ORAL ARGUMENT SCHEDULED FOR SEPTEMBER 11, 2020

No. 20-5204

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION, et al.
[20-5205],

CHEYENNE RIVER SIOUX TRIBE, et al.
[20-5209],

UTE TRIBE OF THE UINTAH AND OURAY RESERVATION
[20-5204],

Plaintiffs-Appellants,

v.

STEVEN MNUCHIN, SECRETARY, UNITED STATES DEPARTMENT OF THE TREASURY,

Defendant-Appellee.

On Appeal from the United States District Court for the District of Columbia (No. 1:20-cv-01002) (Hon. Amit P. Mehta)

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

(A) PARTIES AND AMICI

The parties who appeared before the District Court and that are appearing in this Court are:

1. Confederated Tribes of the Chehalis Reservation, Tulalip Tribes, Houlton Band of Maliseet Indians, Akiak Native Community, Asa'carsarmiut Tribe, Aleut Community of St. Paul Island, Navajo Nation, Quinault Indian Nation, Pueblo of Picuris, Elk Valley Rancheria, California, and San Carlos Apache Tribe, *Plaintiffs-Appellants* in Case No. 20-5205 (Case No. 1:20-cv-01002-APM).

2. Cheyenne River Sioux Tribe, Rosebud Sioux Tribe, Nondalton Tribal Council, Arctic Village Council, and Native Village of Venetie Tribal Government, *Plaintiffs-Appellants* in Case No. 20-5209 (Case No. 1:20-cv-01059-APM). The Oglala Sioux Tribe was also a Plaintiff in the District Court.

3. Ute Indian Tribe of the Uintah and Ouray Reservation, *Plaintiff-Appellant* in Case No. 20-5204 (Case No. 1:20-cv-01070-APM).

4. Steven Mnuchin, Secretary, United States Department of the Treasury, *Defendant-Appellee.*

5. Ahtna, Inc., *Intervenor-Defendant-Appellee.*

6. Alaska Native Village Corporation Association, Inc., and Association of ANCSA Regional Corporation Presidents/CEO's, Inc., *Intervenor-Defendants-Appellees.*

7. Calista Corporation; Kwethluk, Incorporated; Sea Lion Corporation; St. Mary's Native Corporation; Napaskiak, Incorporated; and Akiachak, Limited, *Intervenor-Defendants-Appellees.*

The *amici* who appeared before the U.S. District Court are:

1. National Congress of American Indians; Affiliated Tribes of Northwest Indians; All Pueblo Council of Governors; California Tribal Chairpersons' Association; Great Plains Tribal Chairmen's Association, Inc.; Inter Tribal Association of Arizona, Inc.; Inter-Tribal Council of the Five Civilized Tribes; Midwest Alliance of Sovereign Tribes; United South and Eastern Tribes Sovereignty Protection Fund; National Indian Gaming Association; Arizona Indian Gaming Association; and California Nations Indian Gaming Association, *Amici Curiae*.

2. Alaska Federation of Natives, *Amicus Curiae*.

3. Native American Finance Officers Association, Gila River Indian Community, Penobscot Nation, and Nottawaseppi Huron Band of the Potawatomi, *Amici Curiae*.

(B) RULING UNDER REVIEW

The ruling under review is United States District Court Judge Amit Mehta's June 26, 2020 Memorandum Opinion and Order, *Confederated Tribes of Chehalis Reservation v. Mnuchin*, No. 20-cv-01002 (APM), 2020 WL 3489479 (D.D.C. June 26, 2020), granting Defendant-Appellee's and Intervenor-Defendants-Appellees' Motions for Summary Judgment and denying Plaintiffs-Appellants' Motions for Summary Judgment. The opinion and order appear in the Appendix ("A-") at A-179-216.

(C) RELATED CASES

The Court has consolidated Court of Appeals Case Nos. 20-5204, 20-5205, and 20-5209. Counsel is not aware of any other related cases.

DATED this 31st day of July, 2020.

Respectfully submitted,

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TABLE OF AUTHORITIES

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GLOSSARY

ANCSA	Alaska Native Claims Settlement Act, Pub. L. No. 92-203, 85 Stat. 688 (1971) (codified at 43 U.S.C. §§ 1601-1629h)
ANCs	Alaska Native regional corporations and Alaska Native village corporations established pursuant to ANCSA, §§ 7-8
APA	Administrative Procedure Act, 5 U.S.C. §§ 701-706
BIA	Bureau of Indian Affairs, United States Department of the Interior
CARES Act	Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (2020)
Confederated Tribes	Plaintiffs in Case No. 20-5205: The Confederated Tribes of the Chehalis Reservation, Tulalip Tribes, Houlton Band of Maliseet Indians, Akiak Native Community, Asa'carsarmiut Tribe, Aleut Community of St. Paul Island, Navajo Nation, Quinault Indian Nation, Pueblo of Picuris, Elk Valley Rancheria, California, and San Carlos Apache Tribe
CRST	Plaintiffs in Case No. 20-5209: The Cheyenne River Sioux Tribe, Rosebud Sioux Tribe, Oglala Sioux Tribe, Nondalton Tribal Council, Arctic Village Council, and Native Village of Venetie Tribal Government
Eligibility clause	The clause "which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians," in the definition of "Indian tribe" at 25 U.S.C. § 5304(e)
Interior	United States Department of the Interior
ISDEAA	Indian Self-Determination and Education Assistance Act, Pub. L. No. 93-638, 88 Stat. 2203 (1975)
List Act	Federally Recognized Indian Tribe List Act of 1994, Pub. L. No. 103-454, 108 Stat. 4791

Secretary	Defendant-Appellee Steven Mnuchin, Secretary of the United States Department of the Treasury
Title V	Title V of the CARES Act, "Coronavirus Relief Fund," codified at 42 U.S.C. § 801
The Tribes	The Confederated Tribes, CRST, and Ute
Treasury	United States Department of the Treasury
Ute	Plaintiff in Case No. 20-5204, the Ute Indian Tribe of the Uintah and Ouray Reservation

JURISDICTIONAL STATEMENT

The District Court had jurisdiction under 28 U.S.C. §§ 1331 and 1362. This Court has jurisdiction under 28 U.S.C. § 1291. The District Court issued its memorandum opinion, order, and final judgment disposing of all parties' claims on June 26, 2020. A-179-216. The Tribes timely filed their notices of appeal on July 14, 2020. A-32; *see* Fed. R. App. P. 4(a)(1)(B).

STATEMENT OF THE ISSUE

This case concerns whether the corporate boards of directors of Alaska Native regional corporations and village corporations (collectively, "ANCs")—private, business corporations chartered under the laws of Alaska—are "Tribal governments" eligible to receive payments under Title V of the CARES Act. The issue distills down to two questions:

(1) Whether ANCs are "Indian Tribe[s]" under the ISDEAA definition of the same and hence under Title V. If they are not, then ANCs and their boards cannot qualify as "Tribal governments."

(2) Whether ANCs' boards of directors are "the recognized governing bod[ies]" of Indian Tribes. If they are not, they again do not qualify.

The Confederated Tribes address the first question below. CRST and Ute address the second issue in their briefing.

STATUTES AND REGULATIONS

Pertinent statutes and regulations are set forth in the addendum to this brief.

STATEMENT OF THE CASE

I. Statement of Facts

A. The Tribal Governmental Response to the COVID-19 Pandemic

The COVID-19 pandemic has struck Indian Country with singular force. Chronic poverty, health disparities, and substandard housing have subjected American Indians and Alaska Natives to unique perils.[1] Plaintiffs comprise a diverse group of eighteen federally recognized Alaska Native Villages and Indian Tribes. Like Tribal governments nationwide, they have taken extraordinary emergency actions to stem the spread of the virus. They have declared States of Emergency and issued stay-at-home orders and other critical public health regulations, A-33, 37, 40, 47, 53, 60, 70, 149-51, 155, 159-60, 162-63, 167; established acute health care facilities to treat COVID-19 patients, A-54, 61, 163; procured substantial medical equipment, including personal protective equipment, A-49, 54-55, 61, 69, 149, 155; engaged in around-the-clock public health responses, A-69-70, 73, 75, 149, 155; hired additional first responders and essential staff, A-40-41, 69-70; provided emergency relief funds, medicines, and

[1] https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html.

food to Tribal citizens, A-33-34, 49, 53-55, 59, 69, 73-75, 78, 149, 155, 167; and, in some cases, instituted tight border controls and quarantining measures to counteract the laxer approach of surrounding states, A-69-70, 149-50. They have done all this while striving to maintain the everyday essential services that governments provide. *E.g.*, A-40, 46-48, 54. And at the same time, their governmental revenues have collapsed. *E.g.*, A-33-34, 47-50, 62-64.

B. Federally Recognized Indian Tribes and Alaska Native Corporations

"Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory; they are a separate people possessing the power of regulating their internal and social relations." *Cal. Valley Miwok Tribe v. United States*, 515 F.3d 1262, 1263 (D.C. Cir. 2008) (quotation marks and citation omitted). There presently exist over 570 federally recognized Tribes, including 229 Alaska Native Villages. *See* 85 Fed. Reg. 5462-01 (Jan. 30, 2020) ("The listed Indian entities are acknowledged to have the immunities and privileges available to federally recognized Indian Tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations, and obligations of such Tribes."). Federal recognition is "a formal political act confirming the tribe's existence as a distinct political society, and institutionalizing the government-to-government relationship between the tribe and the federal government." *Cal. Valley Miwok*, 515 F.3d at

1263 (quotation marks omitted). While Indians may organize in different forms, "recognizing a group of Indians … is a prerequisite to the protection, services, and benefits from the Federal Government available to Indian tribes by virtue of their status as tribes[.]" *Mackinac Tribe v. Jewell*, 87 F. Supp. 3d 127, 131 (D.D.C. 2015) (quotation marks omitted), *aff'd*, 829 F.3d 754 (D.C. Cir. 2016). As the pandemic has thrown into sharp relief, federally recognized Tribes exercise their sovereignty through a broad array of governmental institutions and conduct.

ANCs are private corporations chartered under Alaska law pursuant to ANCSA, "a comprehensive statute designed to settle all land claims by Alaska Natives." *Alaska v. Native Vill. of Venetie Tribal Gov't*, 522 U.S. 520, 523 (1998). ANCSA "authorized the transfer of $962.5 million in state and federal funds and approximately 44 million acres of Alaska land," *id.* at 524, to twelve for-profit regional corporations, corresponding to twelve preexisting Native regional associations, 43 U.S.C. § 1606(a), (d), and approximately 200 village corporations, *id.* §§ 1602(j) (defining village corporation as "organized … to hold, invest, manage and/or distribute lands, property, funds, and other rights and assets for and on behalf of a Native village"), § 1610(b) (listing Native villages). Like other corporations, ANCs are controlled by boards of directors and owned by private shareholders. 43 U.S.C. § 1606(f)-(h). Under ANCSA, "all of the shareholders … were required to be Alaska Natives," *Native Vill. of Venetie*, 522 U.S. at 524,

although today shareholders may include non-natives, 43 U.S.C. §§ 1606(h)(2), (h)(3)(d), 1607(c).

While ANCSA devolved substantial benefits onto the new organizations, "nowhere does the law express any intent to force Alaska Natives to abandon their sovereignty." *John v. Baker*, 982 P.2d 738, 753 (Alaska 1999). That sovereignty and the powers of self-government reside with the Alaska Native Villages. *See id.* at 751-54. No ANC presently maintains a government-to-government relationship with the United States. "In fiscal year 2017, ANCs had a combined revenue of $9.1 billion, and the twelve regional ANCs have over 138,000 shareholders and employ more than 43,000 people worldwide." A-90.

C. The CARES Act and the Secretary's Decision to Disburse Funds Mandated for Tribal Governments to ANCs

As the COVID-19 crisis worsened, Congress enacted the CARES Act, which the President signed into law on March 27, 2020. Several sections of the sprawling 335-page bill, including Titles I, II, and IV, provide direct relief for private businesses and individuals. Title V, by contrast, is dedicated to bolstering governmental budgets. In Title V, Congress appropriated $150 billion "for making payments to States, Tribal governments, and units of local government," and from that sum "reserve[d]" $8 billion for "Tribal governments." 42 U.S.C. § 801(a). Governments must use Title V funds "to cover only those costs" that "are necessary expenditures incurred due to the public health emergency," and "were

not accounted for in the budget most recently approved … for the State or government[.]" *Id.* § 801(d). Congress appropriated these relief funds "for fiscal year 2020," *id.* § 801(a)(1), and directed the Secretary to disburse them "not later than 30 days after March 27, 2020," *id.* § 801(b)(1).

While Treasury initially suggested that the $8 billion in Tribal monies would be disbursed only to federally recognized Indian Tribes and Alaska Native Villages, A-123-25, it indicated in a data certification form issued on April 14, 2020, that it would pay some portion to ANCs, A-133-34, prompting this litigation. After the Confederated Tribes moved for a preliminary injunction on April 20, 2020, the Secretary advised the District Court that Treasury had "not yet reached a final decision" regarding ANCs' eligibility. A-66. That same day, Treasury requested the views of the Department of the Interior on whether ANCs qualify as "Tribal government[s]." A-135. Interior Solicitor Daniel Jorjani responded in a brief letter "that it is the Department's position that ANCs are eligible for [Title V] funding." *Id.* Still the Secretary was unsure, advising the District Court on April 23, 2020, just three days before the statutory deadline for disbursement, as to his indecision. A-83-85. Later that day Treasury's General Counsel recommended, on the basis of the Solicitor's letter, that the Secretary deem ANCs "Tribal governments," A-141, and the Secretary concurred, A-144. Nothing in the Administrative Record reflects any independent analysis by Treasury. While

Treasury has not publicly disclosed the full amount of Title V funding subsequently reserved for the ANCs, it has not disputed that sum to approximate $550 million.

II. Procedural History

On April 17, 2020, the Confederated Tribes filed suit challenging the Secretary's decision to treat ANCs as "Tribal governments" for purposes of the CARES Act as violative of the APA, and moved for a preliminary injunction. A-15. CRST and Ute subsequently filed similar actions, and the District Court consolidated the cases. *See* A-183.

On April 27, 2020, the District Court granted the Tribes' motions and preliminarily enjoined the Secretary from paying Title V funds to ANCs. A-86-121. It made an initial determination that ANCs neither satisfy the plain language of the "Indian Tribe" definition nor qualify as "recognized governing bod[ies]" of the same. A-105-106. It further found that "Plaintiffs easily satisfy their burden to show that they will suffer irreparable injury in the absence of immediate injunctive relief," A-100, because "[t]hese are monies that Congress appropriated on an emergency basis to assist Tribal governments in providing core public services to battle a pandemic," A-101.

Thereafter, the District Court granted intervention to various ANCs and ANC Associations. A-185. On June 26, 2020, the District Court granted summary

judgment in favor of the Secretary and Intervenor-Defendants and dissolved the preliminary injunction. A-179-216. In doing so, it emphasized that "this case does not present easy, straightforward questions of statutory interpretation," A-192, and is "a close question," A-193.

The Confederated Tribes moved for an injunction pending appeal, joined by the Ute Tribe, A-29-30, which the District Court granted. A-217-22. The Court declared that "[b]ecause the question of statutory interpretation presented in this case is as complicated as it is consequential, it deserves an audience before a higher court while maintaining the status quo," A-219, that "Plaintiffs would suffer irreparable harm if the court denied injunctive relief and the Secretary then distributed the withheld Title V funds to ANCs," *id.*, and that "the public interest rests with the D.C. Circuit deciding whether this court got it right," A-220. The District Court enjoined disbursement of the disputed monies "until the earlier of September 15, 2020, or resolution of this matter by a three-judge panel of the D.C. Circuit." A-222.

The Tribes appealed. The Confederated Tribes filed an Emergency Consent Motion to Expedite Appeal on July 14, 2020, which this Court granted on July 21, 2020. Doc. #1852762. The Court subsequently set Oral Argument for September 11, 2020.

SUMMARY OF THE ARGUMENT

At stake in this case are not only substantial sums of desperately needed funds intended by Congress to assist Tribes in combatting the COVID-19 pandemic, but also the important question whether the Secretary can lawfully equate ANCs with Tribes for that sovereign purpose. The answer resides in the plain language of the statute. Congress defined the "Indian Tribes" eligible for Title V funding by reference to an eligibility clause, the terms of which the Secretary concedes ANCs do not satisfy. The case-determinative issue, then, is whether the eligibility clause applies to ANCs. In its preliminary injunction decision, the District Court held that it could not "ignore the clear grammatical construct of the ["Indian Tribe"] definition, which applies the eligibility clause to every entity and group listed in the statute," A-109. In its summary judgment decision, the District Court reiterated that the "[t]he eligibility clause plainly modifies each of the nouns that precedes it, including ANCs." A-192.

As this Court recently reiterated, in keeping with now well-engrained teachings from the Supreme Court and this Court, that should have been the end of the matter. *Allegheny Defense Project v. FERC*, 964 F.3d 1, 18 (D.C. Cir. 2020) (en banc). But the District Court instead "look[ed] beyond the statute's grammatical structure," A-193, and gave the definition of "Indian tribe" what it confessed to be an "unnatural reading" leading to a "strange result," A-198-199—

that the eligibility language applies to all Indian entities listed in the definition except ANCs. In doing so, the District Court committed three fundamental errors of statutory interpretation: (1) it resorted to legislative history when the statutory text is clear (and demonstrated the perils of doing so by drawing unfounded conclusions from that history); (2) it elevated the canon against surplusage above the primary canon that Congress should be understood to mean what it says (and in doing so overrode a plain language reading that results in no surplusage); and (3) it accorded the Secretary's determination *Skidmore* deference, again in the face of clear statutory language precluding such deference (and in circumstances where no deference is due). The District Court should not have turned its back on the plain text, and its decision to do so calls for reversal.

STANDARD OF REVIEW

This Court reviews *de novo* the district court's order on summary judgment, "as if the agency's decision had been appealed to this court directly." *Union Neighbors United, Inc. v. Jewell*, 831 F.3d 564, 574 (D.C. Cir. 2016).

ARGUMENT

I. ANCs Are Not Indian Tribes Under the Plain Text of the Definition.

A. The Statutory Text Governs.

Sitting en banc, this Court recently reaffirmed that statutory text is the lodestar of statutory interpretation. When it is clear, the text marks both the beginning and end of the interpretive journey:

> Supreme Court precedent emphatically establishes that courts must take statutory language at its word. *See, e.g.*, *Intel Corp. Investment Policy Comm. v. Sulyma*, 140 S. Ct. 768, 776 (2020) ("We must enforce plain and unambiguous statutory language * * * according to its terms.") (internal quotation marks omitted); *Obduskey v. McCarty & Holthus LLP*, 139 S. Ct. 1029, 1040 (2019) ("[W]e must enforce the statute that Congress enacted."). Doing so requires courts to start with the statutory text, and to end there as well when, as here, the statute speaks clearly. As the Supreme Court "has explained many times over many years," when "the meaning of the statute's terms is plain, our job is at an end." *Bostock v. Clayton County*, 140 S. Ct. 1731, 1749 (2020).

Allegheny Defense Project v. FERC, 964 F.3d 1, 18 (D.C. Cir. 2020) (en banc). Every active member of the Court joined this opinion except Judge Henderson, whose dissent on stare decisis grounds made clear that she too "share[s] the majority's commitment to textualism," *id.* at 24. Shortly thereafter, the Supreme Court left no doubt that fidelity to text governs as forcefully in the field of federal Indian law as it does elsewhere: "To avoid further confusion, we restate the point. There is no need to consult extratextual sources when the meaning of a statute's

terms is clear. Nor may extratextual sources overcome those terms." *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2469 (2020).

B. The Definition's Eligibility Clause Squarely Applies to ANCs.

Title V defines "Indian Tribe," 42 U.S.C. § 801(g)(1), by reference to ISDEAA's definition of the same, namely:

> any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), *which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians*[.]

25 U.S.C. § 5304(e) (emphasis added). If ANCs are subject to the italicized eligibility clause, that is virtually case-dispositive, as the Secretary concedes that ANCs do not satisfy its terms.

That the eligibility clause applies to ANCs is "mandated by the grammatical structure of the statute." *U.S. Ass'n of Reptile Keepers, Inc. v. Zinke*, 852 F.3d 1131, 1135 (D.C. Cir. 2017) (citation omitted). As the district court acknowledged, the "eligibility clause plainly modifies each of the nouns that precedes it, including ANCs." A-192. The definition consists of three clauses. The first two list a range of entities, commencing with the adjective "any," followed by a series of parallel nouns—"Indian tribe, band, nation, or other organized group or community" in the first clause, and "Alaska Native village or regional or village corporation" in the second. The disjunctive listing of those

entities clearly signifies alternatives. Oxford English Dictionary (3d ed. 2004) ("or" is "[u]sed to coordinate two (or more) sentence elements between which there is an alternative"); *Van Wersch v. Dep't of Health & Human Servs.*, 197 F.3d 1144, 1151 (Fed. Cir. 1999) ("the word 'or' unambiguously signifies alternatives").

The relationship between the first and second clauses is likewise clear: The second is a subset of the first. The second clause is introduced by "including," which is "[u]sed to indicate that the specified person or thing is part of the whole group or category being considered[.]" Oxford English Dictionary (3d ed. 2016). "Whatever follows the word 'including' is a subset of whatever comes before; any [entity] that comes within the 'including' clause comes, by definition, within the preceding clause as well." *Epsilon Elecs., Inc. v. U.S. Dep't of Treasury, Office of Foreign Assets Control*, 857 F.3d 913, 922 (D.C. Cir. 2017). The comma pair bookending the second clause confirms the clause's illustrative nature. *See* William A. Sabin, *The Gregg Reference Manual* 37 (11th ed. 2011) ("Use commas to set off expressions that provide additional but *nonessential* information about a noun or pronoun immediately preceding."). Thus "any Alaska Native village or regional or village corporation" is an illustrative subset of the larger set of entities that precedes it. This follows naturally because, as outlined above, ANCs are plainly organized groups of Indians—they were organized by, and their

shareholders are in the main, Alaska Natives. *Supra* at 4-5; *see also, e.g.*, 43 U.S.C. § 1607(a) ("The Native residents of each Native village entitled to receive lands and benefits under this chapter shall organize as a business for profit or nonprofit corporation[.]").

If Congress had stopped there, any entity falling in the listed categories would qualify as an "Indian tribe" under ISDEAA. But it did not, instead modifying the reach of what comes before through the eligibility clause. "Which" can introduce "a clause defining or restricting the antecedent" and "thus complet[e] the sense." Oxford English Dictionary (2d ed. 1989); *see NACS v. Bd. of Governors of Fed. Reserve Sys.*, 746 F.3d 474, 486 (D.C. Cir. 2014) ("*which* can be used restrictively" (quotation marks omitted)).[2] The eligibility clause operates in precisely this fashion, cabining the universe of entities meeting the statutory definition. And given that the eligibility clause applies to "any Indian tribe, band, nation, or other organized group or community"—which the Secretary, the Intervenor-Defendants, and the District Court all agree that it does, A-192—then, by definition, it applies to the ANCs (and Alaska Native villages).

[2] In *NACS*, the Court explained that while either "that" or "which" can be used to introduce a restrictive clause, a comma prior to "which" typically suggests that a clause is descriptive. 746 F.3d at 486. Here, while a comma precedes the "which," it is the backend of the pairing setting off the "including" clause. That comma also makes clear that the eligibility clause applies to the entire series of entities preceding it. *Yang v. Majestic Blue Fisheries, LLC*, 876 F.3d 996, 1000 (9th Cir. 2017) (listing cases that affirm this grammatical rule).

The end result is that any Indian tribe, band, nation, or other organized group or community, including (by way of example) any Alaska Native village or ANC, qualifies for "Indian tribe" status, but *only if* it satisfies the eligibility condition.

C. Canons of Construction Confirm the Plain Text.

The District Court misconstrued the Tribes' position that the eligibility clause applies to ANCs as resting on canons of construction. A-192-94. It does not, other than the "one, cardinal canon [that comes] before all others. We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) (citations omitted). Because the text makes plain the eligibility clause's application to ANCs, that marks the end of the inquiry. *See id.*; *see also United States v. Espy*, 145 F.3d 1369, 1371 (D.C. Cir. 1998) ("Since we do not find the statute in the least bit ambiguous, we have no need to employ, nor any legitimate purpose in employing, canons of construction designed to reconcile confusing language.").

Interpretive canons simply confirm what the plain text already establishes. Under the series-qualifier canon, "'[w]hen there is a straightforward, parallel construction that involves all nouns or verbs in a series,' a modifier at the end of the list 'normally applies to the entire series.'" *Lockhart v. United States*, 136 S. Ct. 958, 970 (2016) (Kagan, J., dissenting) (quoting Antonin Scalia & Bryan A.

Garner, *Reading Law: The Interpretation of Legal Texts* ("Scalia & Garner") 147 (2012)). The series-qualifier canon is most intuitive when "the listed items are simple and parallel without unexpected internal modifiers or structure," *Lockhart*, 136 S. Ct. at 963, as is the case here, and the canon accordingly confirms the natural grammatical reading that the eligibility clause applies to the entire series of Indian entities preceding it.

The series-qualifier canon is not absolute and can yield to the last antecedent rule, depending on the context. *See*, *e.g.*, Scalia & Garner at 150-51. The latter "rule reflects the basic intuition that when a modifier appears at the end of a list, it is easier to apply that modifier only to the item directly before it. That is particularly true where it takes more than a little mental energy to process the individual entries in the list, making it a heavy lift to carry the modifier across them all." *Lockhart*, 136 S. Ct. at 963. If the rule applied here, the eligibility clause would modify only the noun or phrase that it immediately follows—here, "any Alaska Native village or regional or village corporation." Accordingly, while courts have wrestled with which canon should apply in particular cases, *e.g.*, *Lockhart*, 136 S. Ct. at 965, any debate between the two would be largely academic in this case because both confirm that, whatever else, the eligibility clause should be read to apply to ANCs.

D. No ANC Presently Satisfies the Eligibility Clause.

The Secretary's position in this litigation is firm: ANCs do not satisfy the eligibility clause, *see, e.g.*, A-170-71, 190, because they are not federally recognized, A-177-78. This position is solidly grounded in the statutory text, as the eligibility clause is a well-recognized term of art.

In the List Act of 1994, Congress provided that "[t]he Secretary [of the Interior] shall publish in the Federal Register a list of all Indian tribes which the Secretary *recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians*." 25 U.S.C. § 5131(a) (emphasis added). Congress thus mandated that Interior publish (annually) a list identifying those Indian entities that satisfy the same eligibility clause appearing in ISDEAA and, by incorporation, the CARES Act. Because the statutes employ the same eligibility language, they are *in pari materia* and must be "interpreted together, as though they were one law." Scalia & Garner at 252; *see also Branch v. Smith*, 538 U.S. 254, 281 (2003) ("if it can be gathered from a subsequent statute *in pari materia*, what meaning the legislature attached to the words of a former statute, they will amount to a legislative declaration of its meaning, and will govern the construction of the first statute").[3] Interior published

[3] On this same basis, the Federal Circuit has agreed with the government that a tribe not appearing on Interior's list is not an "Indian tribe" for purposes of the American Indian Trust Fund Management Reform Act, 25 U.S.C. § 4001(2),

the most recent list pursuant to the List Act in January of this year, 85 Fed. Reg. 5462-01, and no ANCs are on it.

In contrast to the Secretary, the ANCs argued below that they *do* satisfy the eligibility clause. A-190. They contended that if a federal agency in fact allows entities, such as ANCs, to participate in programs available to Indians, the agency through its practice may anoint a group of Indians an "Indian tribe" meeting the clause. But this position is rooted in the very sort of agency discretion that Congress put an end to through passage of the List Act, *see* Pub. L. No. 103-454, § 103(7), (8), and ignores Congress's concomitant equation of the eligibility language with federal recognition. On this issue the Secretary has it right.

* * *

This should be the end of the matter. Under the plain text of the "Indian Tribe" definition, the eligibility clause applies to ANCs, and they do not satisfy it. Because the text is unambiguous, there exists no basis to look further. *Allegheny Defense Project*, 964 F.3d at 12 (where statute is unambiguous "our analysis begins with the statutory text, and ends there as well" (quotation marks omitted)). Nor does there exist anything about the "larger statutory structure and … purpose"

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which uses the same definition as ISDEAA. *Wyandot Nation of Kan. v. United States*, 858 F.3d 1392, 1398 (Fed. Cir. 2017); *see also Slockish v. U.S. Fed. Highway Admin.*, 682 F. Supp. 2d 1178, 1202 (D. Or. 2010) (same result under National Historic Preservation Act, 54 U.S.C. § 300309, formerly at 16 U.S.C. § 470w(4)).

of Title V "to convince us that the plain text … cannot mean what it says." *Eagle Pharms., Inc. v. Azar*, 952 F.3d 323, 333 (D.C. Cir. 2020). To the contrary, as CRST and Ute elaborate on in their briefing, Title V directs funds to State, Tribal, and local governments to assist with their sovereign responses to the pandemic. Whatever else might be said about ANCs, they are not governments and enjoy no government-to-government relationship with the United States. Text and purpose fully align here.

II. The Reasons Proffered by the District Court, the Secretary, and the ANCs Provide No Basis for Departing from the Statutory Text.

A. The District Court Interpreted the Definition of "Indian Tribe" Contrary to Its Ordinary Meaning.

Faced with the herculean task of reconciling the "Indian Tribe" definition with the decision to disburse Title V funds to ANCs, the government had no choice below but to forge a path divorced from the text. The Secretary invited the District Court "to look beyond the statute's grammatical structure," A-193, and to hold that the eligibility clause, while applying to all other Indian groups listed, including Alaska Native villages, does not extend to ANCs. The District Court accepted the invitation even while recognizing that in doing so it was making a grammatical hash out of the text:

> Admittedly, reading the ISDEAA definition as the Secretary posits gives rise to an odd grammatical result…. That reading … creates the strange result that the eligibility clause modifies the first in the series of three nouns that

> comprises the Alaska clause, but not the last two. That is an unnatural reading, to be sure.

A-198-99.

The District Court should have done more than recognize the artificial nature of this reading—it should have balked at it. "[W]hen the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000) (quotation marks omitted). Instead, the District Court distorted the text beyond recognition. It ignored the ordinary meaning of "including" as establishing that Alaska entities are listed in the "Indian tribe" definition as a non-exhaustive subset of Indian groups, and that all such entities are accordingly subject to the restrictive force of the eligibility clause. Its further decision to exempt ANCs, but not the Alaska Native villages that appear alongside them in the same clause, from the restriction likewise cannot be justified by any known rule of grammar. The end result is a definition that reads as follows:

> any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village ~~or regional or village corporation~~ as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and any regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688).

Rather than rewriting the statute in this fashion, the District Court should have responded much as the Supreme Court did to an analogous effort by the government. "[The] maneuver has no grammatical basis.... The Government is choosing where to start in the sentence (that is, which words to qualify) based only on what best serves its argument." *Cyan, Inc. v. Beaver County Emps. Retirement Fund*, 138 S. Ct. 1061, 1077 (2018).

The District Court overrode the text for three reasons. First, it was persuaded that the legislative history of ISDEAA reflects a congressional intent to define ANCs as "Indian tribes" *per se*. Second, having inferred this congressional intent, the court was concerned that the portion of the "Indian tribe" definition referring to ANCs would be rendered superfluous through application of the eligibility clause. Finally, the court accorded deference to the Secretary's atextual interpretation. The District Court erred on all three counts.

B. The Legislative History Provides No Warrant for Overriding the Plain Text.

The District Court had no reason to consider legislative history. "Because congressional intent is best divined from the statutory language itself, resort to legislative history is inappropriate when the statute is unambiguous." *Performance Coal Co. v. Fed. Mine Safety & Health Review Comm'n*, 642 F.3d 234, 238 (D.C. Cir. 2011). And the District Court's foray into legislative history demonstrates

well the perils of that enterprise, for even if one were to consider that history, it simply does not support the inference the court drew from it.

Congress first took up the bill that would become ISDEAA in January 1973, just over a year after ANCSA was signed into law. The original bill defined an "Indian tribe" as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native community as defined in the Alaska Native Claims Settlement Act, for which the Federal Government provides special programs and services because of its Indian identity." S. 1017, 93d Cong., 1st Sess. (Feb. 26, 1973). The second iteration of the bill replaced the final clause with the eligibility clause while retaining the reference to "any Alaska Native community." S. Rep. No. 93-682, at 2 (1974). ANCSA, however, does not define or use that term. Congress accordingly revised the definition: The Senate added "any Alaska Native village," S. Rep. No. 93-762, at 2 (1974), and the House then added "or regional or village corporation," H.R. Rep. No. 93-1600, at 2 (1974). The House Report states only that the Subcommittee on Indian Affairs "amended the definition of 'Indian tribe' to include regional and village corporations established by the Alaska Native Claims Settlement Act." *Id.* at 14. When it made this revision, the sub-committee did not revise the eligibility clause or change its location immediately following the Alaska entities.

This is the sum total of the legislative history relied upon by the District Court. A-199-200. Nothing in it declares, or even suggests, that Congress intended to exempt ANCs—unique among the organized groups of Indians listed—from the eligibility clause. The District Court deemed the mere sequence of bill amendments "compelling evidence" that Congress possessed an intent in contravention of the statute's plain meaning. A-200. But that Congress sought to ensure that proper ANCSA entities were identified as potential "Indian tribe[s]" does not mean that it deemed those entities "Indian tribe[s]" *per se* (and indeed neither the District Court nor the Secretary was willing to apply such reasoning to the Native villages).

The District Court then went even further astray, asserting that the eligibility clause cannot apply to ANCs because "[t]here is simply no legislative history before the court to support the notion that Congress in 1975 believed ANCs could ever meet the eligibility clause." A-200. While Justice Frankfurter famously quipped that "when the legislative history is doubtful, go to the statute," *Greenwood v. United States*, 350 U.S. 366, 374 (1956), the absence of legislative history is in truth never grounds to reject the ordinary meaning of an enactment. "[I]t would be a strange canon of statutory construction that would require Congress to state in committee reports or elsewhere in its deliberations that which is obvious on the face of a statute." *Harrison v. PPG Indus., Inc.*, 446 U.S. 578,

592 (1980); *see also, e.g.*, *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 385 n.2 (1992) ("Suffice it to say that legislative history need not confirm the details of changes in the law effected by statutory language before we will interpret that language according to its natural meaning.").[4]

[4] The historical context further underscores the pitfalls in the District Court's legislative history analysis. ANCSA was a sweeping statute. Congressman Udall stated at the time, "If we serve here another 20 years, I do not think we will ever deal with a more complicated piece of legislation." 117 Cong. Rec. 46,768, 46,786 (1971). Implementation of its provisions, including the organization of ANCs by Alaska Natives, was still ongoing at the time of ISDEAA's passage. *See, e.g.*, Dep't of Commerce, Cmty. & Econ. Dev., *Search Corporations Database*, State of Alaska, https://www.commerce.alaska.gov/cbp/main/Search/Entities (indicating when one searches for ANC names that ANCs were formed throughout 1972 to 1975, and perhaps beyond). It is hardly remarkable that Congress named a variety of these Alaskan entities as potentially qualifying for "Indian tribe" status.

And it was certainly not a foregone conclusion in 1975 that no ANC could satisfy the eligibility clause. When Congress passed ISDEAA, federal recognition of Indian groups was an ad hoc process, lacking any "uniform and objective approach," and largely "at the discretion" of Interior officials. 42 Fed. Reg. 30,647-01, 30,647 (June 16, 1977). Two years later, the BIA proposed regulations to develop uniform procedures for recognition that provided that any "Indian group" could petition for "the status of a federally recognized Indian tribe[.]" *Id.* ANC comments on this proposal make plain that ANCs' eligibility for recognition remained an open question, with one regional ANC commenting that the question whether ANCs satisfy the eligibility clause was "complex," and another objecting that the proposed regulations might unfairly eliminate ANCs' eligibility for tribal status. Comment Letter from The 13th Regional Corporation (July 18, 1977), PDF at 280, and Comment Letter from Kawerak, Inc. / Bering Straits Native Association (Aug. 5, 1977), PDF at 220, https://www.bia.gov/sites/bia.gov/files/assets/asia/ofa/admindocs/25CFRPart54_1978_Comments1977.pdf. It was not until June 1978 that the BIA proposed revised regulations that clearly excluded ANCs from federal recognition. 43 Fed. Reg. 23,743-01, 23,744 (June 1, 1978) (providing at § 54.3(c) that "[t]his part is not intended to apply to associations, organizations, corporations or groups of any character, formed in recent times, composed of individuals of Indian descent from

It is not surprising, then, that in the end the District Court cast doubt on its own analysis: "[W]hether ANC eligibility remained an unsettled question in 1975 is ultimately a distraction. The issue before the court is whether Congress meant for ANCs to be eligible for CARES Act relief *in 2020*…. And certainly by 2020, Congress understood that no ANC could satisfy the eligibility clause[.]" A-200-201. That the foray into ISDEAA's legislative history was a distraction is true, but it was a distraction of the court's own making. And the court's refusal to heed textual commands fares no better when fast-forwarded to the CARES Act. In that Act Congress again chose words that unambiguously subject ANCs to the eligibility clause. Speculation that it had something else in mind trenches far beyond the judicial role.[5]

several different groups or tribes" and explaining that "[a] group of Indian descendants, living in the same general region, does not necessarily constitute an Indian tribe, even though the individuals may have recently joined together in some formal organization such as a corporation.").

[5] This is particularly true where clear textual alternatives were available that use the ISDEAA definition of "Indian tribe" but do *not* include the eligibility clause. *See* 16 U.S.C. § 470bb(5) (Archaeological Resources Protection Act); 16 U.S.C. § 4302(4) (Federal Cave Resources Protection Act); *see also* 20 U.S.C. § 1401(13) (Individuals with Disabilities Education Act defining "Indian tribe" as "any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.))").

C. The Surplusage Canon Provides No Warrant for Overriding the Plain Text.

The District Court relied heavily on the surplusage canon in granting summary judgment to the Secretary and the ANCs, accepting their argument that to adhere to the ordinary reading of the text would render mention of ANCs in the "Indian Tribe" definition without force. Two fatal flaws infect the District Court's analysis.

First, fidelity to the text creates no surplusage here. For each listed Indian entity in the first and second clauses of the definition, the ordinary meaning of "any" when paired with the third, restrictive clause encompasses possibilities ranging from none, to some, to all, depending on how many of each entity meet the requisite condition. And the disjunctive nature of the nouns in both clauses underscores that no superfluity arises if the answer for certain categories is none. *In re Espy*, 80 F.3d 501, 505 (D.C. Cir. 1996) ("[A] statute written in the disjunctive is generally construed as 'setting out separate and distinct alternatives.'" (citation omitted)); Scalia & Garner at 116 ("With the conjunctive list [joined by 'and'], all three things are required—while with the disjunctive list [joined by 'or'], at least one of the three is required, but *any* one (or more) of the three satisfies the requirement." (emphasis added)). Presently, there are more than 570 tribes, bands, nations, and other organized groups and communities, including 229 Alaska Native villages, that satisfy the eligibility clause. That this is not

currently true of any ANCs does not render their mention in the definition a nullity, but simply reflects the reach of the eligibility clause. The statute creates the potential for ANCs to qualify, but it no more ordains that they must qualify than it does for any other Indian group.

The District Court properly recognized this in its preliminary injunction decision. A-109. Its later surplusage concern was rooted in the erroneous inference it drew from the legislative history—that is, *extratextual* sources led the Court to believe that "adopting Plaintiffs' construction would render Congress's purposeful inclusion of ANCs in the ISDEAA definition 'wholly superfluous.'" A-195 (citation omitted). But backing into a surplusage issue via legislative history (let alone misconstrued history) is no more acceptable than any other use of such history to rewrite the text.

Second, the District Court fundamentally misunderstood the role that canons, and the surplusage canon in particular, play in statutory interpretation. When the court concluded that "[t]he eligibility clause plainly modifies each of the nouns that precedes it, including ANCs," A-192, its task in determining the reach of the clause was "at an end." *Allegheny Defense Project,* 964 F.3d at 18 (quoting *Bostock,* 140 S. Ct. at 1749). Instead, the court launched into an extensive discussion of the surplusage canon. But "canons of construction are no more than rules of thumb that help courts determine the meaning of legislation .... When the

words of a statute are unambiguous, then, ... 'judicial inquiry is complete.'" *Germain*, 503 U.S. at 253-54 (discussing surplusage canon in particular) (citation omitted); *United States v. Espy*, 145 F.3d at 1371.

The surplusage canon may provide a "clue" in specific situations, *Rimini Street, Inc. v. Oracle USA, Inc.*, 139 S. Ct. 873, 881 (2019). "But only a clue." *Id.* It cannot be used to overcome plain text or "create ambiguity where the statute's text and structure suggest none." *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 227 (2008). Indeed, the District Court's approach here in adopting a construction of the "Indian Tribe" definition that it acknowledged to be "an unnatural reading," A-199, in deference to the surplusage canon stands in stark contrast to then-Judge Roberts' opinion for this Court in *Amoco Production Company v. Watson*, 410 F.3d 722 (D.C. Cir. 2005). There, this Court rebuffed the notion that it should depart from "the more natural reading," *id.* at 733, of a statute because of surplusage concerns, holding that "[n]o canon of construction justifies construing the actual statutory language beyond what the terms can reasonably bear." *Id.* at 734. The District Court failed to heed this admonition.

D. *Skidmore* Deference Provides No Warrant for Overriding the Plain Text.

The District Court's final reason for adopting an "unnatural reading" of the "Indian Tribe" definition was its decision to accord *Skidmore* deference to the Secretary's determination. But "[t]his argument runs into another fundamental

principle of statutory interpretation: that agency practice cannot alter unambiguous statutory text." *Air Line Pilots Ass'n, Int'l v. Chao*, 889 F.3d 785, 792 (D.C. Cir. 2018).

Even if the statute were ambiguous, no deference would be due here. The decision was recommended without analysis by Treasury's General Counsel, relying on a two-page letter prepared in twenty-four hours by the Interior Solicitor. A-141-43. The Solicitor stated that because the ISDEAA definition names ANCs, "it is unquestionable" that ANCs are "Indian Tribes" under the CARES Act. A-142. Truncating the definition, he *did not mention* the eligibility clause. *Id*. This letter, rubber-stamped by the Secretary, is accordingly counter-textual, perfunctory, and ill-explained, rendering its "persuasive power … virtually nil." *Fox v. Clinton*, 684 F.3d 67, 80 (D.C. Cir. 2012); *see also, e.g.*, *Grecian Magnesite Mining, Indus. & Shipping Co., SA v. Comm'r of Internal Revenue Serv.*, 926 F.3d 819, 823 (D.C. Cir. 2019); *Clark v. Fed. Labor Relations Auth.*, 782 F.3d 701, 706 (D.C. Cir. 2015).

The District Court mentioned none of this. A-201-203. Instead, it pointed to an internal 1976 memorandum prepared by Assistant Solicitor of the Interior Charles Soller, A-137-40, which the Solicitor's letter cites, A-142. The Commissioner of Indian Affairs had requested the memorandum because he found the eligibility clause "troub[ling]" to any claim that ANCs fall within the definition

of "Indian tribe." A-138. Soller responded that "we think the better view is that Congress intended the qualifying language not to apply to regional and village corporations but to pertain only to that part of the paragraph which comes before the word 'including.'" A-138. Soller made no effort to explain how this could be so, given the ordinary understanding of "including" as introducing a subset of a greater whole. Indeed, the single-paragraph analysis is bereft of any discussion of ordinary meaning or grammar, or any citation to legal authority. *See Clark*, 782 F.3d at 706 (agency decision was "cursory" and provided "no support" for key statement); *Fox*, 684 F.3d at 79 (agency interpretation "fail[ed] to comprehend" the statute's text). And Soller's view was that Alaska Native villages were not covered by the eligibility clause either, a view the government has disavowed in this litigation. A-138. This poorly reasoned, entirely unsubstantiated, and, by the District Court's own account, A-203n.10, erroneous memorandum hardly constitutes grounds for deference.

The Solicitor's letter also points to a single case—*Cook Inlet Native Association v. Bowen*, 810 F.2d 1471 (9th Cir. 1987)—which concluded that ANCs are "Indian tribe[s]" under ISDEAA. *Cook Inlet* is inapposite for a number of reasons: It predated the 1994 List Act, ignored Interior's 1978 recognition regulations, and accorded *Chevron* deference to the agency position. *Id.* at 1476. Most importantly, there exists "no warrant to ignore clear statutory language on the

ground that other courts have done so." *Milner v. Dep't of the Navy*, 562 U.S. 562, 576 (2011) (rejecting construction of statute that had been relied upon for thirty years). Indeed, in *Allegheny Defense*, this Court declined to follow longstanding Circuit precedent that could not be squared with the relevant statutory text. If "*stare decisis* principles do not stand in the way of … holding that [a statute] means what it says," 964 F.3d at 18, a single, flawed out-of-Circuit decision does not either.

CONCLUSION

For the foregoing reasons, the Confederated Tribes respectfully request that this Court reverse the District Court's judgment and remand with instructions (1) to vacate the Secretary's decision; (2) to enter a declaratory judgment pursuant to 28 U.S.C. § 2201(a) that ANCs are not "Tribal governments" under 42 U.S.C. § 801; and (3) thereafter to remand this matter to Treasury to expeditiously determine an appropriate allocation of remaining Title V funds to federally recognized Indian Tribes and Alaska Native villages.

DATED this 31st day of July, 2020.

Respectfully submitted,

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(s) Riyaz Kanji

Attorney for Plaintiffs-Appellants

Dated: July 31, 2020

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on this 31st day of July, 2020, in accordance with Circuit Rule 25(c), I caused the foregoing brief together with statutory addendum and appendix to be filed with this Court's ECF system.

/s/ Riyaz A. Kanji

ADDENDUM

42 U.S.C. § 801, Title V of the CARES Act, Coronavirus Relief Fund

(a) Appropriation

(1) In general

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated for making payments to States, Tribal governments, and units of local government under this section, $150,000,000,000 for fiscal year 2020.

(2) Reservation of funds

Of the amount appropriated under paragraph (1), the Secretary shall reserve-

(A) $3,000,000,000 of such amount for making payments to the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa; and

(B) $8,000,000,000 of such amount for making payments to Tribal governments.

(b) Authority to make payments

(1) In general

Subject to paragraph (2), not later than 30 days after March 27, 2020, the Secretary shall pay each State and Tribal government, and each unit of local government that meets the condition described in paragraph (2), the amount determined for the State, Tribal government, or unit of local government, for fiscal year 2020 under subsection (c).

(2) Direct payments to units of local government

If a unit of local government of a State submits the certification required by subsection (e) for purposes of receiving a direct payment from the Secretary under the authority of this paragraph, the Secretary shall reduce the amount determined for that State by the relative unit of local government population proportion amount described in subsection (c)(5) and pay such amount directly to such unit of local government.

(c) Payment amounts

(1) In general

Subject to paragraph (2), the amount paid under this section for fiscal year 2020 to a State that is 1 of the 50 States shall be the amount equal to the relative population proportion amount determined for the State under paragraph (3) for such fiscal year.

(2) Minimum payment

(A) In general

No State that is 1 of the 50 States shall receive a payment under this section for fiscal year 2020 that is less than $1,250,000,000.

(B) Pro rata adjustments

The Secretary shall adjust on a pro rata basis the amount of the payments for each of the 50 States determined under this subsection without regard to this subparagraph to the extent necessary to comply with the requirements of subparagraph (A).

(3) Relative population proportion amount

For purposes of paragraph (1), the relative population proportion amount determined under this paragraph for a State for fiscal year 2020 is the product of—

(A) the amount appropriated under paragraph (1) of subsection (a) for fiscal year 2020 that remains after the application of paragraph (2) of that subsection; and

(B) the relative State population proportion (as defined in paragraph (4)).

(4) Relative State population proportion defined

For purposes of paragraph (3)(B), the term "relative State population proportion" means, with respect to a State, the quotient of—

(A) the population of the State; and

(B) the total population of all States (excluding the District of Columbia and territories specified in subsection (a)(2)(A)).

(5) Relative unit of local government population proportion amount

For purposes of subsection (b)(2), the term "relative unit of local government population proportion amount" means, with respect to a unit of local government and a State, the amount equal to the product of—

(A) 45 percent of the amount of the payment determined for the State under this subsection (without regard to this paragraph); and

(B) the amount equal to the quotient of—

(i) the population of the unit of local government; and

(ii) the total population of the State in which the unit of local government is located.

(6) District of Columbia and territories

The amount paid under this section for fiscal year 2020 to a State that is the District of Columbia or a territory specified in subsection (a)(2)(A) shall be the amount equal to the product of—

(A) the amount set aside under subsection (a)(2)(A) for such fiscal year; and

(B) each such District's and territory's share of the combined total population of the District of Columbia and all such territories, as determined by the Secretary.

(7) Tribal governments

From the amount set aside under subsection (a)(2)(B) for fiscal year 2020, the amount paid under this section for fiscal year 2020 to a Tribal government shall be the amount the Secretary shall determine, in consultation with the Secretary of the Interior and Indian Tribes, that is based on increased expenditures of each such Tribal government (or a tribally-owned entity of such Tribal government) relative to aggregate expenditures in fiscal year 2019 by the Tribal government (or tribally-owned entity) and determined in such manner as the Secretary determines appropriate to ensure that all amounts available under subsection (a)(2)(B) for fiscal year 2020 are distributed to Tribal governments.

(8) Data

For purposes of this subsection, the population of States and units of local governments shall be determined based on the most recent year for which data are available from the Bureau of the Census.

(d) Use of funds

A State, Tribal government, and unit of local government shall use the funds provided under a payment made under this section to cover only those costs of the State, Tribal government, or unit of local government that—

(1) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);

(2) were not accounted for in the budget most recently approved as March 27, 2020, for the State or government; and

(3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

(e) Certification

In order to receive a payment under this section, a unit of local government shall provide the Secretary with a certification signed by the Chief Executive for the unit of local government that the local government's proposed uses of the funds are consistent with subsection (d).

(f) Inspector General oversight; recoupment

(1) Oversight authority

The Inspector General of the Department of the Treasury shall conduct monitoring and oversight of the receipt, disbursement, and use of funds made available under this section.

(2) Recoupment

If the Inspector General of the Department of the Treasury determines that a State, Tribal government, or unit of local government has failed to comply with subsection (d), the amount equal to the amount of funds used in violation of such subsection shall be booked as a debt of such entity owed to the Federal Government. Amounts recovered under this subsection shall be deposited into the general fund of the Treasury.

(3) Appropriation

Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated to the Office of the Inspector General of the Department of the Treasury, $35,000,000 to carry out oversight and recoupment activities under this subsection. Amounts appropriated under the preceding sentence shall remain available until expended.

(4) Authority of Inspector General

Nothing in this subsection shall be construed to diminish the authority of any Inspector General, including such authority as provided in the Inspector General Act of 1978 (5 U.S.C. App.).

(g) Definitions

In this section:

(1) Indian Tribe

The term “Indian Tribe” has the meaning given that term in section 5304(e) of Title 25.

(2) Local government

The term “unit of local government” means a county, municipality, town, township, village, parish, borough, or other unit of general government below the State level with a population that exceeds 500,000.

(3) Secretary

The term “Secretary” means the Secretary of the Treasury.

(4) State

The term “State” means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

(5) Tribal government

The term “Tribal government” means the recognized governing body of an Indian Tribe.

25 U.S.C. § 5304(e)

"Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians[.]