



The Beat *in DC*

2016 Year-End Report

(April—December 2016)

*A publication of the USET Sovereignty
Protection Fund*

Budget

Federal Government Continues to Operate under 2nd Continuing Resolution

With the 114th Congress adjourned, the federal government remains open for business, but operating under its second continuing resolution for Fiscal Year (FY) 2017, which provides funding to federal agencies at FY 2016 levels on a pro rata basis. Congress first passed a short-term continuing resolution (CR) in September through December 9, 2016 in order to fund the government for the beginning of FY 2017 after failing to complete work on 11 of 12 appropriations bills. Following the November 8th election of Donald Trump, Congressional appropriators agreed to support a second CR at the request of the incoming administration. The current CR runs through April 28, 2017.

While September's CR was generally "clean" (without additional legislation attached) December's CR, passed by the Senate just ahead of a midnight deadline on December 9th, does provide "accelerated funding" for a number of line items, including Indian Health Service funding for "the rate of operations necessary to provide for costs of staffing and operating newly constructed facilities" (Section 166); the Department of Housing and Urban Development Public and Indian Housing funding for Tenant-Based Rental Assistance "necessary to renew grants for rental assistance and administrative costs..." (Section 183); and the Census Bureau to maintain the required schedule for the 2020 Decennial Census Program. (Section 152). The December CR also contains \$872 million for the 21st Century Cures Act, legislation aimed at biomedical research, prescription drug approval, and the opioid crisis. Finally, the CR contains funding for an assortment of other items, including the Flint, Michigan water crisis, disaster relief, and a short extension of Temporary Assistance for Needy Families.

Issue Highlights:

- Federal Government Continues to Operate under 2nd Continuing Resolution
- USET SPF Executive Director and Legislative Director Publish Op-Ed in Tribal Business Journal
- USET SPF Submits Testimony on SCIA Economic Development Bills
- Congress Passes Water Infrastructure Improvements for the Nation Act, Containing Funding for Tribal Water Operator Certification
- Congress Introduces IHS Reform Bills, USET SPF Calls for Full Funding
- USET SPF Continues to Seek Answers on IHS Proposed Headquarters Realignment
- USET SPF Remains Committed to Carcieri Fix
- USET SPF Stands with Standing Rock
- USET SPF Continues to Urge Treasury to Convene TTAC
- USET SPF Presidential Transition Page

As we move into 2017 and the 115th Congress, federal funding for FY 2017 will need to be addressed, once again. At present it is unclear whether Congress will pass appropriations for the remaining months of FY 2017 or if they will choose to enact yet another CR. USET SPF will continue to advocate for full appropriations for FY 2017, as we as monitor and provide updates on the appropriations process as it develops.

- [HSDW Memo on December CR](#)
- [USET SPF FY 2017 Testimony before House Interior Appropriations Subcommittee](#)
- [Standing with Indian Country—President Obama’s FY 2017 Budget Request for Indian Programs](#)
- [IHS Budget Formulation---Nashville Area Narrative of FY 2017 Budget Priorities](#)
- [Tribal Interior Budget Committee---Eastern Region FY 2017 Testimony](#)

USET SPF Supports Tribal Set-Aside from the Crime Victims Fund

The as-yet-to-be-approved House and Senate versions of the FY 2017 Commerce, Justice, Science, and Related Agencies appropriations bills each contain a 5% Tribal set-aside from the Crime Victims Fund. Currently, American Indians and Alaska Natives experience the highest rates of victimization in the United States, and yet are largely left out of the crime victims supports and services provided through the Crime Victims Fund. USET SPF joins other Tribal Nations and organizations in advocating for the continued inclusion of the Tribal set-aside, which would provide direct funding to Tribal governments for victims services in their communities and also appears in S. 1704, the SURVIVE Act. These services include referrals, crisis counseling, temporary housing, and other supports for victims of child, domestic, and sexual abuse. With bi-partisan support for a 5% set aside, Tribal Nations have never closer to accessing these sorely needed dollars. USET SPF will continue to advocate for this set aside during the 115th Congress.

- [USET Resolution](#)

Consultation

USET SPF Executive Director and Legislative Director Publish Op-Ed in Tribal Business Journal

In December, USET SPF Executive Director, Kitcki Carroll, and Policy and Legislative Affairs Director, Liz Malerba, published an op-ed in Tribal Business Journal, entitled, “From Consultation to Consent.” The op-ed calls for a new paradigm in the federal-Tribal relationship. The current consultation process is applied inconsistently, often violated, and frequently does not result in a favorable outcome for Tribal Nations. USET SPF is calling upon the federal government to return to a model that requires the consent of Tribal Nations prior to any federal action affecting Indian Country. It is time for a Tribal Nation-defined model, with dual consent as the basis for strong and respectful diplomatic relations between two equally sovereign nations.

- [From Consultation to Consent Op-Ed](#)

Culture & Heritage

Repatriation Resolution Passes Congress, USET SPF Supports Further Action

Prior to adjourning, both chambers of Congress approved H.Con. Res. 122, the Protection of the Right of Tribes to Stop the Export of Cultural and Traditional (PROTECT) Patrimony Resolution. Introduced earlier this year by Rep. Steve Pearce (R-NM) and Sen. Tom Udall (D-NM) respectively, the non-binding resolution condemns the theft, illegal possession or sale, transfer, and export of Tribal cultural items, and calls upon government agencies to consult with Tribal Nations as they seek to end these thefts and return sacred objects. USET SPF supported the resolution, which references USET resolution 2015:007, as an opportunity to highlight and encourage dialogue around the illegal sale and export of Tribal cultural items. USET SPF strongly supports further action on this issue, including passage of the Safeguard Tribal Objects of Patrimony (STOP) Act, S. 3127, which was introduced by Sen. Martin Heinrich (D-NM) in July and would provide enhanced protections for Tribal cultural items.

- [H.Con.Res. 122 Bill Text](#)
- [SCIA Press Release](#)
- [Rep. Pearce Press Release](#)
- [USET Resolution 2015:007](#)
- [STOP Act Text](#)
- [USET SPF Letter](#)

Economic Development

USET SPF Submits Testimony on SCIA Economic Development Bills

On September 7th, the Senate Committee on Indian Affairs (SCIA) held a legislative hearing on: S. 3234, the Indian Community Economic Enhancement Act of 2016 and S. 3261, the Native American Business Incubators Program Act, among other legislation. The Indian Community Economic Enhancement Act of 2016 is aimed at improving access to capital in Indian Country by amending a hosting of existing law, including the Native American Business Development, Trade Promotion, and Tourism Act of 2000, the Native American Programs Act of 1974, and the Buy Indian Act. While USET SPF supports many of the provisions of the bill, our testimony for the hearing record noted that there are a number of opportunities for improvement within the bill as introduced. Most importantly, it is the position of USET SPF that any dialogue and legislation surrounding Tribal economic development must include matters related to taxation. Through inequities in the tax code as well as state dual taxation, revenue generated within Indian Country continues to be taken outside its borders or otherwise falls victim to a lack of parity. USET SPF's comments urged the inclusion of language that, at a minimum, acknowledged this problem. Additional recommendations include reporting from the Department of Commerce on the state of Indian economic development, reporting on the implementation of the Buy Indian Act, and targeted amendments to the Indian Trader Act.

In addition to guidance on S. 3234, USET SPF also submitted comments on S. 3261, the Native American Business Incubators Program Act, which would establish a grant program to provide financial assistance for the establishment and operation of business incubators serving Tribal communities within the Department of the Interior. The growth and diversification of Native businesses within Indian Country is critical to economic sovereignty, self-determination, and Nation rebuilding. USET SPF strongly supports this legislation as an opportunity to create jobs and strengthen Tribal economies, particularly in the USET SPF region.

Both bills were successfully reported out of committee on September 21st. Neither received further action in the 114th Congress.

- [USET SPF Testimony](#)
- [SCIA press release](#)

Education

USET SPF Comments on Native Languages Program at the Department of Education

On September 15th, USET SPF responded to a Department of Education “consultation” request on Native languages in the Every Student Succeeds Act (ESSA). Enacted in 2015, ESSA reauthorized the Elementary and Secondary Education Act, law that governs the nation’s public education system. Section 6133 of ESSA created a Native American Language Program at the Department. USET SPF fundamentally believes that the survival of Native languages is fundamental to the success of Tribal Nations and endurance of our cultures and customs. In its comments, USET SPF expressed strong support for the program, but disappointment that the Department did not provide any opportunities for meaningful consultation on the program. Rather the Department conducted a question and answer session through a webinar. This is in violation of the Department’s own consultation policy. USET SPF will continue to advocate for true consultation on this and other issues.

- [USET SPF Comments](#)

USET SPF Comments on ESSA Draft Accountability Regulations

On August 1st, USET SPF submitted comments to the Department of Education on its draft state accountability regulations implementing portions of the Every Student Succeeds Act (ESSA). USET SPF’s comments urge the Department to ensure all Native students are considered alongside Native parents and communities in holding schools accountable under ESSA. USET SPF strongly supports requirements that states consult in a timely manner with Tribal governments, parents, and Native education advocates, among other new requirements. However, we noted a number of areas in which the draft regulations fell short. USET SPF will continue to work with the Department as ESSA is implemented, with a goal of ensuring the educational needs of our Native students are met.

- [USET SPF Comments](#)

Environment

Congress Passes Water Infrastructure Improvements for the Nation Act, Containing Funding for Tribal Water Operator Certification

Before adjourning, the 114th Congress approved the Water Infrastructure Improvements for the Nation (WIIN) Act (the conferenced version of the House and Senate versions of the reauthorized Water Resources Development Act), legislation focused on improving and maintaining our nation's water infrastructure. The WIIN Act contained a number of provisions benefitting Indian Country's water infrastructure, providing access to clean drinking water and improvements to waste water systems, settling several Tribal water rights claims, and providing parity for Tribal Nations in water resources development projects. Most importantly for USET SPF, the legislation provides the opportunity for more stable funding USET SPF's water and waste water operator training and certification program. Offered at no-cost to the personnel of member Tribal Nations, USET SPF's program is currently funded through a budget line item with the Department of Health and Human Services that is frequently slated for elimination. Sections 2110 and 2111 WIIN Act make USET SPF's operator certification eligible for funding under the Safe Drinking Water Act. USET SPF, along with the National Congress of American Indians and the Inter-Tribal Association of Arizona, worked on and supported the inclusion of this important language. The President signed the WIIN Act into law on December 16th.

- [Joint USET SPF, NCAI, ITAA Letter Supporting WIIN Act](#)
- [WIIN Act Conference Report Language](#)
- [Joint USET SPF, NCAI, ITAA Letter Supporting Funding for Operator Training and Certification](#)

USET SPF Comments on NPS Director's Order #100: Resource Stewardship for the 21st Century

On November 18th, USET SPF submitted comments to the National Park Service (NPS) on its Director's Order #100: "Resource Stewardship for the 21st Century." The Order articulates the NPS' vision, policies, and actions for resource stewardship in the National Park System for the next century. USET SPF supported the Order, especially the NPS assertion to fulfill its responsibility to preserve and restore ecological, historical, and cultural integrity; and to increase the NPS' understanding and use of traditional ecological knowledge (TEK). In light of our sacred trust relationship, USET SPF firmly believes that the TEK of Tribal Nations should always be the primary source of guidance to the NPS, as it makes decisions regarding the protection of resources within the National Park System.

- [USET SPF Comments](#)

USET SPF Comments on EPA Clean Energy Incentive Program

On September 2nd, USET SPF submitted comments to the Environmental Protection Agency (EPA) proposed rule on its Clean Energy Incentive Program (CEIP), a part of

the Agency's Clean Power Plan (CPP). USET SPF expressed major concerns with the approach that the EPA has taken on certain points in the proposed rule for the CEIP. We are concerned that, as proposed by EPA, whether or not the CEIP will be available in Indian Country will depend upon decisions made by the states. Moreover, many states have sued EPA seeking to block the CPP, including seven of the twelve states in which USET SPF Tribal homelands are located (Alabama, Florida, Louisiana, Mississippi, North Carolina, South Carolina, Texas). In light of such opposition to the CPP, there is reason to doubt whether such states will take steps to make the CEIP available at all, let alone in Indian Country. USET SPF's recommendation is that EPA develop a federal plan to implement the CEIP in Indian Country. However, in the Obama Administration's last days, it is looking unlikely that this option will be available for Tribal Nations.

- [USET SPF Comments](#)

USET SPF Comments on EPA Environmental Justice 2020 Draft Action Agenda

On July 28th, USET SPF submitted comments concerning the U.S. Environmental Protection Agency's (EPA) strategic plan for environmental justice for 2016-2020. USET SPF's comments commended the EPA for its efforts to advance environmental justice; development of a suite of programs, actions, and measures to make a visible difference in the environmental and public health landscape; and the vision to cultivate strong partnerships to achieve better environmental outcomes and reduce disparities in overburdened communities. USET SPF also registered its support for the goals of EJ 2020 to deepen environmental justice practice within EPA programs to improve the health and environment of overburdened communities; work with partners to expand our positive impact within overburdened communities; and demonstrate progress on significant national environmental justice challenges. Finally, USET SPF applauded EPA for acknowledging its trust responsibility to federally recognized Tribal Nations; recognizing the right of Tribal governments to self-determination; committing to protect the environment and health of federally recognized Tribal Nations and indigenous peoples; and providing access to the Agency's decision-making processes.

- [USET SPF Comments](#)

USET SPF Provides Written Comments in Response to Congressional Roundtable on Environmental Justice

On June 17th, USET SPF wrote to Rep. Raul Ruiz (D-CA), Ranking Member of the House Natural Resources Subcommittee on Indian, Insular, and Alaska Native Affairs, to provide input on his policy discussion on environmental justice in Tribal communities. While USET SPF was not able to attend the policy discussion in person, our comment letter provided extensive recommendations in pursuit of environmental justice within Indian Country. These recommendations include modernizing the relationship between the United States and Tribal Nations, the extension of self-governance to Environmental Protection Agency programs, funding for water operator training and certification, and the protection of Tribal sacred sites.

- [USET SPF Letter to Rep. Ruiz](#)

Federal Recognition

USET SPF Continues to Oppose H.R. 3764, The Tribal Recognition Act

Since its introduction in October 2015 by Rep. Rob Bishop (R-UT), Chairman of the House Natural Resources Committee, USET SPF has registered its strong opposition to H.R. 3764, the Tribal Recognition Act. The legislation seeks to eliminate the executive branch's ability to recognize Native Nations, placing the responsibility solely in the hands of Congress. Not only is there strong legal and constitutional authority for the Secretary of the Interior's ability to recognize Tribal Nations, USET SPF is deeply concerned that placing sole authority for recognition in the hands of Congress will inject unrelated political considerations into a process that is at the heart of the federal trust responsibility.

In spite of the objections from USET SPF and other Tribal Nations and organizations, the legislation was reported out of the full House Natural Resources Committee on a party-line vote September 8th. While the legislation did not see further action in the 114th Congress, USET SPF will continue to monitor this issue and express opposition, as necessary, in the 115th Congress.

- [USET SPF Letter to Committee](#)
- [USET Testimony for 12/8/15 Hearing](#)
- [Bill Text](#)
- [Hearing Memo](#)
- [USET Testimony for 10/28/15 Hearing](#)
- [USET Letter](#)
- [USET Resolution](#)

Health

Congress Introduces IHS Reform Bills, USET SPF Calls for Full Funding

Following reports of violations and failures in the Indian Health Service (IHS) Great Plains Area, including the termination of some provider agreements by CMS, legislation to reform the Agency has been introduced in both chambers of Congress. On the Senate side, S. 2953, the IHS Accountability Act, was approved by the Senate Committee on Indian Affairs on September 21st. The legislation would expand removal and discipline authorities to deal with problem employees, require Tribal consultation on the hiring of certain senior staff, require reporting on staffing and spending, mandate investigations into patient deaths, and employment incentives. However, it does not provide additional funding for the chronically underfunded Agency or include additional policy recommendations made by USET SPF. Further, there have been constitutional concerns regarding the expanded authorities to under the bill.

In the House, H.R. 5406, the Helping to Ensure Accountability, Leadership, and Trust in Tribal Healthcare (HEALTTH) Act, was introduced by Rep. Kristi Noem (R-SD) in July. This legislation contains many of the same provisions as S. 2953, but also, as

introduced, proposes to make major changes to the Purchased/Referred Care (PRC) Program at direct-service sites, including freezes and redistribution, rather than full funding. USET SPF and the Self-Governance Communication and Education Tribal Consortium submitted extensive comments on H.R. 5406 and have been working with Rep. Noem's staff to ensure the legislation does not unfairly impact Tribal Nations by spreading financial inadequacies across the Indian Health System.

While neither bill saw additional action in the 114th Congress, USET SPF expects to see further action on this issue in the 115th Congress. We will continue to provide monitoring, guidance, and information on this issue as it develops.

- [USET SPF – SGCETC Joint Comments on HEALTTH Act](#)
- [USET SPF Comments on IHS Accountability Act](#)
- [Article on Great Plains](#)
- [SCIA Oversight Hearing Video](#)
- [USET SPF Statement for the Record of SCIA Oversight Hearing](#)

USET SPF Urges Tribal Relief from ACA Employer Mandate

Throughout 2016, USET SPF continued to partner with National Indian Health Board (NIHB) and other Tribal organizations to advocate for Tribal relief from the Affordable Care Act's (ACA) Employer Mandate, which requires that "large employers" (with 50 or more full-time equivalent employees) offer health insurance or pay a penalty.

For Tribal employers employing Tribal members, the Mandate is inconsistent with the federal trust responsibility and denies many Tribal members the opportunity to take advantage of the benefits and protections designed for them in the ACA's health insurance Marketplaces. The cost of health insurance also proves unaffordable for many Tribal employers. If fully implemented in Indian Country, many Tribes will be forced to choose between the expense of providing coverage, likely resulting in a reduction to vital governmental services, or using scarce federal resources to pay the substantial IRS penalties if they do not comply.

For several year, USET SPF, NIHB, and others have been in communication with the Administration (including the White House, Treasury, and Health & Human Services) in pursuit of guidance or regulations providing Tribal Nations with relief from the Mandate—at least for IHS-eligible employees. Yet, in spite of lengthy discussions, white papers, and the provision of draft guidance, the Department of Treasury via the Internal Revenue Service maintains that the agency is not able to find the basis for permanent relief.

In addition to administrative relief, Tribes are pursuing legislative options. Last July, Rep. Kristi Noem (R-SD) and Sen. Steve Daines (R-MT) introduced legislation that would provide relief to Tribal employers from the Affordable Care Act's (ACA) employer Mandate. The *Tribal Employment and Jobs Protection Act* (H.R. 3080 and S. 1771) would exempt Tribal employers, including Tribal governments and Tribal organizations, from the requirement to provide health insurance to any employee, regardless of Tribal citizenship. USET SPF has consistently joined other inter-tribal organizations on letters urging the House Ways and Means and Senate Finance Committees to immediately

consider and favorably pass H.R. 3080/S.1771. However, neither the House nor the Senate was able to pass the legislation in the 114th Congress.

However, USET SPF expects that the 115th Congress and incoming Administration will repeal the employer mandate in its entirety, along with many other parts of the ACA. USET SPF will work to ensure provisions within the ACA aimed at improving health status in Indian Country, including the permanent reauthorization of the Indian Health Care Improvement Act (IHCIA) are upheld, and will provide information on this issue as it develops.

- [Inter-Tribal Letter on ACA and IHCIA](#)
- [Inter-Tribal Letter to House Ways and Means](#)
- [Inter-Tribal Letter Senate Finance](#)
- [Bill Text](#)
- [USET Fact Sheet](#)
- [USET-NIHB, Other Orgs Letter to the White House, June 2015](#)

USET SPF Continues to Seek Answers on IHS Proposed Headquarters Realignment

In response to failures in the Great Plains Area and resulting Congressional, Government Accountability Office, Office of Inspector General inquiries and reports, the Indian Health Service (IHS) has proposed to realign its Headquarters office. However, this proposal has been issued without appropriate Tribal consultation and adequate clarification on the Realignment, its effect on Area operations, and its funding mechanisms. Despite an extended comment period and several national teleconferences with IHS, USET SPF continues to seek answers to outstanding questions on the Realignment.

- [USET SPF Letter to Mary Smith re Questions](#)
- [Inter-Tribal Letter on Realignment](#)
- [USET SPF Initial Comments on Realignment](#)

IHS Finalizes Contract Support Costs Policy

On October 27th, the Indian Health Service (IHS) issued its new Contract Support Cost (CSC) policy. After years of negotiation and consultation, the new policy the agency's negotiation and payment of CSC for contracts and compacts under the Indian Self-Determination and Education Assistance Act in light of the Supreme Court decision that held CSC must be paid in full. USET SPF supports some parts of the new policy, but not others. However, both Tribal and federal representatives to the CSC Workgroup feel as though the new policy is something they can live with.

- [New Policy](#)
- [HSDW Memo](#)
- [USET SPF Comments](#)

USET SPF Comments on CMS MACRA Rule

Enacted in April of 2015, the Medicare and CHIP Reauthorization Act (MACRA) repeals the sustainable growth rate, a physician payment mechanism designed to control spending (but ultimately leading to a "fix" annually to avoid cuts to Medicare payments)

and establishes a new payment system focused on quality. During the federal rulemaking process to implement MACRA in 2016, USET SPF provided comments to the Centers for Medicare and Medicaid Services (CMS) on both proposed and final rules. USET SPF's comments urged additional Tribal consultation on the rule, as Tribal Nations were forced to participate in the public comment process along with stakeholders. In addition, USET SPF stressed that any CMS payment model that reduces essential resources to the chronically underfunded Indian Health System through penalties or other adjustments in reimbursement will have a long-term negative impact on American Indian/ Alaska Native (AI/AN) patient health outcomes and access to care. Further USET SPF called for dedicated resources for Tribal technical assistance in complying with new requirements, as well as sub-regulatory guidance regarding the Final Rule's application to the Indian Health System

- [USET SPF Comments on Proposed Rule](#)
- [USET SPF Comments on Final Rule](#)

USET SPF Submits Comments on ITU Addendum

On November 16th, USET SPF submitted comments in response to the Centers for Medicare and Medicaid Services (CMS) release of the Indian Health Care Addendum for Contracting with Medicaid and CHIP Managed Care Entities (IHS, Tribally-operated or urban Indian clinic (ITU) Addendum, which is the result of Tribal advocacy aimed at protecting and upholding the special Medicaid protections for American Indian and Alaska Native (AI/AN) patients contained in the American Recovery and Reinvestment Act of 2009 (ARRA). USET SPF's comments propose a number of amendments and clarifications to the ITU addendum and included a redline draft outlining these recommended changes. Additionally, USET SPF urged CMS to take an active role in ensuring there are no disruptions in AI/AN access to Medicaid as a consequence of interacting with Medicaid managed care systems.

- [USET SPF Comments on ITU Addendum](#)
 - [ITU Addendum Redline](#)

USET SPF Comments on IHS Proposed Rule on CHEF

Following calls for additional consultation, the Indian Health Service extended the comment period on a Proposed Rule governing the Catastrophic Health Emergency Fund (CHEF). USET SPF continues to express concerns that portions of the Proposed Rule unfairly shift costs to Tribal Nations, misconstrue the nature of Tribal self-insurance plans, and make a significant departure from long-standing IHS policy. USET SPF continues to urge the IHS to rescind the Proposed Rule on the CHEF policy and develop new regulations in consultation with the Purchased/Referred Care (PRC) Workgroup. Additionally, we urge the removal of Tribal self-insurance from the definition of alternate resources in the Proposed Rule.

- [USET SPF Further CHEF Comments](#)
- [USET SPF Initial CHEF Comments](#)
- [HSDW CHEF Memo](#)

USET SPF Submits Comments on IHS Draft Circular for Tribal Premium Sponsorship

On October 31st, USET SPF offered comments in response to the Indian Health Service's (IHS) July 29, 2016 "Dear Tribal Leader" letter (DTLL) requesting feedback on its draft Circular for Tribal Premium Sponsorship (Circular). Although USET SPF supports the expansion of Tribal Premium Sponsorship programs and Tribal Nations' right to enter into self-governance agreements, we believe the language in the draft Circular is overly restrictive, imposing unnecessary constraints and limitations on self-governance compacts and contracts. Further, the draft Circular was developed without Tribal input and without a clear audience. Consequently, USET SPF recommended that IHS rescind the draft Circular, as well as an October 2013 DTLL, and provide technical assistance to Tribal Nations as they develop premium sponsorship programs.

- [USET SPF Comments](#)
- [IHS July DTLL](#)
- [IHS 2013 DTLL](#)

USET SPF Comments on CHAP Expansion

On October 27th, USET SPF submitted comments to the Indian Health Service (IHS) regarding the draft policy statement on creating a national IHS Community Health Aide Program (CHAP). USET SPF believes that expanding access to mid-level providers, including community health aides (CHA), behavioral health aides (BHA), dental health aide therapists (DHAT) and other types of mid-level providers will help to address long-standing provider shortages and access to care challenges. While we recognize there are statutory limitations with regard to inclusion of DHAT in a national program established by the Secretary, DHATs are a critical component to any CHAP program and USET SPF continues to support their inclusion in Tribal CHAP programs. USET SPF supports the nationalization of the CHAP in a way that will allow Tribal Nations, either independently or in partnership with IHS Area offices, to implement the program as they see fit. We support the formation of an IHS-Tribal CHAP Workgroup in order to facilitate on-going consultation as the CHAP expansion policy is developed and formalized.

- [USET SPF Comments](#)

USET SPF Submits Comments on the IHS Draft Quality Framework

On October 3rd, USET SPF submitted comments in response to the Indian Health Service's (IHS) July 20, 2016 "Dear Tribal Leader" letter regarding the IHS proposed Quality Framework for 2016-2017. The draft Framework was issued in response to failures to provide adequate care in certain IHS facilities and Areas. USET SPF expressed its support for initiatives that aim to increase the level of quality care in the Indian Health System, which has been plagued by systemic challenges for decades. However, our Tribal Nations seek comprehensive solutions in addressing the root causes of these challenges and are concerned about nationalizing standards in reaction to regionally-specific issues. USET SPF noted draft IHS Quality Framework was effective in setting quality goals, but was unclear in how the Agency will respond if these

goals are not met. With this in mind, USET SPF called for clarifications on a number of items within the draft Framework.

The final IHS Quality Framework, released on November 16th, provided clarity or changes in response some, but not all of, USET SPF's comments. We continue to monitor changes at IHS and will provide updates as they become available.

- [IHS DTLL on Draft Quality Framework](#)
- [USET SPF Comments on Draft Quality Framework](#)
- [IHS Final Quality Framework](#)
- [Comparison of Final Quality Framework to USET SPF Comments](#)

USET SPF Submits Testimony on S. 2417, The Tribal Veterans Health Care Enhancement Act

On May 11th, the Senate Committee on Indian Affairs (SCIA) held a legislative hearing on S. 2417, the Tribal Veterans Health Care Enhancement Act, legislation that would shift the burden for cost-sharing assessed by the Department of Veterans Affairs (VA) for health care provided to American Indians and Alaska Native (AI/AN) veterans from individual AI/AN to the Indian Health Service (IHS). While S. 2417 seeks to address the harmful financial impacts of unpaid VA balances accrued by AI/AN veterans who have been referred to the VA health system by Indian health clinics, it unfairly burdens the severely underfunded IHS rather than seeking to eliminate cost-sharing for AI/AN veterans. USET SPF's testimony noted that this is inconsistent with the federal trust responsibility to provide health care to AI/AN, and called for the elimination of all cost-sharing for AI/AN within federal health care programs, including the VA. The legislation was approved by SCIA on June 8th, but did not receive further action in the 114th Congress.

- [Bill Text](#)
- [USET SPF Testimony](#)

USET SPF Submits Comments on the FY 2015 IHS Self-Governance Report to Congress

On September 30th, USET SPF responded to the Indian Health Service's (IHS) "Dear Tribal Leader" letter (DTLL) requesting comments on the Fiscal Year (FY) 2015 IHS Self-Governance Report. USET SPF believes that the report falls short in providing information required under the Indian Self-Determination and Education Assistance Act and omits important details highlighting the importance of Tribal Self-Governance.

- [USET SPF Comments](#)

USET SPF Comments on VA Proposed Rule Recognizing Tribal Organizations for Representation of VA Claimants

On September 19th, USET SPF provided the Department of Veterans Affairs (VA) with comments in response to its July 20th proposed rule regarding the recognition of Tribal organizations for representation of VA claimants. USET SPF also submitted comments regarding this matter in response to its March 3, 2016 "Dear Tribal Leader" letter, which

sought Tribal consultation and input on this policy change. In the September 19th comments, USET SPF expressed its disappointment that the Agency did not make a more earnest effort to address Tribal concerns through the consultation process and in the resulting proposed rule. While the proposed rule made several clarifications based on Tribal feedback, additional policy considerations and issues that remained unaddressed.

- [USET SPF Comments on Proposed Rule](#)
- [Proposed Rule](#)
- [USET SPF DTLL Comments](#)

USET SPF Comments on CMS Proposed Rule Expanding the Medicare Diabetes Prevention Program Model

On September 6th, USET SPF offered comments on a Centers for Medicare and Medicaid Services (CMS) Proposed Rule expanding the Medicare Diabetes Prevention Program (MDPP) model. USET SPF stressed the need for CMS to honor its own Tribal consultation policy, which requires the agency to consult with Tribal Nations in the development of Federal policies that have Tribal implications. In addition, USET SPF offered recommendations to ensure the MDPP is inclusive of Indian Country's Diabetes prevention programming.

- [USET SPF Comments](#)

USET SPF Comments on HHS Rulemaking Effecting ISDEAA

On August 12th, USET SPF wrote to the Department of Health and Human Services (HHS) to provide comments to its Notice of Proposed Rulemaking (NPRM) on HHS Grant Regulation in response to the Office of Management and Budget's (OMB) Uniform Guidance. The NPRM was issued without meaningful Tribal consultation, and so USET SPF urged HHS to suspend rulemaking until this could be completed. In addition, USET SPF expressed major concerns about the application of grant and cooperative agreement rules to Indian Self-Determination and Education Assistance Act (ISDEAA) contracts and compacts in spite of clarification within the OMB Uniform Guidance that ISDEAA would govern any conflicts between it and the Guidance. While HHS did conduct a call with Tribal Nations and organizations on the NPRM on December 9th, a number of questions and concerns remain unaddressed. USET SPF will provide additional comments on this issue in 2017.

- [USET SPF August 12 Comments](#)
- [NPRM](#)

USET SPF Comments on FDA Draft Tribal Consultation Policy

On May 31st, USET SPF provided the Food and Drug Administration (FDA) with comments in response to the Agency's February 29, 2016 "Dear Tribal Leader" letter regarding its draft Tribal Consultation Policy. USET SPF noted FDA's commitment to honor and further its role in the government-to-government relationship between Tribal Nations and the federal government. As agencies of the United States government, the Department of Health and Human Services (HHS) and its operating divisions, including the FDA, have sacred trust obligations to Tribal Nations. With this in mind, USET SPF provided constructive recommendations in support of the establishment of FDA

protocols for engaging with Tribal Nations and to ensure meaningful consultation in the development of policies impacting Indian Country.

- [USET SPF Comments](#)
- [FDA Draft Consultation Policy](#)

USET SPF Comments on IHS Medicare-Like Rates Final Rule

On May 18th, USET SPF offered comments on the Indian Health Service (IHS) Final Rule establishing a Medicare-Like rate (MLR) of payment for non-hospital-based-care purchased for patients by the Indian Health System. In a previous comment letter, USET SPF demonstrated the critical need for MLR for non-hospital services in an effort to extend the resources of the chronically underfunded Purchased/Referred Care (PRC) account and ensure federal dollars are expended in a more efficient manner. As noted in a Government Accountability Office (GAO) report, implementing MLR for non-hospital services would extend the resources of the PRC program by an estimated \$31.7 million annually. USET SPF was pleased with the Final Rule, as it incorporated the recommendations made by USET SPF and Tribal Nations regarding flexibility in the application of the new payment methodologies. USET SPF's final comments offered support for the inclusion of Tribal Nation recommendations, identified other provisions of the final rule that needed additional clarification or amendments, and requested consultation surrounding the payer of last resort.

- [USET SPF Comments](#)
- [Final Rule](#)

USET SPF Comments on Gen-I Projects under SASP

On May 2nd, USET SPF submitted comments to the Indian Health Service (IHS) comments in response to the April 1, 2016 "Dear Tribal Leader" letter (DTLL) regarding consultation on the Generation-Indigenous (Gen-I) projects under the Substance Abuse and Suicide Prevention Programs (SASP), formerly the Methamphetamine and Suicide Prevention Initiative (MSPI). USET SPF's comments focused on increasing access to SASP Gen-I funding, and ensuring full participation by Tribal Nations impacted by the significant burden of substance abuse challenges among the youth and in their communities.

- [USET SPF Comments](#)

Interior

USET SPF Comments on DOI Strategic Plan Revisions

On September 20th, USET SPF provided the Department of the Interior (DOI) with comments in response to its "Dear Tribal Leader" letter (DTLL) dated July 15, 2016, initiating Tribal consultation on DOI's proposed revisions to its Fiscal Years (FY) 2014 – 2018 Strategic Plan (Plan). USET SPF agrees that both DOI's and the forthcoming Bureau of Indian Affairs (BIA) Strategic Plan should, "reflect the diverse and unique needs of Indian Country." More than that, however, the Plans must reflect DOI and BIA's commitment to nation rebuilding within Indian Country and the execution of federal trust obligations, to the collection of meaningful data as evidence of Nation rebuilding (rather than measures that reflect widget counting), and to the promotion and

advancement of self-determination. With this in mind, USET SPF submitted comments to provide some broad guidance to DOI as it seeks to achieve a Plan that is more reflective of its full commitment to 21st century Tribal Nations.

- [USET SPF Comments](#)

USET SPF Comments on BIA Draft CSC Policy

On July 29th, USET SPF wrote to provide comments on the draft Indian Affairs Manual chapter entitled Contract Support Costs (CSC) issued by the Bureau of Indian Affairs (BIA) with a letter dated March 22, 2016. USET SPF expressed general support for the Policy, which was issued in order to facilitate full-funding of CSC, but also offered suggestions for improvement. A final policy has not yet been issued.

- [USET SPF Comments](#)
- [Draft BIA CSC Policy](#)

International

USET SPF Joins Indian Law Resource Center Comments to U.N. on Enabling the Participation of Indigenous Governments

On June 28th, USET SPF joined numerous Tribal Nations and Organizations in signing onto comments submitted by the Indian Law Resource Center (IRLC) to inform the United Nations (UN) to clarify the need to enable the participation of Indigenous governing institutions at the UN and to assure that the new status, the necessary standards for accreditation, and the rules for participation will permit Indigenous governing institutions to participate effectively in the work of the UN.

- [IRLC Comments](#)

Justice

Tribal Law and Order Act Reauthorization Approved by SCIA

On June 22nd, the Senate Committee on Indian Affairs (SCIA) approved S. 2920, the Tribal Law and Order Act (TLOA) Reauthorization and Amendments Act of 2016. The legislation reauthorizes many TLOA provisions. However, USET SPF consistently noted that while there has been some progress in the law's implementation, including improved federal relationships and action, better Tribal infrastructure, and some cases of better cross-training, the provisions of TLOA remain elusive for many Tribal Nations. This is especially true of USET SPF Tribal Nations. With the exception of one member Tribal Nation, we are not aware of any USET SPF Tribal Nations that have implemented TLOA's enhanced sentencing provisions. On June 22nd and March 29th, USET SPF submitted comments outlining barriers to USET SPF member Tribal Nations assuming the new authorities provided by TLOA and urging SCIA to address these impediments.

- [USET SPF Letter](#)
- [SCIA Press Release](#)
- [Senate Roundtable Webcast](#)
- [USET SPF TLOA Comments](#)

Labor

USET SPF Continues to Seek Passage of the Tribal Labor Sovereignty Act

Since passage its passage in the House by a wide margin in November 2015, Tribal Nations have been working toward a vote on the Tribal Labor Sovereignty Act (TLSA), H.R. 511, in the Senate. The legislation would confirm that all Tribal enterprises, like the enterprises of state and local governments, are exempt from the National Labor Relations Act. Advocates had hoped to achieve enough bi-partisan support for the bill to see its approval before the end of the 114th Congress, but it did not see further action in the Senate. USET SPF joined numerous TLSA support letters transmitted to the Senate by the U.S. Chamber of Commerce's Native American Enterprise Initiative in 2015 and 2016. USET SPF will continue to join these letters, advocate on Capitol Hill, and provide information, as well as template support letters, to member Tribal Nations during the upcoming 115th Congress.

- [Final US Chamber Letter to Senate](#)
- [Article on Senate Letter](#)
- [US Chamber Letter re: Omnibus Inclusion](#)
- [USET Letter to President Obama](#)
- [USET Letter to House Education & Workforce Committee Chairman Kline](#)
- [US Chamber Letter to the Senate](#)
- [US Chamber Letter to the House](#)
- [USET Template Letter](#)
- [USET Resolution 2015:019 Support for Tribal Parity in NLRA](#)
- [USET President Brian Patterson ICT Statement](#)

Land

USET SPF Remains Committed to Carcieri Fix

As has been the case since 2009, USET SPF is committed to the passage of legislation accomplishing the two objectives that a *Carcieri* fix requires: 1. Reaffirming the status of existing trust lands, and 2. Restoring the Secretary of the Interior's authority to take future lands into trust on behalf of Tribal Nations. With this in mind, we continue to monitor legislation that aims to achieve one or both *Carcieri* fix objectives.

USET SPF continues to support legislation that would provide certainty for Tribal Nations by reaffirming all lands that have been taken into Trust by the Secretary of the Interior. During the 114th Congress, Co-Chairs of the Congressional Native American Caucus, Reps. Tom Cole (R-OK) and Betty McCollum (D-MN) and Senator Jerry Moran (R-KS), introduced H.R. 3137 and S. 1931, legislation that would end lawsuits

challenging the status of existing trust lands. This legislation is one part of a two-part *Carcieri*-fix.

Following its approval by the Senate Committee on Indian Affairs (SCIA), S. 1879, the *Interior Improvement Act*, did not receive action from the full Senate in the 114th Congress. The bill, sponsored by SCIA Chairman John Barrasso, contains the two *Carcieri* fix objectives, as well as the codification of parts of the existing land-into-trust process. It also encourages, but does not require, intergovernmental agreements between Tribal Nations and local governments. During the USET Annual Meeting in October 2015, the USET Board of Directors passed a resolution expressing general support for S. 1879 and Chairman Barrasso's efforts to fix *Carcieri*. While the future of a *Carcieri* fix remains uncertain under a new Administration and Congress, USET SPF will continue to urge action on this issue and provide updates as they develop.

- [Land Reaffirmation Inter-Tribal Support Letter](#)
- [USET Land Reaffirmation Support Letter](#)
- [USET Land Reaffirmation Resolution](#)
- [USET Resolution on Interior Improvement Act](#)
- [Interior Improvement Act One-Pager](#)

Litigation

Supreme Court Upholds MBCI Jurisdiction in Dollar General

USET SPF remains committed to defending challenges to Tribal sovereignty in the courts. 2016 brought a number of cases with the potential to change the application of federal Indian law. USET SPF was a leader on an amicus brief in *Dollar General v. Mississippi Band of Choctaw Indians*, a Supreme Court case concerning whether a Tribal Nation has jurisdiction over tort claims member against a non-Indian corporation based on the consensual relationship between the store owned by Dollar General and the Tribal Nation. In June 2016, the Supreme Court issued a 4-4 affirmance of the Fifth Circuit's ruling upholding Tribal court jurisdiction.

- [USET SPF Statement](#)
- [Amicus Brief](#)

USET SPF Submits Amicus Brief in Lewis v. Clarke

USET SPF is engaged in efforts to protect Tribal sovereign immunity. In *Lewis v. Clarke*, the Connecticut Supreme Court is set to consider whether Tribal sovereign immunity applies to Tribal employees conducting Tribal business outside reservation boundaries. On December 21st, USET SPF joined Tribal Nations and organizations on an amicus brief in the case.

- [Lewis v. Clarke Amicus Brief](#)

USET SPF Supports member Tribal Nations in Land Restoration Cases

USET SPF worked to defend and reacquire lands for member Tribal Nations in 2016, submitting amicus briefs on two cases: *Shinnecock v. NY*, concerning whether the Shinnecock Nation had the opportunity to bring a land claim against the state and *Littlefield et al v. U.S. Dept. of Interior*, concerning whether the Department of the Interior had the authority, under the Indian Reorganization Act, to take land into trust for the Mashpee Tribe.

- [Shinnecock v. NY Brief](#)
- [Littlefield et al v. U.S. Dept. of Interior Brief](#)

USET SPF Leads on NLRB Amicus Brief

On March 16th, USET SPF filed an amicus brief to the Supreme Court in *Little River Band of Ottawa Indians v. the National Labor Relations Board (NLRB)*. The case focused on whether the NLRB has jurisdiction over the Little River Band's casino. Tribal Nations maintain that the NLRB should not have jurisdiction over any Tribal enterprises, as they are all essential to Tribal government functions. Unfortunately, on June 27th, the Supreme Court declined to hear the case, upholding the 6th Circuit decision that the NLRB does have jurisdiction.

- [NLRB Amicus](#)

USET SPF Joins DC Football Team Amicus Brief

On February 11th, USET SPF joined an amicus brief to the 4th Circuit filed by Native organizations in *Pro-Football v. Blackhorse*, a case concerning the constitutionality of trademarking the racist DC football team name. The 4th Circuit hearing on the case has been postponed, pending a Supreme Court decision in a separate trademarking case, *Lee v. Tam*.

- [Pro Football v Blackhorse Brief](#)

Sacred Sites

USET SPF Stands with Standing Rock

An 1168-mile-long crude oil pipeline, known as the Dakota Access Pipeline (DAPL), is set to be built from North Dakota into South Dakota, Iowa, and Illinois, including making crossings over land sacred to the Standing Rock Sioux Tribe (SRST) and other Lakota peoples. If allowed to proceed, DAPL stands to destroy sacred sites, as well as jeopardize public health and the environment. SRST, along with other affected Tribal Nations, is pursuing legal action against the U.S. government regarding the permitting of DAPL. Throughout the latter months of 2016, SRST and thousands of representatives from Tribal Nations across the country engaged in non-violent protest of DAPL at Sacred Stone Camp near Cannon Ball, ND.

On December 5th, after strong, sustained advocacy from USET SPF and other Tribal Nations and organizations, the Obama Administration denied an easement for DAPL to proceed forward with construction under Lake Oahe, a SRST sacred site. Though DAPL

asserts that the easement denial does not prevent it from moving forward and court cases on the pipeline continue to move through the legal system, USET SPF remains committed to support SRST. The crisis resulting from failures to consult with Tribal Nations on this project, inspired the Obama Administration to engage in broader Tribal consultation on federal infrastructure permitting. USET SPF submitted extensive comments on November 30th

- [USET SPF Page on DAPL](#)
- [USET SPF Comments](#)
- [Human Rights Joint Org Letter to President Obama](#)

Treasury

USET SPF Continues to Urge Treasury to Convene TTAC

Following the passage of the Tribal General Welfare Exclusion Act (P.L.113-168) in September 2014, a number of provisions of the law have yet to be implemented. This includes the full establishment of Treasury's Tribal Advisory Committee (TTAC). Section 3 of the Act directs the Department of the Treasury to establish a TTAC that will "advise the Secretary on matters related to the taxation of Indians" and work with the Secretary to establish training and education for IRS field agents. In Section 2, the TTAC is charged to work with the Secretary in "developing guidelines for what constitutes lavish or extravagant benefits with respect to Indian tribal government programs." Section 4 of the Act suspends IRS audits and examinations of Indian Tribal governments until the training and education of IRS agents prescribed by Section 3 has been completed. Congress assigned important interpretation and implementation responsibilities to the TTAC and yet it is still not fully seated.

In accordance with the Act, the TTAC is to be made up of seven members, three appointed by the Secretary of the Treasury and the remaining four appointed by the Chairmen and Ranking Members of the House Committee on Ways and Means and Senate Committee on Finance. On December 21, 2015, after strong advocacy from USET SPF and other Tribal Nations and Organizations, Treasury announced its three appointments: USET SPF nominee, Chief Lynn Malerba (Mohegan Tribe), Chairman Ron Allen (Jamestown S'Klallam Tribe), and Treasurer Lacey Horn (Cherokee Nation). On the same day, Rep. Sander Levin (D-MI), Ranking Member of House Ways & Means, announced his appointment of Pokagon Band of Potawatomi Treasurer, Eugene Magnuson, to the TTAC.

In 2016, both Sen. Ron Wyden (D-OR), Ranking Member of the Senate Finance Committee, and Rep. Kevin Brady (R-TX), Chairman of the House Ways and Means Committee, each made their appointments. Sen. Orrin Hatch (R-UT), Chairman of the Senate Finance Committee, remains the only member of Congress yet to make an appointment. USET SPF sent letters to Sen. Hatch urging his appointment and Treasury urging the convening of the TTAC with the currently-seated members. USET SPF continues to monitor this issue closely and will provide updates as they become available.

- [USET SPF Letter to Chairman Hatch](#)
- [USET SPF Letter to Treasury](#)
- [USET SPF Congressional Appointees Nomination Letter](#)
- [USET TTAC Nomination Letter](#)

Trust Modernization

USET SPF Writes to Secretary Jewell Regarding the Future of the White House Council on Native American Affairs

On May 31st, USET SPF wrote to Interior Secretary, Sally Jewell, in response to a request for Tribal Nation input regarding engagement with the White House Council on Native American Affairs (WHCNAA) during an April 25th teleconference. USET SPF provided a variety of recommendations on the compositions and activities of the WHCNAA, including the seating of Tribal leaders as full members, a full accounting of federal Indian funding, the creation of a Public Safety and Justice Committee, and action on Trust Modernization. USET SPF will continue to provide recommendations on improvements and activities for the WHCNAA in the new Administration.

- [USET SPF Letter to Secretary Jewell](#)

New in 2017

USET SPF Presidential Transition Page

USET SPF is monitoring developments during the transition into the Trump Administration. Please visit our [transition page](#) [linked] on the USET website for the latest information.

USET SPF Seeking Fellow

In order to continue producing a high volume of work in the policy, legislation, and litigation arena on behalf of member Tribal Nations, USET SPF is seeking a fellow to assist the Director of Policy and Legislative Affairs. The fellowship is paid and will last for one year. Resumes and recommendations should be directed to:

LMalerba@usetinc.org

SAVE THE DATE: USET SPF Resolutions Policy Webinar

On January 6, 2017, USET SPF will be hosting an informational webinar on its recently-approved resolutions process. Please see the attached flyer for details.

- [USET SPF Resolutions Policy Webinar Flyer](#)