



USET

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November 22, 2021

Rebecca Haffajee
Acting Assistant Secretary for Planning and Evaluation (ASPE)
Principal Deputy, ASPE
U.S. Department of Health and Human Services
Office of the Assistant Secretary for Planning and Evaluation
Division of Strategic Planning
200 Independence Avenue SW, Room 434E
Washington, DC 20201

Dear Dr. Haffajee,

We write on behalf of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) to provide comment to the Department of Health and Human Services (HHS) on its Fiscal Year (FY) 2022 – 2026 Strategic Plan (Plan). We appreciate the opportunity to provide guidance prior to the finalization of the Plan. As written, the Plan does not represent a commitment to uphold HHS' trust and treaty obligations to Tribal Nations; it doesn't even mention them. While we note that Tribal Nations are mentioned many times throughout the Draft Plan, our inclusion is most often alongside other units of government, as opposed to within dedicated goals and objectives. The final Plan must reflect HHS' unique obligations to Tribal Nations, measurable goals for the execution of federal functions, and to the promotion and advancement of self-governance and self-determination. With this in mind, we offer the below comments to provide some broad guidance to HHS as it seeks to achieve a Plan that is more reflective of its full commitment to Tribal Nations.

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.

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

Trust and Treaty Obligations Should be Central to the Plan

Given this Administration's and HHS' repeatedly stated commitment to upholding trust and treaty obligations to Tribal Nations, it is disappointing to see this foundational promise to our governments absent from the Draft Plan. While the Plan makes several references to Executive Order 13175 and President Biden's *Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships*, none of the Draft Plan's goals or objectives include a directive to honor trust and treaty obligations. Furthermore, the Draft Plan repeatedly references Native American people alongside commitments to diversity and equity. Although Native American people most certainly experience racism throughout the United States, the trust obligation to Tribal Nations and our citizens is not race-based, but political in nature. This legal and moral obligation supersedes the responsibilities HHS may have to other communities. HHS must view the execution of trust and treaty obligations as a core responsibility and function of the Department and its Operating Divisions. With this in mind, a commitment to their delivery must be imbued throughout the Plan, at both the highest and most granular levels.

HHS Must Uphold Tribal Sovereignty and Self-Governance

Similarly, the Draft Plan does not include any explicit acknowledgement of our diplomatic Nation-to-Nation relationship or HHS' obligation to promote and protect Tribal sovereignty and self-governance. While we appreciate the implicit acknowledgement of our governmental status along with other units of government, this language is not a substitute for a direct recognition of our political status as sovereign Tribal Nations. As with trust and treaty obligations, the protection and advancement of Tribal sovereignty and self-governance are central to HHS' mission and should feature prominently throughout the final Plan. Our federal partners must recognize the inherent right of Tribal Nations to fully engage in self-governance and work toward an expanded recognition of the authority of Tribal governments, so we may exercise full decision-making in the management of our own affairs and governmental services, including in the provision of health care to our people. Indian Country needs to know that you will stand with us in face of challenges to our sovereign status and this commitment should be solidified in the final Plan.

In addition, despite the success of Tribal Nations in exercising authority under Indian Self-Determination and Education Assistance Act (ISDEAA), 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. 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 that HHS join us in supporting this evolution. Broadly, HHS must treat Tribal Nations in a manner befitting our government status, not as grant funded entities or special interest groups. Far too many dollars within HHS Operating Divisions 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. We urge HHS to commit to the expansion and improved implementation of ISDEAA throughout the Department.

Mandatory Funding for the Indian Health Service and Beyond

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.

In light of HHS' recent consultation on mandatory funding approaches for the Indian Health Service (IHS), it was surprising that no mention was made of this priority in the Draft Plan. We expect that consultation around the design of a plan to achieve mandatory funding and the implementation of this authority following legislative action will take significant HHS and IHS resources and time. With that in mind, this dramatic step forward in the Nation-to-Nation relationship between Tribal Nations and the United States should feature prominently within the final Plan.

USET SPF continues to extend its unequivocal support to full and mandatory funding for the IHS. However, the funding and services provided by IHS are only one aspect of the federal government's trust and treaty obligations. All HHS Operating Divisions, along with other federal agencies and programs, carry substantial responsibility for the execution of trust and treaty obligations, as well. USET SPF has repeatedly called for full and mandatory funding for all federal agencies and programs serving Indian Country, as it is more representative of perpetual trust and treaty obligations. We urge HHS to work with the Office of Management and Budget, as well as Congress, and consult with Tribal Nations to develop a proactive plan to identify unfulfilled HHS trust and treaty obligations and a related plan to work towards achievement of full and mandatory funding for all HHS Operating Divisions. This should be included in the final Plan.

Address the Findings and Recommendations of the *Broken Promises* Report

It has been nearly three years since the *Broken Promises* Report was issued by the U.S. Commission on Civil Rights. The Report confirmed what we in Indian Country already know—with the exception of some minor improvements, the U.S. continues to neglect to meet its “most basic” obligations to Tribal Nations. As HHS well knows, the chronic underfunding of federal Indian programs has contributed to the disastrous impacts of the COVID-19 pandemic on Tribal governments and Native peoples. These chronic failures have persisted throughout changes in Administration and Congress, and the COVID-19 pandemic has only served to compound these budget and service delivery deficits. It is through the lens of this public health emergency that the failure of the federal government to uphold its most basic trust and treaty obligations has become ever more apparent. HHS must include within its Strategic Plan a commitment to addressing the findings and recommendations found within the *Broken Promises* Report. In addition to working toward full and mandatory funding for IHS, HHS must address other deficits highlighted during the pandemic, including access to critical supplies and personal protective equipment, Tribal Nation and Tribal Epidemiology Center access to surveillance data from other jurisdictions, and the lack of public health infrastructure in Indian Country. A consultation around the meaning of, “quality health services,” is only the beginning of a much deeper conversation and should include a commitment to action in order to truly “Build Back Better” for Indian Country.

Emphasis on Trauma and Behavioral Health

In the wake of historical and ongoing trauma, including the trauma experienced during a once-in-a-generation public health emergency, USET SPF appreciates HHS' focus on, “supporting those who have experienced trauma and violence.” We need not remind HHS that after centuries of a U.S. effort to eradicate our people and governments, trauma runs deep within Tribal Nations. We urge a particular focus on ensuring that trauma resources are available within Indian Country, including as a part of this Administration's Indian Boarding School and Missing and Murdered Indigenous Women initiatives. Similarly, we urge HHS to identify funding for substance abuse treatment and aftercare, as substance abuse is another symptom and consequence of trauma.

Conclusion

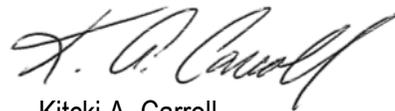
Along with other actions, statements, and initiatives, USET SPF views HHS' Strategic Plan as reflective of its commitment to Tribal Nations. Historically, HHS' Plans have come up short in articulating a clear vision

for delivery of trust and treaty obligations and support for our sovereignty. We urge HHS to make measurable improvements as it develops and finalizes its Strategic Plan for FY 2022-2026. As we look toward recovery from the global pandemic, USET SPF asks that you join us in working toward 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. We look forward to continuing to work with you to improve the execution of HHS' trust and treaty 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,

A handwritten signature in black ink, appearing to read 'K. Francis', with a long horizontal flourish extending to the right.

Kirk Francis
President

A handwritten signature in black ink, appearing to read 'K. A. Carroll', with a large, stylized flourish at the end.

Kitcki A. Carroll
Executive Director