



USET

SOVEREIGNTY PROTECTION FUND

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December 13, 2024

Ms. Fatima Abbas
Director
Office of Tribal and Native Affairs
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Director Abbas,

We write on behalf of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) to provide comment to the U.S. Department of Treasury (Treasury) in response to its Tribal consultation on a [Notice of Proposed Rulemaking](#) implementing section 139E of the Internal Revenue Code, created by the Tribal General Welfare Exclusion Act of 2014 (GWE). The Proposed Rule comes after nearly a decade of advocacy from Tribal Nations and organizations, [including USET SPF](#), as well as considerable work from Treasury's Tribal Advisory Committee (TTAC). The Proposed Rule provides an historic level of proper deference to Tribal Nation sovereignty and self-determination in the establishment and administration of GWE programs. We extend our support to the Proposed Rule and strongly urge Treasury to maintain this deference in the Final Rule. Additionally, we provide recommendations designed to strengthen the Rule and better reflect the intent of the GWE.

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.¹ 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.

General Support for the Proposed Rule

Passage of the Tribal General Welfare Exclusion Act at the end of the 113th Congress was an important step forward in recognizing and affirming the sovereign governmental rights and authorities of Tribal

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), 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), 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

Nations to provide for the general welfare needs of our respective citizenry. Since then, USET SPF has urged that implementation of the law be in accordance with Congressional intent and in consultation with Tribal Nations. USET SPF extends its general support to the Proposed Rule. The Proposed Rule provides an historic level of deference to Tribal Nation sovereignty and self-determination in the establishment and administration of GWE programs. This includes the following broad flexibilities:

- **Deference to Tribal Nations:** The Proposed Rule incorporates the Act's provision that ambiguities should be resolved in favor of a Tribal Nations by incorporating Tribal deference into regulatory provisions.
- **Broad Definition of Eligible Individuals:** The Proposed Rule defers to Tribal Nations on the definition of an eligible Tribal citizen and recognizes children that are eligible for enrollment. It also defines a Tribal Program Participant as a citizen's ancestor, descendant, former spouse, widow or widower, or legally recognized domestic partner or former domestic partner.
- **Use of Any Revenue and No Need Requirement:** The Proposed Rule provides that GWE benefits under a Tribal Nation's program may be funded by any source of revenue or funds, including net gaming revenues. The proposed rule also does not impose a need requirement.
- **Allowance of Uniform Payments:** The Proposed Rule recognizes that Tribal Nations may use any revenue to provide eligible benefits, including uniform payments.
- **Maintenance of the Audit Suspension:** The Proposed Rule confirms that the Act's audit suspension will not be lifted until after final regulations are issued and the Act's required training is completed in consultation with the TTAC.

Importantly, the proposed rule also defers to Tribal Nations in determining whether a provided benefit is "lavish or extravagant," which is vital to upholding Tribal self-determination and self-governance, as well as accounting for the unique circumstances and traditions found across Indian Country.

While there are opportunities for improvement, we are pleased with the level of deference the Proposed Rule provides to Tribal Nations and our ability to make critical decisions for our people. In addition, the rulemaking comes after nearly a decade of advocacy and completing this process in a way that responds to Tribal guidance is a top priority. We ask that you maintain Tribal deference, the definition of eligible individual, flexibilities around type of revenue that can be utilized, the lack of need requirement, and the allowance of uniform payments. These features are critical to executing the Final Rule in accordance with federal trust and treaty obligations, as well as Congressional intent.

Opportunities for Improvement

Although we strongly urge Treasury to maintain the aforementioned provisions of the Proposed Rule, we note that several items discussed with the TTAC remain outstanding or unaddressed. We join the TTAC and others in advocating for these additions in an effort to ensure a comprehensive Final Rule.

The application of the Tribal Canon of construction should be referenced directly in the Final Rule. While we appreciate the level of deference to Tribal Nations found within the Proposed Rule, unlike the underlying law, it does not confirm that ambiguities in its language and application will be resolved in favor of Tribal Nations. We feel as though this should be confirmed in the Final Rule.

Address deferred benefits, such as minors' trusts. Many Tribal Nations utilize minors' trusts to provide general benefits to minor Tribal citizens. Treasury should address how this method of distributing GWE benefits would be treated under the Final Rule, so that Tribal Nations that oversee minors' trusts will have certainty in their utilization. Additionally, USET SPF asserts that

GWE distributions via this method should be treated the same as other types of GWE distributions in the Final Rule.

Address economic development benefits. Both Tribal Nations and the Department of Treasury have an interest in Tribal economic development, as Tribal Nations seek to engage in nation rebuilding following centuries of federal neglect. This includes supporting businesses owned by individual Tribal citizens. The Final Rule should provide for GWE benefits that support businesses owned by our people as an opportunity to move closer to economic sovereignty in Indian Country.

GWE Benefits Should Not Impact Eligibility for Other Federal Programs. In the years since the passage of the law and as Tribal Nations have worked to implement our own GWE programs, it has become clear that there is a need for clarification regarding the impact of general welfare benefits on eligibility for state and federal assistance. More specifically, Treasury should work with other Departments and Agencies to ensure that just as Tribal general welfare benefits are not taxable income, they should also be necessarily excluded in eligibility determinations for assistance like Supplement Security Income or the Supplemental Nutrition Assistance Program. To leave this issue unaddressed would run counter to the purpose of the GWE by further penalizing Tribal citizens for the assistance provided by Tribal governments. Treasury should remain cognizant of this problem and ensure solutions are reflected in the Final Rule.

Audit Suspension

In addition to making improvements to the Proposed Rule, Treasury must confirm that when audits resume, they will only be prospective in nature. While we appreciate the maintenance of the audit suspension pending the finalization of the Proposed Rule and the Internal Revenue Service (IRS) field agent training, it is critically important that Tribal Nations have certainty in the prospective nature of IRS audits. The finalization of these two items should not pave the way for IRS to audit Tribal Nations with impunity. Relatedly, Treasury must ensure that Tribal Nations operating GWE programs in good faith prior to finalization of the Proposed Rule are held harmless and given the opportunity to bring any necessary provisions of current GWE programs into compliance with the Final Rule.

Relatedly, the IRS field agent training, which is also overdue, must be developed in consultation with Tribal Nations and TTAC. Failure to prioritize the training or ensure that it is appropriately comprehensive will lead to consequences and results inconsistent with the spirit and intent of GWE. What is ultimately developed for IRS field agents around this law and on Tribal Nations generally should go through a full Tribal consultation process, as is required under Treasury's Tribal consultation policy. This will ensure that the training fully reflects Indian Country's guidance and unique circumstances.

Revenue Procedure 2014-35

Finally, Treasury is seeking comment on whether it is necessary to retain Revenue Procedure 2014-35 beyond implementation of the Final Rule. We do not believe this is necessary, and encourage Treasury to obsolete it after the Proposed Rule is finalized.

Conclusion

The Proposed Rule implementing the GWE is very long overdue. We celebrate this development and appreciate Treasury's diligence in working with the TTAC to ensure it was promulgated during this Administration. With this in mind, Treasury must work swiftly to finalize the Proposed Rule at the conclusion of the consultation period. Indian Country has waited long enough for the certainty that these regulations will provide.

USET SPF also asserts that the development process surrounding the Proposed Rule underscores the necessity of continuing to work in close coordination with the TTAC. While we are generally pleased with the Proposed Rule, it is clear that the TTAC's guidance was absolutely essential in crafting regulations that function properly and reflect the reality of life on the ground in Indian Country. Similarly, Treasury's Office of Tribal and Native Affairs (OTNA) played a pivotal role that cannot be replicated anywhere else in the Department. At long last, Tribal Nations are seeing progress that, in some cases, has been decades in the making. However, in order to keep this momentum, Treasury must commit to further institutionalizing these bodies and their functions. This includes permanency for OTNA.

Please count USET SPF partner in your efforts to advance Tribal sovereignty through Treasury's improved understanding of its obligations to Tribal Nations. 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 or 615-838-5906.

Sincerely,



Kirk Francis
President



Kitcki A. Carroll
Executive Director