



USET

SOVEREIGNTY PROTECTION FUND

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Transmitted electronically to:
OTAP@samhsa.hhs.gov

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. 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) regarding its request for comment on the Tribal Opioid Response (TOR) grant program funding methodology. The opioid epidemic has had a devastating effect on USET SPF Tribal Nations and Tribal Nations across the country who continue to experience the destructive effects of opioid addiction at higher rates than non-Tribal communities. According to the Centers for Disease Control and Prevention (CDC), American Indians and Alaskan Natives (AI/ANs) experienced the highest rates of opioid overdose deaths of any racial or ethnic group in both 2020 and 2021. Between 2020 and 2021 alone, Tribal Nations experienced a staggering 33% rise in overdose deaths¹. Despite the disproportionate impact opioid addiction has had in Indian Country, Tribal Nations continue to lack access to sufficient and sustained resources to address the challenges of the opioid epidemic in our communities. The TOR grant program has sometimes been a valuable tool for Indian Country as we battle the opioid epidemic, but USET SPF offers the following recommendations we believe could greatly improve the efficacy of the program.

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.² 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 "[Drug Overdose Deaths in the United States, 2001-2021](#)," Centers of Disease Control and Prevention

² 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

Support for Equitable Funding Methodology

To combat the ongoing opioid epidemic, Tribal Nations require flexible and substantial funding to create 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. The federal government has affirmed many times over its requirement to “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 and treaty obligations 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 changing the funding methodology for the TOR grant program, USET SPF maintains 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 supports SAMHSA maintaining the current, simple formula methodology. The minimum award amount ensures that each Tribal Nation receives a meaningful amount of funding on which to base a TOR program.

USET SPF is generally supportive of SAMHSA continuing to use the IHS user population data as the basis of the formula but would also support other data sources such as self-attested population numbers from Tribal Nations, or the IHS active Indian registrants data. While the current methodology has been and will be acceptable, using self-attested population data from Tribal Nations in the formula could be more representative of the populations Tribal Nations intend to serve with this program. SAMHSA could also consider using the IHS active Indian registrants data, which is typically more in line with Tribal Nation enrollment data while still being an IHS-produced metric.

Overall, USET SPF supports non-competitive, formula-based funding methodologies and urges SAMHSA to maintain this in future grant cycles. Tribal Nations must not be forced to compete for limited resources, particularly given the broad range of challenges Indian Country is experiencing from the opioid epidemic. Regardless of the relative challenges in each Tribal community, to force Tribal Nations to compete for limited resources based on “need” is an abrogation of trust and treaty obligations, and an affront to Tribal sovereignty.

Avoid Overreliance on Data in Funding Methodology

It is unquestionable that opioid abuse, deaths, and trafficking have reached epidemic levels in the United States— particularly in Indian Country. Available statistics already show that AI/AN people had the highest rates of drug related deaths in recent years, and information from the Indian Health Service (IHS) indicates that AI/ANs are more likely than any other race/ethnicity to have an illicit drug use disorder. According to the NIH, opioid mortality rates for AI/AN populations have risen almost continuously for nearly two decades. However, USET SPF suspects that rates of AI/AN opioid overdose and addiction among Tribal Nations are likely much higher than national statistics and current data reveal. Per the CDC, misclassification of race on death certificates “results in the underestimation of death rates by as much as 34%” for AI/AN people. Further, currently available data fails to fully illustrate the impacts opioids are having in Tribal communities, as data access within the Indian Health System is limited and often incomplete. To assess the full scope of impact opioids are having in our communities, Tribal Nations require strengthened data collection activities at all levels and jurisdictions. However, no funding is currently available to Tribal Nations to create data systems that could more adequately and appropriately illustrate the impacts of the opioid crisis.

USET SPF is aware of the statutory requirement that SAMHSA give preference to Tribal Nations with “demonstrated need” but we caution against overly relying on “hard” data or requiring specific types of data in the program methodology. There are no specific types of data around opioid misuse or death that would not be flawed or underestimate the issue in some way, especially in the USET SPF region. For example, beyond the fact that AI/AN people are often racially misclassified on death certificates, as illustrated above, the cause of death on certificates is often not recorded as an overdose (usually as respiratory or heart failure instead.) This leads to a significant undercounting of deaths and artificially lowers the rate of opioid misuse and death in an area, which in turn affects the “demonstrated need” in a Tribal community. We urge SAMHSA to stay true to the formula-based design of the program, as all Tribal Nations are feeling the devastating effects of the opioid crisis and “need” additional resources to combat the epidemic in our communities.

Flexibility in Use of Funds, Reporting Requirements and Support for a Longer Grant Cycle

As an agency of the federal government, SAMHSA has an obligation to uphold and promote Tribal sovereignty and self-determination. With this in mind, it is critical that Tribal Nations have broad authority in allowable costs and activities to ensure that we 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. While the opioid epidemic has caused many shared challenges across Indian Country, each Tribal Nation faces a unique set of circumstances which require a tailored approach that can be achieved only through the flexibility to utilize these resources in a manner that responds to local conditions and priorities.

Further, Tribal Nations should not be subject to burdensome administrative and reporting requirements for the use of these funds. Given the challenges and shortfalls around data collection in Indian Country, which have been documented in these comments and by other Tribal Nations and organizations, SAMHSA should move away from focusing on data collection as a program requirement. Beyond failing to reflect the nature of the federal trust obligation, burdensome reporting requirements often unintentionally exclude Tribal Nations that could significantly benefit from the program but lack the capacity to conduct extensive data collection.

While it will not solve many of the challenges associated with significant reporting requirements, TOR recipients would benefit from expanding the grant cycle from 2 years to 5 years. Currently, Tribal Nations and organizations only have one year to plan and one year to execute the program, which both causes and is impacted by limiting factors such as lack of staffing and administrative capacity. It is difficult to plan, staff and execute any grant within 2 years, but particularly a grant that requires data collection and the use of “evidence-based” practices. A longer grant cycle would allow Tribal Nations to construct more comprehensive programs that result in meaningful progress and offer greater continuity. At present, a greater proportion of time is spent planning and closing out the grant than is spent executing the program, which is not an efficient use of time or resources, particularly for Tribal Nations with already-limited capacity. USET SPF strongly supports the proposal to shift the TOR program to a 5-year cycle.

Grant Funding Does Not Fulfill the Trust Obligation

The stated purpose of this consultation was to gather input on the specific funding methodology for the TOR program, and USET SPF is appreciative of previous efforts to ensure that the TOR program was designed to provide formula-based funding over a competitive grant model. But we would be remiss if we did not address the inherent issues with grant funding for Tribal Nations overall. 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.

Additionally, USET SPF maintains our position that all federal programs and dollars be eligible for inclusion in self-governance contracts and compacts. Despite the success of Tribal Nations in exercising authority under the Indian Self-Determination and Education Assistance Act (ISDEAA), the goals of self-governance have not been fully realized. We must move beyond piecemeal approaches directed at specific functions or programs and start ensuring Tribal Nations have real decision-making in the management of our own affairs and assets and in our responses to critical challenges like the opioid epidemic. It is imperative that Tribal Nations have the authority to redesign federal programs to best serve our communities, but accomplishing this requires a new framework and understanding that moves us away from paternalism. Grant program requirements and standards developed unilaterally by Congress or federal officials – including the requirement in this program that Tribal Nations demonstrate “need” – are barriers to the exercise of Tribal self-governance. Because funding for Tribal Nations is provided in fulfillment of clear legal and historical obligations, those federal dollars should not be subject to an inappropriate, grant-based mentality that does not properly reflect our diplomatic relationship.

Conclusion

USET SPF appreciates this opportunity to provide recommendations to SAMHSA regarding the TOR grant program funding methodology. The opioid epidemic is unquestionably wreaking havoc on Tribal Nations and our communities, and it is critical that we have access to all the culturally appropriate prevention, treatment, and aftercare services resources necessary to combat this crisis. USET SPF urges SAMHSA to remember the federal trust obligation and make the recommended changes that will allow Tribal Nations to utilize TOR grant resources more meaningfully and efficiently. 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