



USET

SOVEREIGNTY PROTECTION FUND

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Transmitted Electronically

August 9, 2024

Secretary Debra Haaland
Co-Chair
White House Council on Native American Affairs
1849 C Street NW, MS – 4146 – MIB
Washington, DC 20240

Ms. Neera Tanden
Co-Chair
White House Council on Native American Affairs
1849 C Street NW, MS – 4146 – MIB
Washington, DC 20240

The Honorable Shalanda Young
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 2050

Dear Secretary Haaland, Ms. Tanden, and Director Young,

We write on behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) to provide comment in response to 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) July 8th virtual Tribal consultation session on the implementation of 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](#). As we have indicated previously, 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 and are invested in its success. The following comments are offered with the goal of proper and meaningful implementation.

USET SPF is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe–Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA), and Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is Strength in Unity

General Comments

EO 14112 is long overdue. Tribal Nations have long been seeking a full accounting of the federal government's unmet financial obligations, as well as the type of funding flexibilities and deference to Tribal decision-making reflective of trust and treaty obligations and a recognition of our sovereignty. We appreciate the ambitious nature and scope of this EO, as it seeks to do more to address the federal government's chronically unmet obligations to Tribal Nations and to advance many of Indian Country's longstanding priority reforms for increasing our exercise of sovereignty in our use of these funds owed to us.

Consistent with the Executive Order, USET SPF urges the WHCNAA to continue to impress upon federal agencies that EO implementation is mandatory and in accordance with its directives (1) ensure that each federal agency is taking specific and concrete steps now to carry out the EO's mandate for flexibility in federal funding, including identification of any statutory and regulatory changes that are necessary to ensure that Federal funding and support programs effectively address the needs of Tribal Nations, and (2) ensure that each federal agency has the necessary resources to assess the full funding of obligations and to develop its recommendations and strategy to fulfill meeting these obligations in a manner consistent with the timeline expressed within the EO.

Methodology for Quantifying Unmet Obligations

Section 4(a), the subject of this consultation, 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.”

USET SPF asserts that the scope of unmet obligations under the E.O. be broad and extend beyond existing federal programs and services to achieve full funding goals. With this in mind, 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.

Additionally, the federal government must do the heavy lifting in generating assumptions that will allow us to arrive at accurate data on unmet obligations. While surveying Tribal Nations—such as through the current effort by the Department of the Interior and WHCNAA to collect information on “Tribal access to capital and funding needs”—should be one piece of this effort, it should not be a sole source of data. As history and prior efforts have already proven, such a survey is unlikely to produce the comprehensive, reliable, and uniform data necessary for this effort to be successful. 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.

Along with undertaking survey efforts, the federal government must measure and quantify its own failures, while also taking Tribal input into account. This includes the incorporation of existing Tribal budget formulation workgroups and their research into these efforts. A significant amount of work has already been conducted in this space, and the Administration must coordinate with these efforts as part of the analysis required under this EO. This should allow the Administration to focus on gaps in data, rather than “reinventing the wheel” or producing data that is inconsistent with these efforts. In addition, the Administration must utilize federal staff who have relevant subject matter expertise in order to come to reasonable assumptions and defensible estimation methodologies around funding shortfalls. It must also enlist appropriate experts, such as actuaries and economists, to arrive at well-informed figures. When the federal government does the research to create appropriate assumptions in consultation with Tribal Nations, such as that a certain number of police officers are

required for a certain population size and land base, and pairs those assumptions with data provided by a Tribal Nation, such as regarding its own population and land base, accurate data will result.

Finally, 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.

Dedication of Sufficient Resources

In order for the federal government to do the work to ensure this EO makes the meaningful change in federal funding that it promises, substantial and adequate federal resources must accompany this effort so that appropriate research and Tribal consultation can be undertaken. During our recent USET SPF Impact Week meeting, a panel of federal officials serving in the Tribal Affairs offices for various federal agencies expressed anxiety over their agencies' existing capacity to implement the EO. Tribal liaison offices are critically understaffed and under resourced. Their concern underscores the critical necessity of dedicating both financial and human resources to this historic endeavor.

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 the WHCNA and Tribal affairs staff in each federal agency must receive funding for the Administration to succeed in its mandate.

Immediate Implementation of E.O.'s Funding Flexibility Mandate

While we understand that this consultation concerns Section 4(a) and 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. We are currently aware of numerous instances in which agencies and departments are failing to apply the E.O.'s directives to their funding processes and not demonstrating the flexibilities mandated by this EO. 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.

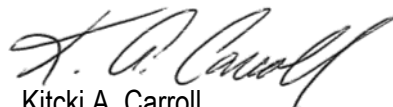
Conclusion

USET SPF and our member Tribal Nations are wholly invested in the success of this EO. Its correct and thorough implementation has the potential to produce lasting change in the U.S.-Tribal Nation relationship, and for our communities. It is our expectation that the Biden Administration will dedicate the necessary time and resources to ensuring the EO produces meaningful results. Please count us as a partner in your efforts to better acknowledge Tribal sovereignty and self-determination and more fully deliver upon trust and treaty obligations. Should you have questions or require further information, please contact Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at: lmalerba@usetinc.org.

Sincerely,



Kirk Francis
President



Kitcki A. Carroll
Executive Director