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SOVEREIGNTY PROTECTION FUND

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Laws of General Applicability Tribal Leader Talking Points White House Tribal Nations Summit 2023

Summary

Tribal Nations' status as inherently sovereign political entities and our unique relationship with the United States permits the United States to treat us differently from others and for Tribal Nations to enact and apply our own legal standards for our people and lands. Thus, the federal government must not enact or apply laws and requirements of general applicability created for the public to Tribal Nations.

USET SPF remains concerned by recent efforts by the Biden Administration to condition receipt of federal funds on Tribal Nations' compliance with anti-discrimination laws and other instances of the application of 'laws of general applicability' to Tribal Nations. While we understand and appreciate this Administration's focus on racial equity and justice, we underscore that Tribal Nations have inherent sovereignty to set our own anti-discrimination laws under our own jurisdiction, and general federal laws should not be applied to us. Additionally, with regard to different treatment for Native people, the relationship between Tribal Nations and the United States is not race-based, but rather a political, diplomatic relationship. Compliance with certain laws of general applicability, including non-discrimination laws, that have never been applied to Tribal Nations due to our unique sovereign, political status as a condition of receipt of federal funds is completely inappropriate.

USET SPF highlights the following as examples of the Biden Administration taking actions that either attempted to apply or created confusion regarding the applicability to Tribal Nations of laws and other requirements otherwise generally applicable to the public.

(1) The Administration issued standards and regulations requiring some business entities and health care facilities to comply with COVID-19 vaccine and other COVID-19 mandates for employees and health care workers and to create exemptions to accommodate medical and religious objections under the Americans with Disabilities Act and Title VII of the Civil Rights Act. 86 Fed. Reg. 61,402 (Nov. 5, 2021) (Occupational Safety and Health Administration Emergency Temporary Standard); 86 Fed. Reg. 61,555 (Nov. 5, 2021) (Centers for Medicare & Medicaid Services Interim Final Rule). Tribal Nations' business entities and health care facilities were not exempted from these obligations, and Administration officials said that at least some of these obligations applied to Tribal Nations in some circumstances.

(2) The Administration required that, in order to receive certain COVID-19 funding, Tribal Nations had to sign a form stating they agreed to comply with applicable federal statutes, regulations, and executive orders and listing Title VI of the Civil Rights Act as a statute applicable to the award. Section 9, OMB Approved Form No. 1505-0271.

(3) The Department of Health and Human Services Office of Civil Rights is currently consulting with Tribal Nations on a rulemaking that would require grant recipients to comply with federal statutory nondiscrimination provisions.

Talking Points/Recommendations

- Efforts must be made to ensure that all federal department and agency actions are consistent with the President's expectation that Tribal sovereignty is respected to the fullest extent. We call upon the Biden Administration to begin its consideration of whether to apply any laws and other requirements that are generally applicable to the public to Tribal Nations by first assuming they do not and should not apply to Tribal Nations.

Because there is Strength in Unity