



USET

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September 1, 2021

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Ave, SW
Washington, DC 20407

Re: Comments on Mandatory Funding Approaches for the Indian Health Service

Dear Secretary Becerra,

We write on behalf of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) in response to the Department of Health and Human Services' (HHS) "Dear Tribal Leader" letter of August 12, 2021, seeking input and recommendations on mandatory funding approaches for the Indian Health Service (IHS). USET SPF has long advocated for mandatory funding for all federal Indian programs, which is more consistent with perpetual federal trust and treaty obligations. We strongly support full and mandatory funding for IHS as a critical step forward in better delivering upon these obligations. With this in mind, we celebrate this consultation as an historic and welcome development. We further underscore the urgent nature of this initiative, as well as the unique opportunity before us, and stand ready to assist in making mandatory funding for IHS a reality.

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. ¹USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

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

Because there is Strength in Unity

Introduction

As the Department is well aware, Native peoples have endured many injustices as a result of federal policy, including federal actions that sought to terminate Tribal Nations, assimilate Native people, and to erode Tribal territories, learning, and cultures. This story involves the cession of vast land holdings and natural resources, oftentimes by force, to the United States out of which grew an obligation to provide benefits and services—promises made to Tribal Nations that exist in perpetuity. These resources are the very foundation of this nation and have allowed the United States to become the wealthiest and strongest world power in history. Federal appropriations and services to Tribal Nations and Native people are simply a repayment on this perpetual debt.

At no point, however, has the United States honored these sacred promises; including its historic and ongoing failure to prioritize funding for Indian country. The chronic underfunding of federal Indian programs continues to have disastrous impacts upon Tribal governments and Native peoples. As the United States continues to break its promises to us, despite its own prosperity, Native peoples experience some of the greatest disparities among all populations in this country and have for generations. These intolerable levels of disparities have resulted in unacceptably high mortality rates for Native peoples. For too long, we have become all too familiar with the unnecessary and avoidable death of our loved ones from health outcomes that should have been properly addressed through full and mandatory healthcare funding to best serve our people. It is no surprise, then, that the failures of the federal government came into horrifyingly sharper focus due to the global pandemic. And 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.

While we unequivocally support short-term budget stabilization mechanisms, such as Advance Appropriations, USET SPF has long called for full and mandatory funding for agencies, programs, and services delivered to Indian Country from across the federal government—including IHS. 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. Rather, this funding should mirror other federal entitlement funding, as the United States’ trust and treaty obligations exist in perpetuity.

As we look toward recovery from the global pandemic and to “build back better” for Indian Country, now is the time to make systemic change in the delivery of trust and treaty obligations. With this in mind, we welcome the opportunity to provide additional direction to the Biden Administration, as it delivers upon its promise to examine mandatory funding options for IHS.

Consultation Questions

1. What is the appropriate funding level for a mandatory funding proposal?

As stated above, USET SPF continues to advocate for full and mandatory funding for IHS. While current estimates place the full obligation for IHS funding at \$48 billion, this figure is not comprehensive, as it does not include, for example, public health. In order to determine the level of funding necessary to provide for a robust IHS, as well as the structure for mandatory funding, we urge the establishment of a joint Tribal-federal workgroup. This 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. We recommend that the workgroup be convened immediately, with a goal of providing recommendations for consultation in the next six months. In addition, while these

comments are specific to full and mandatory funding for the IHS system, it is important to acknowledge that there are other federal entities who are part of the public health and direct health services system who are equally deserved of full and mandatory funding as we comprehensively address health and wellness across Indian Country. It is important that the Tribal-federal workgroup include these components as well.

2. What is the appropriate growth pattern for a mandatory funding proposal?

Because funding for IHS does not currently keep pace with inflation, our purchasing power diminishes year after year and increases provided by Congress do not have their intended effect. This, too, must be rectified as a part of any mandatory funding proposal for IHS. There is likely an economic indicator, medical inflation or health care expenditures, for example, or perhaps several economic indicators, that offer appropriate growth patterns for IHS funding. Other factors such as population growth in Indian Country and evolving upgrades and innovations in health technology have increased healthcare costs and should be considered when developing an appropriate growth pattern for IHS mandatory funding. We suggest that these issues also be examined in-depth by a joint Tribal-federal workgroup. Any growth pattern should both reflect national health care spending and costs, as well as the unique circumstances of the Indian Healthcare System.

3. What is the appropriate appropriations structure for a mandatory funding proposal?

We appreciate the presentation given by IHS during the August 25th consultation on this issue, as it provided the full array of mandatory funding options. Regardless of funding mechanism, USET SPF strongly supports an open-ended funding model, as this more fully reflects the perpetual nature of trust and treaty obligations. Similarly, while the August 25th consultation is a historic development, we strongly recommend IHS express and maintain a long-term commitment to conduct ongoing and meaningful consultation to develop an appropriate appropriations structure for mandatory funding. This commitment is particularly important since these activities are likely to be a multi-year undertaking for IHS and Indian Country. In addition, while we feel long-term authorizing legislation is likely the most appropriate funding vehicle for IHS mandatory funding, this question also warrants further exploration by the joint workgroup.

Conclusion

USET SPF is heartened to see that the Department is consulting on this long-standing and long overdue Tribal priority, and that this proposal clearly has support across the Administration. In recognition of the opportunities for collaboration between the current Administration and the current Congress, we strongly urge you to immediately convene a joint Tribal-federal Workgroup to devise a more complete mandatory funding proposal. Please count USET SPF as a partner in your efforts to deliver a legacy of change for Tribal Nations, Native people, and the sacred trust relationship. This includes the enactment of policies that uphold our status as sovereign governments, our right to self-determination and self-governance, and honor the federal trust obligation in full. 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