

Tribal Consultation

Written Comments Received

American Rescue Plan – Indian Affairs

Appropriations

Contents

I.	Collection of Tribal Enrollment Count	3
A.	Support	3
B.	Oppose Because of Timing	5
C.	Concerns About Public Availability	6
D.	Recommended Changes to Form/Collection	7
E.	Counts Provided	8
F.	Other Comments Re: Enrollment Collection.....	8
II.	AS-IA and BIA \$900M	9
1.	Majority of Funding through Tribal Government Funding Line to Give Tribes Flexibility to Reprogram	9
A.	Support	9
B.	Use of Existing Funding Mechanisms	15
C.	Funding Methodology	16
D.	Restrictions on Funds and Reporting Requirements	17
E.	Other Comments re: Use of Tribal Government Funding Line.....	17
2.	Using Tribal Enrollment Count for Tribal Government Services Funding	18
A.	Support	18
B.	Oppose Using Tribal Enrollment Count as Sole Factor	20
C.	“Membership” Too Limiting; Consider Tribe’s Service Population	24
D.	Grouping by Enrollment.....	27
E.	Other Comments Regarding Use of Tribal Enrollment.....	27
3.	Setting Aside Funding for PSJ, Based on Existing Allocation of Base Funding.....	28
A.	Support	28
B.	Oppose Because in PL 280 State.....	30

C. Oppose For Other Reasons.....	38
D. PSJ Funding Needs	39
E. Other Comments	44
4. Housing Improvement \$100M Providing 30% to All Tribes and Remaining Pro Rata	45
A. Support	45
B. Oppose	47
C. Other Comments.....	47
5. Potable Water \$20M Based on Need	50
III. BIE \$850M.....	53
1. Factors to Determine Allocation among K-12 and TCUs.....	54
A. Support for An Equitable Formula.....	54
B. Direct More Funding to K-12	54
C. Direct More Funding to TCUs	55
C. Weighted Student Unit (WSU) and Pro Rata	56
D. Funds to Special Needs, Head Start, and/or JOM.....	57
2. Investment Areas in Addition to LMS and Facility Improvements.....	58
3. Other Comments Re: Distribution of the \$850M.....	62
IV. Other Comments from Tribes	66
1. Contract Support Costs.....	66
2. Deference to Tribal Governments in Use of Funds.....	67
3. Timing.....	70
4. Criticisms of The Consultation	70
5. Miscellaneous.....	71
V. Treasury Funds.....	74

Comments in blue font were received after the comment deadline.

I. Collection of Tribal Enrollment Count

A. Support

The Community is in support of utilizing tribal enrollment as a key factor in determining funding distribution. Tribal governments best know their current enrollment number and can be relied upon as the most accurate count; rather than relying on outdated numbers from certain calculation from previous grant applications from prior years or the ten (10) year Census data. The utilization of the current tribal enrollment is the best way to ensure the equitable distribution among Tribes across the nation. (11-Ak-Chin Indian Community)

Curyung supports the Bureau in using self-certified tribal enrollment data and recognizes that in doing so, the Bureau honors our Tribal sovereignty. Curyung is opposed to the use of unreliable census data, imperfect program participant numbers or any other metric. (62 - Curyung Tribal Council)

My team has reviewed the DOI enrollment certification form and we approve it. The simplicity is welcome and it appears relatively easy to provide the information and transmit back to DOI. We also agree that the BIA regional office is the most appropriate agency office to collect this aggregate information. From the consultation call, we accept that the Freedom of Information Act and Open Data Act require transparency of the BIA and that BIA Director LaCounte plans to publish the aggregate enrollment data on line as well as share that information with other federal agencies. Given the data leak with the CARES Act, we request that the enrollment data be handled carefully and appropriately and that the federal agencies actually utilize tribally certified enrollment data in the funding formula under the ARP. (17-Fort Berthold)

AVCP applauds the decision to collect accurate tribal enrollment data, certified by sovereign tribal governments. However, we have reservations about the ability of BIA to collect and process, and tribes to provide, this information efficiently to allow ARP funds to be distributed quickly and equitably. In rural Alaska, many tribes do not have access to broadband and many tribal staff are still working remotely or on a hybrid schedule. The BIA has not provided information about how the allocation method will be used for tribes who are unable to provide an enrollment certification under this compressed time frame. (66 – AVCP)

We support the use of a simplified form that is certified by the Tribal Chair or an officially designated Tribal Official for submission of enrollment data. We agree with using our Regional Offices to collect and aggregate the Tribal enrollment data in order to protect the data from unnecessary public disclosure.

- However, we question whether the Freedom of Information Act (FOIA) requests could be made to access data that was collected at the Regional level pre-aggregation. If so, this would expose Tribal data to public scrutiny despite the steps DOI has adopted to protect it. (67 - Jamestown S’Klallam)

The Walker River Paiute Tribal Council is constitutionally required to protect the health, safety and well-being of all tribal members. The Walker River Paiute Tribe serves all members, in addition to non-tribal family members, regardless of location of residence. Our membership exceeds the population allowed in the IHBG formula by over 700. Use of any enrollment data other than self-certified data would result in severe underfunding to the Walker River Paiute Tribe. (68 - Walker River Paiute)

Tribal population, as measured by the total number of enrolled Tribal citizens for each Tribe, not Census Bureau data or Indian Housing Block Grant formula area populations. Tribal enrollment data are more reliable than data from the Census Bureau.

- American Indians are the most under counted group in the U.S. Census. More than 80% of reservation lands are in hard to- count (HTC) census tracts. Nation Wide, approximately one-third of all Indian people live in HTC census tracts In states with large Indian reservations, like South Dakota, that number is even higher: 52.4% of Indians in South Dakota live in HTC census tracts- The Census Bureau has identified twelve factors that are associated with census undercounts, including unemployment, poverty, linguistic isolation, lack of a high school diploma, and lack of a telephone. A recent study of these factors found that on-reservation Indians are, and Will continue to be, "very difficult to enumerate accurately" for the Census Bureau.
- In addition to problems with undercounting, Census Bureau data capture self-reports of racial identities and tribal affiliations. They do not accurately count enrolled Tribal members.
- By comparison, Tribal enrollment lists are comprehensive lists of all Tribal citizens enrolled in each Indian Tribe. Tribal enrollment data can be obtained from each Indian Tribe and verified by the twelve (12) Regional Offices in the Bureau of Indian Affairs. (73 - Sisseton-Wahpeton Oyate)

The Department of the Interior's collection of tribal enrollment information; I trust that we will be able to get BIA that information as needed and appreciate BIA handling this for us. (78 – Coeur D’Alene)

The CARES Act reserved \$8 billion from the Coronavirus Relief Fund for payments to Tribal governments and provided 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. The Treasury made payments in 2020, based on population to all Tribal governments. For purposes of the payments based on Tribal population, Treasury referred to the Tribal population data used by the Department of Housing and Urban Development in connection with the Indian Housing Block Grant program. If the American Rescue Plan is to follow the same allocation to tribes based on population, we asked that the Tribes are allowed to submit updated enrollment numbers, and not use what the Department of Treasury relied on in the past. (77 - Kotzebue)

The Choctaw Nation fully supports a process to acquire tribal certification of updated enrollment data upon which to make ARP funding distribution decisions. We do not have any recommendations on the draft form or process for the collection of updated enrollment data from Tribes. (23-Choctaw Nation)

The Native Village of Tuntutuliak...has the tribal enrollment data locally and can be requested through secure means. (26-Qinarmiut Corporation; see comments for more background)

Leech Lake Band of Ojibwe has no issue provided updating tribal enrollment data to the DOI. As many other tribes have expressed, the most accurate tribal data available is collected and shared by each tribe. (33-Leech Lake Band)

MCN maintains a centralized database of tribal enrollment information that is updated daily and provides information to verified users. As a government, we are well positioned to provide accurate and timely information regarding our population at any time. MCN recognizes the importance of collecting and supports utilizing available tribal data to determine distribution of available federal resources. As such, the Nation agrees that the Department of the Interior (DOI) is the best repository of this information. Further, MCN supports the proposed form for submission and acknowledges that this information may later be available to the public under existing federal law. (80 – Muscogee Creek Nation)

B. Oppose Because of Timing

We oppose using the tribally certified enrollment data currently being collected as the “population” data in any funding formula. We do applaud the effort underway to collect tribal enrollment data in a uniform process, but respectfully suggest it is too big of project to be incorporated into the ARPA distribution in the time available. We operate BIA services for most of our member tribes, but did not even learn of the collection process until the last few weeks. We are extremely skeptical that even a 50% response rate is achievable in Alaska in the short term. (60 - Bristol Bay Native Assn)

We do not support a lengthy process to collect tribal enrollment information that will delay distribution of the funding available to our communities. (65 - Cook Island Inlet)

AFN supports a tribally driven process to update enrollment data, but kindly asks BIA to pause this initiative in order to give the task the time and attention it deserves. BIA Should Pause the Collection of Tribally Certified Enrollment Data; Such Data Should Not be Used for ARPA Allocations.

- While AFN fully appreciates that tribes could provide BIA with a more accurate count of American Indians and Alaska Natives throughout the country, and that tribally certified enrollment data would contribute to greater planning and decision-making within DOI—including how billions of dollars in federal resources (outside of ARPA) are annually allocated to tribal entities through contracts, compacts, and grants, we believe the

timing and unintended consequences of this request for information outweighs the benefits.

- Specifically, BIA is scheduled to disburse \$1.75 billion in ARPA funds to American Indian and Alaska Native tribal governments within the next 60 days. This is a Herculean task. Having to develop and implement an educational campaign to procure updated tribal enrollment data while simultaneously allocating these funds will be difficult, if not impossible, even if tribes even agree to help with the effort. Larger BIA regions like Alaska, with 229 tribes, compared to Navajo, with just one tribe, will be especially disadvantaged in soliciting this information on the desired timeline. (see comment for additional justification) (69 - Alaska Federation of Natives)

BIA is scheduled to disburse \$1.75 billion in ARPA funds to American Indian and Alaska Native tribal governments within the next 60 days. That is a very small amount of time to disburse such large distributions of funding. Having to develop and implement a strategy to implement and achieve updated tribal enrollment data during a pandemic while simultaneously allocating these funds will be difficult, if not impossible, even if tribes even agree to help with the effort. Larger BIA regions like Alaska, with 229 tribes, compared to Navajo, with just one tribe, will be especially disadvantaged in soliciting this information on the desired timeline, particularly since some tribal leaders only learned of this plan two days ago. This is nowhere near enough time for TCC to coordinate a satisfactory response to BIA's request for updated tribal enrollment data within our Region, particularly in the midst of a pandemic – when the majority of our rural tribal communities within the region are still on lockdown and emergency services are on-going; the season is changing dramatically – making travel on thin and melting river ice very dangerous (ice roads on rivers and waterways are the primary mode of transportation in the region); and there is limited (or no) internet service in several villages within the region. This puts the 37 tribes that TCC provides support too, most of which are among the poorest in the nation, at a severe disadvantage in applying for and receiving ARPA funds.

- For these reasons, and others, we believe federally recognized tribes would be better served if the Bureau placed this initiative on pause and focused exclusively on allocating the \$1.75 billion in ARPA funds to American Indian and Alaska Native tribal governments. Additionally, these same reason show why the isolated tribal governments in Alaska are in dire needs of resources. After this task is complete, BIA can turn its attention back to updating tribal enrollment data, which TCC agrees is important. The extra time will allow the Bureau to solicit tribally vetted criteria for the certification form, the least of which must include uniform criteria for defining who is and who is not a “tribal member” and a corresponding audit function to fact-check this data, as well as a tribally agreed upon process for collecting and securing this information, and the permitted uses of such data. (83-Tanana Chiefs Conference)

C. Concerns About Public Availability

Some of our tribes view enrollment data as proprietary information and may never be willing to submit it to the federal government. Once this data is incorporated into a funding formula, it becomes public. (60 - Bristol Bay Native Assn)

Moreover, all of the tribal enrollment data that BIA collects would be publicly discoverable through the Freedom of Information Act⁹ and other federal statutes, and shared with other federal agencies. One can imagine how this information could be used to harm the economic, political, social, or traditional well-being of any federally recognized tribe who submitted the requested certification form to the Bureau. As such, AFN believes that American Indians and Alaska Natives would be better served if BIA placed this initiative on pause and focused exclusively on allocating the \$1.75 billion in ARPA to tribal governments. After this task is complete, the Bureau can turn its attention back to updating tribal enrollment data, which AFN agrees is important. (69 - Alaska Federation of Natives)

Sharing or publishing Tribal data has often been a double-edged sword for Tribes. While there are benefits to agencies having access to Tribal data there have been numerous instances where Tribal data has been used by the agencies and Congress in a detrimental way that is harmful to Tribes.

- We strongly oppose any course of action that could subject Tribes to future harm.
- It should also be noted that Tribal enrollment data is not a fixed data point and will need to be updated frequently due to births, deaths, and other Tribal procedures for determining membership. Agencies have not fared well in the past when it comes to collecting and updating Tribal data. There should be processes and procedures in place to ensure Tribal data is current and accurate. (67 - Jamestown S'Klallam)

USET SPF understands DOI's interest in collecting up-to-date enrollment information for the purposes of the distribution of certain portions of ARP funds. However, recognizing this concerns the collection of Tribal Nation data, we defer to our member Tribal Nations for any guidance regarding the appropriateness of this action, including any personally identifiable information. We do have questions about the public availability of such data, as well as unfettered access to said data on the part of other federal agencies. There must be appropriate safeguards and oversight in place regarding the use of this data, particularly as it relates to the development of federal policy and funding mechanisms. In addition, we caution against an overreliance on this data, as it is but one factor in the scope of Tribal governmental action and responsibilities. (32-USET SPF; see comments for more background)

D. Recommended Changes to Form/Collection

The BIA draft Enrollment Form is ok, but, the Effective Date should be the date the Tribe signs the form, not February 1st. For example, Red Lake has several hundred new enrollees pending final Council action on April 13, 2021. These new enrollees should be counted! (03-Red Lake Band)

Tribal Enrollment Data Collection form. Our tribal laws requires that release of tribal enrollment information must be done by the express written permission of the tribal council when such information is requested by any person or organization. We would like to see an option to have this done by resolution of the tribal Council. (70 - Yupiit of Andraefski)

If the BIA chooses to rely on self-certified enrollment data, the Nation urges BIA to accept enrollment numbers on the date the tribe submits the form to the agency instead of being backdated to February 1, 2021. Additionally, the Nation encourages the BIA to consider how land base may be incorporated into the formula, as tribal members living on remote tribal lands require more support from tribal governments, and providing services can be more costly due to the extra transportation costs involved. (57-Navajo Nation)

Tribes are trustworthy partners in the government to government relationship and may be counted on to supply accurate, updated information as needed. A simple signed certification on tribal letterhead from an elected official should suffice. Your agency's certified enrollment form threatening federal action under the False Statements Accountability Act is unnecessary and is insulting to tribal leaders. We suggest you remove this statement immediately. (37-Citizen Potawatomi Nation)

E. Counts Provided

The Community has completed and verified the total number cited on the Tribal Enrollment Data Collection form, verified and confirmed by our Tribal Enrollment Department for our Tribal enrollment of 1, 119 as of February 1, 2021, certified by Community leadership. (11-Ak-Chin Indian Community)

Our [tribally] certified tribal enrollment count as of today, March 30, 202 1, is 1,431. (15-Asa'carsarmiut)

The Karuk Tribe has 3,734 enrolled tribal members and 5,050 enrolled descendants. (59 - Karuk Tribe)

Sac and Fox Nation signed the DRAFT Tribal Enrollment Data Collection agreement form, see submission. (64 - Sac and Fox Nation OK)

F. Other Comments Re: Enrollment Collection

Calista will assist the 56 Y-K Delta Tribes as requested to gather and self-certify their tribal enrollment data.

- As DOI stated during the tribal consultation held Monday, March 29, 2021, any data collected is likely to be subject to requests made under the Freedom of Information Act. Additionally, with the data breach that occurred during the CARES Tribal Relief Fund ("TRF") distributions, only non-sensitive information should be requested in this form.

Should DOI determine sensitive data is needed for the finalized allocation formula, a secure portal should be utilized. Many Y-K Delta Tribes lack access to reliable internet and regular mail service.

- Any requests for tribal information should give ample and adequate time for Tribes to obtain and submit the needed information.
- Technical assistance should also be readily available to Tribes needing help with data submission. A dedicated technical service number should also be provided for Tribes to call in data submissions where internet is not a feasible option. (16-Calista Corp.)

The DTLL states that the tribal enrollment data is needed to ensure equitable and transparent allocation of the \$900 million in BIA ARP funds, but it notes that the enrollment data is "also an important source of information for supporting equitable distribution of resources by Indian Affairs and other agencies" (suggesting that it could impact distribution of the ARP Fiscal Recovery Fund monies being handled by Treasury). The DTLL also states that Interior has attached a draft certification form for collecting enrollment information, on which it would like input; however, the form was not attached, but by separate email GTB received the attached form. No deadline for filing the form is provided. (20-Grand Traverse Band)

1. How will membership numbers affect the allocation if membership has been significantly increased after February 1? 2. Which parts of the funding will be allocated directly to the tribe and which parts of the funding if any do we have to apply for directly? The BIA infrastructure funds is this a portion that will be directly allocated or something we have to apply for? (82-Picayune Rancheria)

II. AS-IA and BIA \$900M

1. Majority of Funding through Tribal Government Funding Line to Give Tribes Flexibility to Reprogram

A. Support

Facilitate maximum flexibility for the expeditious disbursement and implementation of Indian Country funds for addressing COVID-19 and its impacts. It is critical for the Department of the Interior to allow maximum flexibility in the use of new and existing funds to enable tribal nations to carry out comprehensive COVID-19 response efforts.

- In this time of crisis, the federal government, including the Department of the Interior (DOI), must facilitate the most flexibility possible so that our Tribe and others are able to quickly receive federal funding and use that funding in the most effective way possible to combat COVID-19 and its impacts.
- Existing systems of service delivery and infrastructure will experience greater stress and/or reach their breaking points as tribal nations seek to maintain essential services, as well as dedicate resources to the unique circumstances of COVID-19 response. Failure to support tribal discretion in use of funds and resources will be disastrous for Santo

Domingo Pueblo, as well as result in an incomplete response to this crisis, affecting the nation at-large. (02-Santo Domingo)

We support that at least \$700 million of the \$772.5 for tribal government services, public safety and justice, social services, Indian child welfare and related expenses be allocated to tribes through the Aid to Tribal Government line. Doing so will provide the maximum flexibility for tribes to get the funds where they are needed most. (03-Red Lake Band)

The tribal council will have the flexibility to use the funds as each need is addressed once we receive the final guidelines from the consultation. (05-Native Village of Kongiganak)

The Blue Lake Rancheria recommends providing this funding through Aid to Tribal Government funding line and allow tribes to reprogram as necessary. (06-Blue Lake Rancheria)

Congress simply appropriated tribal funds. Tribes should be allowed flexibility on how to utilize and invest those funds in their communities. It is not for DOI to now restrict how tribes use those funds. DOI should help the tribes, not direct the use of ARP funds. DOI should make clear its support of tribal flexibility before distribution to avoid confusion and inefficiencies. (07-Lower Brule)

Regarding the allocation of funds and distribution methodology. Within the bill's language, \$772.5 million is designated for tribal government services, such as public safety and justice, social services, Indian child welfare and related expenses. The Community is in support of the funding distribution utilizing the Aid to Tribal Government (TPA) funding line and allow tribes to reprogram as necessary. The Community is a self-governance Tribe. We encourage Indian Affairs to utilize the process of dispersal through our self-governance compact. The funding provided through the Aid to Tribal Government line item enables Tribes the flexibility to allocate funds to programs, services, functions, and activities as needed within the context of their self-governance agreements. Funds should be distributed to Tribes through self-determination contracts or self-governance compacts should not be decreased for federal administrative costs. (11-Ak-Chin Indian Community)

Yes, Calista believes it would, if this means that Tribes would be able to use the funds consistent with the flexibilities allowed for in the Indian Self-Determination Act, i.e., in any manner that each Tribe "deems to be in the best interest of the health and welfare of the Indian community being served." (16 – Calista Corp.)

Yes. The Fort Belknap Indian Community supports maximum flexibility for tribal governments with ARP resources. Elected tribal leaders and their staff know the highest and best use of funds to be utilized in the community. (17-Fort Berthold)

Yes. If funding is provided to Tribes through the Tribal government funding line, Tribes can reprogram it for other purposes and there will be sufficient flexibility. The services provided by the Tribe would be covered through the bill language, all of which runs through the Sault Ste.

Marie Tribe of Chippewa Indians government. If provided in this manner, the Tribe will be able to move the funds to the area the funds are intended by the statute. (18-Sault Ste Marie)

The Confederated Tribes of Siletz Indians would concur that providing funding through existing tribal government funding lines such as Aid to Tribal Governments would provide sufficient flexibility to reprogram as needed. (19-Confederated Tribes of Siletz)

GTB's supports distribution of Section 11002 funding that provides the greatest flexibility for tribes consistent with each tribe's status under the Self-Determination Act or the related Self-Governance Act. Therefore, GTB supports the majority of the funding "through the tribal government funding line" as identified in question one.... And GTB supports the general comments made by the Seneca Nation at the March 25th consultation in response to questions 1 and 2 to the DTLL of March 16, 2021. (20-Grand Traverse Band)

The funding should acknowledge both contracting and compacting Tribes and Tribal Organizations under Title I and Title V of the Indian Self-Determination Act (ISDA) and be distributed through those well-established and successful agreements based on existing formulas. (65 - Cook Island Inlet)

CITC supports distributing the funding through the Aid to Tribal Government funding line to allow for the broadest possible use of the BIA's ARP funding so essential to ensuring maximum flexibility to address the critical needs of Alaska Native communities in response to the COVID pandemic.

- To the extent that the entire portion is not allocated to Aid to Tribal Government (which we support), we suggest the following as particularly important to ensure adequate response to the pandemic: Workforce development; Social services; Economic development; Aid to Tribal Government; and Public Safety and Justice (More of CITC's justification for this opinion can be found in their letter pg3).
- The funding should support critical response functions to put people back to work through workforce development and the supporting functions that move people to self-sufficiency and get them back to work, such as child welfare, general assistance, burial assistance, aid to tribal government and the funding that allows Tribes and Tribal Organizations the flexibility to meet their own people where they are to help them address the multiple consequences of the COVID 19 pandemic and move Our People to self-sufficiency and self-determination. (65 - Cook Island Inlet)

Yes. The Indian Self-Determination and Education Assistance Act acknowledges that tribes are uniquely suited to administer federally funded programs that benefit tribes and tribal communities. Disbursing ARP funds through each tribe's Aid to Tribal Government program will allow tribes to structure programs to respond to the COVID-19 pandemic as each tribes deems to be in the best interest of the health and welfare of the Indian community being served. (66 – AVCP)

We endorse DOI's decision to provide for maximum flexibility in the use of funds, to include, authorizing Tribes to reprogram, redesign, and reallocate funding to Tribally determined priorities at the local level. Broad flexibility in the use of funding will allow Tribes to address their most pressing needs as they continue to implement measures to protect the health and well-being of our Tribal citizens and community members. (67 - Jamestown S'Klallam)

The Walker River Paiute supports the use of the tribal government funding line to distribute as much of the funding as possible. The ability to reprogram the American Rescue Plan funds to programs and project identified to meet the specific needs of the Walker River Paiute Tribes is essential to the Tribe's continued response, recovery and future preparation efforts. (68 - Walker River Paiute)

Supports BIA using the flexible Aid to Tribal Government (TPA) line item to allocate \$772.5 million in ARPA funds for tribal government services, public safety and justice (PSJ), social services, Indian child welfare, and related expenses. (69 - Alaska Federation of Natives)

Funding provided through the tribal government funding line. Based on our experience with the funds we received under the CARES Act, tribal government funding line allowed us to utilize the funding in a manner that best serves the health and welfare of our tribe as long as it was used to address the COVID-19 public health emergency. We think that this, again, would be the most sufficient in terms of flexibility. In addition, we are already familiar with most of the BIA regional staff and the processes involved in administering the funds. (70 - Yupit of Andreafski)

To provide the greatest flexibility for tribes, we support that a majority of the funding be provided to tribes through the tribal government funding line so the Tulalip Tribes can reprogram this money accordingly based the unique needs of the Tulalip community. (72 - Tulalip Tribes)

Chemehuevi supports the direct distribution to the tribe for the tribe to properly allocate these funds where they will be most beneficial to the tribe. This process supports Chemehuevi's interest in Tribal Self Determination. (75 - Chemehuevi Indian Tribe)

The CTUIR agrees that providing the majority of the \$772.5M in funding to the tribal government funding line would provide the flexibility needed to utilize the funds provided that tribes could reprogram the funds to any authorized function in its Funding Agreement. (76 - CTUIR)

The Navajo Nation largely supports the efforts of the BIA to provide funding to tribal governments through the tribal government funding line so that tribal governments have the flexibility to reprogram this funding as needed. Time and time again, tribal governments have proven that they know what is best for their tribal members. Moreover, as the COVID pandemic has impacted each tribal community in different ways, the needs of communities vary across Indian Country. Thus, providing flexibility in the spending of these funds will provide the most beneficial for all tribal governments. (57-Navajo Nation)

We support distributing the funding through self-governance compacts and funding agreements. This allows for maximum flexibility for Tribes in prioritizing and expending the funding as they determine will best benefit the communities they serve. (48-Kawerak, Inc.)

It would be sufficient for the Tribe if majority of the funding was provided through the tribal government funding lines so that Tribes could reprogram for other purposes. Other factors that should be taken into consideration are rural Tribes with currently no BIA funding for schools or PSJ programs. The Tribe urges consideration for funding to put forth pilot/demonstration programs. These programs would improve school bus stop/school pick up safety areas: lighting, patrol enforcement, "safe paths to school" to improve school bus pick up locations or safe walking paths on "high traffic" Tribal roads or intersections. (44-Tuolumne Band of Me-Wuk Indians)

In that regard, the Community strongly supports the provision of those funds through the Aid to Tribal Government funding line with an important authorization that would broadly allow the Community to re-program those funds as necessary to address our specific needs. Rapid deployment and maximum flexibility are key to maximizing the tribal benefit from the use of those funds. (40-Metlakatla Indian Community)

We support DOI's proposal to funnel the bulk of the ARP funding through the Aid-to-Tribal Government process, and to dedicate an amount to public safety and justice services. (43-Pueblo of Laguna)

Yes. (21-Pueblo of Santa Ana)

Yes, for the purposes of the efficient transfer of funding allocations to each tribe. But the Choctaw Nation strongly cautions against BIA deciding how much it will allocate to each tribe based upon a proportionate share of each tribe's recurring base of individual TPA programs. Tribes have, over time reprogrammed their base funding amounts into different budget categories and as a result BIA would create many unfair anomalies if the BIA were to use proportional shares of specific TPA lines (e.g., the Consolidated Tribal Grant Program—CTGP) to determine how much each tribe is allocated. (23-Choctaw Nation)

We firmly believe that the \$900 million must be allocated with maximum flexibility to ensure that funds can be expended by tribal governments to address local needs. There is no time for developing new funding mechanisms as the public health emergency continues to rage on. BIA should send these monies out to tribal nations through existing program structures, where appropriate, and directly to tribal nations where such structures are not in place or are not inclusive of all tribal governments. Furthermore, the BIA should make immediate direct payments from these funds to tribal nations through their existing ISDEAA agreements, as authorized by the ARPA. (25-Oneida Nation)

Provide a majority of funding through Aid to Tribal Government (TPA) funding line and allow tribes to reprogram as necessary using a formula based on newly collected enrollment data, we would also like to see land base used in this process. (27-Chippewa Cree Tribe)

Using the tribe's multi-year funding agreement is the most streamline process for funding delivery. Flexibility is important to tribes and allows them to leverage all their resources to address their most important needs. Tribes can be trusted to know their communities, the needs, and be creative in solving those needs. This process seemed to work efficiently and fairly under the CARES Act and should be used again. (30-Yurok Tribe)

Yes, in order to ensure maximum flexibility to reprogram, redesign, and reallocate funding to programs and services needed to fight the pandemic is provided to Tribal governments, SGAC strongly supports the transfer of funds through existing compacts, contracts, and funding agreements. (31-Self-Governance Advisory Committee)

USET SPF strongly supports DOI's proposal to distribute the majority of this sum through the Aid to Tribal Government (TPA) funding line, which will provide maximum flexibility to Tribal Nations as we seek to address the unique circumstances each of us faces as a result of the COVID-19 pandemic. (32-USET SPF)

We would prefer for flexibility of funding through the Aid to Tribal Government (TP A) funding line and all the tribes to reprogram as necessary, this would be best for LLBO. (33-Leech Lake Band)

We firmly believe that the \$900 million must be allocated with maximum flexibility to ensure that funds can be expended by tribal governments to address local needs. With the vast differences between tribal nations on COVID-19 impacts, internal capacities, accessible local resources, and geographic locations (with the myriad ancillary challenges that arise for rural and remote communities like ours) flexibility is an absolute necessity. Congress provided for maximum flexibility when it appropriated the BIA funding by category without any further limitations on how the resources can be used...We urge the BIA to interpret this and other provisions as flexibly as possible. (35-Santa Clara Pueblo; see comments for more background)

Generally, White Earth appreciates and approves of your preliminary distribution methods. Foremost, White Earth supports that at least \$700 million of the \$772.5 million for tribal government services, public safety and justice, social services, Indian child welfare and related expenses be allocated to tribes through the Aid to Tribal Government line. Doing so will provide the maximum flexibility for tribes to get the funds where they are needed most. (36-White Earth)

All funding provided in ARPA section 11102(a)(2) should be provided to tribes using flexible funding lines that allow for reprogramming. For many tribes this is the tribal government funding line, also known as "ATG". Tribes successfully used this line to respond to the

pandemic when it was used for CARES Act distributions, there is no need to complicate the process with the larger ARP A allocations. (37-Citizen Potawatomi Nation)

Congress provided for maximum flexibility in the use of these funds without any further limitations on how they can be used. Thus, we believe that the \$900 million must be allocated with maximum flexibility to ensure that funds can be expended by tribal governments to address local needs. PGST supports the funding through Aid to Tribal Government (TPA) methodology used as when negotiating our Multi-Year Funding Agreement to allow us to reprogram as necessary. (38-Port Gamble S'Klallam; see comments for more background)

We support the Department's decision to use the Aid to Tribal Government program line for funding distribution in order to provide Tribes with the greatest flexibility to reprogram dollars to address the Tribally-determined areas of need. Our primary concern is making sure all Federally Recognized Tribes receive a portion of the \$900 million in ARP funding and that no Tribe is left out due to not receiving dollars through the Aid to Tribal Government line. (67 - Jamestown S'Klallam)

Aid to Tribal Governments: MCN fully supports the majority of available funding to be distributed utilizing recent enrollment data certified by tribal governments through the Aid to Tribal Governments (ATG) Tribal Priority Allocation. This distribution should be based on a pro-rata distribution using available data, versus the striated approach previously utilized. The break over points in the striated distribution was not the subject of tribal consultation and likely disadvantages tribes either at the top or bottom of the tiers for distributions. Collection of updated data seems reasonably attainable and, therefore, a proportional distribution would result in more equitable distributions. (80 – Muscogee Creek Nation)

We support distributing the funding through self-governance compacts and funding agreements. This allows for maximum flexibility for Tribes in prioritizing and expending the funding as they determine will best benefit the communities they serve. However, it is difficult to know based on the information that has been provided to us by DOI what restrictions may come with sending funding to tribes/tribal orgs through this funding line. What other restrictions will be imposed on the use of such funding? We agree with sending this funding through our funding agreements but caution that DOI must adhere to self-governance principles and allow Tribes to redesign, reallocate and prioritize this funding to most effectively utilize it where it is needed the most in our region of Alaska. Overly burdensome and unnecessary restrictions will nullify the benefits of distributing this through SG agreements. (83-Tanana Chiefs Conference)

B. Use of Existing Funding Mechanisms

Additionally, we would recommend the transfer funds through existing compacts, contracts, and funding agreements. Contract and Compact amendments should be streamlined and not impose any additional restrictions or requirements other than those included in the Act. (19-Confederated Tribes of Siletz)

We also strongly support the use of existing funding mechanisms for funding distribution purposes, to include, Self-Governance compacts, Self-Determination contracts and Funding Agreements. Utilizing these existing mechanisms will ensure distribution is completed in an expeditious and efficient manner. (67 - Jamestown S'Klallam)

Yes, the majority of the funding should be provided to tribes through existing agreements (Title I and Title IV contracts/compacts). Tribes should be able to reprogram, redesign, and reallocate funding to programs and services needed to fight the pandemic. Tribes should also be able to purchase supplies and equipment to ensure their governments are able to safely function and operate. (25-Oneida Nation)

C. Funding Methodology

Do not allocate to the tribe based upon a proportionate share of each tribe's recurring base of individual TPA programs. Tribes have, over time[,] reprogrammed their base funding amounts into different budget categories and as a result[,] BIA would create many unfair anomalies if the BIA were to use proportional shares of specific TPA lines (e.g., the Consolidated Tribal Grant Program-CTGP) to determine how much each tribe is allocated. (23-Choctaw Nation)

Distribution of funds on a needs-based approach would more efficiently and effectively distribute federal funds to areas where they can make the greatest difference in this pandemic. (24-Oglala Sioux Tribe)

All tribes should receive the same allocation due to their unique situation as they all encounter and experience the same conditions living in rural Alaska. (26-Qinarmiut Corporation; see comments for more background)

The SGAC cautions Indian Affairs that allocations to each Tribal government should not be based upon a proportionate share of each Tribal governments' recurring base of individual TPA programs. Tribal governments have, over time, reprogrammed their base funding amounts into different budget categories and as a result Indian Affairs would create many unfair anomalies if it were to use proportional shares of a specific TPA line to determine how much each Tribal government is allocated. (31-Self-Governance Advisory Committee)

Funding allocations should use existing methodologies that rely upon well-known and understood factors, such as user population. Developing a new methodology could delay the transfer of funds and increase the burden on Tribal recipients to provide or verify new data points. (19-Confederated Tribes of Siletz)

However, we do have concerns with DOI's proposal to base the distribution methodology on the newly collected enrollment data, including the possibility of utilizing groupings by enrollment size. Recognizing there are existing methodologies for the distribution of funds

through this line, the impact of the proposed methodology is currently unclear and is deserving of further consultation in and of itself. DOI must ensure that Tribal Nations are fully aware of the differences between utilizing existing or proposed methodologies. (32-USET SPF)

We would, however, oppose predicating allocations on a proportionate share of each Tribes recurring base in the Aid to Tribal Government line as many Self-Governance Tribes have, over time, reprogrammed their funding amounts into different budget categories. If the intent is fair and equitable distribution, it wouldn't be appropriate to penalize Tribes who reallocated resources into other lines. (67 - Jamestown S'Klallam)

D. Restrictions on Funds and Reporting Requirements

DOI should also refrain from instituting any additional measures that would restrict the use of funds or impose additional reporting requirements on Tribes. (67 - Jamestown S'Klallam)

However, it is difficult to know based on the information that has been provided to us by DOI what restrictions may come with sending funding to tribes/tribal orgs through this funding line. What other restrictions will be imposed on the use of such funding? We agree with sending this funding through our funding agreements but caution that DOI must adhere to self-governance principles and allow Tribes to redesign, reallocate and prioritize this funding to most effectively utilize it where it is needed the most in our region of Alaska. Overly burdensome and unnecessary restrictions will nullify the benefits of distributing this through SG agreements. (48-Kawerak, Inc.)

We recommend that BIA maximize use of streamlined reporting for these new funds. Any reporting that is absolutely necessary should be subsumed into reporting we already provide to the BIA. (24-Oglala Sioux Tribe; see comments for more background)

In addition, the SGAC emphatically opposes the Department placing additional reporting requirements not directed by the Act on these funds. Tribal governments already adhere to reporting required in their Self-Determination and Self-Governance agreements. (31-Self-Governance Advisory Committee)

We recommend that BIA maximize use of streamlined reporting for these new funds. Any reporting that is absolutely necessary should be subsumed into reporting we already provide to the BIA. Additionally, we recommend that the BIA allocate funds directly to tribal governments under the tribal government services sub-category for internal capacity development. (35-Santa Clara Pueblo; see comments for more background, especially Workforce Development and Child Welfare and Related Services)

E. Other Comments re: Use of Tribal Government Funding Line

The Office of the Assistant Secretary - Indian Affairs and Bureau of Indian Affairs (BIA) process for distributing \$900 million in ARP funds to tribal governments; This is very important and needs to be equitably distributed to Tribes so that they individually can decide where the funds should go to and meet needs they individually have prioritized. For example, our Tribal Public Works Department has identified 26 road, housing, other building, historical preservation site, potable and wastewater project needs at the \$13,000,000-\$14,000,000 cost level alone. (78-Coeur D'Alene)

Which parts of the funding will be allocated directly to the tribe and which parts of the funding if any do we have to apply for directly? The BIA infrastructure funds is this a portion that will be directly allocated or something we have to apply for? (22-Picayune Rancheria of Chukchansi)

It is critically important that DOI allows for the broadest possible use of the funding so that Tribes receiving ARPA funding have maximum flexibility to tailor the funding to fit the specific needs of their own communities...adopt an approach in which Tribes may determine for themselves how to put the ARPA funding to use in their own communities, so long as the funding is generally used in furtherance of the intent of the ARPA for expenditures made necessary by the coronavirus pandemic. This approach would be grounded in proven self-governance principles... We request the following in your overall approach:

- 1. Do not establish detailed qualified expenses that is exclusive so that if it is not on the list, it is not a qualified expense. Tribal communities' needs and solutions are not a one-size-fit-all, so you cannot take that approach in developing funding guidelines. Also please prevent problems Tribes faced with CARE ACT funding by including restrictions on expenses that unnecessarily tie up this funding so that such restrictions become barriers or unknowns that raise concerns about audits, as well as the practicality of getting the services to the tribal communities in a reasonable amount of time.
- 2. Ensure that the deadlines to expend the funds are realistic and feasible. Extend them out to give Tribes adequate time. The effects of the pandemic will be impacting us for years. Additionally, given Alaska's distance from the continental U.S. and the geographical isolation of 100's of tribal communities with the State, the reality of a limited amount of supplies/equipment/materials available, and shipping items to these communities can extend project completion from months to years.
- Whatever the process, ensure that all Tribes, large land based or not, large or small population, are receiving an equitable share of the funding, if necessary, by distributing a percentage of the funding as a base amount not tied to other considerations such as population. (83-Tanana Chiefs Conference)

2. Using Tribal Enrollment Count for Tribal Government Services Funding

A. Support

ASIA/BIA Process for Distributing \$900M ARP Funds -- These funds should be distributed among all Tribes on a population-based formula. The only reason that we are consistently given by the

BIA as to why the Kialegee Tribal Town cannot receive funding for the full-range of BIA programs outlined in the Green Book, is because of a lack of funding. We have unmet needs that are proportionally impactful to any level of underfunding to larger Tribes. By distributing these ARP funds only to Tribes with existing Green Book programs, other Tribes, such as ours, are being doubly penalized by not receiving regularly appropriated funding nor funding through ARP. Now that additional funds are available through the ARP, an equitable distribution plan must include some substantial amount of funding going to every Tribe throughout the country. (09-Kialegee Tribal Town)

We support a funding formula based upon the newly collected tribal enrollment data and not based on HUD IHBG data (FBIC was drastically undercounted). We agree that enrollment size is an important factor but we strongly recommend a ceiling and a floor for a funding formula. In specific, tribes with minimal or low tribal enrollments should receive a base allocation (in order to receive some rescue plan relief, unlike the CARES Act with the IHBG formula) and, in contrast, the tribes with the largest tribal enrollments should not receive the vast majority of all ARP funds to the detriment of the vast number of the 574 federally recognized tribes with tribal enrollments that exist in between these two extreme enrollment numbers. The adjusted methodology, with a floor and a ceiling, based on the most recent tribal enrollment data would represent an equitable distribution of ARP funds for Indian country. (17-Fort Berthold)

The Sault Ste. Marie Tribe of Chippewa Indians has no objection to funding being distributed by enrollment data. It is something we recommend. (18-Sault Ste Marie)

We support DOI's plan to utilize Tribal enrollment data for distribution of the ARP funding resources. We believe this process will ensure consistency across regions, align with the intent of establishing a fair and equitable distribution process, adhere to measures that attempt to ensure the secure management of data, and allow for the expeditious disbursement of funding to Tribes. (67 - Jamestown S'Klallam)

To equitably distribute the funding, we support the methodology for the Tribal Government Services funding on tribal enrollment data certified by the Tribal Chair of each tribe. We have no concerns with the certification form proposed by DOI-BIA. (72 - Tulalip Tribes)

We support the use of the Pueblo's certification of enrolled members for use as a yardstick in determining the Pueblo's governmental responsibilities in a formula for distribution of ARP funding. (43-Pueblo of Laguna)

The Yurok Tribe supports a methodology that utilizes Tribal self-certified enrollment data to be used in a similar formula to that of CARES Act BIA-OSG funding. The Yurok Tribe can quickly and easily provide up to the minute enrollment information whenever requested and agrees that the distribution should be population based. (30-Yurok Tribe)

SGAC supports a distribution methodology based on Tribally-certified data of its enrolled citizens that DOI will collect using its proposed form for Tribal Certification of Enrollment Data. (31-Self-Governance Advisory Committee)

A formula based on population was somewhat successful for CARES but failed many tribes by using HUD IHBG data, which itself is a modification of the U.S. decennial census data and historically undercounts tribal citizens in Indian Country. Using a tribally certified enrollment figure rather than a flawed federal data source would be a significant improvement for funding distributions, now and in the future. If population is used as the primary weighting factor in a formula, there should be no need for grouping or tiering of funds. DOI should be able to distribute funds pro-rata according to the total enrollment, per tribe. (37-Citizen Potawatomi Nation)

B. Oppose Using Tribal Enrollment Count as Sole Factor

As a direct service Tribe with relatively low enrollment, we are concerned that DOI appears to intend to tie ARP funding to tribal enrollment and 638 funding. A better formula would be more holistic and account for overall harm to direct service tribes during this time by **considering not only enrollment but also need**. One readily ascertainable source of data relied on throughout federal programs is the most recent census data. This is a similar approach utilized in lending programs targeting severely distressed communities where, not coincidentally, health disparities are largest. Such an approach would target funding with the greatest impact. (07-Lower Brule)

In regards to the equitable distribution of funding, the base methodology for Tribal Government Services funding is necessary to include Tribal enrollment data, however, there are other factors in relation to providing services to our Members.

- The inclusion of **total land base** would be another factor that should be considered. The Ak-Chin Indian Community consists of over 22, 000 acres, including domestic, agriculture, and cultural preserved land.
- **Dependable roads** are a critical factor to be considered. For example, road maintenance is essential with providing safe roads for multiple functions, such as public safety or emergency services in regards to services provided to our Community Members. (11-Ak-Chin Indian Community)

Yes. As discussed above, the BIA ARP funds should be distributed using a fair, balanced distribution formula that incorporates not only tribal enrollment, but also **geographic remoteness, basic sanitation and other critical infrastructure needs**, as well as the health, social and economic disparities that are disproportionately suffered by small remote Tribes, including the Y-K Delta region Tribes....We urge caution in using tribal enrollment data alone to determine distribution of BIA ARP funds. The reality is that small, remote Tribes, including the 56 Tribes of the Y-K Delta region, lack basic infrastructure; have a high cost of living; and lack basic services such as water and sanitation. Using tribal enrollment alone to determine

distribution of BIA ARP funds, without taking into account the health, social and economic disparities suffered by small remote Tribes, would result in gross inequities. The Department of Interior should uphold the Trust Responsibility to all Tribes in its distribution of BIA ARP funds by not using overly simplistic formulas that will result in gross inequities. Rather, it should develop a fair, balanced distribution formula that incorporates not only tribal enrollment, but also the **health, social and economic disparities** that are disproportionately suffered by small remote Tribes. We urge the Department to also consider geographic remoteness and lack of basic sanitation, and other critical infrastructure, in formulating the distribution methodology. (16-Calista Corp.)

GTB supports the equitable distribution of Section 11002 ARP funding based on tribal enrollment as established by a time certain date for all tribes. In addition, GTB supports the previously utilized CARES Act formula for distribution of the Section 11002 funding. Equitable distribution should be a formula that considers not only tribal enrollment but also the governance responsibility of Indian tribes. For practical federal funding purposes in measuring the particular tribal governance responsibility, GTB would urge the use of a **median number over several years of the tribe's schedule federal expenditures of federal awards (SEFA)** contained in audit statements as the measure of the tribes' governance responsibility and the consequence measure of the tribes' eligibility for Section 11002 funding....And GTB supports the general comments made by the Seneca Nation at the March 25th consultation in response to questions 1 and 2 to the DTLL of March 16, 2021.

- GTB supports the comments of the representative of the Great Plains Tribes requesting clarification, explanation and potential further consultation and possible legislation to ensure that indirect costs are fully covered for the tribal administration of Section 11002 funding.
- Special circumstances of individual tribes based on recent Supreme Court decisions should not be a basis for distribution of Section 11002 funding. The circumstances of the development of Indian law jurisprudence is constantly evolving and therefore should be addressed in the annual funding cycle of the tribes' relationship with the federal trustee or through tribal specific legislative language.
- Previous CARES Act consultation requested tribal information on four factors: land, population, number of tribal employees, and total expenditures. GTB believes **that the current number of employees and federal expenditures should be given the greater weight over tribal population and land**. Population can consist of tribal enrollment both on and off the reservation and both within and outside the service area. Thus, the use of population is highly variable in light of the overlapping tribal service areas of multiple tribes. (20-Grand Traverse Band)

We understand that an enrollment based distribution may shortchange Alaska overall. Many Alaska Natives are not formally enrolled in their Tribes because they can still receive federal services by showing they are a shareholder in an Alaska Native Corporation. As such, using pure enrollment numbers will not count these Alaska Natives which will likely impact Curyung. However, we recognize that using our enrollment data is the most accurate information

available. (62 - Curyung Tribal Council)

The allocation method cannot be based on enrollment or population numbers alone. **Cost of living, infrastructure limitations, and other considerations** must also be factored into the allocation method. In 2020, Alaska was the sixth most expensive state to live in. These costs are multiplied exponentially in rural Alaska. According to the U.S. Department of Defense cost-of-living index for “overseas” locations, which include Alaska and Hawaii, the cost of living in the YK-Delta hub-community of Bethel is 50% higher than the U.S. average. The cost of living in rural YK-Delta villages is even higher, but survey information is not immediately available. (66 – AVCP)

While self-certified enrollment should be used as one factor to determine distribution of American Rescue Plan funds, the exclusive use of enrollment would result in a grossly unfair distribution and place small, rural tribes such as the Walker River Paiute Tribe at a severe disadvantage. Additional factors such as **land base, geographical isolation, economic barriers and the complexity of serving members** across the nation should also be taken into consideration. (68 - Walker River Paiute)

AFN respectfully asks the Bureau to build a fair and equitable formula that includes more than “newly collected enrollment data” and “a simple grouping by enrollment size.” BIA Should Build an Equitable Formula to Dispense ARPA Funds; Such Funds Should Not be Allocated Based on Population Alone. BIA Should Allocate ARPA Funds for Tribal Government Services, PSJ, Social Services, Indian Child Welfare and Related Expenses Based on Population and **Poverty Variables**, and Provide a **Cost of Living Adjustment**. (see comment for additional justification pg. 4-6) (69 - Alaska Federation of Natives)

We are in a remote, sparsely populated area and that translates into higher costs to acquire materials and services. To illustrate, last summer we purchased a two unit trailer to use as a quarantine facility for \$96,000 in Anchorage. Shipping by barge line to St. Mary’s cost an additional \$56,000. Last month we purchased 18 sheets of plywood and 19 pieces of lumber of various lengths for \$1,247.00 from a supply company in Anchorage. Shipping by air to St. Mary’s cost an additional \$1,234.00. If the funding formula does not take into account the **cost factors we have here in our remote village**, then it is not equitable. (70 - Yupiit of Andreafski)

The Tribe recommends an equitable distribution of funds between and among federally recognized Indian Tribes. The Tribe urges the BIA to prioritize the following factors:

- Tribal population, as measured by the total number of enrolled Tribal citizens for each Tribe, not Census Bureau data or Indian Housing Block Grant formula area populations. (see comment for additional justification pg1-2)
- **Tribal land base**, as measured by total Indian country acreage, not Tribal Statistical Areas. (see comment for additional justification pg2)
- **Tribal economic need**, as measured by the percentage of Tribal households living in poverty. (see comment for additional justification pg2)
- **Tribal government expenditures**. (see comment for additional justification pg2)

- **Tribal employees.** (see comment for additional justification pg2)
- **Public safety and justice needs.** (see comment for additional justification pg3) (71 - Cheyenne River Sioux)

Tribal economic need, as measured by **the percentage of Tribal households living in poverty.** In allocating funds to Indian Tribes, the BIA should take into account the relative economic hardship of each Indian Tribe, measured by the poverty rate of individuals living on the Indian reservation or within the Indian country of each Tribe, based on the most recent year for which such data are available from the Census Bureau. (We acknowledge the limitations of Census data, but we are aware of no more comprehensive or reliable data¹ on economic hardship throughout Indian country.)

- The greater a Tribe's economic hardship, the greater its expenditures are on governmental services, including governmental services related to the COVID-19 public health emergency. Tribes with high poverty rates are likely to have high rates of unemployment, homelessness, overcrowded and unsafe housing, lack of utilities, food, and other basic necessities, and high rates of underlying comorbid health conditions, such as diabetes and heart disease. Such Tribes are also likely to have greater need for governmental services, social services, child welfare services, and other related expenses.
- **Tribal government expenditures.** In allocating funds to Indian Tribes, the BIA should take into account total Tribal government expenditures.
- **Tribal employees.** Indian Tribes must provide services to Tribal employees, which include unemployment benefits, health care; and other services. Accordingly, the BIA should consider the number of Tribal employees in the distribution of BIA ARPA funds to Indian Tribes.
- **Tribal land base,** as measured by total Indian country acreage, not Tribal Statistical Areas. In allocating funds to Indian Tribes, the BIA should take into account the Indian country land base of each Tribe, including reservation lands, off-reservation trust lands, and dependent Indian communities, as defined in 18 U.S.C § 1151; but not including Tribal Statistical Areas. The size of an Indian Tribe's land base is directly related to its expenditures on governmental services, including expenditures related to the COVID-19 public health emergency; since transportation costs and the costs of providing remote health care, housing assistance, food, supportive services, and other governmental services in dispersed, rural areas are greater than in more densely populated areas. In addition, Tribes with larger land bases have greater needs for funding on roads maintenance, which is directly related to public safety. (73 - Sisseton-Wahpeton Oyate)

We believe that any formula based on enrollment or population must consider other factors. In our region, our Tribes are small in proportion to larger land based Tribes elsewhere. However we are some of the most remote communities in the nation, completely off the road system, with significantly greater challenges to our supply lines and basic provision of life health and safety functions such as law enforcement, health care, and basic infrastructure. If there is to be any additional consideration for this amount, it should be a **cost of living differential factored**

in for Alaska tribes given the exponentially greater costs associated with living and operating in rural Alaska. (48-Kawerak, Inc.)

Finally, as to the distribution methodology, the Community's reservation is located on an island approximately 15 miles from Ketchikan, Alaska. The only ways for goods or services to reach our reservation is by boat or plane, the regular delivery of which can often be impacted by severe and unpredictable weather. Given our location, we strongly recommend that the DOI use an enhancement factor to the enrollment and/or census allocation metric to account for the increased costs of goods and services resulting from our rural and isolated location and climate conditions. Simply, goods and services cost more in our Community than the same things cost in other areas that are closer to large urban centers, that do not require costly shipping or travel expenses to get to the reservation and/or that are located in milder climates. A reasonable measure to use for the **enhancement factor applicable to tribes whose reservations are rural and isolated could be setting it at 10% higher than the overall cost-of-living index for the tribe's closest urban center.** (40-Metlakatla Indian Community)

Distribution of funds on a **needs-based approach** would more efficiently and effectively distribute federal funds to areas where they can make the greatest difference in this pandemic. It would also respect the diversity of internal capacities and COVID-19 response and recovery conditions that exist across the 574 distinct tribal governments operating across Pueblo and Indian Country. (35-Santa Clara Pueblo; see comments for more background, especially Workforce Development and Child Welfare and Related Services)

We believe that any formula based on enrollment or population must consider other factors.

- In our region, our Tribes are small in proportion to larger land based Tribes elsewhere. However we are some of the most remote communities in the nation, completely off the road system, with significantly greater challenges to our supply lines and basic provision of life health and safety functions such as law enforcement, health care, and basic infrastructure. If there is to be any additional consideration for this amount, it should be a cost of living differential factored in for Alaska tribes given the exponentially greater costs associated with living and operating in rural Alaska.
- The United States owes ALL federally recognized Indian tribes and individual beneficiaries a special trust responsibility. This responsibility is grounded in federal-tribal treaties, the U.S. Constitution, federal statutes, and opinions of the U.S. Supreme Court, and commands the highest moral and legal obligations.³ Today this responsibility is often fulfilled by the various federal agencies through their respective tribal funding formulas. (83-Tanana Chiefs Conference)

C. "Membership" Too Limiting; Consider Tribe's Service Population

We urge the BIA not to restrict funding solely to entities with "membership" to identify the allocation of resources. This results in inhibiting Alaska Native people from receiving services in the most efficient and effective ways and disenfranchises almost half of the Alaska Native people in the state from access to these important resources. (65 - Cook Island Inlet)

We support basing the distribution methodology upon updated, tribally certified enrollment data. Regarding the enrollment size groupings, we strongly encourage BIA to consider that the single, most significant factor in responding to the COVID-19 emergency is the number of citizens being served. The types of assistance include economic assistance, food security, student technology, child and family services, homelessness, and the like. The need for resources associated with these services is primarily driven by the population served. Therefore, the full population to be served must be represented to the greatest extent possible in the distribution of ARP funding. Grouping by enrollment size needlessly disadvantages tribes whose numbers fall near the low end of a number group and advantages those tribes whose numbers fall near the top end of a number group. Instead, the Choctaw Nation supports a simple spreadsheet calculation that allocates a proportional share amount to each tribe's specific member count. (23-Choctaw Nation)

Another important factor to consider is that many tribes serve their entire reservation community, not just the enrolled members living there. For example, the Yurok Tribe provides and is expanding internet to whole villages, not just tribal members, enabling to call emergency services in areas without cell service as well as work from home and school from home capabilities. In another example, we have provided COVID-19 testing to the whole community for months. This cultural practice is also effective, as this pandemic can be more efficiently managed when considering and serving the community as a whole. (30-Yurok Tribe; see comments for more background)

Yes. The Pueblo provides services for individuals that reside within the boundaries of the Pueblo that are traditionally accepted. To equitably provide for all Pueblo families, the traditionally accepted individuals should be considered into the overall data. (21-Pueblo of Santa Ana)

PGST does not only serve our enrolled members, PGST serves other natives residing in our community and surrounding area, using the enrollment methodology is not ideal for us. (38-Port Gamble S'Klallam)

Population in any form is not necessarily a good determinate of need as it does not take into account cost factors such as **geographic remoteness** or the economies of scale gained when serving urbanized populations as opposed to scattered rural populations. For this reason we would prefer a distribution method that minimized the use of population at all.

- We suggest using the **best available “service population” data**, or alternatively to use the allocation percentages currently used to distribute “Aid to Tribal Government” as found in the BIA “Green Book” and our respective tribal funding agreements.
- To the extent population is used in the funding formula, we suggest using the best available service population data, i.e. resident Native Americans in a tribe’s location. That may be census data, or possibly data collected by other agencies. If that is not possible to do on short notice – and we don’t know which data set would be best – the fallback position should be to use the existing allocation used for “Aid to Tribal

Government” program funding. Historically this had an “equal per tribe” component as well as population. Although dated, that allocation is familiar and has worked for many years.

- We are also very concerned that DOI would consider using a data set that no one has seen. Although some of our low-population tribes might benefit by using enrollment, it is virtually impossible to tell without actually analyzing the national numbers. ... Tribal enrollment is particularly problematic because tribes have widely varying enrollment qualifications, and because enrollment as such has little to do with the actual service population. Most BIA and IHS service programs are provided on a residency basis – services are limited to Native Americans but are not typically dependent on enrollment in a particular tribe. In our region BBNA, and most of our tribes, provide services to Native residents but not to people who may be tribal members but live in Anchorage or Seattle. (There are some exceptions, such as for Indian Child Welfare services.) (60 - Bristol Bay Native Assn)

Tribal enrollment represents only a fraction of the individuals Tribes serve.

- Many Tribes provide programs and services to more than just enrolled Tribal citizens, to include, Tribal descendants who are not eligible for enrollment, other American Indians and Alaska Natives in a Tribe’s service area, Tribal community members married to Tribal citizens/descendants and their children, essential employees (police officers, teachers, healthcare workers) and other vital community members.
- The use of enrollment numbers as a factor to determine a pro rata share of funding tends to benefit Tribes with large populations of enrolled members. If the intent is to provide funding based on the individuals a Tribe serve, enrollment may not be the best determinant.
- Tribes with large populations may not provide services to all of these individuals. Some Tribes choose to limit services to enrolled members who reside on or near the reservation only, leaving out a large portion of members whose numbers would still be used to determine their allocation of funding, resulting in a windfall of resources to certain Tribes. On the other hand, small Tribes with lower enrollment numbers may choose to serve a broader base of individuals, to include, descendants, AI/AN, and other vital community members but their funding would be limited to only enrolled Tribal citizens. The result being that a small Tribe could be providing services to more community members than a larger Tribe with a larger enrollment population but the smaller Tribe would receive significantly less in funding.
- Due to the uniqueness and cultural differences of every Tribe it is extremely difficult to identify a method of distribution that will be acceptable to everyone given the limited data metrics at our disposal. Expediency requires that we resort to the quickest method of funding distribution with the intent of fair and equitable distribution that will be acceptable to a majority of the Tribes.
- Second, if enrollment numbers are being used to determine funding, fairness and equity would require that an individual should be counted as an enrolled member of one Tribal government and not as an enrolled member of a Tribe, and a shareholder of a village or regional corporation. Federally Recognized Tribal Governments determine membership.

Alaska Native Corporations do not have enrolled members, they provide services to shareholders. (67 - Jamestown S’Klallam)

D. Grouping by Enrollment

The CTUIR recommends that, in order to equitably distribute the funding, BIA should not allocate the funding based on the grouping of tribes in enrollment categories as done under the CARES Act. Instead, the BIA should use the actual enrollment figures certified by the tribes for pro-rata allocation of the funding.(76 – CTUIR)

BIA is considering a distribution methodology based on grouping by enrollment size, similar to the approach used by BIA for CARES Act funds. We didn't realize BIA used a "grouping by enrollment" method last year. We would like to know the specifics of this method. Why can't BIA just prorate funding based on each tribes *actual* enrollment number? (03-Red Lake Band)

We think it would be most equitable if it is evenly distributed by enrollment data alone without grouping by size. The Nation is fine with a minimum allocation amount for the smaller tribes but think the rest should be distributed evenly based on enrollment. (25-Oneida Nation)

The SGAC has concerns about “grouping by enrollment size” as it needlessly disadvantages Tribal Nations whose numbers fall near the bottom of the group and advantages those Tribal Nations whose numbers are near the top of a group. (31-Self-Governance Advisory Committee)

We understand BIA is considering a distribution methodology based on grouping by enrollment size, similar to the approach used by BIA for CARES Act funds. White Earth was unaware that the BIA used a "grouping by enrollment" method last year. We would like the specifics of this method released to tribal leaders and the reason why the funding cannot be prorated based on each tribe's actual enrollment number. (36-White Earth)

E. Other Comments Regarding Use of Tribal Enrollment

It is crucial the allocation reflect that every Tribal Court requires a minimum amount of funding to operate. The smallest tribes received a negligible amount of Covid-19 relief thus far (e.g., Blue Lake Rancheria received ~\$100,000 out of an \$8 billion in the CARES Act tribal government funding, despite being one of the most important governmental providers of Covid-19 response and recovery services in its rural region). (06-Blue Lake Rancheria)

How will membership numbers affect the allocation if membership has been significantly increased after February 1? (22-Picayune Rancheria of Chukchansi)

3. Setting Aside Funding for PSJ, Based on Existing Allocation of Base Funding

A. Support

Regarding distribution of any Public Safety & Justice funding, we support BIA's thoughts on distributing these funds based on existing Base allocations of PSJ funding for tribes. This represents the best way to get the funds to existing tribal law enforcement programs, which are already terribly underfunded by BIA, and who need additional resources to continue to respond to the Pandemic. (03-Red Lake Band)

Public Safety will be greatly accepted which is continually a need yet to be met in its entirety, they will be used toward the alleviation of the need we have. (05-Native Village of Kongiganak)

The Tribal Consultation noted that Public Safety and Justice (PSJ) funding is not being considered a Tribal Priority Allocation and cannot be easily reprogrammed by Tribes. The Community is in support of a set aside funding of the \$ 772. 5 million for PSJ programs. The Community is in support of utilizing the existing allocation of (recurring annual) funding levels. Additional factors that should be considered are current staffing levels of both the Ak-Chin Police Department; including the Uniform Crime Reports (UCR) reports, reported annually by the Ak-Chin Police Department. There should also be consideration of the Ak-Chin Courts staffing levels and also Court data, as well as court programming. (11-Ak-Chin Indian Community)

We agree with BIA on their recommendation to set aside monies for public safety and justice programs which are very important to the tribe as well. Currently, with competitive federal funding from USDOJ, we do administer [and want to continue administering] tribal police, tribal courts, OVW and OVC programs, programs that address a variety of public safety and justice issues that will continue even when funding ends. (15-Asa'carsarmiut)

Yes, provided that the significant public safety challenges of small remote Tribes, including the 56 Tribes of the Y-K Delta region, should be fully and fairly taken into account in the OSJ base allocation formula, if it is not already. Y-K Delta Tribes suffer from some of the highest rates of murder, sexual assault and other violent crimes in the nation. These funds should be allocated in a manner that upholds the trust responsibility to all Tribes, including those that suffer the most from public safety challenges. (16-Calista Corp.)

Public safety and justice (PSJ) funding is critical to large land-based tribes. Consequently, we support setting aside some of the ARP funds for PSJ programs and agree that the most logical formula would be based on recurring annual funding levels for DJS-funded programs, with consideration of land base as a factor. First responders and law enforcement have challenging circumstances in covering substantial distances in remote tribal areas to address public safety in general and, perhaps even more so, with public health and safety for citizens of our community during this pandemic. (17-Fort Berthold)

For PSJ programs, the Sault Ste. Marie Tribe of Chippewa Indians currently uses BIA funding for public safety enforcement, conservation management, and juvenile detention operations. For the public safety enforcement, the funds are used to help enforce the protection, safety, and well-being of the tribal community.

- Sault Tribe law enforcement currently employs 22 sworn-in officers where the main office is in Sault Ste. Marie, Michigan and in satellite offices located in St. Ignace, Michigan; Kincheloe, Michigan; and Manistique, Michigan. For conservation management, the funding received is used to increase the presence of conservation law enforcement officers on Indian lands for the protection, conservation, and enhancement of fish and wildlife species; including habitat protection and larger ecosystem integrity, Indian treaty rights protection, cooperative management, emergency response in rural areas, cultural resource protection, and other forest, water, and agriculture resource protection. For juvenile detention operations, Sault Tribe oversees the operation and administration of the Sault Tribe juvenile detention facility, located in St. Ignace. This 25-bed facility houses youth ages 11-17 who are court-ordered to a detention facility. Sault Tribe would have no objection to distribution for these programs based on the existing allocation of the base for these programs. (18-Sault Ste Marie)

GTB agrees with the BIA's proposed distribution of public safety and justice funding. (20-Grand Traverse Band)

We support the allocation of \$30 million for public safety and justice based on existing allocation of recurring annual funding levels for the Office of Justice Services (OJS) Tribally operated programs. Tribes who currently receive recurring public safety and justice funding should receive a proportionate share of the ARP funding without question.

- Other factors that are usually required in order to receive public safety and justice funding, such as, the requirement that a Tribe have submitted all of their monthly crime and drug reports every month for the prior year should not be used to deny Tribes their allocation. Also, OJS has used other factors to determine eligibility for one time funding, to include, factors such as, violent crime rate, staffing levels/shortages by ratio, size of trust land service area, and drug related offenses. When these additional factors are applied, small Tribes with limited trust lands and lower crime rates are often disadvantaged and denied funding. We would urge the Bureau of Indian Affairs (BIA)/OJS to ensure every eligible Tribe receives a pro rata share of the \$30 million allocation. (67 - Jamestown S'Klallam)

The Walker River Paiute Tribe supports setting aside up 40% of the \$772.5 million for PSJ to be equitably distributed among the 574 federally recognized tribes. The Walker River Paiute Tribe's public safety and justice programs are critically underfunded and do not provide the financial resources to provide services at the level needed to effectively support the community. Any additional funding provided under the American Rescue Plan would allow the tribe to enhance and expand these essential services that have experienced challenges in

staffing and an increase in services as a direct result of the COVID-19 pandemic. (68 - Walker River Paiute)

Because public safety and justice (PSJ) funding is not considered a Tribal Priority Allocation and cannot be easily reprogrammed by Tribes, we support you setting aside some of the \$772.5 million for PSJ programs. We also support you distributing these funds based on the existing allocation of base (recurring annual) funding level for OJS funded, tribally operated, programs. (72 - Tulalip Tribes)

The CTUIR supports the allocation of PSJ funding based on base (recurring annual) funding level. We do not believe any other factors should be used by the BIA in the allocation of the PSJ funding. (76 - CTUIR)

Navajo Nation supports setting aside a certain portion of this funding for tribal public safety and justice programs. It is no secret that tribal governments have been disproportionately impacted by COVID, and our public safety and justice staff are working harder than ever to address its impacts. Ensuring funding can be used to bolster our public safety and justice programs will significantly assist the nation in offsetting the impacts of the pandemic. (57-Navajo Nation)

We support DOI's proposal to funnel the bulk of the ARP funding through the Aid-to-Tribal Government process, and to dedicate an amount to public safety and justice services. This funding mechanism is well-known, and will provide each tribe significant discretion on using ARP funds to meet their unique circumstances. Funds should be distributed based on direct service needs and existing allocations of recurring annual funding levels for OJS tribally-operated programs. (43-Pueblo of Laguna)

[W]ith regard to the Public Safety & Justice funding, we support the use of existing methodologies. (32-USET SPF)

Regarding distribution of any Public Safety & Justice funding, we support BIA's idea to distribute these funds based on existing Base allocations of PSJ funding for tribes. This represents the best way to get the funds to existing tribal law enforcement programs, which are already terribly underfunded by BIA, and who need additional resources to continue to respond to the pandemic. (36-White Earth)

PGST supports allocating more funds to Public Safety and Justice. Our need for more funding of Public Safety, including our Natural Resource Enforcement officers and Justice is beyond our own Tribal funding sources. (38-Port Gamble S'Klallam)

B. Oppose Because in PL 280 State

The Confederated Tribes of Siletz Indians, as a Public Law 280 tribe, would recommend distributing PSJ funding through existing tribal government funding lines such as Aid to Tribal Governments, so as not to penalize those tribes that have incurred increased law enforcement

expenses, but do not operate an Office of Justice Services-funded, tribally operated, program. (19-Confederated Tribes of Siletz)

One of the most outstanding issues we want to address is the possible set aside for Public Safety and Justice (PSJ). We, the Karuk Tribe, are in a Public Law 280 State and have been historically excluded from Public Safety and Justice funding, although we still have needs for Public Safety and Justice funding due to lack of coordination and response from local law enforcement providers. Our communities suffer the consequences of inadequate public safety and justice services. We propose an alternative method of distributing funds for this purpose that would not exclude Tribes who do not receive PSJ in their existing funding agreements. (59 - Karuk Tribe)

The ARP authorizes \$772.5 million for tribal government services, public safety and justice, social services, child welfare assistance, and other related expenses. However, we just heard the proposed set aside of PSJ-law enforcement funding would only be distributed to those programs currently receiving annual/re-occurring PSJ-law enforcement funding. The Fort Independence Tribe, like many California Tribes will not share in the ARP allocation of the " . . . \$772.5 [million] for tribal governments services, public safety and justice (PSJ), social services, " unless the tribe has a Self-Governance contract with the BIA. (63 - Fort Independence Indian Community)

We strongly oppose removing a portion of funding that would otherwise be distributed as "Aid to Tribal Government" funding in order to fund Public Safety and Justice. We believe this proposal would simply take money away from tribes in Alaska and other PL-280 states in order to fund direct BIA services on reservations. Our tribes are also underserved in regard to public safety and courts. (60 - Bristol Bay Native Assn)

Growth of tribal justice systems suffered in PL 280 States such as California. We did not choose to be a PL 280 Tribe but we are penalized for a poorly designed fix that does not meet our Tribe's needs.

- We have heard the BIA is proposing that the \$772.5 million be distributed "based on the existing allocation of base (reoccurring annual) funding level for OJS-funded, tribally operated, programs" because the BIA has determined that the Fort Independence Tribe can always rely on state law enforcement for public safety. This is an erroneous statement. We believe that the BIA should equally distribute these funds so that all tribes can receive an equal portion to serve all federally recognized tribes. (63 - Fort Independence Indian Community)

Allocating public safety and justice funds only on existing allocations of base funding levels for OJS-funded, tribally operated programs will completely exclude Alaska from this important resource and greatly diminish Alaska Tribes' ability to address public safety issues resulting from the pandemic. Therefore, a setaside for this purpose must consider the disproportionate impact it will have on Alaska Tribes and Tribal Organizations. (65 - Cook Island Inlet)

We strongly disagree with basing distribution of ARP PSJ funding on “the existing allocation of base funding for OJS-funded, tribally operated, programs.” PL-280 states, such as Alaska, do not receive base funding for OJS programs. Historically, Alaska tribes have been shutout from BIA public safety funding and forced to rely on the State of Alaska and a patchwork of grants, donations, and fundraising. This has resulted in multiple tribal communities with insufficient or non-existent law enforcement⁴, the highest rates of rape and domestic violence in the Nation, and a current Department of Justice law enforcement emergency declaration in rural Alaska. The COVID-19 pandemic has worsened an already desperate law enforcement situation in Alaska’s tribal communities. It is imperative that our tribes receive their fair share of public safety funding. AVCP recommends including PSJ funding – based on the same equitable allocation methodology for the remainder of BIA’s ARP funds – for every tribe. These funds can be included under the Law Enforcement Special Initiatives line to facilitate providing these funds expeditiously to PL-280 tribes. (66 – AVCP)

We do not agree with the fact that Tribes in PL280 states and some other new Tribes are deemed ineligible for public safety and justice funding. However, it is unclear whether this issue can be resolved swiftly at the 11th hour. Tribes desperately need public safety and justice funding and given the exponential need that has been magnified with the onset of the COVID-19 pandemic, we cannot have funding distribution delayed due to internal policy requirements. We would, however, urge DOI to address this long standing issue that essentially locks Tribes out of the distribution process without any recourse. If states are refusing or failing to provide public safety and justice services to Tribes in PL280 states, Tribes in accordance with the Tribal Law and Order Act, should be eligible to request re-assumption of Federal oversight and provided funding for public safety and justice by DOI. Tribes are currently being held hostage by states who are failing to carry out their jurisdictional responsibilities. (67 - Jamestown S’Klallam)

Objects to BIA setting aside part of the \$772.5 million in ARPA funds for PSJ and dispersing these funds based on current allocation methods, because P.L. 280 tribes would be severely disadvantaged, even though former Attorney General William General Barr designated rural Alaska as a law enforcement emergency, the first time in history a United States Attorney General has done so. (see comment for additional justification, pg6-7) (69 - Alaska Federation of Natives)

The proposed ARP implementation plan provides that \$772.5 million dollars will be set aside for “public safety and justice (PSJ)” services. This allocation will be distributed based on “existing allocation of base (reoccurring annual) funding level for OJS-funded, tribally operated, programs.” Because OJS does not currently fund PSJ services for tribes in PL 280 states, our tribe will not qualify for the \$772.5 million dollar set aside. We strongly object to this allocation formula since tribal courts and law enforcement services in California and other PL 280 states have been impacted by the pandemic and are in need of the critical funding.

- California is one of the five mandatory Public Law (PL) 280 states. Under PL 280, the state and tribes concurrently exercised criminal and limited civil jurisdiction in Indian Country. One of the many consequences of PL 280 is the Bureau of Indian Affairs (BIA) has historically chosen not to fund tribal courts or law enforcement and instead

prioritizes public safety and justice funding for tribes in non-PL 280 states. As result, tribes in California, with the exception of tribes with Self-Governance contracts, are not awarded 638 contracts for law enforcement or tribal court funding and therefore do not receive annual reoccurring base funding for these services.

- Without sustaining and reoccurring federal funding, tribal courts and law enforcement services in California are provided and maintained through competitive tribal grants. Tribal enterprises, businesses and other economic sources that sustain tribal revenue were severely impacted financially by the pandemic which caused a ripple effect to the tribal services to our members and community. Providing funding to tribal courts and law enforcement is critical to maintain public safety to our community. Distribution of the PSJ funds should be fair and equitable to all tribes. We request that BIA work with the tribes in formulating an allocation plan that ensures tribes in PL 280 states are not again denied funding for PSJ services. (74 - Robinson Rancheria) (46-San Pasqual Band) (79 – Cahuilla Band of Indians)

Because OJS does not currently fund public safety and justice services for tribes in PL 280 states, the result of this allocation formula is that, despite being impacted by the pandemic, all California tribes will be ineligible for these funds. Due to the lack of federal funding, tribal courts and law enforcement services in California are supported using tribal general funds. Revenue from our tribal enterprises was severely impacted by the pandemic, which caused a shortage for tribal services to our members and community. Distribution of the public safety and justice funds should be fair and equitable to all tribes, including those of us located in P.L. 280 states. We do not have a jail system, but we contract with the County of San Diego for a resident sheriff and maintain our own Tribal Enforcement Dept. The tribe struggled to support and maintain these programs throughout the pandemic because we believe that law enforcement is critical to maintain public safety in our community. We request that BIA work with the tribes in formulating an allocation plan that ensures California tribes, as well as those in other PL 280 states, receive our fair share of funding for public safety and justice and that we are not, once again, left out of funding opportunities. (55-Barona Band of Mission Indians)

Because OJS does not currently fund PSJ services for tribes in PL 280 states, our tribe will not qualify for the \$772.5 million dollar set aside. The Soboba Band of Luiseño Indians strongly objects to this allocation formula since tribal courts and law enforcement services in California and other PL 280 states have been impacted by the pandemic and are in need of the critical funding. Without sustaining and reoccurring federal funding, tribal courts and law enforcement services in California are provided and maintained through tribal general funds. Tribal enterprises, businesses and other economic sources that sustain tribal revenue were severely impacted financially by the pandemic which caused a ripple effect to the tribal services to our members and community. Providing funding to tribal courts and law enforcement is critical to maintain public safety to our community. Distribution of the PSJ funds should be fair and equitable to all tribes. We request that BIA work with the tribes in formulating an allocation plan that ensures tribes in PL 280 states are not again denied funding for PSJ services. (54-Tule River Tribe) (53- Soboba Band of Luiseño Indians)

My Tribe is urging the BIA to reject the proposed distribution restriction limiting the \$772.5 million dollar allocation of American Rescue Plan (“ARP”) funding for public safety and justice (“PSJ”) programs to tribal governments that have an ongoing PL-93-638 contract (“638 contract”) with the BIA. This restriction unfairly impacts California Tribes who will not be able to share in the allocation for PSJ funding due to the effects of PL-280. [...] It is imperative that the BIA reject this restriction and develop a fair and equitable funding formula for the distribution of the \$772.5 million set aside for PSJ services so that California Tribes, and all tribes in PL 280 states, can receive PSJ funding.” (See comment for additional details.) (51- Chicken Ranch Rancheria)

I respectfully request that the Bureau of Indian Affairs (“BIA”) reject the proposed distribution restriction limiting the \$772.5 million dollar allocation of American Rescue Plan (“ARP”) funding for public safety and justice (“PSJ”) programs to tribal governments that have an ongoing PL-93-638 contract (“638 contract”) with the BIA. This restriction unfairly impacts California Tribes who will not be able to share in the allocation for PSJ funding due to the effects of PL-280. [...] It is imperative that the BIA reject this restriction and develop a fair and equitable funding formula for the distribution of the \$772.5 million set aside for PSJ services so that California Tribes, and all tribes in PL 280 states, can receive PSJ funding. (49-Coyote Valley Band - See comment for additional details) (47-Manchester-Point Arena Band)

To our knowledge, most, if not all Tribes in Alaska do not have a line in funding agreements for "base (recurring annual) funding level for OJS-funded, tribal operated, programs." If this is true, and your approach means that most or all of the Tribes and Tribal Organizations in Alaska will be ineligible to receive any of this funding, then we oppose this approach and believe it unfairly discriminates against Tribes in P.L. 280 States that have not had the advantage of establishing a recurring base OJS funded line in their funding agreements. If this means that some Tribes/Organizations in Alaska will be able to take advantage of this funding and others will not, we would still oppose this approach. Whatever approach is taken, Tribes should be equally entitled to receive a portion of this funding. Alaska Natives suffer from the worst rates of domestic violence, child abuse and neglect, and violence against women, in the entire country. Any formula for public safety and justice funding that excludes Alaska Tribes, would be a complete failure to apply these resources where they are needed the most. Ensure that the formula results in an equitable distribution of this funding to all Tribes, whether in the Lower 48, Alaska, P.L 280 State, or not. (48-Kawerak, Inc.)

It has come to our attention that on a recent tribal consultation, officials from the DOI announced that the portion of the ARP allocation to the BIA for public safety and justice services would be disbursed to tribes based on the existing allocation of base (reoccurring annual) funding levels for Office of Justice Services-funded, tribally operated, programs. As you may be aware, many tribes in PL-280 states, such as California, do not receive public safety and justice law enforcement funding, as the BIA has determined that tribes have the option to rely on state law enforcement for public safety. As tribes in California and other PL-280 states do not receive public safety and justice funding, there is no base or reoccurring annual funding level or 63 8 contracts to utilize for an allocation of a portion of the funds. [New Paragraph]

Unfortunately, utilizing this method of funding essentially guarantees that California tribes, like Dry Creek, would not receive a portion of the \$772,500,000 for public safety. We respectfully request that DOI reconsider this method of funding and develop a fair and equitable funding formula for the distribution of the set aside for public safety and justice services to ensure that California tribes-and all tribes in PL 280 states-receive a portion of the set aside for public safety and justice funding. (41-Dry Creek Rancheria Band)

The Rincon Band strongly objects to a PSJ Set Aside unless the distribution methodology directs an equitable portion to California Indian tribes operating PSJ programs. Since the Ninth Circuit decision in *Los Coyotes Band v. Jewell*, BIA clearly has no legal obligation to reallocate PSJ program funds to contract with tribes not already funded. In California, the BIA has included a PSJ line-item in the Pacific Region budget but refused to allocate funds for PSJ based on the legal fiction that tribal citizens and non-tribal citizens residing or doing business on Indian reservations in California, a Public Law (“PL”) 280 state, are adequately protected by the county sheriffs. We understand that BIA had funding to study and assess tribal courts systems in PL 280 jurisdictions but this funding did not flow through Indian Self-Determination and Education Assistance Act (“ISDEAA”) contracts with California tribes and, without existing ISDEAA contracts for PSJ services, we doubt there is any viable mechanic to distribute an equitable portion of the Set Aside to California tribes. This is manifestly unfair and discriminatory toward California tribes providing those services. For more than 14 years, the Rincon Band has been a founding member of the Intertribal Court of Southern California, and within the last two years has established additional courts to provide civil trial and appellate court services on the Rincon Reservation. To advance public safety, the Rincon Band has contracted with San Diego County Sheriff to provide dedicated law enforcement officers on the Rincon Reservation at an annual cost in excess of \$400,000. The proposed Set Aside should be available to offset the Rincon Band’s PSJ costs. If the Rincon Band is eligible for an equitable share of the Set Aside, of course we support the proposal. Our understanding, however, is that that is not the case. We, therefore, strongly object to the Set Aside. (42-Rincon Band)

Alaska is a PL 280 state – as such there is concurrent jurisdiction between all three sovereigns depending upon the crime and the location of the crime. However, it has been well documented that the State has been an unreliable public safety partner to Alaska Tribes and has been unable to establish and maintain a public safety presence in much of rural Alaska. Attorney General Barr rightfully recognized our predicament as a Public Safety Crisis in June 2019. The State has historically been unwilling to accept that Alaska Tribes have any continuing jurisdiction in public safety matters. Despite the fact that in many rural communities, the Tribal Government is the only functioning government with an on the ground presence. Alaska Tribes, like Tribes in other PL 280 jurisdictions, are forced to turn to competitive federal grants to fund crucial public safety positions. Most Tribes in PL 280 states, including Alaska Tribes, do not receive ‘public safety and justice funds.’ This means that the BIA’s proposal to distribute these funds based on the existing allocation of base (recurring annual) funding level for OJS funded, tribally operated, programs will deny this important funding to Alaska Tribes. We demand that the BIA develop a fair and equitable funding formula for the distribution of the \$772.5 million set aside for PSJ services so that Alaska Tribes and all tribes in PL 280 states

receive PSJ funding. The BIA's assumption that Alaska Tribes can rely upon the State of Alaska for public safety and justice services is demonstrably false – and the BIA can no longer operate as if it is true. PSJ funding should be as flexible as possible and also distributed to entities with 638 contracts. (28-Tangirmaq Native Village)

Public Safety and Justice are critical programs, especially during a pandemic. The Yurok Tribe supports the idea of putting funding towards this program. However, one obstacle must be considered before doing so. The BIA's disastrous policy of not providing law enforcement and tribal courts funding to tribes in Public Law 280 states such as California must be ended. This lack of funding only hampers our ability to respond to emergencies. Nothing prevents BIA from ending this discriminatory policy. For the short term in allocating this funding, an equivalent calculation should be creating for tribes in Public Law 280 states, so they are not once again left behind. (30-Yurok Tribe)

The tribes located in Public Law 280 states are not eligible for recurring annual funding to operate public safety and justice programs. Minnesota is a Public Law 280 state. The Leech Lake Band of Ojibwe has a tribal court that exercises a broad scope of jurisdiction over civil matters, such as children in need of protection or services. The tribal court is partially funded by the tribal government but must compete with other tribes for limited federal grants. The present funding structure results in staffing instability and limited ability to make long-range plans for infrastructure and programming. The tribes located in Public Law 280 states need to be included in the BIA's recurring annual funding if/when they decide to exercise their sovereign authority in the area of criminal jurisdiction. At present, tribal courts located in Public Law 280 states may apply for one-time funding grants. The grants are...relatively small (compared to the need). The grants also have limitations and restrictions that limit their effectiveness. (33-Leech Lake Band; see comments for more background)

BIA should not set aside funds for Public Safety and Justice (PS&J) programs. While it is true that PS&J programs will not otherwise receive an ARPA distribution, a set aside for this purpose would disadvantage tribes by locking funds into PS&J uses, reducing the overall flexibility of relief funds. In addition, not all tribes receive funding in PS&J line items, so a sub-allocation would create an unfair split between those that do and those that do not. An equitable distribution to every federally recognized tribal government cannot be achieved when some funds are carved out for line items that do not serve all tribes. Finally, all ARPA funds should be provided through existing contracts/compacts and funding agreements and not through any grant mechanism. (37-Citizen Potawatomi Nation)

It has come to our attention that on a recent tribal consultation, officials from the DOI announced that the portion of the ARP allocation to the BIA for public safety and justice services would be disbursed to tribes based on the existing allocation of base (reoccurring annual) funding levels for Office of Justice Services-funded, tribally operated, programs. As you may be aware, many tribes in PL-280 states, such as California, do not receive public safety and justice law enforcement funding, as the BIA has determined that tribes have the option to rely on state law enforcement for public safety. As tribes in California and other PL-280 states do

not receive public safety and justice funding, there is no base or reoccurring annual funding level or 638 contracts to utilize as for allocation of a portion of the funds. Unfortunately, utilizing this method of funding essentially guarantees that California tribes, like Tachi, would not receive a portion of the \$772,500,000 for public safety. We respectfully request that DOI reconsider this method of funding and develop a fair and equitable funding formula for the distribution of the set aside for public safety and justice services to ensure that California tribes- and all tribes in PL 280 states- receive a portion of the set aside for public safety and justice funding. (39-Santa Rosa Rancheria)

This distribution method puts PL 280 tribes at a disadvantage because recurring funding received is minimal. We receive less than 3% of the funding needed to operate our police department from the BIA. We have 20 officers, but our BIA funds only pay for 1. Other factors that should be considered are the size of programs. Possible factors include total law enforcement budget, number of officers, crime rates, and need. We submit our criminal statistics monthly, so the OJS should have that information already. Another option would be to treat PSJ as a TPA so we can easily reallocate money there. Another area we have concerns about is tribal court funding. Will OJS be providing additional funds to tribal courts? (25-Oneida Nation)

The Bureau is proposing that the \$772.5 million be distributed “based on the existing allocation of base (reoccurring annual) funding level for OJS-funded, tribally operated, programs.” BIA’s Public Safety and Justice (PSJ) program funds tribal law enforcement and tribal courts. However, most tribes in P.L. 280 states, including Alaska Native tribes, do not receive these funds. More specifically this means that Alaska will not share in the PSJ set aside of ARPA funds unless the tribe has a Self-Governance contract or compact with BIA.

- BIA does not execute 638 contracts and compacts for PSJ funding to tribes in P.L. 280 states (except for Self-Governance tribes). Since tribes in P.L. 280 states do not receive PSJ funding there is no “base (reoccurring annual) funding level” or 638 contracts or compacts in which to allocate a public safety and justice set aside of \$772.5 million in ARPA funds to Alaska Tribes.
- If this is true, the DOI’s approach means that most or all of the Tribes and Tribal Organizations in Alaska, will be ineligible to receive any of this funding, then we oppose this approach and believe it unfairly discriminates against Tribes in P.L. 280 States that have not had the advantage of establishing a recurring base OJS funded line in their funding agreements. To paint a picture both Alaska and California are both P.L.280 states, and these two state alone are home to 338 of the 575 federally recognized tribes of this country- that means more than half of the tribes in this country will be excluded from these funds.
- TCC has assisted tribes in the Region to develop tribal courts since the early 1980s and is viewed in the state as a model for tribal court development. TCC supports this development through training, technical assistance and legal support when tribal courts are challenged by the State of Alaska. Through the many state and federal court decisions that have come from challenges to tribal court activity, Alaska tribes are confirmed to have clear civil jurisdiction particularly in the area of domestic relations

even in the absence of Indian country. These cases proved that Alaska tribes have jurisdiction over tribal members and protecting their health and safety even without the land base of a reservation. Former U.S. Attorney General William Barr stated during his June 2019 visit to Alaska that it was harder for him to imagine a more vulnerable population than the Native women and children he saw in rural Alaska. He immediately issued an Emergency Declaration for Rural Public Safety and reallocated existing Justice Department funds to mitigate the crisis. The Biden-Harris Administration should continue to prioritize the public safety crisis of Alaska Natives with an all-of-government approach. (See comment for additional statistics on public safety problems in Alaska's tribal communities).

- As such, TCC only supports BIA's proposed PSJ set aside of ARPA funds if the Bureau develops a fair and equitable funding formula for the distribution of these funds for PSJ services so that Alaska Native tribes and all tribes in P.L. 280 states receive PSJ funding. Additionally TCC requests the DOI consider allowing Tribes in P.L. 280 state to receive annual base funding for PSJ, tribal government within P.L. 280 states retain their jurisdiction over their tribal members and are truly in need of funding resources to help keep tribal communities safe. (83-Tanana Chiefs Conference)

C. Oppose For Other Reasons

As we mentioned at the March 25th Consultation, the Seneca Nation's constitutionally-created law enforcement agency, the Seneca Marshals, is funded completely through Seneca Nation general funds and is not a PSJ/OJS-funded program. The Seneca Nation does receive a modest BIA Tribal Court grant that is funded under our 638 community service contract and not the PSJ program. If the BIA follows through with its funding proposal under Question #3, the Seneca Nation likely would receive no funding and would basically be penalized for funding its law enforcement through Seneca Nation general funds.

- The Seneca Nation proposed that the full \$772.5 million be provided to Native Nations through the "tribal government funding line." Upon hearing the Seneca Nation's comments, Mr. Newland suggested that the Seneca Nation propose a method of distribution that meets the public safety and justice demands of OJS-funded Native Nations as well as Nations like Seneca that fund their public safety and justice programs through general funds than through OJS funding.
- The Seneca Nation proposes that if the BIA goes forward with setting aside some of the \$772.5 million for PSJ programs, then a portion of the "set aside" should be reserved for Native Nations that do not have an existing allocation of funding for "OJS-funded, tribally operated, programs." This portion of the set aside should then be distributed to such Native Nations (those who are not OJS-funded) through the tribal government funding line. (10-Seneca Nation)

The Choctaw Nation strongly supports a set aside for PSJ funding but would oppose as grossly unfair any distribution based on existing allocations of OJS funding because OJS funding completely bypasses tribes like the Choctaw Nation which have huge, non-PL 280 Reservation

land areas for which they are responsible for public safety without any OJS funding. The BIA's responsibility to provide recurring PSJ funding to the Choctaw Nation is not at all represented in the current PSJ base funding level. Funding levels have not been raised commensurate with the additional trust responsibility for funding the Choctaw Nation Reservation as necessitated by the U.S. Supreme Court's 2020 ruling in *McGirt v. Oklahoma*. The Choctaw Nation would recommend that any such set aside funds be distributed as tribal government services funding, so that a tribe may reprogram any portion of its allocation to supplement PSJ. The BIA could simply distribute all the funds as discussed in Question 2 above and make clear that tribes may program to any activities allowed by the Act. Alternatively, the BIA should distribute any PSJ allocation based on the newly updated enrollment data, not upon the existing recurring base for PSJ. Should the BIA consider allocating some shares in relation to the PSJ base funding levels, the historically inaccurate base funding level for Choctaw Nation must be considered and treated in parity with other tribes under the funding formulas BIA uses in its Tribal Law and Order Act annual reports. (23-Choctaw Nation)

SGAC supports a set aside for PSJ funding. However, the SGAC has significant concerns about distributing these funds based on the existing allocation of OJS funding. The COVID-19 crisis continues to exacerbate basic safety and human rights issues that already disproportionately hurt Tribal communities due to vicious cycles of marginalization, loss of sovereignty, and Federal neglect. In addition, as state and Federal prisons have become infection hotspots, American Indian and Alaska Native people again bear a disproportionate burden of the impact due to their 38 percent higher-than-average incarceration rate. Many Tribal Nations do not receive OJS funding or receive very minimal amounts of funds compared to the Tribal governments' actual operating budget for public safety and justice programs. (31-Self-Governance Advisory Committee)

MCN opposes distribution of the available funding through the public safety line item. The reason funding cannot easily be reprogrammed is because of historical decisions of the BIA, which did not consider tribal input. Therefore, modern distributions of funding to recognize the true need, especially for the Muscogee (Creek) Nation. On average, MCN finances law enforcement services on the reservations 7-8 times greater than the amount of funding the BIA provides. Historical funding bases also do not recognize recent affirmations of the Nation's reservation, nor do current funding levels meet the needs on the reservation. Therefore, we are opposed to any distribution which is based on historical funding levels. If, instead, the BIA were to use recent, available population or available crime data to distribute a subset of funding, the MCN would consider that a more appropriate measure for a formula distribution. (80 – Muscogee Creek Nation)

D. PSJ Funding Needs

The Lower Brule Sioux Tribe is approximately 200,000 acres, which is occupied by a little over 1,600 enrolled members. With a low population spread over a remote and large land base, our Tribe has unique needs.

- Part of those needs is law enforcement and adequate detention facilities. With condemnation threatening our old justice facility around the turn of last century, BIA agreed to house inmates here in Lower Brule. Part of this agreement involved using Tribal funds to build this new facility, which cost the Tribe around \$8.5M. Our Justice Center currently houses the BIA Law Enforcement Command Center and detention spaces serving both the Lower Brule and Crow Creek Tribes. The Tribe is currently in the middle of a major project of its Justice Center. The COVID-19 pandemic largely ground tribal construction to a halt, negatively impacted tribal finances and placed a chill on lenders. During this time our tribal law enforcement and inmate population along with their families struggle with the pandemic. The Lower Brule Sioux Tribe needs adequate funding and maximum flexibility to help meet the unique challenges it faces. (07-Lower Brule)
- a. Yes, non-tribal offenders lessen Pueblo public safety resources (e.g., arrest, processing).
- **b. Courts:** The Pueblo lands lie at a major travel intersection and have two major highways that run through the Pueblo, East to West, and North to South. Over 300 miles of roads exist within the boundary of the Pueblo. As a result, 60,000 people travel through tribal lands every day with a large majority being from the other 20 tribes within the State of New Mexico. This heavy foot and automobile traffic impact the Pueblo public safety systems and courts. On average the Santa Ana Police Department (SAPD) responds to around 5000 dispatch calls annually. Due to this influx from other tribes in the surrounding area on to the Pueblo, the court usually has an average of 70% of all court cases being with non-Santa Ana tribal members.
 - **c. Law Enforcement:** The Law Enforcement program for the Pueblo is insufficient given the land mass, number of residents, travelers, and patrons. Additional personnel and associated costs for the program are essential to the safety and security of the respective interests of the Pueblo. Upper-level Command Staff positions must also be created and funded to ensure proper oversight and continual progress of the Law Enforcement program. The current staffing levels and assignments are insufficient and problematic to the overall mission of the Santa Ana Police Department.
 - The COVID-19 pandemic has had a significant impact on the Santa Ana Police Department as well. Due to the COVID-19, the Santa Ana Police Department has maintained a checkpoint at one of the access points to the village for over one year. The checkpoint was established to mitigate the spread of COVID-19 within the Pueblo.
 - Workspace for the Santa Ana Police Department and Tribal Court System is a significant problem as well. The Pueblo is currently unable to fund the completion of a Public Safety/ Judicial Complex. Funding and finalization of the project is uncertain with no anticipated end date. Due to budget constraints related to the COVID-19, the Santa Ana Police Department did not receive any funding for the purchase of new emergency response vehicles during the current fiscal year. An aging fleet is costly to maintain and raises concerns regarding the reliability of the vehicles. (21-Pueblo of Santa Ana; see comments for more background)

The path to public safety must be safely paved. We recommend that the BIA use a portion of the \$772.5 million public safety and justice sub-category allocation to:

- Address its substantial backlogged road and bridge projects by taking a tribal nation's mile inventory, size, remoteness and seasonal weather conditions into consideration.
- Authorize new tribal road maintenance and construction projects.
- Authorize purchases of essential road equipment (snowplows, graders, etc.) for short and long term road maintenance.

Our officers are overworked and under tremendous stress. ARPA funds must be used to rectify this situation. We recommend the BIA allocate funds directly to tribal governments for law enforcement workforce development, emergency vehicle maintenance and replacements, administrative and public safety equipment, systems upgrades, and training. Our Tribal Court and justice services...have been strained during the pandemic by a rise in drug-related activities and crimes on our lands. We also recommend that the BIA broadly authorize expenditures under the public safety and justice sub-category of ARPA funding. Because Congress did not distinguish public safety and justice services into separate line items, the BIA should allocate these funds together directly to tribal governments so that we can target expenditures appropriately to meet local needs. (24-Oglala Sioux Tribe; see comments for more background)

The path to public safety must be safely paved.

- **Roads Maintenance.** On our Reservation and Pueblo lands, roads maintenance is a persistent need. Unmet repair and construction needs create unsafe road conditions...can create challenges in emergency situations, for individuals and families, for the delivery of goods and services, and for accessing areas that are culturally and spiritually significant. This is all the more true during a pandemic. We recommend that the BIA use a portion of the \$772.5 million public safety and justice sub-category allocation to:
 - Address its substantial backlogged road and bridge projects by taking a tribal nation's mile inventory, size, and geographic location into consideration.
 - Authorize new tribal road maintenance and construction projects.
 - Authorize purchases of essential road equipment for sustainable road maintenance. Because this is an area of high unmet need, we suggest that the BIA allocate roads funding as a separate pot of funding from any law enforcement and justice services.
- **Law Enforcement Personnel and Resources.** There are many challenges that pre-date the pandemic in these areas that have become exacerbated over the past year. Our officers are overworked and under tremendous stress in their dedication to safeguarding our Pueblo. ARPA funds must be used to rectify this situation. We recommend the BIA allocate funds directly to tribal governments...funds should be allocated, to the greatest extent possible, on a needs-based methodology or, where that is not feasible, by taking into consideration geographic and population size.
- **Tribal Court and Justice Services.** Our Tribal Court and justice services...have been strained during the pandemic by a rise in drug-related activities and crimes on our lands and in the surrounding communities. [They] do not have the resources...to timely

process cases and complete necessary coordinating work with tribal partners on public safety in Pueblo Country. Additional resources are needed to close the funding gap.... We recommend that the BIA broadly authorize expenditures under the public safety and justice sub-category of ARPA funding...the BIA should allocate these funds...directly to tribal governments so that we can target expenditures appropriately to meet local needs. (35-Santa Clara Pueblo; see comments for more background)

I submit these comments to ensure our tribal justice system needs are recognized, and to advocate they be funded by the American Rescue Plan (ARP).... The Blue Lake Rancheria has just completed construction (March, 2021), funded by its own treasury, of a Tribal Justice Center (TJC), which houses the Tribal Court, Tribal Police, and related functions and agencies. With this new facility, for the first time the Tribe will have a dedicated space for its Court. Due to the Covid-19 pandemic and the tribal government's many priorities including continuity of operations, closing down of its primary economic enterprises for ~six months to slow the transmission, and funding the many Covid-19 response and recovery activities, the Blue Lake Rancheria seeks assistance with the following resources to equip the facilities.

- Contract Subject Matter Expert (SME) to update and finalize Tribal Court Clerk Manual
- Contract SME to update and finalize the Judge's Bench Book
- Contract SME to update, amend, tribal ordinances and codify them
- Procure security infrastructure for the Tribal Courtroom and related facilities, including two metal detectors also equipped with temperature detection due to COVID-19, security cameras and related infrastructure (e.g., wiring, dedicated server for video file storage)
- Contract SME to develop Court emergency policies and procedures and train employees on their use
- Contract SME to assist with development of Court forms as interactive PDF forms
- Upgrade Court audio/visual system
- Obtain an appropriate court case management system software
- Obtain equipment for Court operations, including but not limited to copy machine, scanner, two printers (clerk+ judge), headphones for clerks, fireproof safe, shredder, fireproof file cabinets, computers, official court stamps.
- Training - all Court staff
- Procure furnishings, including but not limited to:
 - Jury Room: modular conference table and chairs
 - Courtroom: Judge dais, witness chair, modular table and chair system for attorneys, chairs for attendees
 - Judge's Office: desk, chair, modular conference table/chairs for attorneys and other meetings
- Procurement of systems and other resources to ensure all Court operations are compliant with the Americans with Disabilities Act and other accessibility services and best practices (e.g., ADA Coordinator service, system to manage requests for accommodation, Assistive Listening System (ALS) and Portable Assistive Listening

Systems (ALS), interpreter services, Communication Access Realtime Translation (CART), among others)

- Procure Information Technology, including but not limited to:
 - Purchase dedicated broadband fiber network and connectivity equipment
 - Secure Court networks, digital filing and storage software system(s), licenses, and secure/dedicated servers
 - Digital Court calendar system with Court stakeholder communications functionality
 - Dedicated phone line for jurors, dedicated Court phone line for questions
 - Cell phone for clerk's office equipped to receive Court email, and able to Virtual Private Network (VPN) into the Court's secure network
 - Monitors for more accessible public viewing in Courtroom for sharing of documents
- Supplies: Typical Court operations office supplies (e.g., copy paper, pens, highlighters, staplers, staple removers, hole punch, self-stick business envelopes, carbonless receipt books w/court information, label maker, paper clips, desktop/wall calendars, general pre-inked stamps (e.g., faxed, filed, closed, posted, etc.), clipboards, organizational supplies, etc.

To ensure every tribe with a tribal justice system receives meaningful funding under this effort, we propose at least 20% of the funding (~\$154 million) be distributed equally among existing tribal court systems. The remaining 80% of the funding could be distributed equally among the 574 federally recognized tribes to fund a broader set of tribal justice system and public safety initiatives. (06-Blue Lake Rancheria)

I am writing in support of funding Tribal Government Services for the Chippewa Cree Tribe.

- The Chippewa Cree Tribal Court is currently housed in an older abandoned college annex building built in the early 1970's. The building does not provide adequate space or safety for a Tribal Court House employees. Our water pipes freeze each winter, the lights in offices do not work, the building has two furnaces to heat and cool the building, however one furnace does not work so part of the building is freezing cold in the winter and extremely hot in the summer. In 2009 & 2010 the building flooded and the foundation is cracked. I can send pictures of the building showing the siding and rain gutters falling off along with cracked sidewalks and no fire exits for some of the offices. It is not logical to renovate such as old building located near springs which causes the building to flood. I could go on and on about the need for a new court house.
- The Tribal Court upholds all laws and ordinances for civil, criminal and juvenile matters approved by the Chippewa Cree Tribal Council. Tribal courts in the United States are referred to as the third branch of the third sovereign, placing them, by stature, at the bottom of the hierarchy of judicial systems within our federal government. Very little, if any funds for construction are available to tribes to build or maintain tribal department buildings.
- The Chippewa Cree Tribe of the Rocky Boy's Indian Reservation is a self-governance tribe however, our economic development does not provide funds to the tribe like most tribes, thus our tribe does not have the funding for construction of buildings.

- I am an experienced grant writer, however I have no experience as an construction manager or engineer. Our tribe is in desperate need for both positions with the hope of designing new buildings for the Tribal Court, Social Services, TANF, TERO, Voc Rehab and Tribal Office. These departments are forced to operate in older buildings abandoned by the Rocky Boy Health Center and Stone Child College. I can send pictures of these building as well. (12-Chippewa Cree Tribal Court)

E. Other Comments

Setting aside some of the funds for PSJ programs. Our tribe is a member of the Association of Village Council Presidents (AVCP), a consortium of all fifty six federally recognized tribes from the Yukon-Kuskokwim Delta region. Like many tribes in our region, we have a compact agreement with AVCP to administer our public safety and tribal justice programs. A portion of the ARP public safety funding should, however, go directly to tribes to support existing public safety personnel in our communities and assist in enforcing public safety mandates related to COVID-19. (70 - Yupiit of Andreafski)

Public safety and justice needs. In allocating funds to Indian Tribes, the BIA should consider each Tribe's need for assistance with roads maintenance, law enforcement facilities, personnel, and resources, detention and corrections facilities, personnel, and services, and Tribal Court and justice services. The BIA should provide sufficient funding to repair all substandard roads, bridges, and culverts on the Cheyenne River Indian Reservation. (71 - Cheyenne River Sioux)

Public safety and justice needs. In allocating funds to Indian Tribes, the BIA should consider each Tribe's need for assistance with roads maintenance, law enforcement facilities, personnel and resources, detention and corrections facilities, personnel, and services, and Tribal Court and justice services. The BIA should provide sufficient funding for public safety and Justice construction on the Lake Traverse Reservation, including sufficient funding to complete the Sisseton-Wahpeton Oyate Adult Detention Center and funding for a Police Station and Tribal Courthouse. (73 - Sisseton-Wahpeton Oyate)

Pinoleville Pomo Nation is a Self Gov. Tribe located in Ukiah CA The Tribe doesn't have funding for Tribal Police and is need of that funding. We have a Tribal court but no funding for law enforcement. Each tribe should have a fair share of enforcement. This is a Safety problem with Covid 19. (58-Pinoleville)

In short, California schools are in decline and COVID schedule changes have made this decline worse for children from Native families to get safe access to schools. We recommend a small portion of funding for BIE or PSJ funds be set aside for " school transportation/safety improvement programs". Additional factors that should be considered for PSJ programs are those Tribes that are now assessing a Tribal Court or Tribal Public Safety Officer Program. (44-Tuolumne Band)

Next, the Community also supports the authorization to use of those funds for the development of a Justice Center, which would house the police department, the court system and a new correctional facility. Given the Community's remote and isolated location, we have our own police force, jail facility and court system. That said, for decades, the justice system has been woefully underfunded and important infrastructure needs have gone un-met for far too long. For example, in 2009, the Bureau of Indian Affairs-Office of Justice Services condemned our jail facility given its state of severe disrepair. As such, we are unable to adequately protect Community members or to provide important, culturally appropriate rehabilitation services to our members who commit relatively minor offenses due to addiction problems. Because we cannot house them in our correctional facility for more than twelve hours, any member whose offense requires some jail time must serve their time in state facilities, which leads to increased separation from the Community and negatively impacts their ability to truly heal themselves. (40-Metlakatla Indian Community)

Allocate some funding for Public Safety and Justice also based on newly collected enrollment data and existing allocation of reoccurring annual funding level for OJS-funded, tribally operated programs. The Chippewa Cree experienced a higher level of distribution of services and products expenses not only because of our location in a rural area but also Shelter in Place orders for the reservation. (27-Chippewa Cree Tribe)

4. Housing Improvement \$100M Providing 30% to All Tribes and Remaining Pro Rata

A. Support

Regarding the proposed two-step formula for distributing HIP funds, with 30% being used to provide a minimum amount to each tribe, and the remaining amount distributed pro-rata based on enrollment, we support this proposal as an equitable means to assist all tribes. (03-Red Lake Band)

I understand the housing improvement program and its criteria to assist the elderly, any amount that can be added to the \$50,000 will once again be greatly appreciated as well. (05-Native Village of Kongiganak)

The Community supports the Housing Improvement funding proposal for all Tribes to receive a minimum level of funding, as noted within the consultation, which is 30% of the \$ 100 million and a second step with the remaining \$ 65. 5 million funds for distribution on a pro rata based on enrollment data. (11-Ak-Chin Indian Community)

We support the BIA's suggestion to allocate the funds based on a two-step method to ensure all tribes have a minimum level of funding which would expend roughly 30% of the \$1 00 million. We also support the second step to distribute the remaining funding on a pro-rata basis based on enrollment data. (72 - Tulalip Tribes)

We support DOI's decision to provide every Tribe \$60,000 in funding and to distribute the remaining \$65.5 million on a pro rata basis using enrollment data as the distribution factor.

Unfortunately, unmet needs/unfulfilled obligations would have been another factor to apply to the formula distribution methodology but the BIA placed a moratorium on the collection of needs based data for the last four years. We urge the Department to dispense with the moratorium and work with Tribes to establish metrics to collect needs based data. (67 - Jamestown S'Klallam)

The Walker River Paiute Tribe supports the allocation methodology as proposed by the Department of Interior provided the enrollment data used for the second step of the distribution is self-certified enrollment data provided by tribes. (68 - Walker River Paiute)

AFN supports the Bureau's plan to allocate \$100 million of the \$900 million in ARPA funds for housing, provided the data methodology for the pro-rate allocation is based on the most recent Tribal Annual Performance Report (TAPR). This is a historic amount of federal aid at one time. Our greatest hope is that it gets to where it is needed most, lifting American Indians and Alaska Natives out of poverty, while addressing critical needs to allow a rebound in a post-COVID economy which is lasting. You know as well as we do that the needs of American Indian and Alaska Native tribes have been neglected and underfunded for decades. It is critically important that these resources be invested among tribal governments with equity in mind. The poorest among tribes do not have the capacity to compete against the wealthier tribes, yet President Biden has said this is intended to cut poverty in half. It is your challenge to see that the resources get to where the poverty is. We want to help. Alaska Natives are not looking for handouts. Our tribes are looking for their due. In the alternative, if none of our recommendations are acceptable, please consider a \$10 million dollar base per tribe and further equitable sharing using the compact authority the Department has to expedite the transfer of funds.¹ (69 - Alaska Federation of Natives)

The Navajo Nation supports the BIA's proposal to utilize 30 percent of the housing improvement funding to provide baseline funding for all tribal governments and dividing the remaining portion of the funding based on population. This will ensure that no tribal government is left behind while simultaneously ensuring funds are used to support the varying needs of each tribal government in the most cost-effective manner. More specifically, the Navajo Nation encourages the BIA to utilize the U.S. Department of Housing census data to distribute the remaining funding rather than relying on certified tribal enrollment data. While we recognize that there has been some concern about these numbers from other tribes when the CARES funds were distributed, this seems like the appropriate number to apply particularly when dealing with funds meant for housing. This will also ensure that tribal governments receive funding that accounts for members of other federally recognized tribes receiving services and residing on the Navajo Nation reservation. [...] Additionally, the Nation encourages the BIA to consider how land base may be incorporated into the formula, as tribal members living on remote tribal lands require more support from tribal governments, and providing services can be more costly due to the extra transportation costs involved. (57-Navajo Nation)

We support the Housing Improvement Program funding distribution of \$60,000 minimum and the balance based on enrollment. (43-Pueblo of Laguna)

The Choctaw Nation supports using enrollment data to distribute Housing Improvement funds on a pro-rata basis. Providing a minimum level of funding as described for Housing Improvement is also reasonable. (23-Choctaw Nation; see comments for more background)

Regarding the proposed two-step formula for distributing HIP funds, with 30% being used to provide a minimum amount to each tribe, and the remaining amount distributed pro-rata based on enrollment, we support this proposal as an equitable means to assist all tribes. (36-White Earth)

B. Oppose

The CTUIR does not believe that the two step methodology that you propose would be an equitable distribution of the housing improvement funding. The CTUIR recommends that all housing improvement funding be allocated on a pro-rata basis based on the tribally certified enrollment data. (76 – CTUIR)

C. Other Comments

Allocation of housing improvement funding. Our tribe also has a compact agreement with AVCP to administer our housing improvement program. However, since this funding is outside of the normal funding that they receive on our behalf, our tribe should have the option of whether or not we want to receive the funding directly instead of through the consortium. (70 - Yupiit of Andreafski)

One of the most pressing needs on the Sauk-Suiattle Reservation is housing. The Tribe is currently enduring a housing crisis that it has never before experienced with 16.7 percent of Sauk-Suiattle tribal members that are either currently homeless or in imminent threat of homelessness. Because of the Tribe's small size and service population, annual formula-based funds that the Tribe receives from the Native American Housing Block grant have not kept up with the need, which has been exacerbated by COVID-19.

- Given the small size of the Tribe, the Tribe is seeking various forms of federal assistance to construct 15 homes on the Sauk-Suiattle Reservation and on lands that the Tribe owns. Because we have multigenerational family, these homes would significantly reduce the backlog of tribal members on the waiting list for homes. Building these 15 homes would reduce the Tribe's homelessness rate exponentially, and would also get many of the Tribe's homeless and at-risk homeless population off the streets and into stable housing where they can shelter in place and stop the spread of COVID-19 which benefits the entire community, both in the short term during the pandemic and in the longer term.
- For these reasons, the Tribe respectfully **requests that the Department rates tribal homelessness as a factor in allocating the 70 percent** of the Housing Improvement Program (HIP) funds that the Department has proposed to distribute on a pro-rata

basis based on tribal enrollment numbers. Since the HIPP has traditionally been utilized for the neediest of tribal members, we believe that using homelessness as a factor is not only consistent with the HIP, but is also consistent with the intent of the Rescue Plan Act in that homeless individuals are among the most at-risk for COVID-19. (14-Sauk-Suiattle)

Regarding BIA's ARPA Housing set aside funding. Specifically, the tribe would like to request and receive the authority to determine which local low-income families who apply for this program actually receive the funds for home improvement.

- The rationale for our request is simple, the tribe knows its people and their needs more than any outside agency. The tribe is capable of creating and requiring applicable eligibility criteria based on federal program regulations, and if we are given the local program award authority, this will simplify the application and award process, drawing more applications from families who actually need the funding.... Lack of adequate local housing has created many severely overcrowded homes in our community and this has posed, and currently poses, a great health risk, and many other problems, for many local residents.
- The Asa'carsarmiut Tribe would like to inform you that, in regard to the former CARES Act funding and the current ARPA funding, addressing the lack of adequate local housing has been and is one of our very high priorities. (15-Asa'carsarmiut)

Navajo Nation encourages the BIA to utilize the U.S. Department of Housing census data to distribute the remaining funding rather than relying on certified tribal enrollment data. While we recognize that there has been some concern about these numbers from other tribes when the CARES funds were distributed, this seems like the appropriate number to apply particularly when dealing with funds meant for housing. This will also ensure that tribal governments receive funding that accounts for members of other federally recognized tribes receiving services and residing on the Navajo Nation reservation. (57-Navajo Nation)

[H]ousing needs on the Pueblo need to include the entire building envelope (roof, doors, windows) and upgrades to HVAC, plumbing, propane, and electrical systems. Providing funds for a "band aid" approach is not an effective or efficient use of federal funding. (21-Pueblo of Santa Ana)

Our Reservation has an acute housing crisis. Our current unmet need is for over 4,000 new housing units and 1,000 housing repairs—and these numbers are changing every month as pandemic stressors increase wear-and-tear on homes and put pressure on our housing market. We recommend that the \$100 million sub-allocation for tribal housing improvement be distributed as expeditiously as possible...These funds should be provided through existing and new BIA Housing Improvement Program (HIP) grants and direct allocations to tribal governments with maximum flexibility. [W]e recommend the BIA **allocate a portion of the HIP as automatic supplemental grant amounts for existing grantees (such that no action or additional reporting is required on the part of the tribal nation), and that a separate amount be made available through a new non-competitive grant application.** The BIA should inform tribal leaders of the method that it will use to determine how it will equitably distribute funds

to each tribal nation—both existing grantees and new grantees—under the relief bill. (24-Oglala Sioux Tribe; see comments for more background)

If the \$100 million for tribal housing improvement is distributed to tribes through the Housing Improvement Program (HIP), then Interior should distribute on a non-competitive basis. In addition, **tribes should be given maximum flexibility to address unique housing needs** of our members. All tribes are different and a one-size-fits-all approach for HIP funding will not work for Indian Country. The Nation urges Interior to issue waivers of HIP regulations (25 CFR Part 256), such as onerous eligibility or application guidelines, to the extent permissible by law to provide tribes with this needed flexibility. Interior should also take this opportunity to evaluate HIP regulations to identify permanent changes or waivers to the regulations and funding process after the pandemic has concluded. Tribal Nations would benefit from permanent, recurring, non-competitive funding rather than the current competitive, points-based process. (25-Oneida Nation)

The \$100 million for housing improvement distribution methodology used to ensure all tribes have a minimum starting level with remaining funds distributed using enrollment data. (27-Chippewa Cree Tribe; see comments for more background)

USET SPF appreciates DOI's focus on equity for [Housing Improvement] funds and supports the proposal to ensure every Tribal Nation receives a base amount. We defer to our membership regarding the proposal to distribute the remaining funds based on enrollment data. (32-USET SPF)

Our program is separate from our Leech Lake Housing Authority (LLHA) under HUD, so we are unable to utilize their funding stream. At this time, we have 130 applications on our waiting list and it will continue to grow as people are asked to stay home and isolate due to the pandemic and the continuing variants that are spreading. On average, we are receiving 6-8 applications per week. On average, our program receives eight (8) renovation/repair applications per week. Homeownership units that are "past the renovation period," that need a replacement average of approximately five (5) units per year. (33-Leech Lake Band; see comments for more background)

Our Reservation has an acute housing crisis with an unmet need that changes every month as pandemic stressors increase wear-and-tear on houses and puts pressure on our housing market. We recommend that the \$100 million sub-allocation for tribal housing improvement be distributed as expeditiously as possible to provide safe homes in Pueblo and Indian Country. These funds should be provided through existing and new BIA Housing Improvement Program (HIP) grants and through direct allocations to tribal governments. (35-Santa Clara Pueblo; see comments for more background)

During the consultation, it seemed as though Department intended to distribute and require funding to be utilized according to Housing Improvement Program (HIP) regulations. MCN asserts that this set aside should be distributed utilizing population data and that the utilization

of funding should not be limited to those allowable uses under existing regulations. Should DOI intend to utilize existing HIP regulations, the BIA must review the existing regulations and exercise latitude to offer waivers from the regulation so that funding can be fully leveraged. Additionally, self-governance tribes should retain the right to reprogram funding to best suit their ongoing programs. Either way, this funding should not result in significant reporting requirements for any tribes. (80 – Muscogee Creek Nation)

5. Potable Water \$20M Based on Need

Once again what amount of money that will be allocated for our tribe for the need we have, especially in the 20 mil potable water delivery, with absolutely no running water for the community members. (05-Native Village of Kongiganak)

The ARP also includes \$ 20 million for delivery of potable water and \$ 100 million for housing improvement. Within the Tribal Consultation it was noted that these funds would be transferred to the BIA Regions. Within each Region, there would be an application process for Tribes to complete based on need and description of projects, budgets etc. The Community would encourage Indian Affairs to ensure that all Tribes are timely notified of this funding opportunity by the Regions. Our Region, the Western Region needs to ensure that all Tribes receive the information as soon as it becomes available and allow adequate time to complete funding requests. (11-Ak-Chin Indian Community)

In regard to Potable Water set-aside funding, the tribe has a very, very strong need [which was exacerbated by COVID-19] to construct an undeveloped new-housing subdivision, on land that the tribe owns, so that we may address the lack of housing in our community.

- We have informed the Alaska Native Tribal Health Consortium of our desire for water and sewer infrastructure funding to develop the subdivision; we have already contracted an engineering firm to design the roads and gravel pads at the subdivision and received those designs; we also contracted for and received a geotechnical investigation, and the site already received an environmental review.
- In addition to these predevelopment efforts, an Alaskan state engineer from the Village Safe Water program has provided us with an estimate to develop water and sewer at the subdivision and this amount was quoted at \$2.8 million dollars. (15-Asa'carsarmiut)

Calista also supports the Native Village of Tuluksak being fully funded with BIA ARP funds to replace its washeteria facility, its only source of drinking water, which was destroyed in a fire during the pandemic. In a recent Senate Indian Affairs hearing, Calista shareholder Valerie Nurr'Araaluk Davidson, Interim President of the Alaska Native Tribal Health Consortium, testified that “roughly 20 percent of rural Alaska Native homes still lack in-home piped water. Thirty-two of the 190 rural Alaska Native communities are still unserved, lacking access to in-home water and sewer.” We encourage the BIA to thoughtfully consider the critical unmet sanitation infrastructure needs of our small remote Tribes in Alaska in determining how tribal funds are distributed. (16-Calista Corp.)

Providing an additional \$10,000,000 per Tribe to start with as a base will provide meaningful impact throughout Alaska and Indian Country. Indeed, base funding at this level will allow for development of the water, sewer, and broadband infrastructure investments contemplated by Congress. (See more on this \$10 million request on Page 2 of this request)... Alaska rural villages have over 30 communities and 3,300 homes with no running water, the people that we represent are some of the poorest of the poor still today. (61 - ANVCA)

We support funding for water and waste water needs. However, the funding allocated to address Tribal water issues is nowhere near the level needed to assist all Tribes. Many Tribes have infrastructure issues that are a key component of a Tribe's ability to provide clean water to their citizens and community members. (67 - Jamestown S'Klallam)

The Walker River Paiute Tribe recommends prioritizing allocation of the \$20 million set aside for delivery of potable water to tribes that have completed needs assessments and plans developed to immediately address access to clean water issues. Other criteria to be considered in prioritizing allocation should include geographical isolation, the tribe's dependency of federal funds and lack of housing inventory. (68 - Walker River Paiute)

AFN supports the Bureau's plan to allocate \$20 million in ARPA funds for potable water based on "need," provided the Bureau works with the Indian Health Service (IHS) to determine the tribal "need" so the limited funds available can go directly to fund projects already vetted, but not funded, by IHS instead of creating a new program and collecting new applications from the same tribes. Funds should be available only to those tribes with no running water. (69 - Alaska Federation of Natives)

It is our understanding that this funding is for immediate potable water needs for tribes who lack access to water, and to serve needs such as bringing in water trucks to Indian reservations to provide drinking water to members where none currently exists. Accordingly, the Tulalip Tribes supports DOI allocating this funding based on these needs as identified by tribal governments. (72 - Tulalip Tribes)

Because of our isolated area in the desert, the tribe must be able to determine the best use for the funds. This could be used to build a newly updated public water system wells and address inadequate infrastructure highlighted with the Tribe's Water Master Plan. (75 - Chemehuevi Indian Tribe)

Throughout the Navajo Reservation, families continue to face unmet water needs. For example, many Navajo families (estimated at 30-40%) do not have access to running water. For this reason, the BIA should work closely with the Navajo Nation to ensure families living in rural or remote parts of the reservation gain access to portable water tanks and services. This must be a top priority. Additionally, the BIA should consider permitting the funding to be used to clean and service septic tanks. As you are well aware, having access to clean water is critical to fighting the impacts of COVID. (57-Navajo Nation)

In regards to potable water and housing improvements the Tribe does feel other considerations should be given. The Tribe thinks considerations should be given to partnering with EPA to combine wither "Water Rights" funding with an expanded "Safe Drinking Water" program. Many times the individual mandates of the EPA "Clean Water Act 106 funds" is limited to water testing, without being able to fund improved, small scale water treatment or water storage projects. These barriers to actually improving water quality, and water availability through the same grant have hindered Indian Country for decades.

- More funding set-asides are needed for potable drinking water, but source and purity are not the only factors that should be considered, actual new well development and storage, treatment and distribution should be as well. The Tribe recommends set-asides through the IRMP program to actually increase water availability and treatment to *rural* Tribes, especially in California, where current water law, almost universally limits any restoration of Tribal Water sources, rights, location, access and treatment. Many California water districts date their water rights from the gold rush era claims to water and most Tribes in California are more than a 100 years late to establishing their inherent and sovereign rights to access water.
- California is struggling through bad management and we need current set asides and improved access to the BIA water attorney's in order to now not be squeezed out by powerful California Water interests, with deep pockets. We recommend a portion of the BIA funds set aside money for Water Rights reclamation, improved (water) well development and planning funds to help deliver water to California's 'driest' reservations." (44-Tuolumne Band of Me-Wuk Indians)

The Yurok Tribe strongly supports funding for delivery of potable water and housing improvement. The Yurok Tribe also commends the proposed federal investment in housing improvement. Your proposed allocation of a minimum amount to each tribe and the remaining 70% to be distributed based on enrollment data is acceptable and workable. (30-Yurok Tribe)

[P]otable water needs are necessary and a human right but so is wastewater processing. To maintain a safe and clean environment - wastewater improvements need to be addressed with ARP 2021 funds, too. (21-Pueblo of Santa Ana)

Due to the relatively small amount of funding for potable water and the lack of a comparable program within BIA, the Choctaw Nation supports the general premise of distributing funds to the regions and providing a process whereby tribes can submit projects for potable water. (23-Choctaw Nation; see comments for more background)

The BIA sub-allocation of \$20 million for the provision and delivery of potable water must be flexibly distributed so that tribal nations can use these critical dollars for innovation, the maintenance and expansion of existing programs, and for leveraging with other sources of federal and non-federal funding. Our Tribe is in dire need of this funding to ensure our reservation has adequate and safe water supplies to be a livable homeland and to keep reservation residents healthy. We have outlined our shovel-ready potable water projects and

specific water system needs in the Addendum to these consultation comments, titled, "Potable Water Delivery Needs for BIA ARP Funding." [W]e provide a highlight of the major recommendations that we have for the BIA to consider in allocating these funds. (24-Oglala Sioux Tribe; see comments for more background)

The \$20 million in funds managed by the BIA-DBD for Field Operations to provide and deliver potable water should be evenly distributed to a certain level amongst tribes, with opportunities given to tribes to submit for additional funding based on a Needs Analysis. (27-Chippewa Cree Tribe; see comments for more background)

The Yurok Tribe strongly supports funding for delivery of potable water and housing improvement. The Yurok Tribe is facing perhaps the worst drought year than has been seen in quite some time. As many of our reservation households rely on local streams, the Yurok Tribe is planning ahead for water deliveries. Clean, potable water is essential for fighting contagions like COVID-19. As the need will vary tribal nation to tribal nation, your proposed allocation system makes sense. (30-Yurok Tribe)

USET SPF agrees that [Potable Water Funds] should be distributed on an as-needed basis to Tribal governments. For DOI's benefit, we note that there are COVID-19-related situations among our membership where potable water is required, such as for temporary housing that cannot be connected to existing water infrastructure. (32-USET SPF)

We understand that the potable water is intended for providing emergency drinking water to our community members. However, this is only a temporary solution. We would like to propose that the BIA establish a long-term water program to address our potable water disparities on the reservation. We also understand that the water infrastructure funding will be available through IHS [Indian Health Service], but we want to stress that this amount is simply not sufficient for the infrastructure required for our community centers and homeowners on the reservation. Upgrades are needed for each of our water systems...to implement the proper systems for drinkable water within our communities. (33-Leech Lake Band; see comments for more background)

The BIA sub-allocation of \$20 million for the provision and delivery of potable water must be flexibly distributed so that tribal nations can use these critical dollars for innovation, the maintenance and expansion of existing programs, including traditional water infrastructure, and for leveraging with other sources of federal and non-federal funding. Our Pueblo is in need of this funding to ensure its reservation has adequate and safe water supplies to be a livable homeland and to keep reservation residents healthy. (35-Santa Clara Pueblo; see comments for more background)

III. BIE \$850M

1. Factors to Determine Allocation among K-12 and TCUs

A. Support for An Equitable Formula

We support a fair and equitable distribution of the \$850 million dollars in ARP funds to BIE K-12 schools and the 35 TCUs. The Fort Belknap Indian Community has a TCU that operates as Aaniih Nakada College (ANC). ANC influences both the lives of students and the local economy in a remote area. The college plays a key role in helping students increase their employability and achieve their individual potential. Therefore, we support a more equitable distribution of the ARP education funds for TCUs. (17-Fort Berthold)

This is very important and needs to be equitably distributed to Tribes so that they individually can decide where the funds should go and meet needs they individually have prioritized. For example, we have a large infrastructure project at our K-8 school to pay for; the installation of a back-up generator providing electricity when the primary power is not avl. We have the generator on-site but need it moved and installed and operable. (78 – Coeur D’Alene)

Tribes are deeply invested in educating our children kids because we know these kids are our future community leaders, cultural protectors, and language speakers. Education is a central component of the trust obligation but the educational statistics for AI/AN children reflect academic achievements that lag significantly behind their white peers and a high school graduation rate that is less than 50% annually. The Federal government is failing to uphold their trust obligation to educate our AI/AN children. Currently, over 90% of AI/AN children attend public schools but the BIE’s educational funding supports 8% of AI/AN children who attend either BIA or Tribally owned K-12 schools. We would advocate for funding to support the education of all AI/AN students that attend Tribal Headstart programs, K-12 educational institutions, Tribal colleges and universities, vocational institutions, and other institutions of higher learning. Since Jamestown S’Klallam children do not attend BIA or Tribally owned schools, we will refrain from commenting on the distribution of the \$850 million other than to say that we support funding all eligible schools on a fair and equitable basis. We would also urge DOI to coordinate with the Department of Education to ensure all AI/AN students are provided adequate funding and afforded a quality education. (67 - Jamestown S’Klallam)

B. Direct More Funding to K-12

We oppose all funds being directed to tribal colleges and tribal schools. Currently in California we do not have a tribal college, making this allocation unfair and does not provide for our community. Because of our isolated location, we have very limited enrollment. We would like to request that this funding be made available for tribal educational programs that support tribal members. The Chemehuevi Education Center has established programs that addressed the unmet needs from our school district during the COVID-19 pandemic since the shutdown and up to this point. Establishing the protective protocols to safely meet the needs of the tribe while all our local schools were closed and or providing only distance learning. In addition, the

Chemehuevi Education Center provides continuing education for our membership by means of scholarships, tutoring, school counseling, and many other support measures. (75 - Chemehuevi Indian Tribe)

Given that the Navajo Nation reservation is home to 32 BIE operated schools, we urge the BIE to allocate a greater portion of the \$850 million to support our K-12 schools. (57-Navajo Nation)

NIEA recommends that the Bureau of Indian Education allocate funding between K-12 Bureau-funded schools, Tribal Colleges and Universities, and administrative costs in proportion to the amounts allocated in annual appropriations for Fiscal Year 2021. This would amount to, reflected in the chart below [80% or \$6580 million to K-12 Bureau-funded schools; 15% or \$127.5 million to Tribal Colleges and Universities; 5% or \$42.5 to Education Management.] See comment for additional details. (52-NIEA)

We propose that a significant majority of funding directed through the Bureau of Indian Education be directed to the K-12 schools because primary and secondary education is fundamental to everything else and must be prioritized. The allocation could rationally be based on a "per student served" basis. We doubt the usefulness of allocating any ARP funds to Bureau-wide facilities improvements or a learning management system due to the multitude of unique circumstances facing each school. (43-Pueblo of Laguna)

SFIS recommends that not more than 5% of the funds be set aside for BIE Administrative use and that not less than 60% of these funds be distributed to BIE-funded elementary and secondary schools and dormitories. In addition, SFIS recommends that the portion of the \$850,000,000 allocated to BIE-funded elementary and secondary schools and dormitories be distributed according to 25 CFR Part 39, using the Indian School Equalization Formula (ISEF) based on Weighted Student Units (WSUs). Given the status of WSUs in the CFR and the fact that they are the current method for allocating funds, we believe that WSUs should be used as the basis for determining these funding allocations. (81-Santa Fe Indian School)

C. Direct More Funding to TCUs

AIHEC urges the Department of the Interior, and more specifically the Bureau of Indian Education, to provide TCUs and our students with an equitable share of the \$850 million provided to the Bureau of Indian Education. [...] To equitably address ongoing TCU COVID-19-related needs and adaptation strategies of both BIE-funded elementary and secondary schools and TCUs, the BIE Education Stabilization Fund should be divided based on the number of *students* served. Given the number of students served (and using only academic students for TCUs), the TCU share of the BIE COVID-19 relief fund should be 40.84 percent, and the K-12 share would be 59.15 percent. Rounded, this would be 40 percent to the TCUs and 60 percent to the K-12 schools. This request is reasonable and justifiable based on the number of *students served in.*" See comment for additional details. (45-AIHEC)

C. Weighted Student Unit (WSU) and Pro Rata

The factors to be used to determine fair and equitable distribution between K-12 systems and Tribal Colleges and Universities: For K-12 systems we would like to use the ISEP/WSU number. Schools must be held harmless to the end of this SY 20-21. Initiate student count in SY 21/22. Question: What is the percentage being proposed? (13 – Cheyenne River Sioux)

The BIE should provide additional funding to schools with older, inadequate facilities. In addition to funding for improved ventilation and social distancing, many of the schools have an acute need for funding for facility replacement. [W]e urge the BIE to analyze current school populations and trends prior to the COVID-19 pandemic.

- BIE should consider the 3-year averages for WSU, compare the WSU to building/facility age and space, and fund those schools who show a need for additional facility funding. As with the CRRSA funds, schools should be able to plan funding for facility upgrades, expansion, and repair.
- BIE should consider providing additional funding to residential programs. Additional funding is now needed for residential programs to meet the needs of students during and after the COVID pandemic. Consideration should be made by the BIE to provide additional funding to schools and residential programs that continued costly operations throughout the 2020-2021 school year.
- We strongly encourage BIE to consider distributing a portion of these funds to TPA Education programs, using the updated tribal enrollment data. The ARP provides that the \$850 million be distributed to "*programs or activities operated or funded by the Bureau of Indian Education*," not only BIE-operated schools and universities, and thus the BIE has authority to distribute funding to assist more Native students. (23-Choctaw Nation; see comments for more background)

The Nation supports the use of Weighted Student Unit for determining funds distribution. If the BIE were to take into consideration other factors, the BIE could consider the age of facilities or the needs based on the Operation and Maintenance MAXIMO system, which would show the need for repairs at facilities. Keeping our students safe in sound facilities is important. (25-Oneida Nation)

LLBO believes that pro-rata distribution based upon student count would be a fair and equitable distribution. Our student count is as of Dec 30, 2020, was at 211 students, will you need the updated student count as of Feb 1, 2021? (33-Leech Lake Band; see comments for more background)

We recommend that:

- The BIE distribute its \$850 million allocation under the ARPA on a percentage basis between BIE-funded K-12 schools and TCUs.
- The BIE reserve no more than 5% of the overall funding and that the use of such funds should be determined through consultation with tribal leaders.

- The BIE [consider] increased ISEP counts for School Year (SY) 20-21 for schools like KCS with increased enrollment in SY 20-21 as BIE determines how to allocate funding.
 - The WSU needs to be reexamined and improved going forward. Although WSU seems like a fair way to distribute ARPA money to BIE K-12 schools, the weights within WSU are outdated.
 - The BIE consider allowing these funds to be used for expenditures within the BIE-funded school system and TCUs to the maximum extent possible.
- (35-Santa Clara Pueblo; see comments for more background)

D. Funds to Special Needs, Head Start, and/or JOM

The Yurok Tribe, like many other tribes, does not have a BIE-funded school in its area. However, the Yurok Tribe is concerned about the welfare of its children and families. We support investment in head start, early head start, and FACE programs. We urge BIE to pay close attention to the students with special needs whose accommodation may be particularly difficult during this pandemic. (30-Yurok Tribe)

The Bureau of Indian Education (BIE) allocation of funds allocated by ARPA should not be confined to only BIE-funded K-12 schools and Tribal Colleges and Universities. Certainly, there are pressing needs at all 218 of those institutions, however other lines of funding administered via BIE should receive a portion of the funds. Just 2.5 percent of the BIA ARPA appropriation would grant a one-time doubling to the Johnson O'Malley (JOM) program, which serves Native children in non-BIE schools. According to the most recent National Indian Education Study, only about eight percent of Native students attend BIE schools. The ARPA statute does not direct BIE to distribute only to BIE institutions, and the decision to do so withholds funding from the 92 percent of Native K-12 students who attend U.S. public schools. While other sources of ARPA funding may be intended for public schools, they are not earmarked for Native students and experience teaches us that unrestricted dollars disproportionately go to non-Natives in these situations, if they reach them at all. The language of ARPA in section 11005 allows BIE to expend funds "for programs or activities operated or funded by the Bureau of Indian Education," which includes JOM. An increase to JOM would ensure that ARPA funds are spent on educational enhancement for Native students and should be implemented by DOI using this allocation. (37-Citizen Potawatomi Nation)

PGST would like to recommend Head Start to be included in the educational pool and support services for our youngest members who are served through home visiting and Head Start programs be included in this distribution. There are limitations in the allocations that DHHS receives for tribal programs and needs continue to go unmet. PGST [also] would like to have Johnson O'Malley to be included in the distribution, a majority of our students attend public schools. Also continued funding for our Academic Coach Program that works with local Public Schools and after school programs. (38-Port Gamble S'Klallam)

2. Investment Areas in Addition to LMS and Facility Improvements

Learning Management Systems (LMS) or related technology investments: It would be difficult to use a LMS if connectivity continues to be an issue. Connectivity continues to be a major issue for some of the schools, due to the remoteness of their location and/or the lack of resources. There is a need for all students and staff to have current devices for virtual learning. Question: Who determines what LMS to use? The schools or the BIE?

- Facility-related improvements: Maximo continues to be a hinderance to some of the schools who lack the personnel to input information to Maximo. There is a need for a clear definition of facility management issues regarding maintenance, repair, replacement, and construction. Schools continue to have a need for hands on assistance with Maximo to assure the schools have access and understand the data entry access for all schools. Funding to support a Maximo trained data entry position would provide daily support for schools. All schools have safety issues and more now that COVID 19 has been impacted by the CDC safety guidelines for schools. Schools struggle with the ability to access the resources to repair or replace HV AC systems to meet identified CDC guidelines for ventilation; Space utilization for required social distancing and the placement of dividers; Signage for schools with face-to-face school to social distance safely. All schools need generators for when there is a lack of electricity to keep technology available for all. There are schools with outdated lagoons, that need an upgrade or the sewer systems to meet the needs of their school. Waste products need to be managed safely. Due to increased numbers of contaminated waste materials such as PPE items, disposable food containers, and other disposable waste, there is a need to increase equipment for the safe disposal of waste materials. Waste management costs increase additional funding requested to support safe waste management disposal. Access to additional funding for Personal Protective Equipment for identified personnel.
- Other area of investments:
 - Transportation issues: School bus routes on substandard gravel/dirt roads lack maintenance for safe bus travel on the roads that are rough, washboards, soft surface, slick, road shoulders eroding away, bridge wash outs, buses becoming stuck in mud while transporting students, food, and delivery of student Wi-Fi.
 - Mental and Social-Emotional Support for staff, students, and parent/ guardians: The pandemic mental impact has impacted the entire communities. There is a need for local support to address the social and emotional needs of staff, students, and parents/guardians. School will need financial support to arrange for health personnel at the school to help address health related issues from the pandemic for students and staff. Question: Can funds be used for Special Education, Johnson O'Malley, and Early Childhood (13 – Cheyenne River Sioux)

Chemehuevi requests that fund eligibilities are broadened to cover tribal educational programs also. This would allow our Education Center to be eligible for this funding. (75 - Chemehuevi Indian Tribe)

BIE should provide maximum flexibility and tribal discretion on how these dollars are spent. For example, funds should be used to ensure our students can return to the classroom safely by improving ventilation and sanitation systems and retrofitting and expanding existing buildings to ensure social distancing. Additionally, funds should be used to increase the technical capacity of our schools by investing in technology that improves online learning, increases access to broadband, and equips our students with tablets and computers should we not be able to return to the classroom in the immediate future and/or should our communities be impacted by a similar, unfortunate event in the future. (57-Navajo Nation)

Learning Management System: Though NIEA appreciates the longstanding need for a learning management system, this system has not arisen because of the pandemic, nor does it significantly impact student health, safety, or ability to access educational services on a daily basis. For these reasons, we oppose the use of emergency funding for the use of a learning management system. *Infrastructure Improvements and Repairs:* As our schools look at reopening, even our newest facilities are undergoing major renovations to heating and air, plumbing, and other systems to ensure the safety of students, staff, and faculty in the building. Due to space limitations, some school leaders are considering the use of temporary modular classroom units to relieve overcrowding in classrooms. Due to emergent considerations regarding safety of students in reopening classrooms, NIEA strongly supports the use of emergency funds for critical infrastructure improvement and repair. (52-NIEA)

Congress has made clear that funding provided under all the COVID-19 relief bills must be spent solely on activities and programs specifically related to the pandemic. Funding cannot be used to address other needs, no matter how compelling; rather, unused funding must be returned to the federal treasury to reduce the federal budget deficit.

- A BIE-wide learning management system is not pandemic-related. (Further, this system would cover only BIE operated schools. It could not include the other BIE tribally controlled schools due to privacy issues.) Also, TCUs have their own systems developed over a number of years at great expense to each institution. One system could not address K-12 and higher education issues and needs.
- To date, BIE has received funding under CARES (\$69 million, plus \$153.75 million) and CRRSAA (\$409.4 million) to specifically address the needs listed. Many schools and TCUs have already addressed these needs, are in the process of addressing these needs, or can best address them at the local level. Centralized funding is not needed for local activities.
- This funding is intended to address local needs and to support students and families in our communities. As much funding as possible should go to the K-12 schools and TCUs, not to centralized administrations and for-profit contractors. Further, there is no way to ensure centralized funding is equitably distributed. For example, the TCUs have not been permitted to participate in the BIE's CARES Act programs (mental health counseling and IT infrastructure) despite significant needs and promises by the BIE that TCUs would be included.

- While TCUs received additional COVID-19 relief funds through the Department of Education, TCUs are required to use at least half of these funds for emergency aid to students. With the support of direct student aid, many TCU students were able to stay enrolled in school while also caring for family needs. This is another example of COVID-19 relief funds supporting local needs.
- AIHEC recently conducted a survey on the impact of COVID-19 on TCU students (February 2021). The survey revealed a variety of challenges, such as: difficulty adapting to online or hybrid classes, lack of dedicated studying space, lack of broadband access, and decline of mental and physical health. TCUs are uniquely positioned to support TCU students and families during these unprecedented times. However, TCUs need equitable support from the BIE to do so.” (See comment for additional detail on survey results) (45-AIHEC)

As Tribes in rural California are currently experiencing, access to California Public and even private schools is getting more difficult for Native Americans living on or near Federal Indian Reservations. Due to the declining set asides in California Government for previously well funded school programs, that have enabled Native American school aged children better access to schools, transportation is now increasingly being cut back forcing more Native American Families to struggle with alternative methods for providing a safe method of transporting their children to and from school. In short, California schools are in decline and COVID schedule changes have made this decline worse for children from Native families to get safe access to schools. We recommend a small portion of funding for BIE or PSJ funds be set aside for " school transportation/safety improvement programs". Additional factors that should be considered for PSJ programs are those Tribes that are now assessing a Tribal Court or Tribal Public Safety Officer Program. Rural Tribe's should be given priority for these funds having never accessed these programs before. (44-Tuolumne Band)

The Tribe is requesting some funds be set-aside for alternative school programs that do not receive BIE funds currently. The Tribe operates both an afterschool tutoring program and an "in-school" tutoring program where Tribally funded, accredited teachers are made available to native students attending local California/Tuolumne County Schools. The Tribe needs a way to expand its either current tutoring program or open up new K-3 programs on Reservation or adult education GED programs and vocational schools. The Tribe suffers from underemployment and a lack of education and its current sources of funding are limited and shrinking. The Tribe would like to access BIE funds in the future, so the request is for 5% of the funds be set aside for schools to apply for pilot/demonstration programs that are new to many Tribes in similar circumstances. (44-Tuolumne Band)

The Choctaw Nation does not recommend holding funds from distribution for centrally managed projects. Funds should be distributed to the field allowing direction to local priorities. There are too many differences in the schools and TCUs to fund projects that can equally benefit all the BIE system. Tribal leaders and school administrators are in the best position to make those decisions based on the specific individual needs of our schools. (23-Choctaw Nation)

The area of need, as seen across the many different locations of BIE school systems would be the facility need for upgrades to the ventilation systems in the older buildings. Another factor is many facilities do not have the space to allow for 6 feet apart, when students return beyond 50%. The Nation's elementary program will be planning for a 50% return with 30% of our students virtual. It will be hard to allow for all students to be back at half capacity with the current classrooms. Our school staff is aware of schools in the Western part of the country that have written applications and been approved for doublewide classrooms. While the Oneida Nation School System does have a common Learning Management System in Google Class with staff provided training on virtual instruction, this related expense for other school systems may be helpful. The Nation realizes some BIE-funded schools, located in remote areas have not developed an LMS system and some other elementary schools still deliver packets to homes, due to not having connectivity or devices/laptops for all the students. Our school system has planned for this virtual format with the earlier CARES funding and the back orders of devices has been delivered to keep our system working proficiently. The BIE facilities department would be an area that may benefit school systems that are in need of repair or needing urgently to build a new facility, due to the age of the structure, or placement of school programs within a shared facility. This alone would not be the sole reason for a new school structure, but sharing a space, along with a space analysis of the safety needs would be a program that would need additional funding in millions of dollars to assist in construction of additional spaces or buildings that comply with all the school safety measures. (25-Oneida Nation)

Infrastructure dollars will be essential to continue the build-out of broadband and affordable access to broadband that supports student needs and learning and to develop a Learning Management System and related info tech investments for instructional continuity that would benefit the equitable access to education and needs of the LLBO community. (33-Leech Lake Band; see comments for more background)

More funding is needed for our new Distance Learning Program to be able to continue to develop our Learning Management System and related technology for K-12. (38-Port Gamble S'Klallam)

SFIS recognizes that the pivot to remote learning requires the proficient use of digital tools, access to devices, and broadband connectivity for each student. Unfortunately, BIE schools in New Mexico had very limited access to and experience with all three prior to COVID-19, severely disadvantaging Native students. This is compounded in small rural schools without the staff and resources to easily pivot to remote learning. These are the locations who could best benefit by a centralized LMS implementation. Despite that hope and given the current position of IT operations outside of the BIE, we do not recommend that the BIE endeavor to implement a centralized LMS application. Were the BIE to have a dedicated IT Department, with a direct focus on educational technology and school network development, then the BIE would be in the position to grow and extend such services. Until IT support is located within BIE, a better use of the funds would be direct distribution to the schools who have the discretion to address their priority needs. Through the COVID-19 State of New Mexico response, there have been

various procurement tools developed to provide devices and connectivity to unserved students. However, due to a lack of data sharing agreements, BIE schools have systematically been excluded from participating in NM State programs to both identify the students and then match them to local low-cost Internet Service Provider options. To increase support for Native students in NM, SFIS emphasizes the importance of executing data sharing agreements and recommends that the BIE actively engage the State to complete this due diligence. This includes an outreach campaign and education for Tribally-controlled schools. (81-Santa Fe Indian School)

3. Other Comments Re: Distribution of the \$850M

Regarding the \$850 million for BIE related programs and services. We want to ensure that tribal BIE schools and Tribal Colleges have the maximum flexibility in the use of funds. We also hope the distribution methodology will be transparent and more expeditiously than the distribution of funds under last year's CARES Act, which was unnecessarily repeatedly delayed. (36-White Earth)

While we defer to our membership with BIE and Tribally-operated schools for their responses to the consultation questions, we note the distribution of similar funding under the CARES Act utilizing existing methodologies. While we also note the unreasonable delay associated with these funds, we are not aware of concerns related to the distribution methodology. (32-USET SPF)

Regarding the \$850 million for BIE related programs and services, Red Lake wants to make sure Tribal Colleges receive their fair share of these funds. Also, why not allocate some of the funds for the two principal BIE programs that tribes receive direct allocations from: Tribal Scholarships & Johnson O'Malley? The legislation says these funds are for BIE related and funded programs and services, and Tribal Scholarships and Johnson O'Malley are in fact BIE related programs and services. Tribes have covid 19 related funding needs for these two programs! (03-Red Lake Band)

Education should have been a separate consultation time. Education of our future should not have to take a second seat... Questions: (Since these questions were not answered during the Tribal Consultation I am including them in the document. I attended the March 26th, 2021 and March 29th, 2021 tribal consultation. The line was finally opened for me on March 29th, 2021.)

1. What is the Learning Management System? What does the research show regarding the impacts on Native Children learning? How can it benefit Tribal Schools? Can this be timely? Will it be carried through to the next 5-10 years? What is the effectiveness data?
2. Regarding the Mental Health funding that the Bureau of Indian Education held back, what is the status? The Tribal Schools keep asking. The student need is now. The staff need is now. If this funding was provided to the schools that have students on site they would have been already been receiving services regularly.
3. If schools utilize their funding to build/create/procure facility space that is needed for safe distancing children how is BIA facility going to work new space so the schools are receiving Operation and Maintenance funding immediately? How can you ensure the

timely scheduling and receiving timely BIA inspection completion? How can you ensure these are met and that it will be expedited to include to BIA Engineering and approval process?

4. What is meant by investments in Facilities for adequate air ventilation? How can that be fair to all schools? Schools are always pitted against each other to funding. What is meant by centrally invested? By the BIE? For BIE schools or for Tribally Controlled Schools?
5. 10% or \$15,385,000 was reserved by the BIE from the CARES act. What was that utilized for?
6. Congress requested a report by March 20, 2021 regarding IT and the BIE Broadband plan. There was FY21 increases in the funding level. Where is that plan and how can we get a copy? Can you elaborate?

Comments:

1. Additional funding should be set aside and provided to the schools that provided an on-site education program as they incurred extra costs for safe guarding students opposed to those schools that chose to have virtual school. This additional funding should be according to how many days that onsite education was held.
2. The Mental Health program funding should have been sent directly to all schools with the requirement that it was earmarked for direct student mental health and socioemotional health services. This is the most effective way to ensure that funding is spent the way it was intended. This would have ensured timely services to students that needed them. The additional financial resources for mental health would have been on-site at the schools and already operational.
3. Funding needs to be focused for Early Childhood Programs that are operated in and by the Schools. Strong Early Childhood Education can make the most impact early rather than trying to catch up children that are 2-3 grade levels behind later. Children are coming to school not ready for Kindergarten. The SWO Data is stating that. We need to invest in our early learners and their teachers to ensure that they are ready to learn. Another option should be a Junior Kindergarten focus or two year Kindergarten. Why have a child always struggling when given another year they could be at the top of their class. The maturation level of Native Children needs to be researched and compared to their non-native peers.
4. Family and Child Education (FACE) needs to have an increase funding. This funding level has been stagnant for years. Yearly teaching and support staff receive a cost of living increase and perhaps a step increase and yet the funding does not increase to accommodate this. Inflation of supplies, instructional tools and materials also increases with the changes in our economy but funding remains the same. There also is no availability to write for extra funding for exemplary programs or implement new projects internally.
5. Funding should be fairly divided by WSU for all K-12 students. There are 183 schools and 35 tribal colleges which in percentage is 84% are Tribal Schools and 16% are Tribal Colleges. That funding should be split as such according to the WSU's and Higher Ed Student Count. The formula should be skewed that the K-12 students should receive the greatest amount of funding for the basic compensatory education. K-2 Education should

receive the greatest amount of funding so that it ensures a stronger education program which mandates a lower teacher and student ratio.

6. ISEP funding needs an increase in the base funding. The Base funding has shown a little increase lately but it is not adequate to provide for student needs. ISEP funding is primarily utilized for Teacher salaries and thus with more funding more instructional staff can be employed.
7. Invest in Professional Develop Funding for a Grow Your Own Teacher program at each school. Teacher shortages in Indian Country is well documented and yet there is little funding to develop full programs that support teacher education. Programs should be operated at every school to help off-set the teacher shortages across the nation. Mentoring programs should be mandated to support teachers in the schools which should be monitored by the accreditation agencies or other oversight.
8. Learned Management Systems (I have many questions regarding this!) should be a site-based management decision. The schools should be provided the funding for this and allowed to tailor the programs for the student's needs. This should be a decision by the School Administrative Teams that analyze quarterly informative assessment data, other school informative assessment data (Vocabulary, writing, science, math or other assessments) and the annual high stakes assessment data. This should not be a decision that is made for the schools.
9. Funding for school facilities needs to be increased. Currently the level of Operation and Maintenance funding is below 50% of the need. ...Then we have to wonder why the BIE school buildings are not well maintained and have fallen in disrepair. To mitigate the problem the administrators have to supplement this budget and it is supplemented through Instructional funding (ISEP) for most part. Thus it causes a shortage in the Instructional Program but in this situation what do you do... you have to keep children safe in their educational environment.
10. It is unknown where the past CARES Act funding for technology initiatives went. They were not equally distributed and the schools nor students at Sisseton-Wahpeton Oyate did not benefit. A report needs to be requested on the Technology funding and who is benefited.
11. Adequate Construction funding needs to be requested and appropriated for the replacement school listing. Additional funding needs to be allocated for other facility repairs to include upgrading HVAC and other ventilation systems. Windows that open and allow fresh air to students need to be researched.
12. Funding should be provided to all schools to provide internet access for K-12 and college students equally rather than the BIE picking and choosing who shall receive the IT and Broad band extra funding.
13. Continue to provide support and funding for our JOM Programs for our students that attend public schools to help equalize education availability and resources. (08-Sisseton-Wahpeton Oyate)

BIE Process for Distributing \$850M ARP Funds – The rationale for employing an equitable distribution of BIA ARP funds also applies to the BIE funds. Small Tribes, such as ours, have education-related needs that are presently not being met by the BIE. We could certainly benefit

from additional funds to be directed toward our education components. Although none is presently being funded by the BIE or BIA, we could make good use of additional ARP funds for our education program. To limit Tribal recipients of the additional BIE ARP funds only to Tribes with existing BIE programs, compounds the existing problem of underfunding or non-funding of similar programs operated by small Tribes. Congress could not have intended for Tribes, such as ours, to be left out of a funding distribution only to see Tribes with presently-funded programs widen the disparity in funding between the “haves” and the “have nots.” (09-Kialegee Tribal Town)

The Community does not operate a BIE school, college, or university; as the \$ 850 million is strictly for current operating schools; as this funding does not apply to the Community in that context. However, there should be consideration of the native students attending public schools across the United States. According the National Indian Education Association (NIEA), 72% of Native students attend public schools. The Community' s student population majority attend the local public- school district or surrounding charter schools. There should be funding set aside to support our students outside the BIE school operation; either through education program funding or scholarship line items. (11-Ak-Chin Indian Community)

We do not have BIE schools in our region, but agree that those schools should be modernized and maintained up-to-code, as all school children and young learning adults, need to enjoy the safety, comforts and benefits of modern schools. (15-Asa'carsarmiut)

In response to your questions regarding the Bureau of Indian Education: Chemawa School is within our Service Area and it is essential to fill the Superintendent vacancy as soon as possible. It is our position that funds should be used on the Chemawa campus to repair/upgrade buildings and other areas, invest in the swimming pool by way of facilities maintenance and money, and provide additional classes like art, music, and sports. The administrators at the Bureau of Indian Education needs to pay attention to the needs of Chemawa. (19-Confederated Tribes of Siletz)

Both prior to and throughout the pandemic, the Internet speeds at a number of TCUs – particularly at their satellite campuses – are at or below 100 mbps. No other institutions of higher education in the country have Internet speeds this slow, yet **no TCUs** have been included in the BIE's announced commitment to use its own “10 percent reserve fund” to pay the costs needed to “ensure all BIE schools have Internet speeds of at least 100 mbps.” Nor are TCUs able to participate in the federal E-rate program, which provides hundreds of thousands of dollars to BIE K-12 schools each year. TCUs must bear the costs of improving Internet access solely on their own, using their own funds, yet throughout the pandemic, they have provided equipment, hot spots, and monthly Internet access payments to students and their families, benefiting hundreds or thousands of BIE K-12 students. (45-AIHEC)

Since BIE-funded educational institutions have unique and varied needs, we must retain the flexibility to make the kinds of local decisions that best meet the needs of the students we all serve. For this reason, SFIS also contends that the BIE should not impose any arbitrary

restrictions on how these funds may be used, including timeframes or deadlines on expenditures. (81-Santa Fe Indian School)

IV. Other Comments from Tribes

1. Contract Support Costs

BIA should find that Contract Support Costs (CSC) are applicable to these funds. Regardless of the source of direct funding or whether the funds are non-recurring, CSC costs are incurred by Tribal governments and must be paid. Tribes negotiate their Indirect Cost Rates in good faith, and those costs should be allowable. . (19-Confederated Tribes of Siletz)

Finally, we strongly recommend that DOI secure additional funding to cover contract support costs for ARP funds. Similar to the \$7.5 million DOI reserved to cover Federal administration and oversight, Tribes incur similar expenses in the administration of Federal programs and services that must be paid. (67 - Jamestown S'Klallam)

DOI must have a plan of action for timely payment of ARPA contract support costs. No later than thirty days after ARPA funds distribution, BIA should have a plan in place to capture data regarding estimated CSC needs and a timeline to share with tribes that details the process from end-to-end. (37-Citizen Potawatomi Nation)

The Choctaw Nation strongly recommends that the BIA declare that Contract Support Cost (CSC) funding will be added to these ARP funds. Regardless of the source of direct funding or whether the funds are non-recurring, CSC costs are incurred by tribes and must be paid. Should the BIA or BIE require tribes to fund CSC requirements with direct funds, our ability to address COVID-19 needs will be substantially reduced. Further, CSC calculations and payment should be made as soon as practicable, rather than delaying until the end of the fiscal year. (23-Choctaw Nation)

The [Chippewa Cree] Tribe is also concerned regarding collection of Contract Support Costs, the tribes were required to submit for CSC for the CARES Act funding, however there has been no further communication regarding submittal of these particular reports. The tribe would like to ensure that there is clear direction and communication regarding collection of these costs. (27-Chippewa Cree Tribe)

In addition to the specific questions posed by Indian Affairs, SGAC strongly recommends that Indian Affairs pay Contract Support Costs (CSC) on ARP funds. Regardless of the source of direct funding or whether the funds are non-recurring, CSC costs are incurred by Tribal governments and must be paid. As you know, since 2014, Congress has fully paid CSC in a separate line item to Tribal governments to cover the costs of providing services to their citizens under contracts and compacts with the DOI. Therefore, no portion of the ARP allocation should be used to pay CSC. The SGAC requests that CSC calculations and payments be made as soon as possible,

rather than delaying the release of these funds until the end of the fiscal year. (31-Self-Governance Advisory Committee)

It is also vital that contract support costs be accounted for with ARPA funding. The intent behind the relief legislation is to alleviate burdens and costs for tribal governments, not to add to them. As such, the BIA should develop funding allocation methodologies that account for contract support costs as needed. (35-Santa Clara Pueblo)

DOI must have a plan of action for timely payment of ARPA contract support costs. Relief funds for both CARES and ARPA have generated their own significant administrative burden not covered by the existing CSC recovery of tribes. No later than thirty days after ARPA funds distribution, BIA should have a plan in place to capture data regarding estimated CSC needs and a timeline to share with tribes that details the process from end-to-end. Tribes should be paid CSC on both CARES and ARPA funds in lump sums based on a simple application of approved rates against the total amounts received in each distribution. (37-Citizen Potawatomi Nation)

MCN maintains that contract support costs (CSC) should be made available on any funding distributed to tribal governments or organizations as would normally be provided through a contract or compact. Further, MCN requests that the BIA collect CSC data in an orderly and professional manner that respects tribal decisions regarding the utilization and timing of funding deployment. Previously, this information was collected haphazardly and there are still tribes awaiting CSC payments from similar 2020 distributions, including MCN. (80-Muscogee Creek Nation)

2. Deference to Tribal Governments in Use of Funds

Deference should be granted to tribal governments and sovereignty. As sovereigns, Santo Domingo Pueblo and all tribal governments should be afforded the respect to expend funds in a responsive manner that is determined to be in the best interests of the tribal community served. Consistent with this premise, Santo Domingo Pueblo strongly advocates for Tribal governments to be allowed the same deference when it comes to the funds disbursed under the incoming relief legislation. Many federal agencies are active in addressing COVID-19 and its impacts, with efforts moving quickly. We ask that, as trustee, you ensure tribal nations' voices are meaningfully engaged in decision making regarding the ways in which DOI carries out the COVID-19 response effort.

- Treasury and Interior are therefore urged to conduct and complete meaningful consultation as soon as possible in order to allocate the appropriate amounts. In doing so, Treasury and Interior should resist any suggestions from non-Tribal government entities to confuse this duty with a broader mandate, not supported by the law, to distribute funds beyond federally recognized Tribal governments.
- We also ask that you facilitate tribal nation involvement in decision making by other federal agencies regarding their COVID-19 response efforts as they relate to Santo Domingo Pueblo and the rest of Indian Country. Our Tribe is on the ground taking care

of our people through this crisis and we know best what our needs are at this critical time. A safe harbor is necessary and equitable because Tribal governments have repeatedly sought direction economic stimulus assistance under CARES Act funds and been met with silence, re-direction, and confusing advice. Congress intended the funds to aid governments in responding to this pandemic and entrusted Treasury with providing guidance to recipients. Further, Treasury and Interior have a trust responsibility to Santo Domingo Pueblo and, accordingly, should assist tribal governments that have been seeking clarification in good faith to stay in compliance and meet the urgent needs of their citizens.

- In closing, Santo Domingo Pueblo appreciates Treasury and Interior's swift action to implement their consultation duties, and looks forward to the completion of a well-reasoned distribution formula. These funds will be critical to assist Tribal governments in withstanding the impacts of COVID-19. We stand ready to work with you to ensure your departments are prepared to uphold the federal trust responsibility to our tribal nations as you work to address the impact of this global crisis. (02-Santo Domingo)

The BIA should disburse available ARPA funds to Indian Tribes as quickly as possible and it should provide Tribes with the greatest possible flexibility in using these funds to meet the needs of their people during this public health emergency. The determinations of Indian Tribes concerning the relationship between public health and safety, economic relief, and tribal general welfare are entitled to deference under prevailing Federal law and policy and should not be disturbed. See, e.g., Pub. L. 113-168, § 2(b) (2014), codified at 26 U.S.C. sec. 139E note (providing that, under the Tribal General Welfare Exclusion Act, “deference shall be given to Indian tribal governments for the programs administered and authorized by the tribe to benefit the general welfare of the tribal community”). (71 - Cheyenne River Sioux) (73 - Sisseton-Wahpeton Oyate)

It is critically important that DOI allows for the broadest possible use of the funding so that Tribes receiving ARP A funding have maximum flexibility to tailor the funding to fit the specific needs of their own communities. [...] The reason is simple-Tribal communities know what is most needed and what will work best in their own communities. They are best equipped to identify priorities and apply funding where it is needed most, when it is most needed.

- The same self-governance principles should guide DOI as it determines what parameters to establish for allowable uses of the Tribal ARP A funding in order for this funding to be most efficiently used for the benefit of Tribal Communities. The agencies should adopt an approach in which Tribes may determine for themselves how to put the ARPA funding to use in their own communities, so long as the funding is generally used in furtherance of the intent of the ARP A for expenditures made necessary by the corona virus pandemic. This approach would be grounded in proven self-governance principles that have and are working very well in Indian Country today, and will allow Tribes to establish their own priorities and utilize the ARP A funding in ways that are tailored to each individual Tribal community.
- Consequently, in keeping with self-governance principles, we request the following in your overall approach:

- Do not establish a laundry list of qualified expenses that is exclusive so that if it is not on the list, it is not a qualified expense. And do not include restrictions on expenses that unnecessarily tie up this funding so that such restrictions become barriers or unknowns that raise concerns about audits. That has been a problem with CARES Act funding.
- Ensure that the deadlines to expend the funds are realistic and feasible. Extend them out to give Tribes adequate time. The effects of the pandemic will be impacting us for years.
- Whatever the process, ensure that all Tribes, large land based or not, large or small population, are receiving an equitable share of the funding, if necessary, by distributing a percentage of the funding as a base amount not tied to other considerations such as population. (48-Kawerak Inc.)

We recommend that the BIA allocate [Tribal Government Services] funds directly to tribal governments under the tribal government services sub-category for internal capacity development. Such funds should be allocated, in part, by taking into consideration population size and should not be overly restrictive but all for broad expenditures to address local government needs. (24-Oglala Sioux Tribe; see comments for more background)

We request that contract and compact amendments be streamlined and not impose any additional restrictions or requirements other than those included in the ARP. [U]nder the prior administration, BIA initially placed inappropriate limitations on allowable uses of the funds authorized by the CARES Act. Although the limitation was ultimately reversed, it caused significant delays and confusion that prevented Tribal governments from using the funds to respond to urgent needs. To avoid a similar situation, the SGAC expects Indian Affairs will ensure that its offices do not place such limitations on use of funds authorized by ARP. (31-Self-Governance Advisory Committee)

Please consider these comments and recommendations:

1. The Self-Governance programs have an established distribution methodology.
2. Existing Self-Governance agreements are the fastest, easiest way to distribute funds to the Osage Nation and other Self-Governance tribes.
3. We have distributed other COVID restricted funds that are one time funding on a regular basis since the beginning of the pandemic. (34-Osage Nation; see comments for more background)

[Tribal Government Service] funds should be allocated, in part, by taking into consideration population size and should not be overly restrictive but allow for broad expenditures to address local government needs. We recommend that the BIA provide [housing improvement] funds with maximum flexibility to tribal governments pursuant to a needs-based methodology. In summary, we recommend that the \$900 million BIA allocation and the \$850 million BIE allocation be distributed quickly with maximum flexibility and minimum reporting requirements. (35-Santa Clara Pueblo; see comments for more background)

We ask that you respect Tribal sovereignty by recognizing Tribal government authority to allocate funds in accordance with the Act. The Act identifies the intended purpose and allowable uses for the funds. Agency interpretations that limit allowable uses of the funds hinder Tribal governments' efforts to protect the health and welfare of their citizens and communities. (19-Confederated Tribes of Siletz)

3. Timing

There should be a reasonable timeline in which to spend the funding each tribe receives. Our Tribe was relieved when past funds were allocated to the Government Relief Fund under the CARES Act, but we remain concerned about the continued potential for inordinate distribution delays and resulting hardship by Tribes to spend funding by the initial deadline. Amidst these delays, the socio-economic impact of the pandemic grew and our Tribe worked to meet the growing response and recovery needs of our tribal citizens. In addition, it is likely that the nation will have to address the current pandemic for many more months and even years to come. This is especially true for our Pueblo whose economic and health disparities have become exacerbated by the pandemic. In addition to recurring outbreaks of COVID-19, we need to prepare in advance for the pandemics of the future. We urge your consultation with our Pueblo and other Tribes to determine a reasonable timeline in which we have to spend incoming relief funding. (02-Santo Domingo)

The fast track deadline for the expenditure of the funds, requires planning and immediate implementation. We are staffed and prepared to implement the expenditure of these funds. (34-Osage Nation; see comments for more background)

There is no time for developing new funding mechanisms as the public health emergency continues to rage on. Neither is there a need. BIA should send these monies out to tribal nations through existing program structures, where appropriate, and directly to tribal nations where such structures are not in place or are not inclusive of all tribal governments. Furthermore, the BIA should make immediate direct payments from these funds to tribal nations through their existing ISDEAA agreements, as authorized by the ARPA, where appropriate and requested by tribal leaders. (35-Santa Clara Pueblo; see comments for more background)

4. Criticisms of The Consultation

Currently, there are many Tribal consultations taking place within a small window to listen, respond, and write comments. We would recommend for the future, additional time to respond for written comments. Although the comments are due on March 31st, four (4) business days from the Tribal consultation, there needs to be consideration of all the other federal agencies also conducting their Tribal consultations. There are deadlines within days of each other, and it can be cumbersome to provide responses in the time for associated deadlines. (11-Ak-Chin Indian Community)

We appreciate the effort DOI-IA has made to hold consultations and develop distribution plans in such a short time-frame. However, so little detail has been provided on the specifics of possible distribution methods it is difficult to make considered recommendations. (60 - Bristol Bay Native Assn)

It is also untrue that TPA money cannot be reprogrammed for this type of service; Aid to Tribal Government funding can be reprogrammed into tribally designed services that provide the same functions. The lack of clarity in this part of the consultation documents is of great concern. (60 - Bristol Bay Native Assn)

5. Miscellaneous

Please consider Alaska Native Corporations (ANCs) to receive funding.

- As an ANC we are required to treat all shareholders equally. My Tribe, Aniak Tribe has not helped me with the CARES ACT funding, along with many tribal members that do not reside in Aniak. There are Villages in The Kuskokwim Corporation region. We have villages that are isolated and have high costs of goods and are having them to live off the land. The only way to travel in and out of the villages is by plane and traveling the river by boat or on the ice road. Some of these villages do not have running water and no flush toilets. Imagine always packing drinking water and going to the community washeteria to wash your clothes and showering. We also need medical attention in our area. There has been a number of people who have died due to medical issues, they have very limited jobs and are required to rely on State funding regarding medical. This process goes to the YKHC health clinic and they send the patients information to the State of Alaska and this process takes weeks to month for our people to get seen, only to make another appointment and to follow this long process again.
- Please think of the Alaskan Village Tribal members and Alaska Nave Corporations to help with the struggles that they are facing. Most of the Tribes in our area have not had helped with the CARES ACT funding and these Tribal Members have been going to the Alaska Nave Corporations to seek help. I hope some of this funding will go to Alaska Nave Corporations because they are the ones helping Tribal Members that do not reside in the villages. (04-Kimberly Gregory)

Qinarmut Corporation supports the [Native Village of Tuntutuliak] in receiving an equitable share of the BIA ARP funding, as it would meet the greatest needs of the tribal members. This would meet the...high costs of living in rural Alaska that are not on the road system. Basic necessities are supplemented through general assistance from the state, and would be disastrous if there was no assistance in place. Qinarmut Corporation urges BIA to consider the unmet sanitation needs of the village and consider the high cost of living in rural Alaska. (26-Qinarmut Corporation; see comments for more background)

The initial distribution of Coronavirus Relief Funds allowed the Walker River Paiute Tribe to implement critical programs that met urgent, but not all needs of members, these critical funds

enabled the tribe to implement basic preventative measures and responses to the COVID-19 pandemic. While the initial funds addressed critical and immediate needs, much remains to be done. The highly restrictive uses of funds, unrealistic timeline placed on the use of funds, and overly burdensome reporting requirements placed on tribes under the CARES Act only added to the many challenges the Walker River Paiute Tribe faced in implementing a comprehensive, long term, sustainable response plan to the pandemic. (68 - Walker River Paiute)

ANVCA requests that each tribe receives a minimum base allocation of \$10 Million. Alaska faces unique challenges, and COVID has disproportionately affected our people. (61 - ANVCA)

The absence of reliable, accurate, current data is a barrier to Tribes' ability to reach our full potential and self-reliance goals. Substandard or non-existent data throughout the Federal system has exacerbated the impacts of this deadly virus because it has impeded Tribes' ability to secure adequate resources. It is incumbent upon the agencies, as trustees, to work collectively with the Tribes to quantify the true unmet need/unfulfilled Federal obligation with credible metrics that will demonstrate an accurate community profile for each Tribe. We need economic statistics and data that establish and drive policy goals, ensure effective implementation of programs and services, measure funding impacts, prove effective and efficient use of funding, and to demonstrate program success. At this point in time, there is not a system in place that captures the data needed. There is an absence of good data agency wide. In fact, DOI imposed a moratorium on the collection of needs-based data for Tribes for the last four years and we view this as a failure of the trust and one of the contributing factors to the devastating effects of the pandemic on our communities. The agencies need to be held accountable and directed to work in partnership with Tribes to collect data that quantifies the true unmet needs/unfulfilled Federal obligations in Indian Country. (67 - Jamestown S'Klallam)

We are fully supportive of providing sufficient funding to DOI for administrative costs and oversight to ensure that trust and treaty obligations to Tribes are efficiently and effectively carried out. We are disappointed, however, that information on how the funding would be applied to Federal administrative costs and oversight was not provided on the call. We trust that DOI will exercise discretion in ensuring that any funding reserved to carry out the Federal functions associated with administrative costs and oversight will be wisely spent. Transparency breeds trust in the process and strengthens the Tribal-Federal relationship. (67 - Jamestown S'Klallam)

This is a brief confirmation that Tuntutuliak Traditional Council supports Calista Corporation's Comment on American Rescue Plan Investments for Indian Affairs. (56- Tuntutuliak Traditional Council)

We appreciate the broad categories of allowable expenditures that Congress has earmarked for the \$772.5 million sub-allocation of the BIA's new relief funds. Those determinations have been left to the BIA's discretion. We urge BIA to account for the recommendations of tribal leaders as it determines how to distribute the \$772.5 million among these accounts. We suggest that:

- BIA allocate roads funding as a separate pot of funding from any law enforcement and justice services [and] that the BIA allocate the funds through its general BIA Roads Maintenance program and a new targeted roads improvement program for specific projects funded based on a tribal nation's geographic size, mile inventory, remoteness, and extreme seasonal weather conditions. The funds should cover maintenance, construction, and road equipment procurement.
- BIA allocate and/or broadly allow for workforce development programs to benefit from the new \$772.5 million sub-allocation of the ARPA.
- The BIA child welfare and related services sub-category must be expansively defined to include all...aspects of holistic child health.
- [T]argeted tribal allocation for...services that was provided as part of the Indian health system title of the ARPA...we recommend that the BIA and the Indian Health Service coordinate leveraging opportunities between their two pots of funding on this issue. Tribal governments should be authorized to the greatest extent possible to expend these monies jointly for the furthest reach in the community.
- ARPA child welfare funding should be provided broadly for allowable expenses in this area of local need, including for facilities procurement, maintenance, and new construction. (24-Oglala Sioux Tribe; see comments for more background)

[T]he Yurok Tribe must once again insist that Interior follow Congress' direction and implement an update to its base funding. We are located in a beautiful and precious but isolated and rural part of California, many hours away from any major population centers. Parts of the reservations still lack electricity, cell phone, internet service, and proper roads, making serving our community more difficult. Congress recognized these disparities and directed Interior to address them in Senate Report 100-564 regarding the Hoopa Yurok Settlement Act ("HYSA"). This direction from Congress remains unfulfilled. In addition, we have the largest population of tribal members of tribes in California, with over 6,200 enrolled members. The lack of infrastructure and resources on the Reservation are particularly challenging with so many members to serve during the COVID-19 pandemic. While all tribes share in a general lack of proper federal funding for operations, the Yurok Tribe faces significant injustice even as compared to other California tribes. The Yurok Tribe has been attempting to work with Interior for many years on the issue that our annual base funding was never properly set. Implementing the HYSA to finalize a list of members took years (ending in 2007) and our annual base funding, set in 2003, does not reflect that our membership has tripled. As we have repeatedly advocated with Interior, the Yurok Tribe's annual base funding considering membership, funding formulas with other tribes, and our unique inequities that Interior was tasked with resolving, should be several times over what we currently receive. Unlike some other tribes, Yurok does not have any significant sources of discretionary income to fill that gap. This inequity should be addressed immediately, building on the workgroup active in 2014-2015, to ensure no further distributions continue to rely on this historic and continuing inequity. (30-Yurok Tribe)

MCN is opposed to any effort to collect data or reporting on aid to tribal government or HIP funding which is not required by statute. Under the Indian Self-Determination and Education

Assistance Act, BIA cannot enforce reporting requirements which are not statutorily required or financially supported through federal funding, therefore BIA should avoid any administratively burdensome requirements with regard to deployment of the funding distributed to tribes through existing funding mechanisms. (80-Muscogee Creek Nation)

V. Treasury Funds

Tribal Governments are the governing bodies of Federally Recognized Indian tribes. Treasury should distribute remaining CARES Act Tribal Governments CRF funds to Indian Tribes on the Secretary of the Interior's list of federally-recognized Indian Tribes. The Trump Administration erroneously disregarded the requirement of Federal recognition in deciding to distribute CARES Act Tribal Government Coronavirus Relief Funds to Alaska Native Regional and Village Corporations (ANCs). ANCs are not recognized by the Secretary of the Interior as Indian Tribes or Tribal Governments, but rather 229 Alaska Native villages are Federally Recognized Indian Tribes. ANCs are state chartered shareholder corporations, and are not eligible for CARES Act Tribal Government CRF distributions. Tribal Government CRF distributions must be made to Federally Recognized Indian Tribes as required by the CARES Act. The Biden Administration must correct the Trump Administration error. Treasury must immediately distribute all remaining Tribal Government CRF monies to Federally Recognized Indian Tribes. (01 – GPTCA)

With respect to factors to be considered in the final allocation of CRF funds, we ask the Treasury Department to prioritize four factors in the allocation formula for the remaining CRF funds:

- Tribal Population = Tribal Enrollment. Tribal membership is tribal citizenship—the self-governing political status of our Native People. Tribal members are enrolled in our Tribal Government to reflect their status as voting members of our Tribal Government Polity, our Indian Tribe. Our Tribal Governments track changes in Tribal enrollment, and tribal enrollment records are the most up-to-date and accurate records of Tribal population. In general, Tribal enrollment lists are comprehensive lists of all Tribal citizens enrolled in each Indian Tribe. Tribal enrollment data can be obtained from, and verified by, the Bureau of Indian Affairs. In contrast, the Census Bureau tracks the racial category of Native Americans, which is based upon self-identification and does not reflect the verified political status of tribal membership in an Indian tribe. Due to the Census Bureau's failure to mail initial enumeration forms to P.O. Boxes, which are very common in rural Indian country, and other factors, the Census has turned rural Indian Country into Hard-to-Count areas. In the Great Plains, our Indian nations and tribes are typically undercounted in the Census. The Indian Housing Block Grant (IHBG) records are derivative of the Census enumeration and are not reflective of tribal membership. The Treasury should not use IHBG population area formulas, since they rely on Census Bureau data, without any "boost" for HTC census tracts and without regard to Tribal enrollment data, and since they use Tribal Statistical Areas, not Indian country land bases. Accordingly, IHBG population numbers are flawed and Treasury should not use IHBG numbers. Treasury should use Tribal Enrollment.

- (2) Tribal Lands, Measured by Total Indian Country, Not Tribal Statistical Areas. Treasury should use Tribal Lands as an additional CRF allocation, including reservation lands, off-reservation trust lands, and dependent Indian communities, as defined in 18 U.S.C. § 1151, Indian Country. For RST, the Rosebud Sioux Reservation is the proper measure of Tribal Lands because our Tribal Government service area extends throughout our 1889 Reservation. Treasury should not use the flawed Tribal Statistical Areas, which do not reflect Tribal Government jurisdiction. The size of an Indian Tribe's land base is directly related to its expenditures on the COVID-19 public health emergency, since transportation costs and the costs of providing remote health care and emergency housing assistance, food, and supportive services in dispersed, rural areas are greater than in more densely populated areas.
- (3) Tribal Economic Need, as measured by the Percent of Tribal Households in Poverty. The CDC has recognized that economic factors, including poverty, unemployment, low educational opportunity, poor health care, and overcrowded housing, which are endemic in tribal populations in low income areas result in pre-existing health conditions that make Native Americans more susceptible to the COVID-19 Coronavirus. Tribes with high poverty rates have had to address these factors in order to respond effectively to the COVID-19 pandemic. This has increased expenditures. Accordingly, Treasury should use as a Tribal Government CRF allocation factor the relative economic hardship of each Indian Tribe, measured by the poverty rate of persons living on the Indian reservation or within the Indian country of each Tribe, based on the most recent year for which such data are available from the American Community Survey and the Census.
- (4) Tribal Employees. Tribal Governments must also provide services to Tribal employees, which may include unemployment benefits, health care, housing, nutrition services and financial assistance during the COVID-19 National Public Health Emergency and Economic Crisis. Accordingly, Treasury should consider the number of Tribal Employees in the distribution of CRF Funds to Tribal Governments. Treasury may rely on numbers previously provided because Congress intended these funds to be distributed in 2020.
- Treasury should distribute remaining CARES Act Tribal Government Coronavirus Relief Funds among Federally Recognized Indian Tribes according to Tribal population (measured by Tribal Enrollment), Tribal Lands (as measured by Indian Country), Poverty or Economic Disadvantage, and Tribal Employment.
- As initially directed by Congress, Tribal Government CRF monies from the CARES Act are for the most part expended. Treasury can use the tribal enrollment data previously supplied by Indian tribes in 2020. To expedite the process, Treasury should rely on existing Tribal Government expenditure data supplied by Indian Tribes in 2020.
- (See also NCAI Comments attached to Comments) (01-GPTCA)

The distribution formula should more accurately reflect the actual impact of COVID-19 by considering the number of employees and economic factors in addition to population size and

should allow tribes to self-certify their populations rather than relying on any outside source; Santo Domingo Pueblo is appreciative of Treasury and Interior's intent to facilitate rapid deployment of CARES Act resources to tribal nations using existing funding mechanisms, processes, agreements, and partnerships. However, pursuant to the distribution methodology chosen by Treasury under the CARES Act, some tribal governments received either an improper allocation or no allocation at all due to the use inappropriate population data based on participation in HUD's Indian Housing Block Grant program. We ask that Interior advocate and Treasury allow and distribute incoming funds as soon as possible in consultation with Tribes to accurately account for each Tribe's unique economic situation and allow tribal self-certification of populations rather than relying on outside sources. (02-Santo Domingo)

The ARP mandates that \$1 billion be distributed to each of the 574 Tribal governments in equal shares, which is about \$1,742,000 each. To best assist Alaska Native Tribes, we propose that the Treasury Department allocate an additional \$10,000,000 per Tribe as a base element of its distribution formula. In addition, we request that the ARP formula incorporate an element based on actual economic need. For example, the ARP Local Assistance and Tribal Consistency Fund focuses distribution of the \$250 million fund on the economic condition of a Tribe based on poverty rates, household income, land values, and unemployment rates. We believe that a similar factor should be included in the formula distributing for all ARP funding to Tribal governments. (61 - ANVCA)

We want to ensure we do not run into a similar situation that occurred with the CARES Act distribution at the Department of the Treasury. (67 - Jamestown S'Klallam)

Due to the federal government's chronic failure to fully fund trust and treaty obligations, as well as ongoing failures to provide necessary resources, Tribal Nations continue to operate with limited and diminishing resources as we work to address the impacts of COVID-19. While the \$31.2 billion allocated to Tribal Nations under ARP provides hope in both the short- and long-term, DOI needs to work with Tribal Nations to ensure the \$1.75 billion it administers, as well as the \$20 billion under Treasury's Fiscal Recovery Fund, is distributed as equitably as possible and in full recognition of Tribal sovereignty. Expedious, but thoughtful, distribution of these resources will allow Tribal Nations to both address and begin to recover from the COVID-19 pandemic. (32-USET SPF)

Our experience with direct distributions from Treasury and other government agencies of the COVID funds has involved burdensome reporting requirements and delayed delivery of funds. (34-Osage Nation)

I respectfully request that the Department of Treasury immediately disburse the one billion dollars of non-discretionary monies included the American Rescue Plan Coronavirus Recovery Funds ("ARP CRF") and designated to be distributed on a pro rata basis to all federally recognized Tribes and, in the interest of developing a just and equitable distribution methodology for the remaining monies, give a pro rata amount of not less than \$10 million dollars to each tribe and extend time to submit comments to the Department on the ARP CRF.

- Treasury has scheduled Tribal Consultation - four consultation sessions - over two days, March 31 and April 1. Treasury has also requested written comments by April 2, 2021. The Tribe requests that the written comment deadline be extended by not less than two weeks. While the Tribe appreciates that Treasury is moving relatively quickly to consult with Tribes, as required under Executive Order 13175, the deadline for written comments is too short for Tribes to be able to thoughtfully and comprehensively consider and respond to the discussions that will occur during the consultation sessions. As was demonstrated in April of last year, and more recently demonstrated last week, 574 federally recognized tribes will have a variety of opinions and views on how the ARP CRF monies should be further allocated. Given this expected diversity of ideas, the Tribes should have more time to adjust their own views and ideas before submitting their final comments in writing.
- Furthermore, even though Treasury has been tasked with distributing funds to Tribes within 60 days if practicable, and the Tribe recognizes this extension will delay the distribution of the entire fund, the Tribe is more concerned at this point with Treasury establishing a more fair and equitable allocation methodology than that previously decided with the CARES Act Coronavirus Relief Funds. As a mechanism for allocating these funds is a fair, equitable and meaningful distribution to all tribes – regardless of population size, land mass or economic revenues – we call on Treasury to issue a pro rata amount of not less than \$10 million. This will leave \$14.26 billion to be distributed based on the formula developed utilizing the input from Tribes. As these funds will have to last four years and with the immediate disbursement of the one billion dollars on a pro rata basis, the Tribe is willing to trade time for a fairer formula based on the considered view and input from Tribes once the larger pro rata amount has been distributed. (84-Coyote Valley)