



# USET

SOVEREIGNTY PROTECTION FUND

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July 8, 2022

Bryan Newland  
Assistant Secretary – Indian Affairs  
U.S. Department of the Interior  
1849 C Street NW  
Washington, DC 20240

Dear Assistant Secretary Newland,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the June 8, 2022 Tribal consultation held by the Department of the Interior (DOI) on the proposal to collect Tribal Nation enrollment data annually. The collection of Tribal Nation enrollment data was conducted in April 2021 to inform funding allocations following passage of the American Rescue Plan Act (ARPA). This effort was done to ensure that past mistakes would not be repeated in the allocation of vitally important dollars to Tribal Nations, such as those that occurred during the allocation of the Coronavirus Relief Fund (CRF) in 2020. The allocation methodology for the CRF utilized by the federal government relied on flawed and inaccurate Tribal Nation population data sets, such as the Indian Housing Block Grant (IHBG) program, and many Tribal Nations either received inadequate funds or no funds at all to respond to the outbreak of the COVID-19 public health emergency. We appreciate that in determining how to allocate funds for ARPA, DOI responded to the concerns of Tribal Nations and developed a process to ensure that we could submit our own enrollment numbers to receive ARPA funds. USET SPF supports this continued practice by DOI, but we urge the Department to protect this information from being shared publicly or with other agencies without Tribal Nation consent.

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.<sup>1</sup> 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.

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<sup>1</sup> 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***

### **Tribal Nation Enrollment Data Should be Self-Certified and Should Not Be Made Publicly Available**

Among the questions posed by DOI during the Tribal consultation were whether the Department should make the collection of Tribal Nation enrollment data publicly available on its website. In the absence of individual Tribal Nation consent, USET SPF does not support this proposal and firmly holds that only Tribal Nations should determine whether data should be shared publicly. While we understand that some Tribal Nations publish their enrollment numbers on their own websites, this should not empower DOI to publish our enrollment data on its website. Tribal Nations should provide express consent to having their enrollment numbers published on DOI's website.

Furthermore, USET SPF supports DOI's previous efforts in allocating ARPA funds by empowering Tribal Nations to self-certify our enrollment data when submitting it to the Department. This process should be continued on an annual basis to determine how DOI funds should be allocated equitably to Tribal Nations. Enrollment (citizenship), and determining enrollment criteria, in a federally recognized Tribal Nation is an inherently sovereign activity conducted by our Nations. This process is specifically outlined in our Constitutions, By-Laws, and other governing documents, many of which must go through approval processes with the Secretary of the Interior. In light of this, DOI must continue to recognize the authority and sovereign right of Tribal Nations to self-certify our own enrollment data if the Department will continue to collect this data annually. This activity will ensure that the process is streamlined and not unduly burdensome on our Tribal governments, and that accurate enrollment numbers are used to direct the equitable allocation of vital DOI funds for Tribal Nations.

### **Tribal Nation Enrollment Data Should Not Be Shared Without Tribal Nation Consent**

During the allocation of ARPA, DOI shared Tribal Nation enrollment data with Treasury to determine equitable allocation disbursements of various programs. While this was an appropriate action for immediate distribution of ARPA funds, this practice should not become commonplace moving forward. While we support the annual collection of Tribal Nation enrollment data by DOI to inform equitable allocation of Indian Affairs and other DOI programmatic funds, this data should not be shared with other federal agencies without Tribal Nation consent. Rather, we recommend that DOI, in consultation with Tribal Nations, produce guidance for informing Tribal Nations when a federal agency requests our enrollment data, why they are requesting such data, and a process for us to approve or disapprove of the sharing of such data. This will ensure that DOI employees, as well as Tribal Nations, have a clear understanding of proper protocols and procedures for the sharing of our enrollment data with federal agencies outside of DOI. Similarly, this guidance should also include a process for Tribal Nations to approach DOI and request the sharing of our enrollment data if it is pertinent and necessary to share with another federal agency when applying for non-DOI programs and funds.

### **Tribal Nation Enrollment Data Should Be Protected from FOIA Requests**

DOI should protect Tribal Nation enrollment data from Freedom of Information Act (FOIA) requests, especially when FOIA requests are being made by non-Tribal entities attempting to gain access to sensitive, confidential, and economic information. DOI must inform Tribal Nations of these FOIA requests and let us determine whether such requests should be withheld or redacted. As a matter of upholding the federal government's trust and treaty obligations, Tribal government information—including Tribal Nation enrollment data—should never be released without first seeking the consent of relevant Tribal Nation(s). Concerns regarding the FOIA process have been raised in other Tribal consultation proceedings held by the Department of Justice (DOJ). USET SPF has recommended that DOJ, DOI, and the Office of Management and Budget (OMB) address this as soon as possible. This includes the recommendation that OMB, in coordination with DOJ and DOI, consult with Tribal Nations on this issue and publish blanket guidance to federal agencies on how FOIA requests on our information are handled. We will continue to raise these concerns until they are addressed by the federal government.

## **Conclusion**

We appreciate DOI's effort to ensure equitable allocation of Indian Affairs and other DOI programmatic funds by developing a process to collect Tribal Nation enrollment data. Following passage of ARPA, DOI developed a simple form for Tribal Nations to submit our own enrollment data instead of relying on existing federal data sets to determine the allocation of ARPA funds. This established a streamlined and efficient process for Tribal Nations to receive ARPA funds and initiate vital infrastructure projects to rebuild our Tribal Nations, especially during the COVID-19 public health emergency. We appreciate DOI's response to Tribal Nation concerns regarding the use of inaccurate data sets, such as the IHBG program and Census data, and support the continued practice of collecting self-certified enrollment data from Tribal Nations. This action upholds DOI's trust and treaty obligations while respecting our status as sovereign governments. Further, we appreciate DOI's efforts to develop streamlined processes to collect Tribal Nation enrollment data, especially when they are informed by guidance received from Tribal Nations. DOI should continue to conduct these activities while ensuring our private data and other governmental information is protected and remains subject to Tribal Nation control. We look forward to continuing to work with you on this issue. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at [LMalerba@usetinc.org](mailto:LMalerba@usetinc.org) or 615-838-5906.

Sincerely,



Kirk Francis  
President



Kitcki A. Carroll  
Executive Director