

No. 20-5286

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

THE SHAWNEE TRIBE,
Plaintiff-Appellant,

v.

STEVEN MNUCHIN, SECRETARY, UNITED
STATES DEPARTMENT OF TREASURY;
UNITED STATES DEPARTMENT OF THE
TREASURY; DAVID BERNHARDT,
SECRETARY, UNITED STATES DEPARTMENT
OF INTERIOR; UNITED STATES
DEPARTMENT OF INTERIOR,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

CASE NO. 1:20-cv-01999-APM (THE HON. AMIT P.
MEHTA)

**OPENING BRIEF OF
APPELLANT THE SHAWNEE TRIBE**

Luke Cass (D.C. Circuit Bar No. 62670)
Scott McIntosh (D.C. Circuit Bar No. 60541)
QUARLES & BRADY LLP
1701 Pennsylvania Avenue, NW, Suite 700
Washington, D.C. 20006
Phone: (202) 780-2638
E-Mail: luke.cass@quarles.com
scott.mcintosh@quarles.com
Counsel for Plaintiff-Appellant

No. 20-5286

Gregory J. Bigler
P.O. Box 1927
Sapulpa, Oklahoma 74067
Phone: (918) 694-6178
E-Mail: gdbigler@swbell.net

Pilar M. Thomas
QUARLES & BRADY LLP
One South Church Street, Suite 1800
Tucson, Arizona 85701
E-Mail: pilar.thomas@quarles.com

Nicole L. Simmons
QUARLES & BRADY LLP
One Renaissance Square
2 North Central Avenue
Phoenix, Arizona 85004
Phone: (602) 229-5200
E-Mail: nicole.simmons@quarles.com

Certificate of Parties, Rulings, and Related Cases

I. Parties Appearing Below

The parties who appeared before the U.S. District Court were:

1. The Shawnee Tribe, Plaintiff in Case No. 1:20-cv-01999-APM.
2. Steven Mnuchin, Secretary, United States Department of the Treasury; United States Department of the Treasury; David Bernhardt, Secretary, United States Department of Interior; United States Department of Interior, Defendants in Case No. 1:20-cv-01999-APM.
3. No others appeared as parties or amici curiae.

II. Parties and Amici Appearing in this Court

1. The Shawnee Tribe, Plaintiff-Appellant in Case No. 20-5286.
2. Steven Mnuchin, Secretary, United States Department of the Treasury; United States Department of the Treasury; David Bernhardt, Secretary, United States Department of Interior; United States Department of Interior; Defendants-Appellees in Case No. 20-5286.
3. The Prairie Band of Potawatomi Nation and the Miccosukee Tribe have indicated to The Shawnee Tribe an intent to join this matter as amici.

III. Rulings under Review

The rulings under review are United States District Court Judge Amit Mehta's August 19, 2020 Memorandum Opinion and Order, *see Shawnee v. Mnuchin*, No. 20-cv-1999 (APM), 2020 WL 4816461, at *1 (D.D.C. August 19, 2020) and his September 10, 2020 Memorandum Opinion, *see Shawnee v. Mnuchin*, No. 20-cv-1999 (APM), 2020 WL 5540552, at *1 (D.D.C. September 10, 2020), respectively, denying Plaintiff-Appellant's Motion for Preliminary Injunction and granting

Defendants-Appellees' Motion to Dismiss. Dismissal was effectuated by Order dated September 10, 2020. The August 19, 2020 Memorandum Opinion and Order appears in the Appendix ("S-App'x") at 1-10, the September 10, 2020 Memorandum Opinion at S-App'x 13-20, and the September 10, 2020 Order. [Dkt. 49, Order].

IV. Related Cases

The underlying case was originally filed in the United States District Court for the Northern District of Oklahoma on June 18, 2020, where it was assigned Case No. 20-cv-00290-JED-FHM. On July 28, 2020, the case was transferred in its entirety to the United States District Court for the District of Columbia, where it was assigned Case No. 20-cv-01999-APM. No prior appeals in the case have been filed with this Court or any other court. A related case pending before this Court is Court of Appeals Case No. 20-5205, the appeal taken by the Confederated Tribes Plaintiffs-Appellants in District Court Case No. 20-cv-01002-APM. Counsel are not aware of any other related cases pending before this Court.

RESPCETFULLY SUBMITTED this 9th day of October, 2020.

THE SHAWNEE TRIBE

/s/ Scott McIntosh

Luke Cass (D.C. Circuit Bar No. 62670)

Scott McIntosh (D.C. Circuit Bar No. 60541)

QUARLES & BRADY LLP

1701 Pennsylvania Avenue, NW, Suite 700

Washington, D.C. 20006

Counsel for Plaintiff-Appellant

TABLE OF CONTENTS

Certificate of Parties, Rulings, and Related Cases	1
I. Parties Appearing Below	1
II. Parties and Amici Appearing in this Court	1
III. Rulings under Review	1
IV. Related Cases	2
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES.....	iii
GLOSSARY	1
JURISDICTIONAL STATEMENT.....	3
STATEMENT OF THE CASE	4
I. Background	4
A. The Coronavirus Aid, Relief and Economic Security Act.....	4
B. By April 13, 2020, the Government had decided to use population as a proxy for Title V allocations and requested population data for that purpose from Tribal Governments.	5
C. After adopting a population based allocation methodology, the Government separately decided to use the IHBG population data for the population component of its formula.....	7
D. The Government’s use of IHBG population data erroneously resulted in a reported population of zero, thereby depriving The Shawnee Tribe proportionate share of CARES Act relief funds.	10
E. The Shawnee Tribe acted in good faith to resolve this matter short of litigation but the Government refused.	12
F. Procedural History.	14
SUMMARY OF ARGUMENT	17
STANDARD OF REVIEW.....	22
ARGUMENT	22
I. The Shawnee Tribe’s Claims are Justiciable.	22
A. The Shawnee Tribe’s claims remain justiciable, even after the appropriation lapses.....	23

B.	The Shawnee Tribe’s claims remain justiciable, regardless of whether the <i>Chehalis</i> decision stands.	25
II.	The Government’s actions under the APA were impermissible as a pure matter of law.	28
A.	The Government’s separate decisions regarding methodology and its use of IHBG data are reviewable.....	28
1.	The District Court incorrectly applied a presumption of non-reviewability to Title V.....	29
2.	The District Court erred in relying on <i>Prairie Band</i> , <i>Vigil</i> and <i>Physicians for Soc. Responsibility</i> as support that a presumption of non-reviewability applies.....	33
3.	The Government’s spending decisions under Title V are reviewable.	36
B.	The Government’s methodology based on population and use of IHBG data was arbitrary and capricious, and violated the APA as a matter of law.	42
III.	The District Court’s denial of preliminary injunctive relief was clear error and should be reversed.	50
A.	The Shawnee Tribe will likely be successful on the merits of its APA claim.....	53
B.	Irreparable harm will occur if injunctive relief if not awarded.....	54
C.	The injunction, if issued, will not adversely affect the public interest and the balance of equities favors The Shawnee Tribe.....	55
	CONCLUSION	57
	CERTIFICATE OF SERVICE.....	59
	CERTIFICATE OF COMPLIANCE	60

TABLE OF AUTHORITIES

Cases	Page(s)
63 Comp. Gen. 525 (1984).....	26
347 F.3d 955 (D.C. Cir. 2003)	44
394 U.S. 103 (1969)	28
2020 WL 3489479 (D.D.C. June 26, 2020)	26
<i>A.L. Pharma, Inc. v. Shalala</i>	
62 F.3d 1484 (D.C. Cir. 1995).....	43, 48
<i>Aamer v. Obama</i>	
742 F.3d 1023 (D.C. Cir. 2014).....	52
<i>Abbott Labs. v. Gardner</i>	
387 U.S. 136 (1967)	31
<i>Agua Caliente Band of Cahuilla Indians v. Mnuchin</i>	
2020 WL 3250701 (D.D.C. June 15, 2020)	13
<i>Agua Caliente Band of Cahuilla v. Mnuchin</i>	
2020 WL 2331774	38, 46
<i>Am. Trucking Ass'ns v. City of Los Angeles</i>	
559 F.3d 1046 (9th Cir. 2009)	53
<i>Archdiocese of Wash. v. Wash. Metro. Area Transit Auth.</i>	
897 F.3d 314 (D.C. Cir. 2018).....	53
<i>Banks v. Booth</i>	
2020 WL 1914896	56
<i>Barker v. Conroy</i>	
921 F.3d 1118	22
<i>BellSouth Corp. v. F.C.C.</i>	
162 F.3d 1215 (D.C. Cir. 1999).....	43, 54
<i>Block v. Cmty. Nutrition Inst.</i>	
467 U.S. 340 (1984)	30
<i>Bowen v. Mich. Acad. of Family Physicians</i>	
476 U.S. 667 (1986)	31
<i>Cannon v. District of Columbia</i>	
717 F.3d 200	11, 12, 13
<i>Chafin v. Chafin</i>	
568 U.S. 165 (2013)	23
<i>Citizens to Preserve Overton Park Inc. v. Volpe</i>	
401 U.S. 402	34

<i>City of Houston</i>	
24 F.3d 1421	24
<i>CSX Transp., Inc. v. Williams</i>	
406 F.3d 667 (D.C. Cir. 2005).....	52
<i>Davenport v. Int'l Bhd. of Teamsters</i>	
166 F.3d 356 (D.C. Cir. 1999).....	52
<i>Davis v. Pension Benefit Guar. Corp.</i>	
571 F.3d 1288 (D.C. Cir. 2009).....	52, 53
<i>Dep't of Homeland Sec. v. Regents of the Univ. of Cal.</i>	
140 S.Ct. 1891 (2020)	Passim
<i>Dunlop v. Bachowski</i>	
421 U.S. 560 (1975)	30
<i>Franklin v. Mass.</i>	
505 U.S. 788 (1992)	29
<i>Genuine Parts Co. v. Env'tl. Prot. Agency</i>	
890 F.3d 304 (D.C. Cir. 2018).....	44, 54
<i>Guindon v. Pritzker</i>	
31 F. Supp. 3d 169 (D.D.C. 2014).....	44, 47
<i>Halkin v. Helms</i>	
690 F.2d 977 (D.C. Cir. 1982).....	28
<i>Harris v. District of Columbia Water & Sewer Auth.</i>	
791 F.3d 65 (D.C. Cir. 2015).....	22
<i>Heckler v. Chaney</i>	
470 U.S. 821	34
<i>Holland v. Nat'l Mining Ass'n,</i>	
309 F.3d 808	22
<i>Humane Soc'y Int'l v. U.S. Fish & Wildlife Serv.</i>	
394 F. Supp. 3d 67 (D.D.C. 2019).....	56
<i>In re Roman Catholic Church of Archdiocese of Santa Fe</i>	
615 B.R. 644 (Bankr. D.N.M. 2020).....	45, 49
<i>Jacksonville Port Auth. v. Adams</i>	
556 F.2d 52 (D.C. Cir. 1977).....	57
<i>Judulang</i>	
565 U.S.	42, 45, 47, 54
<i>League of Women Voters of the U.S. v. Newby</i>	
838 F.3d 1 (D.C. Cir. 2016).....	56
<i>Lincoln v. Vigil</i>	
508 U.S. 182 (1993)	Passim

<i>Mach Mining, LLC v. E.E.O.C.</i>	
575 U.S. 480 (2015)	30, 31, 36
<i>Make the Rd. N.Y. v. McAleenan</i>	
405 F. Supp. 3d 1 (D.D.C. 2019)	43, 47, 51
<i>Marshall Cnty. Health Care Auth. v. Shalala</i>	
988 F.2d 1221 (D.C. Cir. 1993).....	22
<i>McAlpine v. United States</i>	
112 F.3d 1429 (10th Cir. 1997)	31
<i>Minney v. U.S. Off. of Pers. Mgmt.</i>	
130 F. Supp. 3d 225 (D.D.C. 2015)	57
<i>Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.</i>	
463 U.S. 29 (1983)	44, 45, 50
<i>Mozilla Corp. v. Fed. Commc’ns Comm’n</i>	
940 F.3d 1 (D.C. Cir. 2019).....	43, 54
<i>Multnomah Cnty. v. Azar</i>	
340 F. Supp. 3d 1046 (D. Or. 2018).....	36
<i>Nat. Res. Def. Council v. U.S. E.P.A.</i>	
808 F.3d 556 (2d Cir. 2015)	44
<i>Nat’l Ass’n of Regional Councils v. Costle</i>	
564 F.2d 583 (D.C. Cir. 1977).....	24
<i>Nat’l Immigration Project of Nat’l Lawyers Guild v. Exec.</i>	
<i>Office of Immigration Review</i>	
2020 WL 2026971 (D.D.C. Apr. 28, 2020)	58
<i>Nat’l Org. for Women, Wash., D.C. Chapter v. Social Sec. Admin.</i>	
<i>of Dept. of Health & Human Servs.</i>	
736 F.2d 727 (D.C. Cir. 1984).....	23
<i>Open Top Sightseeing USA v. Mr. Sightseeing, LLC</i>	
48 F. Supp. 3d 87 (D.D.C. 2014)	52
<i>Physicians for Soc. Responsibility v. Wheeler</i>	
956 F.3d 634 (D.C. Cir. 2020).....	Passim
<i>Pursuing Am.’s Greatness v. Fed. Election Comm’n</i>	
831 F.3d 500 (D.C. Cir. 2016).....	56
<i>Reno</i>	
35 F.3d 1093 (6th Cir. 1994).....	56
<i>Saint Francis Med. Ctr. v. Azar</i>	
894 F.3d 290 (D.C. Cir. 2018).....	45
<i>Sanchez v. Office of the State Superintendent of Educ.</i>	
959 F.3d 1121	23, 24

Shawnee v. Mnuchin

2020 WL 4816461 (D.D.C. August 19, 2020) 1, 15, 16, 17

Steenholdt v. F.A.A.

314 F.3d 633 (D.C. Cir. 2003)..... 31

Swedish Am. Hosp. v. Sebelius

773 F. Supp. 2d 1 (D.D.C. 2011) 43

Swedish Am. Hosp.

773 F. Supp..... 48

Confederated Tribes of the Chehalis Reservation v. Mnuchin

— F.3d —, No. 20-5204, 2020 WL 5742075 (D.C. Cir. 2020).....Passim

United States v. Hahn

359 F.3d 1315 (10th Cir. 2004) 23

Utah Animal Rights Coal. v. Salt Lake City Corp.

371 F.3d 1248 23

Village of Barrington, Ill. v. Surface Transp. Bd.

636 F.3d 650 (D.C. Cir. 2011)..... 47

West Va. Ass’n of Cmty. Health Centers, Inc. v. Heckler

734 F.2d 1570 (D.C. Cir. 1984)..... 24

Winter v. Nat. Res. Def. Council, Inc.

555 U.S. 7 (2008) 52, 53, 54

Statutes

5 U.S.C. ch. 5, subch. I § 500..... 1

5 U.S.C. § 702 30

5 U.S.C. § 706(2)(A) 42, 56

5 U.S.C. § 706(2)(D) 42

11 U.S.C. § 525(a) 49

28 U.S.C. § 1291 3

28 U.S.C. §§ 1331 and 1362 3

31 U.S.C. § 1501(a)(5)(A)..... 26

42 U.S.C. § 801(a)(1), (c)(7) 24

42 U.S.C. § 801(a)(2)(B)..... 4

42 U.S.C. § 801(c)(7) 5, 38

Pub. L. No. 116-136, 134 Stat. 281 (2020) 1

Rules

F.R.A.P. 4(a)(1)(B).....	3
Fed. R. App. P. 32(a)(5)	61
Fed. R. App. P. 32(a)(6)	61
Fed. R. App. P. 32(a)(7)(B).....	61
Fed. R. App. P. 32(f)	61

Other Authorities

H.R. 6800.....	28
S. 3752	28

GLOSSARY

Reference to the following terms in this brief shall have the following meanings:

1. “ANCs” means Alaskan Native Corporations.
2. “APA” means the Administrative Procedures Act, 5 U.S.C. ch. 5, subch. I § 500 *et seq.*
3. “CARES Act” or “Title V” means Title V of the Coronavirus Aid, Relief and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (2020).
4. “COVID-19” means the new strain of coronavirus VI disease that has also been referred to as the 2019 novel coronavirus.
5. “IHBG” means the Indian Housing Block Grant program, a competitive grant program administered by the U.S. Department of Housing and Urban Development under the Native American Housing Assistance and Self Determination Act of 1966 to provide funding for affordable housing on Indian reservations.
6. “HUD” means the U.S. Department of Housing and Urban Development.
7. “Interior” means Defendant-Appellant United States Department of Interior.
8. “Population Award” means the 60 percent of the CARES Act relief funds that the Government decided to allocate to tribes “based on population data used.”
9. “Secretary of Interior” means Defendant-Appellant David Bernhardt,

Secretary, United States Department of Interior.

10. “Secretary of Treasury” means Defendant-Appellant Steven Mnuchin, Secretary, United States Department of the Treasury.

11. “Government” means collectively all Defendants-Appellees.

12. “The Shawnee Tribe” or “Tribe” shall mean Plaintiff-Appellant.

13. “Treasury” means Defendant-Appellant United States Department of the Treasury.

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 and Order denying preliminary injunctive relief on August 19, 2020 (S-App'x 1-10), and issued its Memorandum Opinion and separate Order granting Appellees' Motion to Dismiss and disposing of all parties' claims on September 10, 2020 (Dkt. 49, Order). Pursuant to F.R.A.P. 4(a)(1)(B), The Shawnee Tribe timely filed its Notice of Appeal on September 16, 2020. (S-App'x 23-25).

STATEMENT OF THE ISSUES

1. Did the District Court commit legal error when: (a) it dismissed The Shawnee Tribe's claims against the Government by applying a legal presumption of non-reviewability other than the presumption of reviewability; and (b) when it held that the government's decision to use plainly and obviously erroneous population data for the purposes of distributing COVID-19 funding was unreviewable?

2. Did the Government violate the APA and acted arbitrarily, capriciously, and contrary to law by using a federal housing program formula and obviously wrong data, without explanation, to determine the Tribe's population for COVID-19 funding?

3. Whether The Shawnee Tribe is entitled to injunctive relief to prevent imminent and irreparable harm, the existence of which the District Court acknowledged, caused by the impending distribution of remaining COVID-19 funds?

STATEMENT OF THE CASE

I. Background

A. The Coronavirus Aid, Relief and Economic Security Act.

This case involves the allocation of funds appropriated by Congress under Title V of the CARES Act. Pursuant to the CARES Act, which was passed on March 27, 2020, Congress appropriated \$8 billion (out of \$150 billion) specifically to provide economic relief for, in part, necessary expenditures incurred by “Tribal Governments” impacted by the COVID-19 pandemic. 42 U.S.C. § 801(a)(2)(B).¹ Undisputedly, The Shawnee Tribe is a federally recognized Tribal Government, as defined by the CARES Act, and entitled to CARES Act relief funds based on its increased COVID-19 expenditures. [S-App’x 30, ¶ 10].

In its appropriation, Congress directed the Secretary of Treasury to pay Title V funds to each Tribal government in an “amount the Secretary shall determine” based on “increased expenditures.” That determination authority, however, was

¹ Although the CARES Act amends the Social Security Act, which is typically administered by the Secretary of the United States Department of Health and

not unbridled. Instead, under Title V the Secretary's determination was: (1) expressly contingent on "consultation with the Secretary of the Interior and Indian Tribes;" (2) required to be "based on increased expenditures of each such Tribal government ... relative to aggregate expenditures in fiscal year 2019 by the Tribal government;" and (3) was required to "ensure that all amounts available under subsection (a)(2)(B) for fiscal year 2020 are distributed to Tribal governments." 42 U.S.C. § 801(c)(7). The CARES Act also expressly limited the use of the funds to "necessary expenditures ... with respect to the Coronavirus Disease 2019 (COVID-19) ... incurred during the period that begins on March 1, 2020, and ends on December 30, 2020." *Id.* § 801(a)(1), (b)(1), (d).

B. By April 13, 2020, the Government had decided to use population as a proxy for Title V allocations and requested population data for that purpose from Tribal Governments.

On March 31, 2020, the Government issued a notice that it would conduct telephonic tribal consultations on April 2 and 9, 2020, the purpose of which was to "develop[] the methodology or formula" to allocate the CARES Act relief funds, and not to select any data used within it. [S-App'x 74]. Federal officials heard from representatives of Tribal governments from across the United States during these telephonic tribal consultation sessions. [S-App'x 31, ¶ 12]. These consultations were led by Interior and Treasury, and included Mr. Dan Kowalski, Senior Advisor

Human Services, here Congress appropriated the Title V funds to Treasury for

to the Secretary, who was authorized by the Secretary of the Treasury to administer CARES Act relief funds to Tribal governments.

During the April 2 consultation, Mr. Kowalski expressly admitted that “I am not an expert on Tribal issues.” [S-App’x 77, lines 14:3-4]. Mr. Kowalski nonetheless assured the tribes that Treasury’s policy was to achieve “a fair and transparent method for allocating these funds.” [S-App’x 78, lines 15:6-8].

By the April 9 consultation session, Treasury had “determined that a formula [for distributing CARES Act relief funds] makes sense. It’s hard to do anything other than a formula” [S-App’x 92, lines 18:7-11]. Moreover, as of April 9, Treasury had led the Tribe, among others, to believe that it had selected population as a key component of its distribution formula. Indeed, during the April 9 consultation, Chairperson Jaime Stuck for the Nation of Nottawaseppi Huron Band of the Potawatomi noted that she was “aware that both Treasury and Interior officials have a preference for utilizing a simple formula or criteria for distributing these funds within Indian Country in order to expedite delivery of these critically needed funds ... [but] we do not support a formula based on a single criteria such as Tribal population.” [S-App’x 93, lines 73:4-15].

By April 13, 2020, the Government had determined to use population in the formula approach for allocating CARES Act relief funds and began specifically

allocation.

requesting that data from tribes. For example, on April 8, 2020, the Department of Interior (“Interior”) through the Bureau of Indian Affairs (“BIA”), specifically requested the Tribe’s certified tribal member population. [S-App’x 31, ¶ 13]. Then, on April 13, 2020, following the close of the consultation period, Treasury published a form entitled “Certification for Requested Tribal Data” on its website, which also requested tribal “[p]opulation” from all eligible Tribal governments. [S-App’x 31, ¶ 14; S-App’x 44]. Treasury broadly defined “tribal population” as the “[t]otal number of Indian Tribe Citizens/Members/Shareholders, as of January 1, 2020.” [S-App’x 44]. The Shawnee Tribe timely certified to Treasury that its tribal population was 3,021 members, by the Government’s requested deadline of April 17, 2020. [S-App’x 31, ¶¶ 13-15]. The Government never questioned The Shawnee Tribe’s enrollment data and has not challenged the accuracy of it in this case.

C. After adopting a population based allocation methodology, the Government separately decided to use the IHBG population data for the population component of its formula.

After requiring tribes to submit and certify several categories of data by April 17, 2020, the Government announced on May 5, 2020, an outline of the selected allocation formula: 60 percent of the CARES Act relief funds would be allocated to tribes “based on population data used,” (“Population Award”) and 40 percent of the CARES Act relief funds would be allocated to tribes based on tribal employment and further expenditure data, not yet available. [S-App’x 33 , ¶ 26]

(the “May 5 Announcement”); S-App’x 98-100].² To calculate the Population Award, Treasury used the “single-race and then multi-race for each Tribe’s IHBG formula area,” both of which reflected zero for The Shawnee Tribe. [S-App’x 100]. Secretaries Mnuchin and Bernhardt reasoned, absent any support or rationale, that “Tribal population [was] expected to correlate reasonably well with the amount of increased expenditures of Tribal governments related directly to the public health emergency, such as increased costs to address medical and public health needs.” [S-App’x 99]. In the May 5 Announcement, the Government also separately announced its election to allocate the Population Award using population data from the IHBG program administered under HUD. [S-App’x 32, ¶ 19]. In doing so, the Government distinguished its decision about how to allocate the CARES Act relief funds from its choice of what data to use under that formula. For instance, its methodology announcement was made under one heading, the “**Allocation determination**,” and its separate choice to use the IHBG population data under HUD is contained under another heading called “**Tribal population data**.” [S-App’x 99 (emphasis in original)]. Nowhere in the May 5 Announcement is there any indication that the Government’s “**Allocation determination**” and decision to

² Cited in the Verified Complaint at footnote 6 as U.S. Dept. of the Treasury, Coronavirus Relief Fund Allocations to Tribal Governments (May 5, 2020), <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Tribal-Allocation-Methodology.pdf>, (last visited June 16, 2020). Courtesy copy is attached hereto as S-App’x 98-100.

use IHBG population data were one in the same or even made at the same time. [See *generally id.*, S-App’x 98-100]. This confirmed the Government made the early determination to use population as a proxy for Title V allocations no later than April 13, 2020 and, after receiving the population data it had requested for that purpose, separately decided to ignore it and use the IHBG formula data.

On June 12, 2020, the Government issued a press release acknowledging that had Treasury used the reliable data “provided by the Bureau of Indian Affairs, rather than the [census-based IHBG] data,” an additional \$679 million would have been allocated to certain tribes. [S-App’x 35, ¶ 35; S-App’x 101]. The Government, accordingly, voluntarily withheld that amount “to resolve any potentially adverse decision in litigation,” which it deemed, “a prudent course” of action, [S-App’x 101] – a clear acknowledgment that Treasury may have erred in its use of the IHBG formula data.

In that same June 12 press release, Defendants demonstrated their dual stage decisionmaking process under Title V. In the May 5 Announcement, Defendants acknowledged that they made the decision to use employment and expenditures as bases to distribute the other 40 percent of CARES Act relief funds. [S-App’x 63, Ex. C; S-App’x 101]. Defendants, however, waited until “after receiving” “additional information from Tribal governments” to determine what weight – if any – that data would be given in the formula, which was not announced until June

12. [S-App'x 101].

D. The Government's use of IHBG population data erroneously resulted in a reported population of zero, thereby depriving The Shawnee Tribe proportionate share of CARES Act relief funds.

The IHBG data selected by the Government showed that The Shawnee Tribe has a population of zero, which is a legal and factual impossibility for an existing, federally recognized Indian Tribe with over 3,000 members. [S-App'x 31, ¶ 21; *see also* S-App'x 46-60]. Further, the Government used participation in the IHBG program as a prerequisite to receiving Title V funding. However, The Shawnee Tribe does not participate in this elective program administered by HUD. [S-App'x 33, ¶ 23]. The result of the Government's specious selection of this false data is that The Shawnee Tribe was not eligible to receive CARES Act relief funds consistent with its actual population or increased expenses to combat the COVID-19 Pandemic because it did not participate in a specific program, administered by another agency, and wholly unrelated to COVID-19. And against this backdrop, COVID-19 cases in Oklahoma were rising with acute effects on Tribal Nations.³

Within the same IHBG formula table the Government had before it, a few columns over, HUD also reported, albeit incorrectly, that The Shawnee Tribe had

³ *See, e.g.*, U.S. Centers for Disease Control, CDC COVID DATA TRACKER, available online at https://covid.cdc.gov/covid-data-tracker/index.html#cases_casesinlast7days. The Court may take judicial notice of

“2113 enrolled members” (“Tribal Enrollment Data”). [S-App’x 33 ¶ 22; S-App’x 54]. In wrongly selecting the IHBG data that showed the Tribe's population of zero, the Government ignored the Tribe’s certified tribal population data, the BIA population data, and HUD’s enrollment figure of 2,113 contained within the same IHBG table. Illogically, the Government summarily determined that the Shawnee Tribe's HUD enrollment data of 2,113 enrolled members was inaccurate [S-App’x 54], but not the IHBG data that showed a zero population.

Treasury ignored the data requested , and to date, still has never made any determination with respect to the requested certification of tribal “[p]opulation” or reasonably explained why it ignored that information. [*Compare id.*, p. 2 with S-App’x 44 (defining “[p]opulation”)]. The Government elected to use the obviously false IHBG population data of zero for The Shawnee Tribe, even though it already had The Shawnee Tribe’s accurate enrollment data showing a population of 3,021 from two separate reliable sources: the BIA and the Tribe itself. At no time prior to Treasury’s May 5 Announcement did it give The Shawnee Tribe notice that it was going to change the population data source or might use IHBG population data that showed a zero population for the Tribe. [S-App’x 33, ¶ 25]. Nor did it give the Tribe an opportunity to confirm that correct population data was being used.

information posted on official public websites of government agencies. *See, e.g., Cannon v. District of Columbia*, 717 F.3d 200, 205 n. 2 (D.C. Cir. 2013).

Based on the Government's Population Award calculations and its assignment of population of zero to the Shawnee Tribe, The Shawnee Tribe received only \$100,000. [S-App'x 33, ¶ 26]. This was the minimum allocation made to tribes with fewer than 37 members according to the IHBG data set that omitted the Shawnee Tribe's population. [*Id.*; S-App'x 100]. Had the Government used The Shawnee Tribe's reported population number, instead of the obviously false number of zero, there is no doubt the Tribe would have received substantially more funds.

E. The Shawnee Tribe acted in good faith to resolve this matter short of litigation but the Government refused.

Between May 5, 2020, when the Government disclosed its intended use of the IHBG data and until seven days before this lawsuit was filed, The Shawnee Tribe was actively engaged with the Government to resolve this matter. On May 13, 2020, on a conference call with Tribal leaders and Mr. Kowalski, The Shawnee Tribe's Chief, Ben Barnes, questioned how it was possible that the Government could determine a tribe had zero population for the purposes of Title V. [S-App'x 34, ¶ 29]. Chief Barnes further asked if there was a challenge process to correct what was an obvious clerical or accounting error. [*Id.*].

When Mr. Kowalski's response was that he understood the issue but that he was unaware of any recourse [*id.*], The Shawnee Tribe began pursuing other potential administrative remedies. This included outreach to the White House and

Interior staff. In further support of these efforts, on May 28, 2020, several members of Congress sent a letter to the Secretary seeking a resolution to this clear error. [S-App'x 62-63, Ex. C]. Representative Mark Wayne Mullin and his staff spoke to Mr. Kowalski or his staff on multiple occasions. [S-App'x 34-35, ¶¶ 33-34]. On or about June 8, 2020, Rep. Mullin offered a potential solution for The Shawnee Tribe. Mr. Kowalski advised Rep. Mullin that he would take the solution to Secretary Mnuchin. Ultimately, Treasury responded to Rep. Mullin on June 10, 2020, acknowledging that some tribes' populations were zeroed out based on the formula, but that if the Tribe wanted its funds it would have to sue the Treasury. [S-App'x 34-35, ¶ 34].

Six days before The Shawnee Tribe filed this lawsuit, the Government notified the Tribe that it had earmarked \$679 million "to resolve any potentially adverse decision in litigation on this issue" (the "Reserve Funds") [S-App'x 102]. Despite the promise of a reserve from which the Tribe could satisfy its claim, on June 15, 2020, the District Court, in another case, ordered Treasury to distribute the Reserve Funds. *See Agua Caliente Band of Cahuilla Indians v. Mnuchin*, No. 20-CV-01136 (APM), 2020 WL 3250701, at *1 (D.D.C. June 15, 2020). The Shawnee Tribe filed its lawsuit within 72 hours of that order. [See generally S-App'x 28].

F. Procedural History.

On June 18, 2020, the Tribe filed a Verified Complaint, seeking declaratory and injunctive relief and a Motion for Temporary Restraining Order (the "Motion") in the Northern District Court of Oklahoma where the Tribe is located and where the impacts from the Government's arbitrary and capricious decisions are suffered. [See *generally* S-App'x 28-73]. In its Verified Complaint, The Shawnee Tribe alleged the Government acted arbitrarily and capriciously and in violation of the CARES Act when it: (1) selected their methodology based on population; (2) separately decided to use the obviously and patently false IHBG population data within that methodology indicating The Shawnee Tribe had zero population; and (3) refused to correct its known and admitted use of this incorrect data. [S-App'x 30-33 (Sections B and C alleging separate decisions); S-App'x 39, ¶¶ 63-66 (same)]. Because of these actions, the Government failed to comply with Title V of the CARES Act, which states the Government "shall" provide funds to "each" Tribal Government "based on increased expenditures" – not just those Tribal Governments who participate in certain elective federal programs. [See S-App'x 30-31, ¶¶ 7-11).

On June 29, 2020, the Oklahoma District Court denied the Motion and converted the Motion to one for preliminary injunctive relief. The case was then transferred to the United States District Court of the District of Columbia ("District Court") on July 28, 2020, where other cases involving the CARES Act

were being litigated.

On August 19, 2020, after full briefing on the Tribe's Motion and oral argument, the District Court issued a Memorandum Opinion and Order denying it. [S-App'x 1-10 (*Shawnee Tribe v. Mnuchin*, No. 20-cv-1999 (APM), 2020 WL 4816461, at *5 (D.D.C. Aug. 19, 2020))]. The District Court's decision rested entirely on its determination that the Secretary's use of the "HUD tribal population data set, however imperfect it may be, is a discretionary agency action that is not subject to judicial review." [S-App'x 2]. In doing so, the District Court held there is a "presumption of non-reviewability" that automatically attaches to a lump sum allocation, irrespective of the nature, limitations and uses of that allocation. [S-App'x 3 (citing *Physicians for Soc. Responsibility v. Wheeler*, 956 F.3d 634, 642 (D.C. Cir. 2020))]. Absent from the District Court's analysis was whether the CARES Act lump sum appropriation was of the kind and nature intended to be unreviewable as set forth by the Supreme Court in *Lincoln v. Vigil*, 508 U.S. 182 (1993).

Having determined that all lump sum appropriations are categorically presumed unreviewable, the District Court held that there were no limitations in Title V cabining the Government's discretion. In doing so, the District Court effectively read out of Title V all limitations, including that it must distribute funds to "each" tribe "based" on "increased expenditures." Furthermore, it held that "[t]he Secretary issued no regulations, policy statements, or guidance in

connection with that choice” to use the incomplete or false IHBG data. [S-App’x 6]. The District Court declined to make any other determinations on The Shawnee Tribe's likelihood of success on the merits. [See *generally* S-App’x 1-10]. The District Court did acknowledge that The Shawnee Tribe would suffer irreparable harm absent injunctive relief. [S-App’x 8, n.3].

On August 27, 2020, Defendants filed a two-page Motion to Dismiss that, in essence, argued this lawsuit should be dismissed because the selection of methodology remains within its sole discretion. [Dkt. 45]. The Shawnee Tribe opposed the Motion to Dismiss on multiple grounds, to which the Government fully responded [Dkt. 47] Briefing closed on September 4, 2020.

On September 10, 2020, the District Court granted the Motion to Dismiss. [S-App’x 13-20]; *see also Shawnee Tribe*, 2020 WL 4816461, at *4 n.3. Rather than adjudicate the Motion to Dismiss on its merits, the District Court merely incorporated its decision from the PI Motion in a different case – which was wholly based on a presumption of “*non-reviewability*” – and thus held that “the Secretary’s decision to use IHBG data was “committed to agency discretion by law” and therefore is not reviewable under the APA.” [S-App’x 20 (internal quotation marks omitted); *see also* 2020 WL 4816461 at *4 (concluding that the “Secretary’s choice of the HUD tribal population data ... is ... unreviewable”)]. The District Court reasoned that the phrase “the Secretary [of Treasury] shall determine” in Title V rendered its decisions completely discretionary and it

disregarded all other requirements of Title V, including that the amount of funds for each tribe shall be “based on increased expenditures of each such Tribal Government.”

Moreover, the District Court held that because the Government’s decision to use population as a proxy for increased COVID-19 expenditures was found to be completely discretionary, so too was the Government’s decision to use the patently false IHBG data. [*Id.*]. This is true despite the fact that the Government has never denied the Tribe’s assertion that the IHBG data is false, nor has it provided any evidence that the IHBG population data is accurate or correct. [*See* Dkts. 6, 21, 45, 47].

Based on the District Court’s decision that the Government’s actions were unreviewable, it therefore left in place an indisputably incorrect action by the Government and allowed the Government to effectively render the Shawnee Tribe extinct for purposes of distributing critical and necessary Title V funds.

SUMMARY OF ARGUMENT

Long ago, the United States of America recognized the Shawnee people exist and, as such, federally recognized The Shawnee Tribe. As with any federally recognized tribe, and like the United States, The Shawnee Tribe is a government that has a duty to serve and protect its citizens. A government with no citizens simply does not exist.

Yet, when Congress mandated that the Government allocate \$8 billion in

desperately needed funds⁴ to “each” Tribal Government “based” on increased expenses related to COVID-19, Treasury used an elective federal housing program formula that falsely reported The Shawnee Tribe’s population was zero for the purposes of distributing desperately needed CARES Act funding. This prevented The Shawnee Tribe from receiving Title V relief funds, to which it was entitled.

A hallmark of arbitrary and capricious action is when an agency fails to consider an important aspect of the problem and fails to rely on the record and information before it. No one in this case, including the District Court, disputes that The Shawnee Tribe does in fact exist. After all, a tribe that does not exist obviously has no expenses. However, rather than dispute the merits or the facts of this case, the Government claims Congress granted Treasury unbridled discretion to distribute CARES Act funds as it pleases. And accordingly its decision to use an unrelated formula that includes objectively false data is unreviewable as a matter of law. Taken to its logical conclusion, under this bizarre rationale – and the District Court’s decision in favor of the Government – Treasury could have distributed (and still could) all Title V funds to a single tribe or subset of tribes, and its actions would be wholly beyond the reach of the courts. Selection of such data, from a program that does not correctly reflect tribal population data, was

⁴ As of October 4, 2020, Oklahoma had over 90,000 cases, which are steadily rising. See Okla. State Dep’t of Public Health, available online at <https://coronavirus.health.ok.gov/> (last visited Oct. 1, 2020).

arbitrary and capricious, and is inconsistent with the plain language of the Title V. Critically, the decision to use IHBG data was done without explanation, and without providing an opportunity to The Shawnee Tribe to correct the obvious error in using data that incorrectly reported the Tribe as having a population of zero.

The District Court clearly erred by agreeing with this flawed reasoning when it applied an incorrect categorical presumption of non-reviewability to all lump sum appropriations, regardless of the kind and nature of this **particular** lump sum appropriation, and overlooked key, mandatory and discretion limiting Title V language. This Court, however, has already determined that a presumption of reviewability applies to the funding decisions made under Title V of the CARES Act because nothing in Title V precludes review of the Government's spending decisions. *Confederated Tribes of the Chehalis Reservation v. Mnuchin* ("*Chehalis*"), — F.3d —, No. 20-5204, 2020 WL 5742075, *3 (D.C. Cir. 2020). Moreover, *Vigil v. Lincoln*, relied on by the District Court and the Government, also supports a presumption of reviewability for spending decisions stemming from lump sum appropriations where Congress expressly limited the use of the funds and where there is law to apply. In the end, the Government's actions are reviewable because the plain language of Title V and the Government's own policy statements have limited its discretion in how it allocated Title V funds to

tribes. This Court should hold that the Government's action is reviewable under the APA, and reverse the Order granting the Motion to Dismiss.

Furthermore, the Government's actions were arbitrary and capricious. There is simply no rational or reasonable explanation for distributing Title V funds based on the use of an unrelated elective federal housing program formula that contains patently false data. There is no conceivable or reasonable connection between participation in an elective housing program and increased expenses related to the COVID-19 Pandemic. Tellingly, in this case the Government failed to provide any explanation about why it used objectively false data in lieu of the certified population data it had requested, defined, and received. Use of this patently false data and failure to provide the lack of a contemporaneous explanation are sufficient to obtain relief under this Court's jurisprudence which requires courts to undo agency action when it fails to provide a reasoned explanation, or where the record belies the agency's conclusion. The Government's decisions are neither based on "reasoned decision making" nor bear any "rational connection between the facts found and the choice made" as required by law. It is more akin to pulling numbers out of a hat – the epitome of arbitrary and capricious action. Thus, this Court should find the Government violated the APA, and direct the lower court to enter judgment in favor of The Shawnee Tribe and require the Government to allocate Title V funds to the Tribe in the same

amount as was allocated to other tribes having a population of 3,000.⁵

The District Court also abused its discretion when it denied injunctive relief. The Shawnee Tribe is likely to be successful on the merits and the District Court “accept[ed] that Plaintiff would suffer irreparable harm absent injunctive relief.” Entering injunctive relief here to preserve the Tribe’s remedy would not adversely affect and, instead, would preserve the public’s interest.

Finally, The Shawnee Tribe addresses this Court’s question of whether its claims and remedies could become moot. They cannot. Title V funds have already been obligated from an accounting perspective and, per the Government, can be distributed post lapse of the Title V appropriation. Moreover, the Government has already conceded to this Court that, even if it could not disburse the remaining funds on its own accord after the Title V appropriation lapses, it may do so pursuant to Court order. This Court has determined that \$162 million of the Title V funds are no longer available to the ANCs, and those funds remain presently available to right the wrong against The Shawnee Tribe. But, the temporary availability of these funds underscores the importance of a swift grant of injunctive relief to prevent the Government from repeating history.

⁵ In calculating Title V funds, the Government used population data from three other tribes in lieu of IHBG program data because they were not accounted for in that data; thus, there is no reason the Government cannot use The Shawnee Tribe’s population figure in lieu of the facially inaccurate IHBG data. [S-App’x 115 (June 4 Press Release)].

STANDARD OF REVIEW

When considering challenges to agency action under the APA, “the district judge sits as an appellate tribunal. The ‘entire case on review’ is a question of law,” including both whether the agency action is reviewable and whether it is supported by the record. *Marshall Cnty. Health Care Auth. v. Shalala*, 988 F.2d 1221, 1226 (D.C. Cir. 1993) (quotations and citations omitted). This Court reviews questions of law in the APA context *de novo*. *Holland v. Nat’l Mining Ass’n*, 309 F.3d 808, 814 (D.C. Cir. 2002). In a case like this one, in which the District Court reviewed an agency action under the APA, this Court will “review the administrative action directly, according no particular deference to the judgment of the District Court.” *Holland*, 309 F.3d at 814.

Because a motion for preliminary injunction does not involve a final determination of the merits, a grant or denial of an application for a preliminary injunction will be set aside only if the District Court was in clear error or abused its discretion. *Nat’l Org. for Women, Wash., D.C. Chapter v. Social Sec. Admin. of Dept. of Health & Human Servs.*, 736 F.2d 727, 743 (D.C. Cir. 1984).

ARGUMENT

I. The Shawnee Tribe’s Claims are Justiciable.

Pursuant to the Court’s September 25, 2020 Order, The Shawnee Tribe addresses the question of whether its claim is justiciable after: (1) the CARES Act

appropriation lapses; or (2) the remaining CARES Act funds are obligated.

Although a justiciable controversy does not exist when the question sought to be adjudicated has been mooted by subsequent developments, this is true “only when it is impossible for a court to grant any effectual relief whatever to the prevailing party. As long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot.” *Sanchez v. Office of the State Superintendent of Educ.*, 959 F.3d 1121, 1125–26 (D.C. Cir. 2020) (quoting *Chafin v. Chafin*, 568 U.S. 165, 172 (2013)); *see also United States v. Hahn*, 359 F.3d 1315, 1323 (10th Cir. 2004) (noting “the Supreme Court has held that ‘even the availability of a partial remedy is sufficient to prevent a case from being moot.’”); *Utah Animal Rights Coal. v. Salt Lake City Corp.*, 371 F.3d 1248, 1257–58 (10th Cir. 2004) (finding justiciable nominal damages claim of \$1). It is not necessary that the full measure of relief requested by the Tribe remains available; rather, justiciability remains where the potential for “any effectual relief . . . however small” exists. *Sanchez*, 959 F.3d at 1125.

A. The Shawnee Tribe’s claims remain justiciable, even after the appropriation lapses.

Congress appropriated Title V funds for fiscal year 2020, which ended September 30, 2020. 42 U.S.C. § 801(a)(1), (c)(7). The Government concedes that, even if it could not disburse the remaining funds on its own accord after September 30, 2020, it may do so pursuant to Court order. [S-App’x 108]. According to the

Government:

[t]here is an equitable doctrine ... that permits a court to award funds based on an appropriation even after the date when the appropriation lapses, so long as the lawsuit was instituted on or before that date. ... [I]t is now established that courts may authorize the expenditure of funds after the funds have expired for obligational purposes. As long as the suit is filed prior to the expiration date, as it was here, the court acquires the necessary jurisdiction and has the equitable power to revive expired budget authority. Accordingly, once there is a final judgment in this case, a court can authorize the government to disburse funds to federally recognized tribes.

[S-App'x 108-09 (internal citations and quotations omitted) (citing *City of Houston v. Dep't of Housing & Urban Dev.*, 24 F.3d 1421, 1426 (D.C. Cir. 1994); *West Va. Ass'n of Cmty. Health Centers, Inc. v. Heckler*, 734 F.2d 1570, 1576–77 (D.C. Cir. 1984)]; see also *Nat'l Ass'n of Regional Councils v. Costle*, 564 F.2d 583, 588 (D.C. Cir. 1977). The Shawnee Tribe agrees with the Government.

As such, on September 30, 2020, this Court granted a motion to suspend the expiration of the funding appropriation until at least October 30, 2020, or the time to file a petition for rehearing in the *Chehalis* appeal. [S-App'x 113]. Because this case will not be decided before October 30, this Court may issue an order extending the stay of the expiration of the Title V appropriation so that, should the Shawnee Tribe succeed on its claims, those funds may be distributed to The Shawnee Tribe for necessary expenses related to COVID-19. Thus, as this Court decided in *Chehalis*, even after the Title V appropriation lapses, relief can remain available for this Court to award.

B. The Shawnee Tribe's claims remain justiciable, regardless of whether the *Chehalis* decision stands.

Although the Court poses the question as to whether The Shawnee Tribe's claims are still justiciable if all Title V funds are "obligated," The Shawnee Tribe interprets this question to mean what happens when all funds have actually been distributed to the Tribal governments? As discussed above, the funds have already been obligated from an accounting perspective and, per the Government, can be distributed post lapse of the Title V appropriation. See 2 U.S. Gov't Accountability Office, *Principle of Federal Appropriations Law*, 10-107 (3d Ed. 2004) (the obligational event for a grant generally occurs at the time of the grant award when the agency records the obligation, not when the agency distributes the funds).⁶ This is true even where the grantee may change. *Id.* Thus, there is likely no issue with respect to whether the funds have been obligated.

However, \$162.3 million that currently remains with Treasury from which to satisfy The Shawnee Tribe's claims may be distributed before this case is finally

⁶ See also 2 U.S. Gov't Accountability Office, *Principle of Federal Appropriations Law*, 7-41 (3d Ed. 2004) ("In other situations, the obligating action for purposes of 31 U.S.C. § 1501(a)(5)(A) may take place by operation of law under a statutory formula grant or by virtue of actions authorized by law to be taken by others that are beyond the control of the agency (even when the precise amount of the obligation is not determined until a later time). When this occurs, the documentary evidence used to support the accounting charge against the appropriation is a reflection of, not the creation of, the obligation under the particular law and usually is generated subsequent to the time that the actual obligation arose. 63 Comp. Gen. 525 (1984); B-164031(3).150, Sept. 5, 1979.

adjudicated, which is why overturning the Court's preliminary injunctive ruling (as discussed below) is so vital here. Pursuant to the District Court's order in *Confederated Tribes of Chehalis Reservation v. Mnuchin*, Treasury was enjoined from distributing approximately \$162.3 million in funds from the "Population Award" which had been set aside for ANCs (the "Set Aside") pending final resolution of those consolidated cases on appeal. *See* 2020 WL 3489479, at *3 (D.D.C. June 26, 2020) *rev'd* No. 20-5204 (D.C. Cir. September 25, 2020). This Court, on its own motion, further enjoined the Government from disbursing those funds until the resolution of that appeal, through the issuance of a mandate.

On September 25, 2020, when this Court reversed the District Court's holding that the ANCs are Tribal Governments entitled to Title V awards, the decision freed up the Set Aside for distribution to Tribal Governments, including The Shawnee Tribe. *Chehalis*, 2020 WL 5742075, *10. This Set Aside is available to The Shawnee Tribe to satisfy its claim to its equitable share of the "Population Award" and the Court may enjoin the Government to make a corrective distribution. So, before the Government distributes the Set Aside amount to the Tribal governments, this Court should overturn the District Court's denial of the preliminary injunction and order the District Court to enjoin Treasury to retain \$12 million from the remaining Set Aside funds to satisfy the Shawnee Tribe's claims. Furthermore, allowing the Government to re-distribute those Set Aside funds using

the same false data that gave rise to this lawsuit in the first instance would not once – but twice – permit irreparable harm to The Shawnee Tribe. As discussed below, The Shawnee Tribe was and is entitled to injunctive relief to prevent this tragic repeat of errors.

Notwithstanding the irreparable harm to The Shawnee Tribe of the full distribution of the Set Aside funds, the exhaustion of the Set Aside amount will not “completely and irrevocably” nullify the Government’s wrong because The Shawnee Tribe would still be entitled to declaratory relief (which it requested) establishing the Government violated the APA by using objectively false data. *Halkin v. Helms*, 690 F.2d 977, 1006-07 (D.C. Cir. 1982) (holding declaratory relief was sufficient to overcome mootness even where other claims were not).

The issuance of a declaratory judgment that Treasury violated the APA when it used obviously false population data for The Shawnee Tribe would still leave the Tribe better off than without judicial intervention. Far from a pyrrhic victory, the entry of judgment against the Government adjudging them to have violated the APA by assigning the Tribe a population of zero when it has a population exceeding 3,000 would serve multiple remedial purposes. Among other things, it would establish that The Shawnee Tribe is, in fact, incurring substantial costs for its population for COVID-19 related services. And it would avoid a repeat of a mistake of this magnitude, which could be used for the distribution of

Set Aside funds and other future government funding award amounts, including additional tranches of money appropriated under future legislation,⁷ with substantial consequences on the Tribe's ability to deal with COVID-19 – the very issue Title V was enacted to ameliorate. Such a victory would be neither advisory nor pointless. The effects of the Government's APA violations by eliminating the Tribe's population remain present, unameliorated, and yet capable of repetition and recompense, thus, it remains justiciable.

II. The Government's actions under the APA were impermissible as a pure matter of law.

A. The Government's separate decisions regarding methodology and its use of IHBG data are reviewable.

The essence of the District Court's ruling dismissing the Tribe's claims is that Congress gave Treasury unbridled discretion, which cannot be reviewed by the courts, when it came to awarding desperately needed Title V relief funds to Tribal governments and using patently false data to determine that award. The District Court erred in three respects: (1) it applied a categorical presumption of non-reviewability to all lump sum appropriations, regardless of the kind and nature of

⁷ See, e.g., the SMART Act, S. 3752, which would appropriate \$16 billion to Tribes using the same authority to the Secretary ("shall be determined in the same manner as the amounts paid to Tribal governments under section 601(c)(7)"); see also HEROES Act, H.R. 6800, which would appropriate \$9.5 billion to Tribes using the same authority to the Secretary ("payments of amounts made available in this paragraph shall be made to each Tribal Government in an amount determined

this **particular** lump sum appropriation, and (2) in doing so, it improperly applied *Vigil and Physicians for Soc. Responsibility*; and (3) it disregarded key Title V statutory language that clearly limits the Government's discretion. This decision is contrary to precedent, statutory language, and congressional intent.

The APA “sets forth the procedures by which federal agencies are accountable to the public and their actions subject to review by the courts.” *Franklin v. Mass.*, 505 U.S. 788, 796 (1992). As this Court has noted, the APA provides a cause of action to any person “adversely affected or aggrieved by agency action,” 5 U.S.C. § 702, but only to the extent that the “statute preclude[s] judicial review,” *id.* § 701(a)(1). See *Chehalis*, 2020 WL 5742075 at *3. “Whether and to what extent a particular statute precludes judicial review is determined not only from its express language, but also from the structure of the statutory scheme, its objectives, its legislative history, and the nature of the administrative action involved.” *Id.* (citing *Block v. Cmty. Nutrition Inst.*, 467 U.S. 340, 345 (1984)).

1. The District Court incorrectly applied a presumption of non-reviewability to Title V.

The District Court's categorical application of a presumption of non-reviewability to Title V simply because it was a lump sum appropriation⁸ is

by the Secretary of the Treasury, in consultation with the Secretary of the Interior and Indian Tribes....”).

⁸ It is questionable whether the \$8 billion in Title V funds earmarked for Tribal Governments are lump sum appropriations at all. 2 U.S. Gov't Accountability

contrary to Circuit and Supreme Court precedent. It erroneously shifts the Government's "heavy burden" -- which it has not met -- to overcome the strong presumption of reviewability embodied in the APA. *Mach Mining, LLC v. E.E.O.C.*, 575 U.S. 480, 486 (2015), *Dunlop v. Bachowski*, 421 U.S. 560, 567 (1975). Instead, the District Court imposed the burden on the Shawnee Tribe to not just rebut, but to legally prove that the Government's decision is reviewable.

The requisite starting point under the APA is and always has been a “‘strong presumption’ favoring judicial review of [an] administrative action.” *Mach Mining*, 575 at 486; *Bowen v. Mich. Acad. of Family Physicians*, 476 U.S. 667, 670 (1986); *Lincoln*, 508 U.S. at 190 (1993); *Steenholdt v. F.A.A.*, 314 F.3d 633, 638 (D.C. Cir. 2003) (citing *Abbott Labs. v. Gardner*, 387 U.S. 136, 140 (1967)).

Although the Supreme Court has held that certain allocations of funds from a lump-sum appropriation may be unreviewable under section 701(a)(2) of the APA, this narrow exception does not typically or presumptively extend to all allocations of appropriated funds.” *Vigil*, 508 U.S. at 193 (“Of course, an agency is not free simply to disregard statutory responsibilities: Congress may always circumscribe agency discretion to allocate resources by putting restrictions in the operative statutes,” even those involving lump sum appropriations); see *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S.Ct. 1891, 1905 (2020)

Office, *Principle of Federal Appropriations Law*, 6-5 (3d Ed. 2004)

(noting, even in light of *Vigil* and *Physicians for Soc. Resp.*, the § 701(a)(2) exception is rarely and “quite narrowly” applied and, even then, it only rebuts the presumption under the APA (as opposed to creating an entirely new presumption of non-reviewability)); *McAlpine v. United States*, 112 F.3d 1429, 1433 (10th Cir. 1997) (citing extensive case law holding that Section 701(a)(2) is to be applied only to “a very narrow range of agency decisions” and, even then, not all lump sum appropriations are unreviewable).

Indeed, even under *Lincoln v. Vigil*, upon which the lower Court erroneously relied for the presumption of non-reviewability, review under the APA is denied only “in those rare circumstances where the relevant statute ‘is drawn so that a court would have no meaningful standard against which to judge the agency’s exercise of discretion.’” *Vigil*, 508 U.S. at 191 (citations omitted). The mere fact that a statute makes a lump sum appropriation does not mean that it is insulated from the strong presumption of reviewability under the APA. Rather, only “[w]here ‘Congress merely appropriates lump-sum amounts without statutorily restricting what can be done with those funds,’” and thereby provides no meaningful standard by which to judge the agency’s actions, might a particular lump sum appropriation be unreviewable in practice. *Id.* at 192.

Consistent with the above, this Court has already determined that the

(differentiating between lump sum appropriations and line items).

presumption of reviewability under the APA applies to Title V. *Chehalis*, 2020 WL 5742075 at *3 (“[a]ny preclusion [of review] must be ‘fairly discernible in the statutory scheme’ ... and must appear ‘with sufficient clarity to overcome the strong presumption in favor of judicial review’”). Indeed, there is no dispute in this case that Title V lacks language – express or otherwise in the statutory structure – that reflects congressional intent to preclude judicial review. Furthermore, there is no dispute in this case that the issue here is also a challenge to the Treasury "funding decision" for the Shawnee Tribe. This Court has already held in *Chehalis*, which now serves as precedent for this case, that regardless of the lump sum nature of Title V Treasury's funding decisions are reviewable. There is no basis for this Court to now find that Title V has somehow morphed into a lump sum appropriation of the kind and nature that is presumed unreviewable here. It is the same appropriation, the same funding decisions, and should be accorded the same presumption of reviewability.

Thus, under well-settled law, and this Court's recent precedent in *Chehalis*, the Title V lump sum appropriation remains presumptively reviewable by this Court, including both the “Allocation determination” and the decisions to use the IHBG population data set that omits The Shawnee Tribe.

2. ***The District Court erred in relying on *Prairie Band*, *Vigil* and *Physicians for Soc. Responsibility* as support that a presumption of non-reviewability applies.***

Despite the extensive law above, the District Court applied a presumption of non-reviewability based on its analysis in *Prairie Band*, and a misreading of *Vigil* and *Physicians for Soc. Responsibility*. As a threshold matter, *Prairie Band* is not binding precedent on The Shawnee Tribe. *Prairie Band of Potawatomi Nation v. Mnuchin*, Case No. 20-cv-1491-APM (D. D.C.). Nor did the Tribe have a full opportunity to litigate, let alone brief, the issues raised in that case. Thus, the Districts Court's incorporation of the holdings in that case as applicable and binding precedent in this case was improper.

Nor did the District Court properly rely upon *Vigil* or *Physicians for Soc. Responsibility* to establish a black letter proposition that all lump sum appropriations are presumptively unreviewable. In *Vigil*, the Supreme Court held that absent **any limiting** language in a lump sum appropriation, the Court could not review a decision by the Indian Health Service (IHS) to cease funding a specific Indian health care program. *Vigil*, 508 U.S. at 193-194. The annual lump sum appropriation at issue in *Vigil* was intended to fund Indian health care programs authorized under two laws, namely, the Snyder Act and the Indian Health Care Improvement Act. Together, the annual appropriation bill and the authorizing statutes provided discretionary authority to the IHS for over 30 years to fund health

care programs for Indians. The Court held that Congress did not provide any statutory limitations on how IHS could use those funds or what programs IHS could administer with those funds. *Id.* at 193. In fact, the Court expressly noted “the appropriations Acts for the relevant period do not so much as mention the Program [discontinued], and ... speak about Indian health only in general terms”). In other words, there was literally no law to apply. *Id.* at 192; *Citizens to Preserve Overton Park Inc. v. Volpe*, 401 U.S. 402, 410. Critically, the Court further reasoned that lump sum appropriation spending decisions might be unreviewable where the agency is “far better equipped than the Courts” to make spending decisions because it is “peculiarly within [the agency’s] expertise”; requires allocations between “one program or another”; or involves policy decisions as to whether a “program ‘best fits the agency’s overall policies.’” *Id.* at 193 (citing *Heckler v. Chaney*, 470 U.S. 821, 831 (1985)). But, these policy rationales do not themselves establish a presumption of non-reviewability nor do they apply here.

As noted throughout this brief, unlike in *Vigil*, there is law to apply in the plain language of Title V that cabins the Government’s discretion. In at least four separate ways, the Government’s discretion to allocate Title V funds is limited to “each” tribe; “based on increased expenditures”; only after consultation with tribes; and can only be used for COVID-19 related expenses. This case is certainly beyond the confines of *Vigil* where there was literally no law to apply.

The District Court's decision fares no better under *Physicians for Soc. Responsibility*, which did not involve a lump sum appropriation at all. In that case, plaintiff challenged the Environmental Protection Agency's ("EPA") then-Administrator Scott Pruitt's directive prohibiting recipients who received EPA grants from serving on its scientific advisory committee. *Physicians for Soc. Responsibility*, 956 F.3d at 641. Nowhere in that case is a lump sum appropriation at issue. Rather, the Court addresses, in passing, that lump sum appropriations "traditionally have [been] regarded as 'committed to agency discretion,'" but nowhere does it apply a categorical presumption of non-reviewability in every context or overcome the express *Vigil* language stating such a presumption does not automatically apply. *Id.* at 642; *Vigil*, 508 U.S. at 193. Thus, *Physicians for Soc. Responsibility* is wholly irrelevant here and the District Court erred when it relied upon it to create an entirely new categorical presumption of unreviewability for all lump sum appropriations without considering the kind and nature of this particular appropriation.

Thus, a presumption of reviewability applies to Title V. As such, District Court erred when it effectively shifted the burden from the Government, as the law requires, to The Shawnee Tribe to overcome the District Court's legally unsupported presumption of non-reviewability

3. *The Government's spending decisions under Title V are reviewable.*

In the lower court, the Government argued, and the District Court agreed, that “Plaintiff’s entitlement to any of the Funds is based on whatever methodology Treasury selects.” [See Dkt. 21, p. 11]. Under such a holding, the Government could have allocated all Title V funds to a single tribe and such an allocation decision would be beyond the reach of the courts' review authority under the APA. The lower court’s position is belied by the plain language of Title V, the Government’s informal policy statements, and common sense.

Regardless, Congress may always circumscribe agency discretion by including restrictions in the operative statute, including on the use of funding in the appropriations act. *Mach Mining LLC*, 575 U.S. at 486; *Multnomah Cnty. v. Azar*, 340 F. Supp. 3d 1046, 1061–62 (D. Or. 2018) (holding the use of the word “shall” and other mandates provides a standard against which to judge the agency’s discretion). Moreover, “judicial review is available where there are ‘meaningful standards to cabin the agency’s otherwise plenary discretion,’” which, in addition to the statutory language, can take the form of “informal policy statements.” *Physicians for Soc. Responsibility*, 956 F.3d at 643. This Circuit has found such meaningful standards in statutory language requiring nothing more than “high quality and cost-effective” care and where an Army Board “*may* excuse a failure to file ... *if it finds it to be in the interest of justice.*” *Id.* (emphasis in original).

This Court has already decided that “[n]othing in the CARES Act expressly precludes review of spending decisions under Title V.” *See Chehalis*, 2020 WL 5742075, at *4. Furthermore, Title V is filled with mandatory language, such as “shall” be “based” on “each” tribe’s “increased expenditures” and requiring consultation with the tribes, by which this Court could judge whether the Government’s actions complied with the CARES Act and the APA. Importantly, Congress required Treasury to pay “each such Tribal government” – not just some of them and certainly not just those who participate in an elective Indian housing program– based on their increased expenditures. There is nothing discretionary about Title V’s mandates and this Court has found meaningful standards in statutes requiring far less. *Physicians for Soc. Responsibility*, 956 F.3d at 643 (finding statute reviewable where an Army Board “*may* excuse a failure to file ... *if it finds it to be in the interest of justice.*”).

Critically, there is no dispute the question of “who” is entitled to Title V funds is reviewable. [Dkt. 21, pp. 12-13 (Government conceding the “who” is reviewable)]; *Chehalis*, — F.3d —, No. 20-5204, 2020 WL 5742075, *3 (holding the question of who is a “Tribal Government” is reviewable under Title V). Here, the Government made the decision about who receives Title V funding (and, inversely, who does not) based on whether the tribe participates in elective housing grants issued under the IHBG program.

Moreover, Congress expressly cabined the Government's discretion about how to distribute these funds by requiring it to be rationally "based" on COVID-19 increased expenses. Although the District Court found that CARES Act relief funds need only be used for COVID-19 "increased expenditures," that is not the only requirement in Title V. Instead, the statute expressly requires that any amounts distributed be "based on increased expenditures of each such Tribal government ... relative to aggregate expenditures in fiscal year 2019 by the Tribal government." 42 U.S.C. § 801(c)(7); *Agua Caliente Band of Cahuilla v. Mnuchin*, 2020 WL 2331774, at *6 (D.D.C. May 11, 2020) (allocations under Title V are expressly limited and "shall be 'based on increased expenditures'"). Simply put, it is not enough that funds be merely used for COVID-19 expenses, regardless of how or in what amount distributed; rather, Congress expressly limited the Government's discretion to distribute these funds in a way that they are rationally "based" on COVID-19 "increased expenses."

In requiring consultation with the tribes, Congress also acknowledged that Treasury would need assistance with determining how to allocate the Title V funds to Tribal governments. This mandatory consultation requirement establishes a further limitation on Treasury's discretion. Further, it calls into question whether Treasury sufficiently consulted with Tribes. In this case, for example, Treasury failed to consult with the tribes after April 17, when it changed the source of

population data from tribal certified data to the IHBG formula data. In addition, Treasury failed to further consult when the IHBG formula data selected was obviously false.

The District Court erred when it ignored all of this plain language of Title V, which expressly limits the Government's discretion and provides the Court with "law to apply."

Relatedly, there are no Vigil policy reasons to refrain from reviewing the Government's funding decisions under the APA. The Treasury lacks any particular expertise that makes it far better equipped than the Court to determine whether funding decisions for Tribal government are based on "increased expenditures" - a statutory interpretation exercise. Indeed, Mr. Kowalski expressly admitted, "I am not an expert on Tribal issues." [S-App'x 77, lines 14:3-4]. For this very reason, Congress required Treasury to consult with the experts, namely, the tribes themselves. Having done that, and having collected specific, accurate information about the actual population of The Shawnee Tribe, Treasury set that information aside and relied on an entirely different federal agency program – the IHBG program – to attempt to determine the tribal population because it lacked the expertise to do so on its own. Moreover, there are no funding allocations between "one program or another," and no decisions as to whether a "program 'best fits the agency's overall policies.'" See *Vigil*, 508 U.S. at 193. There are simply no

existing policy reasons that would put Treasury in a “far better” position than this Court to determine whether funding decisions – including the selection of the population methodology, the IHBG data and formula, and the use of objectively false population data for the Shawnee Tribe – are arbitrary, capricious, and contrary to Title V of the CARES Act.

Even if this Court were to find that Congress did not cabin the Government’s discretion, Treasury certainly did through its own guidance documents, statements and selection process. During the April 2, 2020 consultation, Mr. Kowalski’s made the informal policy statement that “Treasury want[s] ... a fair and transparent method for allocating these funds.” [S-App’x 78, lines 15:6-8)]. Moreover, in the Government’s May 5 Announcement, they announced their determination to use population as a proxy for increased expenditures under Title V because it purportedly “correlate[s] reasonably well.” [S-App’x 99]. In doing so, the Government acknowledged it must use data that “correlate[s]” with and, therefore, is “based” upon increased expenditure. Thus, the Government curtailed its own discretion to use a formula and data that accomplishes the statutory purposes and not data that is objectively false and effectively eliminates entire tribal populations. In other words, once the Government limited its discretion by creating the allocation formulas as proxies for "increased expenses" of Tribal governments, it stands to reason that that discretion could not then extend to the use of objectively

and demonstrably false data in those allocation formulas. But, contrary to its own policy statements, instead of using actual population statistics the Government requested and timely received, the Government decided to use the IHBG data that included objectively false population data for the Tribe. Further, on its face, this was not a “fair and transparent” process – another limitation imposed by the Government on its decision-making. This is particularly true given that the Government admits it did not consult with the tribes with respect to its use of the IHBG population data. This also provides the Court a meaningful standard by which to judge the Government’s exercise of discretion by using objectively false data without the statutory consultation requirement and rendering some tribes – but not others – extinct.

The District Court ignored both the plain language of Title V and the Government's own guidance and policies to effectively "read out" of the statute the express limitations on the Government's discretion to allocate funds to Tribal governments. Furthermore, the Government has failed to argue any legitimate basis as to why its spending decisions under Title V are unreviewable. This Court should find that the Government's decision is reviewable and overturn the lower court's dismissal of the Tribe's claims. In addition, for the reasons stated below, this Court should also overturn the lower court's denial of the Tribe's preliminary injunction motion and order the lower court to enjoin the Government from

disbursing \$12 million from the Set Aside until these claims are finally resolved.

B. The Government's methodology based on population and use of IHBG data was arbitrary and capricious, and violated the APA as a matter of law.

Pursuant to the APA, a reviewing court shall hold unlawful and set aside agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” (5 U.S.C. § 706(2)(A)), or that fails to observe procedure required by law (5 U.S.C. § 706(2)(D)). The role of the court under the APA is to “ensur[e] that agencies have engaged in reasoned decisionmaking.” *Judulang*, 565 U.S. at 53. Courts must review “whether the agency examined the relevant data and articulate[d] a satisfactory explanation for its action including a rational connection between the facts found and the choice made, and whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.” *Mozilla Corp. v. Fed. Commc'ns Comm'n*, 940 F.3d 1, 49 (D.C. Cir. 2019) (internal quotations omitted). “[W]here the agency has failed to provide a reasoned explanation, or where the record belies the agency's conclusion, [the courts] must undo its action.” *BellSouth Corp. v. F.C.C.*, 162 F.3d 1215, 1222 (D.C. Cir. 1999) (citation and quotation omitted).

Violations of the arbitrary and capricious standard under the APA can take many forms. For example, if the agency fails to provide a factual basis upon which a court may conclude that the agency has actually engaged in reasoned decision-

making, it has violated the APA. *Swedish Am. Hosp. v. Sebelius*, 773 F. Supp. 2d 1, 14 (D.D.C. 2011) (requiring an explanation for a challenged action); see *A.L. Pharma, Inc. v. Shalala*, 62 F.3d 1484, 1491 (D.C. Cir. 1995) (noting that an agency is required to explain its decision so the court can fulfill its duty of ensuring non-arbitrary decision-making under the APA). Moreover, an agency that transparently engages in policymaking, but arrives at its discretionary decision “by Ouija board or dart board, rock/paper/scissors, or even the Magic 8 Ball” has still violated the APA’s arbitrariness prohibition because its policy determination was not a reasoned one. *Make the Rd. N.Y. v. McAleenan* (“MTRNY”), 405 F. Supp. 3d 1, 47 (D.D.C. 2019), *rev’d on other grounds sub nom., Make the Rd. N.Y. v. Wolf*, 962 F.3d 612 (D.C. Cir. 2020). An agency similarly violates the APA if it “entirely fail[s] to consider an important aspect of the problem,” or if its decision “runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, — U.S. —, 140 S.Ct. 1891, 1910 (2020); see also *Nat. Res. Def. Council v. U.S. E.P.A.*, 808 F.3d 556, 574 (2d Cir. 2015) (overturning agency decision as arbitrary and capricious because it failed to consider an “important aspect of the problem,” among other reasons).

Nor may agencies rely on one-sided or unsuitable data, particularly where superior data is available, as was the case here. This fundamental principle has been reinforced by courts repeatedly. Recently, in *Genuine Parts Co. v. Env'tl. Prot. Agency*, 890 F.3d 304, 313 (D.C. Cir. 2018), this Court held that “[i]t was arbitrary and capricious for [the agency] to rely on portions of studies in the record that support its position, while ignoring cross sections in those studies that do not.” Likewise, in *Lakeland Bus Lines, Inc. v. N.L.R.B.*, 347 F.3d 955, 962-63 (D.C. Cir. 2003), the Court reversed an agency’s decision on unfair labor practices because it failed “to take account of contradictory evidence” and engaged in a “clipped view of the record it chose to take.” And in *Guindon v. Pritzker*, 31 F. Supp. 3d 169, 195 (D.D.C. 2014), the district court stated that an agency may not “disregard superior data in reaching its conclusion,” and held that the agency’s final rule was arbitrary and capricious when it did.⁹

“Under any of these circumstances, it is the court’s obligation to declare that the challenged rule is procedurally unlawful, and to vacate the agency’s action under section 706(2)(A) of the APA.” *See Regents*, 140 S.Ct. at 1910; *see also In re Roman Catholic Church of Archdiocese of Santa Fe*, 615 B.R. 644, 653 (Bankr.

⁹ Even the Government’s use of outdated data has been found to be arbitrary and capricious. *Saint Francis Med. Ctr. v. Azar*, 894 F.3d 290, 297-98 (D.C. Cir. 2018) (vacating federal agency’s rule as arbitrary and capricious where it relied on outdated data to support its decision to reimburse hospitals at a historically low rate).

D.N.M. 2020) (noting, in the context of the CARES Act, “courts retain an important role ‘in ensuring the agencies have engaged in reasoned decisionmaking’ by examining the reasons for the agency decisions, or lack thereof, and determining ‘whether the decision was based on consideration of the relevant factors and whether there has been a clear error of judgment’”) (quoting *Judulang*, 565 U.S. at 53).

This case is not concerned with slight imperfections or misjudgments. The Government determined that the population of The Shawnee Tribe was zero when it knew that population was 3,021. This decision was “so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc.*, 463 U.S. at 43. There is no dispute in this case that The Shawnee Tribe still exists, which it could not if it had a tribal population of zero. This is quintessential arbitrary and capricious agency action.

Similarly, there is no dispute that the Government’s use of the IHBG data runs directly counter to the evidence before the agency, namely, the population data the Government requested and received. Though the Government already had The Shawnee Tribe’s accurate population data from two separate reliable sources, namely, the BIA within Interior and the Tribe itself, they elected to instead use the inaccurate IHBG population data. This decisions resulted in the false finding that The Shawnee Tribe had been depopulated, which is legally and factually

impossible. Ironically, the Government ignored the data from the very same organizations with whom Title V expressly required it to consult – the Interior and tribes.¹⁰ Even the District Court noted the curious nature of the Government’s actions, which wholly lacks explanation. *See Agua Caliente*, 2020 WL 2331774, at *7 (“Plaintiffs are rightly upset ... [where] the 60% distribution made by the agency relied not on data obtained from Indian tribes in the last few weeks, but on population data from [HUD] that was publicly available before the pandemic struck”). There is no dispute in this case that the Government had superior data available to determine The Shawnee Tribe was not extinct for the purposes of Title V funding but it disregarded it, which is arbitrary and capricious. *Guindon*, 31 F. Supp. 3d at 195.

This amounts to nothing more than pulling numbers out of the sky. *See, e.g., Judulang v. Holder* at 55 (holding that, even where BIA has discretion to make decisions, “it must do so in some rational way. If the BIA proposed to [make its decision] . . . by flipping a coin . . . we would reverse the policy in an instant.”); *Village of Barrington, Ill. v. Surface Transp. Bd.*, 636 F.3d 650, 660 (D.C. Cir. 2011) (“If an agency fails or refuses to deploy [its] expertise—for example, by simply picking a permissible interpretation out of a hat—it deserves no deference.”). Flipping a coin or picking a number out of a hat would have yielded

¹⁰ This is true despite Treasury admitting they are not the experts.

no less inaccurate population figures for The Shawnee Tribe than what the Government did in this case.

Nor has the Government proffered any explanation for ignoring the population data it requested and received. Although the Government determined that “[t]ribal enrollment” data in the IHBG table was inaccurate, it never explained how or why it ignored the requested certification of tribal population.¹¹ [*Compare id.*, p. 2 with Dkt. 2-1 (defining “[p]opulation”)]. More importantly, the Government has never explained why the data it requested and received was ignored in favor of IHBG data that is obviously false and effectively rendered the Shawnee Tribe extinct for the purposes of Title V. This lack of explanation alone is arbitrary and capricious. *See A.L. Pharma, Inc.*, 62 F.3d at 1491 (noting an agency is required to explain its decision); *Swedish Am. Hosp.*, 773 F. Supp. at 14 (requiring explanation for a challenged action).

The fact that housing and transportation programs use this data is irrelevant and runs directly counter to Title V’s objective. Title V awards were directed by Congress to compensate tribes for “increased expenditures related” to COVID-19. Nowhere in Title V does it state that only those tribes who have a housing or transportation program are entitled to funds (again, a “who” decision), or that

¹¹ Even if the Government meant the certified population data was inaccurate, it then failed to explain its refusal to use the enrollment data in the IHBG population data.

participation in those programs is a prerequisite to getting funds for increased COVID-19 expenses. Indeed, the fact that the HUD data was created for elective program awards is illustrative of the fact that it is entirely unrelated to Title V objectives to compensate for non-elective COVID-19 expenses. Instead, what Title V does require is that “each” tribe is entitled to Title V funds that are “based” on their increased expenditures related to COVID-19, which is entirely unrelated to any participation in unrelated and elective federal programs.

By deciding tribes that participate in the IHBG program are eligible for Title V funds commensurate with their IHBG populations while tribes that do not participate in that program are not, the Government created a condition to funding that Congress did not impose under the CARES Act. Whereas in *Chehalis* the Government granted funding to groups not eligible for it, here it has withheld the full measure of designated funds from The Shawnee Tribe to which Congress unequivocally directed such funding. The Government’s decision to rely on an IHBG data set that was obviously false population data for The Shawnee Tribe is beyond “the bounds of reasoned decisionmaking” and cannot be defended on review. *Roman Catholic Church*, 615 B.R. at 653.

The *Roman Catholic Church* holding is particularly instructive here. In that case, the Court also found that the Department of Treasury “exceeded its authority” and engaged in “unlawful behavior” when it invented criteria to exclude eligible

recipients from CARES Act benefits. The Court reasoned this was a “usurpation of Congressional authority to determine which business are eligible for . . . funds.” *Id.* at 655-56. There, as here, Treasury “lacked the authority to change . . . eligibility requirements and exclude Plaintiff,” which runs directly counter to the plain language of Title V. *Id.* at 656. There, as here, Treasury's “inexplicable and highhanded decision to rewrite the . . . eligibility requirements in this way was arbitrary and capricious, beyond its statutory authority, and in violation of 11 U.S.C. § 525(a).” *Id.* at 657. The unmistakable conclusion here is that Congress did not impose participation in a particular Indian housing program as a condition to receiving funds under the CARES Act, and the Government was wrong to impose that condition in contravention to Congress's stated intent. The Government's incorrect determination as to which tribes are entitled to funds cannot be sustained.

Critically, the Government “entirely fail[ed] to consider an important aspect of the problem” when its decision effectively rendered The Shawnee Tribe (and others) extinct, and resulted in unreasonably insufficient funding to the Tribe. *Motor Vehicle Mfrs. Ass’n of U.S., Inc.*, 463 U.S. at 43; *Regents of the Univ. of Cal.*, — U.S. —, 140 S.Ct. at 1904-05. It is axiomatic that a depopulated tribe cannot incur any expenses at all, let alone \$100,000 worth of expenses, which is the minimum payment the Government provided to tribes with zero population - again a legal and factual impossibility. The mere fact that the Government

distributed funds to a tribe that it claims does not exist demonstrates the \$100,000 is not “based” on COVID-19 related expenses at all and, thus, fails to meet Title V statutory objectives. The Government’s decisionmaking, even where discretionary, violates the APA arbitrariness prohibiting when it amounts to nothing more than “by Ouija board or dart board, rock/paper/scissors, or even the Magic 8 Ball.” *MTRNY*, 405 F. Supp. 3d at 47 (D.D.C. 2019).¹² The Government has acted arbitrarily and capriciously, and fundamentally failed to honor Congress’ intent when it enacted Title V.

III. The District Court’s denial of preliminary injunctive relief was clear error and should be reversed.

The District Court clearly erred by finding that the Treasury decision is not reviewable. In so doing, it held that the Tribe was not likely to succeed on the merits of its APA claim. But, for the reasons argued above, the Court should reverse that finding and confirm both that the Treasury decision is reviewable and that the Tribe is likely to succeed on the merits of its claim. Such a finding necessitates that the Court also reverse the District Court’s denial of the Tribe’s

¹² There is also no dispute that the Government failed to consult with The Shawnee Tribe with respect to the decision to use the objectively false IHBG population data. Instead, the Government claimed they did not have to, despite express language requiring it to consult the tribes in determining CARES Act awards and their admission they are not the experts. The Government has independently failed to provide any valid basis for their failure to meet this objective of the statute, which does not piecemeal or diminish in any way the Government’s duty to consult.

motion for a preliminary injunction and remand with instructions for the District Court to grant the preliminary injunction. The Tribe continues to face a real and immediate risk that the \$12 million CARES Act funds that it should have received may be dissipated unless a preliminary injunction issues.

The primary “purpose of a preliminary injunction is to preserve the object of the controversy in its then existing condition—to preserve the status quo.” *Aamer v. Obama*, 742 F.3d 1023, 1043 (D.C. Cir. 2014). The status quo now is that the Government is holding \$12 million that can, and should, be earmarked for payment to The Shawnee Tribe. However, absent a preliminary injunction, the Government can, and will, dissipate those funds elsewhere. The Shawnee Tribe merely requests that the Court reverse and direct the District Court to enter a preliminary injunction to “freeze” or otherwise hold those funds in abeyance until the merits of its suit regarding its statutory rights to those funds can be resolved. *See, e.g., CSX Transp., Inc. v. Williams*, 406 F.3d 667, 674 (D.C. Cir. 2005) (reversing district court and remanding “with direction to enter a preliminary injunction....”).

A plaintiff seeking a preliminary injunction must establish “[1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.” *Open Top Sightseeing USA v. Mr. Sightseeing, LLC*, 48 F. Supp. 3d 87, 89 (D.D.C. 2014); *Winter v. Nat. Res. Def.*

Council, Inc., 555 U.S. 7, 20 (2008) (citations omitted).

Notably, this Circuit evaluates the four factors required for a preliminary injunction on a “sliding scale.” *Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1291 (D.C. Cir. 2009) (quoting *Davenport v. Int’l Bhd. of Teamsters*, 166 F.3d 356, 361 (D.C. Cir. 1999)). Under this sliding scale, if a “movant makes an unusually strong showing on one of the factors, then it does not necessarily have to make as strong a showing on another factor.” *Id.* at 1291–92. Indeed, although the Supreme Court’s decision in *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 51 (2008) may have cast some doubt on the viability of the sliding scale approach, see *Davis* at 1296 (Kavanaugh, J., concurring) (“[T]he old sliding-scale approach to preliminary injunctions ... is ‘no longer controlling, or even viable.’”) (quoting *Am. Trucking Ass’ns v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009)), the D.C. Circuit has yet to squarely decide whether to abandon that test. See, e.g., *Archdiocese of Wash. v. Wash. Metro. Area Transit Auth.*, 897 F.3d 314, 334 (D.C. Cir. 2018).¹³ Consequently, the Court has flexibility in analyzing the relative strengths of each element below.

¹³ See also *Davis*, 571 F.3d at 1292 (quoting *Winter*, 129 S.Ct. 365, 392 (2009) (Ginsburg, J., dissenting) (“[C]ourts have evaluated claims for equitable relief on a ‘sliding scale,’ sometimes awarding relief based on a lower likelihood of harm when the likelihood of success is very high. This Court has never rejected that formulation, and I do not believe it does so today.”)).

A. The Shawnee Tribe will likely be successful on the merits of its APA claim.

As argued in the previous sections, the Tribe is likely to be successful on the merits of its APA claims. In sum, under applicable law there is a presumption of reviewability of the Government's spending decisions, and, in particular, the Secretary's conduct here. And, the population data by which the Secretary used to fashion his decision with respect to the funding levels relied on erroneous data. Reliance on erroneous data in this manner is the hallmark of arbitrary and capricious agency action.

The Government cannot dispute two critical points: (1) The Shawnee Tribe is entitled to Title V funds; and (2) the plain language of that statute requires "each" such Tribal Government – not just some of them – to receive funds "based" on its "increased expenditures." The Government's decision to allocate The Shawnee Tribe \$100,000 bears no connection whatsoever to its increased expenditures related to COVID-19, let alone the zero population the Government says it has and alleges somehow reasonably correlates to those expenses. That is arbitrary and capricious. *See, e.g. Genuine Parts Co. v. Env'tl. Prot. Agency*, 890 F.3d 304, 313 (D.C. Cir. 2018); *see also* cases cited *supra* at 40.

Far from "reasoned decisionmaking" or providing a "rational connection between the facts found and the choice made," the Government has engaged in clear error of judgment and it must be undone. *Judulang*, 565 U.S. at 53; *see also*

Mozilla Corp., 940 F.3d at 49 (requiring a rational connection between the facts and decisions made); *BellSouth Corp.*, 162 F.3d at 1222 (requiring courts to undo an agency's action "[w]here the agency has failed to provide a reasoned explanation, or where the record belies the agency's conclusion"). As such, it was clear error for the District Court to deny a preliminary injunction here.

B. Irreparable harm will occur if injunctive relief is not awarded.

The District Court has already "accept[ed] that Plaintiff would suffer irreparable harm absent injunctive relief." [S-App'x 8, n. 3]; *see also* Dkt. 48, p. 3 (adopting its prior conclusions on the PI)].

The Shawnee Tribe agrees that its injury is certain and not merely theoretical. The Government's allocation decision, which relied on population and used false IHBG data, wholly eliminated The Shawnee Tribe's 3,021 population, resulting in a Title V award shortfall to the Tribe of approximately \$12,000,000. The Shawnee Tribe's claim to these funds will be forever foreclosed by the Government's distribution of these funds. Once distributed, these funds cannot be recouped. The Title V funds will then be exhausted, leaving The Shawnee Tribe irreparably harmed. As discussed above, injunctive relief remains available to resolve this harm, regardless of whether this Court's September 25, 2020 decision in *Chebalis* stands. The Court should reverse and direct the District Court to immediately enter a preliminary injunction to protect these funds pending the

outcome of the litigation below.

C. The injunction, if issued, will not adversely affect the public interest and the balance of equities favors The Shawnee Tribe.

The final two elements, the public interest and the balance of equities, also favor granting a preliminary injunction. Where, as here, the government is a party to the suit, the harm to defendants and the public interest merge. Indeed, they “are one and the same, because the government's interest *is* the public interest.” *Pursuing Am.'s Greatness v. Fed. Election Comm'n*, 831 F.3d 500, 511 (D.C. Cir. 2016).

The Government’s decision to allot a “zero” population figure to The Shawnee Tribe was arbitrary and capricious because it exceeded the agency’s discretion and otherwise failed to rely on correct data available to it. Arbitrary and capricious agency conduct is, by its very definition, unlawful. *See* 5 U.S.C. § 706(2)(A) (courts must “hold unlawful and set aside” arbitrary and capricious agency action); *Humane Soc’y Int’l v. U.S. Fish & Wildlife Serv.*, 394 F. Supp. 3d 67, 79 (D.D.C. 2019) (noting that available remedy under the APA for arbitrary and capricious action is for the Court to hold the action unlawful). “There is generally no public interest in the perpetuation of an unlawful agency action.” *League of Women Voters of the U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016). “To the contrary, there is a substantial public interest ‘in having governmental agencies abide by the federal laws that govern their existence and operations.’” *Id.*

(quoting *Wash. v. Reno*, 35 F.3d 1093, 1103 (6th Cir. 1994)); see also *Banks v. Booth*, No. 20-849, 2020 WL 1914896, at *12 (D.D.C. Apr. 19, 2020) (“There is no harm to the [g]overnment when a court prevents unlawful practices.”). And, “the public interest is harmed when the [g]overnment ham-handedly exercises its responsibilities.” *Minney v. U.S. Off. of Pers. Mgmt.*, 130 F. Supp. 3d 225, 236 (D.D.C. 2015); see also *Jacksonville Port Auth. v. Adams*, 556 F.2d 52, 59 (D.C. Cir. 1977) (“[T]here is an overriding public interest...in the general importance of an agency's faithful adherence to its statutory mandate.”). Accordingly, the public interest is served by preserving funds to redress an arbitrary and capricious decision by the Government.

The Shawnee Tribe does not seek to withhold funds properly distributed to other tribes; thus, injunctive relief would not adversely affect the public. Rather, The Shawnee Tribe seeks to enjoin the Government from disbursing only those Title V Funds that The Shawnee Tribe would have otherwise received – and to which it is entitled – if the Government had not determined it extinct for the purposes of calculating Title V disbursements, a figure calculated at approximately \$12 million. Other tribes receiving a larger proportionate share of funds based on IHBG data that deleted The Shawnee Tribe population have no legitimate basis to claim those funds in the first instance; thus, they are not adversely affected by a grant of injunctive relief to the Tribe here. Further, given this Court's recent

decision that the funds should be distributed only to Tribal governments, it would be patently unfair for the previous zero population error to be compounded again, when Treasury must redistribute the \$162 million previously withheld for the ANCs.

Finally, the very purpose of these CARE Act funds – intended to mitigate the public health crisis affecting everyone – supports a finding that the public interest and equities favor a preliminary injunction. Absent a preliminary injunction, The Shawnee Tribe members will suffer continued irreparable harm, despite already experiencing extraordinary hardship due to COVID-19 related issues that the Title V Funds were designed specifically to address. To be sure, “[i]t goes almost without saying, of course, that promoting public health—especially during a pandemic—is in the public interest....” *Nat'l Immigration Project of Nat'l Lawyers Guild v. Exec. Office of Immigration Review*, No. _____, 2020 WL 2026971, at *12 (D.D.C. Apr. 28, 2020). The District Court’s decision to deny the preliminary injunction should be reversed and remanded for entry of a preliminary injunction freezing the \$12 million in funds pending a resolution on the merits.

CONCLUSION

Based on the foregoing, The Shawnee Tribe respectfully requests that this Court (1) find, consistent with *Chehalis*, the Government’s spending decisions

under Title V are reviewable; (2) reverse the District Court's dismissal; and (3) find the Government violated the APA, and direct the lower court to enter judgment in favor of The Shawnee Tribe and require the Government to allocate Title V funds to the Tribe in the same amount as was allocated to other tribes having 3,000 members; or in the alternative, reverse the District Court's denial of the preliminary injunction pending a resolution on the merits and direct it to preliminarily enjoin the Government from distributing \$12 million in Title V funds The Shawnee Tribe would have received had the Government not arbitrarily and capriciously assigned it a population of "zero."

DATED this 9th day of October, 2020.

Respectfully submitted,

THE SHAWNEE TRIBE

/s// Scott McIntosh

Luke Cass (D.C. Circuit Bar No. 62670)

Scott McIntosh (D.C. Circuit Bar No. 60541)

QUARLES & BRADY LLP

1701 Pennsylvania Avenue, NW, Suite 700

Washington, D.C. 20006

Phone: (202) 780-2638

E-Mail: luke.cass@quarles.com

scott.mcintosh@quarles.com

Counsel for Plaintiff-Appellant

CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2020, I electronically filed the foregoing Opening Brief of Appellant The Shawnee Tribe with the Clerk of the Court for the U.S. Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. All participants are registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/ Scott McIntosh

Luke Cass (D.C. Circuit Bar No. 62670)

Scott McIntosh (D.C. Circuit Bar No. 60541)

QUARLES & BRADY LLP

1701 Pennsylvania Avenue, NW, Suite 700

Washington, D.C. 20006

Phone: (202) 780-2638

E-Mail: luke.cass@quarles.com

scott.mcintosh@quarles.com

Counsel for Plaintiff-Appellant

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(B), I certify that:

This brief complies with the type-volume limitation of 13,000 per Fed. R. App. P. 32(a) and D.C. Cir. Rules 28(c), 28(e), and 32 because this brief contains 12,834 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word 2013, Times New Roman 14-point font.

Date: October 9, 2020

/s/ Scott McIntosh

Luke Cass (D.C. Circuit Bar No. 62670)

Scott McIntosh (D.C. Circuit Bar No. 60541)

QUARLES & BRADY LLP

1701 Pennsylvania Avenue, NW, Suite 700

Washington, D.C. 20006

Phone: (202) 780-2638

E-Mail: luke.cass@quarles.com

scott.mcintosh@quarles.com

Counsel for Plaintiff-Appellant

APPENDIX**TABLE OF CONTENTS**

1:20-cv-01999 Memorandum Opinion and Order, Dkt. 43, August 19, 2020	1-12
1:20-cv-01999 Memorandum Opinion, Dkt. 48, September 10, 2020	13-22
Civil Notice of Appeal, Dkt. 50, September 10, 2020	23-27
4:20-cv-00290 Verified Complaint for Injunctive and Declaratory Relief, Dkt. 2, June 18, 2020	28-42
Complaint Ex. A, Certification for Requested Tribal Data, Dkt. 2-1	43-44
Complaint Ex. B, IHBG Final Allocation Dkt. 2-2	45-60
Complaint Ex. C, 5/28/2020 Letter to Mnuchin, Dkt. 2-3	61-63
Complaint Ex. D, Case No. 20-cv-01136 (APM) Memorandum Opinion, Dkt. 2-4	64-73
3/31/2020 Letter to Tribal Leader regarding consultation call	74
1:20-cv-01491, April 2, 2020 Cares Act Title VI Tribal Consultation, Dkt. 2-3	75-89
1:20-cv-0149, April 9, 2020 Cares Act Title VI Tribal Consultation, Dkt. 2-4	90-97
Coronavirus Relief Fund, Allocations to Tribal Governments, May 5, 2020, Dkt. 46-3	98-100
Coronavirus Relief Fund, Allocations to Tribal Governments, June 12, 2020	101-102
Frequently Asked Questions on Tribal Populations, June 4, 2020	103-104
USCA Case No. 20-5204, Doc. 1864090, Response to Plaintiffs' Emergency Motion to Suspend Lapse of Appropriation, September 30, 2020	105-112
No. 20-5204, Doc 1864207, Order, September 30, 2020	113-114

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

THE SHAWNEE TRIBE,

Plaintiff,

v.

STEVEN T. MNUCHIN, in his official capacity
as Secretary of Treasury, et al.,

Defendants.

Case No. 20-cv-1999 (APM)

MEMORANDUM OPINION AND ORDER

Plaintiff Shawnee Tribe asks the court for an order preliminarily enjoining the Secretary of the Department of Treasury (“Secretary”) from distributing not less than \$12 million in funds remaining of the \$8 billion that Congress allocated under Title V of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) to assist Tribal governments with expenditures incurred due to the COVID-19 pandemic. *See* Pl.’s Ex Parte Mot. for TRO, ECF No. 3 [hereinafter Pl.’s Mot.].¹ Plaintiff challenges the manner in which the Secretary allocated a portion of the \$8 billion. Specifically, on May 5, 2020, the Department of Treasury announced that the first tranche of CARES Act funds disbursement would rely on “Tribal population data used by the Department of Housing and Urban Development (HUD) in connection with the Indian Housing Block Grant (IHBG) Program.” *See* U.S. DEP’T OF TREASURY, Coronavirus Relief Fund

¹ Plaintiff originally brought this action in the Northern District of Oklahoma, where this motion was styled as an “Ex Parte Motion for Temporary Restraining Order” (“TRO”), despite also seeking a preliminary injunction. *Shawnee Tribe v. Mnuchin, et al.*, No. 20-cv-1491, ECF No. 3. On July 28, 2020, the Northern District of Oklahoma denied Plaintiff’s request for a TRO and ordered the case transferred to this court under the first-to-file rule. *See* Opinion and Order, *Shawnee Tribe v. Mnuchin, et al.*, No. 20-cv-1491 (N.D. Okl. July 28, 2020), ECF No. 27. Thus, the only issue remaining for this court’s consideration is Plaintiff’s request for a preliminary injunction.

Allocations to Tribal Governments (May 5, 2020) [hereinafter Allocation Mem.], at 2, available at <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Tribal-Allocation-Methodology.pdf> (last accessed on August 18, 2020). Plaintiff contests the Secretary's selection of the HUD tribal population data as arbitrary and capricious in violation of the Administrative Procedure Act ("APA").

This is the second case to come before this court challenging the Secretary's use of the HUD tribal population data. In the first case, the Prairie Band Potawatomi Nation argued that the Secretary's decision to rely on the HUD tribal population data was arbitrary and capricious because it undercounted the tribe's actual population. *See Prairie Band Potawatomi Nation v. Mnuchin*, No. 20-cv-1491 (APM), 2020 WL 3402298 (D.D.C. June 11, 2020). The court denied the *Prairie Band* plaintiff's motion, in part, on the ground that the manner in which the Secretary allocated the lump-sum CARES Act appropriation was not a reviewable agency action under the APA. *Id.* at *1. Plaintiff Shawnee Tribe now attempts to avoid that conclusion, arguing not just that the HUD tribal population data was flawed, but that it was "objectively false" because it counts the Shawnee Tribe as having *zero* enrolled members when, in fact, the Tribe has more than 2,113 tribal citizens. *See* Pl.'s Mot. at 1–2.

The Shawnee Tribe's argument fares no better than the one asserted in *Prairie Band*. The Secretary's selection of the HUD tribal population data set, however imperfect it may be, is a discretionary agency action that is not subject to judicial review. For the reasons stated below, Plaintiff's motion for injunctive relief is denied.²

² As in *Prairie Band*, the court incorporates by reference the factual background and the injunction standard set forth in *Agua Caliente Band of Cahuilla Indians v. Mnuchin*, No. 20-cv-01136 (APM), 2020 WL 2331774 (D.D.C. May 11, 2020), and *Confederated Tribes of Chehalis Reservation v. Mnuchin*, No. 20-cv-01002 (APM), 2020 WL 1984297 (D.D.C. Apr. 27, 2020).

I.

In *Prairie Band*, this court held that the plaintiff had failed to demonstrate a likelihood of success on the merits because, under the Supreme Court’s decision in *Lincoln v. Vigil*, “as long as an agency allocates funds from a lump-sum appropriation to meet permissible statutory objectives, § 701(a)(2) of the APA gives the courts no leave to intrude. To that extent, the decision to allocate funds is committed to agency discretion by law.” *Prairie Band*, 2020 WL 3402298, at *1 (cleaned up) (quoting *Lincoln v. Vigil*, 508 U.S. 182, 193 (1993)). Because the plaintiff in *Prairie Band* had made no allegation that “the Secretary [had] allocated CARES Act funds for anything other than their stated statutory purpose,” the court found that the population-based allocation was not subject to judicial review. *Id.* at *2.

Notwithstanding *Prairie Band*, Plaintiff Shawnee Tribe insists that the Secretary’s selection of the HUD tribal population data is reviewable. It so argues for multiple reasons. First, it contends that this court in *Prairie Band* made a threshold error because it “failed to consider that the APA presumes review, even where lump sum appropriations are at issue.” Pl.’s Reply in Supp. of Pl.’s Mot., ECF No. 23 [hereinafter Pl.’s Reply], at 5. That argument misstates the law. In this Circuit, a “presumption of *non*-reviewability” attaches to an agency’s “allocation of funds from a lump-sum appropriation.” See *Physicians for Soc. Resp. v. Wheeler*, 956 F.3d 634, 642 (D.C. Cir. 2020) (internal quotation marks omitted) (emphasis added). The court applies this presumption of non-reviewability here, just as it did in *Prairie Band*.

Next, Plaintiff maintains that this court’s reliance on *Vigil* was misplaced. See Pl.’s Reply at 4. Plaintiff argues that, “[u]nlike in *Vigil* where there was no statutory language on the proper use or administration of the appropriated funds, Title V’s statutory scheme does contain limitations on the allocation and use of funds, such that a reviewing court can discern the intent of Congress.”

Id. (citation omitted). But the CARES Act evinces no greater congressional intent to constrain agency action than the statutes at issue in *Vigil*. See *Policy & Research, LLC v. Dep’t of Health & Human Servs.*, 313 F. Supp. 3d 62, 74 (D.D.C. 2018) (stating that where “an agency’s action is presumptively *unreviewable*, [] the [c]ourt can only review the agency’s decision if the ‘operative’ statute or regulations provide ‘clear guidelines by which to do so, or otherwise evince[s] an intent to constrain the [agency’s] discretion.’” (third and fourth alterations in original) (quoting *Drake v. FAA*, 291 F.3d 59, 71 (D.C. Cir. 2002))). In *Vigil*, the statutes at issue concerned the delivery of health services to Indian tribes. One statute, the Snyder Act, authorized the Indian Health Service to “‘expend such moneys as Congress from time to time [finds] appropriate, for the benefit, care, and assistances of the Indians,’ for the ‘relief of distress and conservation of health.’” 508 U.S. at 185 (quoting 25 U.S.C. § 13). The other statute, the Improvement Act, authorized expenditures for, among other things, Indian mental-health care and, specifically, for “therapeutic and residential treatment centers.” *Id.* (quoting 25 U.S.C. § 1621(a)(4)(D)). The CARES Act’s broad purpose is comparable to the breadth of the statutes in *Vigil*, and its text is no more limiting. Congress appropriated a lump sum of \$8 billion to assist Indian tribes with “necessary expenditures” associated with the coronavirus pandemic, 42 U.S.C. § 801(d)(1), and directed that “the Secretary shall determine, in consultation with the Secretary of the Interior and Indian Tribes,” the amounts to be paid to Tribal governments “based on increased expenditures of each such Tribal government . . . relative to aggregate expenditures in fiscal year 2019 by the Tribal government . . . and *determined in such manner as the Secretary determines appropriate*” as to ensure full distribution of the appropriated sum, *id.* § 801(c)(7) (emphasis added). Congress’s general instruction to allocate funds based on “increased expenditures” “in such manner as the Secretary determines appropriate” is no more restrictive than the statutory directives at issue in *Vigil*. As this

court stated in *Prairie Band*, “Congress gave the Secretary no further guidance on how to allocate the emergency relief funds”; thus, the CARES Act “contains no ‘statutory reference point’ by which to judge the Secretary’s decision to use HUD’s population data set, as opposed to some other.” 2020 WL 3402298, at *1 (quoting *Drake*, 291 F.3d at 72). That conclusion applies equally here.

At oral argument, Plaintiff for the first time urged the court to take a “bifurcated” review of the Secretary’s allocation determination. *See* Hr’g Tr. (draft), Aug. 12, 2020, at 37–38. Plaintiff asserted that, even if the Secretary’s top-level decision to use population data as a proxy for increased expenditures is not reviewable, then its secondary decision to select the HUD tribal population set is reviewable. *Id.*; *see also* Pl.’s Suppl. Br. on Reviewability, ECF No. 40 [hereinafter Pl.’s Suppl. Br.], at 4. But that argument fails for at least two reasons.

First, it is not clear, as a factual matter, that the Secretary’s decision-making was “bifurcated” in the way Plaintiff suggests. The Secretary, on May 5, 2020, announced *both* that he had used tribal population as the metric by which to make the first-tranche allocation of Title V funds *and* that he had relied on the HUD data set to supply the population figures. *See* Allocation Mem. at 2 (“Treasury has determined to distribute 60 percent of the \$8 billion reserved for Tribal governments immediately based on population. . . . For purposes of the payments based on Tribal population, Treasury will refer to the Tribal population data used by [HUD] in connection with the [IHBG] program.”). Thus, Plaintiff’s proposition that the Secretary engaged in a divisible, “bifurcated” decision-making process, the first half of which is reviewable and second half is not, is not borne out by the record.

Second, even if the Secretary’s decision could be bifurcated in the manner Plaintiff suggests, the selection of the HUD tribal population data set is no more reviewable than the initial

decision to use population as a proxy for increased expenditures. Congress provided that the allocation of Title V funds to Tribal governments would be “determined in such manner as the Secretary determines appropriate.” 42 U.S.C. § 801(c)(7). Far from cabining the Secretary’s discretion, Congress codified it. So, the Secretary’s choice of the HUD data over perhaps more comprehensive, and even more accurate, tribal population statistics is not subject to judicial review. Nor did the Secretary limit his own discretion by selecting population as a metric for allocating Title V funds. The Secretary issued no regulations, policy statements, or guidance in connection with that choice. *See Physicians for Soc. Resp.*, 956 F.3d at 643 (“[J]udicially manageable standards may be found in formal and informal policy statements and regulations as well as in statutes.” (internal quotation marks omitted) (quoting *Steenholdt v. FAA*, 314 F.3d 633, 638 (D.C. Cir. 2003))). Such action, if it had occurred, might have signaled an intent to cabin his discretion. *See, e.g., id.* (holding that General Services Administration regulations implementing the Federal Advisory Committee Act provided judicially manageable standards). But the mere selection of population as a measure of how to allocate a lump-sum appropriation evinces no such intent. The Secretary’s choice of a particular tribal population data set therefore is not judicially reviewable.

The cases Plaintiff cites in support of its position are inapposite. Plaintiff cites *Milk Train, Inc. v. Veneman*, 310 F.3d 747 (D.C. Cir. 2002), for the proposition that the “unreviewability” of one agency decision does not preclude the court from reviewing a separate but related decision, Pl.’s Suppl. Br. at 4. But nothing in *Milk Train* changes the fact that the court needs a statutory or regulatory reference point by which to judge each agency decision. Nor does *Milk Train* otherwise weigh in Plaintiff’s favor. As the court explained in *Prairie Band*, the relevant portion of *Milk Train* involved a dispute over whether the Secretary of Agriculture’s disbursement of funds

complied with its statutory purpose—to cover milk producers’ “economic losses incurred during 1999”—where the plaintiff claimed that the Secretary was using 1997 and 1998 data to calculate 1999 losses. *See Prairie Band*, 2020 WL 3402298 at *1 (quoting *Milk Train*, 310 F.3d at 752). “Plaintiff makes no comparable allegation here,” where it “does not allege that the Secretary allocated CARES Act funds for anything other than their stated statutory purpose—to assist Tribal governments to combat the COVID-19 pandemic during the year in which those expenses incurred.” *Id.* at 1–2.

Center for Biological Diversity v. Trump, Case No. 19-cv-00408 (TNM), 2020 WL 1643657 (D.D.C. Apr. 2, 2020), is likewise inapplicable. There, the court examined whether it had authority to review the Secretary of Treasury’s expenditure of funds to pay for a border wall between the United States and Mexico. *Id.* at *16. Because the relevant statute “allow[ed] the Treasury Secretary to expend [the] funds [at issue] ‘in connection with the law enforcement activities of any Federal Agency,’” *id.* (quoting 31 U.S.C. § 9705(g)(4)(B)), the court found that the statute had cabined the Secretary’s discretion to use the funds “for any purpose he chooses,” *id.* Specifically, the requirement that the funds had to be spent for “law enforcement activities,” provided a “statutory reference point by which the court [was] able to review the Secretary’s decision.” *Id.* (cleaned up). In this case, on the other hand, the only conceivable statutory reference point is Title V’s requirement that the funds be used to cover “necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19),” 42 U.S.C. 801(d)(1), which, as discussed, neither provides “clear guidelines” by which to evaluate the Secretary’s selection of the HUD tribal population data nor otherwise “evinces an intent to constrain the agency’s discretion,” *Drake*, 291 F.3d at 71. Finally, Plaintiff cites to *Policy & Research, LLC v. U.S. Department of Health and Human Services*, see Pl.’s Suppl. Br. at 2, where

the court found that a decision by HHS to cut funding for various teen pregnancy prevention programs was reviewable, 313 F. Supp. 3d at 76–78. But that case is distinguishable because HHS was bound by regulations that “expressly” limited its discretion to “terminate” grant funding without cause. *Id.* at 76. As explained above, no similar agency regulation or policy limits the Secretary’s discretion to allocate funds under Title V.

In sum, Plaintiff points to nothing in either the text of the CARES Act or any associated agency action that overcomes the presumption of non-reviewability that attaches to the Secretary’s discretion over how to allocate the \$8 billion lump-sum appropriation under Title V. The Secretary’s choice of the HUD tribal population data to make the first tranche of Title V payments is therefore unreviewable. Accordingly, Plaintiff has not demonstrated a likelihood of success on its APA claim.

II.

Other preliminary injunction factors also counsel in favor of denying Plaintiff’s request.³ Where, as here, “the Government is the opposing party,” the balance of equities and public interest factors “merge.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). Plaintiff in this case fares slightly better on the equities than the plaintiff in *Prairie Band*, where the court found the plaintiff had unjustifiably delayed bringing suit. *See* 2020 WL 3402298, at *2. Here, Plaintiff has shown that it made a concerted effort to resolve the dispute informally before bringing this action, including outreach to the Secretary’s office as early as May 13, 2020. *See* Pl.’s Mot. at 6–7 (showing that Plaintiff was actively engaged in discussions with the Secretary’s staff regarding a resolution of Plaintiff’s complaint, and that Plaintiff also engaged White House and Department of Interior staff and congressional representatives on the issue). Still, the equities favor denying relief. As of

³ The court accepts that Plaintiff would suffer irreparable harm absent injunctive relief.

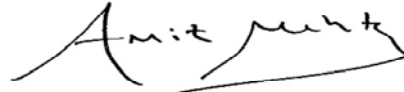
today, the Secretary has distributed nearly all Title V funds to Tribal governments, and except for a negligible portion, what remains are funds slated for Alaska Native Corporations (“ANCs”) that are tied up in litigation before the D.C. Circuit.⁴ The monetary burden of Plaintiff’s claim would therefore fall almost exclusively on the ANCs, whose share of CARES Act funds, through no fault of their own, has already been delayed far beyond the statutory deadline, *see* 42 U.S.C. § 801(b)(1) (requiring the Secretary to disburse the allocated funds “not later than 30 days after March 27, 2020”). The ANCs’ interest in the designated Title V funds weighs against the requested injunctive relief, particularly given the weakness of Plaintiff’s claim on the merits.

Plaintiff asserts that granting relief would not harm the ANCs because “tribes receiving [Title V] funds based on false data have no legitimate basis to claim those funds.” Pl.’s Mot. at 13. But as noted by the court in the Northern District of Oklahoma in denying Plaintiff’s motion for temporary restraining order, that argument “presumes . . . that the Department’s formula overpaid [the ANCs].” *See Shawnee Tribe v. Mnuchin*, 20-cv-290, ECF No. 19, at 3 (N.D. Okl. June 29, 2020). “It is possible that [the ANCs’] enrollment numbers were understated too, and that they were shorted in the same way that [Plaintiff] claims that it was.” *Id.* Plaintiff has made no showing to the contrary. Granting Plaintiff’s request for relief would amount to a judicial rebalancing of the allocation decisions made by the Secretary, which the court is in no position to do.

⁴ The final disposition of the funds slated for ANCs is dependent on the outcome of the D.C. Circuit’s review of this court’s Order granting summary judgment for the Secretary in *Confederated Tribes of the Chehalis Reservation v. Mnuchin*, 20-cv-1002, ECF No. 112 (D.D.C. July 14, 2020). The other nominal amount that remains undistributed is due to administrative difficulties in paying grantee Tribal governments. *See* Def.’s Suppl. Mem., ECF No. 34, at 1 n.1.

III.

For the foregoing reasons, Plaintiff's motion for a preliminary injunction, ECF No. 3, is denied. The parties shall file a Joint Status Report by August 26, 2020, which proposes a schedule for further proceedings in this matter.

A handwritten signature in black ink, appearing to read "Amit Mehta", written over a horizontal line.

Dated: August 19, 2020

Amit P. Mehta
United States District Court Judge

From: DCD_ECFNotice@dcd.uscourts.gov
Sent: Wednesday, August 19, 2020 8:04 AM
To: DCD_ECFNotice@dcd.uscourts.gov
Subject: Activity in Case 1:20-cv-01999-APM SHAWNEE TRIBE v. MNUCHIN et al Memorandum & Opinion

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS*** There is no charge for viewing opinions.**

U.S. District Court

District of Columbia

Notice of Electronic Filing

The following transaction was entered on 8/19/2020 at 11:04 AM and filed on 8/19/2020

Case Name: SHAWNEE TRIBE v. MNUCHIN et al

Case Number: [1:20-cv-01999-APM \[ecf.dcd.uscourts.gov\]](https://ecf.dcd.uscourts.gov/1:20-cv-01999-APM)

Filer:

Document Number: [43 \[ecf.dcd.uscourts.gov\]](https://ecf.dcd.uscourts.gov/43)

Docket Text:

MEMORANDUM OPINION AND ORDER denying [3] Plaintiff's motion for a preliminary injunction. See the attached Memorandum Opinion and Order for further details. Signed by Judge Amit P. Mehta on 08/19/2020. (lcapm2)

1:20-cv-01999-APM Notice has been electronically mailed to:

Jason C. Lynch Jason.Lynch@usdoj.gov

Jonathan P. Labukas jonathan.labukas@quarles.com, dawn.mccombs@quarles.com,
ivon.paddock@quarles.com, john.dienelt@quarles.com, mary.gaines@quarles.com,
nicole.simmons@quarles.com, pilar.thomas@quarles.com

Kuntal Virendra Cholera kuntal.cholera@usdoj.gov

Pilar Thomas pilar.thomas@quarles.com, Catherine.Gould@quarles.com, DocketAZ@quarles.com

Nicole Simmons nicole.simmons@quarles.com, DocketAZ@quarles.com, Hilda.Lynn@quarles.com

1:20-cv-01999-APM Notice will be delivered by other means to::

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:suppressed

Electronic document Stamp:

[STAMP dcecfStamp_ID=973800458 [Date=8/19/2020] [FileNumber=6703524-0]
[5e0cefd97e449f7c87a0d183057fe641e473ad0a3abf9380f6ba053526d622e170bd
07105d4b5aad2b532d40d5de5a67459c25cacc65eeebd0b5e6ed7ff99f2e]]

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

THE SHAWNEE TRIBE,

Plaintiff,

V.

Case No. 20-cv-1999 (APM)

STEVEN T. MNUCHIN, in his official capacity
as Secretary of Treasury, et al.,

Defendants.

MEMORANDUM OPINION

I.

On May 5, 2020, the Department of Treasury announced that it would rely on “Tribal population data used by the Department of Housing and Urban Development (HUD) in connection with the Indian Housing Block Grant (IHBG) Program” to allocate and distribute a portion of the \$8 billion that Congress set aside for “Tribal governments” under Title V of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”).¹ In this action, Plaintiff Shawnee Tribe challenges the Treasury Secretary’s decision to use the IHBG data as arbitrary and capricious in violation of the Administrative Procedure Act (“APA”). *See* Compl., ECF No. 2, ¶¶ 42–59.²

On August 19, 2020, this court denied Plaintiff's motion for an order preliminarily enjoining the Secretary from paying out \$12 million in undistributed CARES Act funds. *See Shawnee Tribe v. Mnuchin*, No. 20-cv-1999 (APM), 2020 WL 4816461, *1 (D.D.C. Aug. 19,

¹ U.S. DEP'T OF TREASURY, Coronavirus Relief Fund Allocations to Tribal Governments (May 5, 2020), at 2, available at <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Tribal-Allocation-Methodology.pdf> (last accessed on September 10, 2020).

² The court incorporates by reference the factual background pertaining to Title V set forth in *Agua Caliente Band of Cahuilla Indians v. Mnuchin*, No. 20-cv-01136 (APM), 2020 WL 2331774 (D.D.C. May 11, 2020), and *Confederated Tribes of Chehalis Reservation v. Mnuchin*, No. 20-cv-01002 (APM), 2020 WL 1984297 (D.D.C. Apr. 27, 2020).

2020). The court ruled that Plaintiff had not demonstrated a substantial likelihood of success, because the Secretary's allocation of the lump-sum CARES Act appropriation was a non-reviewable agency action under the APA. *See id.* at *1. Now before the court is Defendants' Motion to Dismiss Plaintiff Shawnee Tribe's Complaint under Federal Rules of Civil Procedure 12(b)(1) and/or 12(b)(6). *See* Defs.' Mot. to Dismiss, ECF No. 45 [hereinafter Defs.' Mot.]. For the same reason the court declined to grant preliminary relief, and for those that follow, the court dismisses Plaintiff's Complaint.

II.

This is the second case to come before this court challenging the Secretary's allocation of funds for "Tribal governments" under Title V of the CARES Act. In the first case, the Prairie Band Potawatomi Nation argued that the Secretary's decision to rely on HUD's IHBG population data set was arbitrary and capricious because it undercounted the tribe's actual population. *See generally Prairie Band Potawatomi Nation v. Mnuchin*, No. 20-cv-1491 (APM), 2020 WL 3402298 (D.D.C. June 11, 2020). The court denied the Prairie Band plaintiff's motion for preliminary relief in part on the merits, holding that the Secretary's decision was an unreviewable agency action under the APA, *see id.*, and on July 9, 2020, plaintiff voluntarily dismissed the case, *see* Notice of Voluntary Dismissal, *Prairie Band Potawatomi Nation v. Mnuchin*, No. 20-cv-1491 (D.D.C. July 9, 2020), ECF No. 30.

Like the *Prairie Band* plaintiff, Plaintiff in this case challenges the manner in which the Secretary allocated a portion of the \$8 billion. Plaintiff argues that the Secretary's decision to rely on the IHBG data was arbitrary and capricious because the IHBG data "was 'objectively false' [since] it counts the Shawnee Tribe as having zero enrolled members when, in fact, the Tribe has more than 2,113 tribal citizens." *Shawnee Tribe*, 2020 WL 4816161, at *1.

III.

To survive a motion to dismiss for failure to state a claim, a complaint must contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In the context of the APA, where “a complaint seek[s] review of agency action ‘committed to agency discretion by law,’ 5 U.S.C. § 701(a)(2), [it] fail[s] to state a claim under the APA, and therefore should be dismissed under Rule 12(b)(6),” *Sierra Club v. Jackson*, 648 F.3d 848, 854 (D.C. Cir. 2011). The question presented here is whether the manner in which the Secretary allocated Title V funds amongst the various Tribal governments was “committed to agency discretion by law.” *See id.* After multiple rounds of briefing and oral arguments on motions for preliminary relief in this case and in *Prairie Band*, the court has twice found the answer to that question to be “yes”—the Secretary’s allocation methodology is not reviewable under the APA. Plaintiff now asks the court to change its mind, but nothing Plaintiff has added to its argument persuades the court to do so. The court continues to adhere to its conclusions and reasoning set forth in *Prairie Band*, 2020 WL 3402298, and *Shawnee Tribe*, 2020 WL 4816461, and incorporates those decisions here. Any appellate review of the instant decision should be read in conjunction with those earlier rulings. In the interest of judicial economy, the court here addresses only the additional arguments advanced by Plaintiff in opposition to Defendants’ motion to dismiss.

First, Plaintiff points to additional cases it claims support its argument that the Supreme Court’s decision in *Lincoln v. Vigil*, 508 U.S. 182 (1993), “does not apply” here. Pl.’s Opp’n to Defs.’ Mot., ECF No. 46 [hereinafter Pl.’s Opp’n], at 18–23. *Vigil* held that as long as “an agency allocates funds from a lump-sum appropriation to meet permissible statutory objectives, § 701(a)(2) of the APA gives the courts no leave to intrude. To that extent, the decision to allocate

funds is committed to agency discretion by law.” *Prairie Band*, 2020 WL 3402298 at *1 (cleaned up) (quoting *Lincoln v. Vigil*, 508 U.S. 182, 193 (1993)). Plaintiff asserts that “ever since” *Vigil*, courts have been “distinguishing the review of agency decisions in the context of lump sum appropriations.” Pl.’s Opp’n at 18. The additional cases Plaintiff cites to prop up its argument on this point, however, are clearly distinguishable.

In *Ramah Navajo School Board Inc. v. Babbitt*, the D.C. Circuit found “a plan initiated by the Secretary of the Interior for disbursing fiscal year 1995 contract support funds appropriated by Congress for distribution to Native American Tribes as required by the Indian Self-Determination Act” (“ISDA”) was reviewable, where the “text and structure of the ISDA” evinced clear congressional intent to “limit the Secretary’s discretion in funding matters and to provide for judicial review of all of the Secretary’s actions.” 87 F.3d 1338, 1340, 1347 (D.C. Cir. 1996). There, the statute specified an “indirect cost rate” formula, which “dictate[d] the amount of [funds a] Tribe [was] entitled to receive.” *Id.* at 1341. Here, in sharp contrast, Title V of the CARES Act provides that allocation of funds to Tribal governments would be “determined in such manner as the Secretary determines appropriate.” 42 U.S.C. § 801(c)(7). As the court previously observed, “[f]ar from cabining the Secretary’s discretion, Congress codified it.” *Shawnee*, 2020 WL 4816161, at *3.

The Tenth Circuit’s holding in *Mount Evans Co. v. Madigan*, 14 F.3d 1444 (10th Cir. 1994), is similarly inapposite. There, plaintiffs challenged a United States Forest Service “decision not to rebuild a structure located on Forest Service lands which was destroyed by fire.” *Id.* at 1447. In distinguishing *Vigil*, the *Madigan* court observed that the statute upon which the plaintiffs based their cause of action expressly limited the discretion of the Forest Service. *Id.* at 1449. The statute required that the Forest Service “first ensure that *necessary* improvements to the damaged

property” were made before spending the money on anything else. *Id.* at 1450. The *Madigan* court distinguished the wording of the operative statute in that case from that at issue in the Supreme Court’s decision in *Webster v. Doe*, 486 U.S. 592 (1989). In *Webster*, the Court found unreviewable a statute that “allowed termination of a CIA employee whenever the Director ‘shall deem such termination necessary or advisable in the interests of the United States.’” *Id.* (quoting *Webster*, 486 U.S. at 600). The *Madigan* court noted that unlike the statute in *Webster*, the statute governing the Forest Service’s action “use[d] the word necessary without any deference to the Forest Service’s determination of what is necessary.” *Id.* Title V of the CARES Act is more akin to the statute in *Webster*, not *Madigan*. Its provision that “the amount paid . . . to a Tribal government shall be . . . *determined in such manner as the Secretary determines appropriate . . .*,” 42 U.S.C. § 801(c)(7) (emphasis added), “exudes deference to the [Secretary],” and therefore “foreclose[s] the application of any meaningful judicial standard of review,” *Webster*, 486 U.S. at 600.

Second, Plaintiff maps out the various limitations it sees within Title V as providing a judicially reviewable standard. See Pl.’s Opp’n at 20–22. That mapping exercise identifies one judicially manageable standard already identified by this court. See *Confederated Tribes of Chehalis Rsr. v. Mnuchin*, No. 20-cv-01002 (APM), 2020 WL 1984297, *5 (D.D.C. Apr. 27, 2020) (holding that Title V “circumscribed the agency’s discretion by supplying a concrete definition of ‘Tribal government’ against which to measure eligibility for Title V funds”). But Plaintiff points to no statutory limitation on the exercise of discretion that it actually challenges in this lawsuit—the Secretary’s chosen methodology for determining *how much* funding to disburse to Tribal governments. Plaintiff contends that, because Defendants have “arguably interpreted the term ‘increased expenditure’ [in 42 U.S.C. § 801(c)(7)] to include the concept of tribal

population,” the Secretary’s choice of the IHBG data is somehow reviewable. Pl.’s Opp’n at 22. But even if an instruction to allocate funds “based on increased expenditures” could be read as a statutory constraint of some kind, Title V cannot be reasonably read to place any restriction on *how* the Secretary must allocate the \$8 billion to achieve that goal. Once again, Congress provided that the allocation is to be “determined in such manner *as the Secretary determines appropriate* to ensure” that all appropriated Title V funds are distributed to Tribal governments. 42 U.S.C. § 801(c)(7) (emphasis added). Such clear discretionary language does not provide a “judicially manageable standard[.]” *Physicians for Soc. Resp. v. Wheeler*, 956 F.3d 634, 643 (D.C. Cir. 2020).

Third, Plaintiff claims that “[a] lump sum appropriation may avoid judicial review under 5 U.S.C. 702(a)(2) only where, with no law to apply, policy reasons *also* support the determination that the funding decision is committed to agency discretion by law.” Pl.’s Opp’n at 23. Plaintiff provides no authority to support its policy-focused test, and the court declines to adopt one where, as here, Congress has expressly evinced intent to leave the determination of how to allocate funding to the Secretary’s discretion.

Fourth and finally, Plaintiff renews its argument that, by first electing to use Tribal population as a proxy for “increased expenditures,” the Secretary cabined his own discretion and made reviewable his secondary decision to use the IHBG data. *Id.* at 28–30. But as stated in the court’s Opinion and Order denying preliminary relief, the factual premise of that argument—that the Secretary engaged in bifurcated decision-making—is dubious, as the Secretary announced the decision to use population as a proxy for “increased expenditures” and the IHBG data set in the same May 5, 2020 announcement. Plaintiff’s parsing of the separate headings in that announcement as evidence of separate decision-making, *see id.* at 8, is unconvincing, and Plaintiff

points to nothing else that would show that the Secretary's decision-making was in fact "bifurcated."

Plaintiff also points to "informal policy statements" to buttress its position that the Secretary cabined his own discretion, specifically a Treasury official's statement during a telephone conference with tribal leaders that "Treasury want[s] . . . a fair and transparent method for allocating these funds." Pl.'s Opp'n at 28–29 (quoting Exhibit A, lines 15:6-8). But Plaintiff cites no case for the proposition that such an informal, aspirational representation can provide a "judicially manageable standard[]." *Physicians for Soc. Resp.*, 956 F.3d at 643 (stating that "judicially manageable standards may be found in formal and informal policy statements and regulations as well as in statutes"). The cases on which Plaintiff relies are inapposite. *See* Pl.'s Opp'n at 27–28. The court in *Moncrief v. U.S. Department of Interior*, 339 F. Supp. 3d 1, 6 (D.D.C. 2018), did not address the issue of reviewability, but in any event, in that case there were not only clear statutory limits on the agency's authority, the agency also had promulgated regulations governing the activity at issue. *Id.* at 5. Nor is the New Mexico district court's decision in *New Mexico Health Connections v. U.S. Department of Health & Human Services* persuasive, where the agency action at issue was bound up in a complex regulatory regime. 340 F. Supp. 3d 1112, 1122–24 (D.N.M. 2018). In sum, as the court previously held, "the selection of the HUD tribal population data set is no more reviewable than the initial decision to use population as a proxy for increased expenditures." *Shawnee Tribe*, 2020 WL 4816161, at *3.

* * *

Because the court finds that neither the language of the CARES Act nor the agency's own regulations or policies provide "judicially manageable standards" to cabin the otherwise plenary discretion afforded to the Secretary under Title V, it concludes that Plaintiff's challenge to the

Secretary's decision to use IHBG data was "committed to agency discretion by law" and therefore is not reviewable under the APA. 5 U.S.C. § 701(a)(2). Plaintiff's claim therefore must be dismissed under Federal Rule of Civil Procedure 12(b)(6). *See Sierra Club*, 648 F.3d at 854.³

III.

Accordingly, Defendants' Motion to Dismiss Plaintiff's Complaint is granted. A separate final order accompanies this Memorandum Opinion.



Dated: September 10, 2020

Amit P. Mehta
United States District Court Judge

³ The court does not reach Defendant's alternative argument that dismissal is warranted under Rule 12(b)(6) because the Secretary's chosen allocation methodology was not arbitrary and capricious. See Defs.' Mot. at 2.

McCombs, Dawn (PHX x3514)

From: DCD_ECFNotice@dcd.uscourts.gov
Sent: Thursday, September 10, 2020 2:21 PM
To: DCD_ECFNotice@dcd.uscourts.gov
Subject: Activity in Case 1:20-cv-01999-APM SHAWNEE TRIBE v. MNUCHIN et al Memorandum & Opinion

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS*** There is no charge for viewing opinions.**

U.S. District Court

District of Columbia

Notice of Electronic Filing

The following transaction was entered on 9/10/2020 at 5:20 PM and filed on 9/10/2020

Case Name: SHAWNEE TRIBE v. MNUCHIN et al

Case Number: [1:20-cv-01999-APM \[ecf.dcd.uscourts.gov\]](https://ecf.dcd.uscourts.gov)

Filer:

Document Number: [48 \[ecf.dcd.uscourts.gov\]](https://ecf.dcd.uscourts.gov)

Docket Text:

MEMORANDUM OPINION re: [45] Defendant's Motion to Dismiss. Please see the attached Memorandum Opinion for additional details. Signed by Judge Amit P. Mehta on 09/10/2020. (lcapm2)

1:20-cv-01999-APM Notice has been electronically mailed to:

Jason C. Lynch Jason.Lynch@usdoj.gov

Jonathan P. Labukas jonathan.labukas@quarles.com, dawn.mccombs@quarles.com,
ivon.paddock@quarles.com, john.dienelt@quarles.com, mary.gaines@quarles.com,
nicole.simmons@quarles.com, pilar.thomas@quarles.com

Kuntal Virendra Cholera kuntal.cholera@usdoj.gov

Pilar Thomas pilar.thomas@quarles.com, Catherine.Gould@quarles.com, DocketAZ@quarles.com

Nicole Simmons nicole.simmons@quarles.com, DocketAZ@quarles.com, Hilda.Lynn@quarles.com

1:20-cv-01999-APM Notice will be delivered by other means to::

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:suppressed

Electronic document Stamp:

[STAMP dcecfStamp_ID=973800458 [Date=9/10/2020] [FileNumber=6737491-0]

[5433a1c3cc5cfcc18f8c68fb9bcd34f2c105f6c77ca63ea96d2462264ee1629e37dc

ada93ea731404543b94a195cf316e75c1136cb10391c94794c8cde93dfbe]]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT COLUMBIA

THE SHAWNEE TRIBE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:20-cv-01999 APM
	)	
STEVEN T. MNUCHIN, in his official capacity	)	
as Secretary of the United States Department of	)	
the Treasury; UNITED STATES DEPARTMENT	)	
OF THE TREASURY; DAVID BERNHARDT, in	)	
his official capacity as Secretary of the United	)	
States Department of the Interior; UNITED	)	
STATES DEPARTMENT OF THE INTERIOR	)	
	)	
Defendants.	)	
_____	)	

CIVIL NOTICE OF APPEAL

Pursuant to Federal Rules of Appellate Procedure 3(a) and 4(a), timely notice is hereby given on this 16th day of September, 2020, that The Shawnee Tribe (the “Tribe”) appeals to the United States Court of Appeals for the District of Columbia Circuit from this Court’s Memorandum Opinion and Order entered on August 19, 2020 (Dkt. 43) denying the Tribe’s Motion for a Preliminary Injunction and this Court’s Memorandum Opinion entered on September 10, 2020 (Dkt. 48) granting Defendants’ Motion to Dismiss.

Respectfully submitted this 16th day of September, 2020.

Respectfully submitted,

/s/Pilar M. Thomas
Jonathan P. Labukas
(D.C. Bar 998662)
Quarles & Brady LLP
1701 Pennsylvania Avenue, NW, Suite 700
Washington, DC 20006
Phone: (202) 372-9514

Pilar M. Thomas
(*Admitted Pro Hac Vice*)
QUARLES & BRADY LLP
One South Church Avenue, Suite 1800
Tucson, Arizona 85746

Nicole L. Simmons
(*Admitted Pro Hac Vice*)
QUARLES & BRADY LLP
One Renaissance Square
Two North Central Avenue
Phoenix, Arizona 85004-2391

Attorneys for Plaintiff

CERTIFICATE OF FILING AND SERVICE

The undersigned hereby certifies that on the 16th of September, 2020, the foregoing document was filed with the Court using the CM/ECF system and served which provided service to all parties through their attorney of record.

/s/ Dawn McCombs

From: DCD_ECFNotice@dcd.uscourts.gov
Sent: Wednesday, September 16, 2020 9:56 AM
To: DCD_ECFNotice@dcd.uscourts.gov
Subject: Activity in Case 1:20-cv-01999-APM SHAWNEE TRIBE v. MNUCHIN et al Notice of Appeal to DC Circuit Court

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

District of Columbia

Notice of Electronic Filing

The following transaction was entered by Thomas, Pilar on 9/16/2020 at 12:56 PM and filed on 9/16/2020

Case Name: SHAWNEE TRIBE v. MNUCHIN et al
Case Number: [1:20-cv-01999-APM \[ecf.dcd.uscourts.gov\]](https://ecf.dcd.uscourts.gov/1:20-cv-01999-APM)
Filer: SHAWNEE TRIBE
WARNING: CASE CLOSED on 09/10/2020
Document Number: [50 \[ecf.dcd.uscourts.gov\]](https://ecf.dcd.uscourts.gov/50)

Docket Text:

NOTICE OF APPEAL TO DC CIRCUIT COURT as to [48] Memorandum & Opinion, [43] Memorandum & Opinion by SHAWNEE TRIBE. Filing fee \$ 505, receipt number ADCDC-7599113. Fee Status: Fee Paid. Parties have been notified. (Thomas, Pilar)

1:20-cv-01999-APM Notice has been electronically mailed to:

Jason C. Lynch Jason.Lynch@usdoj.gov

Jonathan P. Labukas jonathan.labukas@quarles.com, dawn.mccombs@quarles.com,
ivon.paddock@quarles.com, john.dienelt@quarles.com, mary.gaines@quarles.com,
nicole.simmons@quarles.com, pilar.thomas@quarles.com

Kuntal Virendra Cholera kuntal.cholera@usdoj.gov

Nicole Simmons nicole.simmons@quarles.com, DocketAZ@quarles.com, Hilda.Lynn@quarles.com

Pilar Thomas pilar.thomas@quarles.com, Catherine.Gould@quarles.com, DocketAZ@quarles.com

1:20-cv-01999-APM Notice will be delivered by other means to::

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:suppressed

Electronic document Stamp:

[STAMP dcecfStamp_ID=973800458 [Date=9/16/2020] [FileNumber=6746366-0]

[33170e0ee9cd7311fda2fd42e92bd753f16f8004db7046d55d436fb8f5870a600c69

b6253d311a3fb49ed3c262463d781e9ac2d3412e06c4dec45a590d6df63d]]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

(1) THE SHAWNEE TRIBE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.
	)	
(1) STEVEN T. MNUCHIN, in his official capacity)	)	
as Secretary of the United States Department of the)	)	
Treasury; (2) UNITED STATES DEPARTMENT)	)	
OF THE TREASURY; (3) DAVID BERNHARDT,)	)	
in his official capacity as Secretary of the United)	)	
States Department of the Interior; (4) UNITED)	)	
STATES DEPARTMENT OF THE INTERIOR)	)	
	)	
Defendants.	)	

**VERIFIED COMPLAINT FOR
INJUNCTIVE AND DECLARATORY RELIEF**

Plaintiff, The Shawnee Tribe, a federally recognized sovereign Indian nation, by and through its counsel, states and alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1362. The Shawnee Tribe, a federally recognized Tribal government, asserts civil claims arising under the Constitution and laws of the United States, including the Administrative Procedures Act, 5 U.S.C. § 701 *et seq.*

2. Moreover, the allegations of the Complaint give rise to an actual controversy within the meaning of 28 U.S.C. § 2201.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(e) because this lawsuit names an officer and agency of the United States, this action does not involve claims for real property, and The Shawnee Tribe is located in Miami, Oklahoma.

PARTIES

4. Plaintiff, The Shawnee Tribe, is a federally recognized Tribal government, which provides essential governmental services to its nearly 3,000 enrolled citizens living on and off-reservation. The Shawnee Tribe brings this action to assert and protect its own rights, and the rights of its citizens.

5. Defendants, the United States Department of the Treasury (the “Treasury”) and Steven T. Mnuchin (“Secretary Mnuchin”), who has been sued in his official capacity as the Secretary of Treasury, were tasked with distributing funds pursuant to the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). Under the CARES Act, the Treasury and Secretary Mnuchin were directed by Congress to consult with Tribal governments and the United States Secretary of the Interior in order to determine each Tribal government’s allocation of the funds provided under the CARES Act. *See* 42 U.S.C. § 801(c)(7). Despite having three separate reliable sources to The Shawnee Tribes’ population data – one of which was data submitted directly by The Shawnee Tribe’s government at the Treasury’s request – the Treasury issued funds based upon the incomplete and unreliable IHBG Metric population data reporting **zero** enrolled tribal members, which was arbitrary and capricious.

6. Defendants, the United States Department of the Interior (the “Interior”) and David Bernhardt (“Secretary Bernhardt”), who has been sued in his official capacity as the Secretary of the Interior, was tasked under the CARES Act to consult with Tribal governments to determine each Tribal government’s allocation of the funds provided under the CARES Act and, accordingly, they had an obligation to ensure the most accurate enrollment numbers were used in calculating the allocation, which it failed to do. *See* 42 U.S.C. § 801(c)(7).

RELEVANT BACKGROUND

A. Tribal Funding Under the CARES Act

7. The CARES Act, Pub.L. 116-136, 134 Stat. 281 (2020), was signed into law on March 27, 2020, to provide economic relief for, among many other individuals, Tribal, state, and local governments impacted by the COVID-19 pandemic.

8. Pursuant to Title V of the CARES Act, which amends the Social Security Act (42 U.S.C. 301 et seq.), Congress appropriated \$8 billion in direct aid to “Tribal governments” specifically (“Title V Funds”). 42 U.S.C. § 801(a)(2)(B).

9. Title V defines “Tribal governments” as “the recognized governing body of an Indian tribe.” *Id.* § 801(g)(5).

10. The Shawnee Tribe is a federally recognized Tribal government as defined by the CARES Act, and entitled to receive Title V Funds proportionate to a rational and reasonable tally of its total population.

B. After Perfunctory Consultation Treasury Solicits Information and Adopts a Population Based Allocation that is Arbitrary and Unreasonable

11. Congress specifically directed that:

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 ... relative to aggregate expenditures in fiscal year 2019 by the Tribal government*** ... 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.

Id. § 801(c)(7) (emphasis added). In short, the Treasury, in consultation with Interior and Indian Tribes, was given authority to determine the amounts Tribal governments should receive, based

on their "increased expenditures" relative to fiscal year 2019 aggregate expenditures. The CARES Act did not explicitly authorize the Secretary to adopt a population based formula to determine the amount of funding Tribal governments were to receive under Title V.¹

12. On April 2, 2020 and April 9, 2020, Treasury and the Interior held telephonic consultation sessions where federal officials heard from representatives of Tribal governments from across the United States. Treasury also solicited written comments from Tribal governments regarding their views on potential methodologies for the allocation of Title V Funds.

13. On April 8, 2020, the superintendent for the Department of the Interior Bureau of Indian Affairs (BIA) Miami agency office contacted the Tribe and specifically requested the Tribe's certified tribal member enrollment population. The Tribe provided the BIA with an enrollment population of 3,021 tribal citizens.

14. Following the conclusion of the consultation period, on April 13, 2020, Treasury published a form entitled "Certification for Requested Tribal Data" on its website. The "Certification for Requested Tribal Data" sought individualized enrollment data from all 574 federally recognized Tribal governments.

15. The Shawnee Tribe provided the requested data to Treasury prior to Treasury's April 17, 2020, deadline. The Shawnee Tribe timely certified Plaintiff's Actual Tribal Enrollment Metric of 3,021. *See* Exhibit A.

16. On May 5, 2020, Secretary Mnuchin and Secretary Bernhardt issued a joint press

¹ Compare with 42 U.S.C. 801(c)(8). Although Congress mandated that Treasury use United States Census Bureau population data for determining the distribution of Title V Funds to States and units of local government (42 U.S.C. § 801(c)(8)), no such requirement exists for the distribution of funds to Tribal governments. Instead, Tribal governments are treated as a distinct category from state and local governments in Title V. *See, e.g., id.* at § 801(a)(1) (referencing payments to "States, Tribal governments, and units of local government").

release announcing the agreed upon plan for allocating the Title V Funds.²

17. According to the jointly agreed upon plan, Treasury decided to split the Title V funds into two allocations. The first allocation to Indian Tribes would be from sixty percent of the Title V Funds, or \$4.8 billion, “based on tribal population” (“Population Award”) because “Tribal population [was] expected to correlate reasonably well with the amount of increased expenditures of Tribal governments related directly to the public health emergency, such as increased costs to address medical and public health needs.”³

18. For tribes with a population of less than 37 members, a minimum payment of \$100,000 would be awarded.⁴

C. Without consultation with the Tribes, Treasury uses IHBG’s Race-Based Data containing inaccurate population data.

19. Despite The Shawnee Tribe providing enrollment data of over 3,000 members only weeks earlier, the Treasury elected to allocate the Population Award based “on population data used in the distribution of the Indian Housing Block Grant,” (“IHBG”), under the Department of Housing and Urban Development (“HUD”).⁵

20. According to Treasury, it adopted the IHBG data because it was purportedly a “reliable and consistently-prepared” metric.

² U.S. Dept. of the Treasury, Joint Statement by Treasury Secretary Steven T. Mnuchin and Secretary of the Interior David L. Bernhardt on Distribution of Coronavirus Relief Fund Dollars to Native American Tribes (May 5, 2020), <https://home.treasury.gov/news/press-releases/sm998> (last visited June 16, 2020)

³ U.S. Dept. of the Treasury, Coronavirus Relief Fund Allocations to Tribal Governments, <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Tribal-Allocation-Methodology.pdf>, (last visited June 16, 2020), p. 2.

⁴ *Id.*, p. 3.

⁵ U.S. Dept. of the Treasury, Joint Statement by Treasury Secretary Steven T. Mnuchin and Secretary of the Interior David L. Bernhardt on Distribution of Coronavirus Relief Fund Dollars to Native American Tribes, <https://home.treasury.gov/news/press-releases/sm998>, (last visited Jun. 16, 2020).

21. Under the IHBG race-based data, twenty-five Tribal governments, including The Shawnee Tribe, are listed as having a population of **zero**, a practical impossibility (“IHBG Race-Based Data”).⁶

22. Within the same IHBG data, HUD reports that The Shawnee Tribe has **2113 enrolled members** (“IHBG Enrollment Data”). See Exhibit B.

23. Although HUD maintains enrollment population data for tribes, it is for the sole purpose of calculation and distributing HUD funds, which The Shawnee Tribe does not receive and is, thus, erroneously undercounted.

24. Treasury made the determination to use IHBG Race-Based Data even though the BIA also maintains accurate enrollment numbers for tribes, and in fact sought to directly confirm the correct enrollment number with the Shawnee Tribe.⁷

25. At no time prior to the Treasury’s May 5, 2020 announcement did it give The Shawnee Tribe or any other tribal government notice that it might utilize the ill-fitting IHBG Race-Based Data, rather than the accurate population data solicited directly from the tribes, or readily available data through the IHBG Enrollment Data and the BIA.

D. Due to the Obvious Error in Population, the Shawnee Tribe Receives the Minimum Funding and Seeks to Correct the Error.

26. The same day that Treasury released its allocation plan, on May 5, 2020, it announced the first round of funding consisting of \$4.8 billion. Based on the Treasury’s Population Award calculations, The Shawnee Tribe received only \$100,000, which was the minimum allocation based on the IHBG Race-Based Data showing it had zero population.⁷

⁶ U.S. Dept. of the Treasury, Coronavirus Relief Fund Allocations to Tribal Governments, <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Tribal-Allocation-Methodology.pdf>, p. 2 (last visited June 16, 2020).

⁷ *Id.*, p. 3.

27. Even though The Shawnee Tribe has an official enrollment of 3,021 tribal members, and even though HUD has an enrollment number of 2,113 for the Shawnee Tribe, the IHBG "formula" has a population of zero for the Shawnee Tribe. Because of this obviously erroneous population amount, the Shawnee Tribe only received \$100,000 for its "Population Award."

28. The Shawnee Tribe immediately sought to determine why Treasury used the obviously incorrect population number.

29. On May 13, 2020, on a conference call with Tribal leaders and Dan Kowalski, Senior Counselor to Secretary Mnuchin, Chief Ben Barnes raised a question about how it was possible for a tribe to be listed as having zero citizens. Chief Barnes further asked if there was a challenge process to correct what was clearly a clerical or accounting error. Mr. Kowalski's response was that he understood the issue but that there was no recourse for the Tribe.

30. The Shawnee Tribe began pursuing other potential administrative recourse, including outreach communications to Mr. Kowalski, White House staff, and Interior staff.

31. Upon information and belief, the various staff members conveyed to the Tribe and its representatives that Treasury realized its error and was working on a potential solution.

32. The Shawnee Tribe also enlisted the support of congressional representative. On May 28, 2020, several members of Congress sent a letter to the Secretary seeking a resolution to this clear error. *See Exhibit C.*

33. Upon information and belief, Representative Mark Wayne Mullin and his staff spoke to Mr. Kowalski or his staff on multiple occasions. On or about June 8, 2020, Rep. Mullin offered a potential solution for the Tribe. Mr. Kowalski advised Rep. Mullin that he would take the solution to Secretary Mnuchin.

34. Upon information and belief, Treasury responded to Rep. Mullin on June 10, 2020

that they acknowledged some tribe's populations were zeroed out and other's populations were drastically reduced. Nonetheless, Treasury decided they would not distribute any additional money to the negatively impacted tribes. Instead, Treasury advised Rep. Mullin that ***if a tribe has an issue with their amount (or lack thereof), they should file a lawsuit.***

35. On June 12, 2020 Treasury announced the methodology for the second allocation of funds.⁸ Because of several pending lawsuits against Treasury, Treasury decided to withhold approximately \$679 million of the Title V funds in reserve, as a policy matter, “‘to resolve any potentially adverse decision in litigation’ over Defendant’s methodology for calculating disbursements from CARES Act appropriation for Tribal governments.”⁹

36. However, on June 15, the District Court for the District of Columbia ordered the Secretary to disburse these reserved funds no later than June 17, 2020. *See* Exhibit D, Order in *Agua Caliente Band of Cahuilla Indians et al. v. Mnuchin*, 20-cv-01136 (APM), pp. 2-3.¹⁰

37. On information and belief, Treasury is in the process of disbursing the remaining \$679 million of Title V Funds, as it has been ordered to do so and it is expected to do so imminently.

E. Treasury's Clear Error and Unwillingness to Correct Its Error Prevents the Tribe From Receiving its Fair Share of the Title V Fund and Hinders the Tribe's Ability to Respond to the COVID-19 Pandemic

38. Treasury clearly erroneous and thus unreasonable reliance on the IHGB Race-

⁸ U.S Dept. of the Treasury, Tribal Allocation Methodology for Second Distribution, <https://home.treasury.gov/system/files/136/Tribal-Allocation-Methodology-for-Second-Distribution.pdf> (last visited June 16, 2020).

⁹ *Id.*, pg. 2

¹⁰ Though the court in *Prairie Band Potawatomi Nation v. Mnuchin* has ordered distribution of the remaining \$679 million, it has done so because “[a]t present, there is no court order that prevents the Secretary from releasing the remaining \$679 million in Title V funds to Tribal governments. That amount is being withheld of the Secretary’s own accord.” Exhibit D, pp. 2-3.

Based Data showing The Shawnee Tribe had a zero population¹¹ and awarded it \$100,000 instead of the approximately \$6 million or more¹² it would have been entitled to had the enrollment data readily available from The Shawnee Tribe itself, the BIA or available *within the same HUD document* Treasury relied upon been used.

39. Treasury's data set grossly undercounted The Shawnee Tribe's total enrolled population by nearly 3,000 members, or approximately 98 percent, assuming the best case scenario that it accounted for at least 37 members.

40. The Shawnee Tribe has incurred significant medical and public health expenses in responding to the devastation resulting from the COVID-19 pandemic, and it continues to provide essential services to its citizens residing on-reservation and off-reservation.

41. As such, Treasury's allocation formula which grossly understates The Shawnee Tribe's population – despite readily available and reliable data showing otherwise – is arbitrary and capricious, and has caused injury to The Shawnee Tribe by reducing the Tribe's proportionate share of the Population Award.

COUNT I
(Declaratory Relief,
5 U.S.C. § 706, and 28 U.S.C. §§ 2201-2202)

42. The Shawnee Tribe restates and realleges the preceding paragraphs as if fully stated herein.

43. The Administrative Procedures Act ("APA") authorizes judicial review of agency actions. 5 U.S.C. § 702.

¹¹ If Treasury did, in fact, award Title V funds to The Shawnee Tribe based on 37 members or any other number, it would be unsupported by any data whatsoever.

¹² Because the Treasury's remaining formula is based on a pro rata share of money received by all tribes, and the calculations and population figures for other tribes are currently unknown, The Shawnee cannot determine the exact amount it would be entitled to Title V funds had the correct enrollment numbers been used.

44. The APA allows a Court to set aside agency actions, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise contrary to law. 5 U.S.C. § 706(2)(A).

45. Treasury's and Interior's joint decision to adopt the IHBG Race-Based Data for the basis of calculating the Population Award was arbitrary and capricious under the APA.

46. Treasury's and Interior's rationale for adopting the IHBG Race-Based Data was based on inaccurate inferences, including: (i) that the IHBG is "reliable and consistently-prepared"; (ii) that IHBG captures Tribal population; (iii) that Tribal governments are familiar with and scrutinize the IHBG; and (iv) that the IHBG data's reliance on Census Bureau data is a benefit for the purposes of disbursement of Title V Funds.

47. The IHBG data is facially flawed, as it contains population values for The Shawnee Tribe which are objectively erroneous; relies upon race-based population that is not an accurate measurement of essential services the Shawnee tribal government provides to its citizens; it fails to account for the Tribe's citizens who reside outside of the geographic area used by HUD to determine Tribal housing needs; and it fails to account for the Tribe's lack of participation in the HUD program or the census gathering.

48. Even if Treasury's reliance on and use of the IHBG formula for calculating the Population Award was not arbitrary and capricious, in light of the plainly wrong population number of zero for Shawnee Treasury's failure to use readily available and accurate data documenting The Shawnee Tribe's actual population was clearly erroneous and unreasonable.

49. Treasury had access to The Shawnee Tribe's population data from three sources: (1) the Bureau of Indian Affairs, with which it consulted; (2) The Shawnee Tribe itself, at Treasury's request; and (3) the IHBG data showing that The Shawnee Tribe's population was at

least 2113.

50. Treasury had this data, yet it ignored it and relied upon the IHBG Race-Based Data showing The Shawnee Tribe had zero members.

51. Aside from being patently false and a practical impossibility, the IHBG Race-Based Data showing The Shawnee Tribe has zero members was contradicted by data within the same document, which Defendants ignored.

52. Despite its knowledge and admission of such clear error, Treasury also arbitrarily and capriciously ignored the Shawnee Tribe's and Rep. Mullin's efforts over 30 days to correct the clear error, and advising the Tribe to sue instead.

53. The APA also directs a Court to set aside agency actions that fail to observe procedure required by law. 5 U.S.C. § 706(2)(A)

54. Title V of the CARES Act granted Treasury the discretion to determine an appropriate method of allocating Title V funds to Tribal governments only after consulting with tribal governments and the Interior. 42 U.S.C. § 801(7).

55. Treasury never consulted with tribal governments to use IHBG Race-Based Data as a basis for awarding funds, particularly where Tribal governments had just submitted their enrollment data to Treasury, per its request. Tribal governments were, therefore, deprived of a reasonable opportunity to consult on the weaknesses of the IHBG Race-Based Data.

56. Pursuant to the CARES Act, the Interior was required to consult with Treasury to determine the appropriate allocation formula.

57. The Interior also had reasonable notice that the IHBG Race-Based Data was an improper source of population data, upon which Treasury could base its Population Award; thus,

it had a duty under its general trust obligations and the CARES Act to investigate and ensure the use of the proper population data.

58. Secretary Bernhardt and the Interior failed to do so.

59. For all the above reasons, Defendants actions and inactions are arbitrary, capricious, an abuse of discretion or otherwise contrary to law and should be set aside.

COUNT II
(Injunctive Relief
Against Secretary Mnuchin and Treasury)

60. The Shawnee Tribe restates and realleges the preceding paragraphs as if fully stated herein.

61. Pursuant to the CARES Act, The Shawnee Tribe is entitled to a proportionate share of the Title V Funds.

62. The Shawnee Tribe has incurred significant medical and public health expenses in responding to the devastation resulting from the COVID-19 pandemic and the Tribe continues to provide essential services to its citizens residing on-reservation and off-reservation.

63. The Shawnee Tribe is likely to prevail under APA because Treasury's selection of the allocation formula was arbitrary and capricious, as alleged above.

64. Even if it were not, Defendants ignored readily available data in calculating the Population Award, which grossly understated The Shawnee Tribe's population by nearly 3,000 members or approximately 98 percent.

65. This gross understatement has resulted in injury to The Shawnee Tribe by reducing the Tribe's proportionate share of the Population Award.

66. Further, Treasury refused to correct its known and admitted clear error without the filing of this law suit.

67. Treasury's pending disbursement of the remainder of the Title V Funds, which was ordered to occur by June 17, threatens The Shawnee Tribe with imminent, irreparable, injury as it will exhaust the Title V Funds and leave the Tribe without an adequate remedy.

68. Consequently, The Shawnee Tribe is entitled to a temporary restraining order pending a hearing for preliminary injunction enjoining Secretary Mnuchin and Treasury from distributing any further portion of the reserved \$679 million intended to resolve the amount of funds for Oklahoma tribes, any further portion of any remaining Title V funds, or at least \$12 million, until such time as Secretary Mnuchin and Treasury can determine the appropriate amount of funding based on The Shawnee Tribe's accurate tribal member population.

PRAYER FOR RELIEF

Wherefore, The Shawnee Tribe respectfully requests the Court:

1. Enter judgment pursuant to 28 U.S.C. § 2201 and 5 U.S.C. § 706 declaring that Treasury's and Interior's use of the IHBG data to distribute Title V funds was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law and procedural requirements;

2. Enter judgment pursuant to 28 U.S.C. § 2201 and 5 U.S.C. § 706 declaring that Treasury's failure to correct the obvious population data error for the Shawnee Tribe in the IHBG formula before the funds were distributed under the Population Award, and Treasury's ongoing refusal to correct the known and obvious population data error was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the CARES Act;

3. Enjoin Treasury and Secretary Mnuchin from distributing, disbursing, or otherwise depleting any further that portion of the reserved \$679 million intended to resolve the amount of funds for Oklahoma tribes, any further portion of any remaining Title V funds, or that

amount that would be reasonably available to Oklahoma tribes but no less than \$12 million, until such time as The Shawnee Tribe's accurate population data is used and funds are distributed to The Shawnee Tribe consistent with the purpose of the CARES Act; and

4. Award The Shawnee Tribe its reasonable attorney fees, costs, and such other and further relief as the Court deems just and proper.

Dated this 18th day of June, 2020.

/s/ Gregory Bigler

Gregory Bigler (OK Bar No. 11759)
BIGLER LAW
P. O. Box 1927
Sapulpa, Oklahoma 74067

Pilar M. Thomas (pro hac vice pending)
QUARLES & BRADY LLP
One South Church Avenue, Suite 1800
Tucson, Arizona 85746

Nicole L. Simmons (pro hac vice pending)
QUARLES & BRADY LLP
One Renaissance Square
Two North Central Avenue
Phoenix, Arizona 85004-2391

Attorneys for Plaintiff

VERIFICATION

Chief Ben Barnes, declares as follows:

I am the Chief of The Shawnee Tribe. As such, I am authorized to make this Verification for and on behalf of The Shawnee Tribe. I have read the foregoing **VERIFIED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF** and know the contents thereof, and, I attest that such contents are true to the best of my actual knowledge, information, and belief. As to those matters stated therein upon information and belief, I believe them to be true.

THE SHAWNEE TRIBE

By: _____

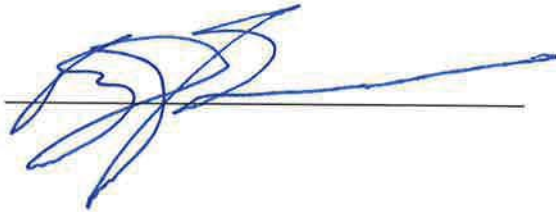


EXHIBIT A

OMB Approved No. 1505-0264
Expiration Date: 10/31/2020

USCA Case #20-5286

Document #1865766

Filed: 10/09/2020

Page 116 of 188

Certification for Requested Tribal Data

Name of Indian Tribe: Shawnee Tribe

Population: Total number of Indian Tribe Citizens/Members/Shareholders, as of January 1, 2020:

3,021 Enrolled Shawnee Tribal Citizens

Land Base: Total number of land acres held by the Indian Tribe and any tribally-owned entity (to include entities in which the Indian Tribe maintains at least 51% ownership) as of January 1, 2020 (to include lands held in trust by the United States, owned in restricted fee status, owned in fee, or selected pursuant to the Alaska Native Claims Settlement Act).

Total Land Base: 234.33 acres

Employees: Total number of persons employed by the Indian Tribe and any tribally-owned entity (to include entities in which the Indian Tribe maintains at least 51% ownership) on January 1, 2020.

Total Employees = 168

Expenditures: Total expenditures for the most recently completed fiscal year.

Total Expenditures for FY19= 6,652,140.17

CERTIFICATION

I hereby certify I am authorized by the governing body of the Indian Tribe described above to submit the information included with this form and that it is true and correct to the best of my knowledge. I further understand that anyone who knowingly and willfully makes a false statement to the United States Government may be subject to criminal prosecution under the False Statements Accountability Act of 1996, 18 U.S.C. 1001.

Name: 
Title: Chief
Date: 4-16-2020

Note: '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, 43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is two hour per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

S-App'x00044

EXHIBIT B

FY 2020 IHBG Final Allocation

Office	Tribes	AIAN Persons (American Indian/Alaska Native)	HHLT 30% (AIAN Households with less than 30% Median Family Income)	HHLT 30-50% (AIAN Households between 30% and 50% of Median Family Income)	HHLT 50-80% (AIAN Households between 50% and 80% of Median Family Income)	HH Overcrowded (AIAN Households with more than 1 person per room or without kitchen or plumbing)	HH Severe Cost (AIAN Households with Housing Expenses greater than 50% of Income)	Housing Shortage (Number of AIAN Households with less than 80% of Median Family Income)	Enrollment	TRSAIP	AEL (Allowable Expense Level)	FMR (Fair Market Rent)	TDC (Total Development Cost)	Inflation	FCA's Portion of Allocation (Formula Current Assisted Stock 24 CFR 1000.312-1000.322)	Needs Portion of Allocation (Needs Component 24 CFR 1000.324)	Phase Down Adjustment (24 CFR 1000.331)	FY 1996 Adjustment (24 CFR 1000.340)	Unadjusted FY 2020 Allocation	FY 2020 Repayment Amount	FY 2020 Undisbursed Funds Adjustment (24 CFR 1000.329)	Minimum Allocation Adjustment (24 CFR 1000.329)	FY 2020 Final Allocation	
ALASKA	Aleknagik	91	6	8	11	11	6	25	384	332	0	\$1,222	\$670.883	1.74	\$0	\$71.988	(\$669)	(\$827)	\$70.503	\$0	\$0	\$0	\$4,091	\$74,594
ALASKA	Agdaaguk Tribe of King Cove	298	20	25	15	4	15	42	693	693	0	\$1,118	\$670.883	1.74	\$0	\$116.493	\$26.235	(\$1,655)	\$141,074	\$0	\$0	\$0	\$0	\$141,074
ALASKA	AHTNA, Incorporated	249	5	11	7	9	0	11	586	586	875	\$1,222	\$670.883	1.74	\$1,690,154	\$44.382	\$6,625	(\$14,713)	\$1,726,448	\$0	\$0	\$0	\$0	\$1,726,448
ALASKA	Akniook	35	10	4	0	4	4	4	98	86	0	\$1,222	\$670.883	1.74	\$0	\$50.556	\$0	\$0	\$50.556	\$0	\$0	\$0	\$24,038	\$74,594
ALASKA	Aknaglak	688	30	35	35	100	4	100	815	708	0	\$1,563	\$670.883	1.74	\$0	\$398.929	(\$3,454)	(\$4,585)	\$390.890	\$0	\$0	\$0	\$0	\$390,890
ALASKA	Akvik	360	25	20	30	65	10	75	396	386	0	\$1,563	\$670.883	1.74	\$0	\$284.578	(\$4,838)	(\$3,243)	\$276.494	\$0	\$0	\$0	\$0	\$276,494
ALASKA	Aktutan	471	10	15	4	4	4	26	163	98	0	\$1,118	\$670.883	1.74	\$0	\$52.782	\$0	(\$612)	\$52.770	\$0	\$0	\$0	\$22,424	\$74,594
ALASKA	Aktanuk	724	50	45	30	105	15	104	849	849	0	\$931	\$670.883	1.74	\$0	\$461,701	(\$7,332)	(\$5,268)	\$449,102	\$0	\$0	\$0	\$0	\$449,102
ALASKA	Aiatna	30	0	0	0	0	0	0	70	33	0	\$780	\$715.983	1.74	\$0	\$50.556	\$0	\$0	\$50.556	\$0	\$0	\$0	\$24,038	\$74,594
ALASKA	Aleknagik	178	10	10	15	10	4	33	351	208	0	\$1,312	\$670.883	1.74	\$1,810,807	\$79.171	\$34,555	(\$1,320)	\$112,506	\$0	\$0	\$0	\$0	\$112,506
ALASKA	Aleut Corporation	21	0	0	0	0	0	0	3,400	0	924	\$1,657	\$670.883	1.74	\$1,810,807	\$79.171	\$34,555	(\$9,475)	\$1,803,273	\$0	\$0	\$0	\$0	\$1,803,273
ALASKA	Alpaadik (St. Mary's)	433	25	20	45	65	15	63	480	274	0	\$931	\$670.883	1.74	\$0	\$302.060	(\$3,440)	(\$3,462)	\$285.158	\$0	\$0	\$0	\$0	\$285,158
ALASKA	Alpakat	182	10	20	10	40	4	40	257	129	0	\$780	\$715.983	1.74	\$0	\$171.905	(\$4,855)	(\$1,937)	\$165.113	\$0	\$0	\$0	\$0	\$165,113
ALASKA	Auritt (Old Harbor)	185	25	20	10	15	15	55	606	618	0	\$1,222	\$670.883	1.74	\$0	\$143.499	\$0	(\$1,664)	\$141.836	\$0	\$0	\$0	\$0	\$141,836
ALASKA	Ambler	228	10	15	15	40	4	40	361	334	0	\$1,326	\$715.983	1.74	\$0	\$174.377	(\$1,670)	(\$2,002)	\$170.705	\$0	\$0	\$0	\$0	\$170,705
ALASKA	Anaktuvuk Pass	285	10	4	15	30	4	27	348	166	0	\$1,328	\$715.983	1.74	\$0	\$136.837	(\$988)	(\$1,575)	\$134.294	\$0	\$0	\$0	\$0	\$134,294
ALASKA	Angoon	327	30	25	15	15	15	48	554	454	0	\$866	\$581.158	1.74	\$0	\$135.484	\$0	(\$1,571)	\$133.913	\$0	\$0	\$0	\$0	\$133,913
ALASKA	Aniak	390	20	30	25	30	15	75	629	629	0	\$1,563	\$670.883	1.74	\$0	\$208.642	\$0	(\$2,419)	\$206.223	\$0	\$0	\$0	\$0	\$206,223
ALASKA	Anvik	78	10	10	4	15	4	24	248	96	0	\$780	\$670.883	1.74	\$0	\$78.071	(\$905)	\$77.165	\$0	\$0	\$0	\$0	\$77,165	
ALASKA	Arctic Slope Regional Corporation	215	2	4	0	5	0	6	7,200	123	924	\$1,328	\$715.983	1.74	\$2,846,714	\$30.989	(\$2,147)	(\$18,542)	\$2,857,013	\$0	\$0	\$0	\$0	\$2,857,013
ALASKA	Arctic Village	133	20	10	4	50	4	34	172	160	0	\$780	\$715.983	1.74	\$0	\$193.715	(\$7,949)	(\$2,154)	\$183.613	\$0	\$0	\$0	\$0	\$183,613
ALASKA	Aas/Carsamut (Mountain Village)	841	30	40	45	110	4	115	1,032	1,124	0	\$931	\$670.883	1.74	\$0	\$446.295	(\$8,447)	(\$5,076)	\$432.772	\$0	\$0	\$0	\$0	\$432,772
ALASKA	Atka	47	4	10	0	0	4	16	174	80	0	\$1,657	\$670.883	1.74	\$0	\$50.556	\$0	\$0	\$50.556	\$0	\$0	\$0	\$24,038	\$74,594
ALASKA	Arnatluak	304	15	10	10	55	4	35	301	301	0	\$1,563	\$670.883	1.74	\$0	\$201.960	(\$3,378)	(\$2,292)	\$195.391	\$0	\$0	\$0	\$0	\$195,391
ALASKA	Atkasook (Atkasook)	227	4	10	2	2	1	15	164	114	0	\$1,328	\$715.983	1.74	\$0	\$93.720	(\$996)	(\$1,076)	\$91.748	\$0	\$0	\$0	\$0	\$91,748
ALASKA	Barrow	2,598	140	140	190	285	85	321	3,999	3,677	0	\$1,328	\$715.983	1.74	\$0	\$1,569.452	(\$18,195)	\$1,551,257	\$98,248	\$0	\$0	\$0	\$0	\$98,248
ALASKA	Beaver	81	4	15	4	25	4	23	246	239	0	\$780	\$670.883	1.74	\$0	\$101.309	(\$1,152)	\$98,248	\$0	\$0	\$0	\$0	\$98,248	
ALASKA	Belkofski	0	0	0	0	0	0	0	62	62	0	\$1,118	\$670.883	1.74	\$0	\$50.556	\$0	\$0	\$50.556	\$0	\$0	\$0	\$24,038	\$74,594
ALASKA	Bering Straits Native Corporation	30	1	2	2	3	1	4	6,179	0	817	\$1,599	\$670.883	1.74	\$2,359,794	\$12.803	(\$1,034)	(\$13,261)	\$2,358,102	\$0	\$0	\$0	\$0	\$2,358,102
ALASKA	Bill Moore's Slough	0	0	0	0	0	0	0	106	106	0	\$931	\$670.883	1.74	\$0	\$50.556	\$0	\$0	\$50.556	\$0	\$0	\$0	\$24,038	\$74,594
ALASKA	Birch Creek	32	0	0	0	0	0	0	84	28	0	\$780	\$670.883	1.74	\$0	\$50.556	\$0	\$0	\$50.556	\$0	\$0	\$0	\$24,038	\$74,594
ALASKA	Brevig Mission	387	35	30	25	65	10	70	323	341	0	\$1,599	\$670.883	1.74	\$0	\$295.361	(\$2,983)	(\$3,390)	\$285.989	\$0	\$0	\$0	\$0	\$285,989
ALASKA	Bristol Bay Native Corporation	36	4	0	2	2	1	6	5,945	0	799	\$1,238	\$670.883	1.74	\$898,092	\$14.146	(\$834)	\$1,489,882	\$0	\$0	\$0	\$0	\$1,489,882	
ALASKA	Buckland	415	25	15	20	75	10	60	407	385	0	\$1,326	\$670.883	1.74	\$0	\$297.776	(\$8,567)	(\$3,353)	\$285.856	\$0	\$0	\$0	\$0	\$285,856
ALASKA	Calista Corporation	56	6	1	0	0	0	7	11,940	0	954	\$1,563	\$670.883	1.74	\$3,256,826	\$10.432	(\$690)	\$685,410	\$3,951,989	\$0	\$0	\$0	\$0	\$3,951,989
ALASKA	Cantwell	56	4	4	4	4	4	12	108	117	0	\$1,494	\$581.158	1.74	\$0	\$50.556	\$0	\$0	\$50.556	\$0	\$0	\$0	\$24,038	\$74,594
ALASKA	Chalkyitsik	58	10	10	4	30	4	24	119	119	0	\$780	\$670.883	1.74	\$0	\$115,224	\$16,260	(\$1,524)	\$129,960	\$0	\$0	\$0	\$0	\$129,960
ALASKA	Cheesh-Na	43	10	0	0	4	4	4	80	54	0	\$1,222	\$670.883	1.74	\$0	\$50.556	\$0	\$0	\$50.556	\$0	\$0	\$0	\$24,038	\$74,594
ALASKA	Chefornek	449	10	15	25	75	0	60	514	514	0	\$1,563	\$670.883	1.74	\$0	\$261.531	(\$94)	(\$3,031)	\$258,436	\$0	\$0	\$0	\$0	\$258,436
ALASKA	Chenega (Chenega)	41	0	0	0	0	0	10	65	66	0	\$1,222	\$581.158	1.74	\$0	\$50.556	\$0	\$0	\$50.556	\$0	\$0	\$0	\$24,038	\$74,594
ALASKA	Chetavik	1,002	45	65	35	140	25	127	1,307	667	0	\$931	\$670.883	1.74	\$0	\$606,818	(\$7,157)	(\$6,952)	\$592,709	\$0	\$0	\$0	\$0	\$592,709
ALASKA	Chickadee	508	13	17	11	15	9	41	254	1,091	0	\$1,078	\$581.158	1.74	\$0	\$109,383	(\$2,07)	(\$1,266)	\$107,911	\$0	\$0	\$0	\$0	\$107,911
ALASKA	Chignik Bay Tribal Council	51	4	4	4	4	0	12	227	75	0	\$892	\$670.883	1.74	\$0	\$50.556	\$0	\$0	\$50.556	\$0	\$0	\$0	\$24,038	\$74,594
ALASKA	Chignik Lagoon	48	4	4	4	4	0	12	218	87	0	\$892	\$670.883	1.74	\$0	\$50.556	\$0	\$0	\$50.556	\$0	\$0	\$0	\$24,038	\$74,594
ALASKA	Chignik Lake	68	4	4	4	4	4	12	275	144	0	\$892	\$670.883	1.74	\$0	\$50.556	\$3,435	\$0	\$53,991	\$0	\$0	\$0	\$0	\$53,991
ALASKA	Chikilak (Klukwan)	74	4	4	4	4	0	0	233	80	0	\$869	\$581.158	1.74	\$0	\$50.556	\$5	\$0	\$50.561	\$0	\$0	\$0	\$24,038	\$74,594
ALASKA	Chikot (Haiees)	405	30	14	80	10	14	112	393	393	0	\$1,012	\$581.158	1.74	\$0	\$133.898	\$0	(\$1,552)	\$132,346	\$0	\$0	\$0	\$0	\$132,346
ALASKA	Chinik (Golovin)	158	10	10	10	30	4	30	293	285	0	\$1,599	\$670.883	1.74	\$0	\$125.774	\$0	(\$1,451)	\$123,723	\$0	\$0	\$0	\$0	\$123,723
ALASKA	China	24	0	4	4	4	4	4	250	100	0	\$1,222	\$670.883	1.74	\$0	\$50.556	\$0	\$0	\$50.556	\$0	\$0	\$0	\$24,038	\$74,594
ALASKA	Chualitlik (Russian Mission, Kuskokwim)	117	10	4	4	15	4	18	132	80	0	\$1,563	\$670.883	1.74	\$0	\$73.008	\$25,669	(\$1,150)	\$98,028	\$0	\$0	\$0	\$0	\$98,028

FY 2020 IHBG Final Allocation

Office	Tribes	AIAN Persons (American Indian/Alaska Native)	HHLT 30% (AIAN Households with less than 30% Median Family Income)	HHLT 30-50% (AIAN Households between 30% and 50% of Median Family Income)	HHLT 50-80% (AIAN Households between 50% and 80% of Median Family Income)	HH Overcrowded (AIAN Households with more than 1 person per room or without kitchen or plumbing)	HH Severe Cost (AIAN Households with Housing Expenses greater than 50% of Income)	Housing Shortage (Number of AIAN Households with less than 80% of Median Family Income)	Enrollment	TTSAP	ACL (Allowable Expense Level)	FMR (Fair Market Rent)	TDC (Total Development Cost)	Inflation	FCA's Portion of Allocation (Formula Current Assisted Stock 24 CFR 1010.312-1000.322)	Needs Portion of Allocation (Needs Component 24 CFR 1000.324)	Phase Down Adjustment (24 CFR 1000.331)	FY 1996 Adjustment (24 CFR 1000.340)	Unadjusted FY 2020 Allocation	FY 2020 Repayment Amount	FY 2020 Undisbursed Funds Adjustment (24 CFR 1000.329)	Minimum Allocation Adjustment (24 CFR 1000.329)	FY 2020 Final Allocation	
ALASKA	Cook Inlet Region, Inc.	38,061	1,738	1,509	2,159	1,164	1,470	5,191	9,051	35,972	804	\$1,313	\$581,158	1.74	\$4,791,475	\$9,394,436	\$0	(\$145,180)	\$14,040,730	\$0	\$0	\$0	\$24,038	\$14,040,730
ALASKA	Council	0	0	0	0	0	0	0	131	115	0	\$1,598	\$670,883	1.74	\$0	\$50,556	\$0	(\$1,129)	\$50,556	\$0	\$0	\$0	\$0	\$74,594
ALASKA	Craig	471	19	19	40	8	14	50	424	524	0	\$1,071	\$581,158	1.74	\$0	\$97,384	\$0	(\$1,129)	\$97,384	\$0	\$0	\$0	\$0	\$98,255
ALASKA	Crooked Creek	99	10	4	4	25	4	18	121	115	0	\$1,067	\$670,883	1.74	\$0	\$98,067	\$22,802	(\$1,401)	\$119,468	\$0	\$0	\$0	\$0	\$119,468
ALASKA	Curyung (Dillingham)	1,365	80	45	90	95	55	188	2,160	2,251	0	\$1,312	\$670,883	1.74	\$0	\$649,830	\$642,968	(\$7,534)	\$642,968	\$0	\$0	\$0	\$0	\$642,968
ALASKA	Deering	111	4	10	15	13	4	4	186	178	0	\$1,326	\$670,883	1.74	\$0	\$71,028	\$24,431	(\$1,114)	\$94,945	\$0	\$0	\$0	\$0	\$94,945
ALASKA	Diomed (Inalik)	120	14	4	4	19	0	22	248	249	0	\$1,599	\$715,963	1.74	\$0	\$71,593	\$13,049	(\$981)	\$83,651	\$0	\$0	\$0	\$0	\$83,651
ALASKA	Dot Lake	55	4	4	4	4	4	12	137	22	0	\$1,234	\$670,883	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$24,038	\$74,594
ALASKA	Douglas	639	50	40	45	35	55	135	464	464	0	\$1,457	\$670,883	1.74	\$0	\$340,892	\$24,219	(\$3,671)	\$313,001	\$0	\$0	\$0	\$0	\$313,001
ALASKA	Doyon, Ltd.	12,158	627	592	413	669	658	6,971	6,971	6,971	762	\$1,356	\$670,883	1.74	\$388,418	\$4,436,285	(\$15,081)	(\$36,610)	\$4,773,013	\$0	\$0	\$0	\$0	\$4,773,013
ALASKA	Eagle	324	15	35	25	100	4	12	113	30	0	\$1,234	\$670,883	1.74	\$0	\$50,556	\$0	(\$4,082)	\$50,556	\$0	\$0	\$0	\$0	\$74,594
ALASKA	Eek	324	15	35	25	100	4	63	375	278	0	\$1,563	\$670,883	1.74	\$0	\$350,889	(\$1,394)	(\$4,082)	\$345,443	\$0	\$0	\$0	\$0	\$345,443
ALASKA	Egegik	41	4	4	4	4	4	12	326	109	0	\$892	\$670,883	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$24,038	\$74,594
ALASKA	Eklutna	43	4	4	4	4	4	12	246	191	0	\$1,313	\$581,158	1.74	\$0	\$50,556	(\$610)	\$0	\$49,946	\$0	\$0	\$0	\$0	\$74,594
ALASKA	Ekwok	2	0	0	0	0	0	0	122	2	0	\$1,312	\$670,883	1.74	\$0	\$50,556	\$0	(\$616)	\$52,558	\$0	\$0	\$0	\$22,038	\$74,594
ALASKA	Elim	491	16	25	32	46	15	72	450	453	0	\$1,599	\$670,883	1.74	\$0	\$205,641	\$0	(\$2,384)	\$203,257	\$0	\$0	\$0	\$0	\$203,257
ALASKA	Emmonak	826	45	30	45	95	15	120	984	984	0	\$931	\$670,883	1.74	\$0	\$441,950	(\$6,156)	(\$5,052)	\$430,739	\$0	\$0	\$0	\$0	\$430,739
ALASKA	Evansville (Bettles Field)	7	4	4	0	4	4	8	22	22	0	\$780	\$670,883	1.74	\$0	\$50,556	\$0	(\$1,241)	\$50,556	\$0	\$0	\$0	\$24,038	\$74,594
ALASKA	Evak	200	25	10	0	0	0	25	557	461	0	\$1,222	\$581,158	1.74	\$0	\$95,465	\$11,448	(\$1,241)	\$105,772	\$0	\$0	\$0	\$0	\$105,772
ALASKA	False Pass	22	4	0	4	4	0	4	96	102	0	\$1,118	\$670,883	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$24,038	\$74,594
ALASKA	Fort Yukon	511	50	50	25	80	25	125	581	512	0	\$760	\$670,883	1.74	\$0	\$422,393	(\$4,526)	(\$4,845)	\$413,027	\$0	\$0	\$0	\$0	\$413,027
ALASKA	Gakona	35	4	4	4	4	4	6	85	91	0	\$1,222	\$581,158	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$24,038	\$74,594
ALASKA	Galeria (Louden Village)	294	20	30	15	30	4	65	652	428	0	\$780	\$670,883	1.74	\$0	\$168,999	(\$2,468)	(\$1,931)	\$164,001	\$0	\$0	\$0	\$0	\$164,001
ALASKA	Gambell	710	70	30	115	25	110	762	597	597	0	\$1,599	\$715,963	1.74	\$0	\$554,886	(\$8,702)	(\$6,330)	\$539,654	\$0	\$0	\$0	\$0	\$539,654
ALASKA	Georgetown	2	0	0	0	0	0	0	113	112	0	\$1,563	\$670,883	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$24,038	\$74,594
ALASKA	Goodnews Bay	258	20	15	4	40	4	39	344	338	0	\$1,563	\$670,883	1.74	\$0	\$166,876	(\$4,847)	(\$1,878)	\$160,150	\$0	\$0	\$0	\$0	\$160,150
ALASKA	Gravling (Hokkachuk)	166	25	15	4	40	10	44	403	171	0	\$760	\$670,883	1.74	\$0	\$183,331	\$0	(\$2,125)	\$181,205	\$0	\$0	\$0	\$0	\$181,205
ALASKA	Gulkana	99	4	4	4	4	0	4	132	142	0	\$1,222	\$581,158	1.74	\$0	\$50,556	(\$642)	\$0	\$49,914	\$0	\$0	\$0	\$24,680	\$74,594
ALASKA	Hamilton	0	0	0	0	0	0	0	29	21	0	\$931	\$670,883	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$24,038	\$74,594
ALASKA	Healy Lake	12	0	0	0	0	0	0	34	27	0	\$1,234	\$670,883	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$24,038	\$74,594
ALASKA	Holy Cross	160	10	15	15	30	4	40	528	219	0	\$760	\$670,883	1.74	\$0	\$135,141	\$0	(\$1,567)	\$133,574	\$0	\$0	\$0	\$0	\$133,574
ALASKA	Hothead	374	30	40	45	10	10	103	899	589	0	\$968	\$581,158	1.74	\$0	\$157,530	\$27,477	(\$2,145)	\$182,862	\$0	\$0	\$0	\$0	\$182,862
ALASKA	Hooper Bay	1,164	75	55	40	195	15	145	1,356	1,011	0	\$931	\$670,883	1.74	\$0	\$757,931	(\$11,536)	(\$8,653)	\$737,741	\$0	\$0	\$0	\$0	\$737,741
ALASKA	Hughes	74	4	4	4	4	0	12	139	61	0	\$760	\$715,963	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$24,038	\$74,594
ALASKA	Huslia	250	20	20	25	40	10	64	609	274	0	\$760	\$715,963	1.74	\$0	\$218,981	(\$4,75)	(\$2,532)	\$215,873	\$0	\$0	\$0	\$0	\$215,873
ALASKA	Hydaburg	307	20	30	25	4	4	75	341	274	0	\$1,071	\$581,158	1.74	\$0	\$69,777	\$8,970	(\$1,144)	\$97,504	\$0	\$0	\$0	\$0	\$97,504
ALASKA	Iliupuk	20	4	4	4	4	4	12	64	42	0	\$992	\$670,883	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$24,038	\$74,594
ALASKA	Iliamna	58	4	0	4	4	0	8	128	91	0	\$992	\$670,883	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$24,038	\$74,594
ALASKA	Iquruit Traditional Council	341	14	29	8	50	8	31	374	278	0	\$931	\$670,883	1.74	\$0	\$174,544	(\$4,065)	(\$1,976)	\$168,503	\$0	\$0	\$0	\$0	\$168,503
ALASKA	Ivanof Bay	7	0	0	0	0	0	0	15	5	0	\$892	\$670,883	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$24,038	\$74,594
ALASKA	Kaguvak	2	0	0	0	0	0	0	8	6	0	\$1,222	\$670,883	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$24,038	\$74,594
ALASKA	Kake	408	35	30	30	20	10	66	465	465	0	\$1,071	\$581,158	1.74	\$0	\$158,659	\$17,610	(\$2,044)	\$174,225	\$0	\$0	\$0	\$0	\$174,225
ALASKA	Kaktovik	224	4	10	15	15	4	27	227	228	0	\$1,328	\$715,963	1.74	\$0	\$92,165	\$17,426	(\$1,271)	\$108,329	\$0	\$0	\$0	\$0	\$108,329
ALASKA	Kalsag	192	20	15	25	45	10	37	220	226	0	\$1,563	\$670,883	1.74	\$0	\$200,955	\$0	(\$2,326)	\$198,329	\$0	\$0	\$0	\$0	\$198,329
ALASKA	Kallag	171	15	15	4	20	4	34	404	194	0	\$760	\$670,883	1.74	\$0	\$106,214	(\$1,46)	(\$1,230)	\$104,838	\$0	\$0	\$0	\$0	\$104,838
ALASKA	Kanaktak	0	0	0	0	0	0	0	133	67	0	\$992	\$670,883	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$24,038	\$74,594
ALASKA	Kariuk	34	4	10	0	4	4	14	83	44	0	\$1,222	\$670,883	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$24,038	\$74,594
ALASKA	Kasaan	23	0	0	8	4	0	8	28	28	0	\$1,071	\$581,158	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$24,038	\$74,594
ALASKA	Kasigluk	604	30	25	25	80	4	75	607	603	0	\$1,563	\$670,883	1.74	\$0	\$323,575	\$0	(\$3,751)	\$319,823	\$0	\$0	\$0	\$0	\$319,823
ALASKA	Kenaitze	3,340	218	157	148	57	166	500	1,670	3,512	0	\$1,139	\$581,158	1.74	\$0	\$988,577	\$0	(\$9,719)	\$928,628	\$0	\$0	\$0		

FY 2020 IHBG Final Allocation

Office	Tribes	AIAN Persons (American Indian/Alaska Native)	HHLT 30% (AIAN Households with less than 30% Median Family Income)	HHLT 30-50% (AIAN Households between 30% and 50% of Median Family Income)	HHLT 50-80% (AIAN Households between 50% and 80% of Median Family Income)	HH Overcrowded (AIAN Households with more than 1 person per room or without kitchen or plumbing)	HH Severe Cost (AIAN Households with Housing Expenses greater than 50% of Income)	Housing Shortage (Number of AIAN Households with less than 80% of Median Family Income)	Enrollment	TRSAIP	AEL (Allowable Expense Level)	FMR (Fair Market Rent)	TDC (Total Development Cost)	Inflation	FCA's Portion of Allocation (Formula Current Assisted Stock 24 CFR 1000.312-1000.322)	Needs Portion of Allocation (Needs Component 24 CFR 1000.324)	Phase Down Adjustment (24 CFR 1000.331)	FY 1996 Adjustment (24 CFR 1000.340)	Unadjusted FY 2020 Allocation	FY 2020 Repayment Amount	FY 2020 Undisbursed Funds Adjustment (24 CFR 1000.329)	Minimum Allocation Adjustment (24 CFR 1000.329)	FY 2020 Final Allocation
ALASKA	Kino Salmon	78	8	40	8	3	3	16	85	85	0	\$1,238	\$670.883	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$24,038	\$74,594
ALASKA	Kipnuk	700	40	45	40	150	10	125	809	784	0	\$1,563	\$670.883	1.74	\$0	\$568,734	(\$12,392)	(\$6,450)	\$549,891	\$0	\$0	\$0	\$549,891
ALASKA	Kivalina	372	30	10	30	115	4	70	389	370	0	\$1,326	\$670.883	1.74	\$0	\$393,313	(\$6,054)	(\$4,490)	\$382,769	\$0	\$0	\$0	\$382,769
ALASKA	Klawock	407	19	40	19	8	14	25	497	497	0	\$1,071	\$581.158	1.74	\$0	\$30,211	\$34,932	(\$1,451)	\$123,692	\$0	\$0	\$0	\$123,692
ALASKA	Kluti Kaah (Copper Center)	171	35	4	4	20	20	21	302	326	0	\$1,222	\$581.158	1.74	\$0	\$128,409	(\$3,240)	(\$1,451)	\$123,718	\$0	\$0	\$0	\$123,718
ALASKA	Knik	4,518	180	246	180	167	167	605	2,259	4,228	0	\$1,078	\$581.158	1.74	\$0	\$1,439,938	(\$16,694)	(\$16,694)	\$1,423,244	\$0	\$0	\$0	\$1,423,244
ALASKA	Kobuk	142	10	4	4	15	4	13	172	74	0	\$1,326	\$715.963	1.74	\$0	\$77,313	\$7,718	(\$1,095)	\$93,336	\$0	\$0	\$0	\$93,336
ALASKA	Kokhanok	134	20	10	15	20	4	42	190	174	0	\$892	\$670.883	1.74	\$0	\$114,588	\$15,787	(\$1,512)	\$128,864	\$0	\$0	\$0	\$128,864
ALASKA	Kongiganak	471	25	20	25	75	10	40	490	349	0	\$1,563	\$670.883	1.74	\$0	\$297,228	(\$1,603)	(\$3,427)	\$292,197	\$0	\$0	\$0	\$292,197
ALASKA	Koniag, Incorporated	513	34	44	64	63	32	59	3,300	1,882	802	\$1,222	\$670.883	1.74	\$3,283,261	\$369,677	(\$3,098)	\$3,619,025	\$0	\$0	\$0	\$3,619,025	
ALASKA	Kotlik	631	40	35	25	90	4	81	690	590	0	\$931	\$670.883	1.74	\$0	\$366,920	\$0	(\$4,254)	\$362,666	\$0	\$0	\$0	\$362,666
ALASKA	Kotzebue	2,349	65	75	100	260	50	159	2,712	1,575	0	\$1,326	\$670.883	1.74	\$0	\$1,097,710	(\$8,054)	(\$12,633)	\$1,077,023	\$0	\$0	\$0	\$1,077,023
ALASKA	Koyuk	322	30	15	15	40	4	38	402	345	0	\$1,599	\$670.883	1.74	\$0	\$182,892	(\$3,464)	(\$2,080)	\$177,348	\$0	\$0	\$0	\$177,348
ALASKA	Koyukuk	761	20	4	4	35	4	28	280	92	0	\$780	\$670.883	1.74	\$0	\$135,493	(\$4,601)	(\$1,517)	\$129,374	\$0	\$0	\$0	\$129,374
ALASKA	Kwethluk	761	30	45	45	140	4	120	1,285	881	0	\$1,563	\$670.883	1.74	\$0	\$524,087	\$0	(\$6,076)	\$518,011	\$0	\$0	\$0	\$518,011
ALASKA	Kwigillingok	342	10	20	4	35	4	14	408	266	0	\$1,563	\$670.883	1.74	\$0	\$142,106	\$0	(\$1,648)	\$140,459	\$0	\$0	\$0	\$140,459
ALASKA	Kwinlagaak (Quinhagak)	701	40	55	25	115	15	120	808	0	0	\$1,563	\$670.883	1.74	\$0	\$488,409	(\$1,006)	(\$5,651)	\$481,752	\$0	\$0	\$0	\$481,752
ALASKA	Larsen Bay	60	10	4	4	4	4	11	484	51	0	\$1,222	\$670.883	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$24,038	\$74,594
ALASKA	Levelock	57	4	10	4	10	4	18	209	124	0	\$892	\$670.883	1.74	\$0	\$24,087	\$0	(\$3,076)	\$18,011	\$0	\$0	\$0	\$18,011
ALASKA	Lime Village	30	4	0	4	4	4	8	44	43	0	\$1,563	\$715.963	1.74	\$0	\$50,556	\$0	(\$2,736)	\$49,821	\$0	\$0	\$0	\$49,821
ALASKA	Lower Kalskag	292	25	20	10	60	4	55	294	259	0	\$1,563	\$670.883	1.74	\$0	\$236,030	\$0	(\$2,736)	\$233,293	\$0	\$0	\$0	\$233,293
ALASKA	Manley Hot Springs	26	4	0	8	8	0	12	77	17	0	\$780	\$670.883	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$24,038	\$74,594
ALASKA	Manokotak	454	30	40	25	70	15	95	515	404	0	\$1,312	\$670.883	1.74	\$0	\$335,589	(\$2,319)	(\$3,864)	\$329,407	\$0	\$0	\$0	\$329,407
ALASKA	Marshall (Fortuna Ledge)	441	15	25	20	60	4	60	377	377	0	\$931	\$670.883	1.74	\$0	\$244,966	\$1,165	(\$2,850)	\$242,981	\$0	\$0	\$0	\$242,981
ALASKA	Mary's Igloo	0	0	0	0	0	0	0	108	61	0	\$1,599	\$670.883	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$24,038	\$74,594
ALASKA	McGrath	188	20	8	14	14	8	42	322	176	0	\$780	\$715.963	1.74	\$0	\$94,076	\$0	(\$1,091)	\$92,985	\$0	\$0	\$0	\$92,985
ALASKA	Mekoryuk	200	20	15	10	25	4	27	454	170	0	\$1,563	\$670.883	1.74	\$0	\$124,222	(\$2,101)	(\$1,416)	\$120,705	\$0	\$0	\$0	\$120,705
ALASKA	Mentasta	87	15	10	4	4	4	15	500	90	0	\$1,222	\$670.883	1.74	\$0	\$50,799	(\$5,499)	(\$563)	\$49,668	\$0	\$0	\$24,926	\$74,594
ALASKA	Mellakalla (Annette Island)	1,345	45	75	80	45	10	120	2,292	1,230	771	\$1,071	\$581.158	1.74	\$1,107,727	\$321,689	(\$3,069)	\$1,409,821	\$0	\$0	\$0	\$1,409,821	
ALASKA	Minto	187	15	25	20	35	4	60	424	237	0	\$780	\$670.883	1.74	\$0	\$170,260	\$0	(\$1,974)	\$168,286	\$0	\$0	\$0	\$168,286
ALASKA	Nanek	249	8	14	19	8	8	41	842	335	0	\$1,238	\$670.883	1.74	\$0	\$73,892	\$3,106	(\$899)	\$75,008	\$0	\$0	\$0	\$75,008
ALASKA	NANA Corporation	198	1	21	0	0	1	22	10,406	0	933	\$1,326	\$715.963	1.74	\$2,866,007	\$36,862	\$0	\$2,887,374	\$0	\$0	\$0	\$2,887,374	
ALASKA	Nanwalek (English Bay)	227	15	25	4	25	0	37	288	295	0	\$1,139	\$581.158	1.74	\$0	\$103,996	(\$1,430)	(\$1,162)	\$100,784	\$0	\$0	\$0	\$100,784
ALASKA	Napaimute	1	0	0	0	0	0	0	84	90	0	\$1,563	\$670.883	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$24,038	\$74,594
ALASKA	Napakiaik	386	45	25	20	75	10	90	510	303	0	\$1,563	\$670.883	1.74	\$0	\$331,734	(\$3,809)	(\$3,809)	\$324,716	\$0	\$0	\$0	\$324,716
ALASKA	Napaasiak	439	35	30	10	55	4	75	534	399	0	\$1,563	\$670.883	1.74	\$0	\$252,892	\$5,542	(\$2,993)	\$255,131	\$0	\$0	\$0	\$255,131
ALASKA	Nelson Lagoon	31	4	4	4	4	4	11	50	47	0	\$1,118	\$670.883	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$24,038	\$74,594
ALASKA	Nenana	158	24	19	8	14	8	36	717	165	0	\$780	\$670.883	1.74	\$0	\$90,783	\$6,775	(\$1,131)	\$96,427	\$0	\$0	\$0	\$96,427
ALASKA	New Koliganek	215	4	10	10	20	4	15	262	174	0	\$1,312	\$715.963	1.74	\$0	\$97,064	\$20,510	(\$1,363)	\$116,211	\$0	\$0	\$0	\$116,211
ALASKA	New Stuyahok	512	25	30	35	60	4	90	598	400	0	\$1,312	\$715.963	1.74	\$0	\$352,164	(\$2,169)	(\$4,062)	\$348,081	\$0	\$0	\$0	\$348,081
ALASKA	Newhalen	150	4	10	15	4	4	16	219	219	0	\$892	\$670.883	1.74	\$0	\$122,662	(\$2,189)	(\$812)	\$99,261	\$0	\$0	\$5,333	\$74,594
ALASKA	Nemtok	381	20	15	15	60	4	50	429	421	0	\$1,563	\$670.883	1.74	\$0	\$233,175	(\$7,108)	(\$2,621)	\$223,446	\$0	\$0	\$0	\$223,446
ALASKA	Nightmute	288	15	10	15	50	0	31	121	188	0	\$1,563	\$670.883	1.74	\$0	\$179,020	(\$4,694)	(\$2,021)	\$172,305	\$0	\$0	\$0	\$172,305
ALASKA	Nikolai	75	10	4	10	25	4	24	167	81	0	\$780	\$715.963	1.74	\$0	\$109,476	(\$5,30)	(\$1,263)	\$107,683	\$0	\$0	\$0	\$107,683
ALASKA	Nikolski	14	4	4	4	4	4	5	85	19	0	\$657	\$670.883	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$24,038	\$74,594
ALASKA	Niritlichik	1,244	95	45	90	60	75	220	649	992	0	\$1,139	\$581.158	1.74	\$0	\$430,486	(\$16,917)	(\$4,795)	\$408,774	\$0	\$0	\$0	\$408,774
ALASKA	Noratak	510	15	20	20	55	4	39	558	564	0	\$1,326	\$715.963	1.74	\$0	\$237,845	\$0	(\$2,767)	\$235,087	\$0	\$0	\$0	\$235,087
ALASKA	Nome Eskimo Community	1,863	59	95	121	176	58	230	2,229	1,720	0	\$1,599	\$670.883	1.74	\$0	\$764,550	\$0	(\$5,894)	\$755,868	\$0	\$0	\$0	\$755,868
ALASKA	Noronat	103	15	15	15	20	4	37	445	332	0	\$862	\$670.883	1.74	\$0	\$110,085	\$0	(\$1,276)	\$108,808	\$0	\$0	\$0	\$108,808
ALASKA	Noorvik	617	30	40	25	85	20	78	1,018	1,071	0	\$1,326	\$670.883	1.74	\$0	\$385,298	(\$8,069)	(\$4,373)	\$372,856	\$0	\$0	\$0	\$372,856
ALASKA	Northway	347	18	17	12	19	19	47	470	199	0	\$1,354	\$670.883	1.74	\$0	\$127,304	\$0	\$0	\$125,394	\$0	\$0	\$0	\$125,394
ALASKA	Nuigtut (Nooksut)	370	40	4	15	40	0	16	349	419	0	\$1,328	\$715.963	1.74	\$0	\$143,968	\$60,458	(\$2,370)	\$20				

FY 2020 IHBG Final Allocation

Office	Tribe	AIAN Persons (American Indian/Alaska Native)	HHLT 30% (AIAN Households with less than 30% Median Family Income)	HHLT 30-50% (AIAN Households between 30% and 50% of Median Family Income)	HHLT 50-80% (AIAN Households between 50% and 80% of Median Family Income)	HH Overcrowded (more than 1 person per room or without kitchen or plumbing)	HH Severe Cost (AIAN Households with Housing Expenses greater than 50% of Income)	Housing Shortage (Number of AIAN Households with less than 80% of Median Family Income)	Enrollment	TRSAP	AEL (Allowable Expense Level)	FMR (Fair Market Rent)	TDC (Total Development Cost)	Inflation	FCA's Portion of Allocation (Formula Current Assisted Stock 24 CFR 1000.312-1000.322)	Needs Portion of Allocation (Needs Component 24 CFR 1000.324)	Phase Down Adjustment (24 CFR 1000.331)	FY 1996 Adjustment (24 CFR 1000.340)	Unadjusted FY 2020 Allocation	FY 2020 Repayment Amount	FY 2020 Undisbursed Funds Adjustment (24 CFR 1000.329)	Minimum Allocation Adjustment (24 CFR 1000.329)	FY 2020 Final Allocation	
ALASKA	Nunam Iqua (Sheldon's Point)	192	4	15	4	15	4	23	263	198	0	\$9,311	\$670,883	1.74	\$0	\$60,833	\$12,826	(\$1,086)	\$0	\$92,573	\$0	\$0	\$0	\$92,573
ALASKA	Nunapitluk	533	25	30	25	75	4	80	755	480	0	\$1,563	\$670,883	1.74	\$0	\$308,939	(\$403)	(\$3,573)	\$0	\$304,959	\$0	\$0	\$0	\$304,959
ALASKA	Ohogamiut	0	0	0	0	0	0	0	150	81	0	\$9,311	\$670,883	1.74	\$0	\$50,556	\$0	\$0	\$0	\$50,556	\$0	\$0	\$0	\$50,556
ALASKA	Onotaramiut (Bethel)	4,227	135	180	165	355	120	417	2,454	3,631	0	\$1,563	\$670,883	1.74	\$0	\$1,850,952	(\$23,045)	(\$21,192)	\$0	\$1,806,715	\$0	\$0	\$0	\$1,806,715
ALASKA	Oscarville	72	0	4	4	4	0	8	54	59	0	\$1,563	\$670,883	1.74	\$0	\$50,556	\$2,742	(\$909)	\$0	\$21,296	\$0	\$0	\$0	\$21,296
ALASKA	Ouzinkie	130	10	20	10	10	4	31	562	428	0	\$1,222	\$670,883	1.74	\$0	\$79,948	(\$1,442)	\$0	\$0	\$77,495	\$0	\$0	\$0	\$77,495
ALASKA	Parliut	0	0	0	0	0	0	0	78	78	0	\$9,311	\$670,883	1.74	\$0	\$50,556	\$0	\$0	\$0	\$50,556	\$0	\$0	\$0	\$50,556
ALASKA	Pauloff Harbor Village	16	0	0	0	0	0	0	51	51	0	\$1,118	\$670,883	1.74	\$0	\$50,556	\$0	\$0	\$0	\$50,556	\$0	\$0	\$0	\$50,556
ALASKA	Pedro Bay	28	4	0	4	4	0	4	135	130	0	\$892	\$670,883	1.74	\$0	\$50,556	\$0	\$0	\$0	\$24,038	\$0	\$0	\$0	\$24,038
ALASKA	Perryville	107	4	15	4	15	4	23	269	110	0	\$892	\$670,883	1.74	\$0	\$77,106	(\$1,555)	(\$876)	\$0	\$74,675	\$0	\$0	\$0	\$74,675
ALASKA	Petersburg	404	25	19	25	8	19	51	417	417	0	\$1,108	\$581,158	1.74	\$0	\$101,429	\$42,867	(\$1,673)	\$0	\$142,623	\$0	\$0	\$0	\$142,623
ALASKA	Pilot Point	55	8	4	4	8	4	16	156	96	0	\$892	\$670,883	1.74	\$0	\$50,556	\$0	\$0	\$0	\$50,556	\$0	\$0	\$0	\$50,556
ALASKA	Pilot Station	627	35	35	25	80	4	95	711	683	0	\$9,311	\$670,883	1.74	\$0	\$343,319	(\$2,633)	(\$3,950)	\$0	\$336,737	\$0	\$0	\$0	\$336,737
ALASKA	Pikias Point	119	10	4	10	25	4	24	137	136	0	\$9,311	\$670,883	1.74	\$0	\$104,559	(\$1,813)	(\$1,191)	\$0	\$101,554	\$0	\$0	\$0	\$101,554
ALASKA	Platmiut	58	0	4	4	4	0	8	70	71	0	\$1,563	\$670,883	1.74	\$0	\$50,556	(\$729)	\$0	\$0	\$49,827	\$0	\$0	\$0	\$49,827
ALASKA	Point Hope	637	15	20	40	85	4	70	873	859	0	\$1,328	\$715,983	1.74	\$0	\$349,843	\$0	(\$4,056)	\$0	\$345,787	\$0	\$0	\$0	\$345,787
ALASKA	Point Lay	177	10	4	15	40	4	26	184	184	0	\$1,328	\$715,983	1.74	\$0	\$158,371	\$0	(\$1,836)	\$0	\$156,535	\$0	\$0	\$0	\$156,535
ALASKA	Port Graham	140	25	15	15	15	10	33	296	99	0	\$1,139	\$581,158	1.74	\$0	\$103,781	\$0	(\$1,203)	\$0	\$102,577	\$0	\$0	\$0	\$102,577
ALASKA	Port Heiden	84	4	4	4	4	0	4	116	116	0	\$892	\$670,883	1.74	\$0	\$50,556	\$0	\$0	\$0	\$50,556	\$0	\$0	\$0	\$50,556
ALASKA	Port Lions	118	20	14	8	8	4	37	354	139	0	\$1,222	\$670,883	1.74	\$0	\$64,391	\$13,221	(\$900)	\$0	\$76,712	\$0	\$0	\$0	\$76,712
ALASKA	Portage Creek	1	0	0	0	0	0	0	60	33	0	\$1,312	\$670,883	1.74	\$0	\$50,556	\$0	\$0	\$0	\$50,556	\$0	\$0	\$0	\$50,556
ALASKA	Qagan Tayagunigin (Sand Point)	302	20	30	40	15	20	79	775	629	0	\$1,118	\$670,883	1.74	\$0	\$187,968	\$0	(\$2,179)	\$0	\$185,789	\$0	\$0	\$0	\$185,789
ALASKA	Qawalaringin (Unalaska)	210	15	4	20	4	10	2	657	659	0	\$1,657	\$670,883	1.74	\$0	\$69,243	\$0	(\$803)	\$0	\$68,440	\$0	\$0	\$0	\$68,440
ALASKA	Rampart	50	9	3	3	18	4	15	322	22	0	\$760	\$670,883	1.74	\$0	\$74,997	\$0	(\$699)	\$0	\$74,128	\$0	\$0	\$0	\$74,128
ALASKA	Red Devil	11	0	0	0	4	0	0	26	22	0	\$1,563	\$670,883	1.74	\$0	\$50,556	\$0	\$0	\$0	\$50,556	\$0	\$0	\$0	\$50,556
ALASKA	Ruby	144	15	20	4	35	4	39	418	156	0	\$760	\$715,983	1.74	\$0	\$158,211	(\$2,661)	(\$1,803)	\$0	\$153,746	\$0	\$0	\$0	\$153,746
ALASKA	Saint George Island	74	4	4	4	4	0	2	131	110	0	\$1,657	\$670,883	1.74	\$0	\$50,556	\$0	\$0	\$0	\$50,556	\$0	\$0	\$0	\$50,556
ALASKA	Saint Michael	391	30	35	15	60	10	66	430	429	0	\$1,599	\$670,883	1.74	\$0	\$275,122	(\$1,499)	(\$3,172)	\$0	\$270,451	\$0	\$0	\$0	\$270,451
ALASKA	Saint Paul Island	309	25	20	30	10	15	41	653	450	0	\$1,657	\$670,883	1.74	\$0	\$140,331	\$76,638	(\$2,515)	\$0	\$214,453	\$0	\$0	\$0	\$214,453
ALASKA	Salamatoff	264	4	8	4	4	8	16	380	149	0	\$1,139	\$581,158	1.74	\$0	\$50,556	\$0	\$0	\$0	\$50,556	\$0	\$0	\$0	\$50,556
ALASKA	Savotaga	691	70	30	145	30	10	151	803	815	0	\$1,599	\$715,983	1.74	\$0	\$892,005	(\$1,825)	(\$8,009)	\$0	\$882,772	\$0	\$0	\$0	\$882,772
ALASKA	Saxman	283	24	29	19	19	8	49	324	203	0	\$1,330	\$581,158	1.74	\$0	\$103,753	(\$2,549)	(\$1,173)	\$0	\$100,031	\$0	\$0	\$0	\$100,031
ALASKA	Scammon Bay	530	50	20	25	90	10	95	619	619	0	\$9,311	\$670,883	1.74	\$0	\$381,862	(\$6,006)	(\$4,355)	\$0	\$371,301	\$0	\$0	\$0	\$371,301
ALASKA	Selawik	741	35	40	45	120	15	81	1,057	1,057	0	\$1,326	\$670,883	1.74	\$0	\$482,913	(\$7,721)	(\$5,509)	\$0	\$469,683	\$0	\$0	\$0	\$469,683
ALASKA	Seldovia	132	4	10	8	8	4	4	427	110	0	\$1,139	\$581,158	1.74	\$0	\$50,556	\$0	\$0	\$0	\$50,556	\$0	\$0	\$0	\$50,556
ALASKA	Shageluk	74	10	4	0	15	4	14	249	125	0	\$760	\$670,883	1.74	\$0	\$67,910	(\$703)	(\$779)	\$0	\$66,428	\$0	\$0	\$0	\$66,428
ALASKA	Shaktolik	263	15	15	15	20	4	36	380	338	0	\$1,599	\$670,883	1.74	\$0	\$116,814	\$0	(\$1,352)	\$0	\$115,262	\$0	\$0	\$0	\$115,262
ALASKA	Sheshmaref	582	65	25	30	130	25	120	729	698	0	\$1,599	\$670,883	1.74	\$0	\$549,394	(\$7,378)	(\$6,284)	\$0	\$535,732	\$0	\$0	\$0	\$535,732
ALASKA	Shungnak	258	15	15	20	35	4	42	266	253	0	\$1,326	\$715,983	1.74	\$0	\$170,205	(\$5,005)	(\$1,911)	\$0	\$162,869	\$0	\$0	\$0	\$162,869
ALASKA	Silka Tribe (Baranof Island)	2,002	135	115	145	65	120	355	4,006	3,834	1,000	\$1,253	\$581,158	1.74	\$593,970	\$938,124	(\$10,935)	(\$12,975)	\$1,205,855	\$0	\$0	\$0	\$1,205,855	
ALASKA	Sitka Tribe	119	1	15	10	19	4	26	83	26	0	\$1,022	\$581,158	1.74	\$0	\$77,753	(\$492)	(\$3,856)	\$0	\$76,365	\$0	\$0	\$0	\$76,365
ALASKA	Sleetmute	74	4	10	4	15	4	18	126	111	0	\$1,563	\$670,883	1.74	\$0	\$70,471	\$6,892	(\$897)	\$0	\$76,466	\$0	\$0	\$0	\$76,466
ALASKA	Solomon	0	0	0	0	0	0	0	131	68	0	\$1,599	\$670,883	1.74	\$0	\$50,556	\$0	\$0	\$0	\$50,556	\$0	\$0	\$0	\$50,556
ALASKA	South Naknek	59	4	4	4	4	0	11	245	137	0	\$1,238	\$670,883	1.74	\$0	\$50,556	\$0	\$0	\$0	\$50,556	\$0	\$0	\$0	\$50,556
ALASKA	Stebbins Community Association	578	35	30	30	120	10	53	1,037	701	0	\$1,599	\$670,883	1.74	\$0	\$438,260	(\$2,643)	(\$5,050)	\$0	\$430,566	\$0	\$0	\$0	\$430,566
ALASKA	Stevens Village	65	10	0	0	10	4	10	364	109	0	\$760	\$670,883	1.74	\$0	\$50,865	\$12,394	(\$731)	\$0	\$62,348	\$0	\$0	\$0	\$62,348
ALASKA	Stony River	60	4	4	4	15	4	12	63	39	0	\$1,563	\$715,983	1.74	\$0	\$67,993	\$0	(\$791)	\$0	\$66,614	\$0	\$0	\$0	\$66,614
ALASKA	Sun'aq Tribe of Kodiak (Shoonak)	516	35	44	64	63	32	143	1,379	1,892	0	\$1,222	\$581,158	1.74	\$0	\$552,972	(\$3,225)	(\$4,055)	\$0	\$345,693	\$0	\$0	\$0	\$345,693
ALASKA	Takotna	25	4	4	4	8	4	4	42	21	0	\$760	\$715,983	1.74	\$0	\$50,556	\$0	\$0	\$0	\$50,556	\$0	\$0	\$0	\$50,556
ALASKA	Tanacross	117	20	15	4	20	4	39	169	124	0	\$1,234	\$670,883	1.74	\$0	\$110,077	\$31,205	(\$1,638)	\$0	\$139,645	\$0	\$0	\$0	\$139,645
ALASKA	Tanana	209	15	10	20	40	0	45	1,014	183	0	\$760	\$715,983	1.74	\$0	\$169,399	\$10,498	(\$2,086)	\$0	\$177,812	\$0	\$0	\$0	\$177,812
ALASKA	Tanginaq (Lesroo)	14	1	1	2	2	1	4	432	50	0	\$1,222	\$670,883	1.74	\$0	\$50,556	\$0	\$0	\$0	\$5				

FY 2020 IHBG Final Allocation

Office	Tribal	AIAN Persons (American Indian/Alaska Native)	HHLT 30% (AIAN Households with less than 30% Median Family Income)	HHLT 30-50% (AIAN Households between 30% and 50% of Median Family Income)	HHLT 50-80% (AIAN Households between 50% and 80% of Median Family Income)	HH Overcrowded (more than 1 person per room or without kitchen or plumbing)	HH Severe Cost (AIAN Households with Housing Expenses greater than 50% of Income)	Housing Shortage (Number of AIAN Households with less than 80% of Median Family Income)	Enrollment	TRSAIP	AEL (Allowable Expense Level)	FMR (Fair Market Rent)	TDC (Total Development Cost)	Inflation	FCA's Portion of Allocation (Formula Current Assisted Stock 24 CFR 1000.312-1000.322)	Needs Portion of Allocation (Needs Component 24 CFR 1000.324)	Phase Down Adjustment (24 CFR 1000.331)	FY 1996 Adjustment (24 CFR 1000.340)	Unadjusted FY 2020 Allocation	FY 2020 Repayment Amount	FY 2020 Undisbursed Funds Adjustment (24 CFR 1000.329)	Minimum Allocation Adjustment (24 CFR 1000.329)	FY 2020 Final Allocation
ALASKA	Tellida	3	0	0	0	0	0	0	2	3	0	\$780	\$715,983	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$24,038	\$74,594
ALASKA	Teller	240	25	15	10	50	4	50	202	312	0	\$1,599	\$670,883	1.74	\$0	\$203,230	\$0	(\$2,356)	\$200,874	\$0	\$0	\$0	\$200,874
ALASKA	Tellin	126	10	10	4	30	4	24	281	109	0	\$1,234	\$670,883	1.74	\$0	\$118,168	\$2,673	(\$1,401)	\$119,440	\$0	\$0	\$0	\$119,440
ALASKA	Tlingit and Haida Indian Tribes Central Council	3,788	195	242	177	147	197	568	25,949	13,255	757	\$1,457	\$581,158	1.74	\$3,932,858	\$1,425,225	\$0	(\$38,301)	\$5,319,782	\$0	\$0	\$0	\$5,319,782
ALASKA	Toniak	683	30	30	35	75	15	92	915	808	0	\$1,312	\$670,883	1.74	\$0	\$355,848	\$44,383	(\$4,640)	\$395,591	\$0	\$0	\$0	\$395,591
ALASKA	Tutisak	397	45	15	4	70	4	84	464	504	0	\$1,563	\$670,883	1.74	\$0	\$279,950	\$2,332	(\$3,219)	\$274,399	\$0	\$0	\$0	\$274,399
ALASKA	Tuntutlak	412	30	30	30	110	4	90	602	425	0	\$1,563	\$670,883	1.74	\$0	\$403,228	(\$6,895)	(\$4,597)	\$391,934	\$0	\$0	\$0	\$391,934
ALASKA	Tununak	347	20	20	15	60	4	65	350	350	0	\$1,563	\$670,883	1.74	\$0	\$236,879	(\$1,558)	(\$2,744)	\$233,976	\$0	\$0	\$0	\$233,976
ALASKA	Twin Hills	175	4	10	4	20	4	18	96	70	0	\$1,312	\$670,883	1.74	\$0	\$83,186	(\$1,177)	(\$951)	\$81,058	\$0	\$0	\$0	\$81,058
ALASKA	Tyonek	176	20	10	15	15	4	45	674	185	0	\$1,139	\$670,883	1.74	\$0	\$105,030	(\$632)	(\$1,210)	\$103,188	\$0	\$0	\$0	\$103,188
ALASKA	Ugashik	7	0	0	4	4	0	4	81	12	0	\$892	\$670,883	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$24,038	\$74,594
ALASKA	Unkumiut	56	6	1	0	0	0	7	61	60	0	\$1,563	\$670,883	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$24,038	\$74,594
ALASKA	Unalakleet	579	25	30	50	45	15	83	1,185	888	0	\$1,599	\$670,883	1.74	\$0	\$274,933	\$21,065	(\$3,432)	\$292,566	\$0	\$0	\$0	\$292,566
ALASKA	Unga	28	0	0	0	0	0	0	87	87	0	\$1,118	\$670,883	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$24,038	\$74,594
ALASKA	Venette	133	30	10	4	60	4	44	237	237	0	\$780	\$670,883	1.74	\$0	\$219,297	(\$521)	(\$2,536)	\$216,240	\$0	\$0	\$0	\$216,240
ALASKA	Wainwright	530	20	20	25	70	10	63	593	613	0	\$1,328	\$715,983	1.74	\$0	\$312,542	\$0	(\$3,623)	\$308,919	\$0	\$0	\$0	\$308,919
ALASKA	Wales	134	20	15	15	55	10	50	236	215	0	\$1,599	\$670,883	1.74	\$0	\$224,010	(\$1,229)	(\$2,583)	\$220,197	\$0	\$0	\$0	\$220,197
ALASKA	White Mountain	189	20	15	10	20	15	42	316	316	0	\$1,599	\$670,883	1.74	\$0	\$142,766	\$20,675	(\$1,895)	\$161,546	\$0	\$0	\$0	\$161,546
ALASKA	Wrangell	393	35	45	25	8	30	87	538	538	0	\$989	\$581,158	1.74	\$0	\$143,941	(\$2,938)	(\$1,635)	\$139,368	\$0	\$0	\$0	\$139,368
ALASKA	Yakutat	301	14	24	30	19	10	66	435	352	0	\$1,175	\$581,158	1.74	\$0	\$108,467	\$0	(\$1,258)	\$107,210	\$0	\$0	\$0	\$107,210
ALASKA	Yupik of Andreafski	89	4	0	4	10	4	8	248	134	0	\$931	\$670,883	1.74	\$0	\$50,556	\$49,273	\$0	\$99,829	\$0	\$0	\$0	\$99,829
ALASKA	TOTAL	134,625	7,321	6,860	7,300	10,581	4,837	19,439	200,208	149,187					\$31,937,496	\$60,353,477	\$404,167	\$465,126	\$93,220,266	\$0	\$0	\$1,758,843	\$94,979,125

S-App'x00050

USCA Case #20-5286

Document #1865756

Filed: 10/09/2020

Page 122 of 188

FY 2020 IHBG Final Allocation

Office	Tribe	AIAN Persons (American Indian/Alaska Native)	HHLT 30% (AIAN Households with less than 30% Median Family Income)	HHLT 30-50% (AIAN Households between 30% and 50% of Median Family Income)	HHLT 50-80% (AIAN Households between 50% and 80% of Median Family Income)	HH Severe Cost (AIAN Households with Housing Expenses greater than 50% of Income)	Housing Shortage (Number of AIAN Households with less than 80% of Median Family Income)	Enrollment	TRSAIP	ACL (Allowable Expense Level)	FMR (Fair Market Rent)	TDC (Total Development Cost)	Inflation	FCA's Portion of Allocation (Formula Current Assisted Stock 24 CFR 1000.312-1000.322)	Needs Portion of Allocation (Needs Component 24 CFR 1000.324)	Phase Down Adjustment (24 CFR 1000.331)	FY 1996 Adjustment (24 CFR 1000.340)	Unadjusted FY 2020 Allocation	FY 2020 Repayment Amount	CFR 1000.329 Undisbursed Funds Adjustment (24 CFR 1000.329)	Minimum Allocation Adjustment (24 CFR 1000.329)	FY 2020 Final Allocation	
CHICAGO	Aroostook Band of Micmacs	1,316	204	82	92	20	177	291	999	193	\$742	\$369,956	1.74	\$518,798	\$384,988	(\$5,652)	(\$10,413)	\$887,722	\$0	\$0	\$0	\$887,722	
CHICAGO	Bad River Band of the Lake Superior Tribe of Chippewa	2,356	219	194	134	85	160	380	2,338	238	\$700	\$394,018	1.74	\$1,130,852	\$563,625	(\$17,228)	(\$11,076)	\$1,666,173	\$0	\$0	\$0	\$1,666,173	
CHICAGO	Bay Mills Indian Community	1,021	61	61	76	11	55	74	1,646	194	\$700	\$362,337	1.74	\$646,422	\$151,355	(\$3,440)	(\$3,440)	\$787,442	\$72,122	\$0	\$0	\$959,564	
CHICAGO	Boise Fort Band, Minnesota Chippewa Tribe	680	70	40	49	23	29	111	2,988	1,986	\$947	\$368,213	1.74	\$850,026	\$146,022	(\$4,311)	\$38,224	\$1,029,961	\$0	\$0	\$0	\$1,029,961	
CHICAGO	Catawba Indian Nation	6,498	416	203	381	105	342	1,031	3,249	1,836	\$0	\$926	\$345,608	1.74	\$342,872	\$1,295,656	\$0	(\$18,989)	\$1,619,728	\$0	\$0	\$1,619,728	
CHICAGO	Cayuga Nation	950	104	61	79	13	91	244	475	0	\$838	\$454,877	1.74	\$0	\$291,325	\$0	(\$3,377)	\$287,948	\$0	\$0	\$0	\$287,948	
CHICAGO	Chickasaw Nation	1,798	871	76	127	16	78	290	899	0	\$1,072	\$382,853	1.74	\$0	\$289,111	\$0	(\$3,120)	\$285,991	\$0	\$0	\$0	\$285,991	
CHICAGO	Chickasaw Nation	350	17	15	25	3	15	56	175	0	\$1,072	\$382,853	1.74	\$0	\$289,111	\$0	(\$3,120)	\$285,991	\$0	\$0	\$0	\$285,991	
CHICAGO	Chickasaw Nation	1,965	140	150	114	19	155	384	1,600	170	\$742	\$384,026	1.74	\$1,29,924	\$374,889	\$33,368	\$2,149	\$540,310	\$0	\$0	\$0	\$74,594	
CHICAGO	Chickasaw Nation	7,525	600	360	590	95	405	1,297	15,705	13,562	219	\$683	\$357,874	1.74	\$1,889,167	\$1,649,831	(\$36,375)	(\$13,734)	\$3,488,690	(\$6,933)	\$0	\$0	\$3,481,757
CHICAGO	Chickasaw Nation	6,266	666	285	356	260	441	1,065	3,902	3,379	\$201	\$371,887	1.74	\$1,790,280	\$2,014,987	(\$35,873)	(\$32,711)	\$3,736,684	\$0	\$0	\$0	\$3,736,684	
CHICAGO	Chickasaw Nation	7,111	59	41	39	15	31	85	1,295	1,352	195	\$742	\$391,988	1.74	\$203,177	\$159,952	(\$8,334)	(\$4,060)	\$410,246	\$0	\$0	\$0	\$410,246
CHICAGO	Chickasaw Nation	4,62	75	25	50	55	15	130	1,107	477	175	\$742	\$405,798	1.74	\$203,177	\$159,952	(\$8,334)	(\$4,060)	\$410,246	\$0	\$0	\$0	\$410,246
CHICAGO	Chickasaw Nation	4,893	339	274	403	69	249	943	4,101	3,204	175	\$800	\$356,112	1.74	\$457,850	\$832,146	\$0	(\$14,829)	\$1,275,967	\$0	\$0	\$1,275,967	
CHICAGO	Chickasaw Nation	2,621	290	165	145	45	295	590	3,719	3,604	170	\$700	\$357,880	1.74	\$190,844	\$856,197	(\$20,799)	(\$11,898)	\$1,014,344	\$0	\$0	\$0	\$1,014,344
CHICAGO	Chickasaw Nation	4,70	34	30	30	20	15	79	780	611	0	\$700	\$358,545	1.74	\$95,214	\$108,441	(\$953)	(\$2,350)	\$200,353	\$0	\$0	\$0	\$200,353
CHICAGO	Chickasaw Nation	15,646	1,150	738	1,152	380	894	2,881	7,823	6,611	\$237	\$941	\$393,884	1.74	\$1,163,651	\$3,181,264	(\$40,564)	(\$39,620)	\$4,264,730	\$0	\$0	\$0	\$4,264,730
CHICAGO	Chickasaw Nation	619	96	38	43	10	83	102	1,800	470	\$742	\$389,956	1.74	\$483,658	\$175,140	(\$2,528)	(\$4,376)	\$651,894	\$0	\$0	\$0	\$651,894	
CHICAGO	Chickasaw Nation	2,376	142	143	177	26	129	214	3,315	2,829	161	\$726	\$362,337	1.74	\$1,611,034	\$358,344	(\$4,536)	(\$15,470)	\$1,949,272	\$0	\$0	\$0	\$1,949,272
CHICAGO	Chickasaw Nation	3,045	210	255	265	105	80	389	6,230	8,062	159	\$792	\$394,018	1.74	\$2,410,639	\$714,795	(\$17,901)	(\$17,106)	\$3,090,426	\$0	\$0	\$0	\$3,090,426
CHICAGO	Chickasaw Nation	2,518	390	180	140	35	210	535	3,432	2,178	160	\$700	\$391,988	1.74	\$1,096,815	\$827,895	(\$33,763)	(\$6,015)	\$1,882,931	\$133,879	\$0	\$0	\$2,016,810
CHICAGO	Chickasaw Nation	135	10	4	4	10	4	10	672	180	\$700	\$392,337	1.74	\$223,356	\$30,284	(\$3,749)	(\$2,170)	\$265,019	\$0	\$0	\$0	\$265,019	
CHICAGO	Chickasaw Nation	6,972	632	428	492	237	307	1,210	8,937	8,875	\$761	\$381,970	1.74	\$2,241,004	\$1,806,530	(\$28,925)	(\$29,286)	\$3,991,322	\$0	\$0	\$0	\$3,991,322	
CHICAGO	Chickasaw Nation	1,347	93	93	108	38	114	294	3,996	1,540	0	\$733	\$356,112	1.74	\$0	\$303,170	\$0	(\$3,515)	\$299,655	\$0	\$0	\$0	\$299,655
CHICAGO	Chickasaw Nation	3,563	246	199	294	50	182	739	4,073	2,333	0	\$765	\$364,234	1.74	\$0	\$629,431	\$0	(\$7,297)	\$622,134	\$0	\$0	\$0	\$622,134
CHICAGO	Chickasaw Nation	728	85	10	45	20	50	140	1,084	729	232	\$700	\$388,061	1.74	\$0	\$208,224	\$0	(\$2,066)	\$206,158	\$0	\$0	\$0	\$206,158
CHICAGO	Chickasaw Nation	67,949	4,885	3,460	4,205	1,265	3,315	12,438	62,610	32,076	170	\$712	\$354,026	1.74	\$712,623	\$14,551,390	(\$228,382)	(\$174,314)	\$14,861,216	\$0	\$0	\$0	\$14,861,216
CHICAGO	Chickasaw Nation	170	4	4	4	4	4	12	1,077	796	0	\$1,151	\$46,823	1.74	\$0	\$50,556	\$4,961	\$0	\$55,517	\$0	\$0	\$0	\$74,594
CHICAGO	Chickasaw Nation	2,630	250	130	245	35	305	625	2,630	0	\$1,524	\$456,868	1.74	\$0	\$83,366	(\$13,947)	(\$9,542)	\$813,474	\$0	\$0	\$0	\$813,474	
CHICAGO	Chickasaw Nation	836	35	61	74	20	42	170	418	192	0	\$663	\$368,204	1.74	\$0	\$198,848	(\$4,384)	(\$2,262)	\$192,012	\$0	\$0	\$0	\$192,012
CHICAGO	Chickasaw Nation	3,194	265	180	180	130	95	346	9,080	5,291	159	\$700	\$406,200	1.74	\$2,101,883	\$762,733	(\$2,701)	(\$15,914)	\$2,846,000	\$0	\$0	\$0	\$2,846,000
CHICAGO	Chickasaw Nation	0	0	0	0	0	0	0	400	589	0	\$1,132	\$42,607	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$74,594
CHICAGO	Chickasaw Nation	4,518	350	184	280	83	219	705	3,800	2,337	228	\$531	\$411,869	1.74	\$807,796	\$844,128	(\$19,850)	(\$13,244)	\$1,618,930	\$0	\$0	\$0	\$1,618,930
CHICAGO	Chickasaw Nation	11,569	614	359	709	659	335	1,389	9,483	8,313	162	\$668	\$331,312	1.74	\$1,532,557	\$1,754,251	(\$13,887)	(\$10,068)	\$3,254,863	\$31,960	\$0	\$0	\$3,222,903
CHICAGO	Chickasaw Nation	2,224	179	23	159	24	154	361	2,400	0	\$814	\$359,750	1.74	\$0	\$377,120	\$0	(\$4,372)	\$372,748	\$0	\$0	\$0	\$372,748	
CHICAGO	Chickasaw Nation	12,867	711	697	1,066	194	577	2,410	7,699	3,011	161	\$804	\$334,869	1.74	\$379,259	\$1,930,303	\$0	(\$24,422)	\$2,285,140	\$0	\$0	\$0	\$2,285,140
CHICAGO	Chickasaw Nation	740	37	27	46	7	47	110	370	0	\$1,104	\$365,565	1.74	\$0	\$151,782	\$0	(\$1,760)	\$150,023	\$0	\$0	\$0	\$150,023	
CHICAGO	Chickasaw Nation	2,116	215	110	35	10	105	360	2,732	2,732	0	\$1,099	\$442,763	1.74	\$0	\$397,110	\$0	(\$4,604)	\$392,407	\$0	\$0	\$0	\$392,407
CHICAGO	Chickasaw Nation	2,202	120	100	230	40	160	450	1,449	372	0	\$757	\$370,190	1.74	\$0	\$442,984	(\$9,756)	(\$5,022)	\$428,167	\$0	\$0	\$0	\$428,167
CHICAGO	Chickasaw Nation	2,000	172	93	132	32	144	368	1,000	650	251	\$637	\$422,476	1.74	\$233,046	\$584,933	(\$13,315)	(\$3,691)	\$790,973	\$0	\$0	\$0	\$790,973
CHICAGO	Chickasaw Nation	14,695	945	745	995	260	705	2,490	17,129	5,382	184	\$633	\$406,200	1.74	\$1,434,685	\$2,709,317	(\$44,979)	(\$40,160)	\$4,056,844	\$0	\$0	\$0	\$4,056,844
CHICAGO	Chickasaw Nation	0	0	0	0	0	0	0	0	0	0	\$858	\$422,476	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$74,594
CHICAGO	Chickasaw Nation	40	8	15	8	0	8	31	398	38	0	\$1,067	\$382,853	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$74,594
CHICAGO	Chickasaw Nation	619	80	65	50	4	30	108	1,364	707	183	\$827	\$384,084	1.74	\$878,396	\$1,613,617	(\$20,439)	(\$8,639)	\$1,029,046	\$0	\$0	\$0	\$1,029,046
CHICAGO	Chickasaw Nation	3,240	305	170	240	35	185	663	2,367	640	181	\$901	\$394,084	1.74	\$388,979	\$628,979	(\$4,326)	(\$10,323)	\$987,011	\$0	\$0	\$0	\$987,011
CHICAGO	Chickasaw Nation	1,491	130	95	106	10	60	261	2,014	906	181	\$827	\$384,084	1.74	\$577,261	\$248,963	\$0	(\$5,218)	\$821,006	(\$535)	\$0	\$0	\$820,471
CHICAGO	Chickasaw Nation	5,850	323	317	484	88	262	1,039	2,925	1,567	167	\$864	\$334,869	1.74	\$527,052	\$968,724	(\$11,154)	(\$1,141)	\$1,373,481	\$0	\$0	\$0	\$1,373,481
CHICAGO	Chickasaw Nation	8,110	336	595	718	190	403	1,634	4,055	1,712	238	\$779	\$411,017	1.74	\$87,498	\$2,140,550	(\$47,128)	(\$25,053)	\$2,135,668	\$0	\$0	\$0	\$2,135,668
CHICAGO	Chickasaw Nation	434	21	18	31	4	19	70	217	0	\$991	\$382,853	1.74	\$0	\$65,431	\$0	(\$7,591)	\$64,673	\$0	\$0	\$0	\$64,673	
CHICAGO	Chickasaw Nation	1,046	85	75	50	25	40	93	2,504	144	\$744	\$394,018	1.74	\$934,243	\$226,154	(\$5,942)	(\$5,963)	\$1,147,572	\$0	\$0	\$0	\$1,147,572	
CHICAGO	Chickasaw Nation	7,075	1,060	289	456	416	494	1,806	11,806	10,338	186	\$766	\$381,970	1.74	\$2,098,456	\$2,527,337	(\$8,479)	(\$3,646)	\$4,580,666	\$0	\$0	\$0	\$4,580,666
CHICAGO	Chickasaw Nation	982	45	35	85	50	10	145	1,334	196	\$696	\$374,768	1.74	\$1,29,506	\$199,800	\$0	(\$3,566)	\$325,540	\$0	\$0	\$0	\$325,540	
CHICAGO	Chickasaw Nation	6,544	441	352	377	126	525	1,119	3,277	1,799	188	\$735	\$377,970	1.74	\$340,470	\$1,340,534	(\$78,144)	(\$17,182)	\$1,585,677	\$0	\$0	\$0	\$1,585,677
CHICAGO	Chickasaw Nation	1,466	238	67	133	14	134	243	2,909	171	\$719	\$394,018	1.74	\$1,253,434	\$370,701	(\$16,076)	(\$15,490)	\$1,592,579	\$0	\$0	\$0	\$1,592,579	

FY 2020 IHBG Final Allocation

Office	Tribal	AIAN Persons (American Indian/Alaska Native)	HHLT 30% (AIAN Households with less than 30% Median Family Income)	HHLT 30-50% (AIAN Households between 30% and 50% of Median Family Income)	HHLT 50-80% (AIAN Households between 50% and 80% of Median Family Income)	HH Overcrowded (AIAN Households with more than 1 person per room or without kitchen or plumbing)	HH Severe Cost (AIAN Households with Housing Expenses greater than 50% of Income)	Housing Shortage (Number of AIAN Households with less than 80% of Median Family Income)	Enrollment	TRSAIP	AEL (Allowable Expense Level)	FMR (Fair Market Rent)	TDC (Total Development Cost)	Inflation	FCA's Portion of Allocation (Formula Current Assisted Stock 24 CFR 1000.312-1000.322)	Needs Portion of Allocation (Needs Component 24 CFR 1000.324)	Phase Down Adjustment (24 CFR 1000.331)	FY 1996 Adjustment (24 CFR 1000.340)	Unadjusted FY 2020 Allocation	FY 2020 Repayment Amount	FY 2020 Undisbursed Funds Adjustment (24 CFR 1000.329)	Minimum Allocation Adjustment (24 CFR 1000.329)	FY 2020 Final Allocation
CHICAGO	Sault Ste. Marie Tribe of Chippewa Indians	13,788	822	830	1,027	152	749	2,245	44,395	16,415	238	\$706	\$361,073	1.74	\$2,923,483	\$2,243,342	(\$29,917)	(\$45,489)	\$5,091,420	\$0	\$0	\$0	\$5,091,420
CHICAGO	Seminole Tribe of Florida	1,749	165	32	74	27	83	271	3,991	3,165	196	\$1,013	\$342,605	1.74	\$0	\$331,858	(\$13,377)	\$81,727	\$1,000,208	\$0	\$0	\$0	\$1,000,208
CHICAGO	Seneca Nation of New York	3,977	320	300	354	115	144	793	8,124	3,794	159	\$761	\$454,877	1.74	\$1,354,623	\$1,199,902	\$0	(\$27,367)	\$2,527,158	\$0	\$0	\$0	\$2,527,158
CHICAGO	Shakopee Mdewakanton Sioux Community	301	25	4	10	0	35	39	391	655	232	\$1,151	\$437,345	1.74	\$0	\$92,351	\$8,664	(\$1,171)	\$99,844	\$0	\$0	\$0	\$99,844
CHICAGO	Shinsock Indian Nation	567	10	10	4	0	4	24	1,292	368	0	\$1,907	\$533,607	1.74	\$807,594	\$0	\$64,317	\$0	\$114,873	\$0	\$0	\$0	\$114,873
CHICAGO	Sovacoan Chippewa Community	670	56	39	36	15	29	6	1,541	1,274	205	\$700	\$391,988	1.74	\$0	\$132,215	(\$3,678)	(\$6,857)	\$929,275	(\$24,986)	\$0	\$0	\$904,279
CHICAGO	St. Regis Mohawk Tribe	4,993	500	220	345	85	310	186	11,703	11,702	228	\$746	\$404,320	1.74	\$670,312	\$1,388,970	(\$46,233)	(\$21,993)	\$1,991,057	\$0	\$0	\$0	\$1,991,057
CHICAGO	Stockbridge-Munsee Community	557	70	65	85	10	25	166	1,569	681	162	\$700	\$400,154	1.74	\$362,167	\$196,428	(\$2,018)	(\$2,201)	\$554,376	\$0	\$0	\$0	\$554,376
CHICAGO	Tonawanda Band of Seneca	0	0	0	0	0	0	0	0	0	0	\$838	\$440,699	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$50,556
CHICAGO	Tuscarora Nation	0	0	0	0	0	0	0	0	0	0	\$1,058	\$392,853	1.74	\$0	\$181,308	\$0	(\$2,102)	\$179,206	\$0	\$0	\$0	\$179,206
CHICAGO	Upper Mattaponi Tribe	1,210	58	51	85	11	53	195	605	439	232	\$700	\$422,175	1.74	\$68,681	\$168,314	\$43,378	(\$3,250)	\$277,122	\$0	\$0	\$0	\$277,122
CHICAGO	Upper Sioux Indian Community	705	18	55	30	40	14	88	483	1,450	170	\$679	\$564,026	1.74	\$0	\$251,044	\$0	(\$2,910)	\$248,133	\$0	\$0	\$0	\$248,133
CHICAGO	Wacanamaw Sioux Tribe	1,329	74	45	80	25	59	195	1,450	1,450	644	\$1,684	\$576,105	1.74	\$368,988	\$74,345	\$32,210	(\$2,571)	\$472,873	\$0	\$0	\$0	\$472,873
CHICAGO	Wampanoag Tribe of Gay Head (Aquinnah)	408	15	35	0	10	8	26	1,056	304	195	\$708	\$374,251	1.74	\$1,931,592	\$1,434,690	(\$34,342)	(\$27,187)	\$3,304,773	\$0	\$0	\$0	\$3,304,773
CHICAGO	White Earth Band, Minnesota Chippewa Tribe	6,087	555	375	335	150	275	987	19,506	7,926	195	\$708	\$374,251	1.74	\$1,931,592	\$1,434,690	(\$34,342)	(\$27,187)	\$3,304,773	\$0	\$0	\$0	\$3,304,773
CHICAGO	TOTAL	277,995	20,966	14,566	18,977	6,122	14,776	48,720	348,463	206,004					\$40,623,451	\$69,971,162	(\$742,568)	(\$151,966)	\$99,700,079	\$141,577	\$0	\$171,507	\$100,013,164

S-App'x00052

FY 2020 IHBG Final Allocation

Office	Tribe	AIAN Persons (American Indian/Alaska Native)	HHT 30% (AIAN Households with less than 30% Median Family Income)	HHT 30-50% (AIAN Households between 30% and 50% of Median Family Income)	HHT 50-80% (AIAN Households between 50% and 80% of Median Family Income)	HH Overcrowded (AIAN Households with more than 1 person per room or without kitchen or plumbing)	HH Severe Cost (AIAN Households with Housing Expenses greater than 50% of Income)	Housing Shortage (Number of AIAN Households with less than 80% of Median Family Income)	Enrollment	TSAIP	AEL (Allowable Expense Level)	FMR (Fair Market Rent)	TDC (Total Development Cost)	Inflation	FACS Portion of Allocation (Formula Current Assisted Stock 24 CFR 1000.312-1000.322)	Needs Portion of Allocation (Needs Component 24 CFR 1000.324)	Phase Down Adjustment (24 CFR 1000.331)	FY 1996 Adjustment (24 CFR 1000.340)	Unadjusted FY 2020 Allocation	FY 2020 Repayment Amount	CFR 1000.329	Minimum Allocation Adjustment (24 CFR 1000.329)	FY 2020 Final Allocation
DENVER	Apachee Nation (Crow)	7,639	394	289	215	395	174	692	11,407	8,058	206	\$764	\$366,398	1.74	\$1,319,153	\$1,447,149	\$0	(\$1,108)	\$2,755,215	(\$255,202)	\$0	\$0	\$2,500,013
DENVER	Arapaho Tribe of the Wind River Reservation	5,809	257	250	309	270	97	650	10,450	6,068	149	\$801	\$364,475	1.74	\$1,110,758	\$1,014,314	\$0	(\$1,269)	\$2,112,463	\$0	\$0	\$0	\$2,112,463
DENVER	Assiniboine & Sioux Tribes of Ft. Peck	7,351	539	365	320	335	99	681	13,509	7,656	145	\$700	\$364,368	1.74	\$3,401,421	\$1,093,374	\$0	(\$7,334)	\$4,487,461	\$0	\$0	\$0	\$4,487,461
DENVER	Blackfeet Tribe	9,307	895	545	380	315	345	1,123	17,138	9,088	148	\$700	\$366,721	1.74	\$4,737,358	\$1,988,106	(\$23,035)	(\$30,734)	\$6,681,676	(\$116,361)	\$0	\$0	\$6,565,297
DENVER	Cheyenne River Sioux	6,519	530	310	340	270	175	482	15,376	15,376	153	\$718	\$32,821	1.74	\$4,325,117	\$1,182,969	\$0	(\$20,323)	\$5,487,164	\$0	\$0	\$0	\$5,487,164
DENVER	Chippewa Cree Indians of the Rocky Boy's Reservation	3,505	265	175	170	90	60	322	6,880	3,379	217	\$700	\$368,600	1.74	\$1,948,003	\$566,954	\$54,845	(\$3,820)	\$2,559,972	\$0	\$0	\$0	\$2,559,972
DENVER	Crow Creek Sioux Tribe	1,939	145	100	115	120	60	161	3,507	3,002	158	\$723	\$32,955	1.74	\$1,235,128	\$416,037	\$0	(\$6,806)	\$1,644,958	(\$41,996)	\$0	\$0	\$1,602,962
DENVER	Eastern Shoshone Tribe of the Wind River Reservation	3,114	138	134	166	144	52	274	3,994	4,036	149	\$801	\$342,859	1.74	\$957,148	\$521,944	\$0	(\$5,120)	\$1,473,970	\$25,086	\$0	\$0	\$1,499,056
DENVER	Flandreau Santee Sioux Tribe	356	30	30	20	10	10	30	723	1,922	204	\$700	\$359,081	1.74	\$322,494	\$70,371	(\$1,018)	(\$2,546)	\$389,301	\$0	\$0	\$0	\$389,301
DENVER	Fort Belknap Indian Community	2,969	204	185	119	74	74	266	6,304	6,035	184	\$700	\$368,600	1.74	\$1,514,555	\$492,011	\$8,175	(\$2,510)	\$2,012,231	\$0	\$0	\$0	\$2,012,231
DENVER	Goshute Reservation Confederated Tribes	1,060	65	52	65	24	66	155	530	185	402	\$874	\$362,242	1.74	\$2,559,494	\$188,406	\$0	(\$4,200)	\$443,700	\$0	\$0	\$0	\$443,700
DENVER	Little Shell Tribe of Chippewa Indians	6,797	760	345	425	255	565	1,530	5,375	0	0	\$747	\$348,600	1.74	\$0	\$2,069,863	\$0	(\$23,997)	\$2,045,866	\$0	\$0	\$0	\$2,045,866
DENVER	Lower Brule Sioux Tribe	1,488	95	70	70	75	35	59	3,036	1,496	171	\$701	\$343,107	1.74	\$1,054,359	\$265,851	\$0	(\$3,810)	\$1,316,400	\$0	\$0	\$0	\$1,316,400
DENVER	Northern Cheyenne Tribe	5,058	315	235	185	230	185	438	10,486	4,986	148	\$721	\$366,398	1.74	\$1,901,081	\$1,050,949	\$0	(\$2,455)	\$2,949,575	\$0	\$0	\$0	\$2,949,575
DENVER	Northwestern Band of the Shoshone Nation	932	29	29	21	21	9	65	466	357	0	\$731	\$365,923	1.74	\$89,298	\$36,518	\$12,896	(\$2,297)	\$195,515	\$0	\$0	\$0	\$195,515
DENVER	Oglala Lakota Sioux Tribe	17,669	1,255	660	685	1,240	425	1,219	43,146	43,146	151	\$700	\$362,960	1.74	\$7,765,457	\$3,768,712	\$0	(\$67,177)	\$11,466,991	\$0	\$0	\$0	\$11,466,991
DENVER	Omaha Tribe	2,559	170	90	125	115	70	222	5,853	1,634	194	\$701	\$357,185	1.74	\$1,033,043	\$490,851	\$0	(\$4,941)	\$1,518,753	\$0	\$0	\$0	\$1,518,753
DENVER	Paiute Indian Tribe of Utah	1,682	86	65	91	105	69	82	841	841	218	\$824	\$354,406	1.74	\$1,592,114	\$366,707	(\$7,370)	(\$10,817)	\$1,940,634	\$0	\$0	\$0	\$1,940,634
DENVER	Poncha Tribe of Nebraska	8,380	773	477	493	213	589	1,682	4,190	1,059	256	\$865	\$357,185	1.74	\$3,655,538	\$2,231,251	(\$22,486)	(\$28,845)	\$2,544,456	\$0	\$0	\$0	\$2,544,456
DENVER	Rosebud Sioux Tribe	10,729	950	429	414	620	355	917	26,237	22,293	127	\$702	\$343,107	1.74	\$5,303,085	\$2,310,888	\$0	(\$46,319)	\$7,567,654	\$0	\$0	\$0	\$7,567,654
DENVER	Sallish and Kootenai Tribes	8,519	785	498	625	304	389	1,495	8,102	9,924	211	\$750	\$367,033	1.74	\$2,926,365	\$2,051,258	(\$51,943)	(\$27,390)	\$4,898,289	\$0	\$0	\$0	\$4,898,289
DENVER	Santee Sioux Nation	741	70	45	70	30	20	83	2,766	732	169	\$700	\$363,259	1.74	\$772,113	\$164,449	(\$943)	\$13,991	\$949,710	\$0	\$0	\$0	\$949,710
DENVER	Sisseton-Walpaton Oyate	4,635	300	205	230	69	175	257	11,763	11,763	133	\$700	\$367,033	1.74	\$2,985,010	\$718,443	(\$2,857)	(\$18,414)	\$3,682,182	\$0	\$0	\$0	\$3,682,182
DENVER	Skull Valley Band of Goshute Indians	29	0	4	4	0	0	8	162	26	0	\$897	\$362,242	1.74	\$0	\$50,956	\$0	\$0	\$50,956	\$0	\$0	\$24,038	\$74,994
DENVER	Southern Ute Indian Tribe	1,836	165	90	109	20	125	248	1,420	2,780	160	\$1,031	\$344,729	1.74	\$935,351	\$400,316	(\$12,890)	(\$7,367)	\$1,315,411	(\$42,192)	\$0	\$0	\$1,273,219
DENVER	Spirit Lake Tribe	3,942	395	165	155	195	70	389	5,927	5,759	166	\$700	\$368,428	1.74	\$2,083,468	\$823,690	(\$1,026)	(\$14,804)	\$2,891,327	\$0	\$0	\$0	\$2,891,327
DENVER	Standing Rock Sioux Tribe	6,621	620	290	280	295	220	478	14,170	11,054	184	\$700	\$370,325	1.74	\$4,312,251	\$1,427,640	(\$20,111)	(\$29,248)	\$5,690,733	\$0	\$0	\$0	\$5,690,733
DENVER	Three Affiliated Tribes of Fort Berthold	5,382	390	175	265	179	109	364	15,013	8,773	159	\$954	\$366,264	1.74	\$3,359,148	\$907,034	(\$35,825)	(\$25,434)	\$4,276,573	\$0	\$0	\$0	\$4,276,573
DENVER	Turtle Mountain Band of Chippewa Indians	13,591	1,586	559	684	314	518	2,139	29,852	34,398	188	\$736	\$369,309	1.74	\$4,512,583	\$3,033,511	(\$26,972)	(\$34,108)	\$7,485,013	\$0	\$0	\$0	\$7,485,013
DENVER	Ute Indian Tribe of the Uintah & Ouray Reservation	3,289	255	95	140	75	145	381	3,174	3,174	136	\$892	\$362,242	1.74	\$996,383	\$635,948	\$12,439	(\$9,080)	\$1,535,709	(\$1,165)	\$0	\$0	\$1,534,544
DENVER	Ute Mountain Ute Tribe	1,903	160	65	95	19	40	170	2,070	1,855	167	\$773	\$350,820	1.74	\$990,933	\$270,714	\$19,206	(\$5,197)	\$1,275,755	\$0	\$0	\$0	\$1,275,755
DENVER	Winnebago Tribe	1,897	100	65	75	85	40	95	5,246	1,490	140	\$700	\$357,185	1.74	\$1,172,170	\$306,964	\$0	(\$9,593)	\$1,469,940	\$0	\$0	\$0	\$1,469,940
DENVER	Yankton Sioux Tribe	3,114	275	120	175	85	105	283	8,300	2,800	189	\$700	\$340,384	1.74	\$1,686,639	\$562,118	\$0	(\$11,959)	\$2,236,798	\$0	\$0	\$0	\$2,236,798
DENVER	TOTAL	160,360	13,016	7,212	7,535	6,391	5,469	17,410	297,423	235,149					\$66,876,014	\$32,985,687	(\$27,069)	(\$483,160)	\$99,351,453	(\$431,890)	\$0	\$24,038	\$98,943,641

S-App'x00053

FY 2020 IHBG Final Allocation

Office	Tribes	AIAN Persons (American Indian/Alaska Native)	HHLT 30% (AIAN Households with less than 30% Median Family Income)	HHLT 30-50% (AIAN Households between 30% and 50% of Median Family Income)	HHLT 50-80% (AIAN Households between 50% and 80% of Median Family Income)	HH Overcrowded (more than 1 person per room or without kitchen or plumbing)	HH Severe Cost (AIAN Households with Housing Expenses greater than 50% of Income)	Housing Shortage (Number of AIAN Households with less than 80% of Median Family Income)	Enrollment	TTSAP	AEL (Allowable Expense Level)	FMR (Fair Market Rent)	TDC (Total Development Cost)	Inflation	FAS Portion of Allocation (Formula Current Assisted Stock 24 CFR 1000.312-1000.322)	Needs Portion of Allocation (Needs Component 24 CFR 1000.324)	Phase Down Adjustment (24 CFR 1000.331)	FY 1996 Adjustment (24 CFR 1000.340)	Unadjusted FY 2020 Allocation	FY 2020 Repayment Amount	CFR 2020 Undisbursed Funds Adjustment (24 CFR 1000.329)	Minimum Allocation Adjustment (24 CFR 1000.329)	FY 2020 Final Allocation
OKLAHOMA	Absentee-Shawnee Tribe	8,708	301	316	549	200	272	842	4,354	25,583	138	\$839	\$320,587	1.74	\$1,744,166	\$1,245,840	\$0	(\$2,038)	\$2,969,867	(\$13,298)	\$0	\$0	\$2,956,669
OKLAHOMA	Alabama-Coushatta Tribe of Texas	676	25	35	25	4	10	58	1,113	511	0	\$753	\$315,229	1.74	\$95,981	\$67,602	(\$2,070)	(\$1,492)	\$160,022	\$0	\$0	\$0	\$160,022
OKLAHOMA	Alabama-Quassarte Tribal Town	922	42	39	57	15	30	137	461	988	0	\$865	\$317,048	1.74	\$0	\$140,649	(\$434)	(\$1,626)	\$138,889	\$0	\$0	\$0	\$138,889
OKLAHOMA	Apache Tribe	1,969	124	93	108	42	90	286	2,562	2,978	0	\$761	\$313,706	1.74	\$188,803	\$271,289	(\$1,475)	\$688,195	\$1,146,812	\$0	\$0	\$0	\$1,146,812
OKLAHOMA	Cardo Nation	3,247	205	153	378	69	149	516	4,911	4,911	143	\$702	\$313,706	1.74	\$119,070	\$453,654	(\$2,754)	(\$5,760)	\$564,221	\$0	\$0	\$0	\$564,221
OKLAHOMA	Cherokee Nation	123,029	6,644	6,793	8,677	2,487	4,844	20,908	319,558	197,684	163	\$746	\$317,048	1.74	\$14,030,769	\$16,880,247	(\$60,742)	(\$303,666)	\$30,706,068	\$3,043	\$0	\$0	\$30,706,068
OKLAHOMA	Cheyenne and Arapaho Tribes	19,974	591	760	1,002	370	508	2,293	12,945	7,440	0	\$799	\$324,421	1.74	\$213,540	\$2,073,968	(\$196)	(\$18,124)	\$2,269,187	\$0	\$0	\$0	\$2,269,187
OKLAHOMA	Chickasaw Nation	45,492	1,973	2,294	2,969	851	1,643	6,483	38,740	38,740	171	\$721	\$306,038	1.74	\$6,888,292	\$5,457,993	\$0	(\$107,272)	\$12,219,013	\$0	\$0	\$0	\$12,219,013
OKLAHOMA	Chickasaw Tribe	988	40	14	70	50	36	123	1,102	565	0	\$743	\$324,913	1.74	\$18,350	\$150,043	(\$7,648)	(\$1,526)	\$159,220	\$0	\$0	\$0	\$159,220
OKLAHOMA	Citizen Potawatomi Nation	50,447	2,955	2,770	3,864	1,023	2,149	9,171	226,296	98,371	137	\$712	\$313,214	1.74	\$3,903,941	\$7,223,495	(\$11,249)	(\$90,916)	\$11,025,271	\$0	\$0	\$0	\$11,025,271
OKLAHOMA	Citizian Potawatomi Nation	17,717	724	698	1,173	385	710	2,570	34,145	24,786	0	\$840	\$320,587	1.74	\$1,053,851	\$2,293,248	\$0	(\$28,510)	\$2,430,569	\$0	\$0	\$0	\$2,430,569
OKLAHOMA	Comanche Nation	10,125	639	476	556	217	465	1,471	12,514	15,312	0	\$641	\$321,769	1.74	\$1,053,855	\$1,383,726	(\$8,063)	(\$19,456)	\$2,410,061	\$24,837	\$0	\$0	\$2,434,898
OKLAHOMA	Coushatta Tribe	76	8	4	0	0	8	12	924	805	0	\$721	\$324,913	1.74	\$0	\$50,556	\$0	(\$19,456)	\$50,556	\$0	\$0	\$0	\$50,556
OKLAHOMA	Delaware Nation (Western)	388	25	18	21	8	18	52	1,462	588	0	\$702	\$313,706	1.74	\$41,898	\$53,511	(\$307)	(\$1,103)	\$94,000	\$0	\$0	\$0	\$94,000
OKLAHOMA	Delaware Tribe of Indians (Eastern)	0	0	0	0	0	0	0	11,014	0	188	\$709	\$317,048	1.74	\$341,463	\$53,511	\$0	\$234,192	\$756,437	\$0	\$0	\$0	\$756,437
OKLAHOMA	Eastern Shawnee Tribe	221	14	14	30	8	20	53	3,518	644	0	\$735	\$317,048	1.74	\$17,769	\$50,556	\$0	\$0	\$86,325	(\$27,442)	\$0	\$0	\$71,152
OKLAHOMA	Fort Sill Apache Tribe	403	25	19	22	9	19	59	785	610	0	\$721	\$313,706	1.74	\$28,083	\$56,064	(\$322)	(\$972)	\$82,854	\$0	\$0	\$0	\$82,854
OKLAHOMA	Iowa Tribe of Kansas and Nebraska	831	101	108	76	14	53	229	4,455	2,729	170	\$702	\$345,312	1.74	\$324,729	\$192,431	\$0	(\$5,090)	\$512,070	\$0	\$0	\$0	\$512,070
OKLAHOMA	Iowa Tribe of Oklahoma	722	39	23	51	18	33	111	748	2,824	131	\$736	\$326,338	1.74	\$7,276	\$104,929	(\$437)	(\$1,296)	\$110,473	\$0	\$0	\$0	\$110,473
OKLAHOMA	Jena Band of Choctaw Indians	0	0	0	0	0	0	0	243	133	0	\$709	\$315,328	1.74	\$0	\$50,556	\$1,851	\$0	\$52,407	\$0	\$0	\$0	\$52,407
OKLAHOMA	Kaw Nation	3,035	144	122	204	79	100	447	3,403	4,295	0	\$700	\$320,587	1.74	\$354,976	\$398,048	\$0	(\$1,474)	\$751,550	\$0	\$0	\$0	\$751,550
OKLAHOMA	Kaleegwa Tribal Town	1,464	66	61	90	25	48	218	732	350	0	\$865	\$315,131	1.74	\$0	\$221,618	(\$463)	(\$2,584)	\$218,992	\$0	\$0	\$0	\$218,992
OKLAHOMA	Kickapoo Traditional Tribe of Texas	918	29	19	48	15	19	77	459	366	180	\$711	\$301,861	1.74	\$117,777	\$97,539	(\$7,370)	(\$1,930)	\$208,018	\$0	\$0	\$0	\$208,018
OKLAHOMA	Kickapoo Tribe of Kansas	680	40	50	84	10	40	130	1,654	1,178	128	\$676	\$339,561	1.74	\$716,739	\$158,124	(\$3,486)	(\$591)	\$870,904	\$0	\$0	\$0	\$870,904
OKLAHOMA	Kickapoo Tribe of Oklahoma	3,266	110	145	115	29	75	352	2,675	2,675	0	\$712	\$315,131	1.74	\$108,249	\$286,847	\$0	(\$4,581)	\$390,516	\$0	\$0	\$0	\$390,516
OKLAHOMA	Kiowa Indian Tribe	7,225	456	340	397	155	332	1,158	11,000	10,927	0	\$721	\$313,706	1.74	\$176,001	\$1,010,049	(\$6,103)	(\$13,157)	\$1,166,790	\$0	\$0	\$0	\$1,166,790
OKLAHOMA	Miami Tribe	427	21	27	29	11	15	77	4,099	575	0	\$735	\$317,048	1.74	\$0	\$60,865	(\$1,305)	(\$691)	\$58,970	\$0	\$0	\$0	\$58,970
OKLAHOMA	Modoc Tribe	143	4	8	8	4	8	5	181	181	152	\$735	\$317,048	1.74	\$91,986	\$50,556	\$0	\$0	\$142,542	\$0	\$0	\$0	\$142,542
OKLAHOMA	Muscogee (Creek) Nation	104,574	5,074	5,165	7,494	1,683	4,328	17,713	72,169	55,817	144	\$814	\$317,048	1.74	\$2,550,083	\$13,977,947	(\$16,324)	(\$137,189)	\$16,274,516	(\$34,773)	\$0	\$0	\$16,239,743
OKLAHOMA	Osage Nation	10,622	630	465	885	150	270	1,980	19,929	11,960	0	\$865	\$313,608	1.74	\$0	\$1,304,871	(\$4,434)	(\$4,949)	\$1,295,488	\$0	\$0	\$0	\$1,295,488
OKLAHOMA	Ozark-Missouri Tribe	392	20	24	25	20	4	21	3,107	1,903	146	\$700	\$320,587	1.74	\$308,000	\$62,863	\$3,418	(\$3,713)	\$370,868	\$0	\$0	\$0	\$370,868
OKLAHOMA	Ottawa Tribe	1,398	115	80	105	35	65	300	2,536	911	0	\$735	\$317,048	1.74	\$0	\$232,444	\$0	(\$2,893)	\$229,552	\$0	\$0	\$0	\$229,552
OKLAHOMA	Pawnee Nation	3,061	115	160	200	85	80	450	3,526	1,361	138	\$700	\$326,338	1.74	\$178,860	\$394,519	\$0	(\$5,961)	\$677,717	\$0	\$0	\$0	\$677,717
OKLAHOMA	Peoria Tribe	2,051	98	131	139	51	73	181	2,761	2,761	137	\$735	\$317,048	1.74	\$1,275,064	\$261,403	(\$5,657)	(\$10,251)	\$1,520,559	\$0	\$0	\$0	\$1,520,559
OKLAHOMA	Ponca Tribe of Indians of Oklahoma	2,223	105	90	150	58	73	310	3,195	3,146	129	\$700	\$320,587	1.74	\$288,034	\$288,034	\$0	(\$10,000)	\$894,402	\$0	\$0	\$0	\$894,402
OKLAHOMA	Prairie Band Potawatomi Nation	747	60	60	50	25	30	153	4,841	2,622	166	\$785	\$339,561	1.74	\$111,487	\$174,451	(\$3,914)	(\$3,781)	\$281,646	\$0	\$0	\$0	\$281,646
OKLAHOMA	Quapaw Tribe	1,352	105	70	125	29	35	300	5,294	1,765	0	\$735	\$317,048	1.74	\$0	\$199,099	\$0	(\$2,308)	\$196,791	\$0	\$0	\$0	\$196,791
OKLAHOMA	Sac and Fox Nation of Missouri	64	4	0	4	4	4	0	482	442	163	\$681	\$339,561	1.74	\$168,802	\$168,802	\$0	\$0	\$219,358	\$0	\$0	\$0	\$219,358
OKLAHOMA	Sac and Fox Nation, Oklahoma	6,384	420	340	410	180	340	1,090	3,949	9,277	131	\$726	\$320,587	1.74	\$446,603	\$1,321,783	(\$23,084)	(\$11,650)	\$1,733,553	\$0	\$0	\$0	\$1,733,553
OKLAHOMA	Seminole Nation	4,407	230	205	350	120	80	741	15,123	4,504	167	\$700	\$315,131	1.74	\$1,053,821	\$701,628	(\$1,662)	(\$1,924)	\$1,734,866	\$0	\$0	\$0	\$1,734,866
OKLAHOMA	Seneca-Cayuga Nation	847	35	54	114	22	23	203	5,557	1,290	0	\$712	\$317,048	1.74	\$0	\$131,420	\$0	(\$1,542)	\$129,866	\$0	\$0	\$0	\$129,866
OKLAHOMA	Shawnee Tribe	0	0	0	0	0	0	0	2,113	912	0	\$0	\$317,048	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$50,556
OKLAHOMA	Thlopthlocco Tribal Town	1,688	75	70	103	28	55	248	834	25,097	0	\$865	\$315,131	1.74	\$0	\$252,412	(\$1,074)	(\$2,914)	\$248,424	\$0	\$0	\$0	\$248,424
OKLAHOMA	Tonkawa Tribe	645	40	30	50	14	40	45	576	959	189	\$700	\$320,587	1.74	\$470,114	\$94,797	\$0	(\$4,970)	\$559,942	(\$477)	\$0	\$0	\$559,465
OKLAHOMA	Tunica-Biloxi Tribe	2,080	54	153	129	17	84	336	1,040	1,334	0	\$741	\$315,328	1.74	\$0	\$247,184	\$0	(\$2,866)	\$244,318	\$0	\$0	\$0	\$244,318
OKLAHOMA	United Keetoowah Band of Cherokee Indians	8,908	481	492	628	180	351	1,601	14,034	14,311	0	\$700	\$317,048	1.74	\$0	\$1,243,122	(\$4,682)	(\$14,366)	\$1,224,082	\$0	\$0	\$0	\$1,224,082
OKLAHOMA	Wichita and Affiliated Tribes	1,134	72	53	62	24	52	112	3,279	1,715	0	\$702	\$313,706	1.74	\$360,344	\$148,579	(\$732)	(\$5,892)	\$502,900	\$0	\$0	\$0	\$502,900
OKLAHOMA	Wyandotte Nation	3,115	179	160	345	29	199	689	4,279	2,179	0	\$723	\$317,048	1.74	\$53,133	\$500,846	\$0	(\$5,423)	\$547,556	\$0	\$0	\$0	\$547,556
OKLAHOMA TOTAL		458,776	23,689	23,200	31,774	8,652	17,881	74,293	874,677	597,014					\$38,381,246	\$62,223,319	(\$270,699)	\$44,386	\$100,376,253	(\$63,761)	\$0	\$92,297	\$100,406,797

FY 2020 IHBG Final Allocation

Office	Tribes	AIAN Persons (American Indian/Alaska Native)	HHLT 30% (AIAN Households with less than 30% Median Family Income)	HHLT 30-50% (AIAN Households between 30% and 50% of Median Family Income)	HHLT 50-80% (AIAN Households between 50% and 80% of Median Family Income)	HH Overcrowded (AIAN Households with more than 1 person per room or without kitchen or plumbing)	HH Severe Cost (AIAN Households with Housing Expenses greater than 50% of Income)	Housing Shortage (Number of AIAN Households with less than 80% of Median Family Income)	Enrollment	TRSAP	AEL (Allowable Expense Level)	FMR (Fair Market Rent)	TDC (Total Development Cost)	Inflation	FCA's Portion of Allocation (Formula Current Assisted Stock 24 CFR 1010.312-1000.322)	Needs Portion of Allocation (Needs Component 24 CFR 1000.324)	Phase Down Adjustment (24 CFR 1000.331)	FY 1996 Adjustment (24 CFR 1000.340)	Unadjusted FY 2020 Allocation	FY 2020 Repayment Amount	FY 2020 Undisbursed Funds Adjustment (24 CFR 1000.329)	Minimum Allocation Adjustment (24 CFR 1000.329)	FY 2020 Final Allocation	
PHOENIX	Acoma Pueblo	3,122	135	75	210	105	40	339	4,819	4,762	278	\$700	\$350,630	1.74	\$560,851	\$472,889	\$0	(\$7,465)	\$1,046,276	\$0	\$0	\$0	\$0	\$1,046,276
PHOENIX	Agua Caliente Band of Cahuilla Indians	521	40	25	14	14	70	79	418	418	0	\$1,232	\$445,002	1.74	\$159,019	\$3,475	(\$3,475)	(\$1,803)	\$153,741	\$0	\$0	\$0	\$0	\$153,741
PHOENIX	Ak-Chin Indian Community	885	170	75	65	25	0	279	730	984	329	\$1,073	\$352,566	1.74	\$259,670	\$230,963	(\$9,616)	(\$4,552)	\$477,466	\$0	\$0	\$0	\$0	\$477,466
PHOENIX	Alturas Indian Rancheria	0	0	0	0	0	0	0	11	11	0	\$700	\$487,874	1.74	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
PHOENIX	Augustine Band of Cahuilla Indians	0	0	0	0	0	0	0	8	8	0	\$1,232	\$445,002	1.74	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
PHOENIX	Bear River Band of the Rohrerville Rancheria	14	4	0	4	0	0	8	291	231	0	\$998	\$495,615	1.74	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
PHOENIX	Berry Creek Rancheria of Maidu Indians	1,252	65	97	103	32	118	245	626	427	380	\$1,144	\$479,753	1.74	\$201,815	\$376,740	(\$824)	(\$4,970)	\$572,762	\$0	\$0	\$0	\$0	\$572,762
PHOENIX	Big Lagoon Rancheria	19	0	0	0	0	0	0	17	17	0	\$998	\$495,615	1.74	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	
PHOENIX	Big Pine Paiute Tribe of the Owens Valley	448	40	20	40	10	20	75	627	414	233	\$929	\$465,540	1.74	\$309,767	\$132,036	(\$88)	(\$1,565)	\$440,130	\$0	\$0	\$0	\$0	\$440,130
PHOENIX	Big Sandy Rancheria of Western Mono Indians	1,032	35	32	50	26	46	116	516	405	0	\$970	\$491,079	1.74	\$0	\$250,172	(\$0)	(\$2,900)	\$247,272	\$0	\$0	\$0	\$0	\$247,272
PHOENIX	Big Valley Band of Pomo Indians	1,624	125	94	106	49	149	325	812	382	0	\$960	\$493,965	1.74	\$0	\$511,988	(\$3,058)	(\$5,900)	\$503,030	\$0	\$0	\$0	\$0	\$503,030
PHOENIX	Bishop Paiute Tribe	1,209	85	60	105	10	35	213	1,895	1,651	233	\$929	\$465,540	1.74	\$738,842	\$285,913	\$451,257	(\$9,717)	\$1,466,295	(\$25,539)	\$0	\$0	\$1,440,756	
PHOENIX	Blue Lake Rancheria	36	4	4	4	4	4	12	51	84	0	\$998	\$495,615	1.74	\$0	\$50,556	\$0	(\$1,186)	\$210,578	\$0	\$0	\$0	\$0	\$210,578
PHOENIX	Bridgeport Indian Colony	39	4	4	4	0	0	0	111	85	233	\$1,250	\$465,540	1.74	\$205,151	\$6,612	\$0	(\$1,186)	\$210,578	\$0	\$0	\$0	\$0	\$210,578
PHOENIX	Buena Vista Rancheria of Me-Wuk Indians	16	1	2	2	0	1	4	8	8	0	\$1,084	\$487,874	1.74	\$0	\$50,556	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$74,594
PHOENIX	Cabazon Band of Mission Indians	36	0	0	0	0	0	0	30	46	0	\$1,232	\$445,002	1.74	\$0	\$50,556	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$74,594
PHOENIX	Cacchi De He Band of Wintun Indians, Colusa Rancheria	58	4	4	4	4	4	12	69	109	0	\$893	\$479,753	1.74	\$0	\$50,556	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$74,594
PHOENIX	Cahito Tribe of the Laytonville Rancheria	262	16	14	15	8	17	11	131	293	380	\$1,078	\$493,965	1.74	\$344,992	\$77,748	(\$152)	(\$3,269)	\$419,319	\$0	\$0	\$0	\$0	\$419,319
PHOENIX	California Valley Miwok Tribe	173	4	4	4	0	4	12	397	293	395	\$1,232	\$445,002	1.74	\$0	\$50,556	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$74,594
PHOENIX	Campo Band of Diegueno Mission Indians	259	35	25	10	10	10	55	302	304	391	\$1,938	\$428,052	1.74	\$314,917	\$85,313	\$5,736	\$282,288	\$662,255	\$0	\$0	\$0	\$0	\$662,255
PHOENIX	Canton Grande Band of Diegueno Mission Indians	610	15	4	4	4	15	23	539	550	395	\$1,938	\$428,052	1.74	\$0	\$63,652	(\$2,111)	\$115,287	\$176,828	\$0	\$0	\$0	\$0	\$176,828
PHOENIX	Cedarville Rancheria	7	0	0	0	0	0	0	33	37	0	\$700	\$487,874	1.74	\$0	\$50,556	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$74,594
PHOENIX	Cher-Ae Heights Indian Tribe	231	19	15	25	8	4	4	1,137	226	374	\$1,232	\$443,084	1.74	\$802,656	\$42,456	(\$16,73)	\$19,649	\$63,289	\$0	\$0	\$0	\$0	\$63,289
PHOENIX	Chiemahuevi Indian Community (Trinidad Rancheria)	2,442	189	141	159	73	224	489	1,221	591	380	\$1,887	\$499,771	1.74	\$0	\$56,918	\$0	(\$660)	\$56,259	\$0	\$0	\$0	\$0	\$56,259
PHOENIX	Cloverdale Rancheria of Pomo Indians	872	53	47	48	25	57	148	436	436	0	\$1,887	\$499,771	1.74	\$0	\$295,368	(\$1,481)	(\$3,407)	\$290,480	\$0	\$0	\$0	\$0	\$290,480
PHOENIX	Cochiti Pueblo	947	35	35	35	20	4	77	1,180	641	300	\$877	\$350,630	1.74	\$157,770	\$106,154	(\$2,047)	(\$2,047)	\$261,877	(\$18,392)	\$0	\$0	\$0	\$243,485
PHOENIX	Cocopah Tribe	650	60	30	75	20	10	90	940	1,081	376	\$798	\$360,497	1.74	\$132,934	\$132,934	(\$3,045)	(\$8,084)	\$916,676	\$0	\$0	\$0	\$0	\$916,676
PHOENIX	Cold Springs Rancheria of Mono Indians	177	4	4	20	4	4	0	213	378	378	\$956	\$491,079	1.74	\$400,740	\$24,922	(\$22)	(\$3,344)	\$262,265	\$0	\$0	\$0	\$0	\$262,265
PHOENIX	Colorado River Indian Tribes	2,835	180	140	239	145	70	305	4,443	2,304	194	\$539	\$443,084	1.74	\$1,874,713	\$753,748	(\$25,086)	(\$15,334)	\$2,588,941	(\$19,515)	\$0	\$0	\$2,569,426	
PHOENIX	Coyote Valley Band of Pomo Indians	748	58	43	49	22	68	119	373	320	222	\$1,656	\$493,965	1.74	\$355,191	\$228,405	(\$5,466)	(\$5,466)	\$578,110	\$0	\$0	\$0	\$0	\$578,110
PHOENIX	Death Valley Timbisha Shoshone Tribe	682	31	10	31	32	17	72	391	273	0	\$929	\$465,540	1.74	\$0	\$129,180	(\$1,533)	(\$1,480)	\$126,168	\$0	\$0	\$0	\$0	\$126,168
PHOENIX	Dry Creek Rancheria Band of Pomo Indians	2,442	189	141	159	73	224	489	1,221	591	380	\$1,887	\$499,771	1.74	\$0	\$778,597	(\$4,317)	(\$8,977)	\$765,303	\$0	\$0	\$0	\$0	\$765,303
PHOENIX	Duck Valley Shoshone-Paiute Tribes	4,060	252	195	240	112	222	604	2,030	1,427	377	\$877	\$413,891	1.74	\$1,132,147	\$1,044,576	(\$0)	(\$16,238)	\$2,160,485	\$974	\$0	\$0	\$2,161,459	
PHOENIX	Duckwater Shoshone Tribe	774	48	38	48	18	48	116	387	114	402	\$878	\$418,047	1.74	\$351,554	\$159,409	(\$795)	(\$3,769)	\$506,399	\$0	\$0	\$0	\$0	\$506,399
PHOENIX	Elem Indian Colony of Pomo Indians (Sulphur Bank F	238	14	13	13	7	15	40	119	246	0	\$960	\$493,965	1.74	\$80,136	(\$399)	(\$924)	(\$924)	\$78,812	\$0	\$0	\$0	\$0	\$78,812
PHOENIX	Elk Valley Rancheria	56	4	4	10	4	4	18	93	48	0	\$945	\$487,874	1.74	\$0	\$50,556	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$74,594
PHOENIX	Elv Shoshone Tribe	1,198	74	58	71	33	66	174	599	300	402	\$874	\$418,047	1.74	\$357,078	\$310,557	(\$890)	(\$4,526)	\$662,219	\$0	\$0	\$0	\$0	\$662,219
PHOENIX	Enterprise Rancheria of Maidu Indians	1,768	92	138	145	46	166	359	916	438	0	\$1,144	\$479,753	1.74	\$86,632	\$534,943	(\$1,70)	(\$7,167)	\$612,118	\$0	\$0	\$0	\$0	\$612,118
PHOENIX	Enterprise Rancheria of Maidu Indians	3,120	194	150	185	86	171	467	1,560	1,692	336	\$878	\$328,200	1.74	\$706,483	\$734,365	\$0	(\$5,365)	\$1,435,483	(\$101,618)	\$0	\$0	\$1,333,865	
PHOENIX	Fallon Paiute-Shoshone Tribe	611	39	37	40	15	48	98	345	308	387	\$744	\$478,197	1.74	\$264,223	\$210,844	(\$939)	(\$2,878)	\$471,250	\$0	\$0	\$0	\$0	\$471,250
PHOENIX	Fort Bidwell Indian Community	56	4	4	4	4	4	18	101	90	233	\$929	\$465,540	1.74	\$37,686	\$50,556	\$0	(\$2,878)	\$88,242	\$0	\$0	\$0	\$0	\$88,242
PHOENIX	Fort Independence Indian Community of Paiute India	56	4	4	4	4	4	18	101	90	233	\$929	\$465,540	1.74	\$37,686	\$50,556	\$0	(\$2,878)	\$88,242	\$0	\$0	\$0	\$0	\$88,242
PHOENIX	Fort McDermitt Paiute and Shoshone Tribes	2,058	128	99	122	57	113	348	1,029	846	0	\$973	\$398,124	1.74	\$0	\$520,332	(\$6,032)	(\$6,032)	\$514,300	\$0	\$0	\$0	\$0	\$514,300
PHOENIX	Fort McDowell Yavapai Nation	1,083	55	20	55	15	25	130	927	1,120	315	\$1,073	\$352,566	1.74	\$0	\$150,303	(\$5,029)	(\$1,482)	\$143,792	\$0	\$0	\$0	\$0	\$143,792
PHOENIX	Fort Mojave Indian Tribe	723	45	40	45	25	29	21	1,436	1,102	359	\$920	\$395,143	1.74	\$1,351,672	\$151,691	(\$2,423)	(\$11,309)	\$1,489,630	(\$10,182)	\$0	\$0	\$1,479,448	
PHOENIX	Gila River Indian Community	13,361	375	315	695	470	210	1,614	20,479	14,966	187	\$1,073	\$356,626	1.74	\$5,288,303	\$2,428,601	(\$11,309)	(\$11,309)	\$7,665,728	\$0	\$0	\$0	\$0	\$7,665,728
PHOENIX	Graton Rancheria Federated Indians	2,866	209	102	91	24	205	402	1,433	445	0	\$2,809	\$525,628	1.74	\$0	\$871,041	(\$7,760)	(\$7,760)	\$663,261	\$0	\$0	\$0	\$0	\$663,261
PHOENIX	Greenview Rancheria	380	18	19	17	3	37	64	190	103	0	\$878	\$470,076	1.74	\$320,943	\$122,436	\$14,613	(\$1,591)	\$135,666	\$0	\$0	\$0	\$0	\$135,666
PHOENIX	Grindstone Rancheria of Wintun-Waiakali Indians	274	9	30	4	1	26	11	137	168	387	\$836	\$470,076	1.74	\$177,723	\$0	\$24,958	(\$2,811)	\$401,126	\$0	\$0	\$0	\$0	\$401,126
PHOENIX	Guadalupe Rancheria	38	4	0	4	0	0	0	143	114	380	\$1,078	\$493,965	1.74	\$177,723	\$0	\$24,958	(\$						

FY 2020 IHGB Final Allocation

Office	Tribes	AIAN Persons (American Indian/Alaska Native)	HHLT 30% (AIAN Households with less than 30% and 50% of Median Family Income)	HHLT 30-50% (AIAN Households between 30% and 50% of Median Family Income)	HHLT 50-80% (AIAN Households between 50% and 80% of Median Family Income)	HH Overcrowded (AIAN Households with more than 1 person per room or without kitchen or plumbing)	HH Severe Cost (AIAN Households with Housing Expenses greater than 50% of Income)	Housing Shortage (Number of AIAN Households with less than 80% of Median Family Income)	Enrollment	TTSAP	ACL (Allowable Expense Level)	FMR (Fair Market Rent)	TDC (Total Development Cost)	Inflation	FAS Portion of Allocation (Formula Current Assisted Stock 24 CFR 1000.312-1000.322)	Needs Portion of Allocation (Needs Component 24 CFR 1000.324)	Phase Down Adjustment (24 CFR 1000.331)	FY 1996 Adjustment (24 CFR 1000.340)	Unadjusted FY 2020 Allocation	FY 2020 Repayment Amount	CFR 1000.329 Undisbursed Funds Adjustment (24)	Minimum Allocation Adjustment (24 CFR 1000.329)	FY 2020 Final Allocation
PHOENIX	Hopi Tribe	26,011	1,333	1,002	1,407	1,620	1,065	3,697	14,422	8,160	393	\$938	\$368,333	1.74	\$319,362	\$6,455,764	(\$114,683)	(\$64,395)	\$6,596,049	(\$231,443)	\$0	\$0	\$6,364,606
PHOENIX	Hopi Band of Pomo Indians	1,852	143	107	121	56	170	351	926	521	380	\$1,885	\$493,965	1.74	\$257,354	\$579,035	(\$3,403)	(\$9,669)	\$824,317	\$0	\$0	\$0	\$824,317
PHOENIX	Hualapai Indian Tribe	1,537	40	35	50	40	10	0	2,133	1,504	358	\$777	\$368,238	1.74	\$1,251,972	\$149,441	\$278,406	(\$1,999)	\$1,677,821	\$0	\$0	\$0	\$1,677,821
PHOENIX	Ipai Nation of Santa Ysabel	312	35	20	20	10	4	75	768	768	0	\$1,938	\$428,052	1.74	\$0	\$64,430	(\$1,684)	(\$959)	\$61,787	\$0	\$0	\$0	\$61,787
PHOENIX	Ipai Band of Diegueno Mission Indians	0	0	0	0	0	0	0	19	20	0	\$1,938	\$428,052	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$24,038	\$74,594
PHOENIX	Isleta Pueblo	1,422	94	142	163	4	89	399	768	652	0	\$1,034	\$487,824	1.74	\$0	\$37,974	(\$19,584)	(\$4,271)	\$364,118	\$0	\$0	\$0	\$364,118
PHOENIX	Jackson Band of Miwok Indians	3,797	270	205	245	65	54	666	3,960	3,960	0	\$877	\$467,760	1.74	\$379,662	\$927,138	\$0	(\$5,350)	\$968,319	(\$3,610)	\$0	\$0	\$964,709
PHOENIX	Jamul Indian Village	0	0	0	0	0	0	0	30	30	0	\$1,094	\$487,874	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$24,038	\$74,594
PHOENIX	Jemez Pueblo	2,089	85	45	70	115	25	175	3,825	3,776	0	\$877	\$350,630	1.74	\$1,617,52	\$339,567	\$3,281	(\$3,688)	\$500,913	\$0	\$0	\$0	\$500,913
PHOENIX	Jicarilla Apache Nation	3,160	165	70	130	75	35	221	3,964	3,578	225	\$701	\$350,630	1.74	\$1,000,368	\$391,458	(\$4,456)	(\$7,001)	\$1,380,370	\$0	\$0	\$0	\$1,380,370
PHOENIX	Kaibab Band of Paiute Indians	4,08	21	16	22	25	17	21	288	128	346	\$785	\$368,333	1.74	\$334,009	\$93,109	(\$1,555)	(\$2,563)	\$423,000	\$0	\$0	\$0	\$423,000
PHOENIX	Kanab Tribe	6,639	429	401	433	160	522	1,099	3,749	13,197	380	\$955	\$495,615	1.74	\$1,733,717	\$2,377,901	(\$10,778)	(\$39,643)	\$4,061,196	\$0	\$0	\$0	\$4,061,196
PHOENIX	Kashia Band of Pomo Indians, Stewarts Point Ranch	1,910	147	111	124	57	175	383	955	565	380	\$1,887	\$499,771	1.74	\$0	\$609,113	(\$3,688)	(\$7,019)	\$598,095	\$0	\$0	\$0	\$598,095
PHOENIX	Xewa Pueblo (Santo Domingo)	3,727	165	95	120	200	25	343	4,492	4,807	278	\$877	\$487,874	1.74	\$251,649	\$590,162	(\$30)	(\$3,758)	\$115,362	(\$43,129)	\$0	\$0	\$78,633
PHOENIX	Kiowa Band of Wintun Indians (Corfina Ranch)	304	18	21	19	13	25	58	152	164	0	\$1,887	\$494,884	1.74	\$0	\$50,556	\$0	(\$1,350)	\$50,556	\$0	\$0	\$24,038	\$74,594
PHOENIX	La Posta Band of Luiseno Indians	0	0	0	0	0	0	0	0	0	0	\$1,938	\$431,887	1.74	\$202,674	\$78,979	\$0	(\$1,051)	\$280,603	\$0	\$0	\$0	\$280,603
PHOENIX	La Posta Band of Diegueno Mission Indians	4,135	205	210	195	110	115	527	8,092	4,280	203	\$700	\$467,760	1.74	\$515,134	\$699,030	\$0	\$295,987	\$1,510,121	\$0	\$0	\$24,038	\$74,594
PHOENIX	Laguna Pueblo	1,07	15	4	4	10	4	18	54	1810	233	\$1,147	\$418,047	1.74	\$138,320	\$50,556	(\$14,139)	(\$1,192)	\$279,068	(\$145,899)	\$0	\$0	\$130,174
PHOENIX	Las Vegas Tribe of Paiute Indians	557	25	15	47	4	79	72	295	350	233	\$1,147	\$418,047	1.74	\$138,320	\$50,556	(\$14,139)	(\$1,192)	\$279,068	(\$145,899)	\$0	\$0	\$130,174
PHOENIX	Lone Pine Paiute Shoshone Tribe	80	10	8	4	8	4	22	349	288	0	\$1,938	\$428,052	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$24,038	\$74,594
PHOENIX	Los Coyotes Band of Cahulla and Cupeno Indians	564	35	27	33	16	31	95	282	268	0	\$973	\$93,663	1.74	\$0	\$141,463	(\$1)	(\$1,640)	\$139,821	\$0	\$0	\$0	\$139,821
PHOENIX	Lovely Band of Paiute Indians	282	10	10	15	4	4	0	311	313	388	\$979	\$418,047	1.74	\$386,025	\$33,887	(\$906)	(\$4,858)	\$414,468	\$0	\$0	\$0	\$414,468
PHOENIX	Mescalero Rancheria of Pomo Indians	2,664	118	178	186	58	213	459	1,132	1,002	380	\$1,144	\$479,753	1.74	\$216,865	\$684,252	\$0	(\$5,151)	\$254,867	\$0	\$0	\$0	\$254,867
PHOENIX	Mescalero Rancheria of Maidu Indians	639	30	25	10	4	20	65	1,015	2,443	395	\$1,232	\$441,167	1.74	\$0	\$104,550	(\$6,11)	\$254,867	\$358,806	\$0	\$0	\$0	\$358,806
PHOENIX	Morongo Band of Mission Indians	560	25	20	50	10	4	64	643	448	300	\$1,069	\$358,372	1.74	\$206,688	\$77,769	\$54,171	(\$94)	\$338,535	(\$14,861)	\$0	\$0	\$338,535
PHOENIX	Mescalero Indian Tribe of Chico Rancheria	1,252	65	97	103	32	118	265	626	442	0	\$1,144	\$479,753	1.74	\$29,312,533	\$44,311,525	\$0	(\$570,073)	\$73,053,965	(\$181,660)	\$0	\$0	\$72,872,295
PHOENIX	Mesa Grande Band of Diegueno Mission Indians	100	15	0	4	4	4	0	690	117	391	\$1,938	\$428,052	1.74	\$275,297	\$24,778	(\$2,832)	\$297,143	\$0	\$0	\$0	\$0	\$297,143
PHOENIX	Mescalero Apache Tribe	4,110	190	145	190	90	55	294	4,309	4,447	287	\$717	\$36,988	1.74	\$1,749,417	\$504,195	(\$9,247)	(\$1,605)	\$2,242,761	(\$137,560)	\$0	\$0	\$2,105,181
PHOENIX	Middletown Rancheria of Pomo Indians	452	35	28	29	14	41	91	226	163	0	\$960	\$493,965	1.74	\$0	\$142,550	(\$56)	(\$1,647)	\$140,446	\$0	\$0	\$0	\$140,446
PHOENIX	Mojave Band of Paiute Indians	282	10	10	15	4	4	0	311	313	388	\$979	\$418,047	1.74	\$386,025	\$33,887	(\$906)	(\$4,858)	\$414,468	\$0	\$0	\$0	\$414,468
PHOENIX	Morongo Rancheria of Maidu Indians	2,664	118	178	186	58	213	459	1,132	1,002	380	\$1,144	\$479,753	1.74	\$216,865	\$684,252	\$0	(\$5,151)	\$254,867	\$0	\$0	\$0	\$254,867
PHOENIX	Morongo Band of Mission Indians	639	30	25	10	4	20	65	1,015	2,443	395	\$1,232	\$441,167	1.74	\$0	\$104,550	(\$6,11)	\$254,867	\$358,806	\$0	\$0	\$0	\$358,806
PHOENIX	Nambe Pueblo	560	25	20	50	10	4	64	643	448	300	\$1,069	\$358,372	1.74	\$206,688	\$77,769	\$54,171	(\$94)	\$338,535	(\$14,861)	\$0	\$0	\$338,535
PHOENIX	Navajo Nation	182,660	13,010	6,634	7,334	15,009	2,715	23,221	277,840	192,067	293	\$820	\$368,333	1.74	\$29,312,533	\$44,311,525	\$0	(\$570,073)	\$73,053,965	(\$181,660)	\$0	\$0	\$72,872,295
PHOENIX	Northfork Rancheria of Mono Indians	4,470	150	136	116	111	198	502	2,235	1,377	0	\$969	\$373,662	1.74	\$392,672	\$444,717	(\$13,786)	(\$5,021)	\$81,306	\$0	\$0	\$0	\$81,306
PHOENIX	Ohkay Owingeh (San Juan Pueblo)	2,151	81	126	71	50	396	2,791	2,721	0	\$700	\$350,630	1.74	\$0	\$142,550	(\$56)	(\$1,647)	\$140,446	\$0	\$0	\$0	\$140,446	
PHOENIX	Ohkay Owingeh (San Juan Pueblo)	2,151	81	126	71	50	396	2,791	2,721	0	\$700	\$350,630	1.74	\$0	\$142,550	(\$56)	(\$1,647)	\$140,446	\$0	\$0	\$0	\$140,446	
PHOENIX	Pala Band of Mission Indians	670	35	4	10	10	20	40	906	1,049	395	\$1,938	\$428,052	1.74	\$411,522	\$99,841	\$14,043	(\$1,988)	\$523,118	(\$30,222)	\$0	\$0	\$492,896
PHOENIX	Pascua Yaqui Tribe	8,440	535	310	444	354	394	918	18,440	14,787	356	\$970	\$354,501	1.74	\$3,269,950	\$1,819,253	(\$1,146)	(\$2,136)	\$5,066,117	\$0	\$0	\$0	\$5,066,117
PHOENIX	Pasqua Band of Nomiaki Indians	540	59	25	51	13	33	135	270	206	0	\$837	\$487,874	1.74	\$0	\$205,905	(\$3,946)	\$199,970	\$0	\$0	\$0	\$199,970	
PHOENIX	Pauma Band of Luiseno Mission Indians	163	4	4	10	4	4	17	189	132	395	\$1,938	\$428,052	1.74	\$5,714	\$50,556	\$0	\$7,788	\$4,058	\$0	\$0	\$10,536	\$74,594
PHOENIX	Pechanga Band of Luiseno Mission Indians	277	10	15	4	4	4	29	1,342	1,032	0	\$1,232	\$445,002	1.74	\$226,778	\$607,238	\$0	\$6,493	\$825,524	\$0	\$0	\$0	\$825,524
PHOENIX	Picayune Rancheria of Chukchansi Indians	2,632	88	80	127	66	117	272	1,316	798	378	\$969	\$373,662	1.74	\$226,778	\$607,238	\$0	(\$6,493)	\$825,524	\$0	\$0	\$0	\$825,524
PHOENIX	Picuris Pueblo	208	35	25	15	4	20	75	311	309	0	\$873	\$350,630	1.74	\$0	\$79,110	\$0	\$4,837	\$83,947	\$0	\$0	\$0	\$83,947
PHOENIX	Pineville Pomo Nation	600	46	35	39	18	55	115	300	237	380	\$1,078	\$493,965	1.74	\$52,271	\$188,965	\$0	(\$2,700)	\$237,847	\$0	\$0	\$0	\$237,847
PHOENIX	Pit River Tribe	4,791	209	226	294	75	369	819	3,109	5,634	0	\$966	\$499,466	1.74	\$0	\$122,964	\$0	(\$14,247)	\$1,214,617	\$0	\$0	\$0	\$1,214,617
PHOENIX	Pit River Tribe	4,791	209	226	294	75	369	819	3,109	5,634	0	\$966	\$499,466	1.74	\$0	\$122,964	\$0	(\$14,247)	\$1,214,617	\$0	\$0	\$0	\$1,214,617
PHOENIX	Pojarque Pueblo	477	25	15	35	4	15	75	482	376	0	\$1,089	\$358,372	1.74	\$0	\$78,497	\$0	\$51,168	\$129,665	(\$19,433)	\$0	\$0	\$10,232
PHOENIX	Porter Valley Tribe	12	1	1	1	0	1	2	6	6	0	\$1,078	\$493,965	1.74	\$0	\$10,556	\$0	\$0	\$50,556	\$0	\$0	\$24,038	\$74,594
PHOENIX	Pyramid Lake Paiute Tribe	5,494	337	270	339	125	343	864	2,747	1,054	379	\$975	\$385,941	1.74	\$615,785	\$1,048,316	\$0	(\$7,427)	\$1,656,674	\$0	\$0	\$0	\$1,656,674
PHOENIX	Quartz Valley Indian Community	613	40	37	40	15	48	91	346	104	387	\$840	\$495,615	1.74	\$251,073	\$216,618	(\$800)	\$461,479	\$0	\$0	\$0	\$461,479	
PHOENIX	Quechan Tribe	5,678	229	119	164	84	87	387	3,368	2,668	389	\$940	\$428,174	1.74	\$1,134,925	\$597,128	(\$20,269)	(\$8,393)	\$1,703,372	\$0	\$0	\$0	\$1,703,372
PHOENIX	Ramona Band of Cahulla	14	0	0	0	0	0	0	11	7	0	\$1,232	\$445,002	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$24,038	\$74,594
PHOENIX	Redding Rancheria	466	30	22	29	10	37	80	233	5,698	0	\$980	\$499,466	1.74	\$0	\$164,091	(\$1,612)	(\$1,894)	\$160,995	\$0	\$0	\$0	\$160,995

FY 2020 IHBG Final Allocation

Office	Tribes	AIAN Persons (American Indian/Alaska Native)	HHLT 30% (AIAN Households with less than 30% Median Family Income)	HHLT 30-50% (AIAN Households between 30% and 50% of Median Family Income)	HHLT 50-80% (AIAN Households between 50% and 80% of Median Family Income)	HH Overcrowded (AIAN Households with more than 1 person per room or without kitchen or plumbing)	HH Severe Cost (AIAN Households with Housing Expenses greater than 50% of Income)	Housing Shortage (Number of AIAN Households with less than 80% of Median Family Income)	Enrollment	TTSAP	ACL (Allowable Expense Level)	FMR (Fair Market Rent)	TDC (Total Development Cost)	Inflation	FAS Portion of Allocation (Formula Current Assisted Stock 24 CFR 1000.312-1000.322)	Needs Portion of Allocation (Needs Component 24 CFR 1000.324)	Phase Down Adjustment (24 CFR 1000.331)	FY 1996 Adjustment (24 CFR 1000.340)	Unadjusted FY 2020 Allocation	FY 2020 Repayment Amount	CFR 1000.329 Undisbursed Funds Adjustment (24 CFR 1000.329)	Minimum Allocation Adjustment (24 CFR 1000.329)	FY 2020 Final Allocation		
PHOENIX	Redwood Valley Rancheria	482	37	28	31	64	44	88	241	162	380	\$1,657	\$493,965	1.74	\$106,596	\$150,260	(\$472)	(\$1,984)	\$254,401	\$0	\$0	\$0	\$0	\$254,401	
PHOENIX	Reno-Sparks Indian Colony	2,354	146	113	139	65	129	298	1,177	985	260	\$975	\$385,941	1.74	\$707,083	\$552,266	\$0	(\$9,444)	\$1,249,896	\$0	\$0	\$0	\$24,038	\$1,249,896	
PHOENIX	Resighini Rancheria	29	0	4	0	0	0	0	8	0	89	\$945	\$487,874	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$0	\$50,556	
PHOENIX	Rincon Band of Luiseño Mission Indians	497	55	10	25	15	30	67	575	574	395	\$1,938	\$428,052	1.74	\$219,817	\$142,906	\$0	(\$154)	\$362,669	\$0	\$0	\$0	\$0	\$362,669	
PHOENIX	Robinson Rancheria	866	52	46	48	25	56	136	433	380	\$960	\$493,965	1.74	\$114,997	\$286,471	(\$1,349)	(\$3,070)	\$397,049	\$0	\$0	\$0	\$0	\$397,049		
PHOENIX	Round Valley Indian Tribes	9,934	767	578	647	298	911	1,941	4,967	2,777	222	\$1,651	\$493,965	1.74	\$579,062	\$3,117,008	(\$1,778)	(\$38,718)	\$3,645,573	\$0	\$0	\$0	\$0	\$3,645,573	
PHOENIX	Salt River Pima-Maricopa Indian Community	5,713	275	235	170	65	115	508	10,543	7,313	333	\$1,073	\$356,626	1.74	\$1,456,170	\$722,106	\$0	(\$9,064)	\$2,169,272	\$0	\$0	\$0	\$0	\$2,169,272	
PHOENIX	San Felipe Apache Tribe	12,958	678	465	510	874	234	1,238	14,654	10,709	388	\$863	\$356,626	1.74	\$3,712,997	\$2,590,940	(\$3,126)	(\$29,988)	\$6,270,923	\$0	\$0	\$0	\$0	\$6,270,923	
PHOENIX	San Carlos Apache Tribe	3,292	130	65	125	200	35	320	3,377	0	\$877	\$350,630	1.74	\$16,075	\$564,350	(\$5,040)	(\$6,280)	\$569,105	\$0	\$0	\$0	\$0	\$569,105		
PHOENIX	San Juan Pueblo	517	40	30	40	4	10	64	804	773	0	\$1,069	\$350,630	1.74	\$267,212	\$81,561	(\$301)	(\$301)	\$348,472	\$0	\$0	\$0	\$0	\$348,472	
PHOENIX	San Juan Southern Paiute Tribe	416	21	16	23	26	17	60	208	208	0	\$1,237	\$368,333	1.74	\$104,028	\$104,028	(\$2,191)	(\$1,181)	\$100,656	\$0	\$0	\$0	\$0	\$100,656	
PHOENIX	San Manuel Band of Mission Indians	80	10	4	4	10	15	18	178	156	0	\$1,232	\$443,064	1.74	\$0	\$56,580	\$0	(\$656)	\$55,924	\$0	\$0	\$0	\$0	\$55,924	
PHOENIX	San Manuel Band of Mission Indians	574	30	25	20	15	15	53	429	294	395	\$1,938	\$428,052	1.74	\$261,698	\$109,807	\$0	(\$1,664)	\$369,500	\$0	\$0	\$0	\$0	\$369,500	
PHOENIX	San Pasqual Band of Diegueño Mission Indians	746	0	0	0	10	14	0	487	413	0	\$877	\$366,760	1.74	\$134,953	\$50,556	\$0	\$0	\$185,908	\$0	\$0	\$0	\$0	\$185,908	
PHOENIX	Sandia Pueblo	689	20	25	40	20	4	80	765	681	0	\$877	\$350,630	1.74	\$102,927	\$92,700	(\$2,022)	(\$1,456)	\$192,149	\$0	\$0	\$0	\$0	\$192,149	
PHOENIX	Santa Ana Pueblo	1,511	94	55	110	20	19	215	2,200	2,764	300	\$723	\$350,630	1.74	\$521,382	\$219,177	\$0	(\$3,703)	\$737,966	\$0	\$0	\$0	\$0	\$737,966	
PHOENIX	Santa Clara Pueblo	71	10	4	4	4	4	18	161	141	395	\$1,232	\$443,064	1.74	\$10,685	\$50,556	\$0	\$0	\$61,241	\$0	\$0	\$0	\$0	\$61,241	
PHOENIX	Santa Rosa Band of Cahuilla Indians	595	20	10	10	10	4	0	738	701	378	\$987	\$453,833	1.74	\$432,283	\$60,256	\$0	(\$3,725)	\$488,613	\$0	\$0	\$0	\$0	\$488,613	
PHOENIX	Santa Rosa Indian Community	187	15	4	25	4	4	44	153	400	395	\$1,951	\$477,342	1.74	\$0	\$53,175	\$0	\$206,322	\$259,497	\$0	\$0	\$0	\$0	\$259,497	
PHOENIX	Scotts Valley Band of Pomo Indians	526	32	28	29	15	34	89	263	294	0	\$1,802	\$493,965	1.74	\$0	\$176,351	(\$874)	(\$2,034)	\$173,444	\$0	\$0	\$0	\$0	\$173,444	
PHOENIX	Shingletown Valley Rancheria of Pomo Indians	932	56	50	52	27	61	133	466	644	380	\$1,552	\$493,965	1.74	\$294,446	\$304,106	(\$1,343)	(\$5,325)	\$581,884	\$0	\$0	\$0	\$0	\$581,884	
PHOENIX	Shingletown Valley Rancheria of Pomo Indians	898	25	67	74	17	97	167	449	1,688	0	\$1,220	\$487,874	1.74	\$0	\$351,557	(\$7,272)	(\$3,981)	\$340,294	\$0	\$0	\$0	\$0	\$340,294	
PHOENIX	Shingletown Valley Rancheria of Pomo Indians	486	30	15	15	10	15	56	963	963	395	\$1,232	\$443,064	1.74	\$40,981	\$98,274	\$7,704	\$172,419	\$319,377	\$0	\$0	\$0	\$0	\$319,377	
PHOENIX	Soboba Band of Luiseño Indians	1	0	0	0	0	0	0	106	133	0	\$961	\$493,965	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$0	\$50,556	
PHOENIX	Summit Lake Paiute Tribe	1,140	40	45	15	35	114	114	1,171	1,757	387	\$948	\$478,197	1.74	\$4,081,188	\$222,719	\$73,904	(\$3,364)	\$791,446	\$0	\$0	\$0	\$0	\$791,446	
PHOENIX	Susac Band of Kulevay Nation	120	4	4	4	0	4	12	73	153	395	\$1,938	\$428,052	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$0	\$50,556	
PHOENIX	Sycuan Band of Kulevay Nation	3	0	0	0	0	0	0	115	115	0	\$956	\$491,079	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$0	\$50,556	
PHOENIX	Table Mountain Rancheria	1,302	50	80	105	40	40	235	2,543	2,410	0	\$873	\$350,630	1.74	\$0	\$260,026	\$10,608	\$217,508	\$488,142	\$0	\$0	\$0	\$0	\$488,142	
PHOENIX	Taos Pueblo	0	0	0	0	0	0	0	0	0	0	\$0	\$413,891	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$0	\$50,556	
PHOENIX	Tejon Indian Tribe	1,089	139	79	63	22	39	184	2,597	2,597	418	\$937	\$441,167	1.74	\$927,600	\$308,205	(\$3,128)	\$91,444	\$1,324,120	\$0	\$0	\$0	\$0	\$1,324,120	
PHOENIX	Te-Moak Tribe of Western Shoshone Indians	408	20	10	15	4	4	36	827	435	0	\$1,089	\$366,372	1.74	\$38,229	\$50,556	\$11,877	\$21,570	\$122,032	\$0	\$0	\$0	\$0	\$122,032	
PHOENIX	Tesuque Pueblo	9,477	1,522	162	434	783	411	1,915	26,673	26,673	170	\$923	\$356,626	1.74	\$1,225,658	\$3,056,530	\$0	(\$18,508)	\$4,262,881	\$10,293	\$0	\$0	\$0	\$4,272,974	
PHOENIX	Tonono O'otham Nation	2,778	180	168	181	67	219	529	1,969	3,191	0	\$968	\$487,874	1.74	\$0	\$1,001,507	(\$4,960)	(\$11,553)	\$854,994	\$0	\$0	\$0	\$0	\$854,994	
PHOENIX	Tolowa Dee-ni Nation (Smith River Rancheria)	98	0	4	15	4	0	19	175	131	0	\$889	\$360,212	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$0	\$50,556	
PHOENIX	Tonto Apache Tribe of Arizona	270	19	4	24	19	14	37	573	321	395	\$1,231	\$441,167	1.74	\$102,108	\$73,891	\$20,490	(\$641)	\$195,947	\$0	\$0	\$0	\$0	\$195,947	
PHOENIX	Torres-Martinez Desert Cahuilla Indians	3,202	159	99	108	108	192	362	1,601	1,205	373	\$925	\$480,928	1.74	\$635,124	\$930,081	\$0	(\$9,941)	\$1,555,265	\$0	\$0	\$0	\$0	\$1,555,265	
PHOENIX	Tule River Indian Tribe	726	16	23	86	13	43	107	363	2,812	378	\$992	\$475,602	1.74	\$137,579	\$201,197	(\$6,441)	(\$3,047)	\$329,287	\$0	\$0	\$0	\$0	\$329,287	
PHOENIX	Tuolumne Band of Me-Wuk Indians	6	0	0	0	0	0	0	13	13	0	\$1,232	\$443,064	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$0	\$50,556	
PHOENIX	Twentynine Palms Band of Mission Indians	526	19	14	24	6	31	68	263	214	0	\$1,220	\$487,874	1.74	\$0	\$127,658	(\$530)	(\$1,472)	\$125,658	\$0	\$0	\$0	\$0	\$125,658	
PHOENIX	United Auburn Indian Community	69	4	4	4	4	0	12	136	67	0	\$1,250	\$465,540	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$0	\$50,556	
PHOENIX	Utu Uta Gwipi Paiute Tribe	330	25	10	10	4	15	44	268	224	395	\$1,938	\$428,052	1.74	\$12,513	\$71,095	(\$571)	\$104,807	\$87,844	\$0	\$0	\$0	\$0	\$87,844	
PHOENIX	Waiilatpu Band of Chinle Indians	6,016	373	289	356	165	330	938	3,008	1,740	349	\$970	\$393,663	1.74	\$672,382	\$1,482,789	\$0	(\$15,587)	\$2,139,594	\$79,725	\$0	\$0	\$2,059,869		
PHOENIX	Washoe Tribe	3,164	196	152	187	87	173	437	1,582	1,580	385	\$973	\$393,663	1.74	\$862,910	\$765,540	\$0	(\$14,300)	\$1,614,451	\$0	\$0	\$0	\$0	\$1,614,451	
PHOENIX	White Mountain Apache (Fort Apache)	14,467	930	605	710	1,010	230	1,635	13,230	12,213	163	\$805	\$356,626	1.74	\$4,001,653	\$3,147,530	\$0	(\$39,070)	\$7,109,475	\$22,459	\$0	\$0	\$0	\$7,131,934	
PHOENIX	White Mountain Apache (Fort Apache)	1,320	91	48	88	23	101	227	660	0	0	\$1,220	\$467,865	1.74	\$0	\$419,100	(\$7,202)	(\$4,775)	\$407,123	\$0	\$0	\$0	\$0	\$407,123	
PHOENIX	Willton Rancheria	47	10	4	4	4	0	18	77	66	0	\$961	\$393,663	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$0	\$50,556	
PHOENIX	Winnemucca Indian Colony	81	15	4	4	4	0	10	23	526	96	0	\$968	\$495,615	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$0	\$50,556
PHOENIX	Wyand Tribe (Table Bluff)	47	10	4	4	4	0	10	23	526	96	0	\$968	\$495,615	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$0	\$50,556
PHOENIX	Yavapai-Apache Nation (Camp Verde)	682	65	50	80	25	10	149	2,134	2,011	356	\$958	\$368,238	1.74	\$905,121	\$167,742	\$50,037	(\$6,861)	\$1,116,038	\$0	\$0	\$0	\$0	\$1,116,038	
PHOENIX	Yavapai-Prescott Indian Tribe	1,411	4	10	4	4	4	18	167	272	0	\$958	\$368,238	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$0	\$50,556	
PHOENIX	Yerington Paiute Tribe	1,866	116	90	110	51	102	302	1,133	467	335	\$972	\$393,663	1.74	\$295,765	\$483,127	\$0	(\$4,989)	\$753,903	\$0	\$0	\$0	\$0	\$753,903	
PHOENIX	Yocha Dehe Wintun Nation (Rumsey Rancheria)	88	5	6	5	4	4	17	44	44	380	\$1,342	\$487,874	1.74	\$0	\$50,556	\$0	\$0	\$50,556	\$0	\$0	\$0	\$0	\$50,556	
PHOENIX	Yocha Dehe Wintun Nation	378	23	18	22	10	21	42	189	116	382	\$973	\$418,047	1.74	\$215,523	\$94,887	\$0	(\$2,754)	\$307,756	\$0	\$0	\$0	\$0	\$307,756	
PHOENIX	Yomba Shoshone Tribe	8,888	513	319	509	197	497	1,327	4,444	901	0	\$831	\$334,673	1.74	\$459,942	\$1,358,231	\$0	(\$19,332)	\$1,798,840	(\$634)	\$0	\$0	\$0	\$1,798,206	
PHOENIX	Ysleta Del Sur Pueblo	11,048	714	667	721																				

FY 2020 IHBG Final Allocation

SCA Case #20-5286

Office	Tribe	Consolidated Data (Single Report) of Multi-Report																				(M)		
		AIAN Persons (American Indian/Alaska Native)	HHLT 30% (AIAN Households with less than 30% Median Family Income)	HHLT 30-50% (AIAN Households between 30% and 50% of Median Family Income)	HHLT 50-80% (AIAN Households between 50% and 80% of Median Family Income)	HH Overcrowded (AIAN Households with more than 1 person per room or without kitchen or plumbing)	HH Severe Cost (AIAN Households with Housing Expenses greater than 50% of Income)	Housing Shortage (Number of AIAN Households with less than 80% of Median Family Income)	Enrollment	TRSAIP	AEL (Allowable Expense Level)	FMR (Fair Market Rent)	TDC (Total Development Cost)	Inflation	FCA's Portion of Allocation (Formula Current Assisted Stock 24 CFR 1000.312-1000.322)	Needs Portion of Allocation (Needs Component 24 CFR 1000.324)	Phase Down Adjustment (24 CFR 1000.331)	FY 1996 Adjustment (24 CFR 1000.340)	Unadjusted FY 2020 Allocation	FY 2020 Repayment Amount	FY 2020 Undisbursed Funds Adjustment (24 CFR 1000.329)	Minimum Allocation Adjustment (24 CFR 1000.329)	FY 2020 Final Allocation	
PHOENIX	Zia Pueblo	856	35	30	45	40	10	92	922	865	0	\$877	\$350,630	1.74	\$118,001	\$142,405	(\$3,660)	(\$1,320)	\$255,426	\$0	\$0	\$0	\$0	\$255,426
PHOENIX	Zuni Tribe	8,248	455	295	355	315	135	906	10,258	10,369	278	\$755	\$344,824	1.74	\$1,473,228	\$1,334,558	(\$628)	(\$7,772)	\$2,799,385	\$0	\$0	\$0	\$0	\$2,799,385
PHOENIX	TOTAL	472,814	31,641	18,893	23,093	25,699	15,576	63,624	563,979	466,012					\$85,854,224	\$113,801,161	\$807,181	\$393,872	\$200,856,439	#####	\$0	\$902,225	\$200,644,575	

USCA Case #20-5286 Document #1865766

Filed: 10/09/2020 Page 130 of 188

S-App'x00058

FY 2020 IHBG Final Allocation

Office	Tribes	AIAN Persons (American Indian/Alaska Native)	HHT 30% (AIAN Households with less than 30% Median Family Income)	HHT 30-50% (AIAN Households between 30% and 50% of Median Family Income)	HHT 50-80% (AIAN Households between 50% and 80% of Median Family Income)	HH Overcrowd (AIAN Households with more than 1 person per room or without kitchen or plumbing)	HH Severe Cost (AIAN Households with Housing Expenses greater than 50% of Income)	Housing Shortage (Number of AIAN Households with less than 80% of Median Family Income)	Enrollment	TSAIP	AEL (Allowable Expense Level)	FMR (Fair Market Rent)	TDC (Total Development Cost)	Initiation	FAS Portion of Allocation (Formula Current Assisted Stock 24 CFR 1000.312-1000.322)	Needs Portion of Allocation (Needs Component 24 CFR 1000.324)	Phase Down Adjustment (24 CFR 1000.331)	FY 1996 Adjustment (24 CFR 1000.340)	Unadjusted FY 2020 Allocation	FY 2020 Repayment Amount	CFR 1000.329	Minimum Allocation Adjustment (24 CFR 1000.329)	FY 2020 Final Allocation
SEATTLE	Burns Paiute Tribe	448	4	50	15	4	8	53	410	241	0	\$700	\$404,405	1.74	\$68,844	\$53,775	(\$1,422)	(\$1,422)	\$121,198	\$0	\$0	\$0	\$121,198
SEATTLE	Chehalis Confederated Tribes	1,660	129	84	88	36	96	233	830	3,453	241	\$1,029	\$427,534	1.74	\$632,278	\$436,391	(\$2,785)	(\$4,363)	\$1,061,521	\$0	\$0	\$0	\$1,061,521
SEATTLE	Coeur d'Alene Tribe	1,368	85	90	105	30	65	184	2,488	1,251	217	\$771	\$390,667	1.74	\$722,760	\$318,554	(\$7,317)	(\$7,317)	\$1,028,745	\$0	\$0	\$0	\$1,028,745
SEATTLE	Coville Confederated Tribes	10,487	830	495	791	338	404	1,849	9,530	5,052	219	\$793	\$411,576	1.74	\$1,896,721	\$2,149,200	(\$28,155)	(\$28,155)	\$4,017,765	\$0	\$0	\$0	\$4,017,765
SEATTLE	Cros Lower Umpqua and Siuslaw Confederated Tribes	2,160	140	131	141	52	170	396	1,220	4,266	0	\$915	\$410,021	1.74	\$2,099,080	\$650,759	(\$3,123)	(\$10,976)	\$935,740	\$0	\$0	\$0	\$935,740
SEATTLE	Coquille Indian Tribe	1,948	126	118	127	47	153	312	1,099	5,186	0	\$934	\$410,021	1.74	\$550,629	\$574,635	(\$2,578)	(\$13,016)	\$1,109,670	\$0	\$0	\$0	\$1,109,670
SEATTLE	Cow Creek Band of Umpqua Tribe	3,242	210	196	212	78	255	617	1,631	8,137	0	\$926	\$410,021	1.74	\$582,252	\$424,625	(\$17,332)	(\$17,332)	\$966,095	\$0	\$0	\$0	\$966,095
SEATTLE	Cowlitz Indian Tribe	7,708	473	475	530	88	550	1,479	3,854	0	0	\$1,166	\$404,025	1.74	\$0	\$1,685,751	(\$13,384)	(\$13,384)	\$1,567,367	\$0	\$0	\$0	\$1,567,367
SEATTLE	Grand Ronde Confederated Tribes	9,609	621	591	627	231	756	1,809	5,426	18,503	0	\$1,121	\$413,996	1.74	\$183,238	\$2,932,436	(\$14,409)	(\$13,954)	\$3,065,311	\$0	\$0	\$0	\$3,065,311
SEATTLE	Hoh Indian Tribe	395	29	22	25	9	27	72	252	172	241	\$902	\$441,271	1.74	\$31,974	\$94,141	(\$720)	(\$775)	\$124,620	\$0	\$0	\$0	\$124,620
SEATTLE	Jamestown S'Klallam Tribe	1,154	83	58	61	25	67	203	577	1,192	0	\$997	\$425,768	1.74	\$0	\$313,472	(\$2,200)	(\$3,609)	\$307,663	\$0	\$0	\$0	\$307,663
SEATTLE	Klamath Tribes	206	10	25	4	4	4	32	472	185	269	\$764	\$415,636	1.74	\$42,548	\$50,556	\$6,502	(\$36,316)	\$99,066	\$0	\$0	\$0	\$99,066
SEATTLE	Knapah Indian Community	9,603	621	580	627	231	756	1,812	5,423	5,449	220	\$748	\$398,314	1.74	\$322,910	\$2,822,170	(\$12,631)	(\$36,316)	\$3,096,133	\$0	\$0	\$0	\$3,096,133
SEATTLE	Kootenai Tribe	83	4	4	4	4	4	9	154	649	277	\$700	\$390,667	1.74	\$31,945	\$50,556	\$0	\$0	\$82,501	\$0	\$0	\$0	\$82,501
SEATTLE	Lower Elwha Tribal Community	1,768	129	97	114	41	119	322	884	1,216	0	\$993	\$425,768	1.74	\$189,287	\$404,301	(\$2,233)	(\$6,513)	\$594,942	(\$3,171)	\$0	\$0	\$591,771
SEATTLE	Lummi Tribe	10,530	766	578	679	244	766	1,907	5,265	4,976	238	\$1,058	\$433,815	1.74	\$899,426	\$2,447,332	(\$12,404)	(\$35,754)	\$3,288,955	(\$79,666)	\$0	\$0	\$3,209,289
SEATTLE	Makah Indian Tribe	1,224	110	50	75	35	15	188	2,534	1,304	198	\$993	\$441,271	1.74	\$756,767	\$274,221	(\$889)	(\$889)	\$850,099	\$0	\$0	\$0	\$850,099
SEATTLE	Muckleshoot Indian Tribe	1,438	135	65	45	35	35	141	2,901	4,211	239	\$1,899	\$445,427	1.74	\$1,299,437	\$310,886	(\$13,659)	(\$15,341)	\$1,581,123	\$0	\$0	\$0	\$1,581,123
SEATTLE	Nez Perce Tribe	2,642	98	145	189	100	53	333	3,338	1,978	193	\$775	\$388,637	1.74	\$660,991	\$522,430	(\$3,259)	(\$15,341)	\$1,180,122	\$0	\$0	\$0	\$1,180,122
SEATTLE	Nisqually Indian Tribe	1,568	113	79	83	34	91	263	784	6,165	241	\$1,237	\$441,271	1.74	\$1,055,228	\$437,784	(\$3,013)	(\$2,974)	\$537,024	(\$4,629)	\$0	\$0	\$532,395
SEATTLE	Noakus Indian Tribe	2,301	167	126	148	53	154	398	1,820	1,001	238	\$1,059	\$433,815	1.74	\$311,785	\$531,356	(\$4,042)	(\$1,776)	\$837,325	\$0	\$0	\$0	\$837,325
SEATTLE	Port Gamble S'Klallam Tribe	2,626	191	146	169	61	176	460	1,313	1,255	215	\$1,204	\$425,768	1.74	\$302,429	\$596,968	(\$2,451)	(\$6,439)	\$979,908	(\$32,966)	\$0	\$0	\$946,942
SEATTLE	Puyallup Tribe	10,622	765	537	564	229	614	1,829	5,311	24,016	263	\$1,265	\$445,427	1.74	\$335,088	\$3,002,529	(\$18,702)	(\$36,677)	\$3,282,238	\$0	\$0	\$0	\$3,282,238
SEATTLE	Quileute Tribe	425	20	20	25	4	4	32	793	1,513	0	\$993	\$441,271	1.74	\$301,160	\$61,770	\$26,274	\$260,118	\$649,322	\$0	\$0	\$0	\$649,322
SEATTLE	Quinalt Indian Nation	6,276	456	344	405	145	421	1,129	3,138	3,203	216	\$859	\$437,210	1.74	\$566,898	\$1,468,737	(\$6,586)	(\$22,281)	\$2,006,770	\$0	\$0	\$0	\$2,006,770
SEATTLE	Sami Indian Nation	3,986	290	219	257	92	267	765	1,993	2,724	0	\$1,569	\$433,815	1.74	\$0	\$935,867	(\$5,111)	(\$10,791)	\$919,966	\$0	\$0	\$0	\$919,966
SEATTLE	Sauk-Suiattle Indian Tribe	503	37	28	32	12	34	90	310	219	0	\$1,707	\$433,815	1.74	\$409,518	\$1,188,912	(\$5,404)	(\$3,648)	\$522,916	\$10,652	\$0	\$0	\$533,268
SEATTLE	Shoawater Bay Indian Tribe	774	48	55	78	10	55	172	387	1,294	241	\$898	\$437,210	1.74	\$55,700	\$188,912	(\$2,800)	(\$2,161)	\$239,651	\$0	\$0	\$0	\$239,651
SEATTLE	Shoshone-Bannock Tribes, Ft. Hall Reservation	4,029	190	155	214	129	65	447	6,008	13,547	159	\$714	\$366,493	1.74	\$705,837	\$659,099	\$0	(\$6,611)	\$1,358,325	\$0	\$0	\$0	\$1,358,325
SEATTLE	Siletz Confederated Tribes	9,632	623	582	629	232	758	1,769	5,439	50,860	242	\$1,173	\$413,986	1.74	\$1,129,618	\$2,927,946	(\$13,490)	(\$48,231)	\$3,997,744	\$0	\$0	\$0	\$3,997,744
SEATTLE	Skokomish Indian Tribe	1,562	112	78	82	34	90	248	776	2,321	241	\$1,003	\$437,210	1.74	\$181,304	\$425,121	(\$2,742)	(\$5,141)	\$599,942	(\$9,325)	\$0	\$0	\$590,217
SEATTLE	Shoquame Indian Tribe	1,083	79	59	70	25	73	208	697	471	0	\$1,899	\$433,815	1.74	\$0	\$294,063	(\$1,962)	(\$2,900)	\$249,733	\$0	\$0	\$0	\$249,733
SEATTLE	Spokane Tribe	5,780	444	309	393	108	321	1,011	2,890	12,201	269	\$862	\$415,636	1.74	\$1,001,348	\$1,529,813	(\$21,913)	(\$17,740)	\$2,491,508	(\$16,483)	\$0	\$0	\$2,475,025
SEATTLE	Squakamish Indian Tribe	2,240	161	113	119	48	130	358	1,120	2,591	241	\$1,034	\$437,210	1.74	\$233,870	\$614,407	(\$3,998)	(\$7,109)	\$837,170	\$0	\$0	\$0	\$837,170
SEATTLE	Squamish Indian Tribe	3,368	171	120	126	51	137	389	1,184	3,783	241	\$1,603	\$441,271	1.74	\$199,325	\$98,788	(\$763)	(\$509)	\$227,443	\$0	\$0	\$0	\$227,443
SEATTLE	Squamish Indian Tribal Community	2,368	171	120	126	51	137	389	1,184	3,783	241	\$1,603	\$441,271	1.74	\$199,325	\$98,788	(\$763)	(\$509)	\$227,443	\$0	\$0	\$0	\$227,443
SEATTLE	Swinomish Indian Tribe	1,674	122	92	108	39	112	242	837	829	263	\$994	\$433,815	1.74	\$779,100	\$376,934	(\$1,800)	(\$11,410)	\$1,142,824	\$0	\$0	\$0	\$1,142,824
SEATTLE	Tulalip Tribes	6,595	479	362	425	153	442	1,148	4,622	2,869	240	\$1,899	\$445,427	1.74	\$1,564,226	\$3,564,971	(\$11,567)	(\$26,728)	\$2,986,971	(\$5,410)	\$0	\$0	\$2,981,561
SEATTLE	Unatilla Confederated Tribes	4,680	205	354	319	104	240	746	3,117	2,674	217	\$735	\$404,215	1.74	\$1,102,302	\$891,427	(\$6,324)	(\$3,270)	\$1,979,136	\$0	\$0	\$0	\$1,979,136
SEATTLE	Upper Skagit Tribe	623	45	34	40	14	42	76	1,343	271	0	\$994	\$433,815	1.74	\$1,167,114	\$1,37,622	(\$1,034)	(\$3,981)	\$1,294,721	\$0	\$0	\$0	\$1,294,721
SEATTLE	Warm Springs Confederated Tribes	4,080	165	49	210	165	64	299	5,341	4,079	220	\$774	\$408,275	1.74	\$816,656	\$697,751	(\$15,296)	(\$14,234)	\$1,484,877	\$0	\$0	\$0	\$1,484,877
SEATTLE	Yakama Indian Nation	21,764	975	857	964	627	1,074	2,480	10,984	16,815	213	\$854	\$420,479	1.74	\$2,297,433	\$3,910,408	(\$45,811)	(\$45,811)	\$6,162,029	\$0	\$0	\$0	\$6,162,029
SEATTLE	TOTAL	163,289	10,479	8,592	9,947	4,012	9,634	26,594	108,842	222,304					\$22,091,509	\$39,060,664	(\$171,033)	(\$266,269)	\$60,712,882	\$0	\$0	\$0	\$60,712,882
SEATTLE	TOTAL	1,667,860	107,112	79,333	98,625	61,556	68,173	250,080	2,393,592	1,866,666					\$285,823,941	\$368,395,450	(\$0)	\$0	\$654,219,391	#####	\$0	\$0	\$655,449,938

The new additional columns added to this spreadsheet to reflect the changes to the IHBG formula regulations. The new columns affected by the new regulations are as follows:

Unadjusted FY 2020 Allocation: This column is equal to the appropriation after set asides plus the net amount of repayments collected in FY 2020 plus the carry-over amount minus three million dollars used for the minimum allocation. In FY 2020, the amounts are \$646,000,000 = \$1,718,323 + \$9,501,068 + \$3,000,000 which totals \$654,219,391.

Unadjusted FY 2020 Allocation: This column is equal to the appropriation after set asides plus the net amount of repayments collected in FY 2020 plus the carry-over amount minus three million dollars used for the minimum allocation. In FY 2020, the amounts are \$646,000,000 = \$1,718,323 + \$9,501,068 + \$3,000,000 which totals \$654,219,391.

Unadjusted FY 2020 Allocation: This column is equal to the appropriation after set asides plus the net amount of repayments collected in FY 2020 plus the carry-over amount minus three million dollars used for the minimum allocation. In FY 2020, the amounts are \$646,000,000 = \$1,718,323 + \$9,501,068 + \$3,000,000 which totals \$654,219,391.

Unadjusted FY 2020 Allocation: This column is equal to the appropriation after set asides plus the net amount of repayments collected in FY 2020 plus the carry-over amount minus three million dollars used for the minimum allocation. In FY 2020, the amounts are \$646,000,000 = \$1,718,323 + \$9,501,068 + \$3,000,000 which totals \$654,219,391.

Unadjusted FY 2020 Allocation: This column is equal to the appropriation after set asides plus the net amount of repayments collected in FY 2020 plus the carry-over amount minus three million dollars used for the minimum allocation. In FY 2020, the amounts are \$646,000,000 = \$1,718,323 + \$9,501,068 + \$3,000,000 which totals \$654,219,391.

Unadjusted FY 2020 Allocation: This column is equal to the appropriation after set asides plus the net amount of repayments collected in FY 2020 plus the carry-over amount minus three million dollars used for the minimum allocation. In FY 2020, the amounts are \$646,000,000 = \$1,718,323 + \$9,501,068 + \$3,000,000 which totals \$654,219,391.

Unadjusted FY 2020 Allocation: This column is equal to the appropriation after set asides plus the net amount of repayments collected in FY 2020 plus the carry-over amount minus three million dollars used for the minimum allocation. In FY 2020, the amounts are \$646,000,000 = \$1,718,323 + \$9,501,068 + \$3,000,000 which totals \$654,219,391.

Unadjusted FY 2020 Allocation: This column is equal to the appropriation after set asides plus the net amount of repayments collected in FY 2020 plus the carry-over amount minus three million dollars used for the minimum allocation. In FY 2020, the amounts are \$646,000,000 = \$1,718,323 + \$9,501,068 + \$3,000,000 which totals \$654,219,391.

Unadjusted FY 2020 Allocation: This column is equal to the appropriation after set asides plus the net amount of repayments collected in FY 2020 plus the carry-over amount minus three million dollars used for the minimum allocation. In FY 2020, the amounts are \$646,000,000 = \$1,718,323 + \$9,501,068 + \$3,000,000 which totals \$654,219,391.

Unadjusted FY 2020 Allocation: This column is equal to the appropriation after set asides plus the net amount of repayments collected in FY 2020 plus the carry-over amount minus three million dollars used for the minimum allocation. In FY 2020, the amounts are \$646,000,000 = \$1,718,323 + \$9,501,068 + \$3,000,000 which totals \$654,219,391.

Unadjusted FY 2020 Allocation: This column is equal to the appropriation after set asides plus the net amount of repayments collected in FY 2020 plus the carry-over amount minus three million

FY 2020 IHBG Final Allocation									
Office	Tribes	AIAN Persons (American Indian/Alaska Native)	HHLT 30% (AIAN Households with less than 30% Median Family Income)	HHLT 30-50% (AIAN Households between 30% and 50% of Median Family Income)	HHLT 50-80% (AIAN Households between 50% and 80% of Median Family Income)	HH Overcrowded (AIAN Households with more than 1 person per room or without kitchen or plumbing)	HH Severe Cost (AIAN Households with Housing Expenses greater than 50% of Income)	Housing Shortage (Number of AIAN Households with less than 80% of Median Family Income)	Enrollment
									TRSAIP
									AEL (Allowable Expense Level)
									FMR (Fair Market Rent)
									TDC (Total Development Cost)
									Initiation
									FCAS Portion of Allocation (Formula Current Assisted Stock 24 CFR 1000.312-1000.322)
									Needs Portion of Allocation (Needs Component 24 CFR 1000.324)
									Phase Down Adjustment (24 CFR 1000.331)
									FY 1996 Adjustment (24 CFR 1000.340)
									Unadjusted FY 2020 Allocation
									FY 2020 Repayment Amount
									FY 2020 Undisbursed Funds Adjustment (24 CFR 1000.329)
									Minimum Allocation Adjustment (24 CFR 1000.329)
									FY 2020 Final Allocation
									Consolidated Single Report (S) of Multi-Report (M)

Minimum Allocation: In accordance with § 1000.329, HUD will hold the lesser amount of \$3 million or available carry-over funds for additional allocations to tribes with grant allocations of less than 0.011547 percent of that year's appropriations. It also states that if less than \$3 million is necessary to fully fund tribes, any remaining carry-over amounts of the set-aside shall be carried forward to the next year's formula. In FY 2020, \$2,948,870 of the \$3,000,000 available was used to fully fund the minimum allocation provision, and \$51,130 will be carried forward to FY 2021.

Please note that the totals may differ slightly due to rounding.

EXHIBIT C

Congress of the United States
House of Representatives
Washington, DC 20515

May 28, 2020

The Honorable Steve T. Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Ave, NW
Washington, DC 20220

Dear Secretary Mnuchin:

On behalf of Indian Country, we are reaching out to make you aware several Federally Recognized Tribes received a grossly disproportionate distribution in the first tranche of the \$8 billion Coronavirus Relief Fund (CRF) for Native American Tribes due to what might just be a clerical error. We are hoping this oversight can be easily rectified before the second tranche of funding is distributed. When Congress worked on the CARES Act and made specific provisions for Indian Country, it was never the intent for any tribe to be omitted. In fact, great strides were made to ensure Indian Country was not left behind or excluded.

The tribes in question have all been assessed a zero population or drastically reduced population, which is inaccurate. It is our understanding Treasury relied on the American Indian Alaskan Native (AIAN) enrollment numbers from the FY 2020 Indian Housing Block Grant (IHBG) report; use of this data ultimately resulted in some tribes incorrectly being assessed at zero enrolled members or greatly reduced their number of enrolled members. The devastating consequence is absolute inequality among tribes of comparable sizes. For example, a California tribe with 630 members receives more than \$2 million while a Florida tribe with 600 members has received no funding at all; or a Wyoming tribe with 3,400 members receives just over \$10 million while an Oklahoma tribe of 3,000 members receives \$100,000.

We understand different enrollment data sources regarding tribal membership often show conflicting numbers. For this reason, it was extremely wise for BIA and Treasury to take the time and effort to engage with Tribal Leaders through consultations, request written comments, and develop a portal for Tribes to self-certify enrollment. These Tribal Consultations, and the enrollment numbers Tribal Leaders provided at Treasury's request, must be respected. The 573 Federally Recognized Tribes are Sovereign Nation partners with the Federal Government. We mustn't let these tribes down in one of the greatest financial and health crises this country has faced in almost a century.

These enrolled member numbers must get rectified immediately, as the problem has the potential to snowball for Tribal Nations erroneously assessed with zero or reduced enrolled members. These numbers cannot become the standard by which the Federal Government, Treasury or any other Agency engages with Tribes. If we don't act swiftly, we will be creating additional undue hardships on Tribes already struggling with COVID-19.

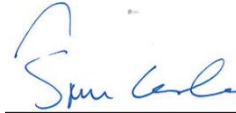
S-App'x00062

Please let us know what measures we can take to help rectify this problem. Time is of the essence not only because there are statutory time frames to distributing the \$8 billion CRF, but also because our friends in Indian Country are suffering and need action now.

Sincerely,



Markwayne Mullin
Member of Congress



Tom Cole
Member of Congress



David Schweikert
Member of Congress



Mario Diaz-Balart
Member of Congress



Paul Gosar
Member of Congress



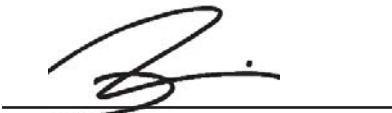
Kevin Hern
Member of Congress



Scott Tipton
Member of Congress



Doug LaMalfa
Member of Congress



Brian Mast
Member of Congress



Ken Calvert
Member of Congress



John Katko
Member of Congress



Andy Biggs
Member of Congress



Debbie Lesko
Member of Congress

EXHIBIT D

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**AGUA CALIENTE BAND OF
CAHUILLA INDIANS, et al.,**

Plaintiffs,

v.

**STEVEN MNUCHIN, in his official capacity
as Secretary of the Treasury,**

Defendant.

Case No. 20-cv-01136 (APM)

MEMORANDUM OPINION

I.

This matter is once again before the court on a motion for preliminary injunction. Plaintiffs are Indian tribes that seek, for a second time, to compel Secretary of the Treasury Steven Mnuchin to allocate undistributed funds appropriated by Congress under the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat 281 (2020) (“CARES Act”), to aid Tribal governments in combating the devastating impacts of the COVID-19 pandemic. Under Title V of the CARES Act, Congress set aside \$8 billion for Tribal governments, 42 U.S.C. § 801(a)(2), and directed the Secretary to distribute such funds “not later than 30 days after March 27, 2020,” that is, by April 26, 2020, *id.* § 801(b)(1). On May 11, 2020—16 days after the CARES Act’s statutory deadline—the court denied Plaintiffs’ first request for injunctive relief. *See Agua Caliente Band of Cahuilla Indians v. Mnuchin*, Case No. 20-cv-01136 (APM), 2020 WL 2331774 (D.D.C. May 11, 2020). The court found that “Plaintiffs . . . [had] not carried their burden to show that the Secretary’s delay thus far is so egregious as to warrant mandamus relief today.” *Id.* at *1. The court so held, in part, because only six days earlier—May 5, 2020—the Secretary had begun to

distribute 60% of the \$8 billion and had announced steps to gather information and determine a formula for distributing the remaining 40% of funds. *See id.* at *2–3. The court warned, however, that the denial of Plaintiffs’ motion “does not mean the Secretary enjoys an indefinite period to carry out Congress’ command. . . . [S]hould the Secretary’s delay verge on doubling the time Congress mandated to fully disburse Title V funds to Tribal governments, then the question of egregiousness becomes a closer one than it is today.” *Id.* at *8.

On June 5, 2020—39 days after the congressional deadline lapsed—Plaintiffs filed the motion that is now before the court. *See* Pls.’ Renewed Mot. for Prelim. Inj., ECF No. 37. Seven days later—on June 12, 2020—the Secretary began to distribute the remaining 40% of emergency relief, but withheld \$679 million, or roughly 8.5% of Title V funds, due to a recently filed litigation, *Prairie Band Potawatomi Nation v. Mnuchin*, 20-cv-1491 (APM), which challenges the methodology used by the Secretary to distribute the first tranche of Title V funds, *see* Def.’s 6/12/2020 Status Report, ECF No. 39. The Secretary withheld the \$679 million “‘to resolve any potentially adverse decision in litigation’ over Defendant’s methodology for calculating disbursements from CARES Act appropriation for Tribal governments.” *Id.* at 1. The Secretary did so even though the court had ruled the prior day, June 11, 2020, that the Prairie Band Plaintiffs were not entitled to enjoin the Secretary’s final emergency relief payments, because his first-tranche allocation determination was a discretionary act that is not judicially reviewable under the Administrative Procedure Act. *See* Mem. Op. and Order, *Prairie Band Potawatomi Nation v. Mnuchin*, 20-cv-1491 (APM), ECF No. 22 [hereinafter *Prairie Band* Mem. Op.], at 2–3. Thus, at present, there is no court order that prevents the Secretary from releasing the remaining \$679

million in Title V funds to Tribal governments.¹ That amount is being withheld of the Secretary's own accord.

II.

In assessing Plaintiffs' initial motion, the court considered the six-factor test for resolving claims of unreasonable agency delay set forth in *Telecommunications Research & Action Center v. FCC (TRAC)*, 750 F.2d 70, 80 (D.C. Cir. 1984), and concluded that, despite missing the congressionally imposed 30-day deadline, the Secretary's delay in making Title V payments was not egregious and therefore did not warrant court intervention, *see Agua Caliente Band*, 2020 WL 2331774, at *5–8. Plaintiffs therefore had not demonstrated a likelihood of success on the merits. *See id.* Since that initial motion, three relevant facts have changed. First, more time has passed. The Secretary has now taken more than twice as much time as Congress directed to distribute *all* CARES Act funds. Congress instructed the Secretary to make payments within 30 days; as of today, the Secretary is at 80 days and counting. Second, the Secretary has distributed most of the emergency relief but not all of it. He continues to withhold \$679 million “to resolve any potentially adverse decision” in the *Prairie Band* matter. Def.'s 6/12/2020 Status Report at 1. And, third, Plaintiffs in this case have received (or soon will receive) most of the money to which they are entitled, but again not all, because of the Secretary's withholding.

These new facts alter the court's balancing of the *TRAC* factors. The passage of now 50 days beyond the congressional deadline—marking over twice as long as Congress intended for distribution of all CARES Act funds—weighs in favor of finding unreasonable delay. As the court previously observed, the length of the agency's delay is the most important of the *TRAC* factors,

¹ The Secretary has properly withheld payments designated for Alaska village and regional corporations consistent with the court's preliminary injunction issued in *Confederated Tribes of the Chehalis Reservation v. Mnuchin*, Case No. 20-cv-1136 (APM), 2020 WL 1984297 (D.D.C. Cir. April 27, 2020).

see 2020 WL 2331774, at *6, *see also In re People's Mojahedin Org. of Iran*, 680 F.3d 832, 837 (D.C. Cir. 2012), and longer delays are less tolerable when public health considerations are at stake, *see Agua Caliente Band* at *7 (citing *Pub. Citizen Health Research Grp. v. Comm'r, FDA*, 740 F.2d 21, 34 (D.C. Cir. 1984)). Here, public health considerations are at their zenith. As the court previously observed, "the COVID-19 pandemic presents a national health emergency that is without precedent in modern times." *Agua Caliente Band* at *1. Continued delay in the face of an exceptional public health crisis is no longer acceptable.

The court acknowledges the Secretary's efforts to date to distribute more than 90% of the \$8 billion appropriated by Congress, and to do so in a fair and equitable manner. But the Secretary's withholding of \$679 million "to resolve any potentially adverse decision in litigation," Def.'s 6/12/2020 Status Report at 1, simply cannot be justified. For one, it is not clear what authority under the CARES Act the Secretary possesses to make such a withholding. The CARES Act directs the Secretary to determine amounts to be paid to Tribal governments "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." 42 U.S.C. § 801(c)(7). The Secretary already has "determined" the amounts that should be paid to each Tribal government. *See* U.S. DEP'T OF TREASURY, Coronavirus Relief Fund Allocations to Tribal Governments (June 12, 2020).² His obligation now is to distribute those funds. *See* 42 U.S.C. § 801(b)(1) ("[N]ot later than 30 days after March 27, 2020, the Secretary shall pay each . . . Tribal government . . . the amount determined . . ."). The CARES Act does not grant him the discretion to do otherwise.

Nor is the Secretary's initial allocation at genuine risk of being overturned or modified through litigation. The court already has held that the Supreme Court and Circuit precedent

² Available at <https://home.treasury.gov/system/files/136/Tribal-Allocation-Methodology-for-Second-Distribution.pdf>.

squarely foreclose judicial review of the Prairie Band Potawatomi Nation's challenge to the Secretary's discretionary choice of the population data he used to allocate the first tranche of CARES Act funds. *See Prairie Band Mem. Op.* at 2–3 (citing *Lincoln v. Vigil*, 508 U.S. 182 (1993), *Milk Train, Inc. v. Veneman*, 310 F.3d 747 (2002), and *Physicians for Social Responsibility v. Wheeler*, 956 F.3d 634, 642 (D.C. Cir. 2020)). Further litigation in that matter is highly unlikely to cause the Secretary to revisit his first-tranche allocation methodology. Moreover, the amount withheld by the Secretary far exceeds the amount at stake in the *Prairie Band* matter. The plaintiff in that case claims underpayment of \$7.65 million, *see Prairie Band Mem. Op.* at 1–2, and has not moved for class certification, yet the Secretary has held in reserve nearly 90 times the amount in dispute. The Secretary's injection of further delay into processing the remaining Title V payments is grossly disproportionate to the litigation exposure he fears.

Finally, the Secretary's unilateral withholding will result in even more delay, and for an unknown period of time. The Secretary intends to withhold funds until final resolution of the *Prairie Band* matter, including on appellate review. *See Draft 6/15/2020 Status Conf. Tr.* at 10.³ Such resolution easily could add months to the timetable for a final distribution. Additionally, the Secretary's withholding only invites other dissatisfied Indian tribes to bring their own challenges to the Secretary's allocation decisions. More litigation will only lead to more delay—a result that the court cannot countenance in the face of a pandemic.

Accordingly, the court now finds that Plaintiffs have demonstrated a likelihood of success on the merits of their Administrative Procedure Act unreasonable-delay claim.

³ The Prairie Band Potawatomi Nation appealed the court's denial of its motion for preliminary relief in the afternoon of June 15, 2020, after the hearing held on Plaintiffs' motion in this case. *See Notice of Appeal, Prairie Band Potawatomi Nation v. Mnuchin*, 20-cv-1491 (APM), ECF No. 26. As the Order accompanying this Memorandum Opinion reflects, the Secretary in his discretion may withhold \$7.65 million, if the Prairie Band Potawatomi Nation seek expedited review before the D.C. Circuit.

III.

The remaining equitable relief factors favor an order compelling the Secretary to distribute the remaining Title V funds. Plaintiffs will suffer irreparable harm in the absence of an injunction. As noted, the Secretary's present intention is to withhold \$679 million in Title V funds until the *Prairie Band* matter is finally resolved. Def.'s 6/12/2020 Status Report at 1. Such an indefinite wait will result in irreparable harm. Congress plainly recognized the immediate need for emergency funds to assist Tribal governments in addressing the COVID-19 pandemic, as evidenced by the remarkably short 30-day deadline to distribute the aid. *See* 42 U.S.C. § 801(b)(1). Each day that passes in which Plaintiffs have not received their full allotment of funds impairs their capacity to respond to the crisis. *See Agua Caliente Band*, 2020 WL 2331774, at *7 (citing Plaintiffs' affidavits).

The Secretary faults Plaintiffs for not providing current information about how their portion of the withheld monies will adversely impact them, but that criticism is misplaced in two respects. First, the Secretary announced that he would be withholding the \$679 million *after* Plaintiffs filed the present motion, so Plaintiffs have not had a genuine opportunity to respond to this new information. *See* Def.'s 6/12/2020 Status Report. And, second, the Secretary demands too much in the present health crisis. Congress made a policy judgment that Tribal governments are in dire need of emergency relief to aid in their public health efforts and imposed an incredibly short time limit to distribute those dollars. Tribal governments therefore are presumed already to be suffering great harm, as confirmed by Plaintiffs' affiants, who have explained that they have been forced to shut down revenue-producing operations while also incurring new costs to respond to the pandemic, with the resulting reduction of "government services putting the health and safety of tribal members at substantial risk." Affidavit of Ryan Ortiz, ECF No. 20, ¶ 11. Considering

the public health challenges presented by the COVID-19 pandemic, the damage done by further delay cannot be fully cured by later remedial action, rendering Plaintiffs' harm irreparable. *Cf. Harris v. Bd. of Supervisors, Los Angeles Cty.*, 366 F.3d 754, 766 (9th Cir. 2004) (finding irreparable harm from risk of infection and possible death due to delayed treatment from the reduction of hospital beds); *Kildare v. Saenz*, 325 F.3d 1078, 1083 (9th Cir. 2003) (explaining that "back payments cannot erase either the experience or the entire effect of several months" of deprivation of necessary resources (internal quotations marks and citation omitted)). "The risk to human life need not be a certainty to justify expedition," particularly where the "very purpose of the governing Act is to protect those lives." *Public Health Citizen Research Group v. Auchter*, 702 F.2d at 1160, 1157–58 & n.26 (D.C. Cir. 1983).

Finally, the balance of equities and the public interest favor injunctive relief. The court reiterates what it said in denying the *Prairie Band* Plaintiff's motion for injunctive relief: "[I]t would be patently unfair to make Tribal governments wait any longer to receive the remaining CARES Act funds." *Prairie Band* Mem. Op. at 4. The 80 days they have waited, when Congress intended receipt of emergency funds in less than half that time, is long enough. The equities and the public interest favor immediate disbursement of the remaining Title V funds.

IV.

For the foregoing reasons, Plaintiffs' Renewed Motion for Preliminary Injunction, ECF No. 37, is granted. A separate Order accompanies this Memorandum Opinion.


Amit P. Mehta
United States District Court Judge

Dated: June 15, 2020

USCA Case #20-5286

Document #1865766

Filed: 10/09/2020

Page 144 of 188

Complaints, Counterclaims & Cross-claims[4:20-cv-00290-JED-FHM Shawnee Tribe, The v. Mnuchin et al](#)

DISCREP

U.S. District Court**U.S. District Court for the Northern District of Oklahoma****Notice of Electronic Filing**

The following transaction was entered by Bigler, Gregory on 6/18/2020 at 1:23 PM CDT and filed on 6/18/2020

Case Name: Shawnee Tribe, The v. Mnuchin et al**Case Number:** [4:20-cv-00290-JED-FHM](#)**Filer:** Shawnee Tribe, The**Document Number:** [2](#)**Docket Text:**

COMPLAINT with Jury Demand against All Defendants (paid \$400 filing fee; receipt number AOKNDC-2221807) by Shawnee Tribe, The (With attachments) (Bigler, Gregory)

4:20-cv-00290-JED-FHM Notice has been electronically mailed to:

Gregory H Bigler gdbigler@swbell.net

4:20-cv-00290-JED-FHM Notice has not been electronically mailed to:

The following document(s) are associated with this transaction:

Document description:Main Document**Original filename:**n/a**Electronic document Stamp:**

[STAMP dcecfStamp_ID=1058978411 [Date=6/18/2020] [FileNumber=2363755-0]
] [3d9a83e00c86b9486ac1ee7937346b9d0900b1fc1a8ae96fdc8fc04a44f61a6cd3b
9b812d26646d4045448096736aeff93aa89cec0add915b63d14f39a793c95]]

Document description:Exhibit Exh A to Complaint**Original filename:**n/a**Electronic document Stamp:**

[STAMP dcecfStamp_ID=1058978411 [Date=6/18/2020] [FileNumber=2363755-1]
] [2c3885b3df2f0ba11b1de20be51396929cda1ecc4abbfbf12a5f974e4347f791bdf
f5f87cc68db660d32d64cb5d4758cdccc655081c5f7979ae8072a68bdce2a]]

Document description:Exhibit Exh B to Complaint**Original filename:**n/a**Electronic document Stamp:**

[STAMP dcecfStamp_ID=1058978411 [Date=6/18/2020] [FileNumber=2363755-2]
] [09d7ecfdd71e8b17ac6f1673d4f038ab27e8cd8324756a52032157a50d01369ed51]

S-App'x00072

USCA Case #20-5286

Document #1865766

Filed: 10/09/2020

Page 145 of 188

65160152512b8c17a9af26eb4772f163983aa4afbfc5a8d95c495042003ec]]

Document description:Exhibit Exh C to Complaint

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1058978411 [Date=6/18/2020] [FileNumber=2363755-3]
][bb1b6b8b4231b2ee832621f067961138bfa9f8df9381229d3bdbbc03b777236cb862
15c4a6620a557a94f2da99d344352c34f6288e3763eead7c6bf47398ef5be]]

Document description:Exhibit Exh D to Complaint

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1058978411 [Date=6/18/2020] [FileNumber=2363755-4]
][6d5f6600674ad51c798939dfecc161d14a6b9c757aff9c91b8adab3f148e97096a4
ce16ddee7513e42f7f14c37f0e2a44271848c70ede1e6ce763dd1cb7d626e]]

S-App'x00073



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAR 31 2020

ATTENTION: TIME SENSITIVE CONSULTATION INFORMATION
ALL-TRIBES CONSULTATION CALL
RE: CARES ACT TITLE VI, CORONAVIRUS RELIEF FUND

Dear Tribal Leader:

The Coronavirus Aid, Relief, and Economic Security (CARES) Act signed by President Trump on March 27, 2020, provides additional funding to assist Tribes in preventing, preparing for, and responding to coronavirus. The CARES Act includes a Coronavirus Relief Fund (CVF) that includes an \$8 billion set aside for Tribal governments, to be distributed no later than April 26, 2020.

Together with the U.S. Department of Treasury, I seek your input on developing a methodology or formula to allocate this \$8 billion to Tribal governments, as outlined in the CARES Act, and guidance on what qualifies as necessary expenditures incurred due to the coronavirus public health emergency. A compressed timeline is necessary, so that we may distribute the funds as soon as possible to address your needs in these unprecedented and uncertain times. I invite you, as the official leader of your Tribe, to join Indian Affairs and representatives of the U.S. Department of Treasury on two following scheduled consultation sessions:

Date	Time (Eastern Time)	Call-In Information
Thursday, April 2, 2020	1 p.m. – 4 p.m.	Phone number: 888-950-5924 Participant Code: 1682452
Thursday, April 9, 2020	1 p.m. – 4 p.m.	Phone number: 888-950-5924 Participant Code: 1682452

In the event you are unable to make the consultation call, please provide written comments and submit to consultation@bia.gov and tribal.consult@treasury.gov **no later than Monday, April 13, 2020**. I appreciate your input and leadership as we work together to ensure these funds provide the maximum protection and relief for your communities.

Sincerely,

Tara Sweeney
Assistant Secretary – Indian Affairs

S-App'x00074

U.S. DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

CARES ACT TITLE VI
CORONAVIRUS RELIEF FUND
TRIBAL CONSULTATION

Washington, D.C.

Thursday, April 2, 2020

1 PARTICIPANTS:

2 Opening:

3 MARK CRUZ
4 Deputy Assistant Secretary, Policy and Economic
5 Development, Indian Affairs
6 U.S. Department of Interior

7 Welcome:

8 TARA SWEENEY
9 Assistant Secretary, Indian Affairs
10 U.S. Department of Interior

11 DANIEL KOWALSKI
12 Counselor to the Secretary
13 U.S. Department of Treasury

14 Consultation Presentation:

15 TARA SWEENEY
16 Assistant Secretary, Indian Affairs
17 U.S. Department of Interior

18

19

20

21

* * * * *

22

1 Director of the Senate Budget Committee.

2 I still have a number of friends on
3 Capitol Hill, including on Indian Affairs. I am
4 not an expert on Tribal issues, but I have worked
5 while at Treasury on matters affecting Tribes with
6 respect to Opportunity Zones. I worked with your
7 representatives to come to a workable solution to
8 the relevant issue, which was leasing as far as
9 Tribal lands are not able to sold and how we could
10 use that in the Opportunity Zone framework. I
11 think we worked together to come to a solution
12 that fits the statute and also fits the needs of
13 the community. I hope that we -- I am confident
14 actually that we will do the same here.

15 What is the Coronavirus Relief Fund?
16 It's a \$150 billion one-time grant program set up
17 in the CARES Act. \$150 billion in total, \$8
18 billion earmarked for Tribes, \$3 billion earmarked
19 for territories in the District of Columbia. The
20 funds must be used for Covid-19 expenditures above
21 baseline for the period March 1, 2020 through
22 12/31/2020. We anticipate that the funds will be

1 distributed on or about April 24, 2020, Friday the
2 24th. And so that's what we are working for
3 there. There are special rules that apply to the
4 Tribal distribution. And, you know, we will work
5 to figure out what that means together.

6 What does Treasury want from this
7 Consultation? Really, ultimately, we want a fair
8 and transparent method for allocating these funds.
9 We also need to arrive at it quickly because April
10 24 is not that far away and the statute told us to
11 get those funds to the communities within 30 days
12 of enactment. Treasury is responsible for
13 determining the allocation of the funds. We take
14 seriously the directive to ensure that all amounts
15 available are distributed to the Tribe and Alaskan
16 Native villages that are eligible for the funding.
17 But we also take seriously Congress' instructions
18 On how funds are to be used. If there are
19 clarifications about how funds might be used, some
20 of those will need to be addressed by Congress and
21 will be beyond the scope of what we can do here.

22 We do need to keep within the four corners of the

1 questions. The first question comes from Darrell
2 G. Seki, Sr., Chairman. Your line is open.

3 MR. CRUZ: Hey, operator. I can't hear
4 you and I'm sure others on the line can't hear
5 you.

6 OPERATOR: My apologies. I'll see if I
7 can fix the line. One moment please. And my
8 apologies. Is this better? My apologies.

9 MR. CRUZ: There you go.

10 OPERATOR: Darrell G. Seki, Sr.,
11 Chairman, your line is open.

12 MR. SEKI: This is Darrell G. Seki, Sr.,
13 Chairman of Red Lake.

14 The thing I want to talk about is we
15 serve -- Red Lake serves a resident population of
16 15,000 members, land base of 850,000 acres in
17 Northern Minnesota. We operate a commercial
18 fishery, other enterprises, including traditional
19 food business. We also have three small casinos
20 and revenues are very critical to support our
21 Tribal and community service programs. Many of
22 these the Federal Government does not provide any

1 financial support. We are supporting a funding
2 methodology that provides direct funding to Tribal
3 Governments and provides the funding to provide
4 relief from the costs we are incurring and expect
5 to incur as a result of the closure of daily
6 operations, the shuttering of the travel program
7 and enterprises, and our need to obtain increases
8 resources to protect our community from this
9 pandemic.

10 Because of this we need clarity on what
11 parameters Treasury and DOI considers eligible for
12 the relief funds. We hope Treasury and DOI
13 consider a methodology that takes into account
14 population, possibly as a layer above some base
15 level of funding for each Tribe. We also support
16 direct funding from the Department of Interior
17 through our existing BIA self- governance compacts
18 and 638 contracts. In addition, the funds are
19 meant to support Tribal Governments and there
20 should be no funding held back by the Department
21 of Interior as administrative costs for their use.
22 And considering how funds are distributed, there

1 expenditures are, just as the states are being
2 allowed to do. We support using an existing
3 funding distribution model, such as
4 self-governance, the 638 funding agreement for
5 rapid disbursement of funding to the Tribes. We
6 also have some concerns around our furloughed
7 workers and request that the Department of
8 Interior consult with the Department of Labor to
9 assess the impacts of the pandemic on those
10 workers to develop policies that will sustain our
11 Tribal economy.

12 ATNI also supports reasonable based
13 funding approaches for every Tribal government,
14 and we believe the population can be a factor that
15 included (inaudible) citizens and potentially the
16 number of employees of the Tribe.

17 I would also like to add in that we
18 support the Northwest Portland Area Indian Health
19 Board's recommendations as outlined in the letter
20 you'll be receiving soon.

21 That's all the comments I have for now
22 and appreciate the opportunity.

1 So thank you for this opportunity folks.
2 And I appreciate the hard work by the leadership
3 in Treasury and the Department of Interior with
4 regard to this matter.

5 So I'll try to keep our comments brief.
6 Our Tribe totally supports the recommendations of
7 ATNI, NCAI, and NAFOA, who have made good
8 recommendations with regard to how these resources
9 can be distributed. We agree that when it comes
10 the distribution base, that you need to look
11 seriously at a base number that would be
12 reasonable and fair for all Tribes, small and
13 large, so that the smaller Tribes who have smaller
14 bases get a reasonable amount of relief, as
15 intended by the Act.

16 And then we believe that population is a
17 factor simply because people to serve, and so it's
18 more relevant to the complexity of each of the
19 Tribes and each of their areas. So we think that
20 that is definitely appropriate.

21 We agree that with regard to
22 expenditures that we have -- that the rules to the

1 consulted and that's the funding mechanism that we
2 have today. So I support that.

3 I do need to say that population does
4 need to be a factor here, as other Tribes I have
5 heard say that as well.

6 So I don't want to take up too much more
7 time. I know that here are a lot of Tribes
8 probably waiting, as I was, to offer input, but.

9 I also support that as a threshold there
10 should be a minimum about, but that should not be
11 all that there is. But to expedite the funds and
12 to get them out, that might be a place to start.

13 I agree with most -- well, one thing I
14 want to say is that I don't believe that there
15 should be a list for priorities, as with states.
16 It's our discretion. Certified funds go to the
17 annual audit for review. And should there be
18 another opportunity, I highly encourage for the
19 Treasury and all departments -- I know you're
20 agencies and you don't lobby, but the need in
21 Indian Country is great, it's vast, and this is
22 just the tip of the iceberg.

1 You know, and there's such a heavy criteria that
2 we're not being able to proactively test to see
3 who is actually testing positive or may already be
4 carrying the virus here within the boundaries of
5 the Pine Ridge.

6 Thank you.

7 MR. CRUZ: Thank you, President Bear
8 Runner.

9 MR. KOWALSKI: I have a question for the
10 President. So what do you think about land mass
11 as an indicator of relative need? We've heard a
12 number of people talk about population and you
13 talk about the size of your Tribal land. How well
14 correlated is that to needs in your view?

15 MR. BEAR RUNNER: Well, you know, that
16 has a tremendous -- I mean it creates a tremendous
17 need because like our ambulances are school buses.
18 Again, our roads are already, you know, almost
19 nonexistent. You know, they're deteriorating
20 fast. And so it creates a snowball effect that
21 one, the vehicles. That it's having -- our
22 emergency vehicles are being mileaged out. And

1 continue. We are going to be starting with
2 layoffs and furloughs, which will be starting
3 soon. But even at that we've elected to pay
4 health benefits for the next two months for those
5 furloughed employees.

6 What we're looking for is clarity and
7 direction as to what impacts will qualify for
8 inclusion in this. Again, we're asking to use
9 that expansive reading of the language that you
10 said is your intent as we go forward with this.

11 And as far as a formula, I understand
12 the population base coming forward and the issues
13 that Tribes have with small Tribes versus Large
14 Tribes, Large land based, but we believe one of
15 the factors that also needs to be factored in --
16 and it fits within the economic factor of what
17 this means -- is the number of employees that a
18 Tribe has.

19 And so I just thank you for the time
20 again to hear our concerns and our comments, and
21 look forward to some quick responses.

22 MR. CRUZ: Thank you, Vice Chairman

1 Gobin. Dan?

2 MR. KOWALSKI: Thank you. Thank you for
3 putting employees as another thing that we need to
4 think about in our weighting scheme that we may
5 have to come up with. Appreciate that.

6 MR. CRUZ: Thank you, sir. Operator,
7 we're ready for the next caller.

8 OPERATOR: The next caller is Lawrence
9 Solomon. Your line is open.

10 MR. SOLOMON: Good morning, or good
11 afternoon. This is Lawrence Solomon, Lummi
12 Nation. Tara Sweeney, Dan Kowalski, thank you for
13 taking time and we appreciate this Consultation
14 today.

15 In Lummi we have 17 confirmed positive
16 cases of Coronavirus. So this is why we
17 appreciate this Consultation today. Today we are
18 working together, protecting our elders, our
19 history, our elders, our culture, our children,
20 and our future. The Lummi Nation is located in
21 Washington State, which is ground zero for the
22 Covid-19 pandemic in the United States. We share

1 space because our local hospital is too small.
2 The alternative care site is estimated to cost our
3 Tribe \$3.8 million. Our disaster related health
4 visits in emergency rooms in Washington State are
5 close to 100,000 over the last 3 months.

6 So we share the important message that
7 we cover healthcare first and foremost in our
8 hearts, in our minds, and in our actions moving
9 forward.

10 So this is one of our questions, what
11 would a formula methodology to allocate the \$8
12 billion look like?

13 That's my question to you, but I want to
14 continue on.

15 We recommend that the current Indian
16 Health Service methodology through our Tribal once
17 a year Funding Agreement, these funds have been
18 negotiated between sovereign Tribal Nations and
19 the Federal Government -- the mechanism is already
20 in place. What qualifies as an expenditure
21 related to Covid- 19? The Covid-19 pandemic has
22 demonstrated that the Tribal Nations need

1 investment in public health and in public health
2 infrastructure. Our public health team expects
3 this virus to be a reoccurring event, much like
4 the flu. An investment in public health
5 infrastructure will help Tribes better respond to
6 future public health crises.

7 We will also submit a letter and
8 comments. Wash your hands, stay home, stay safe.
9 (Speaking in native language) Thank you.

10 MR. CRUZ: Thank you, sir. Treasury?

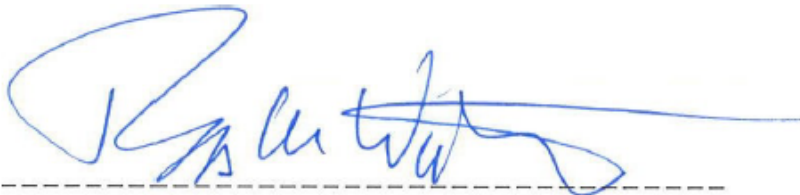
11 MR. KOWALKSI: Yes, thank you. I can
12 tell you that I don't really know what a
13 distribution looks like at this point. That I
14 think is the point of the Consultation. I know we
15 are interested in working with BIA and learning
16 from BIA what models are out there for
17 distributing funds. And it's good to hear that
18 you think that there's one that may be appropriate
19 for this particular crisis in the IHS, and that
20 may be something to look at.

21 I think the types of expenditures that
22 you mentioned in your comments really are the

CERTIFICATE OF NOTARY PUBLIC

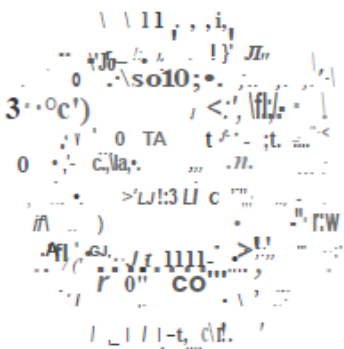
DISTRICT OF COLUMBIA

I, Thomas Watson, notary public in and for the District of Columbia, do hereby certify that the forgoing PROCEEDING was duly recorded and thereafter reduced to print under my direction; that the witnesses were sworn to tell the truth under penalty of perjury; that said transcript is a true record of the testimony given by witnesses; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was called; and, furthermore, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public for the District of Columbia; 3

My Commission Expires: May 31, 2024



S-App'x00089

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

CARES ACT TITLE VI
CORONAVIRUS RELIEF FUND
TRIBAL CONSULTATION

Washington, D.C.
Thursday, April 9, 2020

1 PARTICIPANTS:

2 Opening:

3 MARK CRUZ

4 Deputy Assistant Secretary, Policy and Economic
5 Development, Indian Affairs
6 U.S. Department of Interior

7 Welcome:

8 TARA SWEENEY

9 Assistant Secretary, Indian Affairs
10 U.S. Department of Interior

11 DANIEL KOWALSKI

12 Counselor to the Secretary
13 U.S. Department of Treasury

14 Consultation Presentation:

15 TARA SWEENEY

16 Assistant Secretary, Indian Affairs
17 U.S. Department of Interior

18 * * * * *

1 I think once we have that done and once
2 we complete this Consultation process and weigh
3 the additional comments that we will receive today
4 and in written form -- although we do hope you get
5 your written form in sooner rather than later --
6 to then move more on the actual formula for
7 distribution. I think we have somewhat determined
8 that a formula makes sense. It's hard to do
9 anything other than a formula in the time that's
10 available and the statute is pretty specific about
11 when the funds should go out. We respect that and
12 we also think that, you know, the costs are
13 occurring now in real time, so that, you know, you
14 should get the funds that the Federal Government
15 promised you as soon as we can get them out.

16 Always looking for more discussion on
17 what's the appropriate way to balance out the
18 competing needs and equities in that distribution
19 formula. I very much enjoyed participating in
20 this Consultation and this conversation last week
21 and I look forward to the next few hours of
22 additional conversation.

1 allocated under Title V for nearly all Covid-19
2 relief funding.

3 Recommended formula criteria for
4 distribution of funds, the NHBP is aware that both
5 Treasury and Interior officials have a preference
6 for utilizing a simple formula or criteria for
7 distributing these funds within Indian Country in
8 order to expedite delivery of these critically
9 needed funds. The NHBP urges Treasury to
10 recognize that a one size fits all approach will
11 inevitably result in inequities and fail to
12 account for regional and tribal specific impacts.
13 According to the NHBP, we do not support a formula
14 based on a single criteria such as Tribal
15 population. Tribal population alone will not
16 account for the degree to which the total Tribal
17 population depends on Tribal Government programs
18 and services and the additional burden costs a
19 Tribal Government may be experiencing as a result
20 of this pandemic. We believe a blended formula
21 that provides a guaranteed minimum amount of
22 assistance to even those Tribes that may not have

1 went back to the Act and its intent to provide
2 relief funding for Tribal budget deficits caused
3 by the Coronavirus. There is no formula
4 contemplated in the Act. And it is our strong
5 belief that we need to have a process that is need
6 based. I will repeat, that is need based. I know
7 that some have commented that based on the
8 expedited timeframe to disburse the funds there
9 isn't enough time for an application process or
10 for Tribes to be able to provide a self-certified
11 estimate of their individual needs, but I
12 fundamentally disagree with that conclusion,
13 everyone.

14 Each Tribe has all the information it
15 needs to prepare a certified estimate of needs and
16 we must do that, all of us. There is information
17 that all Tribes have that is readily available and
18 can be completed in an hour or two. And that is
19 what the Act anticipates.

20 One, the 2019 budget, two, the Tribe's
21 budget for FY 2020, including anticipated revenue
22 sources to support it, and an estimate by month of

1 the deficits being caused to those Tribal budgets
2 by increased costs and decreased revenues to
3 support the budgets, excluding any planned savings
4 or per capital payments. Since none of us know
5 when we'll be able to reopen our businesses, our
6 enterprises, we should provide an estimate that is
7 based on reopening on May 1 as we all hope, but
8 also by June 1, as it seems more realistic.

9 Tribes should submit this Covid-19
10 relief estimate to Treasury with a certification
11 that states that this is a good faith estimate on
12 its part of what it can expend on Covid-19 costs
13 as required under the Act. This type of estimate
14 of needs could be easily reviewed by the agency
15 and would also provide a realistic view of the
16 actual needs of Indian Country.

17 This is important. We must show the
18 actual needs of Indian Country to Congress. When
19 we went to Congress -- and as you know, Tribal
20 Leaders, we proposed \$20 billion for the Tribal
21 relief fund -- we were told by our congressional
22 representatives that we couldn't justify our

1 numbers. If we don't take the time now, and there
2 is still time to do this within the timeframe
3 remaining, then we will end up shortchanging
4 Indian Country in the end because we won't be able
5 to show that we need additional infusions of
6 funding at a later date.

7 We also feel strongly that there should
8 be a minimum reserve for each Tribal Nation. No
9 one should be left behind during this crisis.
10 That is not who we are as Indian People. I also
11 think a cap for this round of funding would also
12 be necessary to ensure there is enough funding to
13 go around and to make sure all of our unique needs
14 can be met. The fact that the House has now
15 started a process to add additional funds for
16 Tribes in the fund should alleviate some concerns
17 from Tribes that a cap might leave them with
18 insufficient funding to meet their actual needs.

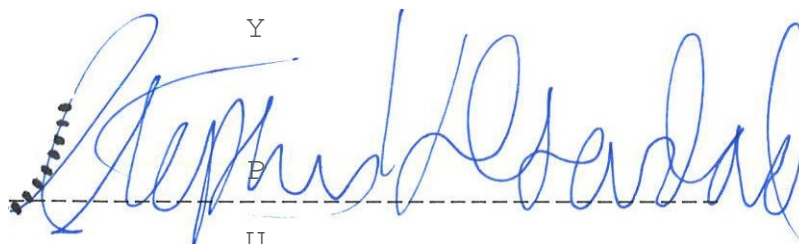
19 The Community submitted comments to the
20 agency -- on Tuesday we submitted our comments and
21 we may submit supplemental comments based on
22 today's Consultation.

IC DISTRICT OF COLUMBIA

C
I, Steven K. Garland, notary public in
E
and for the District of Columbia, do hereby
R
certify that the forgoing PROCEEDING was
T
duly recorded and thereafter reduced to
I
print under my direction; that the
F
witnesses were sworn to tell the truth
I
under penalty of perjury; that said
C
transcript is a true record of the testimony
A
given by witnesses; that I am neither
T
counsel for, related to, nor employed by
E
any of the parties to the action in which
this proceeding was called; and,
O
furthermore, that I am not a relative or
F
employee of any attorney or counsel
employed by the parties
N
hereto, nor financially or otherwise interested
O
in the outcome of this action.

T
Notary Public, in and for the District of Columbia

A
My Commission Expires: May 31, 2024

R
Y

U

B
L

S-App'x00097

**Coronavirus Relief Fund
Allocations to Tribal Governments
May 5, 2020**

The CARES Act reserves \$8 billion from the Coronavirus Relief Fund (the Fund) for payments to Tribal governments and provides that the allocation of payments to Tribal governments is to be determined by the Secretary of the Treasury in consultation with the Secretary of the Interior and Indian Tribes.¹

Consultation process

In accordance with Treasury's Tribal consultation policy, Treasury and the Bureau of Indian Affairs conducted two telephonic Tribal consultations with Tribal leaders and received written comments from Indian Tribes. Treasury also appreciates the submissions made by Indian Tribes in response to Treasury's request for information.

Allocation determination

The CARES Act provides that the Tribal allocation is to be "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 [of the Treasury] determines appropriate to ensure that all amounts" are distributed to Tribal governments.²

Based on a reasonable assessment of the reliability, verifiability, and relevance of available data and after consulting with the Bureau of Indian Affairs and Indian Tribes, Treasury has determined that it is reasonable and appropriate to allocate payments based on a formula takes into account population data, employment data, and expenditure data. This determination is also based on considerations of administrative feasibility—a particularly important factor in light of the need for prompt payment to Tribal governments to meet immediate needs.

By necessity and due to the statutory design, any allocation formula will yield only an estimate of increased eligible expenditures, and the statute therefore grants the Secretary discretion to devise a formula that the Secretary deems appropriate to ensure that all amounts are distributed to Tribal governments.³ It is of course unknown at present what a Tribal government's increased expenditures will be over the course of the period beginning March 1, 2020, and ending December 30, 2020, during which expenses to be covered using payments from the Fund may be incurred.⁴ Treasury determined that it would not be appropriate to rely entirely on Tribal governments' fiscal year 2019 expenditures in making allocations, *e.g.*, by providing payments to each Tribal government based on a fixed percentage of such Tribal government's fiscal year 2019 expenditures.

Treasury believes the allocation of payments should be focused on, to the extent administratively feasible, necessary expenditures that are due to the public health emergency, which are the only expenditures that may be made using payments from the Fund.⁵ Treasury observed wide variability in expenditures reported by Tribal governments that appears to be related to differences in the extent to which Tribes and tribally-owned businesses engage in business activities. Although Treasury interprets the CARES Act to permit the provision of certain economic support to affected businesses, not all business expenses will be eligible. Treasury expects that Indian Tribes with less extensive tribally-owned businesses (and therefore

¹ See section 601(c)(7) of the Social Security Act, as added by § 5001(a) of the CARES Act.

² See *id.*

³ See *id.*

⁴ See *id.* at section 601(d)(3).

⁵ See *id.* at section 601(d)(1).

lower overall expenditures) will have a proportionately greater increase in eligible expenditures than those Tribes whose prior year expenditure amount would include expenditures associated with large tribally-owned businesses.

In contrast, Tribal population is expected to correlate reasonably well with the amount of increased expenditures of Tribal governments related directly to the public health emergency, such as increased costs to address medical and public health needs. The Federal government also has reliable and consistently-prepared data for this key variable, discussed further below, that permits payments to be made at this time. Given the importance of providing funding as soon as possible to Tribal governments to address health and human services costs and other costs directly related to COVID-19, Treasury has determined to distribute 60 percent of the \$8 billion reserved for Tribal governments immediately based on population.

Treasury will distribute the remaining 40 percent of the \$8 billion reserved for Tribal governments based on employment and expenditures data of Tribes and tribally-owned entities. The use of employment data is expected to correlate reasonably well with expenditures related to effects of the emergency, such as the provision of economic support to those experiencing unemployment or business interruptions due to COVID-19-related business closures. Data relating to expected increased expenditures is expected to correlate reasonably well with the variability in the per person costs of service delivery in different tribal environments. Treasury believes it is important to ensure that this data is as consistent across Tribal governments as possible and for that reason intends to request additional information in the near future from Tribal governments as to their employment and expenditures. Treasury intends to determine the specific weight given to employment and expenditure data after receiving such additional submissions. Final payments will be made after data on employment and expenditures are received, reasonably verified, and accounted for in the allocation formula.

Treasury determined that the total number of land acres held by the Tribal government and any tribally-owned entity would not provide a useful indicator of increased expenditures. Although the total number of land acres can indicate increased costs of providing services over a larger area, particularly in remote locations, there are some areas that are so sparsely populated that reliance on this factor likely would overstate the increased marginal costs of Tribal governments in these areas.

Tribal population data

For purposes of the payments based on Tribal population, Treasury will refer to the Tribal population data used by the Department of Housing and Urban Development (HUD) in connection with the Indian Housing Block Grant (IHBG) program.⁶ This population data is based on Census Bureau data, and Tribal governments are familiar with it and have already been provided the opportunity to scrutinize and challenge its accuracy.⁷

The IHBG program allocation formula uses the American Indian and Alaska Native population count as determined by the Census of each Tribe's "formula area."⁸ Although the definition of "formula area" was developed by HUD for the specific context of the IHBG program, the formula area corresponds broadly with the area of a Tribal government's jurisdiction and other areas to which the Tribal government's

⁶ The IHBG formula includes total American Indian and Alaska Native (AIAN) population as part of the needs component. The remainder of the IHBG formula will not be referenced by Treasury in making payments from the Fund.

⁷ See 24 C.F.R. §§ 1000.330(c), 1000.336.

⁸ See *id.* at § 1000.302.

provision of services and economic influence extend. The IHBG formula area is also useful because it incorporates adjustments to address overlapping jurisdictions.

The IHBG population data used by Treasury for the Fund allocation is available from HUD.⁹ For Indian Tribes not included in the IHBG population data, HUD provided population figures at Treasury's request. Treasury will not include state-recognized Tribes that participate in the IHBG program but that are not Indian Tribes as defined by Title V of the CARES Act. Treasury will follow the IHBG practice of calculating a payment amount for each Tribal government based on single-race and then multi-race data and allocating the larger calculation amount for each Tribe.¹⁰

Minimum payment amount

The population-based allocation will assign a minimum payment of \$100,000 to the smallest Indian Tribes as set forth in step 2, below. Only Tribal governments with a population of less than 37 will receive the minimum payment. The decision to apply a minimum payment to such Indian Tribes reflects the greater relative significance that variations in population would have at the low end of the range and the greater marginal costs that small Indian Tribes have in providing services to their people. The establishment of this minimum amount also reflects the clear desire expressed by a substantial number of Indian Tribes during the Tribal consultation process and is set at an amount that should allow funds to be used by Tribes of this size for eligible expenditures.

Alaska Native corporations

As previously stated, Treasury, after consultation with the Department of the Interior, has concluded that Alaska Native regional and village corporations as defined in or established pursuant to the Alaska Native Claims Settlement Act are eligible to receive payments from the Fund. Payments are not being made to the Alaska Native corporations at this time due to pending litigation.

Population-based component of allocation formula

The allocation will result from Treasury taking the following steps:

Step 1. Calculate the pro-rata payment for each Tribal government based on single-race and then multi-race data for each Tribe's IHBG formula area, and use the larger result for each Tribal government.

Step 2. Assign a minimum payment of \$100,000 to those Tribal government that would otherwise receive less than that amount under step 1.

Step 3. For Tribal governments that would receive a payment greater than the minimum, a pro-rata reduction is made for those amounts above the minimum for each Tribe so that the total amount for all Tribes does not exceed \$4.8 billion.

⁹ See <https://www.hud.gov/sites/dfiles/PIH/documents/FY%202020%20Final%20Allocation%20Single-Multi.xlsx>. (This footnote was updated on August 11, 2020, to provide the correct URL.)

¹⁰ Prior to 2000, the Census required a person to choose a single racial category. Starting in 2000, a person was allowed multiple responses. For example, a person with mixed ancestry could report that they were both AIAN and Asian. Since 2006, successive appropriations acts have directed HUD to run the IHBG formula twice—once counting the needs of all persons who report that they are AIAN, whether they say they are AIAN alone or AIAN in combination with some other race, and then again counting only the needs of persons who identify solely as AIAN. A Tribe's allocation is based on the definition—either AIAN alone or the broader definition of multi-race AIAN—which provides it with a higher share of total funds. See, e.g., Further Consolidated Appropriations Act, 2020, Public Law 116-94, Div. H, Title II; 133 Stat 2534, 2985.

**Coronavirus Relief Fund
Allocations to Tribal Governments
June 12, 2020**

The CARES Act reserves \$8 billion from the Coronavirus Relief Fund (the Fund) for payments to Tribal governments and provides that the allocation of payments to Tribal governments is to be determined by the Secretary of the Treasury, in consultation with the Secretary of the Interior and Indian Tribes.¹

On May 5, 2020, the Department of the Treasury announced the Secretary of the Treasury's determination to allocate payments to Tribal governments based on population, employment, and expenditure data, and Treasury began making payments of population-based amounts on that date. In order to ensure to the greatest extent feasible that employment and expenditure-based payments would be allocated using data that is as consistent across Tribal governments as possible, Treasury requested additional information from Tribal governments as to their employment and expenditures, as discussed below. Treasury stated at the time of the first distribution that it intended to determine the specific weight given to employment and expenditure data after receiving such additional submissions. As discussed below, this determination has been made, and Treasury is making a second distribution of payments to Tribal governments today.²

Employment and expenditure data

Treasury requested that, for each calendar quarter of 2019, Tribal governments submit the number of their employees and the number of employees of any entity of which the Tribal government owns at least 51% of the ownership interests. To ensure consistency, Tribes were required to use the employee numbers submitted to the IRS on Form 941.

Treasury also requested that Tribal governments provide the total amount of government expenditures, other than capital outlays and debt service costs, for the 12 months of the 2019 fiscal year and break out the amount of federal financial assistance represented in the total government expenditure figure. Tribal governments were required to provide documentation supporting these figures.

Treasury has determined to distribute 30 percent of the \$8 billion reserved for Tribal governments based on the employment data of Tribes and tribally-owned entities and 10 percent of the \$8 billion reserved for Tribal governments based on tribal total government expenditures for the 12 months of the 2019 fiscal year (subject, in each case, to the amount of the reserve described further below). The greater weight placed on employment data responds to comments received during the tribal consultations that the allocation formula should account for the economic impact that a Tribe's business enterprises have in the community where the Tribe is located. Tribes made clear the importance of being able to maintain their tribally-owned businesses, including by providing payroll support to compensate for stay-at-home orders, social distancing measures, and other costs brought about by COVID-19. The relatively smaller weight placed on tribal expenditure amounts is appropriate because payments have already been made on the basis of population, and both population and expenditure amounts are expected to correlate to a similar extent with similar categories of COVID-19 related expenses of Tribal governments.

¹ See section 601(c)(7) of the Social Security Act, as added by § 5001(a) of the CARES Act.

² As previously stated, Treasury, after consultation with the Department of the Interior, has concluded that Alaska Native regional and village corporations as defined in or established pursuant to the Alaska Native Claims Settlement Act are eligible to receive payments from the Fund. Treasury has accepted payment requests from such corporations and asked them to submit supplemental information. They are also included in the computations below, but payments are not being made to the Alaska Native corporations at this time due to pending litigation.

Reserved funds

At this time, Treasury has determined to reserve \$679 million from amounts that would otherwise be paid to Tribal governments, which represents an estimate of the difference in total payment amounts to Tribal governments if Treasury had made population-based payments based on tribal enrollment data provided by the Bureau of Indian Affairs, rather than the Census-based Indian Housing Block Grant data used for the first distribution as announced on May 5, 2020. These reserved funds would be available to resolve any potentially adverse decision in litigation on this issue with respect to payments from the Fund to Tribal governments. In particular, given that the Judgment Fund is unavailable to compensate plaintiffs seeking additional CARES Act payments, this reserve is intended to enable Treasury, if necessary, to address claims for additional payment presented in litigation. Although Treasury is not required to maintain this reserve, Treasury has concluded that it is a prudent course at this stage as a policy matter.

Employment-based component of allocation formula

The allocation based on employment data will result from Treasury taking the following steps:

Step 1. By Tribe, sum reported tribal employment and tribal entity employment for each quarter of 2019.

Step 2. Calculate the non-zero annual average of the summed quarters one through four obtained in Step 1.

Step 3. Calculate the pro-rata³ payment for each Tribal government, based on the annual employment averages obtained in step 2.

Expenditure-based component of allocation formula

The allocation based on tribal total government expenditures will result from Treasury calculating the pro-rata⁴ payment for each Tribal government, based on 2019 tribal total government expenditures.⁵

³ More specifically, this step sums the non-zero annual employment averages obtained in step 2 for each Tribe to obtain total annual average employment for all Tribes combined. Each Tribe's step 2 employment average is then divided by that total average employment amount to obtain the share of total employment for each Tribe. This tribal share is then multiplied by the amount being allocated, 30% of \$8 billion, or \$2.4 billion.

⁴ More specifically, this step sums total government expenditures for each Tribe to obtain total government expenditures for all Tribes combined. Each Tribe's total expenditures are then divided by those combined total expenditures to obtain the share of total expenditures for each Tribe. This tribal share is then multiplied by the amount being allocated, or 10% of \$8 billion, or \$800 million.

⁵ Treasury did not use the information collected on federal financial assistance in the allocation formula. Treasury determined that, because of wide differences in the proportion of federal financial assistance to total assistance among different Tribes, total expenditures was the better indicator of the full costs of Tribal governments.

**Coronavirus Relief Fund
Frequently Asked Questions on Tribal Population
June 4, 2020**

Why did Treasury allocate funding based on Tribal population using the Decennial Census total American Indian Alaskan Native (AIAN) data used by the Department of Housing and Urban Development (HUD) in its Indian Housing Block Grant Program (IHBG)?

Treasury used the Decennial Census data on AIAN population that is used in the IHBG program after making the determination that it is the most consistent and reliable metric on which to base the allocation of payments to Tribal governments. The methodology for calculating population for the IHBG formula was developed through negotiated rulemaking with tribes in the mid-1990s and has been reconsidered over the years, including a negotiated rulemaking session that concluded in 2016. Using these data, which are updated annually using the Census Bureau's Population Estimates Program (PEP) to reflect demographic shifts that have occurred at the county level, provides consistency between Tribal governments and states and local governments. Treasury used PEP data to allocate funding to the state and local governments under the CARES Act. Tribal governments are familiar with these data, and have had the opportunity to challenge them in the past. Finally, the data has been used in other funding formulas that disburse payments to tribes.¹

What population data did Treasury use for Indian Tribes not included in the IHBG population data?

Treasury requested population data from HUD for the three federally-recognized Indian Tribes that are not included in the IHBG population data. Those Indian Tribes are: Mohegan Tribe of Indians of Connecticut, Prairie Island Indian Community, and Chicken Ranch Rancheria of Me-Wuk Indians.²

Although they do not participate in the IHBG program, these tribes do have Decennial Census data attributed to their defined formula areas under the IHBG program. HUD provided the following population figures for each of the tribes by applying the PEP adjustments in the same manner as is done for tribes that do participate in the IHBG program.

Tribe	Single Race	Multi Race
Chicken Ranch	1	1
Mohegan	28	32
Prairie Island	195	219

Treasury used this data in the allocation methodology.

¹ For example, the funding formula under the Tribal Transportation Program, established to address the transportation needs of Tribal governments throughout the United States, is calculated, in part, using the same Decennial Census AIAN population used in the IHBG program. See 23 U.S.C. 202(b)(3)(B).

² These tribes formally withdrew from the IHBG program and asked HUD not to be included in the IHBG formula allocation.

Why did Treasury not use the tribal enrollment data as a proxy for population data?

Tribal enrollment does not provide a consistent measure of tribal population across tribes. Tribal enrollment criteria are set forth in tribal constitutions, articles of incorporation, or ordinances, and vary from tribe to tribe.³ Additionally, tribal enrollment data does not necessarily distinguish between members living within the tribal area from those living outside the tribal area. Instead, “formula areas”, as incorporated in the IHBG population data, correspond broadly with the area of a Tribal government’s jurisdiction, where it provides services, and include adjustments to address overlapping jurisdictions.

Our tribe’s enrollment data is substantially larger than the Decennial Census AIAN population data. Can you explain the difference?

The IHBG program population count is tied to each tribe’s formula area – a specific geographic area attributed to each tribe. Because tribal enrollment does not necessarily distinguish between those living inside and outside of the tribal area, tribal enrollment can significantly differ from the Decennial Census AIAN population data used in the IHBG program.

Why did Treasury not use the population estimates from the American Community Survey (ACS) data?

Treasury did not use ACS population data because the ACS sampling and weighting is based at the county level and since tribal areas are sub-county entities, the tribal population can fluctuate substantially from year-to-year.

³ <https://www.doi.gov/tribes/enrollment>.

[ORAL ARGUMENT HELD SEPTEMBER 11, 2020]
Nos. 20-5204, 20-5205, 20-5209

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

CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION, ET AL.,

Plaintiffs-Appellants,

v.

STEVEN T. MNUCHIN, in his official capacity as Secretary of U.S. Department of
the Treasury,

Defendant-Appellee,

AHTNA, INC., et al.,

Intervenors for Defendant-Appellees.

On Appeal from the United States District Court for the District of Columbia

**RESPONSE TO PLAINTIFFS' EMERGENCY MOTION
TO SUSPEND LAPSE OF APPROPRIATION**

Plaintiffs seek emergency relief designed to protect their ability to secure the funding at issue in this litigation even after the relevant appropriation is scheduled to lapse. While the federal government shares plaintiffs' desire to ensure that the congressionally appropriated funds can be disbursed to the proper parties at the conclusion of this litigation, no emergency order is necessary at this time to provide such assurance. Accordingly, plaintiffs' motion should be denied, without prejudice to the parties' ability to obtain an order at a later time—likely from the district court—to

the extent that such an order would be necessary to ensure that the Department of the Treasury has authority to disburse the funds at issue.

1. These consolidated appeals concern the federal government's distribution of \$8 billion of emergency funds pursuant to the Coronavirus Aid, Relief, and Economic Security Act. *Confederated Tribes of the Chenalis Reservation v. Mnuchin*, No. 20-5204, slip op. 7-9 (D.C. Cir. Sept. 25, 2020); *see* 42 U.S.C. § 801. The statutory appropriation is for payments “for fiscal year 2020,” which ends September 30, 2020. *Id.* § 801(a)(1), (2)(B).

Three groups of federally recognized Indian tribes sued the federal government, seeking to enjoin any payments that might be made to Alaska Native Corporations, and the district court consolidated the cases. *Confederated Tribes*, slip op. 8. After the district court issued a preliminary injunction, a number of Alaska Native Corporations intervened as defendants, and, on June 26, the district court granted summary judgment for the federal government and intervenor defendants. *Id.* On July 7, the district court entered an injunction pending appeal that barred the government from paying any funds to the Alaska Native Corporations until the earlier of September 15 or a merits decision by this Court. *Id.* at 9.

This Court expedited the appeals and held oral argument on September 11. 7/21/20 Order; 7/22/20 Order. On September 14, the Court issued an order enjoining the government “from disbursing or otherwise paying Title V funds to any Alaska Native regional or village corporations pending resolution of these consolidated

appeals.” Order (Sept. 14, 2020). On September 25, the Court issued an opinion holding that Alaska Native Corporations are not eligible to receive funds and therefore reversing the grant of summary judgment to the government and the intervenors, as well as the denial of summary judgment to the plaintiffs. *Confederated Tribes*, slip op. 24. The mandate has not issued.

2. Plaintiffs believe that, once there is a final judgment, the Secretary will have the authority to disburse the funds at issue, even after September 30, 2020. *See* Mot. 10-14. The government agrees that the Secretary will be able to disburse the funds, although depending on the precise circumstances the parties might first need to obtain an appropriate judicial order authorizing that disbursement. As the government informed plaintiffs, “[t]he Treasury Department believes that if no one seeks further review or if the D.C. Circuit’s decision is upheld, then the district court could, after September 30, use its equitable powers to direct the Department to pay funds to non-ANC entities.” Mot. 4 (quoting email from government counsel to plaintiffs’ counsel). Because all parties to this case share the goal of ensuring that the funds can be disbursed, there is no reason to doubt that such an order would issue at the appropriate time if necessary.

The government’s agreement that it would be able to disburse funds to plaintiffs after September 30 with an appropriate court order at that time—and the parties’ common interest in obtaining such an order—should obviate any need for the requested emergency injunction against the lapse of the appropriation. To obtain an

injunction, a movant must establish that the requested relief is necessary to prevent an irreparable injury that is “certain” and “of such imminence that there is a ‘clear and present’ need for equitable relief.” *Olu-Cole v. E.L. Haynes Pub. Charter Sch.*, 930 F.3d 519, 529 (D.C. Cir. 2019); *see also Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (per curiam) (same for a stay). But the government has made clear that if this Court’s recent decision becomes final, then a court could issue an appropriate order, and the Secretary could pay the remaining funds to federally recognized tribes. Accordingly, plaintiffs have not established a certain and imminent harm that would warrant an injunction.

3. The plaintiffs have advanced several theories for why, without any further order of a court, the government would be free to pay additional funds to federally recognized tribes. *See* Mot. 12-14. The Treasury Department will take these theories under advisement in considering how to ensure that once there is a final judgment, the remaining funds can be appropriately disbursed. For present purposes, however, it is sufficient that the Treasury Department believes that even if it could not disburse the remaining funds after September 30 on its own accord, it could do so pursuant to an appropriate court order, and that the Treasury Department intends to join the other parties in securing any necessary order to ensure that the funds can be disbursed. As plaintiffs stressed when seeking an injunction pending appeal (D. Ct. Doc. 106, at 19), “[t]here is an equitable doctrine . . . that permits a court to award funds based on an appropriation even after the date when the appropriation lapses, so long as the lawsuit

was instituted on or before that date.” *City of Houston v. Dep’t of Hous. & Urban Dev.*, 24 F.3d 1421, 1426 (D.C. Cir. 1994) (quotations and emphasis omitted, emphasis added).

Although a “first wave” of cases addressed appropriation lapses by “enjoin[ing] the statutory expiration of budget authority,” as plaintiffs seek here, it is now established that courts may authorize the expenditure of funds “after the funds have expired for obligational purposes.” 1 U.S. Gov’t Accountability Office, *Principles of Federal Appropriations Law* 5-83 (3d ed. 2004).¹ “As long as the suit is filed prior to the expiration date,” as it was here, “the court acquires the necessary jurisdiction and has the equitable power to ‘revive’ expired budget authority.” *Id.* at 5-85. Accordingly, once there is a final judgment in this case, a court can authorize the government to disburse funds to federally recognized tribes. *See City of Houston*, 24 F.3d at 1426 (cited at Mot. 9); *West Virginia Ass’n of Cmty. Health Centers, Inc. v. Heckler*, 734 F.2d 1570, 1576-1577 (D.C. Cir. 1984); *see also National Ass’n of Regional Councils v. Costle*, 564 F.2d 583, 588 (D.C. Cir. 1977) (cited at Mot. 3, 8) (describing authority to “reallocate funds which had been illegally awarded to the wrong category of recipients” and to “redirect[]” funds that have already been obligated).²

¹ Courts regularly look to this GAO manual for principles of appropriation law. *See, e.g., Maine Community Health Options v. United States*, 140 S. Ct. 1308 (2020).

² Pursuant to its interpretation of the CARES Act, the Treasury Department has already obligated funds to the Alaska Native Corporations. An appropriation remains available for five years after the expiration date of the appropriation to, among other things, permit the liquidation of obligations incurred prior to such expiration date. *See* 31 U.S.C. § 1553(a). Accordingly, if the government or the intervenors seek further review and the district court’s judgment were ultimately affirmed, no further order

4. If the Court concludes that an injunction is nonetheless appropriate at this time, the government respectfully suggests that the order provide that the expiration of the appropriation of \$8 billion for payments to Tribal governments in 42 U.S.C. § 801 is suspended pending further court order.

CONCLUSION

For the foregoing reasons, the motion should be denied. To the extent that the Court believes an order at this time is necessary, the government respectfully suggests that the Court enter an order stating that the expiration of the appropriation of \$8 billion for payments to Tribal governments in 42 U.S.C. § 801 is suspended pending further court order.

Respectfully submitted,

MICHAEL S. RAAB

DANIEL TENNY

/s/ Adam Jed

ADAM C. JED

(202) 514-8280

Attorneys, Appellate Staff

Civil Division, Room 7240

U.S. Department of Justice

950 Pennsylvania Ave., N.W.

Washington, D.C. 20530

SEPTEMBER 2020

would be necessary. Thus, regardless of the outcome of any further review, the government can make payment to the proper party: to federally recognized tribes if this Court's opinion is not disturbed on further review (possibly pursuant to a further order of the district court) and to Alaska Native Corporations pursuant to the existing obligation if the district court's judgment is ultimately affirmed.

**CERTIFICATE OF COMPLIANCE WITH
FEDERAL RULE OF APPELLATE PROCEDURE 27(d)**

I hereby certify that this motion complies with Federal Rule of Appellate Procedure 27(d)(1) because it has been prepared in 14-point Garamond, a proportionally spaced font. I further certify that it complies with Federal Rule of Appellate Procedure 27(d)(2) because it contains 1386 words, according to the count of Microsoft Word.

/s/ Adam Jed

Adam C. Jed

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on September 30, 2020, I electronically filed and served the foregoing document by using the appellate CM/ECF system.

/s/ Adam Jed

Adam C. Jed

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-5204

September Term, 2020

1:20-cv-01002-APM
1:20-cv-01059-APM
1:20-cv-01070-APM

Filed On: September 30, 2020

Confederated Tribes of the Chehalis
Reservation, et al.,

Appellees

Ute Tribe of the Uintah and Ouray Indian
Reservation, 20-cv-01070,

Appellant

v.

Steven T. Mnuchin, in his official capacity as
Secretary of U.S. Department of the Treasury,
et al.,

Appellees

Consolidated with 20-5205, 20-5209

BEFORE: Henderson*, Millett, and Katsas, Circuit Judges

ORDER

Upon consideration of the emergency motion to suspend statutory lapse of appropriation and extend budget authority, the responses thereto, and the replies, it is

ORDERED that to ensure an opportunity for orderly review of this Court's September 25, 2020 decision, as well as the government's ability to disburse the disputed funds upon completion of the litigation, any expiration of the appropriation for Tribal governments set forth in 42 U.S.C. 801(a)(2)(B) is hereby suspended. See *Nat'l Ass'n of Reg'l Councils v. Costle*, 564 F.2d 583, 588 (D.C. Cir. 1977). It is

*Circuit Judge Henderson would deny the motion.

S-App'x00113

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-5204

September Term, 2020

FURTHER ORDERED that this order will expire at 5:00 p.m. on October 30, 2020, unless the federal government or the intervenor-appellees has by then filed either a petition for rehearing en banc or for a writ of certiorari seeking review of this Court's decision, in which case this order will remain effective until seven days after final action by this Court or the Supreme Court.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Amanda Himes
Deputy Clerk

**Coronavirus Relief Fund
Frequently Asked Questions on Tribal Population
June 4, 2020**

Why did Treasury allocate funding based on Tribal population using the Decennial Census total American Indian Alaskan Native (AIAN) data used by the Department of Housing and Urban Development (HUD) in its Indian Housing Block Grant Program (IHBG)?

Treasury used the Decennial Census data on AIAN population that is used in the IHBG program after making the determination that it is the most consistent and reliable metric on which to base the allocation of payments to Tribal governments. The methodology for calculating population for the IHBG formula was developed through negotiated rulemaking with tribes in the mid-1990s and has been reconsidered over the years, including a negotiated rulemaking session that concluded in 2016. Using these data, which are updated annually using the Census Bureau's Population Estimates Program (PEP) to reflect demographic shifts that have occurred at the county level, provides consistency between Tribal governments and states and local governments. Treasury used PEP data to allocate funding to the state and local governments under the CARES Act. Tribal governments are familiar with these data, and have had the opportunity to challenge them in the past. Finally, the data has been used in other funding formulas that disburse payments to tribes.¹

What population data did Treasury use for Indian Tribes not included in the IHBG population data?

Treasury requested population data from HUD for the three federally-recognized Indian Tribes that are not included in the IHBG population data. Those Indian Tribes are: Mohegan Tribe of Indians of Connecticut, Prairie Island Indian Community, and Chicken Ranch Rancheria of Me-Wuk Indians.²

Although they do not participate in the IHBG program, these tribes do have Decennial Census data attributed to their defined formula areas under the IHBG program. HUD provided the following population figures for each of the tribes by applying the PEP adjustments in the same manner as is done for tribes that do participate in the IHBG program.

Tribe	Single Race	Multi Race
Chicken Ranch	1	1
Mohegan	28	32
Prairie Island	195	219

Treasury used this data in the allocation methodology.

¹ For example, the funding formula under the Tribal Transportation Program, established to address the transportation needs of Tribal governments throughout the United States, is calculated, in part, using the same Decennial Census AIAN population used in the IHBG program. See 23 U.S.C. 202(b)(3)(B).

² These tribes formally withdrew from the IHBG program and asked HUD not to be included in the IHBG formula allocation.

Why did Treasury not use the tribal enrollment data as a proxy for population data?

Tribal enrollment does not provide a consistent measure of tribal population across tribes. Tribal enrollment criteria are set forth in tribal constitutions, articles of incorporation, or ordinances, and vary from tribe to tribe.³ Additionally, tribal enrollment data does not necessarily distinguish between members living within the tribal area from those living outside the tribal area. Instead, “formula areas”, as incorporated in the IHBG population data, correspond broadly with the area of a Tribal government’s jurisdiction, where it provides services, and include adjustments to address overlapping jurisdictions.

Our tribe’s enrollment data is substantially larger than the Decennial Census AIAN population data. Can you explain the difference?

The IHBG program population count is tied to each tribe’s formula area – a specific geographic area attributed to each tribe. Because tribal enrollment does not necessarily distinguish between those living inside and outside of the tribal area, tribal enrollment can significantly differ from the Decennial Census AIAN population data used in the IHBG program.

Why did Treasury not use the population estimates from the American Community Survey (ACS) data?

Treasury did not use ACS population data because the ACS sampling and weighting is based at the county level and since tribal areas are sub-county entities, the tribal population can fluctuate substantially from year-to-year.

³ <https://www.doi.gov/tribes/enrollment>.