forestry
  - Greater access to programs and funding

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# National Defense Authorization Act



- Annual “must-pass” bill authorizes funding for Dept. of Defense
  - Often becomes “Christmas tree” for unrelated provisions
- Native American Housing Assistance and Self-Determination Act (NAHASDA) reauthorization included in Senate version
  - NAHASDA authorization expired in 2013, but Congress has continued to allocate \$\$
  - House Native American Caucus Letter sent to Committee Leadership urging retention

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# Biden Administration – Final Year



Preserve and buildout structural gains:

- OMB Tribal Affairs
- Treasury Tribal and Native Affairs
- WCHNAA

Policy Advancements

- 151 Regulations
- Mandatory funding plan for IHS and beyond

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# FY 2025 President's Budget Request



September 27, 2023: OMB consultation on FY 2025 President's Request

- USET SPF Comments:
  - Regional funding priorities
  - Mandatory funding for federal Indian agencies and programs
  - Marshall Plan for Tribal Nations
  - Preserve and fund administration gains
    - OMB Tribal Affairs
    - Treasury Office of Tribal and Native Affairs
    - Dedicated funding for WHCNAA
- Next step: Administration will prepare request and release during 1<sup>st</sup> quarter of 2024
  - Next Admin may have opp to weigh in if not enacted by December 31, 2024

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# Marshall Plan for Tribal Nations



## USET SPF White Paper

- The U.S. should make a substantial, one-time investment in Tribal Nation governmental infrastructure
- 2023 Activities:
  - Endorsements
    - Presentations to partner organizations, seeking resolution support
  - Website

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# Tribal Homelands

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# Part 151 Regulations



- December 2022: DTLL announces consultation on proposed rule to revise Part 151 land-into-trust regulations
  - Codify *Carciere* 2-part test
  - Increase efficiency, certainty
  - Reduce burdens on Tribal Nations
  - Expand purposes for land acquisition
- February 28<sup>th</sup>: USET SPF Comments & member template
  - General support for revisions
    - DOI added USET SPF rec that notice of completed app be issued within 30 days
  - Additional recommendations:
    - Conclusive evidence: all treaties, exercise of federal jurisdiction over Tribal citizens
    - Combine within boundaries and contiguous tracks
    - Address RSAs
- DOI: “Hope to issue fall 2023.”

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# Carcieri Fix



Legislative action in the 118<sup>th</sup> Congress

- Bills introduced – H.R. 1208, S. 563

September 18<sup>th</sup>: USET SPF sends support letter to House Natural Resources Committee leadership at the request of Rep. Cole

***Carcieri Fix:*** Any Carcieri fix must (1) reaffirm the status of existing trust lands, and (2) confirm the Secretary's authority to place land into trust for all federally recognized Tribal Nations per the intent of the 1934 Indian Reorganization Act.

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# Economic Development

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# Tax Status of Tribally-Chartered Corporations



- Background: Treasury & IRS state intent to issue guidance re: TCC tax status for more than two decades
  - Formal guidance never produced → uncertainty and lack of economic development options
- May 2023: Treasury Tribal Affairs DTLL initiates consultation on TCC tax status
- USET SPF Comments & Tribal Template
  - Treasury should issue guidance confirming tax-exempt status of TCCs, whether wholly, jointly, or majority owned
- IRA Implications – Guidance may determine which TCCs are eligible for Direct Pay provision

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# Tribal Tax and Investment Reform Act



- Rep. Gwen Moore (D-WI) expected to reintroduce shortly
- Provisions:
  - Repeal essential govt function test for bond issuance
  - Parity in Tribal pension and employee benefit plans
  - Parity for Tribal foundations and charities
  - Parity in child support enforcement
  - Tribal Court ability to make 'special needs' determination for tax credit purposes
  - New Markets Tax Credit for Tribal statistical areas - \$175M/yr set-aside
  - Explicit inclusion of Tribal Nations in Low-Income Housing Tax Credit
  - Confirm GWE benefits are not income for SSI
  - Extend and update Indian Employment Tax Credit
  - Exclude IHS student loan repayment and scholarships from taxable income

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# Infrastructure

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# USET SPF Position on Infrastructure Development



*“The United States must commit to assist in the rebuilding of the sovereign Tribal Nations that exist within its domestic borders..... At the same time, any infrastructure build-out, in Indian Country and beyond, must not occur at the expense of Tribal consultation, sovereignty, sacred sites, or public health.”*

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# USET National Outreach, Education, and Advocacy Project



- New hires: Two fully remote policy analysts
- National outreach and education
  - In-person trainings at various org partner meetings and conferences
  - Webinars
  - Partnerships with orgs and federal agencies
  - Educational materials: webpage, social media, 1-pagers, short videos
- Advocacy for Tribal interests – both on and off Tribal homelands

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# Inflation Reduction Act - Implementation



August 2022: President Biden signs into law **H.R. 5376, the Inflation Reduction Act**

- Months of partisan negotiation between Sens. Schumer and Manchin
- \$437 billion in spending on energy and climate, reducing health care costs, increasing corporate minimum tax

**Direct Funding to Tribal Nations/Native Hawaiians = \$720M—0.16% of total funding**

- \$235 million for Tribal climate resilience, including fish hatchery operations and maintenance;
- \$225 million for development of Tribal high-efficiency electric home rebate programs;
- \$150 million for Tribal home electrification;
- \$75 million for the Tribal Energy Loan Guarantee Program and \$20 billion in allowable loan guarantees; and
- \$12.5 million for Tribal emergency drought relief.

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# Inflation Reduction Act – *Cont.*



## Selected provisions:

- Treasury Direct/Elective Pay
  - Tax-exempt entities can apply for tax credits for the construction of renewable energy facilities
  - after first building clean energy projects or purchasing qualifying clean energy vehicles for non-personal use, an applicable entity may qualify for an elective payment, often referred to as a direct payment, in lieu of claiming the credit to offset any income taxes.
  - Status: Interim guidance, USET SPF comments August 2023
- Low Income Communities Bonus Credit Program
  - Provide a 10-20 point credit boost for wind and solar projects in “low-income” communities
    - Applicant portal opened last week

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# Inflation Reduction Act – *Cont.*



## DOE High-Efficiency Electric Tribal Home Energy Rebates Program: \$225 million

- Fund energy efficiency and electrification home upgrades for Tribal households
- Provided to Tribal Nations via formula grant
- Application and guidance expected soon – USET SPF conversation with DOE re: formula

## Tribal Energy Loan Guarantee Program: \$75 million to support \$20 billion in loans

- supports Tribal investment in energy-related projects by providing direct loans or partial loan guarantees
- Applications accepted on rolling basis, funding has no expiration

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# Biden Administration Wind Energy Priorities



- March 2021: Biden Admin announces action to:
  - Advance ambitious wind energy projects to create good-paying, union jobs
  - Investing in American infrastructure to strengthen the domestic supply chain and deploy offshore wind energy
    - GOAL: deploy 30gw of offshore wind energy by 2030
    - BOEM to advance new lease sales and complete review of at least 16 Construction and Operations Plans (COPs) by 2025
- Selected offshore wind projects:
  - Vineyard Wind – MA
  - Southfork Wind – NY
  - Atlantic Shores North
  - Coastal VA Offshore Wind Project
  - Revolution Wind Farm – RI/CT/NY
  - New England Wind

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# Concerns about Offshore Wind Buildout



- Many issues remain with federal permitting processes and agencies
  - BOEM not properly consulting with Tribal Nations
  - Project proponents not properly mitigating issue, paying for Tribal expertise
- Tribal Nations not appropriately resourced for high volume of cultural reviews
  - USET SPF advocacy for additional THPO funding, payment for ITEK

Bottom line: cultural and sacred sites could be impacted by offshore wind deployment

USET SPF Resolution 2023 SPF:013: Urging a Moratorium on the Bureau of Ocean Energy Management's Offshore Wind Scoping and Permitting

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# Health

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# IHS Reform Legislation



House Natural Resources Committee Hearing July 2023

- H.R. \_\_ Restoring the Accountability in the IHS Act
  - Staffing recruitment and retention incentives
  - Ease hiring and termination
  - Quality and performance measures
  - Fiscal accountability
- USET SPF Testimony for the Record and meeting with Committee Staff
  - Many of IHS' problems due to chronic underfunding
  - Avoid impacting Tribally operated programs
  - Avoid unfunded mandates

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# Medicaid Unwinding



May 11, 2023: PHE expires and state Medicaid agencies begin redeterminations

- As of September 8<sup>th</sup>: 5.9 million disenrolled, up to 72% for procedural reasons
- August 30<sup>th</sup>: CMS issues letter to state Medicaid agencies requiring systems review
  - 30 states were forced to pause disenrollments
  - CMS reinstated coverage for 500,000 children and adults

State	Compliant with Regulations?	Total Estimated Disenrollments (to 9/26/23)	Total Estimated Individuals Affected by System Errors
Texas	Yes	888,300	N/A
Florida	Yes	700,600	N/A
New York	No	338,000	Between 50,000 and 99,999
Virginia	No	184,400	Between 10,000 and 49,999
Massachusetts	No	208,900	Less than 10,000
South Carolina	Yes	104,800	N/A
North Carolina	Yes	99,900	N/A
Mississippi	Yes	68,600	N/A
Louisiana	Yes	107,000	N/A
Connecticut	No	46,100	Between 10,000 and 49,999
Rhode Island	Yes	15,200	N/A
Maine	No	5,700	0

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# Questions??

Liz Malerba

USET SPF Director of Policy and Legislative Affairs

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