



USET

SOVEREIGNTY PROTECTION FUND

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Transmitted electronically to:
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Dr. Miriam E. Delphin-Rittmon
Assistant Secretary for Mental Health and Substance Abuse
Substance Abuse and Mental Health Services Administration
5600 Fishers Lane
Rockville, MD 20857

Dear Dr. Miriam E. Delphin-Rittmon,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) we write to provide comment to the Substance Abuse and Mental Health Services Administration (SAMHSA) on Behavioral Health and Substance Use Disorder Resources for Native Americans authorized by the Consolidated Appropriations Act, 2023 (CAA 2023). Despite Tribal communities facing disproportionately high rates of behavioral health and substance use issues, we continue to lack substantial and sustained funding to address these challenges – a violation of federal trust and treaty obligations to provide comprehensive health care to Tribal Nations. Additional behavioral health and substance use disorder resources have been a long-standing priority for Tribal Nations¹, and it is critical that the federal government fulfill its trust and treaty obligations to Tribal Nations in this regard. While Congress has yet to appropriate the funds necessary to carry out this program, USET SPF strongly urges SAMHSA to identify funding for this program and to ensure that the program is designed in a way that upholds Tribal sovereignty and provides equitable access to all Tribal Nations.

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 Mexico². 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 [Joint Tribal Organization Letter to Congressional Leadership on Native Behavioral Health Resources](#)

² 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

Between 1999 and 2015, drug overdose death rates for American Indian and Alaskan Native (AIAN) populations increased by more than 500%, and reports from SAMHSA and the Indian Health Service (IHS) indicate “alarmingly high suicide rates” among AIAN communities. Addressing the challenges presented by the opioid crisis in Indian Country and disproportionately high rates of suicide is further complicated by high rates of alcohol and substance abuse and other serious mental health conditions. AIAN populations experience serious mental illnesses at a rate 1.58 times higher than the national average, and a report from the IHS states that suicide is the second leading cause of death among AIAN youth ages 5 to 24. Yet, despite these persistent challenges, far too many facilities across the Indian Health System are unable to access the quality health care and services necessary to address these behavioral health issues. USET SPF, alongside numerous Tribal Nations and organizations, has long advocated for expanded mental health and substance use disorder resources for Tribal Nations. We urge Congress and the Administration, [as we have in the past](#), to prioritize its trust and treaty obligations to Tribal Nations by properly implementing and funding the Native Behavioral Health and Substance Use Disorder Resources Program, either through Congressional appropriations in Fiscal Year 2024 or existing SAMHSA budgetary resources

Support for Equitable, Noncompetitive Funding Mechanisms that Uphold Tribal Sovereignty

To combat both the ongoing opioid epidemic and the broader behavioral health crisis in Indian Country stemming from centuries of generational trauma, Tribal Nations and facilities require flexible and substantial funding to create behavioral health programs that are responsive to the unique circumstances facing our communities. Chronic underfunding of Tribal programs, and the Indian Health System as a whole, represent a failure to deliver upon federal trust and treaty obligations to Tribal Nations and has led to devastating consequences for Tribal communities. The trust responsibility has been reaffirmed times over and requires that the federal government “provide all resources necessary” to ensure “the highest possible health status” for Tribal Nations and citizens. USET SPF maintains that SAMHSA, as an arm of the federal government, has a trust responsibility to Tribal Nations to distribute critical funds such as these in a manner that upholds the sovereign status of Tribal Nations.

In response to SAMHSA’s request for input on what methodology or formula should be used to determine awards for this program, USET SPF asserts that any methodology or formula must result in meaningful levels of funding for all Tribal Nations, particularly Tribal Nations with smaller populations. To achieve this and fulfill its trust responsibility to provide meaningful resources to Tribal Nations, USET SPF urges SAMHSA to establish a robust minimum grant amount for the program.

SAMHSA is familiar with establishing a minimum award for Tribal Nations via its Tribal Opioid Response Grant (TOR) program. Setting a minimum award amount ensures that each grantee receives a meaningful amount of funding. In the absence of guaranteed minimums, funding formulas often create disadvantages for smaller Tribal Nations and result in the offer of negligible amounts of funding, which in turn prevents those Tribal Nations from successfully implementing the program as intended or from benefiting from the program at all. In pursuit of a Native Behavioral Health and Substance Use Disorder Resources Program that can be meaningfully utilized and implemented by all eligible Tribal Nations, USET SPF strongly urges SAMHSA to establish a simple funding formula that includes a minimum award amount.

Additionally, USET SPF expects that SAMHSA will work with Tribal Nations to fully implement the portion of the statute authorizing the delivery of program funds through contracts or compacts under Title I or V of the Indian Self-Determination and Education Assistance Act (ISDEAA). Ensuring distribution through ISDEAA contracts and compacts will both aid in efficient distribution of the funds and acknowledge Tribal sovereignty over our health programs. In fulfillment of its trust and treaty obligations to Tribal Nations, we expect SAMHSA to make ISDEAA capabilities permanent in the final program regulations.

Ultimately, SAMHSA must pursue a noncompetitive funding distribution system that accounts for the diversity of experiences and circumstances in Indian Country. All Tribal Nations are facing issues related to behavioral health. As such, the funding methodology should not rely on factors such as population or land base, particularly in the absence of other leveling mechanisms such as a Tribal size adjustment or a minimum funding level. Tribal Nations must not be forced to compete for these limited resources, particularly given the widespread challenges from behavioral health issues and substance use disorders facing Indian Country. However, regardless of the relative challenges in each Tribal community, to force Tribal Nations to compete for limited resources is an abrogation of the trust responsibility and an affront to Tribal sovereignty.

Flexibility and Deference in Use of Funds and Reporting Requirements

Under this new program, Tribal Nations must have broad authority in allowable costs and activities, as well as exempt from overly burdensome reporting requirements for use of the funds. The authorizing language in the CAA 2023 is quite broad, with no specific requirements placed on how funds must be used by eligible entities. It is important that this broad flexibility is maintained in the program to ensure that Tribal Nations have the ability to utilize the funds in manners that best suit our individual circumstances and communities. Overly prescriptive lists of allowable expenses both undermine Tribal sovereignty and fail to account for a variety of potentially fruitful uses and expenses.

We remind SAMHSA that under Executive Order (E.O) 13175, regarding the implementation of statutes and regulations, “the federal government shall grant Indian Tribal governments the maximum administrative discretion possible” and “where possible, defer to Indian Tribes to establish standards.” While increased behavioral health and substance use disorder resources is a priority shared across most of Indian Country, each Tribal Nation and organization faces a unique set of circumstances which require a tailored approach that can be achieved only through Tribal self-governance over these resources. USET SPF greatly appreciated the broad language included in the statute, and strongly urges SAMHSA to comply with E.O 13175 and preserve the intent of the authorizing statute by maintaining maximum flexibility in use of funds.

In recognition of our sovereign status and the federal trust obligation, Tribal Nations must not be subject to burdensome administrative requirements for the use of these funds. The authorizing statute is also quite broad on this point, stating that reporting and data sharing requirements should be created in consultation with Tribal Nations. Given this statutory discretion, SAMHSA must resist focusing on data collection, particularly given the challenges and shortfalls around data collection in Indian Country. Many Tribal Nations lack the capacity to undertake extensive data collection efforts, and the vast majority of federally held data sets do not contain identifiable information, making them of limited utility to Tribal Nations.

At a higher level, SAMHSA must not treat Tribal Nations as grantees. Grant funding, with its reporting requirements, “means testing,” and overall administrative burdens, fails to honor Tribal sovereignty and the unique nature of the federal trust obligation. Tribal Nations are sovereign governments, not non-profits, and funding for Tribal Nations is provided in fulfillment of legal and historical obligations. Beyond being antithetical to Tribal sovereignty, treating Tribal Nations and organizations as grantees has real, measurable consequences in Indian Country. Since 2019, USET has been a grantee under the SAMHSA Strategic Prevention Framework to provide training and support for USET’s Tribal Nations and their substance use disorder/behavioral health programs. However, since March 2022 – well over a full calendar year – USET has been requesting action from SAMHSA regarding our grant administration and has faced consistent and significant delays from SAMHSA officials. What should have been simple amendments to the grant have resulted in extreme delays in program administration, forcing some of our Tribal partners to decrease or discontinue services. In a more appropriate atmosphere that honors federal trust and treaty obligations, we would have been able to make these changes efficiently and continue the administration of

our grant without interruption. While this is only one example of challenges Tribal Nations and organizations face in the grant process, there are numerous more examples of Tribal Nations choosing not to pursue certain SAMHSA grant funding at all because of the significant challenges associated with SAMHSA grants administration.

Therefore, in order to build a program that truly reflects Tribal self-governance, reporting requirements must be kept to the minimum required by law, and any reporting required of Tribal Nations accessing the program through self-governance contracts and compacts should be minimal and reserved for the annual report required under ISDEAA.

Application Requirements and Technical Assistance

In response to SAMHSA's request for input on how the agency can assist eligible entities in submitting applications for program funding, USET SPF asserts that SAMHSA must provide technical assistance to Tribal Nations when relevant and must simplify the application process to the maximum extent. Ideally, SAMHSA will implement a funding distribution system with a minimum award amount that will allow Tribal Nations to simply opt into the program. Overly burdensome application processes, much like burdensome reporting requirements, often unintentionally exclude Tribal Nations with fewer grant-writing and administrative resources. In addition to simplifying the program application, SAMHSA should provide easily accessible, comprehensive technical assistance to any Tribal Nation that requests such assistance.

Conclusion

USET SPF appreciates this opportunity to provide recommendations on the Behavioral Health and Substance Use Disorder Resources for Native Americans program, despite the program currently lacking appropriated funds. USET SPF has long advocated for increased behavioral health and substance use disorder prevention and treatment resources for Tribal Nations and the authorization of these resources is an important step towards the goal of addressing these issues in Indian Country. While centuries of underinvestment in mental and behavioral health resources across Indian Country will require sustained funding and thoughtful effort on the parts of Congress and the Administration to address, we believe this program, if properly funded, is a promising start towards this goal. We strongly urge SAMHSA to advocate to Congress to appropriate funds for the program, and to work internally to identify resources for this program independent of the Congressional appropriations process. USET SPF looks forward to continuing to support this and other efforts to meaningfully increase and implement behavioral health and substance use disorder resources for Tribal Nations. 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 or 615-838-5906.

Sincerely,



Kirk Francis
President



Kitcki A. Carroll
Executive Director

