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Office of Management and Budget Tribal Consultation on Fiscal Year 2023 President's Budget Request *USET SPF Tribal Leader Talking Points*

Summary

On September 3rd, the Office of Management and Budget (OMB) [announced](#) that it will host a Tribal consultation to inform its development of the Fiscal Year (FY) 2023 President's Budget Request. While Indian Country participates in budget formulation processes informing the requests of the Department of the Interior and the Indian Health Service, to our knowledge, OMB has never consulted directly with Tribal Nations as it works to finalize a Budget Request. As with other recent OMB consultations, USET SPF is encouraged by this consultation, as we have continually called upon OMB to fulfill its trust and treaty obligations and consult with Tribal Nations on all matters related to in the delivery of the trust obligation, including Presidential Budget Requests.

Talking Points

General

- **OMB's consultation with Tribal Nations on the President's Budget Request is an historic and welcome development.** USET SPF has long called for OMB to consult on the budget in accordance with trust and treaty obligations. We celebrate this consultation and are hopeful that it leads to improved Budget Requests and increased appropriations, as well as improvements in the execution of trust and treaty obligations across the Executive Branch.
- **The chronic underfunding of federal Indian programs continues to have disastrous impacts upon Tribal Nations and our citizens.** Native Americans experience some of the greatest disparities among all populations in this country. Indeed, the U.S. Commission on Civil Rights' *Broken Promises* report found deep failures in the delivery of federal fiduciary trust and treaty obligations, concluding that the funding of the federal trust responsibility and obligations remains "grossly inadequate" and a "barely perceptible and decreasing percentage of agency budgets." As the primary agency in the federal budgeting process, OMB must work with Indian Country to address these chronic shortfalls.
- **Inadequate funding to Indian Country needs to be viewed as unfilled treaty and trust obligations.** This funding is not delivered on the basis of poverty or for social welfare purposes. The federal government's trust obligations are the result of the millions of acres of land and extensive resources ceded to the U.S.—oftentimes by force— in exchange for which it is legally and morally obligated to provide benefits and services in perpetuity. At no point has the government fully delivered upon these obligations.

Because there is Strength in Unity

- **Above all, the COVID-19 crisis is highlighting the urgent need to provide full and guaranteed federal funding to Tribal Nations in fulfillment of the trust obligation.** While we unequivocally support budget stabilization mechanisms, such as Advance Appropriations, in the long-term, USET SPF is calling for a comprehensive reexamination of federal funding delivered to Indian Country across the federal government. Because of our history and unique relationship with the United States, the trust obligation of the federal government to Native peoples, as reflected in the federal budget, is fundamentally different from ordinary discretionary spending and should be considered mandatory in nature. Payments on debt to Indian Country should not be vulnerable to year to year “discretionary” decisions by appropriators.
- **Tribal Nations must be treated in a manner befitting our government status, not as grant funded entities or special interest groups.** Far too many dollars are only accessible via competitive grants. Forcing Tribal Nations to compete for grants utilizes a process that does not respect the sacred and unique diplomatic relationship that exists between Tribal Nations and the United States.
- **The sacred trust obligation to Tribal Nations transcends measurements, outputs, data, and statistics.** While these things are important, the obligations due to Tribal Nations should not be based on this understanding. Rather, these are things that Tribal Nations concern themselves with as an internal matter to ensure they are providing strong services to their citizenship. We must explore a new approach together that better respects tribal sovereignty.

FY 2023 Regional Budget Priorities

- **The FY 2023 Request should build upon the FY 2022 Request while advocating for bolder change.** Broadly, the President’s Budget Request for FY 2022 is positive for USET SPF member Tribal Nations and Indian Country generally. After years of requests that neglected trust and treaty obligations, we welcome the more substantial increases, as well as the policy change proposed by this Administration. It is also important to remember, however, that centuries of neglect and hostile federal policies cannot be undone in a single request. In addition to our advocacy for the highest discretionary increases possible each FY, we are seeking a long-term commitment to federal fulfillment of trust and treaty obligations—including full and mandatory funding for federal agencies and programs serving Tribal Nations.
- **Bureau of Indian Affairs (BIA).** We continue to note the historic and continued unmet funding obligations with regard BIA’s diverse line items. It is our expectation that, after years of Budget Requests proposing deep cuts to BIA, Biden Administration Requests will continue to propose substantial increases across the agency. In the longer-term, the Administration should commit to exploring mandatory funding for the BIA, in addition to the Indian Health Service (IHS).

Working in partnership with the BIA, the yearly budget formulation process now offers a much more comprehensive look at the priorities of Tribal Nations across the many lines and accounts found within the BIA budget. However, we remain focused on the addition of a component or calculation of BIA’s unfunded obligations in order to measure performance. We offer the Eastern Region’s top priorities for FY 2023 in eight different strategic funding categories:

- Strengthening Tribal Communities: **Social Services (TPA)**
- Trust-Natural Resources Management: **Natural Resources (TPA)**
- Trust-Land & Water Rights Management: **Real Estate Services Program (TPA)**

- Public Safety & Justice: **Tribal Courts (TPA)**
 - Economic Development: **Economic Development (TPA)**
 - Education: **Scholarships & Adult Education (TPA)**
 - Construction: **Education Facilities Improvement and Repair**
 - Resource Management Construction: **Federal Power Compliance [FERC]**
- **Indian Health Service (IHS)**. The chronic underfunding of the Indian Health System continues to result in unacceptably high mortality rates for Native peoples. We have become all too familiar with the unnecessary and avoidable death of our loved ones—a reality that has come into horrifyingly sharper focus due to the global pandemic. One only need look to the state of the Indian Healthcare System amid the public health emergency to understand the deadly impacts of decades of insufficient and unstable healthcare funding. We urge OMB and the Biden Administration to work to address these shameful disparities in FY 2023 and beyond.

In addition to supporting a robust funding stream for current operations that reflects medical inflation, Nashville Area Tribal Nations identified the following top 10 priority line items for increases in FY 2023:

1. **Hospitals & Health Clinics**
 2. **Purchased/Referred Care**
 3. **Alcohol & Substance Abuse**
 4. **Mental Health**
 5. **Electronic Health Record System**
 6. **Dental Health**
 7. **Community Health Representatives**
 8. **Maintenance and Improvement**
 9. **Health Education**
 10. **Self-Governance**
- **Advance Appropriations**. We continue to support advance appropriations as an important mechanism to provide certainty in funding to Tribal Nations and urge the Administration to support this mechanism for all federal Indian programs. Should Advance Appropriations not be enacted for FY 2023, we urge OMB and the Administration to include a request for FY 2024 in the FY 2023 Request.
 - **Mandatory Funding for the Indian Health Service**. USET SPF strongly supports full and mandatory funding for IHS as a critical step forward in better delivering upon trust and treaty obligations. We urge the immediate convening of a joint Tribal-federal workgroup (within the next six months) to examine how to fully fund the agency, discuss appropriate economic growth patterns, and determine the best model for an open-ended entitlement. The Workgroup should have access to a range of supports, including a health economist and/or the Centers for Medicare and Medicaid Services Office of the Actuary, as it seeks to arrive at a comprehensive number for IHS that reflects the full scope of its charge and circumstances. The workgroup's draft recommendations should then be subject to additional Tribal consultation.
 - **Mandatory Funding for Binding Obligations**. While USET SPF celebrates the achievement of separate, indefinite appropriations for both 105(I) leases and Contract Support Costs, we note that likely continued growth in these areas threatens future increases for other IHS and Bureau of Indian Affairs (BIA) lines. While we contend that all federal Indian agencies and programs should be subject to mandatory funding, in recognition of perpetual trust and treaty obligations, we

strongly support the Administration's proposal to transfer these lines to the mandatory side of the federal budget. This will ensure that funding increases are able to be allocated to service delivery, as opposed to the federal government's binding legal obligations. OMB must work with Tribal Nations, IHS, BIA, BIE, and Congress to ensure obligations for these lines are properly estimated and any necessary technical support is provided in order to achieve this policy change.

- **Other Selected Lines and Programs.** Though not an exhaustive list, USET SPF strongly supports the continued funding and increases for the following lines and programs: Good Health and Wellness in Indian Country (CDC), Rural Community Facilities (ACF), Tribal Opioid Response Grants (SAMHSA), Community Development Financial Institutions Fund grants, the Indian Community Development Block Grant, USDA Rural Business Development grants, EPA state and Tribal assistance grants, BIA Tribal Climate Science Centers, Tribal Historic Preservation funding, the 5% Tribal set aside from the Crime Victims Fund, and Native American Housing Block Grants. We also strongly support continued investments to facilitate climate mitigation, resilience, adaptation, and environmental justice projects in Indian Country.
- **Promote Self-Governance through Interagency Transfer Authority.** USET SPF is working toward a future in which all federal dollars are eligible to be contracted or compacted under the Indian Self-Determination and Education Assistance Act (ISDEAA). In the short-term, we urge OMB to ensure all federal Indian funding can be transferred between federal agencies, so that it may be received through contracts and compacts. We cite the unnecessary delays and barriers to the receipt of urgently needed COVID-19 relief funding as an example of why this authority must be confirmed.
- **Expansion and Evolution of Tribal Self-Governance.** Despite the success of Tribal Nations in exercising authority under ISDEAA, as well as the recently enacted Practical Reforms and Other Goals to Reinforce the Effectiveness of Self-Governance and Self-Determination (PROGRESS) for Indian Tribes Act, the goals of self-governance have not been fully realized. Many opportunities still remain to improve and expand upon its principles. An expansion of Tribal self-governance to all federal programs under ISDEAA would be the next evolutionary step in the federal government's recognition of Tribal sovereignty and reflective of its full commitment to Tribal Nation sovereignty and self-determination. Department of Health and Human Services (HHS) agencies and programs outside of the Indian Health Service are particularly well-positioned for ISDEAA expansion. Tribal Nations have worked over multiple Congresses and Administrations to demonstrate that this expansion is feasible and introduce necessary legislation. We ask the OMB join us in supporting this evolution.

Reforms to Federal Budget Process/OMB

- **OMB must produce a detailed crosscut of federal Indian funding.** The agency asserts that over \$20 billion in federal dollars is appropriated to Indian Country annually. From the perspective of Tribal advocates, including those who serve on budget formulation committees for federal agencies, this number seems to be widely inflated, with far less actually reaching Tribal Nations and Tribal citizens. We suspect that OMB arrives at this figure by tallying the amount for which Tribal Nations and entities are eligible, regardless of whether these dollars actually reach Indian Country. While OMB has provided a high-level crosscut of this funding in the past, both USET SPF and the Tribal Interior Budget Council (TIBC) have asked for a full, detailed accounting of federal funding distributed to Indian Country. USET SPF firmly believes that this information is absolutely

essential to consultation around federal budget formulation, as well as the measurement of the federal government's own success in meeting its obligations and the work of Tribal Nations.

- **Presidential budget requests should contain full funding figures developed in consultation with Tribal Nations.** Several federal agencies engage in a Tribal budget formulation process, which is then supposed to influence the Administration's request. Yet, it is typical for any Tribal recommendations that appear in the President's budget request to be significantly scaled back. While we recognize that the Administration may be unable to incorporate all of our recommendations into the official request, Congress should, at the very least, be informed of what Tribal Nations are requesting. In addition, OMB must work with federal agencies and Tribal Nations to determine and reflect shortfalls, both total and by agency/program, in the overall funding of trust and treaty obligations.
- **OMB should require departments/agencies to provide annually a full and complete picture of unfulfilled trust and treaty obligations.** The only way the United States can effectively measure how well it is fulfilling its obligations is in comparison to a full funding for Indian Country budget number. Each department/agency should be required to work in partnership with Indian Country to determine complete budgetary fulfillment of trust and treaty obligations.
- **OMB's role in government efficiency must extend to reducing burdens and improving the delivery of trust obligations for Indian Country.** A primary function of the agency is to help improve administrative management, to develop better performance measures and coordinating mechanisms, and to reduce any unnecessary burdens on the public. In fulfilling this responsibility, OMB must approach its dealings with Indian Country in a manner that works to significantly diminish unnecessary burdens placed on Tribal Nations. Moving away from a grants-based mentality is an initial step toward a more appropriate approach. In addition to measuring the performance of Tribal Nations with appropriated federal dollars, OMB must also work to measure how well federal entities are performing in carrying out their trust duties and functions.
- **Establish a dedicated OMB Indian desk within the Director's Office.** Recognizing OMB's current staffing limitations (approx. 400 FTEs), it is necessary to invest in new resources to honor the agency's trust and treaty obligations. This includes creating a new department to serve as an advocate for Tribal Nations and coordinate within the agency on the development of policies and budgets impacting Tribal Nation interests. Currently, examiners assigned to specific federal agencies or programs and housed in different departments are the only OMB personnel dedicated to Indian Country. The creation of a higher-level, more comprehensive department would assist the agency in fulfilling its obligations to Tribal Nations and be more representative of the sacred duty to our governments.
- **Establish an OMB Tribal Advisory Committee.** A Tribal advisory committee (TAC) would provide the agency with the opportunity for direct communication with and guidance from Tribal leaders on a regular basis. The TAC would complement OMB's consultation with all Tribal Nations, as well as its Indian Desk, by providing specialized guidance on agency initiatives and functions. The TAC should provide broad regional representation reflective of the diverse circumstances facing Indian Country and members should be selected by the Tribal Nations of each region.