USET
SOVEREIGNTY PROTECTION FUND

Washington, DC Office
1730 Rhode Island Ave., NW, Suite 406
Washington, DC 20036

Nashville, TN Office
711 Stewarts Ferry Pike, Suite 100
Nashville, TN 37214
P: 615-872-7900 | F: 615-872-7417

Testimony of the United South and Eastern Tribes Sovereignty Protection Fund
For the Record of the House Committee on Natural Resources
Subcommittee on Indian and Insular Affairs
Oversight Hearing Titled
"Advancing Tribal Self-Determination: Examining the opportunities and challenges of the 477 Program"
March 20, 2024

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is pleased to submit testimony for the record of the House Committee on Natural Resources Subcommittee on Indian and Insular Affairs oversight hearing titled "Advancing Tribal Self-Determination: Examining the opportunities and challenges of the 477 Program" to urge full implementation of the PL 477 Program and expansion of its funding model into other areas. It is time to step into the next era of federal Indian law and policy—an era based in diplomacy, where the United States fully respects Tribal Nations' inherent rights and authorities and fulfills its trust and treaty obligations. One important aspect of this new era is reshaping how the United States delivers federal funding to Tribal Nations, and the PL 477 Program is a key tool in that endeavor.

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 assisting its membership in dealing effectively with public policy issues.

A. Marshall Plan for Tribal Nations and Executive Order 14112

In recognition of chronic and ongoing failures to fund trust and treaty obligations, USET SPF has consistently advocated for a Marshall Plan for Tribal Nations, based on the principle that the United States should make a financial investment in Tribal Nations similar to that of the Marshall Plan through which the United States invested in rebuilding Europe after World War II. The Marshall Plan for Tribal Nations not only calls for a significant investment to bring Tribal Nations up to an appropriate baseline, but it also calls for sufficient, effective, and respectful funding mechanisms moving forward. It advocates for funding delivery and use parameters that are respectful of Tribal Nations' inherent sovereignty. The Marshall Plan for Tribal Nations is gaining momentum, with Tribal organizations signing on and media coverage supporting the effort.

[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 Wampanoag Tribe of Gay Head (Aquinnah) (MA).

USET SPF celebrates that the White House has already taken steps to deliver on the foundational principles underpinning the Marshall Plan for Tribal Nations. Executive Order No. 14112, issued in December and titled "Reforming Federal Funding and Support for Tribal Nations To Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination," seeks to assign a dollar amount to the United States' unmet obligations to Tribal Nations, and also mandates federal agencies utilize flexibility to facilitate Tribal Nations' exercise of our inherent sovereignty in our use of federal funds. The Executive Order explains: "We must ensure that Federal programs, to the maximum extent possible and practicable under Federal law, provide Tribal Nations with the flexibility to improve economic growth, address the specific needs of their communities, and realize their vision for their future."

B. Support for PL 477 Program

The PL 477 Program is one tool through which appropriately flexible federal funding can be delivered to Tribal Nations, and fully implementing and expanding the funding mechanisms of the PL 477 Program is integral to both the Marshall Plan for Tribal Nations and Executive Order 14112.[2] The PL 477 Program serves as a next step in the evolution of federal funding for Tribal Nations, and it is a model we hope to see replicated in other areas. It is revolutionary in that it authorizes Tribal Nations to consolidate diverse federal funding sources from across 12 federal agencies into one, streamlined Tribal program designed by the Tribal Nation to help its struggling community members achieve self-sufficiency and stability. The bedrock principle of the 477 Program is to enable Tribal Nations to exercise our inherent sovereignty in our use of federal funds, in addition to promoting the improved integration and streamlining of Tribal Nation programs and reporting.

The 477 Program removes strings tied to federal funding such that Tribal Nations may pool and reallocate federal funding integrated into our 477 plans across the services provided through our 477 plan. 25 U.S.C. §§ 3413(a)(1)(A), (a)(2), 3410(b)(3). Integrated funds that are not obligated or expended remain available without fiscal year limitation. 25 U.S.C. § 3413(b)(1). The PL 477 statute creates authority to waive integrated programs' statutory, regulatory, and administrative requirements that get in the way of streamlined operation. 25 U.S.C. § 3406(d). And the PL 477 statute removes all reporting requirements tied to integrated programs, instead requiring just one comprehensive annual report on implementation of the 477 plan. 25 U.S.C. § 3410(a)(2)(A), (b). These are only a few of the 477 Program's functions, all of which are designed to put more decision-making power in the hands of Tribal Nations and remove federal impediments so that we can better respond to the needs of our communities.

The 477 statute sets forth three criteria that define the universe of programs eligible for integration under the PL 477 Program. First, the program must be operated by one of the 12 covered federal agencies. *See* 25 U.S.C. § 3404(b). Second, the program must be implemented for one of the covered purposes, which are designed to be broad so that they encompass not just employment and training programs but also related supportive services. 25 U.S.C. § 3404(a)(1)(A). Third, in order for a program to be eligible for integration into a 477 plan, it must receive a covered type of funding. 25 U.S.C. § 3404(a)(1)(B), (a)(2). When a program meets these three eligibility criteria, as determined by the Department of the Interior (DOI), 25 U.S.C. § 3407(a), it is eligible for integration into a 477 plan.

USET SPF is invested in seeing the PL 477 Program succeed, be implemented to the maximum extent permissible under the law, and be replicated for other types of federal programs. It is one step toward a future in which Tribal Nations are freed from the obstacles preventing us from utilizing federal funding as sovereign nations.

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[2] The 477 Program was authorized under the Indian Employment, Training, and Related Services Demonstration Act of 1992, Public Law 102-477, which was amended in 2000, Public Law 106-568, and again in 2017, Public Law 115-93. The 477 Program is codified at 25 U.S.C. §§ 3401–3417.

C. Call for All Federal Partner Agencies to Fully Implement PL 477

Despite the importance of the PL 477 Program and what it means for delivery of federal funding to Tribal Nations, some federal partners have historically—and currently—prevented full implementation of the PL 477 Program. They have opposed integration of programs they operate and attempted to maintain control over funds after their integration.

We believe these issues tie back to concerns of officials or staff within federal partner agencies about losing control over programs they operate. Many of these individuals are not accustomed to working alongside Tribal Nations. Full implementation of the PL 477 Program requires all parties to understand and respect Tribal sovereignty and to believe that Tribal Nations are equipped to do what is best for our people.

We ask Congress to ensure the federal partner agencies have an appreciation of the principles behind the PL 477 Program—including the trust and treaty obligations it is designed to fulfill and Tribal Nations' sovereignty and self-determination it is intended to respect. We call on Congress, the White House, and leadership within each federal agency to make clear that all government officials and staff must comply with the PL 477 statute. Additionally, it is essential DOI has the tools and backup necessary to ensure all federal partners and program officials and staff fully implement the 477 Program. Indeed, the White House through Executive Order 14112 has already recognized its obligation to assist federal agencies to identify and utilize opportunities to increase funding flexibility for Tribal Nations, and to intervene when federal agencies refuse to do so.

All federal partners must be made to understand that it is DOI that has exclusive decision-making authority over whether a program meets the PL 477 eligibility criteria for integration into a PL 477 plan. 25 U.S.C. § 3407(a). They must acknowledge there is no separate legal authority authorizing any federal partner to avoid transferring funds associated with a program DOI has approved, and instead the PL 477 statute mandates funds be transferred promptly. 25 U.S.C. § 3412(a); *see also* 25 U.S.C. § 3410(a)(2)(D)(ii).

All federal partners must also understand the covered purposes are broad and designed to include supportive services, not just programs authorized specifically for employment and training. 25 U.S.C. § 3404(a)(1)(A). A restrictive interpretation undercuts Congress's intention to facilitate Tribal Nations to create wraparound self-sufficiency programs for our people.

All federal partners must understand that, once a program is integrated into a PL 477 plan, every reporting requirement tied to that program automatically falls away and is replaced by the annual PL 477 report. 25 U.S.C. § 3410(a)(2)(A), (b). They must also understand that all funds integrated into a PL 477 plan may be pooled and reallocated across services within the 477 plan. 25 U.S.C. §§ 3413(a)(1)(A), (a)(2), 3410(b)(3).

All of these things and more happen as an automatic function of integration into a PL 477 plan. On top of these automatic functions, all federal partners must understand that the PL 477 statute itself creates authority to waive requirements associated with the integrated programs, including when those requirements are found in the program's authorizing statute. 25 U.S.C. § 3406(d).

Federal agencies that refuse to implement these congressional mandates must face real consequences. Only after they are made to comply with the mandates of the PL 477 statute will they understand that Tribal Nations will exceed their expectations in reshaping the services carried out through the programs they operate.

D. Department of Justice Position

We recently learned the Department of Justice (DOJ) has taken the position it has separate legal authority to refuse to transfer program funds into a Tribal Nation's PL 477 plan when it disagrees with DOI's assessment of program eligibility.

The Wyandotte Nation on February 26, 2024, received a positive determination from DOI approving integration of two programs operated by DOJ into Wyandotte's PL 477 plan. While DOJ eventually agreed that the programs were eligible for integration and said it would transfer the funds, it preserved its position regarding its alleged separate legal authority. In a letter submitted on the record for this oversight hearing, DOJ said: "After careful legal analysis and the decision by the Secretary of the Interior to integrate the Wyandotte Nation's 477 Plan, the Department has concluded it may, in this circumstance, lawfully transfer to Interior funds under two discretionary grant programs and is moving quickly to do so." Thus, DOJ doubled down on its position that in other circumstances and based on its own legal analysis there may be situations where it is unlawful to transfer integrated funds.

We are concerned that DOJ's position could be adopted by the other federal partner agencies and used as a mechanism to refuse to integrate the full scope of eligible programs into Tribal Nations' PL 477 plans. Such a position could derail the success of the PL 477 Program, which we view as integral to the evolution of federal funding delivery to Tribal Nations. We join Assistant Secretary for Indian Affairs, Bryan Newland, in emphasizing that this position is deeply regressive and fails to reflect the spirit and intent of EO 14112 or the PL 477 Program in any way. We urge you to impress upon DOJ that it has obligations to support Tribal Nation sovereignty, including under the PL 477 statute as a federal partner agency, and that to shirk those obligations contradicts the law.

Conclusion

We appreciate your attention to full implementation of the PL 477 Program. Please reach out to Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at lmalerba@usetinc.org and Katie Klass, USET/USET SPF General Counsel, should you have any questions.