USET
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April 19, 2024

Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Ave. SW
Washington, DC 20201

Dear Secretary Becerra,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write to provide comment to the Department of Health and Human Services (HHS) following the 2024 HHS Annual Tribal Budget Consultation held on April 9th and 10th, 2024. The following comments are not an exhaustive list of priorities for our member Tribal Nations but contain a range of priorities and recommendations to inform HHS as it formulates its fiscal year (FY) 2026 budget requests. We hope that HHS will utilize these recommendations, which we have separated by HHS Operating Division, to develop budget and policy requests that include meaningful implementation of Executive Order (E.O) 14112. This includes honoring its trust and treaty obligations to Tribal Nations, committing actively to advancing and promoting Tribal self-governance and self-determination across HHS programs and services, and fulfilling its responsibility to provide for the "highest possible" health status for Tribal Nations and communities.

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.

Introduction

USET SPF reminds HHS that inadequate funding to Indian Country must be viewed as unfulfilled trust and treaty obligations. The federal government's trust obligations are the result of the cession of vast land and natural resources by Tribal Nations to the United States – oftentimes by force – in exchange for which the U.S. is legally and morally obligated to provide benefits and services in perpetuity. The chronic

[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).

underfunding of federal Indian programs continues to have disastrous impacts on Tribal Nations and communities, with Native Americans experiencing some of the greatest disparities among all populations in this country.

In the long-term, USET SPF is calling for a comprehensive reexamination of federal funding delivered to Indian Country across the federal government – which has now been made a directive in E.O. 14112. Because of our history and unique relationship with the United States, the trust obligation of the federal government to Native peoples, 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. As a key agency tasked with delivering on the trust obligation through programs and services to Indian Country and as a federal entity held to E.O. 14112, HHS must work with Tribal Nations and communities to address chronic shortfalls and federal failures to live up to its promises.

With this in mind, the HHS FY 2026 Budget Request should build upon the FY 2023, 2024, and 2025 requests while advocating for even bolder changes. With earlier Requests, this Administration took unprecedented steps to include mandatory funding for the Indian Health Service (IHS) and binding obligations. After years of requests that neglected trust and treaty obligations, we welcomed the meaningful policy change proposed by this Administration. It is also important to remember, however, that centuries of neglect and hostile federal policies cannot be undone in a single request. In addition to our advocacy for the highest discretionary increases possible each FY, we are seeking a long-term commitment to federal fulfillment of trust and treaty obligations—including full and mandatory funding for all federal agencies and programs serving Tribal Nations.

Implementation of E.O. 14112

In December 2023, President Biden signed Executive Order (E.O) 14112, "Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination." The wide-ranging EO directs federal agencies to: 1. Assess their unmet financial obligations to Tribal Nations; and 2. Remove existing barriers to the accessibility, equity, flexibility, and utility of federal funding and support programs for Tribal Nations. USET SPF is encouraged by the issuance of this E.O., and acknowledges that while it is ambitious, it is also necessary and meaningful as it seeks to address many centuries of broken promises through long-sought reforms to the ways in which funding is delivered to Tribal Nations, and to quantify federal failures to provide funding in fulfillment of trust and treaty obligations.

In order for this E.O. to make the meaningful change that it promises, appropriate research and consultation must be undertaken. To that end, substantial and adequate federal resources must accompany this effort. The Administration should work across federal departments, including utilization of federal staff who have relevant subject matter expertise, in order to come to reasonable assumptions and defensible estimation methodologies around funding shortfalls. This effort should be undertaken across the whole of HHS, encompassing all programs and dollars for which Tribal Nations are eligible.

Additionally, it is important to note that some of the funding delivery and flexibility changes sought in the EO can be implemented without cost through both regulatory and legislative changes. This includes the expansion of the Tribal 477 Program and new programs designed based on its principles, expansion of Tribal self-governance, and direct funding to Tribal Nations across the federal government, as well as deference to Tribal decision-making in use of funds and program administration.

Further, meaningful implementation of the E.O. must include a shift away from grant mechanisms as the primary delivery method for funding in Indian Country. Currently, much of the HHS budget is delivered via competitive grant mechanisms. Grant funding is an abrogation of the federal trust responsibility and does not reflect the sovereignty of Tribal Nations. In accordance with E.O. 14112, HHS must commit to employing funding mechanisms that provide Tribal Nations with more direct funding that includes greater deference to Tribal Nation sovereignty and self-determination.

To achieve this, HHS's implementation of E.O. 14112 must include the expansion of Indian Self-Determination and Education Assistance Act (ISDEAA) contracting and compacting. Expansion of ISDEAA throughout HHS has long been a priority of Indian Country. In 2013, the Self-Governance Tribal Federal Workgroup (SGTFW), established within the Department of Health and Human Services (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. Since then, HHS has neither actively advocated with Congress for expanded authorities nor conducted additional analysis of HHS programs to determine where regulatory flexibilities might exist. E.O 14112 explicitly directs federal agencies, HHS included, to both design and revise funding and programs to promote self-governance contracting and compacting. This is an effort that can and must be started immediately. Compliance with E.O 14112 is mandatory, not suggested, and in accordance with its directives, the Department must uphold its responsibility to Tribal Nations by actively supporting efforts to expand ISDEAA authorities to all HHS programs and services.

At this time, USET SPF requests that HHS share specific information and proposals regarding how the agency is implementing E.O. 14112's mandate for flexibility in federal funding, including the identification of any statutory and regulatory changes that are necessary to ensure that federal funding and support programs effectively address the priorities of Tribal Nations. USET SPF also reminds HHS that in the absence of guidance for addressing funding shortfalls, the agency should, and is required under the E.O., to begin immediately by identifying areas where it can independently incorporate funding and program flexibilities.

HHS Draft Tribal and Tribal Epidemiology Center (TEC) Data Access Policy
On March 5, 2024, USET SPF submitted comments to the Department of Health and Human Services (HHS) on their draft Tribal and Tribal Epidemiology Center Data Access Policy. USET SPF also submitted comments to HHS in 2022 during the first round of consultation on this topic.

Our detailed comment document focused on the ways in which this draft policy is exceedingly inadequate despite HHS conducting extensive Tribal consultation on this topic and having received direct recommendations from the Government Accountability Office (GAO) regarding Tribal data access. The draft policy fails to address the GAO's recommendations, and even fails to accomplish the goals set forth in the policy's own scope and purpose section. In our comments from 2022, USET SPF urged the agency to establish a policy that fully recognizes the status of Tribal Nations and TECs as public health authorities (PHAs). This draft policy fails to do this in a meaningful way, and indeed stands to diminish the authority of Tribal Nations and TECs to access public health data if implemented in its current form. As such, we urged in our comments and continue to ask HHS to overhaul the draft entirely, but offered recommendations on this draft as well in the hopes that the policy might be improved to a point that it may be useful to Tribal Nations and TECs.

The data access policy also requires each HHS Operating Division to create data access policies specific to each agency that align with the HHS general policy. As the issues USET SPF identified with this draft

have the potential to affect each subsequent Operating Division policy, we encourage HHS to share these comments with each Operating Division as the policy development process continues.

USET SPF strongly encourages HHS to reconsider and redraft this policy, particularly given the wide-reaching implications of its application across HHS and its Operating Divisions. HHS has a dual obligation to correct these issues – both as an arm of the federal government tasked with fulfilling trust and treaty obligations, and as the covered entity tasked with sharing data and information with public health authorities.

Administration for Children and Families (ACF)

USET SPF supports the proposal within the President's FY 2025 Budget Request that would create a consolidated grant opportunity for Tribal Nations that could be used for any child welfare purpose, including culturally appropriate prevention and support services, foster care, kinship supports, reunification services, guardianship or adoption support, and child welfare staff and training. This grant would replace currently fragmented funding provided to tribes under title IV-B, subparts 1 and 2, as well as the Chafee and discretionary Education and Training Voucher programs. The new grant program would remove burdensome plan requirements originally designed for state agencies and instead create a "streamlined application process grounded in the principles of [T]ribal self-determination and ensuring the safety and well-being of children and families…. All federally recognized tribes would be eligible to participate in the program and would receive a base level of funding, plus an additional amount per child, based on the enrolled child population of the tribe." The proposal estimates a significant base award plus per capita funding by child, and the program's funding would be uncapped mandatory funding to ensure adequate funds are available to allow participation by all interested Tribal Nations.

USET SPF supports this proposal to consolidate currently fragmented grant funding opportunities in this space. As we do across the federal system, USET SPF supports proposals such as these that aim to streamline application processes and remove barriers to Tribal access to grant opportunities. Additionally, we have consistently advocated for program designs that provide a meaningful base amount of funding for all interested Tribal Nations, as this new consolidated grant would. This is important given that some of the grant programs to be consolidated in this new program, such as those under title IV-B, currently allocate funding based on a formula that excludes some smaller Tribal Nations. 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.

Further, USET SPF has long held that Tribal Nations must have broad authority in program spending and activities and should be exempt from overly burdensome reporting requirements within funding programs. Tribal Nations are best suited to identify and respond to the priorities and circumstances in our communities, and this new program would allow for the exercise of Tribal sovereignty through a broad range of culturally appropriate child welfare services.

Importantly, this proposal falls squarely in line with the intent of E.O 14112 to reform the ways in which funding is delivered to Tribal Nations and reduce barriers to the accessibility and utility of federal funding and support programs for Indian Country. USET SPF looks forward to consulting with HHS on this proposal, including on strategies for advocacy with Congress, as this new program stands to advance Tribal sovereignty and self-determination and our ability to provide for the health and safety of our communities.

Centers for Disease Control and Prevention (CDC)
The Centers for Disease Control and Prevention (CDC) must work to address the frequent challenges in accessing data at both the federal and state levels that Tribal Nations and Tribal Epidemiology Centers (TECs) continue to experience, as well as the consistent lack of investment in TECs and Tribal public health capacity. While CDC has been given directives to share data with Tribal Nations and TECs, the data is often of poor quality and is not shared in a timely manner, hindering the work of TECs and Tribal Nations.

CDC must also take steps to improve the quality and quantity of public health data shared with TECs and Tribal Nations. Under statute, CDC, as an arm of HHS, is required to share all the public health data in the possession of the HHS Secretary with Tribal Nations and TECs. This includes requiring states work with Tribal Nations to correct racial misclassification and ensure bidirectional data sharing, as well as internal work to consult and coordinate with Tribal Nations to identify and secure access to data sets that would aid Tribal Nations and TECs in our efforts to provide for the health and wellness of our communities.

Additionally, USET SPF offers our support for increased resources for CDC's Good Health and Wellness in Indian Country (GHWIC) program. This initiative supports a multitude of services to Tribal Nations, Tribal organizations, and TECs nationwide. Namely, GHWIC focuses on reducing commercial tobacco use and exposure, improving nutrition and physical activity, increasing support for breastfeeding, increasing health literacy, and strengthening team-based health care and community-clinical links. Over the past several FYs, GHWIC has mostly received level funding requests. USET SPF appreciated the decision by Congress to increase program funding from $22.5 million to $24 million in FY 2023, despite the level funding proposal from the Administration. However, we are disappointed that the FY 2025 President's Budget again proposed level funding for the program at $24 million, as well as Congress's decision to maintain level funding at $24 million for FY 2024. While program continuity is critical, we encourage the Biden Administration to not only support continuity for the program in FY 2025 and beyond, but to also advocate to Congress for increased funding.

Centers for Medicare and Medicaid Services (CMS)
Medicaid is a critical mechanism the federal government utilizes to fulfill its trust and treaty obligations to provide health care to American Indians and Alaska Natives (AI/AN). However, significant gaps remain in access to Medicaid for AI/AN, including substantially different eligibility and access to services based on where we reside. Barriers in access to Medicaid run deeply counter to the terms of our sacred relationship with the United States. USET SPF intends to work with the Administration and Congress on policies that promote equal access to Medicaid for AIAN people—regardless of where they reside. We further remain vigilant in ensuring that all future efforts that attack the constitutionality of the unique relationship between the U.S. and Tribal Nations are challenged and opposed.

USET SPF supports the legislative and regulatory priorities and efforts of the CMS Tribal Technical Advisory Group (TTAG), including the authorization of Medicaid reimbursement for qualified Indian Provider services, the extension of 100% Federal Medical Assistance Percentage (FMAP) for Urban Indian Organizations, and reimbursement for services provided by IHS providers outside IHS/Tribal facilities (a permanent Four Walls issue fix). Regarding the "Four Walls" issue, which currently restricts reimbursements for services like home visits or services referred outside the IHS or Tribal facility, USET SPF appreciates Deputy Administrator Dan Tsai's announcement that CMS is working to identify a regulatory fix for this issue. We call upon the agency to work quickly and efficiently to implement a fix as soon as possible to ensure continued operation and reimbursement of healthcare programs. USET SPF has also advocated in the past for a fully federal Medicaid program for Tribal Nations as a means to fix equity and access issues within Medicaid.

As part of these priorities and in pursuit of greater access and equity within Medicaid, USET SPF urges CMS to issue guidance to states informing them that they can reimburse Indian Health Care Providers for Medicaid telehealth services at the Office of Management and Budget (OMB) Encounter Rate. CMS should also expand the definition of permissible Medicare telehealth services and make permanent the telehealth flexibilities provided during the PHE, including allowing Medicare to reimburse for telehealth services provided in a patient's home, to include audio only telehealth services.

Additionally, "Medicaid unwinding" – the process by which CMS and states are transitioning out of the continuous enrollment provision - has continued to have serious consequences in Indian Country. Under Medicaid unwinding, Medicaid and CHIP programs were allowed to restart eligibility redeterminations for Medicaid and CHIP beneficiaries and disenroll beneficiaries who are no longer eligible for Medicaid or did not comply with eligibility redetermination requirements to maintain their coverage. As of November 2023, a little over 6 months into the unwinding process, reports show that over 400,000 Native Americans have been disenrolled from Medicaid, despite efforts by Tribal Nations and organizations to mitigate the volume of Native Americans disenrolled during this process. The report indicates that more than 70% of those disenrolled during unwinding may have still been eligible for Medicaid but were disenrolled for procedural reasons (such as failure to return paperwork). State policies and practices have played a central role in these procedural terminations.

While CMS has taken steps to ensure state compliance with federal regulations and mitigate the amount of procedural disenrollments from Medicaid, such as this August 2023 letter from CMS to states, we urge CMS to issue additional guidance to states on working with Tribal Nations and organization to facilitate Medicaid unwinding in Indian Country in a way that does not perpetrate further harm.
Beyond these efforts focused on Medicaid, the CMS TTAG also has a set of priorities for the Medicare program, including requests to eliminate Medicare Part B premiums and deductibles for IHS-eligible people and ensuring parity in Medicare reimbursement policies.. USET SPF supports the TTAG's Medicare legislative priorities, Medicare regulatory priorities, Medicaid legislative priorities, and Medicaid regulatory priorities.

Health Resources and Services Administration (HRSA)
USET SPF continues to be concerned by HRSA's narrow definition of "rural" in its program requirements. The definition continues to impede Tribal Nation access to vital resources. Under the CARES Act passed in March 2020, a $15 million set-aside was authorized to be administered by HRSA to support Tribal Nations in preventing, preparing, and responding to COVID-19 in rural communities. However, this critical funding was subject to HRSA's definition of "rural" via grant funding, thus creating an arbitrary and unnecessary barrier for many Tribal Nations during a national crisis. HRSA shares in the federal trust obligation to all Tribal Nations—regardless of rurality—and all funds must be distributed in a manner reflective of our special status and relationship with the federal government. With this in mind, USET SPF asserts that HRSA must ensure that all Tribal Nations have equal access to all federal resources to which we are entitled by designating all Tribal Nations as "rural" under its rules.

All Tribal Nations should be considered rural for the purposes of HRSA funding since the federal trust obligation applies to all Tribal Nations equally. We remind HHS and HRSA that Tribal Nations and our homelands predate the founding of the U.S. However, because U.S. policies progressively forced relocation and reservations upon Tribal Nations and Native people, our communities are now subject to "urban" and "rural" designations which are inappropriately utilized to determine the types of resources that will be made available to us.

Indian Health Service (IHS)
For the second time ever, the Indian Health Service (IHS) has received advance appropriations for the majority of the agency's budget. Under the Consolidated Appropriations Act of 2024, the IHS will receive $5.19 billion in advance appropriations for FY 2025, a slight $61.43 million increase over the FY 2024 advance appropriation. Advance appropriations insulate the IHS from delays or interruptions in funding caused by political infighting during budget negotiations and provide a level of budgetary certainty for the chronically underfunded agency. We applaud the continuance of IHS advance appropriations, but maintain that all federal funding and programs serving Tribal Nations should be provided with full and mandatory funding.

USET SPF is encouraged that the Biden Administration has again elected to propose shifting the IHS budget to mandatory funding beginning in FY 2026 via a 10-year proposal to significantly increase resources at the IHS. The 10-year plan for mandatory funding would shift funding for the IHS from the discretionary to the mandatory side of the federal budget, a move that stabilizes the agency and is more representative of perpetual trust and treaty obligations. The 10-year plan would increase IHS funding to roughly $42 billion by FY 2034 and exempt agency funds from sequestration. USET SPF has consistently advocated for mandatory funding for the IHS and a budget that better honors the U.S.'s perpetual trust and treaty obligations to Tribal Nations, and while the President's proposal is a promising first step towards fulfilling those promises, this proposal should be revised in light of E.O. 14112. The E.O. directs federal agencies and departments to identify chronic shortfalls in funding and services and provide recommendations for better fulfilling the federal government's trust responsibilities. HHS and the Administration must comply with E.O 14112 by working efficiently to develop a proposal for IHS full and mandatory funding that is comprehensive and informed by extensive and meaningful Tribal consultation.

Unfortunately, the President's FY 2025 request for the IHS does not propose shifting Contract Support Costs (CSC) and Section 105(l) lease payments to mandatory in FY 2025, instead proposing that these items remain as indefinite discretionary appropriations until FY 2026. However, under the President's mandatory funding proposal, these line items would be shifted to mandatory as well with the entirety of the IHS budget. USET SPF urges the IHS to advocate for these line items to be immediately transferred to the mandatory side of the budget, regardless of the mandatory proposal for the IHS budget, otherwise we are concerned about the further negative implications that it will have on overall IHS programmatic line items.

Regarding the Special Diabetes Program for Indians (SDPI), USET SPF is pleased with the President's FY 2024 Budget Request for the Special Diabetes Program for Indians (SDPI), which proposes $260 million in mandatory funding, and exempts the program from the mandatory sequester. This represents a $113 million increase over FY 2023 post-sequestration enacted levels, which have remained stagnant since 2004. USET SPF has long advocated for increased resources for the SDPI program, as well as protection from sequestration. The proposal would also reauthorize the SDPI for three years and increase the funding each year, culminating in a total funding level of $270 million annually by FY 2027. It is vital that Congress adopt this proposal, as the SDPI is currently slated to expire on December 31, 2024. USET SPF urges HHS and IHS to advocate with Congress for increased, mandatory resources for the SDPI.

The SDPI has proven successful, and should be a permanently authorized, mandatorily funded program. Congress must also extend ISDEAA compacting and contracting authorities to the SDPI, and USET SPF calls on the IHS to support ISDEAA authority for the SDPI and advocate for this change with lawmakers

Tribal Nations are well positioned to take over administration of the program, and the change would lead to better outcomes on the local level. The current grant funding model is not representative of the U.S.'s trust and treaty responsibility. Tribal self-governance over the SDPI would allow for greater flexibility to meet the priorities of each Tribal Nation recipient and would fall in line with the directives in E.O. 14112.

Finally, IHS must continue to consult and coordinate with Tribal Nations as it continues its efforts to modernize its Health Information Technology (HIT) systems—namely, replacing its current Electronic Health Record (EHR), the Resource Patient Management System (RPMS). Over the next few years, IHS will work to build and configure the new EHR system with the vendor – selected in late 2023 - prior to transitioning programs and facilities into the new system. USET SPF previously submitted comments to the IHS on this program urging transparency and consultation throughout the implementation process. Our comments also requested funding for implementing the new EHR system at Tribal facilities, as well as funding for Tribal Nations that independently transitioned to a commercial off-the-shelf (COTS) EHR ahead of the IHS process. Without additional funding, these Tribal Nations have been forced to bear the full cost of these purchases, which were necessitated by the federal government's historic failure to modernize RPMS. We urge IHS to develop a HIT modernization plan that includes full reimbursement for Tribal Nations that have or plan to implement COTS. USET SPF asserts that the federal government has fallen short of its trust obligation to Indian Country by under-resourcing our health IT. In partnership with Tribal Nations, IHS must work to ensure that the entire Indian Health System is brought into the 21st century. This includes transparent and direct Nation-to-Nation dialogue as this process proceeds, as well as working to address the diverse circumstances of Tribally operated facilities, as well as those operated by IHS.

National Institutes of Health (NIH)

Since 2015, the National Institutes of Health (NIH) has repeatedly failed to seek input from Indian Country and has disregarded guidance from Tribal leaders, Tribal Organizations, and its own Tribal Advisory Committee regarding research and data protection initiatives overseen by the agency. We remind NIH that, as an agency of the federal government, it has a legal and moral trust responsibility to Tribal Nations. This includes upholding the sovereign status of Tribal Nations, as well as our designation as public health authorities, as we seek to protect, regulate, and maintain ownership over the data of our citizens and Nations. NIH must recognize and always consider the shameful and deeply unethical history between research and Tribal Nations and take the necessary steps to ensure that past abuses never happen again. Tribal Nations must have full confidence, ideally through a binding data sharing policy, that research and data collection will be conducted in a way that acknowledges and seeks to correct past abuses, including through the use and development of Tribal Institutional Review Boards, community-based participatory research, and informed consent.

As a research entity, NIH must be held to stronger data sharing requirements to protect subject data. Data collection and sharing within Indian Country must include protocols for integrating Tribal consent and oversight as well as protections for Tribal data ownership and Native people. NIH must remember when it is conducting research in Indian Country that as an arm of the federal government, it must account for and work to mitigate the historical trauma and distrust felt by Tribal Nations throughout our contact with researchers. The agency must continue to ensure that NIH-facilitated or funded research should not occur in our communities or with our people without Tribally determined protections in place.

As part of HHS's efforts to create a Department-wide Tribal and TEC data sharing policy, NIH has been directed to create an agency-specific Tribal data sharing policy. NIH intends to publish a draft policy for Tribal consultation in spring/summer 2024. USET SPF submitted comments to HHS in 2022 and 2024 regarding the Policy that recommended several actions to improve data sharing and Tribal data sovereignty. We continue to await implementation of these recommendations.

Substance Abuse and Mental Health Services Administration (SAMHSA)
Several federal Indian programs are administered through SAMHSA. These include Tribal set-asides and grant-based programs to address substance abuse and behavioral health crises within our communities. These grant-based programs are typically authorized by Congress with slight increases or level funding. Given that Tribal Nations continue to experience the devastating effects of higher levels of addiction, overdose and death, particularly due to the high rates of opioid and fentanyl overdose, in our communities, USET SPF is disappointed that the President's FY 2025 Budget Request proposed only slight increases for Tribal-specific programs within SAMHSA. For example, the President's Request proposed only a $5 million increase for the Tribal Opioid Response Grant (TOR) program for FY 2025, rather than the $20 million increase proposed in the FY 2024 President's Budget. Further, the President's budget has elected to propose a total funding level of $23.7 million for Tribal behavioral health grants, a funding level even with the FY 2024 appropriation. Given the funding stagnation of these programs in recent years, USET SPF is disappointed that the Administration chose to largely maintain FY 2024 spending levels. We understand that the Fiscal Responsibility Act (FRA) limited spending increases in Congress, we urge SAMHSA and the Administration to ensure that Indian Country is not penalized due to these funding caps. As the appropriations process moves forward, we encourage SAMHSA and the Administration to advocate for the inclusion of the funding increase beyond the President's proposal in the FY 2025 appropriations legislation in pursuit of fulfilling the federal trust responsibility, as well as provide more meaningful funding increase proposals in future budget requests from SAMHSA.

USET SPF also maintains that Tribal Nations must have greater flexibility in the use of program dollars, particularly within SAMHSA's TOR and State Opioid Response (SOR) Tribal Set-Aside programs. While this funding continues to be critically important in Indian Country, many of the grant requirements, including those related to data and reporting and use of funds, preclude many Tribal Nations from participating. In accordance with E.O 14112, Tribal Nations must have greater flexibility in the use of Opioid Response grant dollars to address substance abuse in our communities. SAMHSA must also, in fulfillment of E.O. 14112, ensure that all SAMHSA program funding is made available for distribution via ISDEAA contracting and compacting so all Tribal Nations have access to critical resources to address addiction and improve mental health in our communities. As Tribal Nations continue to face the devastating effects of substance misuse and mental health struggles within our communities, we require flexible and substantial funding to create and administer behavioral health programs that are responsive to the unique circumstances facing our communities.

Furthermore, USET SPF continues to urge the inclusion of the full authorized level of $80 million in FY 2025 appropriations to fund the Native Behavioral Health Resources Program as included in the Restoring Hope for Mental Health and Well-Being Act. Despite being authorized as part of the Consolidated Appropriations Act of 2022, Congress did not appropriate funding for the program in either FY 2023 or FY 2024. Unfortunately, this program was also not included in the President's Budget Request in FY 2024, and remains absent from the FY 2025 request. Tribal Nations and our citizens continue to face high rates of behavioral health issues, caused by myriad factors, including centuries of generational trauma resulting from colonization and hostile acts of the United States government. Yet, in violation of federal trust and treaty obligations to provide comprehensive health care to Tribal Nations, we continue to lack substantial and sustained funding to address these challenges for current and future generations. USET SPF continues to urge the Administration to request funding for this program in the budget process, and we urge Congress to appropriate the full authorized amount of $80 million in its FY 2025 spending bills.

Conclusion

USET SPF appreciates this opportunity to provide HHS with comments and recommendations as the agency prepares for the FY 2025 budget negotiations process and the FY 2026 budget formulation process. As HHS crafts future budget requests, we are seeking greater positive structural and systemic change in order to more fully deliver upon sacred promises. USET SPF asks that you join us in working toward a legacy of transformation for Tribal Nations, Native American people, and the sacred trust relationship. This includes the proposal of budget requests that uphold our status as sovereign governments, recognize our right to self-determination and self-governance, and honor the federal trust obligation in full. 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 email at lmalerba@usetinc.org.

Sincerely,

Kirk Francis
President

Kitcki A. Carroll
Executive Director