

USET SPF Policy and Legislative Affairs Updates

USET/USET SPF Impact Week Meeting

March 28, 2024



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Budget and Appropriations



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Debt Ceiling Agreement

Fiscal Responsibility Act of 2023 signed into law by President Biden on June 3, 2023

- Suspends limits on U.S. borrowing power through January 1, 2025
- Caps most discretionary funding for FY 2024 (flat) and 2025 (+1%)
 - If full-year appropriations not enacted by Jan 1, 2024, all funding reduced by 1%
- Rescinds certain unobligated COVID-19 funds
- Modifies work requirements for SNAP and TANF, and
- Rescinds certain funds provided to the IRS.



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FY 2024 Appropriations – Political Divison

- Different topline funding levels between chambers
 - Senate: per agreement
 - House: below statutory cap → FY 2022 funding levels
- Political differences on southern border, foreign aid, policy riders
- 4 Continuing Resolutions necessary to avoid govt shutdown after Sept. 30th
 - 9/30/23, 11/16/23, 1/19/24, 3/1/24

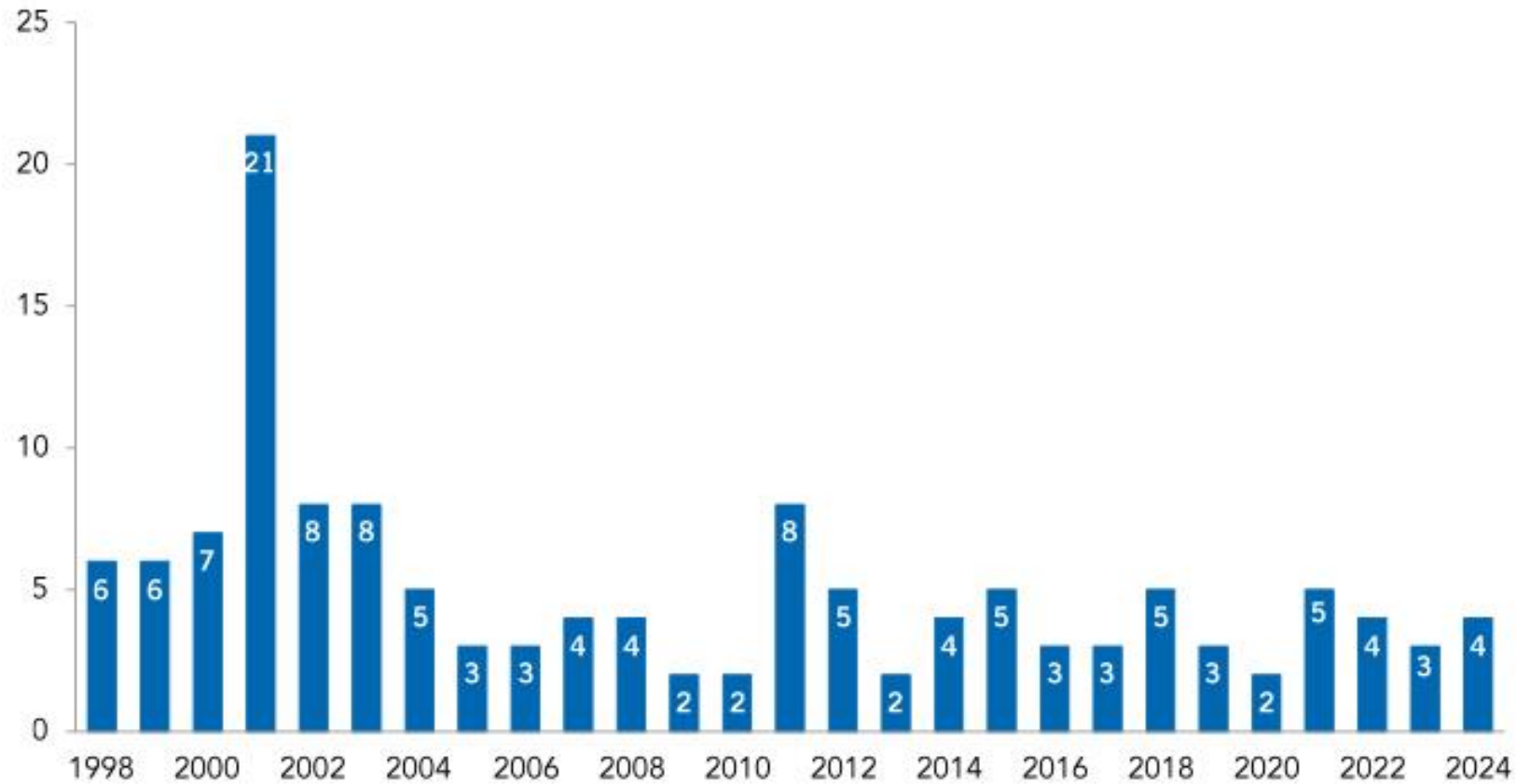


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Lawmakers have enacted a total of 135 continuing resolutions over the past 27 fiscal years

Number of Continuing Resolutions Enacted by Fiscal Year



SOURCES: Congressional Research Service, Appropriations Status Table: FY2020, FY2021, FY2022, FY2023, and FY2024, March 2024; and Continuing Resolutions: Overview of Components and Practices, November 2020.

NOTE: Legislation is counted as a continuing resolution if it included any appropriations that did not extend through the end of the fiscal year.

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FY 2024 Final Appropriations

March 2024: Passage of 2 'minibuses' – bills that contain more than 1 appropriations bill

- Total spending = approx. \$1.8 Trillion
- Avoids automatic 1% across-the-board sequestration

- March 9th: H.R. 4366
 - 6 bills, including Interior

- March 23rd: H.R. 2882
 - 6 bills, including Dept. of Health and Human Services



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IHS and BIA in FY 2024

| Agency | President's Request | FY 2024 Minibus | Minibus v. President's Request | Minibus v. FY 2023 Enacted |
|----------------------------|---------------------|-----------------|--------------------------------|----------------------------|
| Indian Health Service | \$8.08 Billion | \$6.9 Billion | -\$1.1 Billion | +\$65 Million |
| Bureau of Indian Affairs | \$2.9 Billion | \$2.45 Billion | -\$465.8 Million | +\$15.6 Million |
| Bureau of Indian Education | \$1.61 Billion | \$1.36 Billion | -\$244.3 Million | -\$35 Million |



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Advance Appropriations for IHS in FY25

*“The agreement provides advance appropriations for the Indian Health Services and Indian Health Facilities accounts totaling **\$5,190,883,000** for fiscal year 2025. Advanced appropriations are not provided for the Electronic Health Record System, Indian Health Care Improvement Fund, Contract Support Costs, Payments for Tribal Leases, Sanitation Facilities Construction, and Health Care Facilities Construction. Additional details, instructions, and requirements follow in the table at the end of this division.”*

➤ **Increase of \$61 million over FY 2024**



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Advance Appropriations Basics

- Funding that becomes available 1-year or more after appropriations bill in which it is contained—ex. funding level for FY24 identified in FY23, but drawn down in FY24
- Protects funds from delays in appropriations process—i.e. Shutdowns, CRs
- Other entities receiving: VA Health Administration, Corporation for Public Broadcasting, Education Title I grants



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Mandatory Funding for IHS

8/12/21: [HHS DTLL](#) initiating consultation on mandatory funding approaches

- USET SPF Comments on Mandatory Funding for IHS
 - Strongly support full and mandatory funding for all federal Indian programs, including IHS
 - IHS should convene a joint federal-Tribal workgroup to:
 - Determine full funding number;
 - Examine appropriate growth patterns; and
 - Recommend appropriate appropriations structure

November 2021: IHS seeks participants for Budget Formulation Sub-Workgroup re: IHS full and mandatory funding

- Progress???

President's FY 2022-25 Budget Requests: Contain mandatory funding for IHS with no legislative proposals



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Treatment of Binding Obligations

*“The bill continues language from fiscal year 2023 providing an indefinite appropriation **The bill does not include the budget proposal to make these costs mandatory.**”*

- USET SPF continues to urge mandatory status for binding obligations, including through testimony to Congress, comments to OMB

| Agency | Total FY24 Increase | FY24 Increase for CSC | FY24 Increase for 105(I) |
|---------|---------------------|-----------------------|--------------------------|
| IHS | +\$65 Million | +\$82 Million | +\$38 Million |
| BIA/BIE | +\$15.6 Million | +\$14 Million | +\$34 Million |



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Special Diabetes Program for Indians

- Authorized through December 31, 2024 at an annualized level of \$160/yr
 - First funding increase in 20 years
 - Only a one-year authorization
 - Continued advocacy on ISDEAA authority
- House Energy & Commerce and Senate HELP Committees have approved first increase in 20 years: \$170M/yr for 2 years
- SDPI was extended on a short-term basis **9 times** during last reauthorization
 - Typically reauthorized on larger 'extenders' packages



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Farm Bill Reauthorization

- Authorizes agricultural programs every 5 years
- Expired on September 30, 2023 → Extended through September 30, 2024 in November CR
- Tribal priorities:
 - Expansion of 638 and addition of self-governance for FDPIR, SNAP, and forestry
 - Greater access to programs and funding



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FY 2025 President's Budget Request

March 11, 2024: Biden Administration issues Fiscal Year 2025 Budget Request

- Complies with caps agreed to in Fiscal Responsibility Act
- IHS Mandatory Funding in FY 2026
 - Binding obligations mandatory in FY 2026
- \$260 million/yr Special Diabetes for Indians

| Agency | FY 2025 Request | FY 2024 Enacted | FY25 vs. FY24 Enacted |
|--------|-----------------|-----------------|-----------------------|
| IHS | \$8.0 Billion | \$6.9 Billion | +\$1.1 Billion |
| BIA | \$2.9 Billion | \$2.45 Billion | +\$450 Million |
| BIE | \$1.52 Billion | \$1.36 Billion | +\$160 Million |

FY 2025 President's Budget Request *Cont.*

May 7-8, 2024: House Interior Appropriations Subcommittee AI/AN Public Witness Hearings

- 4/12/24 – Deadline to request to testify

September 27, 2023: OMB consultation on FY 2025 President's Request

- USET SPF Comments:
 - Regional funding priorities
 - Mandatory funding for federal Indian agencies and programs
 - Marshall Plan for Tribal Nations
 - Preserve and fund administration gains
 - OMB Tribal Affairs
 - Treasury Office of Tribal and Native Affairs
 - Dedicated funding for WHCNAA



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Final Year of Biden Admin Term #1



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Biden Administration – Final Year



Preserve and buildout structural gains:

- OMB Tribal Affairs
- Treasury Tribal and Native Affairs
- WCHNAA

Policy Advancements

- Executive Order 14112
- Mandatory funding plan for IHS and beyond



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Executive Order 14112

December 6, 2023: President Biden issues EO 14112 on *Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination*

Two directives:

1. Federal agencies assess unmet obligations
2. Remove existing barriers to the accessibility, equity, flexibility, and utility of federal funding



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Marshall Plan for Tribal Nations

USET SPF White Paper

- The U.S. should make a substantial, one-time investment in Tribal Nation rebuilding
 - Cabinet-level Department of Tribal Nation Relations
 - Codify requirements for Tribal Nation consent for federal action
 - Federal funding reforms, including
 - Mandatory funding for all federal Indian agencies and programs
 - Eliminate grants and competitive awards, reporting requirements, limits on funding utilization
 - ISDEAA and 477 expansion, Increase direct funding to Tribal Nations
- 2024 Activities:
 - Endorsements
 - Presentations to partner organizations, seeking resolution support
 - Discussions with the Biden Administration



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Tribal Homelands



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Part 151 Regulations

- December 6, 2023: DOI finalizes revised Part 151 land-into-trust regulations
 - Codify *Carciere* 2-part test
 - Increase efficiency, certainty
 - Reduce burdens on Tribal Nations
 - Expand purposes for land acquisition
- February 28, 2023: USET SPF Comments & member template
 - General support for revisions
 - DOI added USET SPF rec that notice of completed app be issued within 30 days
 - Additional recommendations:
 - Conclusive evidence: all treaties, exercise of federal jurisdiction over Tribal citizens
 - Combine within boundaries and contiguous tracks
 - Address RSAs



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Carcieri Fix

Legislative action in the 118th Congress

- Bills introduced – H.R. 1208, S. 563
- Hearing expected at House Natural Resources soon

September 18, 2023: USET SPF sends support letter to House Natural Resources Committee leadership at the request of Rep. Cole

Carcieri Fix: Any Carcieri fix must (1) reaffirm the status of existing trust lands, and (2) confirm the Secretary's authority to place land into trust for all federally recognized Tribal Nations per the intent of the 1934 Indian Reorganization Act.



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Tribal Jurisdiction & Constitutionality Challenges



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Restrictive Settlement Acts

USET SPF Member Tribal Nations subject to “Restrictive Settlement Acts” passed by Congress to end land claims in respective states

States argue that subsequent legislation passed for benefit of Indian Country don't apply to RSA Tribal Nations

- VAWA, TLOA, ACA
- USET SPF seeking action from the Biden Administration
 - Meeting with ASIA in Feb 2023 → Follow-up letter July 2023 → Meeting with DOI Solicitor to Request M-Opinion
 - Official response ??



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Restoration of Jurisdiction for Drug Crimes

USET SPF position on restoration of criminal and civil jurisdiction *post-Oliphant*: support removal of any and all barriers to Tribal Nations' full exercise of jurisdiction over everyone who sets foot on our lands, in parity with other units of government

Forthcoming Sen. Smith legislation “[t]o recognize Indian Tribal government authority to prosecute Drug Trafficking and Drug-related Offenses occurring in Indian Country, and for other purposes”

- Amends VAWA provisions to include certain drug crimes
- Authorizes Bureau of Prisons to accept prisoners convicted in Tribal court
- USET SPF resolution: ensure applies to RSA Tribal Nations



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Laws of General Applicability

Due to lack of understanding re: federal Indian law and Tribal sovereignty, federal govt attempts to apply 'laws of general applicability' inappropriately in Indian Country

Recent examples:

- Compliance with anti-discrimination provisions in order to receive HHS grants
- Compliance with civil rights law as a condition of receipt for ARPA funds

USET SPF letters to WHCNA & WH Domestic Policy Council:

- Fed govt should assume 'laws of general applicability do not apply

Meetings with HHS Office of Civil Rights and DOJ Civil Rights Division



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Economic Development



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Tax Status of Tribally-Chartered Corporations

- Background: Treasury & IRS state intent to issue guidance re: TCC tax status for more than two decades
 - Formal guidance never produced → uncertainty and lack of economic development options
- May 2023: Treasury Tribal Affairs DTLL initiates consultation on TCC tax status
- USET SPF Comments & Tribal Template
 - Treasury should issue guidance confirming tax-exempt status of TCCs, whether wholly, jointly, or majority owned
- IRA Implications – Guidance may determine which TCCs are eligible for Direct Pay provision



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Infrastructure



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USET SPF Position on Infrastructure Development

“The United States must commit to assist in the rebuilding of the sovereign Tribal Nations that exist within its domestic borders..... At the same time, any infrastructure build-out, in Indian Country and beyond, must not occur at the expense of Tribal consultation, sovereignty, sacred sites, or public health.”



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USET National Outreach, Education, and Advocacy Project

- National outreach and education
 - In-person trainings at various org partner meetings and conferences
 - Previous: 80th NCAI Annual Convention, 2024 RES
 - Upcoming: 2024 Tribal Self-Governance Conference – Tuesday, April 16, 3:15-4:30pm; Chandler, AZ
 - Webinars
 - Partnerships with orgs and federal agencies
 - Educational materials: webpage, social media, 1-pagers, short videos
- Advocacy for Tribal interests – both on and off Tribal homelands



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USET Tribal Infrastructure Development Program Goals

- Awareness of how infrastructure laws impact Tribal Nations and what funding is available
- Access to IRA and other infrastructure funding
 - Implement in ways that work for Tribal Nations
- Equity in the distribution of funding between Tribal Nations and with other units of government
- Flexibility to respond to local conditions
- Streamlining in application and reporting processes
- Protection for Tribal sovereignty, sacred/cultural sites, and public health



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Inflation Reduction Act

August 16, 2022: President Biden signs into law **H.R. 5376, the Inflation Reduction Act**

- \$437 billion in spending on energy and climate, reducing health care costs, increasing corporate minimum tax
- Direct Funding to Tribal Nations/Native Hawaiians = \$720M—0.16% of total funding
 - Includes \$75 million for the Tribal Energy Finance Program and \$20 billion in allowable loan guarantees and direct loans

Tribal Nations are eligible for billions more through dozens of additional federal programs, including tax credits for clean energy projects and a first-of-its-kind opportunity for tax-exempt entities to receive cash payments for the tax credits.



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Biden Administration Wind Energy Priorities

- March 2021: Biden Admin announces action to:
 - Advance ambitious wind energy projects to create good-paying, union jobs
 - Investing in American infrastructure to strengthen the domestic supply chain and deploy offshore wind energy
 - GOAL: deploy 30gw of offshore wind energy by 2030
 - BOEM to advance new lease sales and complete review of at least 16 Construction and Operations Plans (COPs) by 2025



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Concerns about Offshore Wind Buildout

- Many issues remain with federal permitting processes and agencies
 - BOEM not properly consulting with Tribal Nations
 - Project proponents not properly mitigating issue, paying for Tribal expertise
- Tribal Nations not appropriately resourced for high volume of cultural reviews
 - USET SPF advocacy for additional THPO funding, payment for ITEK

Bottom line: cultural and sacred sites could be impacted by offshore wind deployment

USET SPF Resolution 2023 SPF:013: Urging a Moratorium on the Bureau of Ocean Energy Management's Offshore Wind Scoping and Permitting



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Questions??

Liz Malerba

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