



## United South and Eastern Tribes, Inc.

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April 28, 2015

Dr. Elaine Buckberg  
Deputy Assistant Secretary for Policy Development  
Office of Economic Policy  
United States Department of the Treasury  
1500 Pennsylvania Avenue NW  
Washington, DC 20220  
[TRIBALCONSULT@treasury.gov]

Re: Treasury Tribal Advisory Committee (TTAC) Member Recommendations and Selection Criteria Considerations

Dear Dr. Buckberg:

The United South and Eastern Tribes (USET) submits this letter to express its support for the USET Tribal leaders who have submitted their applications for Treasury Tribal Advisory Committee (TTAC) appointment consideration and to also share our views on the criteria that the Secretary should consider when selecting the appointees to the TTAC. USET is a non-profit, inter-tribal organization representing 26 federally recognized Indian Tribes from Texas to Florida and up to Maine.<sup>1</sup> USET is dedicated to enhancing the development of federally recognized Indian Tribes, to improving the capabilities of Tribal governments, and assisting USET Member Tribes in dealing effectively with public policy issues and in serving the broad needs of Indian people.

USET has consistently urged the Department to establish and formally institutionalize a tribal advisory body that would be available to the Department and the Internal Revenue Service (IRS) to identify and provide guidance regarding tax matters affecting tribal governments and tribal citizens. USET and its Member Tribes worked actively with congressional leadership to incorporate the TTAC as Section 3 of the Tribal General Welfare Exclusion Act (Pub. L. No. 113-168, codified as 26 U.S.C. § 139E) and advocated for the passage of that Act.

In creating the TTAC, Congress stated its intent to provide the Department with tribal expertise to assist Treasury in ensuring that treaty rights and principles of self-governance are properly balanced with the Department and the Service's tax policies affecting Indian tribes and their members. USET Resolution 2015:009 incorporates the legislative history of § 139E in expressing USET's commitment to supporting qualified tribal leaders to serve on the TTAC. That USET Resolution states as follows:

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<sup>1</sup> USET member Tribes include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), 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), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), 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), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

"Rep. Nunes' same statement in the Congressional Record further states congressional intent that the Committee be comprised of 'qualified tribal leaders' given 'such qualified individuals would have intimate knowledge of federal Indian law and policy, as well as the financial and community needs of Indian tribes' and that '[t]hese qualifications would enhance the Department's administration of federal tax policies affecting tribal governments while ensuring that treaty rights and principles of tribal self-governance are properly balanced with federal tax policy..."<sup>2</sup>

When USET tribal leaders met with you on February 12, 2015, you requested our comments on the criteria and considerations that Treasury should take into account in the TTAC selection process. Specifically, you asked for our perspectives as to how representation on the TTAC should be balanced by geography and/or other characteristics. This request was reiterated in your letter to tribal leaders of February 19, 2015, and the April 2, 2015, tribal leader telephone conference. USET appreciates the opportunity to share our views.

USET's comments are informed by our sustained engagement and active dialogue with the Department and IRS on the federal tax and economic development policy objectives of our Member Tribes. We believe that Treasury's selection of TTAC members should be governed by the following criteria and considerations.

### **The TTAC Membership Should Reflect the Diversity of Indian Country**

USET believes that the TTAC will be most valuable to Treasury if it reflects the diversity found within Indian Country. By incorporating diversity, the TTAC will be best positioned to develop guidance that reflects the distinct needs and experiences within Indian Country. There are many elements in which diversity can be considered, below are only a few examples:

- Geography: The TTAC membership should include tribal leaders from distinct geographic regions of the United States
- Land-base: TTAC members should represent tribes with diverse land-ownership sizes and patterns, including small land-bases, tribes without any lands, and tribes with large land-bases.
- Economic Development Activity and Experience: Members should include tribal leaders from tribes who have achieved independent economic success as well as members who remain dependent on the federal government
- Form of Engagement with Federal Government: TTAC representatives should include leaders from Self-Governance Tribes, from tribes who carry out federal programs under Indian Self-Determination Act contracts and from tribes who receive program support through direct services provided by the Bureau of Indian Affairs (BIA) and Indian Health Service (IHS).
- Administration of Schools and Education Systems: Indian Country is diverse in the way children are educated. In some tribes, children attend federal Bureau of Indian Education (BIE) schools; in others, the tribe operates tribal schools funded by the BIE; while in others tribal students attend public schools. There are a few tribes in which a combination of these school systems serves their communities.
- Cultural Traditions: Compared to other government leaders, Tribal leaders have a distinct and unique responsibility as a leader to ensure that the cultural and traditional needs of its citizenship are met. Cultural and traditional practices vary tremendously across Indian Country underscoring the need to reflect that diversity on the TTAC.

One of USET's greatest strengths is that its 26 Member Tribes reflect the diversity that you find across all of Indian Country. In this respect, USET itself is illustrative of the national diversity of Indian country. USET covers a broad geographic area, from Texas to Florida and up to Maine. For the reasons above, USET believes that selection of tribal

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<sup>2</sup> USET Resolution 2015:009, Implementation of the Tribal General Welfare Exclusion Act of 2014 (Adopted, Dec. 4, 2014).

leaders from the USET Member Tribes will serve to incorporate considerable diversity of experience to help the TTAC reflect the unique circumstances and variations among tribes. USET also provides the institutional platform for our Member Tribes to inform each other and collaborate for their mutual interest. In this respect, selection of a tribal leader from a USET Member Tribe will ensure active exchange of information and viewpoints as well as reflect the understanding that some types of policy approaches will have varying impacts on tribes in differing circumstances.

With respect to geographic diversity, USET also urges that Treasury's selection process take into account the congressional appointments to the TTAC. While the individuals to be selected for the four appointments by Congress are not guaranteed to be Tribal leaders, USET also feels strongly that these congressional appointments should be Tribal leaders. However, we believe there is sound basis to assume, given the current Committee leadership, that appointees will be from Utah, Oregon, Wisconsin and Michigan. These appointments will establish some degree of representation from the West, Southwest, Northwest and Midwest. USET Member Tribes are not from any of these regions and have different experiences. For instance, many USET Member Tribes have had relationships with the United States from its earliest days (and indeed with the colonies preceding it).

### **TTAC Membership Must be Well-Versed in the Federal Trust Responsibility, the Application of the Indian Canon of Construction and the federal policy of Indian Self-Determination.**

The TTAC will play a vital role in advising Treasury on the intersection of the Trust Responsibility, treaty rights and principles of self-governance with the federal tax policies affecting Indian tribes and their members. Moreover, as a matter of law, the Indian Canon of Construction applies to Treasury's interpretation of the general welfare exclusion as provided by Sec. 2 of the Tribal General Welfare Exclusion Act. TTAC members should have a firm understanding of these fundamental principles of federal Indian law.

By selecting a USET tribal leader, this objective will be accomplished. USET Member Tribes have developed USET's tax reform principles and policy actions in the context of the federal trust responsibility and the federal policy of Indian Self-Determination. USET Member Tribes played leading roles in the work with congressional leadership to include the Indian Canon of Construction as part of the Tribal General Welfare Exclusion Act.

### **TTAC Membership Should Have a Nuanced and Respectful Appreciation of Cultural and Ceremonial Responsibilities of Indian Communities and of the Damage Caused by Assimilation Policies**

Both Rev-Proc. 2014-35 and § 139E recognize the important responsibilities of tribal governments in preserving, protecting and transmitting tribal culture and traditions. This is reflected in the safe harbors for cultural education and promotion activities as well as in the treatment of gifts given as reciprocation to cultural leaders for the performance of ceremonial functions. The TTAC must include representatives with deep and strong appreciation, sensitivity and understanding of the important role of tribal cultural practices and cultural revitalization in the process of sustaining and rebuilding healthy tribal communities. USET Members Tribes have been active leaders in promoting and restoring cultural heritage in the face of challenges from outside forces. Indeed, USET Member Tribes have sustained these traditions despite the most longstanding historical contact with non-Indians.

### **TTAC Members Should Have Experience in the Administration or Oversight of Successful Economic Development Activities**

Tribal leaders who administer and oversee successful economic enterprises are likely to have strong skills and experience with effective governance systems. They will surely have fine-tuned awareness of procedures and protocols for tax compliance, performance monitoring as well as education and training programs that build individual and institutional capability. Those skills will be vital to the development of training programs for IRS field agents and for the development of technical assistance programs under which the IRS and Treasury can genuinely assist tribal governments in understanding and meeting the full range of their compliance obligations. Tribal leaders from USET

Member Tribes have the requisite experience in the administration and oversight of successful economic development programs and projects.

### **USET Support for the Nominations of Tribal Leaders from USET Member Tribes**

USET fully supports the applications of the following tribal leaders from the USET membership.

- Chairman Colley Billie (Miccosukee Tribe of Indians of Florida)
- Chairman Rodney Butler (Mashantucket Pequot Tribal Nation)
- Chief Michell Hicks (Eastern Band of Cherokee Indians)
- Councilor Christina Jimerson (Seneca Nation of Indians)
- Chief Lynn Malerba (Mohegan Tribe of Indians of Connecticut)

Each of these leaders is highly qualified. They are all strong leaders with deep commitment to the economic development and tax policy concerns of Indian Country. USET knows that whichever of them may be selected by Treasury to serve on the TTAC, the others will remain engaged to work in collaboration to advance the views of USET member tribes and Indian country as a whole. USET views the participation of these tribal leaders on the TTAC as a continuation of USET's commitment to active and extended engagement with Treasury in economic development and tax policy.

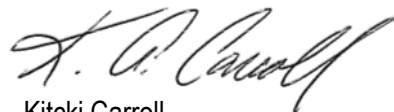
Once again, USET firmly believes the TTAC must be made up of tribal leaders. Additionally, USET also recognizes that in dealing with the specialized technical issues associated with economic development and tax policy, the TTAC by-laws, protocols and procedures must establish that tribal leaders are free to engage their technical advisors as they deem necessary and appropriate to bring specialized subject-matter expertise into the discussion and policy formation process.

In closing, USET urges Treasury to act expediently and in a transparent manner, pursuant to consultation principles, as it works to select TTAC members and to engage the TTAC as an integral component of Treasury's development of tax matters affecting Indian tribes and their citizens. Should you have questions or require additional information, please do not hesitate to contact Ms. Liz Malerba, USET Director of Policy and Legislative Affairs, at (2020-624-3550 or by email at [lmalerba@usetinc.org](mailto:lmalerba@usetinc.org)).

Sincerely,



Brian Patterson  
President



Kitcki Carroll  
USET Executive Director

CC: USET member Tribes  
Wanda Janes, USET Deputy Director  
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*"Because there is strength in Unity"*