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White House Tribal Consultation on Section 4(a) of Executive Order 14112 Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination

Summary

The White House Office of Intergovernmental Affairs, the White House Domestic Policy Council, the White House Office of Management and Budget, and the White House Council on Native American Affairs (WHCNAA) have [announced a virtual Tribal consultation session](#) on Monday, July 8, 2024 with Biden-Harris Senior Administration leadership on Section 4(a) of [Executive Order \(EO\) 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](#). Section 4(a) concerns White House guidance to federal agencies on the calculation of funding shortfalls in federal trust and treaty obligations and reads:

“(a) Within 240 days of the date of this order, the Director of OMB and the Domestic Policy Advisor shall, in consultation with the head of each agency that is a member of WHCNAA, and in consultation with Tribal leaders or their designees, develop guidance for assessing the additional funding each agency needs for its existing Federal funding and support programs for Tribal Nations to better live up to the Federal Government’s trust responsibilities and help address the needs of all Tribal Nations.”

During this consultation, Biden-Harris Administration leadership will seek Tribal leader feedback on important considerations to include as part of the guidance to federal agencies on how to assess funding obligations to Tribal Nations. This guidance is separate from the mandate that federal agencies immediately begin removing existing barriers to the accessibility, equity, flexibility, and utility of federal funding and support programs for Tribal Nations. Tribal leaders are invited to provide comments and recommendations during this session and/or provide written comments and recommendations by Friday, August 9, 2024 via email at whcnaa@bia.gov. USET SPF offers the following talking points for use by our member Tribal Nations during this consultation:

Talking Points

General

- **USET SPF is encouraged by the issuance of this EO and underscores its importance.** While this EO is ambitious, it is also meaningful as it seeks to address many centuries of broken promises through long-sought reforms to the ways in which funding is delivered to and used by Tribal Nations and to quantify federal failures to provide full funding in fulfillment of trust and treaty obligations. We applaud the intent and spirit of this EO.
- **The financial deliverables of this EO represent only a piece of the ‘next era of Tribal self-determination’ and the U.S.-Tribal Nation relationship.** While the delivery of full funding and deference to Tribal sovereignty in the administration of funding is vitally important, equally important is removing barriers to the full exercise of our inherent sovereignty, including through

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exclusive civil and criminal jurisdiction. The federal government should make this distinction clearer as it implements the EO.

- **USET SPF stresses that the economic success of Tribal Nations should have no influence on full funding calculations.** Trust and treaty obligations exist in perpetuity, and are the result of the cession of vast land holdings and natural resources, oftentimes by force, to the United States. These obligations are not extinguished by restored Tribal economies. Economic success must not subsidize federal failures.

Implementation of Section 4(a)

- **The scope of unmet obligations should be broad and extend beyond existing federal programs and services to achieve full funding goals.** The Section 4(a) guidance should focus on supporting the robust operation of Tribal Nation governments and Tribal Nation rebuilding via federal funding. This will require the ability to envision beyond what is currently available to and authorized for Tribal Nations. The White House should draft guidance that stresses this charge to federal agencies.
- **The Administration should do the ‘heavy lifting’ by dedicating additional technical resources to this effort.** In order to comprehensively and reliably quantify full funding numbers for trust and treaty obligations across the government, appropriate research and consultation must be undertaken. While the Administration should work across departments to come to reasonable assumptions around funding shortfalls, it should also enlist appropriate experts, such as actuaries and economists, to arrive at well-informed figures.
- **Federal agencies must not rely exclusively on Tribal liaison personnel and/or offices to quantify unmet obligations.** Recognizing that this is a Presidential Executive Order, it is imperative that the weight of this tremendous lift not be left solely to federal Tribal liaison staff or the “Indian affairs” desk in each federal agency. Instead, those charged in each federal agency with quantifying unmet financial obligations under the EO must have full access to other federal resources and subject matter expertise.
- **While surveying Tribal Nations may be one small piece of this effort, it should not be a sole or primary source of data.** It must not be overlooked that any insufficient Tribal Nation capacity and infrastructure necessary to robustly engage in this effort is the direct result of centuries of the United States’ failure to honor its trust and treaty obligations. Therefore, federal agencies must be discouraged from an overreliance on Tribal Nation-supplied data, as this type of effort alone is unlikely to produce the comprehensive, reliable, and uniform data necessary for this effort to be successful.,
- **Existing Budget Formulation workgroups and research should be incorporated into these efforts.** A significant amount of work has already been conducted in this space, and the Administration should review what exists prior to embarking upon the analysis required under this EO. This should allow the Administration to focus on gaps in data, rather than ‘reinventing the wheel.’
- **As the federal government seeks to reimagine the delivery of funds to Tribal Nations, foreign aid spending can be instructive.** In many cases, U.S. funding to foreign nations is considerably more flexible, defers to the priorities of recipients, and lacks granular reporting

requirements. The United States should do much more to treat Tribal Nations as sovereigns when delivering funding owed in fulfillment of trust and treaty obligations.

- **The funding flexibility mandate of the EO must be implemented now.** While we celebrate federal agencies' efforts to rethink and reshape the way they deliver and monitor federal funding for Tribal Nations, federal officials and staff must understand that the Administration has issued a call to action for them to remove barriers now. They must seriously consider Tribal Nations' requests for specific funding flexibilities to resolve issues that get in the way of program delivery or exercise of Tribal sovereignty. These increased flexibilities will allow more funding to flow directly to Tribal Nations and facilitate our exercise of our inherent sovereignty in how we choose to direct and spend federal monies to meet our communities' needs.