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Transmitted Electronically

October 6, 2026

The Honorable Robert F. Kennedy Jr.
Secretary
Department of Health and Human Services
200 Independence Ave. SW
Washington, DC 20201

Re: USET SPF Comments to HHS ACF on its Notice of Proposed Rulemaking to Rescind and Replace the Head Start Program Performance Standards, Docket ID No. ACF-2026-0595, RIN 0970-AD30

Dear Secretary Kennedy,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Department of Health and Human Services (HHS), Administration for Children and Families' (ACF) Notice of Proposed Rulemaking (NPRM) to rescind and replace the Head Start program performance standards. ACF's proposals purport to modernize these performance standards by reducing federal regulation and duplication while empowering local authorities to meet the unique needs of children and low-income families in their communities. However, several of the proposed changes raise serious concerns for Tribal Nations administering this program. These include reducing the administrative cost cap for developing and administering a Tribal Head Start program from 15% to 5%; deferring to state and local government policies for program administration; and prioritizing use of the English language in education—unless a Tribal Head Start agency is teaching our Native language in "furtherance of Tribal heritage."

While ACF is proposing to reduce regulations and return primary authority for Head Start administration to local authorities, it must ensure that these changes do not infringe on the inherent sovereignty of Tribal Nations to administer our own programs in a manner that best serves our children, families, and communities. This must include assurances that state and local governments will not extend jurisdiction over Tribal Head Start programs as well as explicit protections for the inclusion and use of any Tribal language and cultural curricula in our programs.

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 Turtle Island.[1] USET SPF

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

is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and to assisting its membership in dealing effectively with public policy issues.

The Delivery of Quality Education to Tribal Citizens is a Trust and Treaty Obligation

Tribal Nations are and always have been inherently sovereign governments, a status that predates the arrival of colonizing forces and that has been repeatedly and consistently affirmed by the United States in the U.S. Constitution, U.S. Supreme Court decisions, treaties, statutes, and other legal proclamations.[2] In taking for itself nearly all Tribal Nations' original territory through war, treaty-making, and other coercive means, the United States incurred a debt to Tribal Nations that manifests in trust and treaty obligations to provide services and funding to Tribal Nations, Tribal communities, and Native people, including for education and community development purposes. This debt persists in perpetuity as long as the United States continues to hold and enjoy the benefits of our lands and resources.

As part of these debt-based trust and treaty obligations, the federal government, including ACF, must ensure that the appropriate resources are accessible and available to support Tribal education programs like Head Start. We remind ACF that the chronic, persistent underfunding of Tribal education programs and the consequences of federal policies that sought to eliminate our Tribal heritage have contributed to the harmful socio-economic conditions that affect our communities today. For these reasons, ensuring the preservation and sustainability of Tribal education programs, like Head Start, is critical to the continued growth and development of our children and their families. The Head Start program was specifically established by Congress to provide low-income families and their children with vital support for early learning and development, health, and family well-being services. The program supports children from birth to age five and provides families with essential assistance during pregnancy as well as ongoing parenting support services. Tribal administration of Head Start programs provides opportunities for us to integrate curricula that revitalizes, preserves, and maintains our languages and cultures for our children.

Due to the importance of this program for early childhood development and family support for our most economically stressed citizens, Tribal Head Start programs are a critical component of the federal government's trust and treaty obligations. Any regulatory changes to how Head Start is administered, especially pertaining to the teaching of our languages and cultures to our children, must not adversely affect Tribal administration of this program. ACF must ensure that the necessary federal dollars and resources are appropriately funded and remain available to support the development and instruction of quality, culturally based education for our children and communities, including administrative costs. We emphasize to ACF that Tribal Head Start programs provide essential early development education for our youngest and most economically vulnerable populations and, therefore, any regulatory changes to administration of these programs must not usurp Tribal authorities.

Reduction of the Administrative Cost Cap Will Disproportionately Affect Tribal Head Start Programs

In its NPRM, ACF is proposing an administrative cost cap reduction that would disproportionately affect Tribal administration of this program. The proposed administrative cost cap reduction from 15% to 5% for both federal

[2] *See Haaland v. Brackeen*, 599 U.S. 255, 308 (2023) (Gorsuch, J., concurring) (explaining Tribal Nations "existed as 'self-governing sovereign political communities'" that "d[id] not 'cease to be sovereign and independent'" after colonization (first quoting *United States v. Wheeler*, 435 U.S. 313, 322–23 (1978), then quoting *Worcester v. Georgia*, 31 U.S. [6 Pet.] 515, 561 (1832))); *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014) (describing Tribal Nations as "separate sovereigns pre-existing the Constitution" (quoting *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56 (1978))). Tribal Nations' inherent sovereignty and right to self-determination is further supported by international law principles adopted into the foundations of federal Indian law that carry through to the present day. *Worcester*, 31 U.S. at 520 (describing Tribal Nations' retained sovereignty and right to self-government as consistent with "the settled doctrine of the law of nations"); *Brackeen*, 599 U.S. at 308 (Gorsuch, J., concurring) (describing the concept of retained sovereignty as a "long-held tenet of international law"); *see also* G.A. Res. 61/295, arts. 3–5, U.N. Declaration on the Rights of Indigenous Peoples (Oct. 2, 2007).

costs and the non-federal match will threaten the financial stability and sustainability of Tribal Head Start programs. While ACF alleges that reducing the cap to 5% will redirect additional funds toward providing services, its assessment does not take into consideration the unique administrative challenges that Tribal Nations face in operating our Head Start programs.

ACF has proposed this change based on administrative cost limitations it has identified in other federal grant programs, stating that 5% caps are used in several HHS programs such as the Child Care and Development Fund (CCDF), the Community Services Block Grant (CSBG), and the Substance Use Prevention and Treatment Block Grant (SAPT), to list a few. However, we note that the CCDF's 5% administrative cost cap only applies to states and territories. Under 45 CFR § 98.83(f)(9), Tribal agencies administering the CCDF have a 15% cost cap on administrative activities. This increased cost cap for Tribal agencies participating in the CCDF exists precisely because of the unique administrative challenges that Tribal Nations face when operating our own programs.

This rings true to similar challenges we face in administrating our own Head Start programs. These include difficulties in recruiting and maintaining a qualified workforce, meeting statutory monitoring and reporting requirements, maintaining regular communication with federal program staff, and other administrative obligations necessary to operate this program. We remind ACF that unlike other governments, Tribal Nations lack a substantial tax base that can be leveraged to fund these programs (which are already the federal government's obligation to fund). With the chronic underfunding of Tribal education programs and the often burdensome compliance and reporting requirements associated with such programs, Tribal Nations must currently rely on limited federal funds to cover administrative costs. The proposal to further limit administrative funds would only exacerbate this pre-existing problem. Therefore, in recognition of these unique administrative challenges, Tribal Head Start agencies must retain the current 15% administrative cost cap. This will ensure that our programs have the necessary funds to manage these programs, which includes use of these funds to potentially cover indirect costs for program administration.

USET SPF also reminds ACF that while the statutory 15% administrative cost cap is a ceiling and not a guaranteed allowance (43 USC 9839(b)), ACF's proposal to reduce this cap goes against the NPRM's self-purported purpose to "reduce the scope and prescriptiveness of federal regulatory requirements." In addition, using the administrative cost cap of other programs as justification for reducing the existing cost cap for Head Start programs administered by Tribal agencies does not uphold trust and treaty obligations to provide these services for our communities in perpetuity. For these reasons, USET SPF requests, at a minimum, that ACF retain the current 15% administrative cost cap for Tribal Head Start agencies so that our programs are not disproportionately impacted.

ACF Must Not Rely on a New Waiver Process to Justify a Reduction in the Administrative Cost Cap

In its NPRM, ACF is proposing the addition of a new § 1301.18 waiver process which "may allow programs to address specific circumstances where compliance with the administrative cap of 5% would present undue operational challenges." This proposed process would require Tribal Head Start agencies to submit a waiver request from the 5% cap requirement to HHS in writing that is subject to the approval of the HHS Secretary.

USET SPF does not agree with ACF's presumption that this new waiver process could be relied upon to exempt Tribal Head Start agencies from the proposed 5% administrative cost cap. To be clear, USET SPF does not oppose establishment of a new § 1301.18, or a rescission or alteration of the current waiver process in regulations at 45 CFR 1303.5(b). Rather, we express our opposition to ACF using and relying on a new waiver process as a justification for reducing the administrative cost cap from 15% to 5% simply because the option to pursue a waiver is available. Further, the use of a new waiver process would fail to treat Tribal Nations impartially and uniformly since the HHS Secretary could arbitrarily choose to grant administrative cost cap waivers for some Tribal Head

Start agencies and not others. Rather than adopting a new waiver process, the clearest path forward would be to simply retain the current 15% administrative cost cap for Tribal Head Start programs.

USET SPF emphasizes to ACF that the process of seeking a waiver of the administrative cost cap only adds additional burden to Tribal Nations and our personnel. Following this process would contribute to the needless expenditure of administrative resources rather than focus on the intended purpose of development and management of our Head Start programs—the very result that ACF is seeking to avoid.

We also note that the NPRM specifically states that "it is at ACF's discretion to review and approve such requests." This undefined discretionary review waiver is concerning, as it provides no parameters for agency decision-making. In addition, since the waiver is subject to the approval of the HHS Secretary and no timeframe or deadline is provided in the proposed regulations for when such a waiver must be reviewed, approved, or denied, there is no certainty that such waiver requests will be reviewed in a timely manner.

If the reduced 5% administrative cost cap is adopted, along with the new § 1301.18 regulation on waiver requests, then Tribal Head Start agencies could experience unnecessary delays and difficulty in utilizing funds for management of our Head Start programs. Again, rather than pursuing these proposals, we ask that ACF retain the current 15% administrative cost cap for Tribal Head Start programs.

No Extension of State or Local Government Authority Over Tribal Head Start Programs

ACF makes clear that a primary focus of the NPRM is to "substantially reduce the scope and prescriptiveness of federal regulatory requirements and return primary authority over areas traditionally within state and local purview." Yet, while ACF is clear in its intention to uplift state and local authorities in managing Head Start programs, it is vague and unclear on how Tribal authority would be recognized in the new proposed framework. For instance, the NPRM would rescind performance standards related to attendance and enrollment, group size and ratio, safety and transportation practices, services for children with disabilities, and personnel and records policies. Instead, ACF is proposing to replace these standards with "applicable federal and state statutes and regulations" and, at times, CCDF licensing and health and safety requirements. By proposing to rescind existing federal standards and relying on state authorities, or CCDF requirements, the NPRM leaves Tribal programs in an ambiguous jurisdictional quagmire.

Further, where the NPRM applies CCDF requirements, it does not specify whether this refers to Tribal CCDF, which has its own unique standards. For Tribal Nations that do not have CCDF programs and/or do not align with state requirements, the proposal to align and maintain compliance with this patchwork of CCDF standards will create more administrative burden and uncertainty. This goes against ACF's express goal to "reduce the scope and prescriptiveness of federal regulatory requirements" as stated throughout the NPRM.

USET SPF reminds ACF that the administration of Tribal Head Start programs is a direct exercise of our inherent sovereignty and self-determination to support the education and well-being of our most economically vulnerable children and families. ACF must uphold its trust and treaty obligations and the promises made to provide and support these services for our children and their families. There is no place, and never should there be, for state authority, oversight, or interference in how we manage our Head Start programs. While some Tribal Head Start programs may choose to align with state standards or state licensing requirements, this has always been an inherently Tribal decision and not an imposition by HHS. Similarly, as it defers to state and local authorities in the administration of programs, HHS and ACF must be willing and able to support Tribal self-determination and self-governance in program administration. HHS and ACF should be consulting with Tribal Nations on the option of

extending P.L. 93-638 authorities to Head Start.. This must also include the appropriate and necessary funds and resources from HHS and ACF to properly manage these programs in accordance with our education priorities.

Preserve the Teaching of Our Languages and Cultures in Tribal Head Start Programs

Current Head Start regulations at 45 CFR § 1302.31(b)(2) support bilingual education curriculum that includes both English and the home language for children who are dual language learners. However, ACF is proposing a new § 1301.04 that would require Head Start programs to conduct all education to children in the English language. While we appreciate that the NPRM exempts Tribal Head Start programs from the proposed English-only regulation, USET SPF still views this proposed change as a diminishment from the current performance standards. Under current regulations at 45 CFR § 1302.36, the integration of Tribal language preservation and revitalization efforts "may include full immersion in the Tribal language for the majority of the hours of planned class operations." However, the NPRM states that "this flexibility would no longer be relevant because the [new] proposed § 1301.17(d) exempts Tribal programs from the English-only requirement in proposed § 1301.04(a)." The NPRM shifts from an affirmative protection for the use of Tribal language in teaching curricula to an exception from an English-only rule. In addition, because of this proposed exception, ACF is also proposing rescission of existing regulations on the integration of Tribal language preservation and revitalization curricula in Tribal Head Start programs.

Further, the NPRM's exemption to the proposed English-only regulation states that the language spoken must relate "to the furtherance of Tribal heritage." This is a vague statement that raises significant uncertainty. It does not specify who will determine whether the language spoken relates to "the furtherance of Tribal heritage," whether Tribal Nations will have sole authority to make this determination, or whether Tribal programs will be subject to documentation or justification requirements for use of our language and cultural curricula in our programs. In addition, the English-only exception is unclear as to whether it would protect a Tribal language immersion program, the use of Tribal language in teaching throughout the entire program day, or language restoration efforts in communities where few fluent speakers remain.

Finally, the NPRM also rescinds the performance standard authorizing significant adaptation to a curriculum or curriculum enhancement under certain conditions. While the NPRM asserts that this standard is duplicative of the statutory language, we are concerned that fully rescinding—rather than replacing or streamlining—this standard could create uncertainty around Tribal programs' ability to adapt curricula to incorporate our languages and cultures. Before the NPRM is finalized, we urge ACF to develop clarifying language around the parameters of the English-only exception, and this language must explicitly preserve Tribal inherent sovereign authority to incorporate language and culture into curricula and programming for our programs. We urge ACF to remove Tribal language instruction from the English-only framework and to restore, in the new regulatory structure, the affirmative authorization in the current § 1302.36.

Conclusion

USET SPF supports federal mechanisms to increase Tribal control of education through the exercise of our inherent sovereignty and efforts to support building the internal capacity of Tribal Nations to operate robust education programs. USET SPF recognizes and appreciates that Secretary Kennedy has continued to profess a deep commitment to Tribal sovereignty, Tribal self-determination, and Tribal control of our programs. However, as currently proposed, the changes to the Head Start regulations advanced in this NPRM will not deliver on this commitment. Therefore, before consideration of the NPRM proceeds, USET SPF urges ACF to seriously analyze the impact these proposed changes could have on the administration of Tribal Head Start programs. Instead of pursuing efforts to shift already critical resources away from program administration, ACF must fulfill its trust and treaty obligations to provide the appropriate resources required to support the provision of quality education and

support services for our most economically vulnerable populations. ACF must also ensure that no programmatic changes to Head Start are made in a manner that diminishes Tribal authority to manage these programs, especially in the use of language and cultural curricula in our programs.

We look forward to continuing dialogue with ACF on these important issues and anticipate that HHS and ACF will seriously consider the disproportionate impacts of the proposals in this NRPM on the administration of Tribal Head Start programs. Should you have any questions or require further information, please contact Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 615-838-5906.

Sincerely,

Chief Kirk Francis
President

Kitcki A. Carroll
Executive Director