

WHITE HOUSE TRIBAL NATIONS SUMMIT | 2023

POLICY BRIEFING BOOK

TUESDAY, DECEMBER 5, 2023

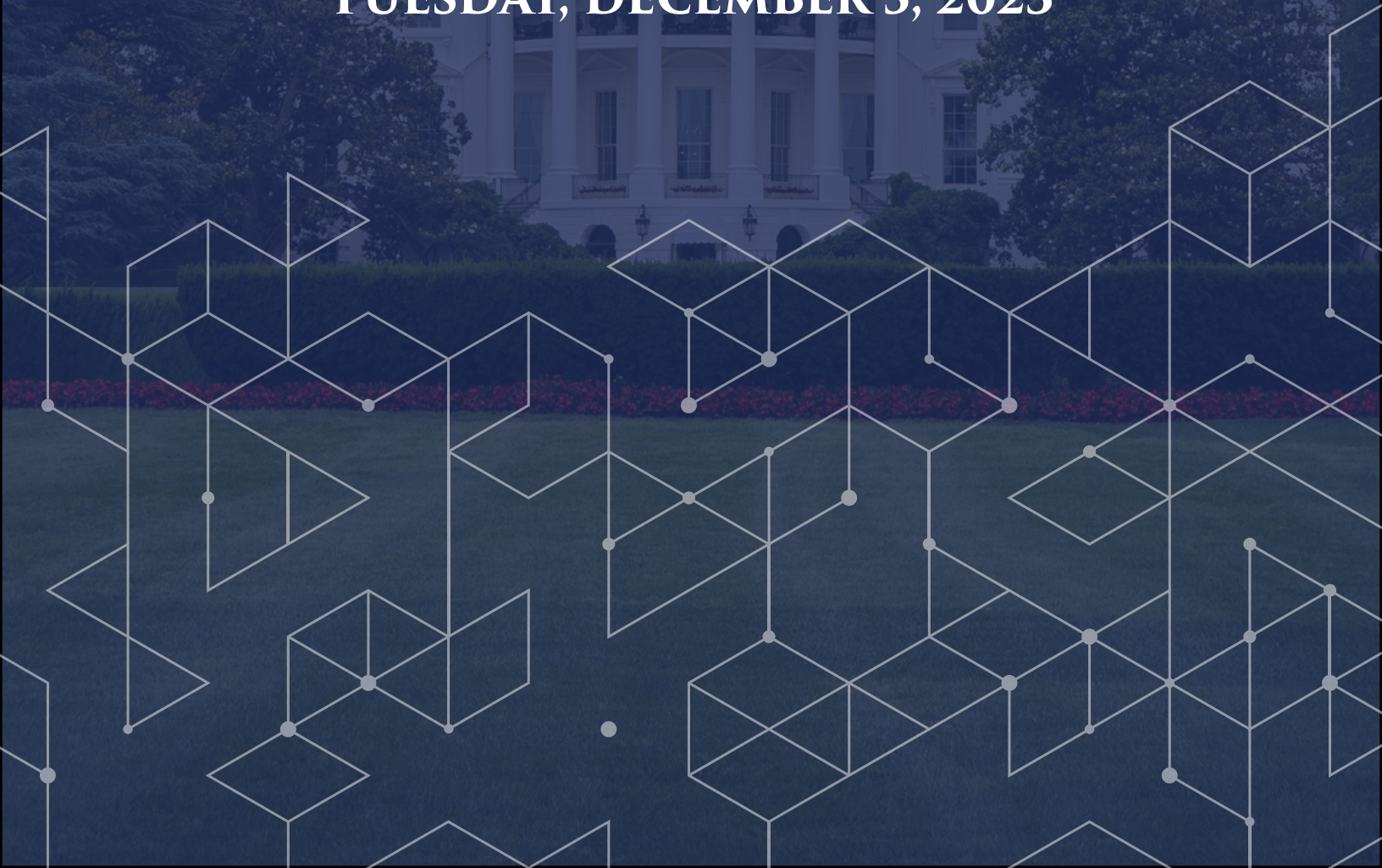


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NATIVE ORGANIZATION POINTS OF CONTACT

(LISTED ALPHABETICALLY)

American Indian Higher Education Consortium (AIHEC)

About the American Indian Higher Education Consortium:

The American Indian Higher Education Consortium (AIHEC) is the collective spirit and unifying voice of our nation's Tribal Colleges and Universities (TCUs). AIHEC provides leadership and influences public policy on American Indian higher education issues through advocacy, research, and program initiatives; promotes and strengthens indigenous languages, cultures, communities, and Tribal Nations; and through its unique position, serves member institutions and emerging TCUs. For more information, visit www.aihec.org.

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Association on American Indian Affairs (AAIA)

About the Association on American Indian Affairs:

The Association on American Indian Affairs is the oldest non-profit serving Native Country protecting sovereignty, preserving culture, educating youth and building capacity. The Association was formed in 1922 to change the destructive path of federal policy from assimilation, termination and allotment, to sovereignty, self-determination and self-sufficiency. Throughout its 100-year history, the Association has provided national advocacy on watershed issues that support sovereignty and culture, while working on the ground at a grassroots level with Tribes to support the implementation of programs that affect lives on the ground. The Association is governed by an all-Native American Board of Directors from across Native Country. As a membership organization, the Association speaks with unified voices from all over the country, both Native and non-Native together, to protect sovereignty, preserve culture, educate youth and build capacity. For more information, visit www.indian-affairs.org.

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Indian Gaming Association (IGA)

About the Indian Gaming Association:

The mission of the Indian Gaming Association is to protect and preserve the general welfare of tribes. IGA works with the Federal, State and Tribal governments to develop sound policies and practices and to provide technical assistance and advocacy on gaming-related issues. IGA works to maintain and protect tribal sovereignty. For more information, visit indiangaming.org.

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Intertribal Agriculture Council (IAC)

About the Intertribal Agriculture Council:

The Intertribal Agriculture Council is a national, Native-led nonprofit that was formed by several federally recognized Tribal Nations in 1987 and tasked with pursuing and promoting the conservation, development, and use of our agriculture resources for the betterment of our people. Since its founding, IAC has actively supported Tribal producers across the country through on-the-ground technical assistance and services, as well as advocacy for improvements in the policies that govern the landscape in which Tribal producers must operate. For more information, visit <https://www.indianag.org>.

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NAFOA

About NAFOA:

NAFOA was founded over four decades ago as the Native American Finance Officers Association to highlight the role of tribal finance in fostering economic opportunities. Since that time, NAFOA has grown along with tribal economies. We are committed to supporting tribal economies through sound economic and fiscal policy, innovative learning opportunities, convening thought leadership, and developing resources for tribes that strengthen governance and exercise sovereignty. For more information, visit <https://nafoa.org>.

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National American Indian Housing Council (NAIHC)

About the National American Indian Housing Council:

The National American Indian Housing Council (NAIHC) is a member organization that represents the unified voice of tribal housing programs across the nation. Established in 1974, NAIHC has a long-respected history of providing effective advocacy and quality training and technical assistance as well as hosting annual events that showcase best practices from tribal housing programs across the country. NAIHC advocates for tribal self-determination and improving housing conditions in tribal communities by working with tribes, tribal housing authorities, and tribally-designated housing entities (TDHEs). Learn more at www.naihc.net.

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National Congress of American Indians (NCAI)

About the National Congress of American Indians:

Founded in 1944, the National Congress of American Indians (NCAI) is the oldest, largest, and most representative American Indian and Alaska Native organization in the United States. NCAI advocates on behalf of tribal governments and communities, promoting strong tribal-federal government-to-government policies. NCAI promotes an understanding among the general public regarding American Indian and Alaska Native governments, people, and rights. For more information, visit www.ncai.org.

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National Council on Urban Indian Health (NCUIH)

About the National Council on Urban Indian Health:

The National Council of Urban Indian Health (NCUIH) is the national non-profit organization devoted to the support and development of quality, accessible, and culturally competent health and public health services for American Indians and Alaska Natives (AI/ANs) living in urban areas. NCUIH is the only national representative of the 41 Title V Urban Indian Organizations (UIOs) under the Indian Health Service (IHS) in the Indian Health Care Improvement Act (IHCIA). NCUIH strives to improve the health of the over 70% of the AI/AN population that lives in urban areas, supported by quality, accessible health care centers. For more information, visit www.ncuih.org.

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National Indian Child Welfare Association (NICWA)

About National Indian Child Welfare Association:

NICWA works to support the safety, health, and spiritual strength of American Indian and Alaska Native children along the broad continuum of their lives. We support tribes in building the capacity to prevent child abuse and neglect through positive systems change at the state, federal, and tribal levels. We are the most comprehensive source of information on American Indian and Alaska Native child welfare. For more information, visit www.nicwa.org.

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National Indian Education Association (NIEA)

About the National Indian Education Association:

NIEA is the Nation's most inclusive advocacy organization working to advance comprehensive education opportunities for American Indians, Alaska Natives, and Native Hawaiians. Formed by Native educators in 1969 to encourage a national discourse on education, NIEA adheres to the organization's founding principles- to bring educators together to explore ways to improve schools and the educational systems serving Native children; to promote the maintenance and continued development of language and cultural programs; and to develop and implement strategies for influencing local, state, and federal policy and decision-makers. Through advocacy, capacity building, and education, NIEA helps Native students, and their communities, succeed. For more information visit www.niea.org.

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National Indian Health Board (NIHB)

About the National Indian Health Board:

The National Indian Health Board (NIHB) serves all 574 federally recognized Tribal governments—both those that operate their own health care delivery systems through contracting and compacting, and those receiving health care directly from the Indian Health Service (IHS). Established by the Tribes to advocate as the united voice of federally recognized American Indian and Alaska Native Tribes, NIHB seeks to reinforce Tribal sovereignty, strengthen Tribal health systems, secure resources, and build capacity to achieve the highest level of health and well-being for our People. For more information, visit www.nihb.org.

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National Indigenous Women's Resource Center (NIWRC)

About the National Indigenous Women's Resource Center:

The National Indigenous Women's Resource Center, Inc. (NIWRC) is a Native-led nonprofit organization dedicated to ending violence against Native women and children. The NIWRC provides national leadership in ending gender-based violence in tribal communities by lifting up the collective voices of grassroots advocates and offering culturally grounded resources, technical assistance and training, and policy development to strengthen tribal sovereignty. Our staff and board of directors consist of Native women from throughout the United States with extensive experience and commitment to ending violence against Native women and their children. NIWRC's staff bring decades of expertise in building the grassroots movement to increase tribal responses to domestic violence and increase safety for Native women. For more information, visit <https://www.niwrc.org>.

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Native American Rights Fund (NARF)

About the Native American Rights Fund:

NARF is a non-profit 501(c)(3) organization focused on applying existing laws and treaties to guarantee that federal and state governments live up to their legal obligations to Native Americans. Since 1970, the Native American Rights Fund (NARF) has provided specialized legal assistance to Native American tribes, organizations, and individuals nationwide to assert and defend the most important Native rights. In hundreds of major cases, NARF has achieved significant results in critical areas such as tribal sovereignty, treaty rights, natural resource protection, voting rights, and Indian education. For more information, visit www.narf.org.

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Native Farm Bill Coalition (NFBC)

About the Native Farm Bill Coalition:

The Native Farm Bill Coalition (NFBC) is a nationwide initiative to lift up the voices of Native American producers and Tribal governments to advance a common policy agenda. It works to ensure that Indian Country's priorities are acknowledged and included in the decision making process for the next Farm Bill, from farming and ranching to nutrition programs, rural development and forestry. The NFBC is a joint project of the Intertribal Agriculture Council, the Shakopee Mdewakanton Sioux Community, the National Congress of American Indians, and the Indigenous Food and Agriculture Initiative, its official research partner. For more information, visit <https://www.nativefarmbill.com>.

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Self-Governance Communication and Education Tribal Consortium (SGCETC)

About the Self-Governance Communication and Education Tribal Consortium:

The Self-Governance Communication and Education Tribal Consortium (SGCETC) is a non-profit 501(c)(3) consortium of Tribal nations that elected to use Self-Governance for the delivery of programs and services for their citizens and communities. SGCETC strives to assist all Tribal nations to achieve their own goals of self-government and seeks to ensure that the tenets and purpose of Self-Governance are accurately communicated and clearly understood by Congress, the Administration, Tribal nations and all other interested parties.

For more information, visit <https://www.tribalselfgov.org>.

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United South and Eastern Tribes Sovereignty Protection Fund (USET SPF)

About the United South and Eastern Tribes Sovereignty Protection Fund:

Established in 2014, the USET Sovereignty Protection Fund (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. 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. For more information, visit <https://www.usetinc.org>.

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ACCESS TO CAPITAL — ECONOMIC DEVELOPMENT — TAXATION

BACKGROUND

Improve Tribal Nation Access to Capital.

Content provided by NCAI.

Across Indian Country, Tribal Nations are forging impressive records of economic progress. From operating nation-owned enterprises to cultivating tribal citizen-owned businesses to preparing their people to access new job opportunities through workforce education and training, Tribal Nations are methodically building sustainable economies to support thriving Native communities. Driving this remarkable yet uneven renaissance is tribal self-determination, specifically the responsibility each Tribal Nation exercises to create a robust economy based on its cultural values, particular circumstances, and long-range priorities. To support Tribal Nations, the federal government must fulfill its binding trust and treaty obligations to take key actions to foster—and remove the barriers impeding—their economy-building efforts.

Since the 1970s, federal policies supporting tribal sovereignty and self-determination have provided Tribal Nations greater freedom to forge new pathways to rebuild their economies and communities. The evidence is clear and overwhelming: when the federal government removes the antiquated and/or unnecessary legal, regulatory, and bureaucratic barriers standing in the way, Tribal Nations have proven they can make significant, positive differences when it comes to jobs, incomes, revenues, quality of life, etc. When the federal government invests in the capacity of Tribal Nations and people to craft and implement comprehensive economic development approaches, it empowers tribal governments to set a solid foundation for economic prosperity in their communities

Create Equity in Tax Code.

Content provided by NCAI.

Across Indian Country, Tribal Nations are building sustainable tribal economies—including through nation-owned and tribal citizen owned businesses—to provide for the economic and social well-being of their growing communities. This development is grounded by tribal self-determination, which includes the ability of each tribal nation to create a viable, robust economy based on its cultural values, distinct challenges, particular circumstances, and short-and long-term community development priorities.

In the area of tribal taxation, state and local governments have been allowed by the federal courts to encroach upon tribal sovereignty and jurisdiction. Consistent with the Treaty and Trust Responsibility, the federal government must take action to protect tribal economies and prevent further escalation of the taxation problem.

Clarify Tax Status of Tribally-Chartered Corporations.

Content provided by USET SPF.

More information available at:

https://www.usetinc.org/wp-content/uploads/2023/12/TCC-Tax-Status-USET-SPF-One_pager-FINAL-11_30_23.pdf.

Uncertainty regarding the tax status of Tribally-Chartered Corporations (TCCs) is one of the federal policy barriers faced by Tribal Nations as we seek to build our economies and generate our own governmental revenues. For well over two decades, Treasury and the Internal Revenue Service (IRS) have stated their intent to issue formal guidance on the tax status of TCCs, but have not done so. In large part, this appears to be because of differences

between departments at IRS, where some have a belief that TCCs are tax shelters and the office of Indian Tribal Governments (ITG) has held back destructive guidance that would subject any TCC not wholly owned by a Tribal Nation to corporate taxation. Now, the Department of Treasury, via the Tribal Affairs Office, has initiated consultation with the intent of publishing guidance on the tax status of TCCs. This is particularly timely, as many Tribal energy corporations, which should be eligible for Direct Pay tax credits under the Inflation Reduction Act, are Tribally-chartered and not wholly-owned. If majority owned TCCs are ultimately taxable, not only would this inappropriately tax the instrumentalities of Tribal governments, but this would also impede many Tribal Nations from accessing Direct Pay tax credits, as intended.

TRIBAL LEADER TALKING POINTS

Improve Tribal Nation Access to Capital.

- Increase Annual Native American CDFI Assistance (NACA) Program Funding to \$50 million: to address the capital needs of Native community development financial institutions (CDFIs) and the eightfold return on investment they produce in economic benefits.
- Increase Department of Interior (DOI) Indian Loan Guarantee and Insurance Program Annual Funding to at Least \$25 Million: to expand flexible private financing of tribally and Native-owned businesses, increase the allocation for administrative expenses so DOI can hire more staff with banking experience, and double the aggregate value of loans subject to this unique federal guarantee.
- Support the Small Business Administration (SBA) proposal for licensing new Small Business Lending Companies (SBLCs): to include at least one new license for a Mission-Based SBLC for Indian Country with eligible applicants to include Native CDFIs.
- Reclassify Contract Support Costs and Indian Self-Determination and Education Assistance Act of 1975 Section 105(l) Leases as Mandatory Spending: Mandatory, not discretionary, spending will provide greater funding resource certainty for Tribal Nations.

Create Equity in Tax Code.

- Develop new Interior Department regulations for the Indian Trader statutes to pre-empt state and local taxation of licensed Indian traders. 25 USC §261- 264.
- Implement the Indian Country Economic Enhancement Act of 2020 by the Commerce, Interior, and Treasury Departments.
- Implement the Indian Tribal Regulatory Reform Act of 2000.
- Exempt from taxation all income earned by Indians on tribal lands from wages or self-employment taxes.
- Expand the Indian Employment Tax Credit to promote work and investment.
- Support tribal economies by allowing Indians to pay any federal taxes they may owe to their tribal governments with a 100% credit.

Clarify Tax Status of Tribally-Chartered Corporations.

- Urge Treasury to issue guidance affirming that TCCs (whether wholly, jointly or majority owned) share the same tax status as the Tribal government, and therefore, are not subject to federal tax on earned income regardless of the location where that income is earned.
- Due to the onerous process associated with the establishment of Section 17 Corporations, Tribal Nations are often establishing LLCs. IRS must understand that these entities are simply generating revenue for government services to our people - not an opportunity for Tribal Nations to avoid taxation.
- IRS must consult with Tribal Nations, as well as work with the Office of Tribal and Native Affairs, and familiarize itself with our unique circumstances in order to avoid the issuance of inappropriate guidance.

- IRS should commit to interagency communication and coordination on this issue, as it has in the past with the General Welfare Exclusion Act. This will allow IRS to be consistent with other agencies in its approach to TCCs.

POINTS OF CONTACT



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National Congress of American Indians (NCAI)

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AGRICULTURE

BACKGROUND

Expand Self-Determination and Self-Governance Authority within USDA.

Content provided by NFBC, SGCETC.

For decades, Tribal Nations have demonstrated that using Self-Determination and Self-Governance authority for the delivery of federal programs has a profound positive impact on the health and well-being of their citizens and communities. In 2018, the Farm Bill established a Self-Determination Demonstration Project to provide Tribal Nations more control over the sourcing of food for the U.S. Department of Agriculture's (USDA) Food Distribution Program on Indian Reservations (FDPIR).

Yet, Self-Determination authority is limited to only a demonstration project within USDA's Food Distribution Program for Indian Reservations (FDPIR) and Self-Governance authority is not currently an option for any USDA programs. Limiting Self-Determination and Self-Governance authority hinders Tribal governments' ability to effectively provide comprehensive, efficient, and effective services to their citizens and communities. Seven Tribal Nations and one Tribal consortium participated in the first round of the FDPIR Self-Determination Demonstration Project and demonstrated its success in incorporating local, higher quality, and more nutritious foods into Tribal programs and boosting local economies.

Obtain Tribal Agriculture Educational Parity.

Content provided by AIHEC.

1994 Institutions receive fewer federal funds administered by the National Institute of Food and Agriculture (NIFA) than 1862 and 1890 Institutions and they are ineligible for certain grant types available to 1862 and 1890 Institutions. Whereas the 1862 and 1890 Institutions receive federal capacity funds specific to agricultural research and extension, 1994 Institutions do not. This is especially frustrating because 75 percent of what is left of Indian Country in the U.S. is agriculture or forested land. This land could be sustainably used if sufficient support existed for research, education, and training, but much of the land lies fallow.

Eliminate Required Land-grant "Partners" for Research Grants.

Content provided by AIHEC.

Currently, only the 1994 institutions are required to partner with other Land-grant institutions, research institutions, or USDA facilities under their research grant program. This requirement was enacted decades ago, when the 1994 research program was newly established by Congress, and TCUs were just beginning to develop research agendas. The requirement served its purpose for 20 years or more. Now, it is time to allow the 1994 institutions the individual freedom to use their judgment, expertise, and network of partners and mentors to continue building their research capacity and working to solve regional, national, and global agriculture, land, and environmental challenges.

Update Agricultural Leasing Regulations in a Way that Works for Indian Country.

Content provided by IAC.

On October 16, 2023, the Bureau of Indian Affairs (BIA) published proposed revisions to 25 CFR Part 162 Subpart B - Agricultural Leases in a discussion draft format. The BIA held three consultations the week of November 13, 2023: Tulsa (no Tribal leaders present); Virtual; Bismarck (no Tribal leaders present). The BIA has indicated it will move forward with formally publishing the proposed revisions to the agriculture leasing regulations in the Spring of 2024 for the purpose of finalizing before the end of 2024. The comment deadline for the informal draft revisions is December 29, 2023.

According to the BIA's Dear Tribal Leader Letter, the proposed revisions are intended "to promote the self-determination of Indian Tribes by providing for the management of Indian agricultural and related renewable

resources consistent with Tribal goals and priorities for conservation, multiple use, and sustained yield. 25 U.S.C. § 3702(1).”

Despite the BIA’s stated goal of promoting self-determination, the BIA has not communicated about the lack of resources it currently commits to Tribal Nations that have pursued Agriculture Resource Management Plans (ARMPs) in line with 25 U.S.C. § 3701 et seq., nor its inability to timely approve such plans. Further, the BIA outlines an approach that is specific to Tribal Nations interested in taking over their agriculture leasing regulations via ARMPs, but does not provide details around BIA accountability when: 1) a Tribal Nation does not have their own agriculture leasing code; 2) when a Tribal Nation is waiting on the BIA to approve their own ARMP; or 3) BIA discretion, generally.

Additionally, the BIA’s stated purpose for its proposed revisions is completely devoid of mention of the interests of the 80,000+ Tribal producers who utilize Tribal lands to provide food for their families and communities, and who offer critical input into Tribal economies. To date, the BIA has not shared whether it has completed an economic impact study to understand whether the proposed changes will have a positive or negative economic impact, and who will bear the brunt of an economic impact.

Some relevant statistics indicating the importance of these regulations include the following facts:

- About 46 million of the 56 million acres of the land that the federal government holds in trust for the benefit of Indian tribes and their members has an agricultural purpose.
- Native-owned/operated farms accounted for less than 1 percent of U.S. agriculture sales even though they represent more than 6 percent of U.S. farmland.
- American Indians/Alaska Natives account for at least 2.3 percent of the country’s 3.4 million producers, with the majority in the western and Plains states.

The voice of Tribal leaders will be critical when the proposed revisions are formally published in the Federal Register and a final round of consultations are held.

TRIBAL LEADER TALKING POINTS

Expand Self-Determination and Self-Governance Authority within USDA.

- Make the FDPIR Self-Determination Demonstration Project permanent.
- Add Self-Governance compacting as an option for FDPIR.
- Expand Self-Determination and Self-Governance authority to the entirety of FDPIR, not just the sourcing opportunity.
- Expand Self-Determination and Self-Governance authorities to other USDA programs and functions—including SNAP.
- Proactively address agency reluctance to embrace self-determination to ensure federal agencies are fulfilling their government-to-government relationship with Tribal Nations.

Obtain Tribal Agriculture Educational Parity.

- Ensure that 1994 Institutions can receive federal capacity funds specific to agricultural research and extension.

Eliminate Required Land-grant “Partners” for Research Grants.







- Allow 1994 Institutions the individual freedom to use their judgment, expertise, and network of partners and mentors to continue building their research capacity and working to solve regional, national, and global agriculture, land, and environmental challenges.

Update Agricultural Leasing Regulations in a Way that Works for Indian Country.

- Engage in government-to-government consultation with Tribal Nations on any proposed updates to agricultural leasing regulations.

- Commit resources to Tribal Nations that have pursued or are interested in pursuing Agriculture Resource Management Plans (ARMPs) in line with 25 U.S.C. § 3701 et seq. and approve plans in a timely fashion.
- Conduct and share an economic impact study in relation to the proposed changes to the agricultural leasing regulations.
- Identify barriers to the development and growth of Tribal agriculture for Tribal Nations, individual Tribal producers, and Tribal landowners and explain how proposed changes to the agriculture leasing regulations address these barriers.

POINTS OF CONTACT

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CHILD AND FAMILY WELFARE

BACKGROUND

Strengthen Tribal Child Welfare Systems through Equitable Funding and Support for ICWA.

Content provided by NICWA.

The Indian Child Welfare Act (ICWA) was enacted in 1978 after decades of abuses by state and private child welfare agencies that removed large numbers of American Indian and Alaska Native (AI/AN) children from their families and communities, disconnecting them from their tribal communities and culture. It is estimated that between 25-35% of all Native children were removed and placed in out-of-home placements before ICWA's enactment, with 85% placed in non-Native homes. This mass removal of Native children through state child welfare systems followed generations of Native children being forcibly removed from their families and tribal communities and placed in federal boarding schools where many were traumatized and abused. The combined impact of over 150 years of boarding school and state child welfare system removals has contributed to high rates of social problems in many tribal communities that continue today, many of which are largely unaddressed and unresolved. Even after ICWA's enactment, state child welfare agencies continue to remove AI/AN children at disproportionate rates nationally, with Native children placed in out-of-home care at over two times their population rate, and in some states, as high as 5 to 14 times higher than their population rates.

Despite these challenges, many Tribal Nations have developed highly effective tribal child welfare systems in their communities and are assisting states as they implement the protections of ICWA for Native children and families in state child welfare systems. Many Tribal Nations have decolonized their child welfare programs and services by grounding their systems in tribal culture, beliefs, traditions, and customs. This approach shifts services and support for Native children from mainstream philosophy and practices focused on removing children from their families as the primary way to ensure child safety to an approach that is grounded in tribal values and prioritizes children's connection to extended family and community, acknowledging culture as a protective factor.

When tribal programs and services are culturally based, with families receiving services and support much earlier, in better coordination with other child and family serving programs, and in a manner that is aligned with tribal values, children and families experience improved outcomes. These tribal programs see significant reductions in removal of children from their homes and extended stays in out-of-home care, fewer repeated incidents that bring them to the attention of the child welfare system (where they are often not successfully addressed), and greater family stability and parenting capacity. While these results exceed those of state child welfare systems in almost all areas, tribal nations continue to receive some of the fewest dollars of any government to support their child welfare system. While tribal children represent over two percent of the United States child population, tribal governments that serve them receive less than one half of one percent of the total amount of federal child welfare funds annually. This funding inequity affects the ability of tribes to develop and maintain highly effective programming and also reduces the ability of tribes to assist states with ICWA cases in state child welfare systems, where states depend upon tribes to assist them with finding appropriate placements, provide culturally appropriate services, and contribute important cultural and family information that informs effective decision-making in the state child welfare system process.

TRIBAL LEADER TALKING POINTS

Strengthen Tribal Child Welfare Systems through Equitable Funding and Support for ICWA.

- Increase Administration budget requests for the Bureau of Indian Affairs ICWA grant program to \$35 million and \$30 million each for the prevention and treatment grant programs under the Indian Child Protection and Family Prevention Act (P.L. 101-630).
- Work with Congress to introduce and support legislation making tribal nations eligible to receive funding and administer directly the Social Services Block Grant, one of the funding streams states use to support child welfare services, by establishing a 10% set-aside for tribes within the authorizing statute.

- Work with Congress to introduce amendments to the Title IV-E Foster Care, Relative Guardianship, Adoption and Prevention Services program to provide the Secretary of the Department of Health and Human Services (HHS) the authority to waive or modify non-federal match requirements for tribes that operate the Title IV-E program directly. The outsized match requirements for tribes are the biggest barrier to tribal participation in the federal government’s largest child welfare funding source - Title IV-E.
- Support H.R. 3461, the “Strengthening Tribal Families Act of 2023.” This legislation provides clarity and direction for HHS to collect data on ICWA’s implementation and assist states and tribes to improve ICWA compliance. Because of their funding and statutory relationship with states, HHS is in the best position to help states with this task, addressing the decades of little to no oversight of ICWA implementation by states.

POINTS OF CONTACT



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National Congress of American Indians (NCAI)

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CIVIC ENGAGEMENT

BACKGROUND

Remove Barriers to Voting for Native Americans.

Content provided by NARF.

On March 7, 2021, President Biden issued an Executive Order (EO) on Promoting Access to Voting . Through the EO, the President documented the unique barriers to voting faced by Native people and directed federal agencies to do what they can to address these barriers, including offering voter registration and accepting designation under the National Voter Registration Act (NVRA) where possible. Offering voter registration services at federal agencies presents a critical opportunity for Native Americans who may not be located near a registration site or who may never proactively be asked to register to vote. Through designation of federal agencies under NVRA, Native Americans in underserved communities can access voter registration in a known and trusted space, facilitated by workers who understand the cultural and logistical barriers faced by Native voters attempting to register. Under the EO, both the Department of the Interior and Indian Health Service have designated NVRA pilot facilities and have begun to offer voter registration at these facilities.

The Department of the Interior (DOI) was the first agency to designate facilities and is a leader in the implementation of this EO. DOI accepted designations of the two tribal colleges it operates, Haskell Indian Nations University in Kansas and Southwestern Indian Polytechnic Institute in New Mexico.

President Biden committed to designating five Indian Health Service voter registration pilot sites by the end of 2023. In October, Native Health Phoenix was designated as an NVRA site. IHS is in the process of designating the remaining sites.

TRIBAL LEADER TALKING POINTS

Remove Barriers to Voting for Native Americans.

- Improve access to voter registration opportunities and polling places throughout Indian Country.
- Offer registration at federal agencies, especially IHS, to reach Native people that are most underserved.
- The President’s Executive Order on Voting Access is appreciated and must continue to be implemented—for example, all IHS facilities should eventually offer voter registration.

POINTS OF CONTACT

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CLIMATE ACTION

ENVIRONMENTAL SUSTAINABILITY

BACKGROUND

Address Tribal Nation Concerns about Offshore Wind Energy Development.

Content provided by USET SPF. More information available at: https://www.usetinc.org/wp-content/uploads/2023/12/Offshore-Wind-USET-SPF-One_pager-FINAL-11_30_23.pdf.

In response to continued concerns voiced by Tribal Nations regarding the speed and trajectory of the permitting and development of offshore wind projects—currently, primarily in the waters off of the East and West Coasts—USET SPF, along with partners, National Congress of American Indians (NCAI) and Affiliated Tribes of Northwest Indians (ATNI) recently passed resolutions calling for the Secretary of the Interior to issue a temporary moratorium on the current Bureau of Ocean and Energy Management (BOEM) scoping and permitting process and allow time to enact a new Nationwide Programmatic Agreement for all currently proposed and future offshore wind projects and guide a new scoping and permitting process under BOEM.

The resolutions call for a moratorium on the permitting and development of offshore wind energy until the process can be restructured to be inclusive of avoidance measures, minimization of impacts, and the integration of Indigenous Knowledge for all Tribal Nations, as infrastructure development will impact us all. Consistent with the Administration’s commitment to Indian Country and “the whole of government” approach, the process must provide full mitigation through the completion of comprehensive and transparent procedures to appropriately protect Tribal Nation religious, cultural, environmental, and sovereign interests. We believe that the Administration’s goals of developing clean energy and increasing Tribal co-management opportunities can and must be harmonized. Indeed, Tribal Nations have extensive experience in navigating the deployment of federal infrastructure in a way where multiple interests are satisfied and our cultural heritage is preserved. We are committed to exploring solutions with our federal partners that will benefit both Tribal Nations and the Administration’s offshore wind deployment goals.

Following the passage of the resolutions, there have been several meetings between Tribal Nations, the Bureau of Ocean Energy Management, and the Department of the Interior, including Secretary Haaland. However, to date, we have not seen meaningful action from the Administration. We continue to support Tribal Nations as they navigate this issue and stand ready to compliment further efforts to ensure clean energy development occurs without negative impacts to our sovereignty, cultural sites, and ways of life.

Incorporate Traditional Ecological Knowledge) into the Production of Clean Energy.

Content provided by NCAI.

The planet is warming due to human activity. The primary drivers of climate change within human society are electrical generation, transportation, and manufacturing. Each of these three sectors currently releases “greenhouse gasses” into the atmosphere. These gasses act as a blanket, keeping heat trapped and warming the world’s lands and oceans. The United Nations estimates that unless humanity can keep average global temperatures under 1.5 degrees Celsius compared to pre-industrialization, life—human and otherwise—will be irreversibly harmed on a catastrophic scale. In 2016, the United States joined with other countries in committing to the Paris Climate Agreement, a series of goals and milestones for nations to meet to keep temperatures under that 1.5-degree threshold. In 2018, the United Nations estimated humanity was set to exceed the threshold by 2030 without drastic changes. We have seven years to tackle this crisis before the consequences become irreversible.

American Indians/Alaska Natives are entrusted by our ancestors with traditional ecological knowledge (TEK) that has been an accumulation of centuries of knowledge, practice, and belief, evolving by adaptive processes and handed down through generations by cultural transmission. There is increasing acknowledgment that Indian tribes possess traditional knowledge that is equivalent to the value of scientific knowledge in solving environmental problems caused by global environmental change and climate change, and that traditional tribal knowledge is a core part of our identity and ways of life, is highly spiritual and carries obligations for its appropriate use.

As described above, climate change is a threat to American Indians/Alaska Natives’ culture, resources, and well-being that is currently impacting hunting, fishing, gathering, economic infrastructure, reservation locations, usual and accustomed areas and natural resources. Traditional Ecological Knowledge—in all its forms—must be protected for the future of Tribal Nations and the planet.

TRIBAL LEADER TALKING POINTS

Address Tribal Nation Concerns about Offshore Wind Energy Development.

- Urge the Secretary of the Interior to issue a temporary pause (moratorium) on the current Bureau of Ocean Energy Management scoping and permitting process and allow time to enact a new Nationwide Programmatic Agreement for all currently proposed and future offshore wind projects and guide a new scoping and permitting process under the Bureau of Ocean Energy Management.
- The new Nationwide Programmatic Agreement must be inclusive of avoidance measures, minimization of impacts, integration of Indigenous Knowledge, and provide full mitigation through completion of comprehensive and transparent procedures to appropriately protect Tribal environmental, cultural, and sovereign interests.
- The Bureau of Ocean Energy Management and the Administration must support shared Tribal jurisdictional authority over and tribal management of offshore renewable energy activities, aimed at empowering Native communities through socio-economic benefits such as job opportunities, revenue sharing, power purchase agreements, and support for tribal energy development projects.

Incorporate Traditional Ecological Knowledge) into the Production of Clean Energy.

- Expeditiously release funding for electrification and electric grid decarbonization and ensure funding for electrification and electric grid decarbonization has a Tribal set aside and is not grant-based.
- Ensure Tribal Nations with vehicle fleets have the resources to purchase electric cars, buses, and trucks.
- Direct each Cabinet Secretary implementing a portion of the infrastructure and inflation reduction laws to visit Indian Country annually to see implementation progress in Tribal communities.
- Recognize and respect Tribal traditions, ordinances and expectations regarding access to and use of traditional ecological knowledge, based on prior and informed consent.
- Provide adequate and proportional funding for Tribal climate change adaptation and mitigation.
- Consult with Native Sovereign Nations as decision makers with all policy, regulations and laws related to climate change effects on important tribal cultural, natural and sacred resources.
- Develop guidance on Recognizing Tribal Sovereign Jurisdiction over Traditional Knowledge.
- Recognize the sovereign rights of tribes to control access to and the use of their traditional knowledge and the right to free, prior and informed consent (FPIC) to give or deny access to it.

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CULTURAL PROTECTION

BACKGROUND

Implement the STOP Act.

Content provided by AAIA.

The persistent trafficking in Native cultural heritage and the lack of meaningful federal movement to implement the Safeguard Tribal Objects of Patrimony (STOP) Act of 2021 (P.L. 117-258) is deeply troubling. This legislation represents an important step forward in prohibiting the export and sale of Native cultural heritage in other countries.

Though the Department of the Interior and Department of State have undertaken tribal consultation to obtain information about what Tribal Nations would like to see in the STOP Act's regulations, there is a long way to go for the final rulemaking to be published. In the meantime, U.S. dealers continue to export sensitive cultural heritage even though the law has passed. There is a current and urgent need to begin training among federal agencies, especially within the Department of Homeland Security, about how to spot items of cultural heritage and prevent their export based on the statute's terms. Regulations do not need to be finalized for this to happen.

The Association on American Indian Affairs monitors domestic and international auctions and has found several U.S. dealers selling sensitive cultural items at foreign auctions. So far in 2023, the Association has monitored the sale of 57 foreign auctions selling approximately 308 potentially sensitive items that were likely looted. This ongoing trafficking is illegal under the STOP Act and requires the federal government to act now. The reasoning provided by the DOI is that they must develop regulations first. But that is a choice by the DOI to sit on their hands and allow trafficking to continue despite the law. Even Native American Graves Protection and Repatriation Act (NAGPRA) was implemented before its regulations were passed in 1995 (five years after the law was passed). Will we have to watch thousands more of our sensitive cultural heritage leave the country to be sold illegally? The government must act now.

Publish the NAGPRA Final Rulemaking.

Content provided by AAIA.

Native Nation leadership should push for the immediate release of the new NAGPRA regulations from the Office of Management and Budget. The current regulations are to blame for the rampant institutional non-compliance with NAGPRA. For 33 years, institutions and federal agencies have failed to complete summaries and inventories, provide proper notice to Tribal Nations, and repatriate Ancestors, their burial belongings, and cultural and sacred items. Some institutions—including the Field Museum and the Harvard Peabody—have shamelessly pushed against the updated regulations to avoid any enhanced accountability and repatriation requirements. This foot-dragging and obstructionism demonstrate precisely why enhanced regulations with more teeth are so necessary. The current regulations have been ineffective, resulting in an utter legislative failure that allows institutions to flagrantly disregard unambiguous Congressional legislative intent—to afford Ancestors their proper journey home. The Biden Administration must ensure that these regulatory updates are finalized and enacted before the end of this year, building trust, fostering cooperation, and working to overcome the legacy of violence against and exploitation of Native Peoples.

Commence Repatriation at Carlisle and all Indian Boarding Schools on Federal Land.

Content provided by AAIA.

Native children remain buried at boarding schools and other institutions, like the Carlisle Indian Industrial School. When Native Ancestors are buried (either pre or post contact) on what is currently federal land, then NAGPRA can be used to disinter and bring home those Ancestors. This is important because NAGPRA allows Native Nations to repatriate Ancestors based on cultural/tribal affiliation instead of going through a lengthy process to prove lineage. Finding lineage often requires time and resources for DNA testing or other family historical research; often such research is not possible because a child buried at a boarding school may not have any descendants remaining today.

The Army, through its Department of Cemeteries, refuses to facilitate respectful repatriation that comports with NAGPRA, requiring proof of lineal descendancy according to Army policies for repatriating soldiers who have died on foreign soil. Army argues that it does not have to comply with NAGPRA, and though some repatriations have occurred showing lineal descendancy, these have burdened Tribal Nations with lengthy research and other costs. The legal arguments Army has provided for their assertions are not supported by the law, and even the Department of the Interior has called them out in their NAGPRA Proposed Rulemaking (October 18, 2021). Furthermore, the Army has refused to consult with Tribal Nations potentially affected by their policies. Tribal Nations and descendants deserve better than bureaucratic runarounds interfering with their inherent sovereignty to bring home their relatives. The Executive branch could end this immediately by directing the Army to comply with NAGPRA repatriation requirements at Carlisle.

Funding for Tribal Historic Preservation.

Content provided by USET SPF.

More information available at: https://www.usetinc.org/wp-content/uploads/2023/12/Infrastructure-USET-SPF-One_pager-FINAL-11_30_23.pdf.

Due to chronic underfunding, many Tribal Historic Preservation Offices (THPOs) are currently operating without the necessary personnel to conduct National Historic Preservation Act Section 106 reviews. THPOs are the protectors of irreplaceable resources: our cultures and spirituality. The explosion in infrastructure development that will be funded by the Inflation Reduction Act and Bipartisan Infrastructure Law is likely to overwhelm THPOs without additional funding and other resources. We urge the Administration to request and provide additional, increased resources for THPOs, so that we may protect our cultural and sacred sites.

TRIBAL LEADER TALKING POINTS

Implement the STOP Act.

- Train federal employees—particularly within the Department of Homeland Security—how to spot items of cultural heritage at the border and prevent their export based on the terms of the STOP Act now, instead of waiting for final regulations.
- Call on the Administration to provide clarification as to precisely when the proposed rulemaking for the STOP Act will be published and what the plan is to achieve the final rulemaking before the end of this Administration.

Publish the NAGPRA Final Rulemaking.

- Call on the Administration to provide clarification as to precisely when the final rulemaking for NAGPRA will be published and urge the Administration to make this a top priority before the end of the year.

Commence Repatriation at Carlisle and all Indian Boarding Schools on Federal Land.

- Direct the Army to comply with NAGPRA repatriation requirements at Carlisle and all Indian Boarding Schools on federal lands.
- Require the Army to engage in government-to-government consultation about implementing NAGPRA on federal lands.

Funding for Tribal Historic Preservation.

- Urge the Administration to request and provide additional, increased resources for THPOs, so that Tribal Nations may protect their cultural and sacred sites.

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EDUCATION — EARLY EDUCATION, K-12

BACKGROUND

Content provided by NIEA.

Education is an essential component of the federal trust responsibility promised to Native people through a long history of treaties, cases, and statutes. Despite the long-recognized legal and fiduciary duty to Native students, schools serving Native communities continue to experience chronic underfunding. Today, it is critically important to bring our schools into the 21st century and ground them with all the tools of our ancestral knowledge. Over the past decade, there has been a rapid change in what constitutes safe, high-quality, culturally-relevant, holistic education. The United States has undergone a major technology boom, a global pandemic, and an unparalleled increase in school-related shooting incidents. All of this, alongside the untreated generational trauma of the federal Indian boarding school system that continues to wreak havoc on the cultural, mental, and emotional health of our children, means we are overdue for a strong investment in Native education. The investment in our children is an investment in the futures of our Tribal Nation's economic growth and cultural vitality.

TRIBAL LEADER TALKING POINTS

Fund Native Education.

- Provide mandatory Native education funding for both the Department of Education – Title VI, Indian Education account and the Bureau of Indian Education, including Education Construction, Facilities and Maintenance, and Johnson O'Malley.
- Invest in construction of public schools that serve Native students—93% of all Native students attend public schools, which in rural, remote, or tribal areas must rely on Impact Aid funding to cover the gaps in their tax base. It is essential the Impact Aid Discretionary Construction Grants are increased.
- Invest in BIE Construction and Facilities and Maintenance—currently, 16 BIE schools are marked for full replacement, at least one of which has been on the list since 2004. The administration has increased the asks for facilities and maintenance funding for BIE schools by over double, and it is estimated that the needs of each of these schools still exceeds the current asks.
- Move Tribal Grant Support Costs (TGSC) to mandatory funding—Contract Support Costs (CSC) and Tribal Grant Support Costs function almost identically in nature, but are treated differently in the federal budget. If TGSCs are not mandatory funded, then any amount over what is appropriated must come from extremely limited discretionary funding accounts to cover them..
- Collect and publish meaningful and accurate data regarding program resources which support the holistic needs of children. Provide funding for professional training to educators to create safe classrooms where Native students can thrive.

Address Critical K-12 Educational Needs.

- Although most states set many of their own policies governing charter schools, all public schools, including charter schools, are governed by the Every Student Succeeds Act (ESSA) and other relevant federal education policy. With this backdrop, the federal government must:
 - Advocate for funding and authorization of Native Charter schools including establishing Tribal Nations as authorizers;
 - Hold the Department of Education accountable to the ESSA provision authorizing tribally controlled schools to develop and use their own assessments
 - Ensure meaningful tribal consultation is occurring under ESSA, and that tribal input and voices are influencing policy;
 - Raise the status of tribal language classes, and ensure Native language teachers are paid commensurately with their teaching peers, and reimburse elder speakers for their time and

- commitments;
- Support tribal teacher accreditation programs;
- Engage with Native populations in an equitable way with respect to data– ensuring tribal communities can voice their needs and perspectives in data collection and disaggregation;
- Promote authentic community engagement in creating accountability coupled with stewardship in creating remedies for low-performing and at-risk schools (which are deficit-based terms associated with many Native Local Education Agencies (LEAs)), in addition to increasing funding to these schools; and
- Protect Native American Special Education students by creating capacity within school districts to create and implement 504 plans.
- Ensure a Native educator and leader pipeline is critical to address the current teacher shortages but also ensure representation in the field. Currently ED has begun their Native American Teacher Retention Initiative, which should be expanded within ED and extended to BIE. As part of this grant investment, there must be authorization for and an increase in funding for Grow Our Own educator programs that certify Native educators to teach through a cultural and linguistic lens.
- Increase funding for Wrap-around Services and Whole Child Approaches, which are critical to addressing trauma and mental health, and ensure cultural grounding by creating community based approaches to education.
- Include recommendations for increases in funding and services for Native education in the Federal Indian Boarding School Investigative Reports–the debt owed our children grew during the boarding school era, and while the federal government in uncovering the harm done and making recommendations for future steps, supporting our children now where the federal government has failed them in the past is essential.

Support Early Childhood Education in Native Communities.

- Authorize and provide funding for the development of culturally-based assessments in Early Childhood Education. Native-serving Early Childhood and Headstart programs should be utilizing alternative assessments that are more community oriented.
- Authorize Tribal Nations to determine their own eligibility requirements for tribally-controlled Headstart programs–Currently, tribal Headstarts are not allowed to change or alter eligibility requirements for children based on local needs assessments or differences in cost of living in rural and remote areas compared with the rest of their states. This change, whether statutory or regulatory within ACF, would not change the federal formulas which fund Head Start, it would simply uphold the right to tribal self-determination.

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EDUCATION — HIGHER EDUCATION AND RESEARCH

BACKGROUND

Content provided by AIHEC.

The 34 Tribal Colleges and Universities in the U.S. operate more than 90 campuses and sites in 16 states. TCU geographic boundaries encompass 80 percent of American Indian reservations and federal Indian trust lands. American Indian and Alaska Native (AIAN) TCU students represent more than 245 federally recognized Tribes and hail from more than 30 states. Nearly 80 percent of these students receive federal financial aid, and nearly half are first-generation students. Pre-pandemic, TCUs served more than 160,000 AIANs and other rural residents each year through academic and community-based programs. TCUs are public institutions, chartered by federally recognized Indian Tribes or the federal government.

TCUs provide culturally-based and place-based postsecondary education and workforce training opportunities. Additionally, TCUs serve as public, cultural, and community centers and as primary employers for their communities. TCUs are the keepers of tradition in our Tribal communities, conducting important Native languages research and education programs for community members and academic students. TCU students are often older than the traditional college students, including single heads of households who are seeking to provide a better future for their families. TCUs offer students a chance to develop the skills they need to succeed in the workforce while continuing to care for their family and communities.

Improve Infrastructure at Higher Education Facilities.

For TCUs to continue strengthening Tribes and building a 21st century Native workforce, TCUs must have the facilities and infrastructure capable of educating and training students in a safe environment. This cannot be accomplished in classrooms with leaking roofs and exposed and substandard electrical wiring, outdated computer labs without sufficient space to operate, and the slowest–yet most expensive–Internet access of any group of institutions of higher education in the country. A July 2021 AIHEC survey of TCUs revealed a long list of chronic facilities needs that remain unmet, including \$400 million in Deferred Maintenance and Rehabilitation and \$2.7 billion in uncompleted TCU master plans.

Fully Fund Tribal Higher Education Facilities.

In the 43 years since the Tribally Controlled Colleges and Universities Assistance Act (TCCUAA) was enacted, the number of TCUs has increased fivefold, and full-time Indian student TCU enrollments have increased by more than 300 percent. Despite this growth, TCUs remain chronically underfunded, causing persistent issues in recruiting and retaining qualified faculty and staff and maintaining accreditation. Additionally, support for the TCU institutional operation funding has not kept up with inflation and is still short of the authorized level of \$9,937 per Indian student (\$8,000 adjusted for inflation). For the academic year 2021-2022, the TCCUAA Title I funded institutions received \$8,676 per Indian student towards operations.

Create Equity in Land-Grant System Funding.

The first Americans, American Indian and Alaska Natives (AIAN), and their respective Tribal Colleges and Universities did not gain land-grant status until 1994, roughly 26 years after the first Tribal college was established. At \$50,000 per institution from USDA, the initial funding for 1994 land-grant programs was modest. Nearly three decades later, USDA funding for the 1994 land-grant programs has only slightly increased. In FY 22, 1994 land-grant institutions received less than 2 percent of overall land grant research funding and less than 3 percent of overall land grant extension funding. These inequities cannot be justified or allowed to continue. The first Americans, last to join the nation's land-grant family, deserve parity.

TRIBAL LEADER TALKING POINTS

Improve Infrastructure at Higher Education Facilities.

- Establish a \$40 million annual fund in FY 24 for TCU Information Technology and Broadband Services.
- Provide \$35 million in FY 24 for the BIE-TCU Construction and Facilities Improvement fund.

Fund Tribal Higher Education Facilities Fully.

- Provide at least \$93.3 million for BIE-TCU operational funding in FY 24.

Create Equity in Land-Grant System Funding.

- Take steps toward establishing equity in funding in FY 24 for the 1994 land-grant programs by providing:
 - \$17.5 million for 1994 land-grant Research;
 - \$17.5 million for 1994 land-grant Extension;
 - \$17.5 million for 1994 land-grant Equity Payments; and
 - \$17.5 million for 1994 land-grant Endowment fund.

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FEDERAL OFFICES, ACTIONS, AND POLICIES

BACKGROUND

Preserve Gains Made Under the Biden Administration.

Content provided by USET SPF.

More information available at: https://www.usetinc.org/wp-content/uploads/2023/12/Preserving-Admin-Gains-USET-SPF-TL-One_Pager-FINAL-11_30_23.pdf.

Over the course of its tenure, the Biden Administration has initiated and expanded upon several important advancements in the U.S.-Tribal Nation diplomatic relationship. These advancements, in the form of federal positions, offices, and working groups contribute to the elevation of Tribal Nations in an unprecedented way. As the first term of the Biden Administration comes to a close, it must commit to preserving these gains.

Appoint More American Indians / Alaska Natives as Federal Judges.

Content provided by NARF.

As you likely are aware, many issues of historic import and daily life for people in Native communities are significantly affected by federal law, including federal common law. Legal cases involving Tribal Nations and their interests are heard primarily in federal courts. For these reasons, it is imperative that federal judges are well-versed in the unique political status, legal principles, and rights of Tribal Nations and Native individuals.

Despite the disproportionate impact of federal court decisions on Tribal Nations, Native individuals, and Tribal communities, Native Americans continue to be under-represented in the federal judiciary. Before the Biden administration, fewer than 10 American Indians, Alaska Natives, or Native Hawaiians total – out of thousands – ever served as lifetime judges. Today, of the more than 870 authorized federal judgeships, only seven judges serving on the federal bench are from American Indian, Alaska Native, and Native Hawaiian communities. There has never been a Native nominee to a federal appellate court, the U.S. Court of Federal Claims, or the U.S. Supreme Court.

At present, there are almost 100 federal court vacancies and many are in districts and circuits that serve Indian Country. Appointments to these vacancies are for life and present the opportunity to shape Indian law for generations to come. It is critical these vacancies are filled with candidates who reflect Tribal communities, or at least are familiar with the basic principles of tribal sovereignty and jurisdiction. Unfortunately, numerous vacancies in Indian Country have remained open, some for years, with no nominee including in South Dakota, Alaska, Montana, and California.

The Biden Administration has made it a priority to improve diversity and representation on the federal bench. Most recently, we applaud President Biden's nomination of Sara Hill, a Cherokee Citizen and former Cherokee Nation Attorney General, to the U.S. District Court for the Northern District of Oklahoma. Ms. Hill still awaits confirmation votes in the U.S. Senate.

TRIBAL LEADER TALKING POINTS

Preserve Gains Made Under the Biden Administration.

- **Funding and Permanency for OMB's Tribal Affairs Advisor.** With the appointment of OMB's first-ever Tribal Affairs advisor, we are seeing the voices and guidance of Tribal Nations raised to new heights within the Administration's priorities and its Budget Requests. We celebrate this achievement and attribute it, in large part, to OMB's commitment to meaningful dialogue with Indian Country. Now, as the Administration enters its final year, it is critical that this progress be preserved. We ask OMB to include dedicated funding and permanency for this position in the FY 2025 Request, so that Tribal Nations can continue to guide the agency in delivering upon trust and treaty obligations.
- **Funding and Permanency for Treasury's Office of Tribal and Native Affairs.** We would like to register

our support for dedicated funding and permanency for Treasury's newly established Office of Tribal and Native Affairs. Tribal Nations have long advocated for the creation of an Office of Tribal Affairs within the Treasury to improve the Department's delivery of federal trust and treaty obligations to Tribal Nations. Providing dedicated funding will assist Treasury with fulfilling this directive and ensure that the full array of Treasury's programs will help support Tribally driven economic development and investment in Indian Country.

- **Funding for the White House Council on Native American Affairs.** Presently, and throughout its short history, the White House Council on Native American Affairs (WHCNAA) has operated with virtually no dedicated staffing or financial resources. Traditionally, the work of the Council has been coordinated by an executive director on detail from the Department of the Interior (DOI). And under the Executive Order establishing the Council, DOI "shall provide funding and administrative support for the Council to the extent permitted by law and within existing appropriations." In practice, this has resulted in a lack of substantive support for the work of the body and the executive director, along with a restricting of the WHCNAA's scope and ability to provide meaningful contact between the Cabinet and Indian Country. Given the potential for WHCNAA to play a significant role in advancing the delivery of the federal government's delivery of trust and treaty obligations, as well as our diplomatic relationship, we urge this Administration to designate a dedicated funding stream for WHCNAA. It is our belief that this will allow the WHCNAA's work to be more substantive, productive, and meaningful for our evolving U.S.-Tribal Nation relationship.

Appoint More American Indians / Alaska Natives as Federal Judges.

- Appoint and confirm Native candidates to current and upcoming federal judicial vacancies.
- Appoint and confirm judicial candidates who have experience in Federal Indian law and working with Tribal Nations and tribal communities.
- Quickly nominate candidates to all judicial vacancies, especially those in Indian Country.
- Prioritize appointing and confirming the first Native judicial candidate to a federal appellate court.
- Consult with Tribal Nations, tribal organizations and bar associations on potential judicial candidates.

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HEALTH

BACKGROUND

Our ancestors paid in advance with their lives and their land for guarantees from the federal government in perpetuity. Among these guarantees is healthcare. As recently as 2010, Congress declared in law that: It is the policy of this nation, in fulfillment of its special trust responsibilities and legal obligations to Indians, to ensure the highest possible health status for Indians and to provide all resources necessary to affect that policy.

Federal appropriations for IHS have never been adequate to meet basic patient needs, and often health care is delivered far below national standards. The Indian health care delivery system faces significant funding disparities, notably in per capita spending between the Indian Health Service (IHS) and other federal health care programs. These funding disparities have severe consequences. The Centers for Disease Control and Prevention (CDC) recently reported in August that American Indian and Alaska Native (AI/AN) peoples' life expectancy has declined 6.6 years from 2019 to 2021. AI/AN people had a life expectancy at birth of 65.2 years in 2021 - equal to the life expectancy of the total U.S. population in 1944!

The underfunded status of the Indian healthcare system has resulted in a health crisis within Tribal communities. Infant mortality, suicides, and preventable deaths plague Tribal communities. Treatment of chronic diseases like diabetes, autoimmune deficiencies, cancer, and heart disease quickly erode our limited resources, leaving few dollars for prevention. Further, failing infrastructure creates unsafe and unsanitary living conditions and severely compromises the quality of care. Despite being enacted in statute, Congress is not appropriating funding that would lead to the "highest possible health status." The United States can and should do better. And the solution begins with equitable funding.

Mandatory Funding for Indian Health Services (IHS).

Content provided by NIHB.

The Biden-Harris Administration's fiscal year 2024 budget was truly historic because it requested mandatory funding for the Indian Health Services (IHS) at a level that would fund IHS at \$288 billion over ten years. For that, we are truly grateful. Tribes look forward to continuing conversations with the Biden-Harris Administration to further develop this proposal and propose a full funding level endorsed by the IHS National Tribal Budget Formulation Workgroup. There continues to be structural challenges with the way the IHS budget is appropriated within discretionary funding caps. Medicare and Medicaid, which provide healthcare for seniors and low-income individuals, have no such caps. As Congress is finalizing its FY 2024 budget for IHS, we urge the White House to insist on exempting IHS from any across the board sequestration cuts or rescissions and getting IHS funding at its highest possible level. Furthermore, obligations for Contract Support Costs and 105(I) leases should immediately be reclassified as mandatory spending to allow additional growth in the IHS services budget.

Obligate Indian Health Services' Unobligated Balances.

Content provided by NIHB.

Recently, IHS has received criticism from Congress and Tribes for its significant unobligated balances of appropriated funds. Unobligated balances refer to amounts of appropriations that still need to be committed or obligated by IHS. Many IHS unobligated balances are due to the suspension of healthcare services during the COVID-19 public health emergency, where referral activity decreased. Last June, after the enactment of the Fiscal Responsibility Act, the Department of the Treasury took back \$419 million originally allocated to help increase Tribal public health infrastructure in response to the COVID-19 pandemic. Further, Senate appropriators are proposing to rescind an additional \$350 million in unspent COVID funding given to IHS. With Congress looking for ways to trim the federal budget, it is critical that the IHS obligate all available appropriations in a timely way so that patients receive the care they need, and so that Congress is not left with a false impression that the Indian health system has more funding than necessary.

Permanently Reauthorize the Special Diabetes Program for Indians.

Content provided by NIHB.

The Special Diabetes Program for Indians (SDPI) is one of the most successful federal public health initiatives. Since 1997, SDPI has reduced the prevalence of diabetes, end-stage renal disease (ESRD), and diabetes-related eye disease and has lowered A1C levels in AI/ANs. This program has also resulted in significant savings in Medicare due to reduction in ESRD. SDPI is the only mandatory appropriation that the IHS receives annually, meaning that when the program expires, there is also no longer funding available. The SDPI funding expires on January 19, 2024. We urge the Administration to permanently reauthorize the program and support Tribal priorities for improvement. SDPI has been level-funded at \$150 million annually since 2004. We thank the Biden-Harris administration proposal for \$250 million for SDPI in FY 2024 with subsequent year increases (consistent with the Tribal request). Legislation is currently moving in both chambers that would reauthorize SDPI for 2 years at \$170 million per year.

Additionally, SDPI has been reduced by \$3 million annually due to annual mandatory sequestration in FY 2022 and FY 2023. The IHS previously covered the cost of the sequestration and avoided a reduction in annual funding amounts for grantees. However, at the June 2022 Tribal Leaders Diabetes Committee (TLDC) meeting, IHS noted that it is not sure how to hold grantees harmless if sequestration continues.

Expand Self-Governance Authority within the Department of Health and Human Services.

Content provided by NIHB and SGCETC.

For decades, Tribal nations have demonstrated that using self-governance authority for the delivery of federal health care programs has a profound positive impact on the health and well-being of their citizens and communities. Using self-governance authority, Tribal governments operate sophisticated health care systems that require the coordination of resources from many Department of Health and Human Services (HHS) agencies and programs and provide services for millions of people.

Despite how many people Tribes serve, self-governance authorities only apply to federal health care programs provided through IHS. This means that valuable federal funding is not getting to Tribal nations, because there is too much reliance on burdensome competitive grants or funding mechanisms excluding Tribal Nations. According to data from OMB's Native American Crosscut, only 0.5% of HHS funding went to programs that benefit Native Americans in 2022—a value that drops to 0.1% if you exclude IHS from that total. At some critical operating divisions—like CDC—it is less than 1%!

Limiting self-governance authority to only a portion of the federal resources that support tribal health care systems hinders the ability of Tribal governments to effectively develop and operate comprehensive, wraparound health care programs for their citizens and communities.

The Biden-Harris Plan for Tribal Nations states "One of Biden's earliest votes as a senator was to support the Indian Self-Determination and Education Assistance Act, which honored tribal sovereignty by allowing Tribes to provide services for their members that the federal government had previously provided. A Biden Administration will work with Tribes to explore ways to expand self-governance opportunities."

A tribal workgroup has identified 23 HHS programs that should be part of a demonstration project to show that self-governance authority can successfully expand to health care programs outside of IHS. The tribally developed legislation to authorize the proposed demonstration project has broad support across Indian Country. Full support and cooperation from the Administration and HHS will help ensure its success.

Provide More Direct Funding to Tribal Nation Health Services and Programs.

Content provided by NIHB.

While our priority continues to be full self-governance for programs outside of the IHS, in the short term it is critical that funding for critical health programs should flow to Tribal Nations directly. Too often, the federal government allocates funding through competitive grants or formula-based grants. The competitive grant system allows those with the highest capacity to apply for and ultimately receive grants. This system does not

honor the federal trust responsibility for health and does not allow funding to go to areas that need it the most. Indian Country is largely left out. States may receive block grant funding, but tribal communities do not typically receive that funding. The Administration must propose a new way of doing business with Indian Country. We need reliable and consistent funding that flows to all Tribal nations with minimal administrative burdens. We look forward to working with the Biden administration to create a new paradigm for federal funding to Tribal Nations.

Improve Access to Tribal Public Health Data.

Content provided by NIHB.

Despite clear public health authority, Tribes and Tribal Epidemiology Centers (TECs) continue to face immense barriers to accessing essential public health data. Because states govern most public health data systems, states become the de facto arbiters of access to public health data. Tribes often find themselves at the mercy of individual relationships between the Tribe and state government officials. Considering the often-fraught history between states and Tribes, this is not a recipe for data equity. Even in states with positive relationships with Tribes, challenges frequently result from state officials lacking the necessary understanding of Tribal sovereignty and the Tribal public health authority.

In some cases, federal agencies hold the data Tribal public health authorities need. However, a 2022 Government Accountability Office (GAO) report found that federal agencies have failed to comply with federal law by withholding health data from TECs. Little progress has resulted since. Two of the GAO report's recommendations concerned IHS, which holds critical health data needed by Tribal public health authorities. As of the most recent update from the GAO, these recommendations remain unfulfilled. With no mechanism to enforce the law, Tribes are left with little recourse.

These access issues are compounded by the federal underinvestment in tribal public health infrastructure, resulting in outdated health data systems and insufficient access to Tribal epidemiologists, data scientists, informaticists, and the legal counsel needed to establish necessary and beneficial data sharing agreements.

Federal inaction persists despite urgent needs and in violation of federal law. As Tribal Nations develop their public health systems, without timely access to public health data, Tribal Nations cannot adequately track the spread of disease, make data-informed decisions, identify those at high risk for severe illness or mortality, or evaluate public health interventions.

Improve Access to Traditional Healing Methods.

Content provided by NIHB.

Tribal Nations have each developed, refined, and stewarded their own unique bases of knowledge since time immemorial. Thus, AI/AN constructions of well-being and practices of healing are imbued with an inherent sovereignty. AI/AN access to traditional healing practices does more than simply provide culturally appropriate health care. Providing traditional healing services protects the right of AI/AN people to care for their health in its full, traditional breadth. There are already highly successful Tribally-supported health programs implementing traditional healing practices in areas including behavioral health, maternal health, and diabetes prevention, among many others.

Arizona, California, New Mexico, and Oregon have submitted Section 1115 waivers for Medicaid to cover traditional health practices furnished through IHS and Tribal facilities. In October of 2022, the Centers for Medicare and Medicaid Services (CMS) approved Arizona's 1115 Demonstration Waiver extension request but did not approve Arizona's traditional healing demonstration. Without a strong commitment from the White House—such as a government-wide policy to increase access to traditional healing services—these requests may not overcome existing barriers that are often cited by CMS and the Department of Justice (DOJ) as justification for refusing to reimburse for traditional healing services.

Provide Resources to Indian Country to Combat the Opioid Crisis.

Content provided by NIHB.

Opioids are the latest face of a mental health and substance use crisis in America that disproportionately impacts our tribal communities. AI/ANs experience some of the highest rates of substance use issues as compared to other racial and ethnic groups, which has been attributed—in significant part—to the ongoing impacts of historical trauma. The high rates of substance use naturally lead to high rates of overdose from illicit substances, like fentanyl. According to the CDC, AI/ANs have experienced the highest age-adjusted overdose death rates of any group for the past decade, with many of those deaths resulting from opioid use, including fentanyl and fentanyl-laced substances.

In the past year, several Tribal Nations issued emergency declarations over the rate of fentanyl deaths among their members. Accidental overdoses – where a person using drugs is unaware that a substance is mixed with fentanyl – are also on the rise among American Indians and Alaska Natives. CDC reports that AI/ANs had the highest overdose rate of any ethnic group for both 2020 and 2021, driven by a 33 percent rise in drug overdose deaths during the same period. The Alaska Native Tribal Health Consortium’s (ANTHC) Alaska Native Epidemiology Center reported that the annual number of opioid deaths among Alaska Natives increased by 383 percent between 2018 and 2022, with the rate of opioid overdose mortality doubling during the COVID-19 pandemic. AI/AN adolescents experienced the highest overdose deaths from fentanyl in 2021. Those numbers are gravely concerning, and if we do not do more to prevent substance use among our children, then our culture, heritage, and way of life are at risk. It is up to all of us to ensure that our children can carry on our traditions into the next generation.

Tribal Nations must see a substantial increase in funding to address the opioid crisis. Tribal Nations and organizations were glad to see the President’s recognition of this crisis through the inclusion of funding in his recent supplemental budget request to Congress. The President’s proposal to address the crisis would provide \$1.55 billion in additional funding to the Substance Abuse and Mental Health Services Administration (SAMHSA), including \$250 million that would be transferred to the IHS and made available for two years. Despite the clear need in Indian Country, few federal dollars have been solely dedicated for this purpose to Tribal nations. For example, in FY 2023, State Opioid Response (SOR) funding was \$1.575 billion, and the Tribal Opioid Response (TOR) Grants were \$55 million, which is roughly 3 percent of the total. Given the impact of the opioid crisis in Indian Country, \$250 million will be a long overdue investment that will save lives for generations to come.

Support Work Focused on the Indigenous Determinants of Health.

Content provided by NIHB.

Indigenous peoples worldwide continue to experience stark health inequities and shortened life expectancy. Reducing these inequities and protecting health will require renewed investment in the strengths, cultural resources, and communities of Indigenous peoples.

The report on Indigenous Determinants of Health adopted this year by the United Nations Permanent Forum on Indigenous Issues makes clear that complex protective and risk factors contribute to the health outcomes that Indigenous People experience. Indigenous frameworks, knowledge, and ways of being cannot simply be classified as social Determinants of health because they are not limited to social constructs. Although social systems have contributed, physical, spiritual, mental, emotional, transgenerational, and other factors also contribute to the unique determinants of Indigenous Peoples.

The Indigenous determinants of health describe not only factors of colonization that create health risks, but also the Indigenous cultural factors that protect health. Our mothers, fathers, elders, siblings, and children are safest and healthiest when they are protected by our Indigenous food systems, our sacred practices, our Indigenous cultures and languages, access to water sources and traditional plants, and our traditional medicines. These specifically Indigenous determinants are essential to making true progress on advancing Indigenous health equity.

BACKGROUND—URBAN INDIAN HEALTH PRIORITIES

The Declaration of National Indian Health Policy in the Indian Health Care Improvement Act (IHCA) states that: “Congress declares that it is the policy of this Nation, in fulfillment of its special trust responsibilities and legal obligations to Indians to ensure the highest possible health status for Indians and urban Indians and to provide all resources necessary to effect that policy.” Urban Indian Organizations (UIOs) play a critical role in fulfilling the federal government’s responsibility as part of the Indian health system, which consists of the Indian Health Service (IHS), Tribal facilities, and UIOs (collectively the I/T/U system). The trust responsibility to provide health care extends to all American Indians and Alaska Natives including the over 70% of American Indians and Alaska Natives in urban areas. The 41 UIOs contracting with IHS under IHCA serve patients from over 500 Tribes in 38 urban areas in 11 of the 12 IHS Areas across the United States. By law (25. U.S.C. § 1603(29)), UIOs are Native-controlled non-profit healthcare organizations that provide critically needed healthcare services to American Indians and Alaska Natives living in urban areas. Services provided by UIOs include primary care, behavioral health services, social and community services, and traditional healing and medicine to American Indian and Alaska Natives living in urban areas.

UIO services are critical to improving the health of American Indians and Alaska Natives in urban areas because they face many of the same health disparities that IHS and Tribal patients face in rural areas. For example, a recent study by the Centers for Disease Control and Prevention (CDC) showed that American Indians and Alaska Natives in urban areas were just as likely to be in fair or poor health as their peers in rural areas and were also equally likely to suffer from hypertension and disabilities. Another CDC study showed that American Indians and Alaska Natives in urban and rural counties face similar rates of drug overdose deaths.

Additionally, according to a 2016 report published in the Journal of Hunger & Environmental Nutrition, American Indians and Alaska Natives living in urban areas were at least as likely to experience food insecurity as American Indians and Alaska Natives living in rural areas. UIOs help address these disparities because they are more than just healthcare providers, they also provide support services that address social determinants of health like housing, nutrition, and domestic violence and serve as cultural hubs for American Indians and Alaska Natives living in urban areas.

Fully Fund IHS and the Urban Health Line Item.

Content provided by NCUIH.

Despite the federal trust responsibility and Declaration of National Indian Health Policy, the United States has continuously failed to fund the Indian Health Service, including the Urban Health line item, at the level of need. For example, the Tribal Budget Formulation Workgroup (TBFWG), which provides a budget recommendation to IHS on behalf of all 574 Tribal Nations, recommended that the FY 2023 budget fully fund the IHS at \$49.8 billion and appropriate \$949.8 million for the Urban Health line item, but the President’s Budget requested just \$9.1 billion and \$112 million, respectively. Eventually, Congress enacted just \$6.96 billion to fund the IHS and \$90.42 million for the Urban Health line item. The United States Commission on Civil Rights found, in a briefing report titled Broken Promises: Continuing Federal Funding Shortfall for Native Americans, that “the low funding federally appropriated for urban Indian health care is concerning, and likely fails to meet the obligations of the federal government under the trust relationship.”

Because UIOs generally receive direct funding only from the Urban Health line item and generally do not receive direct funds from other distinct IHS line items, including the Hospital and Health Clinics, Indian Health Care Improvement Fund, Health Education, and Indian Health Professions line items, or any of the line items under the IHS Facilities account, only an increase to the Urban Health line item ensures that UIOs will actually receive more funding so that they can continue to provide high-quality, culturally competent care to their patients. The National Tribal Budget Formulation Workgroup recommended \$965.3 million for the Urban Health line item in FY 2025, as part of an overall request of \$53.8 billion for the IHS.

Set the Federal Medical Assistance Percentage at 100% for UIO Services.

Content provided by NCUIH.

In addition to failing to fully fund the Urban Health line item, the United States also fails to provide necessary

supplemental funding for urban Indian health through the Medicaid program. The Federal Medical Assistance Percentage (FMAP) is the percentage of Medicaid costs covered by the federal government, through reimbursement to state Medicaid programs. In recognition of the United States' trust responsibility to provide health services to American Indians and Alaska Natives, states receive 100% FMAP for Medicaid services provided at IHS and Tribal facilities. Tribal Nations are able to use the financial flexibility provided by 100% FMAP to negotiate improvements in the Medicaid program for beneficiaries who visit Tribal facilities.

However, states do not receive 100% FMAP for Medicaid services provided to IHS- beneficiaries at UIOs (100% FMAP for UIOs). As a result, the federal government is not paying its fair share for Medicaid-IHS beneficiaries and is skirting the trust responsibility. This also means that states are less amenable to working with UIOs to improve the Medicaid program for American Indians and Alaska Natives who are treated at UIOs. Permanent 100% FMAP for UIO services is the United States' obligation under the trust responsibility and will allow UIOs to work with states to improve health services for American Indian and Alaska Native beneficiaries who are treated at UIOs. This issue has broad support across Indian Country. This year, the Centers for Medicare and Medicaid Services Tribal Technical Advisory Group (TTAG) listed 100% FMAP for UIOs on its list of legislative priorities and both the National Congress of American Indians and the National Indian Health Board have adopted resolutions in support of 100% FMAP for UIOs.

TRIBAL LEADER TALKING POINTS

Mandatory Funding for Indian Health Services (IHS).

- Guarantee the Administration continues to work with Tribal nations to develop reasonable and fair estimates of full mandatory funding for the IHS.
- Continue to protect Advance Appropriations for future years and expand to all areas of IHS budget, including increases from year to year that adjust for inflation, population growth, and necessary program increases, until full, mandatory appropriations are achieved. Continue to protect Advance Appropriations for future years and advocate for increased funding for IHS.
- Advocate to Congress now to make sure that IHS—and all other Indian programs—are not subject to sequestration and rescissions in FY 2024 and beyond.

Obligate Indian Health Services' Unobligated Balances.

- Continue working to spend down unobligated balances for Tribal programs AND protect those balances from being up for grabs in the budget negotiations.
- Educate Congress on IHS accounting policies, including the PRC program, to prevent any misinformation about obligation of funds.

Permanently Reauthorize the Special Diabetes Program for Indians.

- Urge Congress to pass the two-year renewal of SDPI at \$170 million per year. Both chambers have legislation out of committee to do this.
- Allow Tribal Nations to exercise their self-determination right to deliver the program themselves, just as they do for most of the rest of the IHS budget—this can be achieved through structural changes allowing Tribal Nations to receive funds through self-determination and self-governance contracts and compacts;
- Exclude IHS from sequestration moving forward as SDPI has been reduced by \$3 million annually due to annual sequestration in FY 2022 and FY 2023 and continued sequestration will lead to reduced funding to SDPI community-directed programs.

Expand Self-Governance Authority within the Department of Health and Human Services.

- Formally support expanding Self-governance at the Department of Health and Human Services outside of the Indian Health Service. Self-governance promotes efficiency, improved outcomes, and program coordination.

Provide More Direct Funding to Tribal Nation Health Services and Programs.

- Provide additional support to IHS to address the staffing shortages and technology shortfalls that negatively impact the PRC claims process.
- Establish a 10% set-aside, non-competitive, direct funding for Tribal Nations in all available HHS operating divisions and funding streams and eliminate federal match requirements for all federal programs serving Indian Country.

Improve Access to Tribal Public Health Data.

- Data sharing across jurisdictions is a best practice for disease monitoring and prevention. It is vital that states and localities work with Tribes and do not prevent Tribes from accessing Tribal public health data.
- Require states and localities receiving federal public health funding to recognize the Tribes' inherent public health authority status and grant them access to the infectious disease reporting systems based upon the boundaries of the Tribe.
- Issue a communication from the Administration stating unequivocally that Tribal Nations are public health authorities with the rights and responsibilities to provide public health services to their people to avoid confusion over tribal status as public health authorities.
- Support Senator Tina Smith's re-introduction of the Tribal Health Data Improvement Act, which amends the Public Health Service Act and aims to improve Tribal access to data.

Improve Access to Traditional Healing Methods.

- Implement an administration-wide policy supporting traditional healing services and the reimbursement of traditional healing practices and services and remove all barriers that inhibit the integration of traditional practices. The implementation of this policy will help overcome barriers that exist outside of CMS. Reimbursement of traditional healing services will enhance the ability of IHS and Tribal facilities to provide culturally appropriate care that is responsive to community needs.
- Approve the outstanding 1115 waivers with provisions on reimbursement of traditional healing services.

Provide Resources to Indian Country to Combat the Opioid Crisis.

- Advance comprehensive tribal prevention, treatment, and recovery services and an establish continuum of care to address the opioid, fentanyl, and suicide crisis in Indian country.
- Increase funding for Tribal Opioid Response grants and allow these grants to be received through self-governance contracts and compacts.
- Provide tribal access and dedicated funding to the Alcohol and Substance Abuse Block grant; allow it to be received under 638 contracts and compacts.
- Provide Indian health care providers equal access to Medicaid services no matter what State they are in by authorizing them to bill Medicaid for a new set of Qualified Indian Provider Services.
- Support developing priorities that include evidence-based practices and culturally respectful practice-based evidence to support healing for tribal members from historical and intergenerational trauma.
- The Substance Abuse and Mental Health Services Administration (SAMHSA) should conduct Tribal consultation with Tribes on burdens of 42CFR Part 2 on IHS and tribal facilities and ensure tribal input on any changes to Part 2.

Support Work Focused on the Indigenous Determinants of Health.

- Adopt the Indigenous Determinants of Health as a guiding framework for pursuing health equity for Indigenous peoples.
- Support the AI/AN global leadership to ensure the rights of Indigenous Peoples are protected by:
 - providing a staff dedicated to technically assisting and guiding the WHO on conducting proper consultations and engagement with Indigenous Peoples; and
 - creating an Ingenious Fellows program to provide representation in key institutions at U.N. agencies.

Fully Fund IHS and the Urban Health Line Item.

- Provide funding to IHS and the Urban Indian Health Line. Specifically, appropriate \$965.3 million for the Urban Health line item in FY 2025, as part of an overall request of \$53.8 billion for the Indian Health Service.

Set the Federal Medical Assistance Percentage at 100% for UIO Services.

- Ensure that UIO services are eligible for 100% FMAP.

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INFRASTRUCTURE

BACKGROUND

Fund Tribal Priorities for Infrastructure.

Content provided by USET SPF.

More information available at: https://www.usetinc.org/wp-content/uploads/2023/12/Infrastructure-USET-SPF-One_pager-FINAL-11_30_23.pdf.

For generations, the federal government – despite abiding moral and legal trust and treaty obligations – has both chronically failed to invest in and support Tribal Nation infrastructure, as well as committed hostile acts against Tribal governments, leading to the shameful conditions we face across Indian Country today. While the United States faces crumbling infrastructure nationally, there are many in Indian Country who lack even basic running water and passable roads. Indeed, there are hundreds of billions of dollars in unmet infrastructure obligations across Indian Country to include housing, education, transportation, judicial, health care, communication, among other forms that directly affect the safety, health, and wellness of Tribal citizens. In its 2018 Broken Promises report, the U.S. Commission on Civil Rights found that, “the funding of the federal trust responsibility and obligations remains “grossly inadequate” and a “barely perceptible and decreasing percentage of agency budgets.”

Under recently enacted federal infrastructure packages, including the Inflation Reduction Act (IRA) and the Infrastructure Investment and Jobs Act, Tribal Nations will now have access to over \$14 billion in direct funding and are eligible for billions more in funding through competitive grants, loans, loan guarantees, tax credits and contracts. With proper implementation, funding from these recent laws could be transformative for Tribal Nations and our infrastructure. However, it is critically important that Tribal Nations have awareness and access to these resources, and that our interests are represented as funding and reporting mechanisms are implemented.

In addition, the implementation of these new laws must be reflective of trust and treaty obligations to Tribal Nations, especially as these laws stand to spur infrastructure development across the United States, much of which will occur on our ancestral homelands, but outside currently held territories. Tribal Nations, along with our cultural preservation and natural resources departments, need to be prepared for the considerable increase in infrastructure projects requiring cultural and environmental review. While these reviews are legally mandated, Tribal Nations lack access to sufficient funding.

Address the Housing Need in Native Communities.

Content provided by NAIHC.

Tribal housing funding has remained stagnant for decades and has failed to keep pace with inflation, as the cost of housing soars on and off tribal lands. The Department of Housing and Urban Development (HUD) budget grew 250% in the past 20 years, going from \$26 billion in 2001 to \$65 billion today. During that time, tribal funds only increased 28%, from \$600 million to \$772 million. Current funding only builds 2,000 units per year while a 2017 HUD report found that 68,000 units are needed in Indian Country. Tribal Nations are building as many new units as possible, maxing out new housing construction grants each year. Autonomy over Indian Housing Block Grant (IHBG) funds allows Tribal Nations to leverage private investments alongside federal dollars to create more affordable housing for tribal citizens and families. However, higher construction costs and land acquisition remains the largest hurdle for Tribal Nations.

Remove Barriers to Telecommunications Development (including Broadband Access) and Promote Tribal Sovereignty Over Data.

Content provided by NCAI.

Tribal communities still lag behind the rest of the United States in access to radio, wireless, and broadband services. This disparity underscores the critical opportunity to ensure the advancement of telecommunications access throughout Indian Country. Funding is needed throughout Indian Country for rapid deployment, adoption,

affordability, and access to broadband internet. According to a 2019 Federal Communications Commission (FCC) report, individuals residing on tribal lands are nearly 4.5 times as likely to lack any terrestrial broadband internet access as those on non-tribal lands. Even when examining fixed broadband deployment at speeds lower than “broadband,” only six percent of homes on non-tribal lands lack coverage by any wired provider, while 25 percent of homes on tribal lands have no wired option for 10/1 Mbps service. Societal and market behaviors are changing rapidly and everyday tasks and activities are being driven more online. An immediate robust investment into tribal communities is critical to ensure that tribal communities are not entirely left behind as our education, healthcare, government services, and commerce undergo years of changes in a short time.

Invest in Broadband Infrastructure at TCUs.

Content provided by AIHEC.

The COVID-19 pandemic exacerbated the digital divide and underscored the lack of broadband access across Indian Country. To address these deficiencies that could leave Indian Country – and AI/AN students – behind the rest of the U.S. for generations, Congress must act to establish a permanent TCU Broadband Service Fund within the USDA-Rural Utilities Service. An annual \$40 million set-aside for TCUs, which are 1994 Land-grant institutions served by USDA, would help cover rapidly increasing network, connectivity, and equipment costs, maintenance, infrastructure expansion, and IT staffing. Congress recognized this need during the pandemic and attempted to provide support to TCUs by including them in the new NTIA Tribal Connectivity Broadband program. Unfortunately, due to the design and focus of the new program TCUs have largely been excluded from receiving funding.

TRIBAL LEADER TALKING POINTS

Fund Tribal Priorities for Infrastructure.

- Tribal priorities for infrastructure funding include:
 - Access to IRA and other infrastructure funding, which necessarily includes implementing programs 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; and
 - Protection for Tribal sovereignty, sacred/cultural sites, and public health.

Address the Housing Need in Native Communities.

- Permanently reauthorize the Native American Housing Assistance and Self-Determination Act (NAHASDA).
- Allow Tribal Nations access to the Section 8 Voucher Program.
- Establish Tribal set-up for Low Income Housing Tax Credit Program.
- Expand access to USDA Section 502 Single Family Housing Loan Program & VA Native American Direct Loan Program.
- Utilize Native CDFIs to expand access to USDA Section 502 Single Family Housing Loans & VA Native American Direct Loans on trust lands.
- Pass the Native American Rural Home-ownership Improvement Act, S. 1941 Utilizes Native CDFIs to deploy USDA Section 502 Single Family Home Loan funds to Native Americans.
- Pass the VA Native American Direct Loan Improvement Act, S. 185 Increases the number of home loans to Native Veterans returning home.
- Support the Tribal Trust Land Homeownership Act, S. 70 Improves the BIA land title procedures for trust land home loans on trust lands.

Remove Barriers to Telecommunications Development (including Broadband Access) and Promote Tribal Sovereignty Over Data.

- Promote data sovereignty. There is an increased need for accurate data regarding broadband connectivity and infrastructure on Tribal Lands. Poor data collection and bias has led to a severe lack of reliable data and broadband mapping for Tribal Lands and surrounding areas. While the Federal

government should take action to develop baseline measurements for gathering meaningful and accurate broadband data in Tribal Nations, the emphasis should be on empowering and funding Tribal Nations to develop and collect their own broadband data.

- Recognize Tribal Sovereignty over Spectrum. The National Telecommunications and Information Administration (NTIA) recently released its National Spectrum Strategy, wherein Tribal Nations were identified as a major stakeholder in issues related to national spectrum management. We must take this further, and recognize Tribal Nations’ inherent sovereignty over this vital natural resource that exists on and around Tribal Lands. Spectrum frequencies are finite and as the internet and technology continues to permeate everyday life, these frequencies will be obtained and held onto by industry because of its intrinsic value. The federal government, as trustee to Tribal Nations, must also understand and address the historical and present-day barriers that prevent tribal participation in spectrum auctions and the inability of Tribal Nations to access spectrum through secondary market mechanisms. Tribal Nations should have the first rights to spectrum that exists over their lands.
- Remove barriers for Tribal Nation entry into the Broadband Equity Access and Deployment (BEAD) Program at NTIA. The administration should work in tandem with NTIA should waive and remove barriers to entry for Tribal Nations, such as funding match and letter of credit requirements, thus ensuring that every Tribal Nation has access to BEAD funding
- Extend the Affordable Connectivity Program at the Federal Communications Commission. This program is already helping over 21 million households save over \$500 million per month on their monthly internet bills. The program is also critical for the Administration’s high-speed internet deployment programs for rural, remote, and tribal communities. Without this funding, tens of millions of people would lose this benefit and would no longer be able to afford high-speed internet service without sacrificing other necessities. The Administration must advocate strongly for additional funds to strengthen the program by extending free and discounted high-speed internet for eligible households through December 2024 or later.
- Make the National Tribal Broadband Connectivity Grant Program at NTIA a permanent program funded at \$1 billion dollars annually, and should be expanded to include other programmatic funding such as feasibility, affordability, and funding to help maintain and update existing broadband networks in Indian Country.

Invest in Broadband Infrastructure at TCUs.

- Establish a permanent TCU Broadband Service Fund within the USDA-Rural Utilities Service.

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NATIVE LANGUAGES

BACKGROUND

Support Native Language Revitalization Among Native Youth.

Content provided by NIEA.

Native languages are fundamental to Tribal nations, histories, cultures, and traditions and Native language instruction in educational and community settings is crucial to Native language revitalization, and Tribal Nations and schools serving Native students across the United States have identified Native language instruction as a priority for students and community members. Data shows us that there is a direct link between cultural identity and the cognitive success of Native students. Due to over a century of assimilative policy, followed by unprecedented loss of Native elders during the COVID-19 pandemic, many of our languages face extinction today. Tribal Nations and schools often lack the capacity and educational resources to develop comprehensive language instruction curriculums on their own. As a result, tribal communities frequently must turn to federal resources and partner with non-profit organizations to develop Native language materials, including curricula, dictionaries, technological apps, and other resources to promote the learning and transmission of Native languages, to revitalize Native languages for Native peoples, and communities. The federal government has a unique obligation to supporting language revitalization in Native communities, not just due to the federal trust and treaty responsibility, but also due to the active role the federal government historically played in language loss through its assimilative policies.

Develop Plan to Support and Fund Native Language Curriculum and Preservation in Higher Education.

Content provided by AIHEC.

Language is one of the most fundamental expressions of culture. The emergency situation of Native Languages is well known and the federal Executive Branch has copious data on the dire state of myriad heritage languages, and is aware that there is a need:

1. to strengthen and support the ability of Native Peoples to effectively engage in Native Languages revitalization;
2. to highlight the importance of Native Languages and take critical steps to identify federal action that could be taken to support, revitalize, and protect Native Languages;
3. to create an interagency working group to help coordinate efforts to support Native Languages; and
4. to empower a board of advisors to engage leaders on Native Languages, which are foundational to the continuum of Native sovereignties and to the education of future generations.

Schools and programs that utilize Native language medium and immersion as the medium of instruction are critical to student success and language preservation in Native communities. Language immersion provides a foundation to build academic and cognitive skills for future success in a positive learning environment where Native students can thrive. Due to limited funding and resources, some Tribal Nations and communities lack the resources to replicate and expand successful models for language medium and immersion and reclamation.

TCUs are aggressively working to preserve and sustain Tribal languages and cultures; and in many cases, they are the only academic institutions in the world where specific Native languages are taught. Together, the TCUs are engaged in an extensive Native languages research and strategic planning effort funded by private foundations.

TRIBAL LEADER TALKING POINTS

Support Native Language Revitalization Among Native Youth.

- Use the 10-Year Native Language plan as a jumping off point for legislative action to create a comprehensive generational approach to revitalizing Native Languages.
- Address language and culture loss in any future reports regarding the Boarding School Initiative;
- Urge the Department of Education to publish the "Report on Native American Language Medium


Education”.

- Increase support and access to resources for Indigenous language learners
- Align Native Language programs across the government to meet the needs of tribal communities, including:
 - Phase out of all grant-matching requirements;
 - Lower and streamline reporting requirements;
 - Blueprint for joint economic development and language work;
 - Grants for language program planning and implementation;
 - Support increases for capacity building and technical assistance support;
 - Funding for fluent speakers and elders to be directly engaged with language programs; and
 - Unequivocal support for data and intellectual sovereignty for tribal Native Language work.
- Ensure adequate funding for all Native languages programs.
- Identification of current and potential research areas and how the Federal Government can support tribal based research—with strategic federal funding, we can phase out the amount of outsiders/non-Natives who have to do the work for our communities due to funding and education restrictions. Support funding for the development of Native researchers, linguists, teachers, speech therapists and digitize older recordings and platform them to showcase or house the materials to use for learning/teaching.
- Establish a \$40 million annual fund within the BIE or Department of Education, beginning in FY2024, for TCU Native Languages research and programs.
- Simplify the process to integrate Native Languages into nationwide educational settings in the following ways:
 - Early Childhood Education and all Pre-age 8 schooling should allow for English literacy flexibilities for Native children to allow for focus on development of Native language skills;
 - Technical assistance to support bilingual literacy assessments for children learning a Native language alongside English;
 - Combination Teaching Assistants who are Native speakers with certified teachers allows for quality education alongside culturally and linguistically relevant education;
 - Support of NL liaisons and tribal liaisons in public school settings;
 - Technical assistance for public schools with large Native populations;
 - Afterschool, summer school programs in Native languages for all ages; and
 - Support NLs as fulfillment of foreign language/ world language requirements in states.

Develop Plan to Support and Fund Native Language Curriculum and Preservation in Higher Education.

- Work with Tribal Colleges and Universities and other Tribal language experts to develop a coordinated (government-wide) plan for:
 - Aligning federal Native languages support to the unique needs of Native languages programs;
 - Assisting Native languages programs in prioritizing and implementing activities, including sequential pathways, curriculum development, and resource sharing;
 - Ensuring adequate funding for all Native languages programs;
 - Providing targeted funding for Native languages sequential program and assessment; and
 - Establishing a \$40 million annual fund within the BIE or Department of Education, beginning in FY 24, for TCU Native Languages research and programs.

POINTS OF CONTACT

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PUBLIC SAFETY AND JUSTICE

BACKGROUND

Recognize Full Tribal Criminal Jurisdiction.

Content provided by NCAI.

Tribal communities continue to be plagued by the highest crime victimization rates in the country. A recent study by the National Institute of Justice found that more than 80 percent of AI/AN people will be a victim of intimate partner violence, sexual violence, or stalking in their lifetime. The study also found that 90 percent of these victims were victimized by a non-Indian perpetrator. The complicated jurisdictional framework at play in Indian Country, which limits tribal authority to prosecute non-Indians, continues to undermine safety for victims of violence in tribal communities. Tribal Nations are the only governments in America whose authority to protect their communities from domestic and sexual violence, child abuse, stalking, and trafficking is limited by federal law based on the political status/race of the defendant.

The Supreme Court's decision last year in *Oklahoma v. Castro-Huerta* overturned the long-held understanding that states do not have authority to prosecute non-Indians who commit crimes against Indians in Indian country. In that case, the Supreme Court held that "the Federal Government and the State have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country" which strikes against tribal sovereignty and jurisdiction to protect tribal citizens. The reality is that a number of Supreme Court decisions over the past 50 years—not just the *Castro-Huerta* decision—have made Indian Country less safe and now is the time to defend tribal sovereignty and restore full criminal jurisdiction so that Tribal Nations can protect their citizens and the people living within their borders.

Address Domestic Violence in Native Communities.

Content provided by NIWRC.

The Family Violence Prevention and Services Act (FVPSA) has been up for reauthorization since 2015. FVPSA is the only federal grant program solely dedicated to domestic violence shelter and supportive services and is the primary funding source for these services for Indian Tribes. The current FVPSA bills up for reauthorization (S. 1275/H.R. 2119) would provide support for shelters, coalitions, training and technical assistance centers, children's services, emergency response hotlines, and prevention initiatives. It would also increase the funding Tribes receive from 10% to 12.5%, in addition to providing funding for Tribal coalitions and codifying the Alaska Native Tribal Resource Center on Domestic Violence, the national Indian domestic violence hotline, and the Native Hawaiian Resource Center on Domestic Violence.

Ensure Funding for Victim Services.

Content provided by NIWRC.

The Victims of Crime Act (VOCA) is currently facing a proposed 40% (\$700 million) cut for FY24. A cut to VOCA would cause programs that serve millions of victims of crime throughout the country to close their doors, jeopardizing the safety and well-being of Native survivors and Tribal communities.

Implement the Not Invisible Act Commissions Recommendations.

Content provided by NIWRC.

On November 1, 2023, the Not Invisible Act Commission transmitted its report to address the crisis of Missing, Murdered, and Trafficked Indigenous Women to the U.S. Department of Justice (DOJ) and U.S. Department of the Interior (DOI). DOJ and DOI have 90 days to submit a written response to the report.

TRIBAL LEADER TALKING POINTS

Recognize Full Tribal Criminal Jurisdiction.

- Amend 18 U.S.C. § 1152 to expressly preempt state jurisdiction over non-Indian crime within Indian Country.
- Amend Pub.L. 83-280 to ensure that states, other than those six states with mandatory criminal jurisdiction under 18 U.S.C. 1162 (a), have no criminal jurisdiction in Indian country unless they have first obtained tribal consent to that state criminal jurisdiction.
- Amend the Indian Civil Rights Act (ICRA) to relax restrictions regarding tribal authority over non-Indian criminal activity and to remove sentencing limitations.
- Appoint an Associate Deputy Attorney General in the U.S. Department of Justice to work exclusively on Indian law and policy issues.

Address Domestic Violence in Native Communities.

- Reauthorize the Family Violence Prevention and Services Act (FVPSA) with improvements that would increase funding for Tribal Nations, provide funding for Tribal coalitions, and permanently fund the Alaska Native Tribal Resource Center on Domestic Violence, national Indian domestic violence hotline, and the Native Hawaiian Resource Center on Domestic Violence.

Ensure Funding for Victim Services.

- Establish a permanent set-aside under for Tribal Nations within the Crime Victims Fund to ensure that victims of crime in Indian Country receive assistance regardless wherever they live.
- Maintain adequate funding for VOCA in the FY24 Appropriations budget without cutting other critical Department of Justice grant programs that provide vital services and promote safety in Tribal communities and throughout the nation.

Implement the Not Invisible Act Commissions Recommendations.

- Respond to and implement the Not Invisible Act Commission recommendations in a timely manner.

POINTS OF CONTACT

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TRIBAL HOMELANDS

BACKGROUND

Improve Tribal Land Acquisition and Land-into-Trust Process.

Content provided by USET SPF.

More information available at: https://www.usetinc.org/wp-content/uploads/2023/12/PILT-USET-SPF-One_pager-FINAL11_30_23.pdf.

The restoration of Tribal homelands remains a top priority for Tribal Nations. We continue to work to reacquire our homelands, which are fundamental to our existence as sovereign governments and our ability to thrive as vibrant, healthy, self-sufficient communities. The federal government's objective in the trust responsibility and obligations to our Nations must be to support healthy and sustainable self-determining Tribal governments, which fundamentally includes the restoration of lands to all federally-recognized Tribal Nations, as well as the legal defense of these land acquisitions.

Since 1977, the Department of the Interior (DOI) has issued billions in Payments in Lieu of Taxes (PILT) to local governments that help offset losses in property taxes due to the existence of nontaxable federal lands within their boundaries. However, while PILT payments are made for lands administered by the Bureau of Land Management, the National Park Service, the U.S. Fish and Wildlife Service, and the U.S. Forest Service (part of the U.S. Department of Agriculture) and for Federal water projects and some military installations, lands held in trust for Tribal Nations are not currently eligible. PILT (or a PILT-like mechanism) for lands put into trust could remove barriers to the restoration of Tribal homelands while also easing the perceived burdens of and impacts to local government as a result of lost tax revenue.

TRIBAL LEADER TALKING POINTS

Improve Tribal Land Acquisition and Land-into-Trust Process.


- Secure the federal funding required for DOI to fulfill its responsibilities in the Fee to Trust process, including staffing infrastructure and any funding for PILT to state and local governments. This means providing a full accounting of its financial needs to the Office of Management and Budget and Congress. We further request DOI's support in making Tribal trust land acquisition eligible for PILT in order to facilitate the expeditious and continued restoration of Tribal homelands.
- Urge parity for all federally recognized Tribal Nations within the land-into-trust process through the Administrations active and continued support for a fix to the Supreme Court's 2009 decision in *Carcieri v. Salazar*. We call upon DOI to work with Congress to enact legislation that: (1) reaffirms the status of current trust lands; and (2) confirms that the Secretary has authority to take land into trust for all federally recognized Tribal Nations.

POINTS OF CONTACT



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	<p>National Congress of American Indians (NCAI) Ryan Seelau, Director of Policy and Legal rseelau@ncai.org</p>

TRIBAL SOVEREIGNTY

TRUST AND TREATY RELATIONSHIP

BACKGROUND

Do Not Apply Laws of General Applicability Created for the Public to Tribal Nations.

Content provided by USET SPF.

More information available at: https://www.usetinc.org/wp-content/uploads/2023/12/LGA-USET-SPF-One_pager-FINAL-11_30_23.pdf.

Tribal Nations' status as inherently sovereign political entities and our unique relationship with the United States permits the United States to treat us differently from others and for Tribal Nations to enact and apply our own legal standards for our people and lands. Thus, the federal government must not enact or apply laws and requirements of general applicability created for the public to Tribal Nations.

Concerns were raised by recent efforts by the Biden Administration to condition receipt of federal funds on Tribal Nations' compliance with anti-discrimination laws and other instances of the application of 'laws of general applicability' to Tribal Nations. While we understand and appreciate this Administration's focus on racial equity and justice, we underscore that Tribal Nations have inherent sovereignty to set our own anti-discrimination laws under our own jurisdiction, and general federal laws should not be applied to us. Additionally, with regard to different treatment for Native people, the relationship between Tribal Nations and the United States is not race-based, but rather a political, diplomatic relationship. Compliance with certain laws of general applicability, including non-discrimination laws, that have never been applied to Tribal Nations due to our unique sovereign, political status as a condition of receipt of federal funds is completely inappropriate.

The following are examples of the Biden Administration taking actions that either attempted to apply or created confusion regarding the applicability to Tribal Nations of laws and other requirements otherwise generally applicable to the public:

- The Administration issued standards and regulations requiring some business entities and health care facilities to comply with COVID-19 vaccine and other COVID-19 mandates for employees and health care workers and to create exemptions to accommodate medical and religious objections under the Americans with Disabilities Act and Title VII of the Civil Rights Act. 86 Fed. Reg. 61,402 (Nov. 5, 2021) (Occupational Safety and Health Administration Emergency Temporary Standard); 86 Fed. Reg. 61,555 (Nov. 5, 2021) (Centers for Medicare & Medicaid Services Interim Final Rule). Tribal Nations' business entities and health care facilities were not exempted from these obligations, and Administration officials said that at least some of these obligations applied to Tribal Nations in some circumstances.
- The Administration required that, in order to receive certain COVID-19 funding, Tribal Nations had to sign a form stating they agreed to comply with applicable federal statutes, regulations, and executive orders and listing Title VI of the Civil Rights Act as a statute applicable to the award. Section 9, OMB Approved Form No. 1505-0271.
- The Department of Health and Human Services Office of Civil Rights is currently consulting with Tribal Nations on a rulemaking that would require grant recipients to comply with federal statutory nondiscrimination provisions.

Enact a Marshall Plan for Tribal Nations.

Content provided by USET SPF.

More information available at: https://www.usetinc.org/wp-content/uploads/2023/12/USET-SPF-Marshall-Plan-for-Tribal-Nations-Proposal-Summary-FINAL-4_20_23.pdf.

Tribal Nations are inherently sovereign political entities that have been recognized and acknowledged by the

United States through the U.S. Constitution, Treaties, federal statutes, and judiciary decisions by the Supreme Court. Through the exchange and taking of our lands and resources, the U.S. established solemn, legal agreements that established trust and treaty obligations to Tribal Nations and Native people. However, the U.S. has consistently failed to live up to these obligations—both by failing to deliver on the funding it owes to Tribal Nations in exchange for its resource takings, and by restricting Tribal Nations’ full exercise of our inherent sovereign governmental authorities.

What is a “Marshall Plan for Tribal Nations”? At the end of World War II, the U.S. was willing to make a substantial investment in a Marshall Plan for European nations for the purposes of nation rebuilding. As the U.S. begins to discuss similar aid to Ukraine, the concept of a Marshall Plan-like investment for Tribal Nations draws on the same restorative justice, political, and economic principles that underlay the European Marshall Plan. Further, the federal government’s trust and treaty obligations make it morally and legally bound to make such an investment. In developing and implementing a Marshall Plan for Tribal Nations, all branches of the U.S. federal government, including independent federal entities, authorities, and agencies, must:

- Recognize and take responsibility for trust and treaty obligations arising out of its permanent occupation of Tribal homelands and our massive cession of resources that built the foundation of today’s America; and
- Adopt a domestic diplomacy model that is based on mutual respect and recognizes the full exercise of Tribal Nations’ rights and authorities that inherently belong to us.

Issue an Executive Order Executive Order Affirming the United States of America’s Commitment to Treaties, Indian Sovereignty, Self-Determination, Self-Government, and Territorial Integrity.

Content provided by IGA and NCAI.

Tribal Nations are the original American sovereigns, and for thousands of years, Native sovereign nations were independent sovereign nations prior to the formation of the United States of America. When Europeans first landed on American shores, the Dutch, French, English and others sought out Native sovereign nations to enter into treaties defining colonial territory and boundaries and Tribal Nations reserved our sovereignty, self-determination, and our lands as permanent homelands.

When the United States of America was founded, it recognized the prior rights of Tribal Nations—under the Articles of Confederation, the Delaware, Six Nations Confederacy, Cherokee, Wyandot, and other nations entered into treaties with America on a Nation-to-Nation basis, guaranteeing Native territory, reserving self-determination and self-government; and after the Revolutionary War, the United States of America established the Constitution with the authority of “We, the People ... Excluding Indians Not Taxed”, which demonstrates the Constitution’s continued recognition of the original Nation-to-Nation relationship between the United States and Indian nations. In the U.S. Constitution, there are several provisions relating to Indian affairs:

- In the Supremacy Clause, prior Indian treaties were affirmed, recognizing Indian nation as sovereigns, and treaties, along with the Constitution and statutes, are the Supreme Law of the Land;
- In the Treaty Clause, the President with the advice and consent of the Senate, was empowered to enter into treaties;
- The President and Congress were vested with War powers, including the power to make peace;
- Congress was vested with power to regulate foreign commerce, interstate commerce, and “Commerce ... with the Indian Tribes;”
- In the Apportionment Clause, “Indians Not Taxed” were excluded from Apportionment of Congress and Direct Taxation; and
- In the 14th Amendment, the Citizenship Clause acknowledges that Tribal Nation citizens are primarily subject to the jurisdiction of Indian nations while the Apportionment Clause “Excluding Indians not Taxed” affirms the original understanding of the Constitution that Indian nations are prior sovereigns with authority over Native citizens and territory.

In total, more than 375 treaties with Indian nations were ratified on a Nation-to-Nation relationship based on

mutual consent, securing original inherent sovereignty, rights to self-determination and self-government, and territorial integrity and the Constitution of the United States vested with the President and Congress with authority to manage the U.S. Nation-to-Nation relations with Native peoples. Now is time for the U.S. to reaffirm its commitment to Tribal Nations and tribal sovereignty and a Presidential Executive Order would be a significant and meaningful step in accomplishing that goal.

TRIBAL LEADER TALKING POINTS

Do Not Apply Laws of General Applicability Created for the Public to Tribal Nations.

- Ensure that all federal department and agency actions are consistent with the President's expectation that Tribal sovereignty is respected to the fullest extent. We call upon the Biden Administration to begin its consideration of whether to apply any laws and other requirements that are generally applicable to the public to Tribal Nations by first assuming they do not and should not apply to Tribal Nations.

Enact a Marshall Plan for Tribal Nations.

- Make a significant one-time payment (in addition to existing trust and treaty obligations to provide full and mandatory funding to Tribal Nations) on the U.S.'s debt to Tribal Nations to bring us up to a baseline of economic and social stability. As an example, in FY 2021 the U.S. appropriated just \$25.2 billion to Tribal Nations, while the U.S. invested at least 1-2% of Gross Domestic Product in just the first year of the European Marshall Plan. In total, the U.S. spent \$43 billion in historical dollars on the Plan, which amounts to over \$750 billion in today's dollars.
- Establish a Commission comprised of Tribal Nations, federal partners, and others to determine funding distribution methodologies.
- Establish a cabinet-level U.S. Department of Tribal Nation Relations designated to carry out the diplomatic trust relationship with Tribal Nations and streamline and facilitate the delivery of federal funds.
- Evolve consultation to consent and standardize and codify consultation requirements on a Nation-to-Nation, Leader-to-Leader basis.
- Reforms to how federal funding is allocated and utilized by Tribal Nations, including:
 - Move funding for all Tribal Nation programs from discretionary to the mandatory side of the federal budget;
 - Eliminate grantmaking and competitive award models, program reporting requirements, and limitations on funding utilization;
 - Change the federal award process so that Tribal Nations receive funds directly;
 - Expand Self-Determination and Self-Governance authorities across the entirety of the federal government; and
 - Expand 477 Program capabilities across all federal programs to empower Tribal Nations to consolidate federal funds into a single plan with a single reporting requirement.

Issue an Executive Order Executive Order Affirming the United States of America's Commitment to Treaties, Indian Sovereignty, Self-Determination, Self-Government, and Territorial Integrity.

- Call on the President of the United States to issue an Executive Order reaffirming Native sovereign nations, sovereignty and self-determination with the following elements:
 - Affirmation of the Nation-to-Nation relations with Native sovereign nations as reflected in the U.S. Constitution, treaties, statutes, agreements and Executive Orders;
 - Affirmation of the United States' recognition of Native sovereign nations' permanent Indian country homelands;
 - Establishment of a permanent White House Council with Native Nations co-chaired by the Vice

President and the Secretary of the Interior to work with Native sovereign nations in furtherance of the Nation-to-Nation relationship based on mutual consent, and concerning Indian self-determination, self-government, treaties, statutes, Executive Orders and Agreements, Indian Country, and Indian lands, tribal jurisdiction, and tribal economic self-sufficiency; and

- Preemption of contrary state taxation, regulation, and jurisdiction that would interfere with Indian sovereignty, self-government, treaty rights and the Trust Responsibility.

POINTS OF CONTACT



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VETERANS

BACKGROUND

Background on Veterans Health

Consult with Tribal Nations on Veterans Health Issues to Improve Service Delivery.

Content provided by NIHB.

Since 2012, the U.S. Department of Veterans Affairs (VA) and the Indian Health Service (IHS) have implemented a reimbursement agreement for the VA to reimburse IHS and Tribal health facilities for direct care provided to American Indian and Alaska Native Veterans. This venture has proven to be highly successful by improving access to care for Veterans with services provided at IHS and Tribal health facilities. The VA is currently renegotiating three separate reimbursement agreement templates for direct care provided to American Indian and Alaska Native Veterans at Indian healthcare facilities.

These templates are critical for Indian Country as they allow IHS and the VA to coordinate payment and ensure we continue to have an increased focus on timely access to health care services for AI/AN Veterans. Tribal leaders are expressing concerns over the current templates such as reimbursement rates for prescription medication and the ability to reimburse for travel expenses incurred when seeking care. Often, our veterans travel hundreds of miles to receive care at IHS facilities when they cannot access care at a VA facility.

Another challenge facing our veterans is the distance it takes to reach health care facilities operated by the VA. This is especially true for American Indians and Alaska Natives living in Indian country, which is often a rural setting. Veterans residing in rural areas, especially in Indian Country, don't always have the same access to VA health care as those in more suburban and urban areas.

Address Homelessness Among the Native Veteran Population.

Content provided by NCAI.

American Indians and Alaska Natives (AI/AN) have served in the United States Armed Forces at a greater number per capita than any other ethnic group in the nation. Native veterans have never wavered and always stepped forward to fight to protect the legacy of Native peoples through serving as members of the armed forces. Native veterans have shown exceptional valor and heroism on battlefields from the American Revolution to Iraq and Afghanistan. Native American service members are younger as a cohort than all other service members, serve at a higher rate than other ethnic groups, and have a higher concentration of female service members. It is unfortunate that despite their distinguished service, AI/AN veterans have lower incomes, lower educational attainment, and higher employment than veterans of other races. They also are more likely to lack health insurance, and to have a disability, service-connected or otherwise, than veterans of other races. And when it comes to housing—a fundamental human right—there remains a crisis in our communities and it is hitting Native veterans hardest. Despite their service to our country, they face homelessness and housing insecurity at alarming rates, nearly ten times their representation in the veteran population. This is unacceptable for any population, but is downright disgraceful for the men and women who have served our country in the military and now is the time to take action.

TRIBAL LEADER TALKING POINTS

Consult with Tribal Nations on Veterans Health Issues to Improve Service Delivery.

- Consult with Tribal Nations when determining new VA facility locations. This ensures Tribal Nations maintain authority and control over how health care is carried out in their communities. Tribal representation and consultation are essential in advisory committees, planning bodies, and governance functions.
- Engage in tribal consultation and collaborate with Indian Health Services, Tribe Health, and Urban

Indian Health facilities to identify ways to expand Culturally Informed Services at VA facilities.

- Continue to engage, evaluate, and support Tribal Veterans Treatment Courts (VTC) nationwide, including engaging in Tribal nations about how to continue to provide services in a culturally competent manner.
- Address data collection on suicide among AI/AN Veterans, which the VA acknowledges is a nation health crisis, but also omits suicide data each year specific to AI/AN Veterans.
- As negotiations continue on the VA-IHS MOU, Tribal Nations must be consulted to ensure that Indian Country is included in the decision-making process and Tribal sovereignty is recognized. We ask that the Administration support and hold the VA accountable for engaging in meaningful tribal consultation.

Address Homelessness Among the Native Veteran Population.

- Permanently reauthorize Tribal HUD-VA Supportive Housing (Tribal HUD-VASH) program and expand it to all Native veterans living on tribal lands—this program has been a nationwide success because it combines rental assistance, case management, and clinical services for at-risk and homeless veterans.
- Permanently reauthorize the Native American Housing Assistance and Self-Determination Act (NAHASDA).
- Pass the VA Native American Direct Loan Improvement (NADL) Act, which, among other things, will modify the VA NADL Program by making it more accessible to Native American veterans living on trust land to access financing for housing as well as education and housing counseling for Native American veterans looking to qualify for mortgage financing.

POINTS OF CONTACT



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Department of Agriculture



Secretary Thomas Vilsack

Thomas J. Vilsack was confirmed as the 32nd United States Secretary of Agriculture on Feb. 23, 2021, by the U.S. Senate. He was nominated by President Joe Biden to return to the role where he served for eight years under President Barack Obama. Vilsack is focusing on innovating the food system through fairer markets and rebuilding while fighting climate change.

Native Political Appointee

Director of the Office of Tribal Relations
Heather Dawn Thompson
Cheyenne River Sioux Tribe

Department of Commerce



Secretary Gina Raimondo

Gina M. Raimondo serves as the 40th U.S. Secretary of Commerce and was sworn in by Vice President Kamala Harris on March 3, 2021. As Secretary of Commerce, she is focused on good-paying jobs, empowering entrepreneurs to innovate and grow, and helping American workers and businesses compete.

Tribal Liaisons

Economic Development Administration
Tribal Engagement Coordinator
Carolee Wenderoth
Salish Kootenai

Census Bureau

Dee Alexander
Cheyenne Arapahoe Tribe

Department of Defense



Secretary Lloyd J. Austin, III

Lloyd James Austin III was sworn in as the 28th Secretary of Defense on January 22, 2021. Mr. Austin is the principal assistant to the President in all matters relating to the Department of Defense and serves on the National Security Council. Mr. Austin was born in Mobile, Alabama, and raised in Thomasville, Georgia. He graduated from the United States Military Academy with a Bachelor of Science degree and a commission in the Infantry. He holds a Master of Arts degree in counselor education from Auburn University, and a Master of Business Management from Webster University. He is a graduate of the Infantry Officer Basic and Advanced courses, the Army Command and General Staff College, and the Army War College.

EXECUTIVE BRANCH DIRECTORY

Department of Energy



Secretary Jennifer Granholm

Jennifer M. Granholm was sworn in as the 16th Secretary of Energy on February 25, 2021. Secretary Granholm is leading the Department in helping America achieve President Biden’s goal of net-zero carbon emissions by 2050 by advancing cutting-edge clean energy technologies, creating millions of good-paying union clean energy jobs, and building an equitable clean energy future.

Biden-Harris Native American Appointee

Office of Indian Energy Programs & Policy

Wahleah Jones
Navajo Nation

Department of Education



Secretary Miguel Cardona

Dr. Miguel A. Cardona was sworn in as the 12th Secretary of Education on March 2nd, 2021. He became the first Latino Secretary of Education in history when he was sworn in on March 1, 2021. He previously was the Education Commissioner of Connecticut, where he also was the first Latino Education Commissioner. He was born in Meriden, Connecticut, located halfway between the regional cities of New Haven and Hartford.

Biden-Harris Native American Appointee

Office of Indian Education

Julian Guerrero, Jr.
Comanche and Kiowa

Department of Health & Human Services



Secretary Xavier Becerra

Xavier Becerra is the 25th Secretary of the Department of Health and Human Services and the first Latino to hold the office in the history of the United States. As Secretary, he will carry out President Biden’s vision to build a healthy America, and his work will focus on ensuring that all Americans have health security and access to healthcare.

Biden-Harris Native American Appointee

Deputy Director for Intergovernmental Affairs

Stacey Ecoffey
Oglala Sioux Tribe

Department of Housing & Urban Development



Secretary Marcia Fudge

Secretary Fudge is the 18th Secretary of the U.S. Department of Housing and Urban Development. Throughout her career, Secretary Fudge has worked to help low-income families, seniors, and communities across the country. Secretary Fudge served as U.S. Representative for the 11th Congressional District of Ohio from 2008 to March 9, 2021.

Biden-Harris Native American Appointee

Deputy Assistant Secretary for Native American Programs

Heidi Frechette
Menominee Tribe

Department of Justice



U.S. Attorney General Merrick Garland

Attorney General Garland was sworn in as the 86th Attorney General of the United States on March 11, 2021. As the nation's chief law enforcement officer, he leads the Justice Department's 115,000 employees. Under his leadership, the Department of Justice is dedicated to upholding the rule of law, keeping our country safe, and protecting the civil rights of all Americans.

Biden-Harris Native American Appointee

Director, Office of Tribal Justice

Tracy Toulou
Colville Confederated Tribes

Department of the Interior



Secretary Deb Haaland

Secretary Deb Haaland is the first Native American to serve as this position. She is a member of the Pueblo of Laguna and a 35th generation New Mexican and is now the first Native American to become cabinet secretary in U.S. history. She was first elected to the U.S. House of Representatives in the 116th and 117th Congresses prior to becoming Secretary.

Biden-Harris Native American Appointee

Assistant Secretary of Indian Affairs

Bryan Newland
Bay Mills Indian Community

EXECUTIVE BRANCH DIRECTORY

Department of Labor



Acting Secretary Julie A. Su

Julie Su became Acting Secretary of Labor on March 11, 2023. She was previously confirmed by the Senate to serve as the deputy secretary of labor on July 13, 2021. As deputy secretary, she served as the de-facto chief operating officer for the department, overseeing its workforce, managing its budget, and executing the priorities of the secretary of labor.

Biden-Harris Native American Appointee

Division Chief, Indian & Native American Programs

Nathaniel Coley

Department of Transportation



Secretary Pete Buttigieg

Pete Buttigieg took office in January 2021, as the 19th U.S. Secretary of Transportation. South Bend, "Mayor Pete" Buttigieg worked across the aisle to transform the city's future and improve residents' everyday lives. In 2019, Secretary Buttigieg launched an historic campaign for president, and in 2021 made history as the first openly gay person confirmed to serve in a president's Cabinet.

Biden-Harris Native American Appointee

Assistant Secretary, Tribal Government Affairs

Arlando Teller

Navajo Nation

Department of Treasury



Secretary Janet Yellen

On January 26, 2021, Janet Yellen was sworn in as the 78th Secretary of the Treasury of the United States. An economist by training, she took office after almost fifty years in academia and public service. She is the first person in American history to have led the White House Council of Economic Advisors, the Federal Reserve, and the Treasury Department.

Biden-Harris Native American Appointee

U.S. Treasurer

Chief Lynn Malerba

Department of Treasury



Treasurer Lynn Malerba

Chief Mutáwi Mutáhash (Many Hearts) Marilynn “Lynn” Malerba became the 18th Chief of the Mohegan Tribe on August 15, 2010 and is the first female Chief in the Tribe’s modern history. The position is a lifetime appointment made by the Tribe’s Council of Elders. Prior to becoming Chief, she served as Chairwoman of the Tribal Council, and served in Tribal Government as Executive Director of Health and Human Services. Preceding her work for the Mohegan Tribe, Malerba had a career as a registered nurse, ultimately as the Director of Cardiology and Pulmonary Services at Lawrence + Memorial Hospital. She was awarded an honorary doctoral degree in science from Eastern Connecticut State University and an honorary doctoral degree in humane letters from the University of St. Joseph in West Hartford, Connecticut. Malerba earned a Doctor of Nursing Practice at Yale University and was named a Jonas Scholar, a master’s degree in public administration from the University of Connecticut, and a Bachelor of Science in Nursing from the College of St. Joseph.

Department of Veterans Affairs



Secretary Denis McDonough

Secretary McDonough was nominated to lead the Department of Veterans Affairs. He was confirmed by the Senate on February 18, 2021, and was sworn in the following day as the 11th Secretary of Veterans Affairs. He is committed to build and restore VA’s trust as the premier agency for ensuring the well-being of America’s veterans.

Biden-Harris Native American Appointee

Acting Director, Office of Tribal Government Relations

David “Clay” Ward
Choctaw Nation

Environmental Protection Agency



Administrator Michael Regan

Michael S. Regan was sworn in as the 16th Administrator of the EPA on March 11, 2021, becoming the first Black man and second person of color to lead the EPA. His work is guided by forming a consensus, fostering an open dialogue rooted in respect for science and the law, and an understanding that environmental protection and economic prosperity go hand in hand.

Tribal Liaison

Deputy Director at US Environmental Protection Agency (EPA) American Indian Environmental Office

Felicia Wright

Office of Management & Budget



Director Shalanda Young

Director Young served as Deputy Director and Acting Director for 12 months before being confirmed as Director by the Senate in a bipartisan 61-36 vote on March 25, 2022. Director Young is the 43rd Director and is the first Black woman to lead Office of Budget & Management.

Biden-Harris Native American Appointee

Tribal Advisor to Director

Elizabeth Carr

Sault Ste. Marie Tribe of Chippewa Indians



Elizabeth Carr

Liz Carr is the Tribal Advisor to the Director of OMB. Given the renewed focus on Tribal priorities and resulting increases in workload due to Tribal consultation requirements, she will facilitate coordination across all OMB components on Tribal issues. In her nearly-15-year career, Liz has provided expert analysis, advice and guidance to government leadership on policy, regulatory and legislative issues that have a significant and direct impact on Tribal governments. She is well versed in implementing Federal Executive Order 13175 Consultation and Coordination with Indian Tribal Governments and utilizes her experience in tribal affairs and intergovernmental relations to improve tribal and federal relations. Liz, a citizen of the Sault Ste Marie Tribe of Chippewa Indians began her career as an Impact Evaluator at the Administration for Native Americans at the U.S. Department of Health and Human Services in 2009, after her earning her M.S. in Kinesiology from the University of Michigan. She also holds a B.S in Athletic Training from Grand Valley State University.

Small Business Administration



Secretary Isabel Casillas Guzman

Secretary Guzman was sworn in as the 27th Administrator of the U.S. Small Business Administration on March 17, 2021. She serves as the voice for America's 32.5 million small businesses and innovative startups in President Joe Biden's Cabinet. Guzman focuses on revamping programs and services to address crucial challenges -- delivering hundreds of billions in relief to help millions of small businesses survive the pandemic.

Biden-Harris Native American Appointee

Office of Native American Affairs

Jackson S. Brossy

Navajo Nation

Domestic Policy Council



Elizabeth Reese

Elizabeth Reese is a citizen of the Nambé Pueblo and the Senior Policy Advisor for Native Affairs on the White House Domestic Policy Council. Elizabeth joined the council from her position as an assistant professor of law at Stanford University, where she was the first Native American to join the tenure-line faculty. Her articles on tribal law and policies have been published in the University of Chicago Law Review, the Stanford Law Review, and the New York Review.

White House Office of Intergovernmental Affairs



Rose Nimkiins Petoskey

Rose Nimkiins Petoskey is the Senior Advisor to the White House Office of Intergovernmental Affairs and Director of Tribal Affairs for the Biden-Harris Administration. She is a member of the Grand Traverse Band of Ottawa and Chippewa Indians, and joins the White House from her previous position as Senior Counselor to the Assistant Secretary - Indian Affairs at the Department of the Interior.

APPENDIX A: USET Letter to President Biden



USET

SOVEREIGNTY PROTECTION FUND

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Transmitted via email

November 2, 2023

President Joe Biden
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear President Biden,

On behalf of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write to extend our deep appreciation to you and your Administration for the revival of the White House Tribal Nations Summit (WHTNS), and to provide you with recommendations on the format and structure of the event happening later this year. As you stated in your 2023 [Proclamation on National Native American Heritage Month](#), Tribal Nations are “vital members of the overlapping system of governments in the United States.” Your Administration’s continued commitment to hosting the WHTNS represents an essential step toward realizing this and other principles of our diplomatic Nation-to-Nation, sovereign-to-sovereign relationship, but there are additional opportunities to design an event that conveys to Indian Country, the nation, and the world your recognition of our governmental status. With this in mind, we offer the following items for consideration and discussion, as the 2023 WHTNS continues to take shape.

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.

WHTNS Format Should Reflect Diplomatic Relationship

Over the course of the Administration (and during previous administrations), we have seen numerous White House engagements with visiting foreign and domestic dignitaries, including state dinners, meetings with governors and other state officials, and events focused on Congress and the Supreme Court. These events are an expression of respect and honor for those who have come to Washington, DC for an audience with the President. We ask that consideration be given to how the Summit could better incorporate some of the protocols, symbols, and traditions of U.S. diplomacy—domestic and foreign. For example, we suggest that the President host a state dinner (or dinners) for the heads of Tribal Nations – in much the same way he would host the head of government at the White House. Additionally, during a visit from heads of

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), 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), Mi'kmaq Nation (ME), 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 the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is Strength in Unity

government, the White House will display corresponding national or state flags as a form of respect for its visitors and in recognition of our governmental status. We envision a historic and powerful message sent to Tribal Nations from the Biden Administration with the display of our 574 respective flags across the White House lawn. Finally, the President should work toward achieving appropriate national media coverage, including holding a White House Press briefing, with the intent of raising the WHTNS' profile nationally. One of Indian Country's greatest ongoing challenges is a fundamental lack of awareness among broader U.S. society about the uniqueness, origins, and status of our Nation-to-Nation relationship. These rhetorical and visual reinforcements of our historic and ongoing diplomacy with the United States would serve to strengthen our education and advocacy efforts, especially considering that the WHTNS is typically held around Native American Heritage Month. Rather than focusing only on our heritage and history, this would emphasize our modern circumstances and our political interactions with the U.S. government, ultimately serving to improve this country's overall awareness, respect, and appreciation for our relationship.

Increase Substantive Value of Discussions

Since the WHTNS' inception, there have been efforts to ensure the Summit's agenda and corresponding discussions are valuable for Tribal leaders and federal officials alike. This includes ensuring that Cabinet-level officials are present to hear from Tribal Nations, provide decision-making power, and convey respect to Indian Country. However, this frequently results in the WHTNS feeling overly scripted and lacking authentic dialogue. Although it is important to have the highest levels of the federal government represented at the Summit, it is equally important that Tribal leaders have the opportunity for greater informal interaction with federal officials and to have our "tougher" questions and comments addressed along with those that highlight the Administration's priorities and successes. To that end, we join others in requesting a combined agenda – one that involves both opportunities for Cabinet and other officials to share the Administration's progress on delivering upon trust and treaty obligations, as well as less formal roundtable discussions that delve into a variety of issues and Tribal leader questions/comments. We further call for the establishment of a portal that allows for Tribal leader questions to be referred to appropriate agencies and answered timely during or following the WHTNS.

Presidential Meeting Should be more Broadly Representative of Indian Country

In addition to his appearance at the broader WHTNS, we are aware that a smaller group of Tribal leaders—approximately 12—has, in the past, been convened for a more intimate meeting with the President. While this group has been representative of each of the 12 Bureau of Indian Affairs regions, we note that it often seems as though this honor is extended to those Tribal leaders that are well-connected and not a more diverse cross-section of Indian Country. In pursuit of dialogue with the President that is more reflective of the unique circumstances and traditions across Indian Country, we recommend that the small meeting be reinstated, but that the number of Tribal leaders invited to this meeting be increased from one from each region to 3-4 from each region and that those selected vary each year. This would offer the President and the Administration a better sense of the rich diversity across regions and between Tribal Nations, as well as provide a more equitable approach to elevating the voices of each individual Tribal Nation.

Enlist the Assistance of Federal Advisory Committee Leadership

The high number of departmental and agency Tribal advisory committees and their Tribal leader representatives are an untapped resource in the execution of the WHTNS. Tribal leaders from these advisory committees could be called upon to moderate or serve on panels. A gathering of Tribal advisory committee leadership could also function as its own panel, presenting the annual work and priorities of Tribal representatives to these advisory committees. This would ensure greater coordination across agencies and between advisory committees in setting the broad policy priorities of the Administration.

Relationship with White House Council on Native American Affairs

Finally, the discussions held at WHTNS should help to inform the work of the White House Council on Native American Affairs (WHCNAA) throughout the subsequent year, with WHCNAA serving as a coordinating and oversight body for consistent Tribal consultation (with a movement toward consent) and policymaking across the federal government. However, this requires the dedication of additional resources to the WHCNAA's work. Presently, and throughout its short history, WHCNAA has operated with virtually no dedicated staffing or financial resources. Traditionally, the work of the Council has been coordinated by an executive director on detail from the Department of the Interior (DOI). And under the Executive Order establishing the Council, DOI "shall provide funding and administrative support for the Council to the extent permitted by law and within existing appropriations." In practice, this has resulted in a lack of substantive support for the work of the body, along with a restricting of the WHCNAA's scope and ability to provide meaningful contact between the Cabinet and Indian Country.

USET SPF envisions a WHCNAA that engages in transformative policymaking, including working with the Office of Management and Budget to produce a more detailed and accurate crosscut of federal funding delivered to Indian Country annually as a tool in measuring the effectiveness of the delivery of financial obligations to Tribal Nations. This cannot be accomplished without direct and dedicated funding for the WHCNAA. Given the potential for WHCNAA to play a significant role in advancing the delivery of the federal government's delivery of trust and treaty obligations, as well as our diplomatic relationship, we continue to urge this Administration to designate a dedicated funding stream for WHCNAA—through the President's Budget Request or other means. It is our belief that this will allow the WHCNAA's work to be more substantive, productive, and meaningful for our evolving U.S.-Tribal Nation relationship.

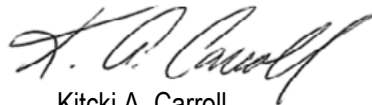
Conclusion

We appreciate your attention to and consideration of these requests. The WHTNS has the potential to assist in the creation and facilitation of necessary, lasting change in U.S.-Tribal relations—including in this country's approach to diplomatic relations with Tribal Nations. It is our hope that under your leadership, the WHTNS will undergird and reinforce the respect that Indian Country deserves as sovereign nations that pre-date the United States. Please count USET SPF as a partner in your efforts to deliver upon the federal government's sacred trust responsibility and obligations to Tribal Nations. Should you have any questions or require additional information, please do not hesitate to contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at (615) 838-5906 or by e-mail at lmalerba@usetinc.org.

Sincerely,



Kirk Francis
President



Kitcki A. Carroll
Executive Director

APPENDIX B:

Proposed Executive Order on Nation-to-Nation Relations Between the United States and Native Sovereign Nations

EXECUTIVE ORDER ON NATION-TO-NATION RELATIONS BETWEEN THE UNITED STATES AND NATIVE SOVEREIGN NATIONS

By the authority vested in me by the Constitution, treaties and laws of the United States, and in order to respect Native American self-government, further the Indian Self-Determination Policy, honor treaty rights, promote nation-to-nation relations, and fulfill the United States' solemn trust responsibility to promote sustainable and prosperous Native American nations, I hereby order as follows:

Section 1. Policy. For thousands of years, Native American Peoples founded and maintained independent sovereign nations with democratic governing institutions; developed agriculture, with crops that now feed more than half the world; made advances in medicine, law and the arts; and built sustainable, prosperous and self-sufficient communities. Native Americans welcomed European settlers, entered treaties with European nations, and entered treaties with the newly formed United States of America. Under the U.S. Constitution, treaties with Native Nations are among the Supreme Law of the Land. American organic acts and treaties pledge the “utmost good faith” towards the Indians and pledge that Native lands and liberty will not be invaded.

For almost a century, the United States made 400 or more treaties with Native Sovereign Nations that pledged peace, friendship, and commerce. In treaties, agreements, statutes, and executive orders, America has recognized the Federal trust responsibility to promote the general welfare, self-determination, and self-government of Native American Nations, and to protect Native lands, waters, and other natural resources. Yet far too often America has failed to live up to that responsibility and to the binding treaties and agreements it has made to Native people, including by violating treaties with Native Nations, initiating wars, seizing Native lands, waters and natural resources, and suppressing Native self-government, languages, religions and cultures. All that was deeply wrong. America must today follow the path of peace and restorative justice.

America must engage with Native American Nations through nation-to-nation relations based upon fairness, justice and democracy pursuant to constitutional, treaty and statutory obligations. We must honor Native American self-determination, support Native economic self-sufficiency, and respect tribal self-government, treaty rights and the Federal trust responsibility.

Section 2. Definitions. For the purposes of this order, “Native Sovereign Nation” or “NSN” means any federally recognized Indian Tribe, Band, or Nation.

Section 3. Fundamental Principles.

- (a) Native Sovereignty. Native Sovereign Nations have sovereign authority over their members and territory. They have Self-Determination and Autonomy to promote Native self-government and economic self-sufficiency, including by engaging in and regulating commerce; exercising jurisdiction to enforce their laws in Indian country and to determine and regulate tribal government activities and operations, and authority to protect Native lands, waters, and other natural resources.
- (b) Nation-to-Nation Relations. Federal agencies should engage with Native Sovereign Nations through the framework of nation-to-nation relations, with recognition not only of

Native Sovereign Nations’ authority and responsibilities but also of the United States’ trust responsibilities to Native Americans, including to protect Native lands, waters, and other natural resources.

- (c) Native Liberty. Many Native Americans believe the Creator gave the breath of life to the first woman and man, endowing Native people with life, liberty, and a sacred duty to Mother Earth. For thousands of years, Native Americans exercised liberty in community through Native Sovereign Nations. Federal agencies should act at all time to safeguard and promote Native liberty and self-government.
- (d) Economic Self-Sufficiency. As they have been since time immemorial, Native Nations today are broadly engaged in commerce. To foster that commerce, America must promote Native American marketplaces and value generated in Indian country, as well as support tribal economic development and self-sufficiency. Consistent with these objections, federal agencies should seek to minimize regulatory burdens on Native Americans, including by preempting unduly burdensome state laws.
- (e) Native Languages, Culture Resources and Religious Liberty. In the past, federal and state governments suppressed native languages, customs, and religions, in violation of the First Amendment, treaties, and statutes. Today, America must promote Native American languages and American Indian Religious Freedom, remove barriers to native religious and linguistic freedom, including fostering access to native sacraments, eagle feathers, and other cultural items, and fund native language restoration programs.

Section 4. Nation-to-Nation Consultation and Mutual Consent. Recognizing that Native Sovereign Nations are prior sovereign nations, with original inherent rights to self-determination and self-government, federal agencies shall consult with Native Sovereign Nations within the framework of nation-to-nation relations required by Executive Memorandum of January 26, 2021, and shall bear in mind that the Constitution of the United States renders enforceable as among the Supreme Law of the Land the treaties into which the United States has entered with Native Sovereign Nations. At the end of treaty-making in 1871, Congress and the President pledged to enforce those treaties already made according to their terms, and embarked on a series of statutory agreements, which are also among the Supreme Law of the Land.

Whenever a federal agency undertakes action—including rulemaking, policy implementation, or development of legislation—that would have significant impact on Native Americans or U.S. policy regarding Native Americans, the agency shall consult with affected Native Sovereign Nations, consistent with Executive Order 13175 and 13647, in a manner that seeks just and equitable policies, proposals, programs and resolutions based upon mutual consent to the full extent practicable and permitted by law.

Section 5. Respect for Tribal Self-Government and Preemption of Contrary State Law. When adopting regulations, to honor treaties, statutes and executive orders, Federal agencies shall fully consider and, as appropriate, develop provisions to preempt state law that conflicts, derogates, interferes with, or undermines: (a) Native American self-determination, self-government, and economic self-sufficiency; (b) the federal trust responsibility; (c) federal law-enforcement and regulation regarding crimes and law enforcement in Indian country; and (d) the

“absolute and undisturbed use” by Native Sovereign Nations of Indian lands as “permanent homes.” For example, in regard to reserved water rights under the *Winters* doctrine, Interior, USDA and Justice should confer with Indian tribes and develop plans to ensure that the United States is assisting NSNs to access, possess, consume and otherwise use water for domestic purposes, agriculture, aquaculture, municipal, industrial, and other economic self-sufficiency purposes;

Section 6. Native American Canon of Construction. The United States of America drafted treaties in English with an imbalance in bargaining power, so America has traditionally utilized the Native American Canon of Construction to interpret, construe and implement Indian treaty and statutory provisions for the benefit of Indian nations and tribes, as Native Americans would have understood the treaties, statutes and executive orders, with ambiguities resolved in favor of the NSNs. Agencies are hereby directed to adhere to the Indian Canon of Construction in the interpretation, construction and implementation of Indian treaties, agreements, statutes, executive orders, agency legislation and other agency activities that references Indian nations and tribes, tribal governments, tribal organizations and/or Indians or Native Americans.

Section 7. White House Council with Native Sovereign Nations. The White House Council on Native American Affairs shall be renamed the White House Council with Native Sovereign Nations. The Chair of the Domestic Policy Council and the Secretary of the Interior shall serve as Council Co-Chairs. The President shall address the Council at least annually and the Vice President shall address the Council at least semi-annually. The Council shall hold quarterly roundtable meetings with Native Sovereign Nations to build nation-to-nation strategies, policies, programs and solutions based upon mutual respect and mutual consent, and shall propose legislation to ratify the Council’s place in the Executive Office of the President.

Section 8. Office of Treaty Relations. The Secretary of the Interior shall establish an Office of Treaty Relations, composed of officials at the Departments of the Interior and State. The Office’s function and purpose shall be to resolve any issue arising between one or more Native Sovereign Nations and the United States under any treaty, agreement, statute or executive order safeguarding Native homelands or ensuring that Native homelands serve as permanent, livable homes.

Section 9. Addressing Gun and Drug Violence. To reduce the gun and drug-related violence that plague too many Native American communities, the Attorney General and the Secretary of the Interior shall establish and co-chair a body to be known as the Indian Country Crime Fighting Commission. This Commission shall, with the participation of officials from other federal agencies, as appropriate, and through consultation with Native Sovereign Nations:

- Develop legislation, programs, and funding proposals aimed to lower violence in Native American communities, through increased police, prosecutors, courts, detention, substance-misuse treatment, diversion programs, youth wellness programs and gun safety laws and programs.
- Tailor federal programs as appropriate to recognize the need for basic law-enforcement and public safety in Indian country;

- Enhance training opportunities for tribal police and police auxiliary forces, including opportunities at Tribal Colleges and state police academies;
- Recommend legislation to establish exclusive federal and tribal jurisdiction over crimes committed by non-Indians against Indians in Indian country.
- Authorize the cross-designation of tribal officials as Special Assistant United States Attorneys, and Special Law Enforcement Commissioners and Officers, and allow the use of use of tribal courts, the Courts of Indian Offenses, and/or the Administrative Office of the Courts' Central Violations Bureau to process and resolve criminal charges for offenses in Indian country, *inter alia*, by non-Indians against Indians; and
- Support for tribal police departments and police officers commensurate with police staffing in at a level commensurate with public safety and police, law enforcement and court staffing in the nation generally;

Section 10. Protecting Indian Child Welfare. To address high poverty rates among Native American children in a culturally sensitive manner, and in recognition of the importance of the Indian Child Welfare Act (ICWA) to protect Indian families and children from separation, the White House Council should consider proposals to enhance ICWA as well as other steps to protect Indian children from family separation, including increased funding for mental- and behavioral-health programs, programs to enhance Native foster-parent programs, social-service programs to secure family and societal connections within Native Sovereign Nations, and, where necessary, removal of ICWA cases to Federal or tribal court. The Secretary of the Interior, HHS and the Attorney General are directed to consult with NSNs and propose amendments to secure ICWA for future generations.

Section 11. Native American Education with Culturally Based Knowledge. To ensure that all Native American students receive a high-quality and culturally appropriate education, the Secretary of the Interior shall collaborate with the Secretaries of Education, Health and Human Services, Housing and Urban Development, and Agriculture to:

- Develop, in consultation with Native Sovereign Nations, a strategic Native American education plan that addresses issues of curriculum (including ensuring that Native students can receive teaching on Native language and culture, English, math, science, Native American history, and other history), facilities, teacher training and recruitment, and school funding;
- Make recommendations to ensure that school-lunch programs and after-school care are adequately provided in Native American communities, especially economically disadvantaged communities;
- Create a proposal for modernizing, repairing, and reconstructing Bureau of Indian Education and Tribal Schools, so that Native students have an equal education opportunity and appropriate environment for learning, including traditional cultural knowledge as well as the technologies necessary to promote career opportunities; and

- Extend Impact Aid to BIE and Indian Schools to ensure full and fair funding of treaty and trust responsibilities for Indian education.

Section 12. Repatriation of Native Remains. The Secretaries of the Interior and the Army shall collaborate to swiftly repatriate Native remains, including any Native student remains from any U.S. government or government-sponsored boarding schools, in a culturally appropriate manner, upon request of the student’s family or Native Sovereign Nation. To the full extent practicable and permitted by law, the Secretaries shall also require private education institutions to develop expeditious programs to repatriate Native remains as a condition of federal funding.

Section 13. Improving Indian Health Care, Health Status, Women’s Reproductive Health Care, Native Longevity, and Nutrition. To address the low life expectancy and poor health status for Native Americans, particularly in the Great Plains, Rocky Mountain, and Navajo regions, the Departments of Interior, Health and Human Services (including IHS, CDC, SAMSHA HRSA, and CMS), Veteran’s Affairs, Agriculture, and Housing and Urban Development are directed to develop, in consultation with Native Sovereign Nations, a plan to meet annually at a National Indian Health Care and Wellness Summit to develop a strategy to improve Native American life expectancy, health care, health status, and living resources, with particular attention to (1) the challenges facing Native American elders; (2) the need for improvements in Native American nutrition; (3) the promotion of innovative programs to improve women’s reproductive health care, maternal and infant wellness; (4) comprehensive community-wellness models, including youth-wellness models, to provide a full spectrum of inpatient treatment, outpatient treatment, and alcohol and substance-use counseling, suicide prevention, intervention and treatment, and (5) an alternative funding plan for Indian Health Care Facilities, including joint venture and ISDEAA section 105(L).

Section 14. Economic Development. Consistent with the principles of Indian self-determination and economic self-sufficiency, the Secretary of the Interior shall promulgate any regulations needed to update and modernize the Federal Trader License Regulations and to preempt state laws that result in duplicate, excessive, or unnecessary regulation and taxation, or otherwise burden Indian commerce. As necessary, the Secretary of the Interior shall collaborate with the Office of Management and Budget and Native Sovereign Nations to develop and promote legislation to further foster Indian self-determination and economic self-sufficiency.

Section 15. Energy Development. Consistent with America’s treaty and trust responsibilities to support Native Sovereign Nation energy governance and regulation, production, financing and access to capital, and facilitate equitable access to markets in recognition of the fact that Native Sovereign Nations have vast energy resources—including 10% of America’s natural gas reserves, more than 5% of oil reserves, and 20% of America’s renewable energy resource potential—federal energy permitting and regulatory agencies and commissions, as well as the Departments of Energy, Defense, Commerce, Interior, along with the Small Business Administration, shall work to strengthen tribal energy workforce development and transition, increase access to energy research opportunities (including commercialization of new technologies), provide Native Sovereign Nations dedicated capacity within the electric grid, and enable Native Sovereign Nations to sell and purchase energy, energy resources, and energy products and services. The Department of Energy and other Federal Agencies shall purchase

energy resources from Native Sovereign Nations at sustainable prices to the full extent practicable and permitted by law.

This Executive Order supplements Executive Order 13175 and 13647, and except as expressly modified herein, those Executive Orders are continued in full force and effect.

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