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Testimony of the United South and Eastern Tribes Sovereignty Protection Fund For the Record of the House Subcommittee on Indian and Insular Affairs Legislative Hearing on, "H.R.__, The Restoring Accountability in the Indian Health Service Act of 2023"

The United South and Eastern Tribes Sovereignty Protection Fund is pleased to provide testimony for the record of the House Natural Resources Subcommittee on Indian and Insular Affairs legislative hearing on the discussion draft of H.R. __, The Restoring Accountability in the Indian Health Service Act of 2023. As we have indicated in the past, we can appreciate the intent of legislation to address shameful failures in the execution of the Indian Health Service's (IHS) trust and treaty obligations to deliver quality health care to Tribal Nations and our citizens. However, it is disingenuous to ignore the decades of chronic underfunding of the agency and how IHS' lack of resources contributes in large part to these failures. In addition, although we recognize that this bill remains a discussion draft, we underscore the need for thorough Tribal consultation to occur prior to further consideration. As written, we join our partners in expressing several concerns about the bill's provisions. Although USET SPF supports reforms that will improve the quality of service delivered by the IHS, we continue to underscore the obligation of Congress to meet its trust and treaty obligations by providing full and mandatory funding to IHS and support additional innovative legislative solutions to improve the Indian Health System.

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.

Chronic Underfunding Leads to IHS Failures

As the Subcommittee 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

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

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. It is no surprise, then, that the failures of the federal government to fund the IHS have come into horrifyingly sharper focus over the years and especially during the global pandemic. Decades of broken promises, neglect, underfunding, and inaction on behalf of the federal government left Indian Country severely under-resourced and at extreme risk during this COVID-19 crisis.

These long-term challenges are multi-faceted and cannot be solved overnight by one-size-fits-all reforms. Any efforts to reform IHS, through Congressional action or otherwise, must be accomplished through extensive Tribal consultation to reflect the complex challenges faced by different Tribal communities, including Tribally-operated healthcare facilities. Although USET SPF supports innovative legislative solutions to improve the Indian Health System and recognizes that policy improvements could be made, we continue to underscore the obligation of Congress to meet its trust responsibility by providing full funding to IHS. The federal trust responsibility obligates the federal government to provide quality healthcare to Tribal Nations which can only be accomplished when the Indian Health System is fully funded.

Full and Mandatory Funding for Federal Trust and Treaty Obligations
USET SPF celebrates and expresses its gratitude to this body for its role in the historic achievement of advance appropriations for the Indian Health Service (IHS). For the very first time, the agency's clinical services will have budgetary certainty in the face of continuing resolutions and government shutdowns. It is our expectation that appropriators will continue to include language providing advance appropriations for IHS beyond Fiscal Year (FY) 2024. We urge the inclusion of all of IHS' budget line items in this mechanism, as well as advance appropriations for all federal Indian agencies and programs as next steps for this Congress. Despite its importance in the stabilization of funding, however, we continue to view advance appropriations as a temporary funding mechanism in our overall advocacy for the full delivery of trust and treaty obligations.

Above all, the COVID-19 crisis has highlighted the urgent need to provide full and guaranteed federal funding to Tribal Nations in fulfillment of federal obligations. Because of our history and unique relationship with the United States, the federal government's trust and treaty obligations to Tribal Nations, 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. Honoring the first promises made by this country, in pursuing the establishment of its great principled democratic experiment, should not be a discretionary decision.

The Biden Administration's FY 2024 Request continues to propose a shift in funding for IHS from the discretionary to the mandatory side of the federal budget, including a 10-year plan to close funding gaps and an exemption from sequestration, a move that would provide even greater stability for the agency and is more representative of perpetual trust and treaty obligations. Year after year, USET SPF has urged multiple Administrations and Congresses to request and enact budgets that honor the unique, Nation-to-Nation relationship between Tribal Nations and the U.S., including providing full and mandatory funding. We continue to ask that Congress join us in genuine partnership, along with the Administration, to craft an

enact this necessary change. We firmly believe that full and mandatory funding for the IHS is the only way to make meaningful inroads in the Agency's challenges. To suggest otherwise ignores the primary source of these challenges.

The FY 2024 Request also, once again, proposes mandatory funding for Contract Support Costs and 105(l) leases—binding obligations—at IHS, as well as the Bureau of Indian Affairs and the Bureau of Indian Education. 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 continue to support the immediate transfer of 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 legal obligations. The Senate Interior Appropriations Subcommittee ultimately supported these important first steps in achieving mandatory funding for Indian Country in its mark for FY 2023. We now call Congress to work with Tribal Nations and the Administration fulfill its responsibilities and work to ensure that this proposal is included in any final FY 2024 appropriations legislation.

Expand Self-Governance Compacting and Contracting

The United States government bears a responsibility to uphold the trust obligation, and that obligation includes upholding Tribal sovereignty, self-determination, and self-governance. The Indian Self-Determination and Education Assistance Act (ISDEAA) authorizes the federal government to enter into compacts and contracts with Tribal Nations to provide services that the federal government would otherwise be obligated to provide under the trust and treaty obligations. Although self-government by Tribal Nations existed far before the passage of ISDEAA, Tribal Nations have demonstrated through ISDEAA authorities since the bill's enactment that we are best positioned to deliver essential government services to our citizens, including through the assumption of federal program and services. Tribal Nations are directly accountable to and aware of the priorities and problems of our own communities, allowing us to respond immediately and effectively to challenges and changing circumstances.

The success of self-governance under the ISDEAA is reflected in the significant growth of Tribal self-governance programs since its passage. In the USET region, the majority of our Tribal Nations engage in self-governance compacting or contracting to provide essential health care services. Across Indian Country, nearly two-thirds of federally recognized Tribal Nations engage in self-governance, either directly through the IHS or through Tribal organizations and intertribal consortia. In Fiscal Year (FY) 2020, approximately 50% of the IHS budget was distributed to self-governance Tribal Nations. However, despite the success of Tribal Nations in exercising these authorities under ISDEAA, the goals and potential of self-governance have not yet been fully realized. Many opportunities still remain to improve and expand self-governance, particularly within HHS. USET SPF, along with Tribal Nations and other regional and national organizations, has consistently advocated for all federal programs and dollars to be eligible for inclusion in self-governance compacts and contracts.

Attempts to expand self-governance compacting and contracting administratively have encountered barriers due to the limiting language under current law, as well as the misperceptions of federal officials. In 2013, the Self-Governance Tribal Federal Workgroup (SGTFW), established within the HHS, completed a study exploring the feasibility of expanding Tribal self-governance into HHS programs beyond those of IHS and concluded that the expansion of self-governance to non-IHS programs was feasible, but would require Congressional action. USET SPF maintains that if true expansion of self-governance is only possible through legislative action, Congress must prioritize this action. We strongly support legislative proposals that would create a demonstration project at HHS aimed at expanding ISDEAA authority to more programs within the Department. In addition, a major priority for Tribal Nations during the upcoming reauthorization of the Special Diabetes Program for Indians (SDPI), along with increased funding and permanency for the

program, is ISDEAA authority. USET SPF looks forward to supporting legislation aimed at fulfilling these priorities during this Congress.

Improve Public Health Funding and Data Sharing
Many of the challenges and shortfalls plaguing the Indian Health Care System are the result of sustained, chronic underinvestment in prevention and public health measures paired with generations of historical trauma and structural discrimination. As the United States's public health infrastructure took shape and grew throughout the twentieth century, Tribal Nations were routinely left out of resource distribution. While Tribal Nations have always and continue to invest in the health and wellbeing of our citizens, our efforts continue to be hampered by lack of funding and inconsistently applied data sharing authorities. In order to more effectively respond to the challenges in our communities, including those posed by current and future public health crises, Tribal Nations need increased resources as well as the ability to efficiently and easily obtain necessary public health data.

In an already strained funding environment, there are often little resources left for public health prevention and surveillance activities in Tribal Nations. Although the IHS supports limited public health activities at federally operated facilities, the primary responsibility for the development and delivery of public health infrastructure and services often lies with Tribal Nations, particularly in regions with high concentrations of self-governance Tribal Nations. While many Tribal Nations and IHS regions have worked to incorporate some public health components in their governments, these entities often do not operate at the same capacity as state programs, and certainly lack much of the authority afforded to state entities. The Indian Health Care Improvement Act (IHCIA) authorized the formation of Tribal Epidemiology Centers (TECs), and since 1996, the TECs have been working to improve the capacity of Tribal health departments to deal with public health issues and priorities. TECs are charged with seven main functions, including data collection, evaluation of systems, and the provision of technical assistance to Tribal Nations. The USET TEC, which serves Tribal Nations in the Nashville IHS Area, provides both aggregate and Tribal Nation-specific public health and mortality data in addition to its other functions. However, despite the critical nature of this invaluable work and Congressional directives to share data, TECs struggle with accessing public health data not only on the federal and state levels, but the Tribal levels as well. Access to timely, accurate data is vital to the delivery of healthcare services in Indian Country, as it is difficult to direct resources appropriately without fully understanding the challenges facing our people.

Congress has the obligation to correct these challenges within Indian Country. In addition to providing full funding to the IHS, Congress must meaningfully invest in public health capacity building in Indian Country. Funding for expanding the Community Health Aide Program (CHAP) to the lower 48 is one example of necessary investments in public health and preventative care in Tribal Nations. To mitigate challenges in data access, the federal government should compel agencies like the Centers for Disease Control and Prevention (CDC) and the Centers for Medicare and Medicaid Services (CMS) to issue specific guidance to states and other public health entities directing them to comply with legislative directives to share usable data with Tribal Nations. USET SPF is appreciative of efforts within the Subcommittee to conduct oversight in these matters.

Discussion Draft Recommendations

Clarification for Tribal Health Programs
While it appears that this bill is intended to apply to IHS-operated health care facilities only, we are concerned that potential unintended impacts to Tribal Nations operating facilities pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA), P.L. 93-638 have not been adequately examined. ISDEAA is among the most successful federal Indian policies, as it recognizes our inherent

Tribal sovereignty and self-determination by ensuring we—and not the federal government—are in the drivers-seat in addressing the needs of our communities. USET SPF member Tribal Nations operate in the Nashville Area of the Indian Health Service, which contains 36 IHS, Tribal, and urban health care facilities, of which 26 are Tribally-operated through contracts and compacts. Through exercising this self-governance authority under ISDEAA, USET SPF Tribal Nations have greater flexibility and control over federally funded programs to more efficiently and effectively utilize funding to meet the unique conditions within our Tribal communities. It is absolutely critical that the effects of this legislation on Tribally-operated programs are analyzed and consulted upon before it receives any further consideration.

Unfunded Mandates
Several provisions place additional administrative requirements on the IHS without providing additional resources for the agency to carry these out. USET SPF is concerned that in addition to creating compliance difficulties for the agency, these provisions will overtax the agency's existing administrative resources to the point of impacting other agency functions. It is unrealistic to expect that these new requirements can be successfully implemented in the absence of increased funding. As written, these new requirements will only exacerbate existing difficulties faced by the agency

Section-by-Section Comments
Below, USET SPF offers section-by-section comments and concerns. Again, this bill should not move forward without additional, thorough Tribal Consultation on a national basis.

Section 101. *Incentives for Recruitment and Retention.*
In order to address the ongoing challenges with the recruitment and retention of IHS staff, the legislation would allow HHS to provide housing vouchers or reimburse the costs for those relocating to an area experiencing a high level of need for employment. Though this provision provides the Secretary discretion to determine whether a location is experiencing a high level of need, USET SPF suggests including language for positions that are "difficult to fill in the absence of an incentive." This addition would allow IHS more flexibility when determining when to offer relocation compensation.

USET SPF agrees that there is a need for recruitment and retention programs. However, the establishment of these programs should not come at the cost of health care services. USET SPF recommends that additional appropriations be authorized for the proposed recruitment and retention programs.

Additionally, it is unclear why the bill includes a sunset date on the housing voucher program. It is unlikely that IHS staff housing needs will be fully addressed in only a 3-year period. USET SPF suggests that the sunset date be stricken.

Section 102. *Medical Credentialing System*.
This section would create a uniform, standardized, and central credentialling system for the IHS to use in its hiring procedures. USET SPF has deep concerns about the centralization of any Area Office functions, including credentialing. Nashville Area Tribal Nations have consistently advocated for Area Office presence and for services to be administered at the Area level. Collectively, we have worked hard to establish the strong relationship we have with our Area Office today. Taking away functions from Area offices causes significant backlogs in services, and disrupts an established and trusted relationship between the Area Office and Tribal Nations. We believe credentialing should be kept at the Area level, utilizing established best practices. In addition, this provision serves as an example of the aforementioned unfunded mandates included in this bill.

Section 104. *Clarification Regarding Eligibility for Indian Health Service Loan Repayment Program.*
USET SPF encourages efforts that would expand the Indian Health Service Loan Repayment Program to include degrees in business administration, health administration, hospital administration, or public health professions as eligible for awards. We recommend including language that would expand these degrees as eligible under the IHS Scholarship Program as well. Allowing for comprehensive eligibility under these programs would increase the number of AI/AN individuals seeking business and health administration degrees, as well as increase the pool of qualified health professionals within Indian Country. In addition, we have long supported legislation that would confirm the nontaxable status of IHS student loan repayments in parity with other federal loan repayment programs.

Section 105. *Improvements in Hiring Practices*.
This section makes several changes to the IHS's hiring authority that aim to give the Agency more ability to quickly address staffing shortages. First, it gives the IHS Direct-Hire Authority, which allows the Agency to bypass certain federal hiring procedures in order to appoint candidates directly to positions when there is a severe shortage of candidates or a critical hiring need.

On Waivers of Indian Preference, USET SPF firmly believes that the providers best suited to care for our communities are ones that come from the communities themselves. At the same time, there is room for improvements in hiring practices to ensure that positions are being filled in a timely manner with qualified candidates. We appreciate the inclusion of language to require Tribal requests to waive Indian Preference in order for the Agency to do so. However, we note that IHS included this policy change in its FY 2024 Budget Request in the absence of Tribal consultation or a provision requiring Tribal Nation approval. With this in mind, it is absolutely essential that this provision receive thorough Tribal consultation. Tribal Nations must guide its development and implementation to ensure that it accomplishes its aims without negatively impacting the development of a culturally competent workforce.

Section 106. *Improved Authorities of Secretary to Improve Accountability of Senior Executives and Employees of the Indian Health Service.*
While USET SPF understands the purposes of including language that would expand the Secretary's authority to remove or demote IHS employees based on performance or misconduct, we believe Tribal governments must also be notified when IHS employees within their Service Area become subject to a personnel action such as removal, transfer or demotion. In addition, we ask that the Report to Congress describing the 1-year period following the enactment of this provision also be shared with Tribal Nations.

Section 107. *Tribal Culture and History.*
USET SPF has consistently supported additional training for all federal employees on the nature and history of U.S.-Tribal Nation relations, trust and treaty obligations, and respectful diplomacy with Tribal Nations. With this in mind, we support the inclusion of Section 107. However, because each Tribal Nation is a unique sovereign entity, language should be included that would require each IHS Area to design these trainings through consultation with the Tribal Nations they serve on a regional basis. This will allow the training to encompass regional cultural commonalities, as opposed to attempting to ascribe cultural similarities to Tribal Nations across the country.

Section 108. *Staffing Demonstration Program.*
This section would establish a demonstration project to provide staffing resources to individual clinics or service units. While we support efforts to increase staffing throughout the Indian Health System, our concerns with this provision are similar to those with Section 101. Financial resources are essential to the proper implementation to this provision. In addition, it remains unclear how the Agency would take just four

years to make the program self-sustaining—especially without increased appropriations. Finally, the Agency appears to have outsize discretion in choosing sites for the demonstration.

Section 111. *Enhancing Quality of Care in the Indian Health Service.*
This section contains many provisions aiming to enhance the quality of care at IHS. While we appreciate Tribal consultation requirements and assurances that parts of this provision are optional for Tribally-operated facilities, we want to underscore the need to ensure that the diversity of Tribal Nations and Indian Country is reflected in the development of this provision. What may work for one Area and the Tribal Nations it serves may not work for another. In addition, any necessary resources should be extended to IHS in order to comply.

Section 112. *Notification of Investigation Regarding Professional Conduct; Submission of Records.*
This section requires the IHS to notify relevant Medical Boards no later than fourteen calendar days after starting an investigation into the professional conduct of a licensee at an IHS facility. This notification should also be extended to Tribal Nations served by that particular facility.

Section 113. *Fitness of Health Care Providers.*
Similarly, the reporting to Medical Boards under this provision must also be extended to Tribal Nations served.

Section 114. *Standards to Improve Timeliness of Care.*
This section requires IHS to establish standards that measure the timeliness of health care services provided in in IHS facilities. It is imperative that any timeliness of care standards are developed in consultation with Tribal Nations and that this section confirms unequivocally that the standards do not apply to Tribally-operated facilities. In addition, we request that any data collected under the provision be provided to Tribal Nations as well as the Secretary.

Section 203. *Fiscal Accountability*.
USET SPF has concerns with this section and its effect on base funding. This section requires further technical evaluation and explanation, including from IHS, in order to assess its true impact.

Sections 302-304**.** *Reports by the Secretary of HHS, Comptroller General, Inspector General.*
USET SPF recommends including language that would require greater collaboration and consultation with Tribal Nations. We feel the reports laid out in this section should be conducted in collaboration with Tribal Nations and provided to those Tribal Nations for consultation prior to their release to Congress or the public.

Section 305. *Transparency in CMS Surveys*.
As above, USET SPF recommends adding language that would require collaboration and consultation with Tribal Nations during the formulation of these compliance surveys. We also believe the results of these surveys should be provided to Tribal Nations prior to their public release.

Conclusion
USET SPF acknowledges the efforts of the Committee and others within Congress in seeking to address the long-standing challenges within IHS. However, we believe that the discussion draft continues to fail to recognize the deep disparities in funding faced by IHS and how these disparities contribute to failures at the Area level. We maintain that until Congress fully funds the IHS, the Indian Health System will never be able to fully overcome its challenges and fulfill its trust obligations. Finally, a number of provisions within the bill seem to be responding to Area-specific concerns. While we stand with our brothers and sisters who are

experiencing these failures, we ask that the Committee strongly consider the national (rather than regional) implications of the bill, and work with Tribal Nations to ensure its impact is positive in all IHS Areas. We thank the Committee for the opportunity to provide comments on this bill and look forward to further consultation The IHS Accountability Act, as well as an ongoing dialogue to address the complex challenges of health care delivery in Indian Country.