USET
SOVEREIGNTY PROTECTION FUND

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Roselyn Tso
Director
Indian Health Service
5600 Fishers Lane, Mail Stop: 08E86
Rockville, MD 20857

Dear Director Tso,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Indian Health Service's (IHS) request for input on the potential implementation of $250 million to combat the ongoing fentanyl crisis in Tribal communities that was included in the Biden administration's domestic supplemental request. Despite our 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 Nations[1], 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 these supplemental funds, USET SPF appreciates the opportunity to consult on the funds in advance in the hope that when the appropriation is made, IHS will be able to distribute them efficiently and 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 Mexico[2]. USET SPF is dedicated to promoting, protecting, and

[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).

advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

Between 1999 and 2015, the drug overdose death rates for American Indian and Alaskan Native (AI/AN) populations increased by more than 500%. 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. Yet, despite these persistent challenges, far too many Tribal Nations and facilities are unable to access nor provide the quality health care and services necessary to address the high rates of substance use disorder in our communities.

Support for Equitable, Noncompetitive Funding Mechanisms that Uphold Tribal Sovereignty

To combat the ongoing opioid epidemic, Tribal Nations and health facilities 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 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. IHS, 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 IHS's request for input on the implementation of these potential funds, USET SPF asserts that any methodology or formula must result in meaningful levels of funding for all Tribal Nations. To achieve this and fulfill its trust responsibility to provide meaningful resources to Tribal Nations, USET SPF urges IHS to establish a simple funding formula that includes a robust minimum award amount for these funds. USET SPF previously recommended a minimum award amount for a similar, currently-unfunded program at the Substance Abuse and Mental Health Services Administration (SAMHSA), which also employs a simple formula and a minimum award amount within its Tribal Opioid Response (TOR) grant program.

Setting a minimum award amount ensures that each eligible Tribal Nation or program 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. A simple funding formula with a minimum award amount would help ensure that the fundings can be meaningfully utilized and implemented by all eligible Tribal Nations.

Ultimately, IHS must pursue a noncompetitive funding distribution system that accounts for the diversity of experiences and circumstances with the opioid epidemic in Indian Country. All Tribal Nations and communities are facing issues related to opioid use and misuse. As such, any funding formula that IHS creates 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. 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.

Self-Governance Contracting and Compacting Capabilities

During Tribal consultation on this topic, IHS stated that it expects discretion in the appropriations language for the agency to employ existing distribution methodologies to expedite the distribution of funds to Tribal communities. USET SPF expects that IHS will deliver these funds through contracts and 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.

IHS has, in the past, been directed by Congress to transfer funds of this nature through ISDEAA contracts and compacts. In the Committee report for the Consolidated Appropriations Act of 2018, Congress stated that it "encourage[s] the transfer" of funds provided for the Substance Abuse and Suicide Prevention Program and for other mental health related programs "through Indian Self-Determination Act compacts and contracts and not through separate grant mechanisms." The report went on to state that this would ensure that administrative costs would be covered through the contract support cost process. However, IHS has elected not to act on this directive and continues to distribute this funding in the form of grants, to the detriment of Tribal Nations and communities. Beyond the benefit of contract support costs, transferring mental health and substance use disorder response funds through self-governance contracts and compacts enables Tribal Nations to exercise our sovereignty more meaningfully, and effectively respond to priorities in our communities. USET SPF urges IHS to comply with prior Congressional directives to distribute substance use disorder response funding through ISDEAA contracts and compacts, as well as work proactively to distribute current and future appropriations in this manner.

Overall, IHS must avoid distributing these funds in the form of grants. 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. Funding models such as grants do not treat Tribal Nations as the sovereign governments we are, and instead create unnecessary barriers to the services and resources to which we are entitled.

Flexibility and Deference in Use of Funds and Reporting Requirements

Within this funding award, Tribal Nations must have broad authority in allowable costs and activities and should be exempt from overly burdensome reporting requirements in use of the funds. Although authorizing language does not yet exist, IHS should ensure to the greatest extent possible that no specific requirements are placed on how the funds may be used by eligible entities. It is vital that broad flexibility is maintained to ensure that Tribal Nations have the ability to utilize 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.

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. In order to distribute these funds in a way 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.

Conclusion

USET SPF appreciates this opportunity to provide recommendations on the potential implementation of $250 million supplemental request to combat the opioid epidemic in Indian Country, despite the lack of appropriating language at this time. 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 could be an important step towards the goal of addressing these issues in Indian Country. We strongly urge IHS to advocate to Congress to fulfill the supplemental request and secure more resources for combatting the opioid crisis in our communities. 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