



The Beat *in DC*

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Budget

Congress Down to the Wire on Funding for FY 2016

As has become typical for the Congressional appropriations process, Congress has failed to approve any of 12 appropriations bills providing funding for Fiscal Year (FY) 2016. With FY 2015 ending at midnight on September 30th, Congress must pass a Continuing Resolution (or “CR”, legislation that continues to fund the government at last year’s levels) or risk a government shutdown. With just days left to consider and pass a CR, there is a political backdrop to the debate on spending. Some lawmakers are calling for the defunding of Planned Parenthood and have threatened a government shutdown if this is not accomplished.

At press time, the Senate failed to approve a short-term CR that would fund the government through December 11, 2015 at an annual rate of \$1.017 trillion, a level compliant with the spending caps in the Budget Control Act of 2011. The bill was widely expected to fail because it contained a 1-year ban on funding for Planned Parenthood, unless it certified that it would stop performing abortions. The Senate will begin consideration of a clean version (that is, without the Planned Parenthood provision) on Monday, September 28th. It is expected to pass easily.

Meanwhile, the House is now expected to vote on and pass a clean CR, as well, prior to the fiscal year deadline. With the retirement of House Speaker, John Boehner announced on Friday, September 25th, it is less likely that the government will shut down. As out-going speaker, Boehner will be free of pressure from those in his party calling for the defunding of Planned Parenthood and able to move a clean CR with the support of democrats.

Both the House and Senate Appropriations Subcommittees on Interior, Environment, and Related

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Agencies have successfully reported out Fiscal Year (FY) 2016 funding bills. The topline spending of both Subcommittees was restricted by the House and Senate Budget resolutions, which cut topline spending in accordance with the Budget Control Act of 2011.

On June 16th, the full House Appropriations Committee advanced an appropriations bill that provides \$4.78 billion in funding for the Indian Health Service (IHS), including \$936 million for Purchased/Referred Care and \$466 million for facilities. Overall, this is an increase of \$145 million, but \$315 million less than the President's request of \$5.1 billion. Additionally, the bill funds the Bureau of Indian Affairs (BIA) and Bureau of Indian Education (BIE) at \$2.76 billion, including \$2.5 billion for Indian Programs and \$133 million for BIE school construction. Overall this is an increase of \$165 million over FY 2015 levels, but \$159 million below the President's request. Many BIA/BIE budget line items would be funded at the fiscal year 2015 enacted level, except contract support costs, road maintenance, tribal grant support costs, elementary and secondary programs, tribal courts, the Indian Energy Service Center which all received increases. BIE school construction also received a \$58 million increase in line with the President's request.

Full House consideration of the Interior, Environment, and Related Agencies appropriations bill for Fiscal Year (FY) 2016 (H.R. 2822) had stalled in July over whether to allow the display and sale of Confederate flags in national parks.

USET continues to monitor the status of FY 2016 appropriations and will provide additional information as it becomes available.

- [FY 2016 DRAFT CR Defunding Planned Parenthood One-Pager](#)
- [USET Testimony to House Interior Appropriations on FY 2016 Funding](#)
- [Detailed Table of House Funding Recommendations](#)
- [House Bill](#)
- [House Summary](#)

BIA and IHS Release FY 2018 Budget Formulation Worksheets

The Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) are preparing to consult with Tribes on funding priorities for Fiscal Year (FY) 2018. Recently, the agencies released instructions to area/regional formulation teams, as they begin discussing and collecting regional priorities. For BIA, regional teams will be determining funding priorities for a potential 8% increase. For IHS, area teams are being asked to list priorities for both a 22% and a 5% increase. It is important to note that these potential increases are just projections from the Administration and that any increase in discretionary funding for BIA or IHS is dependent upon Congressional appropriations.

Following budget formulation at the area/regional level this fall, both agencies will host a meeting of all area/regional teams to determine national budget priorities for FY 2018. From there, the agencies use national Tribal priorities to inform the development of their budget proposals, which will need approval from the Office of Management and Budget before being incorporated into the President's FY 2018 budget request. USET sends

representatives to both the BIA and IHS Budget Formulation workgroups, and is interested in hearing from member Tribes regarding their funding priorities for the IHS and BIA.

- [BIA Budget Formulation Instructions](#)
- [IHS Budget Formulation Instructions](#)

Health

USET Meets with Administration Representatives in Effort to Provide Tribal Relief from ACA Employer Mandate

USET continues 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.

After two USET/NIHB letters (in February and June, respectively) requesting a meeting on the subject, representatives from USET, NIHB, Tribal Self-Governance, NCAI, and the Rocky Mountain Tribal Leaders Council, joined White House and Department of Health & Human Services (including IHS) officials on September 10th to advocate for relief. Notably absent from the meeting were representatives from the Internal Revenue Service (IRS), the agency tasked with administering penalties to employers for not offering health coverage. However, on September 21st, USET met with representatives from the Department of Treasury and IRS to ensure that this issue is being considered at the agency level.

At both meetings, the Administration recognized the conflicts between the employer mandate, the federal trust responsibility, and the Tribal exemption from the ACA's individual mandate. However, no commitments were made to providing regulatory or administrative relief. As a result, USET and others are calling for further conversations with the Administration, as well as Tribal consultation on the topic.

In addition, to administrative relief, Tribes are pursuing legislative options. On July 15th, 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 mandate.

USET has been consistently committed to comprehensive advocacy, outreach, and education on ACA for Member Tribes over the last 3 years, providing over 50 in-person trainings, technical assistance, and outreach materials, as well as numerous comments on federal regulations. As with other issues related to ACA, USET will continue to monitor the employer mandate and will provide updates and guidance as they become available.

- [Bill Text](#)
- [NIHB Fact Sheet](#)
- [USET SPF Alert](#)
- [USET-NIHB Joint Letter to the White House, February 2015](#)
- [USET-NIHB, Other Orgs Letter to the White House, June 2015](#)

Labor

USET Continues to Support Tribal Labor Sovereignty Act

The Tribal Labor Sovereignty Act (H.R. 511/S. 248) has been approved in both the House and Senate, making it ready for consideration by Congress this fall. The legislation would confirm that all Tribal enterprises, like the enterprises of state and local governments, are exempt from the National Labor Relations Act.

Tribes are working to encourage a vote on the legislation as soon as possible. This includes working to shore up support among Members of Congress, as well as urging an official expression of support from the White House. For its part recently, USET has drafted and sent letters to both the House of Representatives and President Obama.

In 2004, the National Labor Relations Board (NLRB) reversed decades of its own precedent and established “a new standard for determining the circumstances under which the Board will assert jurisdiction over Indian owned and operated enterprises.” The NLRB ruled that Tribal governments are subject to the NLRA when acting more “commercially” than “governmentally.” The NLRB has never applied this standard to the enterprises of state or local governments, which are explicitly exempt from the NLRA.

In addition to Committee action, both the House and Senate Labor, Health & Human Services, and Education Appropriations bills contain provisions that would prevent NLRB from exercising jurisdiction over Tribes.

USET continues to sign onto Inter-Tribal letters circulated by the U.S. Chamber of Commerce’s Native American Enterprise Initiative, advocate on Capitol Hill, and provide information, as well as template support letters to member Tribes.

- [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

Senator Barrasso *Carcieri* Fix Legislation to be Marked-up Soon

On July 28th, Senator John Barrasso (R-WY), Chairman of the Senate Committee on Indian Affairs (SCIA), introduced the *Interior Improvement Act* (S. 1879), legislation that would correct the 2009 Supreme Court decision in *Carcieri v. Salazar*. While the text of this legislation differs from what has been previously introduced (see Sen. Tester's S. 732, Rep. Cole's H.R. 249, and Rep. McCollum's H.R. 407), it accomplishes 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 Tribes. Moreover, it is free of Tribal carve outs, gaming provisions, and veto power for counties.

In addition, the legislation seeks to codify parts of existing land-into-trust regulations and while it encourages intergovernmental agreements between Tribes and local governments, it ensures that absence of an agreement does not penalize a land-into-trust application.

Recently, USET has been informed of the intent to mark-up (or consider for Committee approval) the legislation in SCIA this fall. During the mark-up, we understand that the SCIA will consider some technical amendments to the bill. USET will continue to monitor closely the status of S. 1879, as well as any technical changes, as we continue to seek a fix to the decision in *Carcieri* once and for all.

- [Bill Text](#)
- [Section-by-Section](#)
- [One-pager](#)

USET Supports Land Reaffirmation Legislation

In July, 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 provide certainty for Tribes by reaffirming all lands that have been taken into Trust by the Secretary of the Interior.

Since the 2009 decision in *Carcieri v. Salazar*, Tribes and the federal government have faced an ever-increasing number of highly destructive legal challenges to lands currently held in trust. These include the *Match-E-Be-Nash-She-Wish Band of Pottawatomis v. Patchak*, which allowed retroactive challenges to land into trust

decisions, and *Big Lagoon Rancheria v. California*, in which the Ninth Circuit held, in a case involving land taken into trust 20 years ago, that there is essentially no time limit on bringing such challenges. Although the decision in *Big Lagoon* was recently reversed, there are currently more than a dozen legal cases concerning proposed and existing trust acquisitions. The economic uncertainty resulting from *Carcieri* threatens Tribal businesses, reservation contracts and loans, and discourages businesses from investing in Tribal economies.

In recognition of a pressing need to end lawsuits challenging the status of existing trust lands, USET is lending its support to this legislation. On September 15th, USET provided a letter supporting passage of H.R. 3137 in the House. Additionally, on September 24th, USET began seeking signatures from partner organizations on a letter calling upon the leadership of the Senate Committee on Indian Affairs and the House Natural Resources Committee to work towards swift passage of this legislation in both Congressional Chambers.

- [USET House Support Letter](#)
- [Inter-Tribal Org Support Letter](#)
- [Bill Text](#)
- [USET Resolution](#)

Social Services

USET Supports Wyden's Family Stability & Kinship Care Act

On August 5th, Ranking Member of the Senate Finance Committee, Ron Wyden (D-OR), and 7 other Committee members introduced S. 1964, the *Family Stability and Kinship Care Act*. The legislation seeks to provide sorely needed supports to families in need, rather than devote more resources to the removal of children into foster care. It does this by allowing the nation's largest child welfare funding stream to support front-end family services to reduce unnecessary foster care stays. As the bill was introduced, USET, along with over 60 other organizations, expressed support.

Outcomes for all children, including Native children, are improved when they are able to safely remain in or return to their homes and their communities. Unfortunately, the small amount of federal preventive and family services funding that is currently available does not reach all Tribal nations. Often, Tribes are not eligible to receive the funds or available amounts funding are so small that they only cover program administrative requirements, without any remaining to support actual services. S. 1964 would ensure that Tribal child welfare programs, as well as state child welfare programs, have access to new streams of funding for family services and reunification.

USET previously submitted comments on a discussion draft of the legislation released by Sen. Wyden in June.

- [Bill Text](#)
- [Wyden Press Release](#)
- [USET Comments on Discussion Draft](#)

Treasury

IRS Issues Final Rule on Trust Per Capita Payments

On September 18th, the Internal Revenue Service (IRS) released its final rule on the treatment of per capita distributions of trust resource revenue. The final guidance provides clarity that per capita distributions made from funds held by the Secretary of the Interior or by an Indian tribe as part of a tribal trust are excluded from the gross income of tribal members. Thus, under the guidance, per capita distributions of trust revenue is not taxable to the recipients.

However, the guidance does not contain a number of key changes to previous guidance request by Tribes. These include: deference to the Department of the Interior as to whether a per capita distribution involves trust resources, the removal of examples of “egregious abuse” of the policy, and certain clarification on terminology.

USET submitted comments on the proposed guidance in September 2014.

- [Final Rule](#)
- [USET September 2014 Comments](#)

Treasury Releases First-Ever Agency Tribal Consultation Policy

On September 23rd, the Department of Treasury released the agency’s first Tribal Consultation Policy (TCP). After the draft TCP was issued in December 2014, Treasury received a number of Tribal comments that encouraged the department to amend its policy. These include:

- The statement in the interim policy that "Treasury will endeavor to consult" with tribes has been changed in the final policy to simply state that "Treasury will consult" with tribes.
- The interim policy had stated that policy matters of general applicability that may impact tribal governments would remain outside the scope of tribal consultation, but the final policy reverses this position to confirm that policy matters of general applicability that may impact tribal governments are matters for tribal consultation.
- Despite extensive tribal comments, the terms in the interim policy asserting that issues associated with enforcement actions are not subject to consultation remain the same because Treasury is prohibited by law from engaging in enforcement matters. The final consultation policy, however, clarifies that in situations where policy issues affecting multiple tribes arise from an enforcement matter (such as the recent experiences with the General Welfare Exclusion and Per Capita Trust issues) then the policy elements will be explored through consultation with tribes.

USET submitted comments on the interim TCP this April. We will continue to monitor the implementation of this policy and ensure that Treasury meaningfully consults with Tribes.

- [Treasury Final TCP](#)
- [USET Comments](#)

Updates on Treasury Tribal Advisory Committee Appointments

During a meeting of the National Intertribal Tax Alliance (NITA) on September 17th, Dr. Elaine Buckberg, Treasury's Deputy Assistant Secretary for Policy Coordination, provided an update on appointments to the Treasury Tribal Advisory Committee (TTAC). Dr. Buckberg said she had hoped to announce the TTAC members during the NITA conference, but that the required background check of Treasury's three nominees has not yet been completed. She explained that Treasury selects three members of the seven-member Committee (Congress names four -- one each by the Chairmen and Ranking Members of the House Ways and Means Committee and the Senate Finance Committee). She noted that Treasury is coordinating with the Congressional committees with respect to their four TTAC nominees and that those nominees are also subject to a background check.

Additionally, she reported that Treasury had adopted a preference for tribal leader nominees. She added that interviews with all nominees had been completed and that the background check is the only remaining task prior to convening the TTAC. Although Dr. Buckberg told tribal leaders several months ago that she expected the TTAC to hold two meetings per year, with the first taking place before the end of September 2015, last week she indicated uncertainty as to when the current background check process would be finalized and the first TTAC meeting might take place.

USET submitted a letter to Treasury in April suggesting criteria for choosing TTAC members, as well as nominating interested USET Tribal leaders to the Committee.

- [USET TTAC Nomination Letter](#)

Youth

USET Lends Support to House Passage of Alyce Spotted Bear & Walter Soboleff Native Children's Commission Act

USET has issued a support letter in favor of House passage of S. 246, *the Alyce Spotted Bear & Walter Soboleff Commission on Native Children Act*. Introduced by Sen. Heidi Heitkamp (D-ND), the legislation would create a Commission on Native Children to conduct a comprehensive study on the federal and local programs, grants, and supports available for Native communities and Native children as well as assist non-Native partners and communities in understanding and addressing the needs of Native children. The 11-member Commission, appointed by the President and leadership in the House of Representatives and Senate, will include experts in areas of juvenile justice,

social work, education, and mental and physical health. The Committee on Indian Affairs approved the bill unanimously on February 4, 2015. On June 1, 2015 the Senate passed the bill under Unanimous Consent. The bill was then referred to the House Natural Resources Subcommittee on Indian, Insular and Alaska Native Affairs, where it awaits consideration.

- [S. 246 One-Pager](#)
- [USET Support Letter](#)

For more information on these and other USET Policy and Legislative Affairs initiatives, please contact Liz Malerba, USET Policy and Legislative Affairs Director, at lmalerba@usetinc.org.