



October 2021

# COVID-19

## Lessons Learned from Interior and Treasury's Administration of CARES Act Funds Could Improve Federal Emergency Relief to Tribes

Accessible Version



A Century of Non-Partisan Fact-Based Work

# GAO Highlights

Highlights of [GAO-22-104349](#), a report to congressional committees.

## Why GAO Did This Study

GAO has previously found that COVID-19 disproportionately harmed the public health and economies of tribal nations in the U.S. In March 2020, the CARES Act appropriated over \$9 billion for federal programs for tribes and their members—this amount included \$8 billion for Treasury's CRF Tribal Set-Aside and \$453 million for Interior's OIP (CARES Act funds).

The CARES Act includes a provision for GAO to report on its ongoing monitoring and oversight efforts related to the COVID-19 pandemic. This report is part of that body of work. It examines (1) approaches Interior and Treasury took to distribute CARES Act funds to tribes and steps necessary for tribes to access and use these funds, and (2) challenges the agencies and selected tribes faced and lessons learned that could improve future federal emergency relief to tribes.

To do this work, GAO reviewed agency documents and interviewed federal agency officials, representatives of three tribal organizations and two academic research centers—selected for their work related to CARES Act funds—and officials from seven selected tribes that accessed CARES Act funds from the agencies.

## What GAO Recommends

GAO is making two recommendations, including that Treasury update its tribal consultation policy to include direction to consult tribes on data the agency is considering for use in decisions that have tribal implications. The Department of the Treasury agreed with GAO's recommendations.

View [GAO-22-104349](#). For more information, contact Anna Maria Ortiz at (202) 512-3841 or [ortiza@gao.gov](mailto:ortiza@gao.gov).

October 2021

## COVID-19

### Lessons Learned from Interior and Treasury's Administration of CARES Act Funds Could Improve Federal Emergency Relief to Tribes

#### What GAO Found

The Department of the Interior distributed the CARES Act Operation of Indian Programs (OIP) appropriation through existing programs while the Department of the Treasury had to set up a new program to distribute the Coronavirus Relief Fund (CRF) Tribal Government Set-Aside. This resulted in tribes taking fewer steps to access and use Interior's OIP appropriation than Treasury's program.

- **Interior.** The CARES Act required that Interior make at least \$400 million of the OIP appropriation available to meet the direct needs of tribes. Interior disbursed these funds through two existing programs based on tribal enrollment. As a result, tribes needed to take few administrative steps to access and use funds.
- **Treasury.** The CARES Act created the CRF as a new program. The CRF appropriation included an \$8 billion Tribal Set-Aside. Treasury did not have a preexisting allocation methodology or mechanisms for disbursing this funding to tribes, so it had to develop them before it could make payments. Treasury distributed the CRF Tribal Set-Aside in two tranches, using multiple allocation methodologies. Treasury asked tribes to take several administrative steps to access and use CRF payments. For example, tribes had to submit two rounds of data to receive both tranches of CRF payments.

Agencies and selected tribes faced various challenges regarding the CARES Act OIP appropriation and CRF Tribal Set-Aside. Treasury faced greater challenges than Interior, and was delayed distributing CRF payments to tribes. For example:

- Treasury officials said the work needed to develop distribution formulas consistent with the CARES Act contributed to delays in CRF disbursements to tribes.
- Selected tribes told GAO that Treasury used certain data in one of its allocation methodologies without consulting with tribes about the data and their limitations. Such consultation could have allowed the agency to make changes or address tribes' concerns prior to making payments using the data. Consequently, certain tribes did not receive emergency relief in a timely manner to address pandemic needs.
- Selected tribal organizations, academic researchers, and tribes said that adjusting to Treasury's changing guidance on allowable uses of funds further delayed tribes' implementation of projects and increased their administrative burden.

Treasury has applied some lessons learned to its administration of a subsequent relief program established by the American Rescue Plan Act of 2021. For example, Treasury improved its communication to tribes on allowable use of funds. However, Treasury has not formalized other lessons learned into its tribal consultation policy. Specifically, Treasury's tribal consultation policy does not call for the agency to consult with tribes on data it is considering using to make policy decisions with tribal implications. Until Treasury updates its policy, it risks using data without a meaningful dialogue with tribes about any limitations of the data. This deprives Treasury of information that tribes could provide about how to address data limitations and may increase the risk that programs might not be as effective at meeting tribes' needs in a timely manner.

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### **Abbreviations**

ANCs	Alaska Native regional and village corporations
AI/AN	American Indian or Alaska Native
ARP Act	American Rescue Plan Act of 2021
BIA	Bureau of Indian Affairs
CRF	Coronavirus Relief Fund
CSFRF	Coronavirus State Fiscal Recovery Fund
FAQ	Frequently Asked Questions
HUD	Department of Housing and Urban Development
IHBG	Indian Housing Block Grant
NAFOA	Native American Finance Officers Association
OIG	Office of Inspector General
OMB	Office of Management and Budget
OIP	Operation of Indian Programs

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October 29, 2021

Congressional Committees

In the United States, the COVID-19 pandemic caused catastrophic loss of life and substantial damage to the economy, disproportionately harming the public health and economies of tribal nations. In December 2020, the Centers for Disease Control and Prevention reported that American Indian and Alaska Native populations had higher rates of COVID-19 cases and associated deaths compared with the non-Hispanic White population.<sup>1</sup> In addition, many tribal governments faced severe revenue shortfalls because tribal enterprises in the hospitality and energy sectors were adversely affected by the pandemic. Tribal governments often depend heavily on revenue from tribal enterprises in these sectors to support health care, public safety, and other essential services for their members.

To address the national public health and economic threats posed by COVID-19, the CARES Act appropriated \$2 trillion in March 2020, at least \$9 billion of which was for federal programs that serve Indian tribes and their members.<sup>2</sup> This \$9 billion included an \$8 billion appropriation for the Coronavirus Relief Fund (CRF) Tribal Government Set-Aside,<sup>3</sup> administered by the Department of the Treasury. The CRF Tribal Set-Aside was to be disbursed to tribal governments, which could use it to offset costs related to either the pandemic's direct effects (e.g., public

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<sup>1</sup>Arrazola, J., M.M. Masiello, S. Joshi, et al., "COVID-19 Mortality among American Indian and Alaska Native Persons – 14 States, January-June 2020," *Morbidity and Mortality Weekly Report*, vol. 69, no. 49 (Dec. 11, 2020).

<sup>2</sup>We reported on these appropriations in June 2020; see GAO, *Covid-19: Opportunities to Improve Federal Response and Recovery Efforts*, [GAO-20-625](#) (Washington, D.C.: June 25, 2020). For purposes of this report, the term "tribes" refers to Indian tribes that have been recognized by the government of the United States. As of September 2021, there were 574 such tribes.

<sup>3</sup>In this report, we refer to the CRF Tribal Government Set-Aside as the CRF Tribal Set-Aside.

health needs) or its indirect effects (e.g., harm to individuals or businesses as a result of COVID-19 pandemic-related closures).<sup>4</sup>

The \$9 billion also included a \$453 million appropriation for the Department of the Interior's Bureau of Indian Affairs (BIA) for Operation of Indian Programs (OIP)—an existing appropriation account that funds many BIA activities.<sup>5</sup> Interior's OIP appropriation was to prevent, prepare for, and respond to COVID-19; not less than \$400 million of this appropriation was to be made available to meet the direct needs of tribes.<sup>6</sup>

The CARES Act provides for oversight of CRF funds and the broader federal response to the COVID-19 pandemic. In particular, the CARES Act requires Treasury's Office of Inspector General (OIG) to conduct monitoring and oversight of the receipt, disbursement, and uses of CRF payments.<sup>7</sup> The CARES Act also includes a provision for GAO to conduct monitoring and oversight of the use of funds made available to prepare for, respond to, and recover from the pandemic.<sup>8</sup> In addition, the Chair and Ranking Member of the Senate Subcommittee on Regulatory Affairs and Federal Management asked us to review the federal government's response to the COVID-19 pandemic, including federal efforts for tribal governments.

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<sup>4</sup>The CRF received a total appropriation of \$150 billion. The CARES Act required Treasury to disburse the CRF to states, local governments, tribal governments, the District of Columbia, and U.S. territories. Of the \$150 billion, \$8 billion was set aside for tribal governments and \$3 billion was set aside for the District of Columbia and U.S. territories. Pub. L. No. 116-136, § 5001, 134 Stat. 281, 501-504 (2020) (*codified as amended at 42 U.S.C. § 801*).

<sup>5</sup>The remaining amount of the approximately \$9 billion was appropriated for various programs. See the Assistance for Tribal Entities enclosure in [GAO-20-625](#).

<sup>6</sup>Pub. L. No. 116-136, 134 Stat. at 546.

<sup>7</sup>Pub. L. No. 116-136, § 5001, 134 Stat. at 503-504. Treasury's OIG was also given authority to recoup funds in the event that the Inspector General determines a recipient of a CRF payment failed to comply with the *Uses of Funds* requirements of subsection 601(d) of the Social Security Act, as amended (42 U.S.C. § 801(d)).

<sup>8</sup>Pub. L. No. 116-136, § 19010, 134 Stat. at 579-81. We regularly issue government-wide reports on the federal response to COVID-19. For example, see GAO, *COVID-19: Continued Attention Needed to Enhance Federal Preparedness, Response, Service Delivery, and Program Integrity*, [GAO-21-551](#) (Washington, D.C.: July 19, 2021). Our next government-wide report was issued October 27, 2021, and is available on GAO's website at <https://www.gao.gov/coronavirus>.

This is our second report addressing Interior and Treasury's disbursement of CARES Act funds to tribes.<sup>9</sup> In June 2020, we reported that Treasury completed CRF payments to tribes 7 weeks after the statutory deadline to do so.<sup>10</sup> We also reported that challenges we identified in our past work on other issues that affect tribes, such as challenges related to tribal consultation and infrastructure in tribal communities, could impede the federal government's ability to effectively support tribes' COVID-19 response.<sup>11</sup>

This report examines (1) approaches that Interior and Treasury took to distribute CARES Act funds to tribes and the steps necessary for tribes to access and use these funds, and (2) challenges that agencies and selected tribes faced regarding these funds, and lessons learned that could improve future federal emergency relief to tribes.<sup>12</sup>

To examine the approaches Interior and Treasury took to distribute CARES Act funds to tribes, we reviewed the CARES Act to identify statutory requirements for CARES Act funds. We also reviewed agency guidance and other documents that describe the agencies' processes for distributing CARES Act funds. We then analyzed agency data on the distribution of these funds. We assessed the reliability of these data by (1) reviewing the data for obvious errors and anomalies, (2) reviewing related documentation, and (3) interviewing agency officials knowledgeable about the data. We determined that the data were sufficiently reliable for the purposes of confirming when the agencies issued OIP and CRF Tribal Set-Aside payments. We also interviewed Interior and Treasury officials about their administration of CARES Act funds, and interviewed Treasury OIG officials about their oversight of the CRF.

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<sup>9</sup>We first reported on these agencies' disbursement of CARES Act funds to tribes in June 2020. See [GAO-20-625](#). In this second report, we refer to the CARES Act OIP appropriation and the CRF Tribal Set-Aside together as CARES Act funds.

<sup>10</sup>[GAO-20-625](#).

<sup>11</sup>GAO, *Tribal Consultation: Additional Federal Actions Needed for Infrastructure Projects*, [GAO-19-22](#) (Washington, D.C.: Mar. 20, 2019); *Drinking Water and Wastewater Infrastructure: Opportunities Exist to Enhance Federal Agency Needs Assessment and Coordination on Tribal Projects*, [GAO-18-309](#) (Washington, D.C.: May 15, 2018); *Tribal Broadband: FCC Should Undertake Efforts to Better Promote Tribal Access to Spectrum*, [GAO-19-75](#) (Washington, D.C.: Nov. 14, 2018).

<sup>12</sup>This report does not examine how tribes used the CARES Act funds they received.

To obtain information on the steps necessary for tribes to access and use CARES Act funds, we reviewed agency guidance and other documents for accessing, using, and reporting on CARES Act funds. We also interviewed officials from Interior, Treasury, and Treasury OIG, as well as representatives from three relevant tribal stakeholder organizations and two academic research centers.<sup>13</sup> We selected the tribal stakeholder organizations because they were active in assisting tribes with navigating the CARES Act funding and reporting process, and we selected the academic research centers because they conducted research on the CARES Act funds that we examine in this work. To learn about different experiences tribes had accessing and using CARES Act funds, we interviewed officials from a nongeneralizable sample of seven tribes that received CARES Act funds.<sup>14</sup> We selected these tribes because they served different-sized member populations across different geographic locations and were willing to meet with us. The findings from our interviews with selected tribal stakeholder organizations and tribes cannot be generalized to tribes we did not select and interview, but can provide examples that illustrate selected tribes' experiences with CARES Act funds.

To examine challenges agencies and tribes faced regarding CARES Act funds for tribes, we interviewed officials from Interior, Treasury, and Treasury OIG; representatives from the three selected tribal stakeholder organizations and two academic research centers; and officials from our sample of seven selected tribes about challenges they faced with CARES Act funds. We conducted a content analysis of interview statements to identify any themes or commonly cited challenges among those we interviewed.

To identify lessons learned to improve future federal emergency relief to tribes, we reviewed our prior work and relevant reports from Interior and Treasury's Offices of Inspector General, as well as documents from the

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<sup>13</sup>We interviewed representatives from the following tribal stakeholder organizations: the National Congress of American Indians, Native American Finance Officers Association, and the Self-Governance Communication and Education Tribal Consortium. We also met with representatives from these academic research centers: the Harvard Project on American Indian Economic Development and the Native Nations Institute for Leadership, Management, and Policy.

<sup>14</sup>We interviewed officials from the following tribes: Cherokee Nation; Citizen Potawatomi Nation, Oklahoma; Jamestown S'Klallam Tribe; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Central Council of Tlingit & Haida Indian Tribes; Turtle Mountain Band of Chippewa Indians of North Dakota; and the Rappahannock Tribe, Inc.



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selected tribal stakeholder organizations and academic research centers. We then interviewed officials from Interior, Treasury, and Treasury OIG; representatives from selected tribal stakeholder organizations and academic research centers; and officials from our sample of seven selected tribes about aspects of the agencies' implementation that went well and areas for improvement. We compared the findings from our analysis and interviews with agency documents and policies, CARES Act requirements, and federal standards for internal controls for information and communication and risk assessment.<sup>15</sup>

We conducted this performance audit from May 2020 to October 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

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### Federal Program Delivery to Tribes

Through treaties, statutes, and historical relations with tribes, the United States has undertaken a unique trust responsibility to protect and support tribes and their members.<sup>16</sup> Federal law requires federal agencies to provide a variety of services and benefits to tribes and their members. Federal programs and services for tribes may be delivered directly to the tribe by the federal government (direct service), or tribes may choose to

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<sup>15</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

<sup>16</sup>Through treaties, statutes, and historical relations with Indian tribes, the United States has undertaken a unique trust responsibility to protect and support Indian tribes and Indians. Indian Trust Asset Reform Act, Pub. L. No. 114-178, § 101(3), 130 Stat. 432 (2016) (*codified at* 25 U.S.C. § 5601(3)). The fiduciary responsibilities of the United States to Indians are also founded in part on specific commitments made through written treaties and agreements securing peace, in exchange for which Indians have surrendered claims to vast tracts of land, which provided legal consideration for permanent, ongoing performance of federal trust duties. *Id.* at § 101(4).

administer certain federal programs under a self-determination contract or self-governance compact.<sup>17</sup> Each tribe decides whether, and to what extent, to pursue self-determination contracts or self-governance compacts. As of March 2020, 569 of 574 tribes had a self-determination contract or self-governance compact to take over the administration of one or more federal programs from Interior, according to Interior officials.

BIA and other components of Interior have various responsibilities related to self-determination contracts and self-governance compacts. BIA is responsible for negotiating and approving each self-determination contract and its associated annual funding agreement, and for making disbursements to the tribes. Interior's Office of Self-Governance is responsible for administering self-governance compacts. BIA and the Office of Self-Governance are overseen by Interior's Office of the Assistant Secretary – Indian Affairs, which is responsible for policy for Interior programs that serve tribes and their members.

Tribes generally maintain their own information on their membership, expenditures, and other characteristics. However, in certain instances, some federal agencies maintain centralized data for specific purposes. For example, the Department of Housing and Urban Development (HUD) maintains data it uses to administer the Indian Housing Block Grant (IHBG) program. The IHBG data contain three types of population data: (1) U.S. Census data on the number of people who identify as American Indian or Alaska Native (AI/AN), a racial classification; (2) tribal enrollment data; and (3) BIA's total resident service area (service area) population data. HUD uses these data to calculate the number of people who identify as AI/AN and live within the tribe's assigned formula area for the IHBG program (formula area population).<sup>18</sup> Tribes that do not participate in the program do not have a formula area population. To help

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<sup>17</sup>Under the Indian Self-Determination and Education Assistance Act of 1975, as amended, federally recognized tribes can enter into self-determination contracts and self-governance compacts with Interior to take over administration of certain federal programs previously administered on their behalf. Pub. L. No. 93-638, 88 Stat. 2203 (*codified as amended at* 25 U.S.C. §§ 5301-5423). Self-determination contracts allow tribes to assume responsibility for managing the program's day-to-day operations, with BIA providing technical oversight to ensure the tribe meets contract terms. Self-governance compacts transfer administration of the program to tribes and provide the tribes with some flexibility in program administration.

<sup>18</sup>HUD assigns formula areas to tribes but tribes can request that HUD expand or redefine their formula area if the tribes are providing substantial housing services elsewhere. See 24 C.F.R. § 1000.302.

ensure HUD's data are accurate for the purposes of the IHBG program, tribes may challenge certain data HUD uses to make allocations for the program.<sup>19</sup>

To strengthen the United States' government-to-government relationship with tribes, Executive Order 13175 calls for federal agencies to have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.<sup>20</sup> A subsequent 2009 presidential Memorandum on Tribal Consultation directed agency heads to submit to the Office of Management and Budget (OMB), after consultation with tribes, detailed plans of actions that agencies would take to implement the policies and directives of Executive Order 13175.<sup>21</sup> According to two White House reports, many agencies developed or updated tribal consultation policies as a result of the 2009 memorandum.<sup>22</sup> Interior and Treasury both have tribal consultation policies. A January 26, 2021 presidential *Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships* directed every executive department and agency to develop a detailed plan of actions to implement the policies and directives of Executive Order 13175, after consulting with tribal nations and tribal officials.<sup>23</sup> Interior and Treasury each hosted tribal leader consultations on the agency's consultation policies, and both agencies submitted detailed plans to OMB in April 2021.

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<sup>19</sup>On an annual basis, tribes may challenge certain data—including U.S. census and tribal enrollment data—that are used in the IHBG formula. 24 C.F.R. § 1000.336(a). Tribes have until March 30 of each year to submit challenges to certain data in consideration for the upcoming fiscal year.

<sup>20</sup>Exec. Order No. 13175, *Consultation and Coordination with Indian Tribal Governments*, § 5(a), 65 Fed. Reg. 67249 (Nov. 9, 2000). Policies that have tribal implications refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes. *Id.* at § 1(a).

<sup>21</sup>Executive Office of the President, *Presidential Memorandum on Tribal Consultation*, 2009 Daily Comp. Pres. Docs. 887 (Nov. 5, 2009).

<sup>22</sup>Executive Office of the President, *2016 White House Tribal Nations Conference Progress Report, A Renewed Era of Federal-Tribal Relations* (Washington, D.C.: January 2017), and *2015 White House Tribal Nations Conference Progress Report, Building Prosperous & Resilient Tribal Nations* (Washington, D.C.: August 2016).

<sup>23</sup>Executive Office of the President, *Memorandum, Tribal Consultation and Strengthening Nation-to-Nation Relationships*, 86 Fed. Reg. 7491 (Jan. 29, 2021).

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## COVID-19 Impacts on Tribes and Federal Relief

As we have reported, tribes have faced long-standing infrastructure challenges, such as limited access to safe drinking water and wastewater disposal, overcrowded and substandard homes, and limited access to broadband internet service.<sup>24</sup> These infrastructure challenges contribute to health disparities for AI/AN individuals compared with other Americans—disparities that have been exacerbated by the COVID-19 pandemic. For example, we reported in March 2021 that AI/AN individuals were hospitalized because of COVID-19 at a rate 3.6 times that of non-Hispanic white individuals.<sup>25</sup> We also reported that limited access to broadband on tribal lands has negatively impacted access to telehealth, remote education for students, economic opportunities, and tribal government operations.<sup>26</sup>

Further, the COVID-19 pandemic has disproportionately affected tribes because of its impact on tribal government finances. Tribal governments typically do not have access to traditional tax bases, which means that tribes must overwhelmingly rely upon their enterprise profits, earned through their ownership of businesses, as their primary form of governmental finance.<sup>27</sup> Many of these businesses are in the leisure and hospitality sector—one of the sectors hardest hit by pandemic-related restrictions.

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<sup>24</sup>See, for example, GAO, *Native American Housing: Additional Actions Needed to Better Support Tribal Efforts*, [GAO-14-255](#) (Washington, D.C.: Mar. 27, 2014); [GAO-18-309](#); and [GAO-19-75](#). We made 25 recommendations in these reports. As of September 3, 2021, agencies had implemented 10.

<sup>25</sup>GAO, *COVID-19: Sustained Federal Action Is Crucial as Pandemic Enters Its Second Year*, [GAO-21-387](#) (Washington, D.C.: Mar. 31, 2021).

<sup>26</sup>GAO, *Indian Education: Schools Need More Assistance to Provide Distance Learning*, [GAO-21-492T](#) (Washington, D.C.: Apr. 28, 2021); [GAO-20-625](#); and [GAO-19-75](#).

<sup>27</sup>To meet the needs of their citizens beyond what can be addressed with transfers of limited federal funds, state and local governments can levy traditional income, sales, property, fuel, use, and other taxes. Income taxes are generally not sufficient for low-income tribes, and property taxes are often not a viable option since reservation lands are commonly owned by a tribe itself or held in trust by the federal government. Eric C. Henson, Megan M. Hill, Miriam R. Jorgenson, and Joseph P. Kalt, *Policy Brief 4: Emerging Stronger than Before: Guidelines for the Federal Role in American Indian and Alaska Native Tribes' Recovery from the COVID-19 Pandemic*, Harvard Project on American Indian Economic Development and Native Nations Institute (July 24, 2020).

In June 2020, we reported on CARES Act appropriations for federal programs that serve tribes and their members.<sup>28</sup> The largest appropriations we identified were a \$453 million appropriation to BIA for Operation of Indian Programs (OIP) and an \$8 billion appropriation to Treasury for the CRF Tribal Set-Aside, which we discuss in further detail below.

- **BIA's OIP appropriation.** OIP is a preexisting appropriation account that receives annual appropriations and funds many of BIA's activities, including Aid to Tribal Government and Welfare Assistance. Aid to Tribal Government provides funds to tribes to support general tribal government operations and programs. Welfare Assistance provides funds to tribes or their members for adult care, emergency assistance, and burial assistance, among other things, when no comparable financial assistance or social services are available from other governmental sources. The CARES Act required that not less than \$400 million of the \$453 million the act appropriated for OIP be made available to meet the direct needs of tribes. This appropriation was available for obligation until the end of fiscal year 2021.
- **Treasury's CRF Tribal Set-Aside.** The CARES Act created the CRF as a new program with states, the District of Columbia, territories, and local and tribal governments as recipients. Treasury is responsible for implementing the CRF program, including making disbursements to eligible recipients and developing guidance about allowable uses of funds. The CARES Act required the Secretary of the Treasury to determine, in consultation with the Secretary of the Interior and tribes, the amount each tribal government would receive from the CRF Tribal Set-Aside based on tribal governments' (including tribally owned entities) increased expenditures relative to their aggregate expenditures in fiscal year 2019 and in such a manner the Secretary determines appropriate to ensure that all of the CRF Tribal Set-Aside was distributed.<sup>29</sup> The CARES Act also required Treasury to disburse the CRF no later than April 26, 2020—30 days after the CARES Act was enacted.

The CARES Act required CRF recipients to use the funds to cover only those costs that (1) are necessary expenditures incurred due to

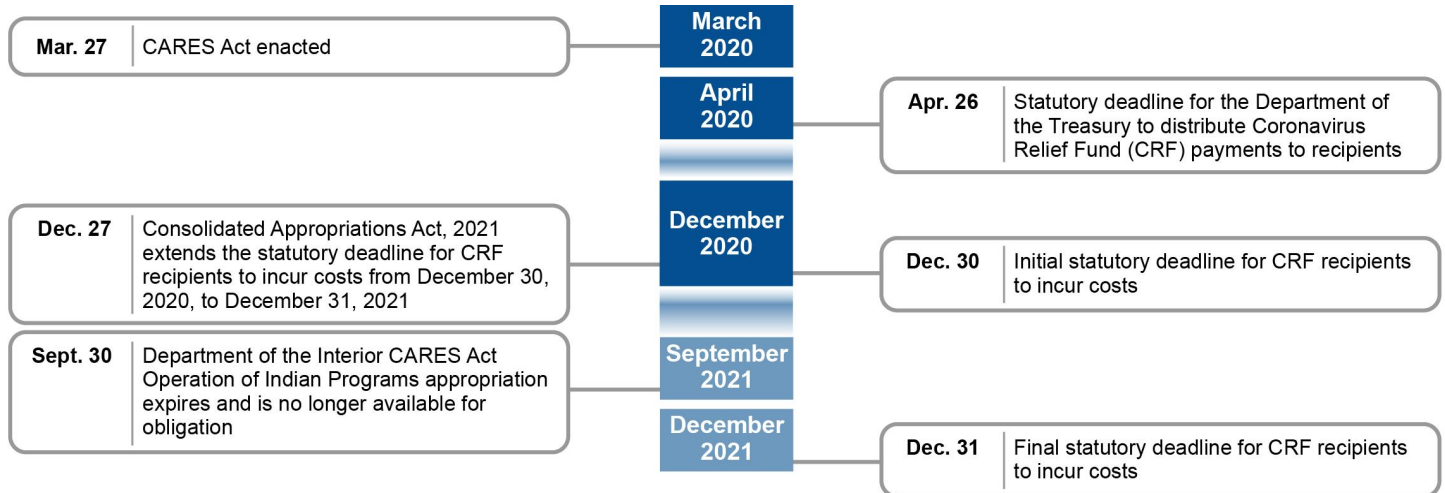
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<sup>28</sup>[GAO-20-625](#).

<sup>29</sup>In contrast, the CARES Act required Treasury to make CRF allocations to states, local governments, the District of Columbia, and territories based on population, with a minimum payment for states of \$1.25 billion.

the public health emergency of the COVID-19 pandemic; (2) were not accounted for in the budget that had been most recently approved as of March 27, 2020; and (3) were incurred between March 1, 2020, and December 30, 2020. However, on December 27, 2020, the Consolidated Appropriations Act, 2021 amended the CARES Act to extend the deadline for CRF recipients to incur costs by 1 year, to December 31, 2021 (see fig. 1).<sup>30</sup>

**Figure 1: Timeline for Department of the Interior’s CARES Act Operation of Indian Programs Appropriation and Department of the Treasury’s Coronavirus Relief Fund**



Source: GAO analysis of legislation. | GAO-22-104349

**Text of Figure 1: Timeline for Department of the Interior’s CARES Act Operation of Indian Programs Appropriation and Department of the Treasury’s Coronavirus Relief Fund**

- Mar. 27, 2020 - CARES Act enacted
- Apr. 26, 2020 - Statutory deadline for the Department of the Treasury to distribute Coronavirus Relief Fund (CRF) payments to recipients
- Dec. 27, 2020 - Consolidated Appropriations Act, 2021 extends the statutory deadline for CRF recipients to incur costs from December 30, 2020, to December 31, 2021
- Dec. 30, 2020 - Initial statutory deadline for CRF recipients to incur costs

<sup>30</sup>Pub. L. No. 116-260, div. N, tit. X, § 1001, 134 Stat. 1182, 2145 (2020).

- Sept. 30, 2021 - Department of the Interior CARES Act Operation of Indian Programs appropriation expires and is no longer available for obligation
- Dec. 31, 2021 - Final statutory deadline for CRF recipients to incur costs

Source: GAO analysis of legislation. | GAO-22-104349

The CARES Act requires Treasury's OIG to conduct monitoring and oversight of the receipt, disbursement, and use of the CRF.<sup>31</sup> If Treasury's OIG determines that a tribal government failed to comply with the statutory restrictions on uses of the CRF, the CARES Act requires that the amount of funds used in violation be considered a debt owed to the federal government.<sup>32</sup>

About a year after the CARES Act was enacted, the American Rescue Plan Act of 2021 (ARP Act) appropriated \$900 million for BIA for a variety of purposes, such as tribal housing improvement, tribal government services, and public safety, among others.<sup>33</sup> The ARP Act also appropriated \$20 billion for the Coronavirus State Fiscal Recovery Fund (CSFRF) Tribal Government Set-Aside to mitigate the fiscal effects stemming from the public health emergency with respect to COVID-19.<sup>34</sup> The ARP Act requires \$1 billion of the Tribal Government Set-Aside to be allocated equally among each tribal government and \$19 billion to be allocated as determined by the Secretary of the Treasury. Recipients can use payments from the CSFRF only for costs incurred by December 31,

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<sup>31</sup>Pub. L. No. 116-136, 134 Stat. at 503-504 (*codified at* 42 U.S.C. § 801(f)(1)).

<sup>32</sup>Pub. L. No. 116-136, 134 Stat. at 504 (*codified at* 42 U.S.C. § 801(f)(2)).

<sup>33</sup>Pub. L. No. 117-2, § 11002, 135 Stat. 4, 241-242. Specifically, the ARP Act appropriated \$100 million for tribal housing improvement; \$772.5 million for tribal government services, public safety and justice, social services, child welfare assistance, and other related expenses; \$7.5 million for related federal administrative costs and oversight; and \$20 million to provide and deliver potable water.

<sup>34</sup>Pub. L. No. 117-2, § 9901, 135 Stat. 4, 223-228 (*codified at* 42 U.S.C. § 802). The ARP Act appropriated \$219.8 billion for the CSFRF to make payments to states, territories, the District of Columbia, and tribal governments, and \$50 million for Treasury's costs of administering the fund.

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2024, for four specific purposes stemming from the fiscal effects of the COVID-19 pandemic.<sup>35</sup>

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## Tribes Had to Take Fewer Steps to Access and Use CARES Act Funds under Interior's Distribution Approach than Treasury's

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### Interior Distributed CARES Act Funds through Existing BIA Programs Based on Tribal Enrollment, and Most Tribes Could Access the Funds without Taking Additional Steps

On April 13, 2020, Interior announced it would disburse \$400 million of the \$453 million CARES Act OIP appropriation through two existing BIA programs—\$380 million through Aid to Tribal Government and \$20 million through Welfare Assistance. Interior announced this approach 17 days after enactment of the CARES Act and began making payments to tribes on the same day. According to Interior officials, Interior chose to distribute the majority of the appropriation as Aid to Tribal Government because such aid is a relatively flexible source of funding, and tribes could use it to address their varied COVID-19 response needs. Interior also announced it would hold an additional \$20 million of the \$453 million appropriation in temporary reserve to address unexpected surges in need.<sup>36</sup>

**Tribal consultation.** Interior officials we interviewed said they chose not to consult with tribes about Interior's administration of the CARES Act OIP appropriation, primarily because they wished to expedite the payments during the pandemic emergency. Interior officials further stated they were concerned that tribal leaders might confuse the OIP appropriation with Treasury's CRF Tribal Set-Aside if Interior were to consult tribes about

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<sup>35</sup>Specifically, payments from the fund can be used only to (1) respond to the public health emergency with respect to COVID-19 or its negative economic impacts; (2) provide premium pay to eligible workers performing essential work during the COVID-19 public health emergency; (3) provide government services to the extent of the reduction in revenue of such government due to the COVID-19 public health emergency relative to revenues collected in its most recent full fiscal year prior to the emergency; and (4) make necessary investments in water, sewer, or broadband infrastructure. *Id.* at § 9901.

<sup>36</sup>Interior's April 13, 2020, announcement stated BIA would direct the remaining \$33 million towards needs related to facility deep cleaning, quarantine of inmates, overtime costs, and IT investments to enhance telework capabilities and wifi connectivity.



the OIP appropriation. Interior officials led the joint tribal consultation with Treasury for the CRF Tribal Set-Aside, and they told us they considered tribal input from that consultation when determining how to allocate the OIP appropriation. According to Interior officials, several tribes raised concerns to Interior about its decision not to consult tribes about allocation of the CARES Act OIP appropriation, but other tribes appreciated how quickly Interior distributed payments from the appropriation. Representatives from selected tribal stakeholder organizations and officials from selected tribes we interviewed expressed mixed sentiments about Interior's decision; some had concerns that Interior did not consult tribes to learn about their needs and preferences, while others emphasized the need to disburse payments quickly.

**Allocation methodologies.** Interior officials told us the agency assembled a team of senior officials to develop simple, equitable allocation formulas that would allow Interior to quickly disburse payments to tribes. The team of senior officials considered several factors on which to base payments—including tribal enrollment, Tribal Priority Allocation base funding,<sup>37</sup> tribal land base, and economic status—and ultimately decided tribal enrollment was the most equitable and efficient factor because all tribes have an enrolled membership.<sup>38</sup> According to Interior officials, Interior used tribal enrollment data from HUD's IHBG data.<sup>39</sup> In the case of tribes that did not have enrollment data in HUD's IHBG listing,

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<sup>37</sup>Tribal Priority Allocation base funding is the amount of tribal priority allocation funds a tribe is entitled to receive on an annual basis, according to Interior officials. The original amounts of such funding are primarily based on a historical tribal shares process, and pro rata increases are applied to the base funding levels when additional funds are appropriated.

<sup>38</sup>Interior officials decided not to use the other factors considered to make allocations because not all tribes receive Tribal Priority Allocation base funding, not all tribes have a land base, and reliable data on economic status were not readily available, according to Interior officials.

<sup>39</sup>The IHBG data contain three types of population data: (1) U.S. Census data on the number of people who identify as AI/AN, a racial classification; (2) tribal enrollment data—which Interior used to allocate the CARES Act OIP appropriation; and (3) BIA's total resident service area (service area) population data. HUD uses these data to calculate the number of people who identify as AI/AN and live within the tribe's assigned formula area for IHBG (formula area population). Tribes that do not participate in IHBG do not have a formula area population. The IHBG program includes an annual process for tribes to challenge certain data used in the formula or appeal HUD formula determinations. According to Interior officials, IHBG data were the only updated centralized source of tribal enrollment data available at the time the CARES Act OIP funds were appropriated.

the BIA region serving those tribes provided the necessary enrollment information.<sup>40</sup>

Interior used the enrollment data to allocate the CARES Act OIP appropriation in the following ways:

- Interior allocated the \$380 million for Aid to Tribal Government by grouping tribes into 20 funding levels based on each tribe's enrollment numbers in the IHBG data. Tribes with the lowest enrollment received a minimum payment of \$61,000, and tribes with the highest enrollment received a maximum payment of \$4 million.
- To allocate the \$20 million in Welfare Assistance, Interior used enrollment data to determine pro rata payments to tribes, with a minimum payment of \$1,000.

For the \$20 million that Interior held in reserve for unexpected surges in need, Interior officials decided by July 2020 that needs were great across all of Indian country and used most of the reserve for payments to tribes. Specifically, Interior equally distributed about \$18 million among BIA's 12 regional offices and directed these offices to work with the tribes in their regions to determine how to allocate the reserve funds. The regions varied in their allocation approaches, such as pro rata or equal payments among the tribes in the region, and payments targeted to selected tribes based on emergency need. Most of the remaining portion—about \$1.7 million—was used to raise the minimum Aid to Tribal Government payment to tribes from \$61,000 to \$100,000.

**Steps for tribes to access relief.** Under Interior's approach to distributing the CARES Act OIP appropriation, tribes that had a self-determination contract or self-governance compact that already included Aid to Tribal Government and Welfare Assistance could receive these funds without having to take additional steps. When Interior began administering the CARES Act OIP appropriation, most tribes (553 of 574)

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<sup>40</sup>According to Interior officials, some BIA regional offices had tribal enrollment data readily available for tribes within their region, but those that did not contacted tribal enrollment offices to obtain the data. Interior then verified the enrollment data by reviewing the data for obvious errors (such as zero members) and conducted outreach to tribes as needed.

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had such a self-determination contract or self-governance compact, and 21 did not, according to Interior officials.<sup>41</sup>

Tribes that received disbursements through a self-determination contract or self-governance compact could then choose to reprogram the funds from Aid to Tribal Government and/or Welfare Assistance to another Tribal Priority Allocation account, so long as the funds were used solely to prepare for, prevent, and respond to COVID-19.<sup>42</sup> Tribes seeking to reprogram OIP payments had to take additional administrative steps to complete the process, which led to a delay of up to 2 days in accessing the payment, according to Interior officials.

Twenty-one tribes had existing contracts or compacts that did not include Aid to Tribal Government or Welfare Assistance and thus had two options for receiving disbursements from the CARES Act OIP appropriation, according to Interior officials: (1) receive their allocation of the CARES Act OIP appropriation as direct services from their BIA office or (2) modify or amend their existing contract or compact to include Aid to Tribal Government or Welfare Assistance to access their allocations of the appropriation. Interior officials told us that of the 21 tribes, 10 chose to receive their Welfare Assistance CARES Act OIP allocation as direct services from their BIA office, and the remaining 11 chose to modify or amend their existing contracts.

Tribes that amended or modified their existing contract or compact had to pass a tribal resolution to adopt the new agreement and then submit required paperwork to Interior before receiving payments from their CARES Act OIP allocation. According to Interior officials, the length of time it took for Interior to process the required paperwork ranged from 1 day to 4 months for some remote tribes in Alaska. Interior officials told us they used administrative flexibilities, such as allowing electronic signatures on documents, to speed up the process and adapt to the

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<sup>41</sup>If a tribe does not have a self-determination contract or self-governance compact that includes Aid to Tribal Government or Welfare Assistance, BIA provides those programs' services to the tribe or its members as a direct service.

<sup>42</sup>There are 25 Tribal Priority Allocation programs within eight categories: 1) Tribal Government, 2) Human Services, 3) Trust – Natural Resources Management, 4) Trust – Real Estate Services, 5) Public Safety and Justice, 6) Community and Economic Development, 7) Executive Direction and Administrative Services, and 8) Bureau of Indian Education. According to Interior officials, a tribe might choose to reprogram CARES Act OIP payments if the tribe received a small payment for a program that the tribe did not already operate and determined it would be more efficient to reprogram the funds to an existing tribal program.

reality that many tribal governments were shut down because of the pandemic.

**Appropriation availability, allowable uses, and reporting.** The CARES Act OIP appropriation was available for Interior to obligate until September 30, 2021. For most tribes, Interior obligated the appropriation by including a tribe's allocation in a self-determination contract or self-governance compact. Once obligated in a contract or compact, the funds are available to the tribe until expended and must be used to prevent, prepare for, or respond to coronavirus. For direct service tribes, their allocation was held at BIA regional offices and obligated when tribes submitted claims for eligible costs incurred to prevent, prepare for, or respond to coronavirus. Interior officials said they allocated a total of \$417 million of the \$453 million CARES Act OIP appropriation to tribes.<sup>43</sup> As of July 20, 2021, Interior officials said they had obligated \$415.3 million to tribes and expended \$403.8 million—\$382.3 million expended through Aid to Tribal Government and \$21.5 million through Welfare Assistance.

In July 2020, Interior issued guidance through a Frequently Asked Questions (FAQ) document that stated its standard reporting requirements for tribes with self-determination contracts and self-governance compacts also applied to CARES Act OIP disbursements through those agreements. However, the agency provided waivers for some Welfare Assistance regulatory reporting requirements. Interior officials told us they also extended the deadline for tribal recipients for

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<sup>43</sup>According to Interior documentation, the remaining funds were allocated for facility deep cleaning, quarantine of inmates, overtime costs, and IT investments to enhance telework capabilities and wifi connectivity.

which they had oversight to submit statutorily required audits,<sup>44</sup> in accordance with OMB guidance. Interior directed tribes to identify expenditures from the CARES Act OIP appropriation payments separately in their standard reports, to illustrate the segregation of these expenditures from expenditures of annual appropriation OIP payments. Interior's July 2020 FAQs also responded to specific questions from tribes about allowable expenditures from the CARES Act OIP appropriation.<sup>45</sup>

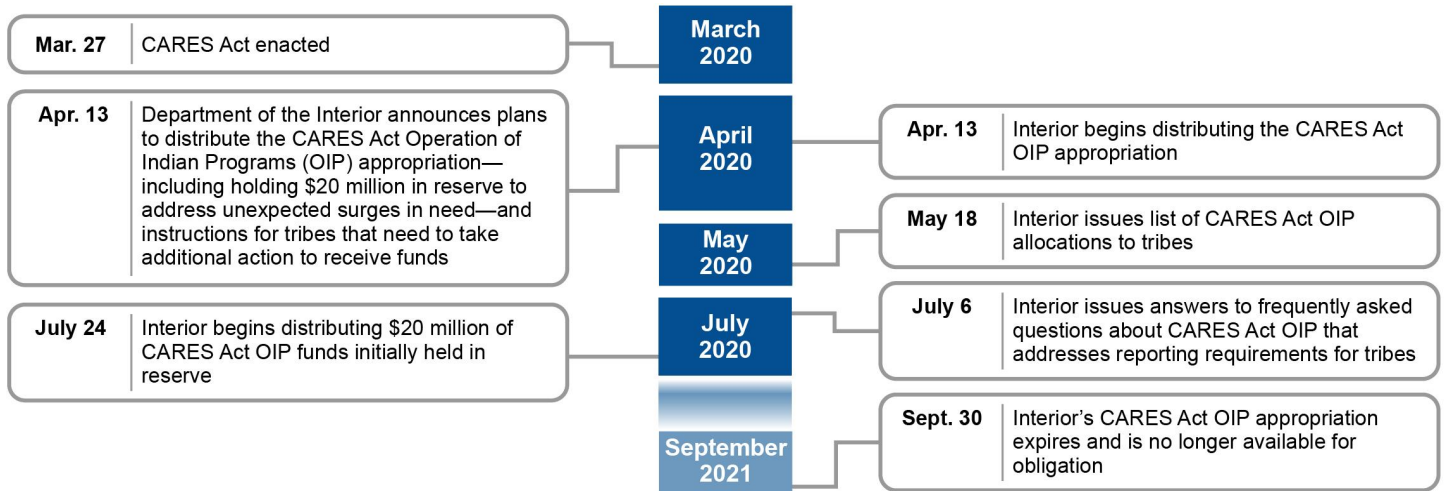
Figure 2 shows the timeline of Interior's administration of the CARES Act OIP appropriation, including Interior's disbursement of funds and guidance to tribes.

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<sup>44</sup>Under the Single Audit Act, entities that receive federal financial assistance and expend \$750,000 or more in federal awards in a fiscal year are required to undergo a single audit, which is an audit of the entity's financial statements and federal awards, or a program-specific audit, for the fiscal year. 31 U.S.C. § 7502(a); 2 C.F.R. § 200.501. OMB issued guidance that identified temporary exceptions to grant management requirements federal agencies could make available to their grantees, as the agencies deemed appropriate and to the extent permitted by law. Office of Management and Budget, *Memorandum on Administrative Relief for Recipients and Applicants of Federal Financial Assistance Directly Impacted by the Novel Coronavirus (COVID-19) due to Loss of Operations*, M-20-17 (Mar. 19, 2020). The guidance said agencies with oversight for single audits should allow recipients with fiscal year-ends through June 30, 2020, to have an additional 6 months to file their single audit submissions. Subsequent OMB guidance said agencies with oversight for single audits should allow recipients with fiscal year-ends from July 31, 2020, through September 30, 2020, to have an additional 3 months to file their single audit. For more information on federal agencies' use of these exceptions, see GAO, *Grants Management: OMB Should Collect and Share Lessons Learned from Use of COVID-19-Related Grant Flexibilities*, [GAO-21-318](#) (Washington, D.C.: Mar. 31, 2021).

<sup>45</sup>As of August 2, 2021, the FAQs Interior issued in July 2020 were still in effect.

**Figure 2: Timeline of Department of the Interior’s Administration of CARES Act Operation of Indian Programs Appropriation**



Source: GAO analysis of legislation and Interior documents. | GAO-22-104349

**Text of Figure 2: Timeline of Department of the Interior’s Administration of CARES Act Operation of Indian Programs Appropriation**

- Mar. 27, 2020 - CARES Act enacted
- Apr. 13, 2020 - Department of the Interior announces plans to distribute the CARES Act Operation of Indian Programs (OIP) appropriation—including holding \$20 million in reserve to address unexpected surges in need—and instructions for tribes that need to take additional action to receive funds
- Apr. 13, 2020 - Interior begins distributing the CARES Act OIP appropriation
- May 18, 2020 - Interior issues list of CARES Act OIP allocations to tribes
- July 6, 2020 - Interior issues answers to frequently asked questions about CARES Act OIP that addresses reporting requirements for tribes
- July 24, 2020 - Interior begins distributing \$20 million of CARES Act OIP funds initially held in reserve
- Sept. 30, 2020 - Interior’s CARES Act OIP appropriation expires and is no longer available for obligation

Source: GAO analysis of legislation and Interior documents. | GAO-22-104349

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## Treasury Distributed the CRF Tribal Set-Aside Using Multiple Allocation Methodologies, and Tribes Had to Submit Additional Data to Access the Funds

The CARES Act required the Secretary of the Treasury to determine, in consultation with the Secretary of the Interior and tribes, the amount to be paid from the CRF Tribal Set-Aside to each tribal government, based on increased expenditures of tribal governments or tribally owned entities relative to aggregate fiscal year 2019 expenditures and in such a manner the Secretary determines appropriate to ensure that all of the CRF Tribal Set-Aside was distributed. In contrast to Interior, Treasury did not have a preexisting program structure or mechanisms for disbursing funds to tribes. As a result, Treasury had to develop an allocation methodology and disbursement mechanism before it could disburse any payments from the CRF Tribal Set-Aside.

**Tribal consultation.** In early April 2020, Interior and Treasury conducted two joint national tribal consultation sessions by phone to obtain input from tribal leaders on the allocation methodology for the CRF Tribal Set-Aside. Treasury officials told us that Interior's Office of the Assistant Secretary – Indian Affairs was the lead on the consultation and that Treasury had limited involvement in planning or preparing the consultation agenda. According to Interior's summary of the consultation, the agencies received approximately 440 written comments from tribal leaders covering a wide range of topics, in addition to comments made during the telephone consultation sessions. Tribal leaders discussed the advantages and disadvantages of various factors they identified for potential use in the CRF Tribal Set-Aside allocation methodology. Such factors included population, land base, demonstrated impact from the pandemic, geographic location and associated costs of living, tribal employees, and tribal expenditures. Many tribal leaders also discussed the need for flexibility in allowable uses of CRF Tribal Set-Aside payments so that each tribe could address its unique circumstances in response to the COVID-19 emergency, according to Interior's summary.

Interior officials told us that after the consultation sessions, Interior and Treasury discussed the factors tribes identified and decided that, in the absence of existing quality federal data on these factors, the agencies would solicit additional data from tribes. Treasury's initial data request directed tribes to use a web portal to submit data on enrollment, land base, persons employed by the tribe, and tribal expenditures to inform its allocation methodology. Treasury also solicited bank account details and

other information as part of the first data request, to facilitate payments to tribes. Tribes were to certify the accuracy of the data they submitted; these data were due 4 days after Treasury launched the web portal. Interior's regional BIA officials reached out to tribes about submitting the requested data to Treasury, according to Interior officials.<sup>46</sup> After the initial consultation sessions about potential allocation factors, Interior and Treasury did not conduct further consultation with tribes about the data Treasury planned to use in its allocation methodologies.

**Allocation methodologies.** On May 5, 2020, Interior and Treasury announced the agencies' plan for Treasury to disburse the \$8 billion CRF Tribal Set-Aside in two tranches—60 percent in the first tranche based on IHBG formula area population data, with a minimum payment of \$100,000, and 40 percent in the second tranche, based on employment and expenditures data for tribes and tribally owned entities. According to Treasury, tribal population was expected to correlate with the amount of tribal governments' increased expenditures related directly to the public health emergency. The agencies announced this approach the same day that Treasury began making the first tranche of payments to tribes—9 days after the statutory deadline of April 26, 2020, for making payments from the CRF.<sup>47</sup>

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<sup>46</sup>In April 2020, Treasury provided Interior with tribal data so the BIA could confirm that tribes had submitted the required information to receive CRF Tribal Set-Aside payments from Treasury. In October 2020, Interior OIG found that some BIA regional officials shared these tribal data, including financial details on tribal expenditures, the number of tribal members, and the names and email addresses of tribal points of contact, to officers of tribes outside the federal government. Interior OIG found that the BIA regional officials' actions were inconsistent with Interior guidance, but found no evidence suggesting that Interior or Treasury employees intentionally released the confidential tribal information. Interior OIG made a recommendation to help Interior ensure proper identification and handling of potentially confidential tribal information and prevent future improper disclosures of this information. See U.S. Department of the Interior, Office of Inspector General, *Management Advisory – Recommendation for Identifying, Protecting, and Ensuring Proper Handling of Tribal Data and Information*, Case Number 20-0463 (Washington, D.C.: October 2020).

<sup>47</sup>On April 30, 2020, several tribes sued the Secretary of the Treasury over the delay in CRF Tribal Set-Aside payments. *Agua Caliente Band of Cahuilla Indians v. Mnuchin*, No. 20-cv-01136 (D.D.C.). On May 11, 2020—6 days after Treasury began disbursing the Tribal Set-Aside—the federal district judge declined to issue an order directing the Secretary to immediately disburse the entire CRF Tribal Set-Aside. On June 12, 2020, Treasury began distributing the remaining CRF Tribal Set-Aside but withheld \$679 million because of the potential for an adverse decision in another lawsuit over the CRF Tribal Set-Aside. On June 15, 2020, the judge ordered Treasury to disburse the \$679 million no later than June 17, 2020. Treasury began disbursing the \$679 million by the deadline.



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### First Tranche of the CRF Tribal Set-Aside

To allocate the first tranche based on population, Treasury used a federal data source—HUD’s IHBG formula area population data—instead of the tribal enrollment data it received from tribes.<sup>48</sup> In documents and interviews, Treasury officials stated three primary reasons for this decision:

- **A federal data source could provide for more uniform measurement across tribes and faster disbursement of funds.** Treasury officials believed that tribal enrollment data did not provide a consistent measurement of need across tribes because tribes have different requirements for enrollment.<sup>49</sup> Additionally, Treasury officials encountered problems with the data submitted by tribes, such as incomplete or duplicated submissions. According to Treasury officials, senior Interior and Treasury officials agreed that using population data from an existing federal formula would provide more uniform measurement and allow Treasury to disburse some of the CRF Tribal Set-Aside more quickly while Treasury developed a formula to allocate the remainder.
- **The CRF would be used to address local health care needs.** Treasury determined that tribal enrollment—including enrollment data from the IHBG program that Interior used to allocate the OIP appropriation—was not the most appropriate basis for CRF Tribal Set-Aside payments because tribal enrollment does not distinguish

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<sup>48</sup>As discussed previously, the IHBG data contain three types of population data: (1) U.S. Census data on the number of people who identify as AI/AN, a racial classification; (2) tribal enrollment data, which Interior used to allocate the CARES Act OIP appropriation; and (3) BIA’s total resident service area (service area) population data. HUD uses these data to calculate the number of people who identify as AI/AN and live within the tribe’s assigned formula area for IHBG (formula area population).

<sup>49</sup>Tribes have inherent authority to determine requirements for membership in the tribe; however, some tribes’ enrollment is subject to requirements in federal law or treaty. See *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 72 (1978) (“a tribe’s right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community”); *Smith v. Babbitt*, 875 F. Supp. 1353, 1361 (D. Minn. 1995), *judgment aff’d, appeal dismissed in part*, 100 F.3d 556 (8<sup>th</sup> Cir. 1996) (“a sovereign tribe’s ability to determine its own membership lies at the very core of tribal self-determination; indeed, there is perhaps no greater intrusion upon tribal sovereignty than for a federal court to interfere with a sovereign tribes’ membership determinations”); *Martinez v. Southern Ute Tribe*, 249 F.2d 915, 920 (10<sup>th</sup> Cir. 1957) (“[t]he Courts have consistently recognized that in the absence of express legislation by Congress to the contrary, a tribe has complete authority to determine all questions of its own membership as a political entity”). Consequently, enrollment requirements vary from tribe to tribe.

members living within the tribe's jurisdiction from those living outside that area. Treasury officials told us that this distinction of geographic location was relevant because they believed the CRF would primarily be used to address local health care needs resulting from the pandemic.<sup>50</sup> According to Treasury, IHBG formula area population data—which reflects the AI/AN population associated with a specific geographic area assigned to each tribe, known as a formula area—corresponded broadly with the population of the area of a tribal government's jurisdiction and where tribes provide services. Treasury also noted that IHBG formula area population data included adjustments to address overlapping formula areas.<sup>51</sup> Treasury reasoned that the IHBG formula area population data could serve as a proxy for increased expenditures for tribes' health care needs. However, a year after it distributed the first tranche, Treasury acknowledged that, in certain instances, IHBG formula area population data may prove insufficient in estimating a tribal government's increased expenditures. For example, the IHBG formula area population data would not reflect increased expenditures for tribes that provide COVID-related assistance to enrolled members living outside of the tribe's jurisdiction or for tribes that do not have a formula area and therefore have a formula area population of zero.<sup>52</sup>

- **HUD's IHBG program allows tribes to review and challenge IHBG data.** Treasury stated that tribal governments were familiar with the IHBG data and had already been provided the opportunity to scrutinize and challenge the accuracy of these data. Specifically, HUD's IHBG program includes a process for tribes to challenge certain data used in the formula or appeal HUD formula determinations. However, because the IHBG formula area population data are one component of a formula with several factors designed so

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<sup>50</sup>Tribes may still provide enrolled tribal members with services or benefits if those members do not reside on or near land under their tribes' jurisdiction. These tribes' total population served would be undercounted in a formula focused on local health care needs.

<sup>51</sup>According to Treasury officials, one advantage to using the IHBG formula area population was that it accounted for overlapping formula areas in Alaska, which helped Treasury avoid double-counting populations across Alaska Native villages—which are federally recognized tribes—and regional and village Alaska Native Corporations—which are for-profit corporations established pursuant to the Alaska Native Claims Settlement Act as vehicles for distributing the settlement's land and monetary benefits to Alaska Natives.

<sup>52</sup>Tribes do not have a formula area if they do not have a reservation or other geographic area over which they are responsible for the provision of services.

that tribes receive an equitable share of the appropriation for development and operation of low-income housing, tribes would have reviewed the data in that context and not for the purpose of allocating CRF Tribal Set-Aside payments. Additionally, the IHBG data did not contain formula area population data for some tribes because they do not participate in the IHBG program. HUD provided population figures for these tribes at Treasury's request. Treasury did not provide tribes an opportunity to challenge the IHBG formula area population data for the purposes of allocating the CRF Tribal Set-Aside. In June and July 2020, three tribes sued Treasury over its use of IHBG formula area population data to make CRF Tribal Set-Aside allocations.<sup>53</sup>

### Second Tranche of the CRF Tribal Set-Aside

On May 14, 2020, Treasury issued guidance to tribes to complete a second data request for the allocation of the remaining 40 percent of the CRF Tribal Set-Aside. The second data request sought more detailed information on tribal employment and expenditures along with supporting documentation. It also specified the sources from which tribes were to compile the data. Treasury officials continued a process they used for the first data request, in which Treasury officials monitored whether tribes were able to file their submissions and, in conjunction with Interior and a tribal stakeholder organization, conducted outreach to ensure all tribes

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<sup>53</sup>In June and July 2020, three lawsuits were filed in federal district court in Washington, D.C. (*Prairie Band of Potawatomi Nation v. Mnuchin*), Oklahoma (*Shawnee Tribe v. Mnuchin*), and Florida (*Miccosukee Tribe of Indians of Florida v. Mnuchin*) challenging Treasury's use of the IHBG formula area population data to make CRF Tribal Set-Aside allocations as arbitrary and capricious. In June 2020, in the *Prairie Band of Potawatomi Nation* case, the federal district judge declined to enjoin Secretary of the Treasury from disbursing the remaining 40 percent of the CRF Tribal Set-Aside. *Prairie Band of Potawatomi Nation v. Mnuchin*, No. 20-cv-01491 (D.D.C. June 11, 2020). The tribe appealed the decision but the appeals court dismissed the case at the tribe's request in July 2020. *Prairie Band of Potawatomi Nation v. Mnuchin*, No. 20-5171, 2020 WL 4931697 (D.C. Cir. July 16, 2020). In September 2020, the *Miccosukee Tribe* case was transferred to the federal district court in Washington, D.C. *Miccosukee Tribe of Indians of Florida*, No. 20-cv-02792 (D.D.C.). The *Shawnee Tribe* lawsuit was also transferred to the federal district court in Washington, D.C., which ruled in September 2020 that Treasury's allocation determination was not subject to judicial review. *Shawnee Tribe v. Mnuchin*, No. 20-cv-1999, 2020 WL 5440552 (D.D.C. Sept. 10, 2020). However, in January 2021, the appeals court ruled that federal courts could review Treasury's allocation methodology and remanded the case to the district court to do so. *Shawnee Tribe v. Mnuchin*, 984 F.3d 94 (D.C. Cir. 2021). In 2021, the Prairie Band of Potawatomi Nation filed a new lawsuit challenging Treasury's use of the IHBG formula area population data. *Prairie Band of Potawatomi Nation v. Yellen*, No. 21-cv-00012 (D.D.C. Jan. 4, 2021). The federal district judge consolidated all three lawsuits into one, which, as of October 19, 2021, was still pending before the district court. *Shawnee Tribe v. Mnuchin*, No. 20-cv-1999 (D.D.C.).

had the ability to submit data if they chose to.<sup>54</sup> Treasury subsequently extended the deadline twice, with a final deadline of June 6, 2020.

On June 12, 2020, Treasury announced the allocation methodology for the remaining 40 percent (the second tranche) of the CRF Tribal Set-Aside—30 percent based on the employment data of tribes and tribally owned entities, and 10 percent based on total tribal government expenditures for the 2019 fiscal year. Treasury began disbursing payments for this second tranche on the same day as the announcement.

**Steps for tribes to access relief.** Tribes had to take several administrative steps to access CRF Tribal Set-Aside payments. Specifically, for both tranches of funding, tribes had to collect and submit a variety of data and supporting documentation through Treasury's web portal in relatively short periods of time to meet Treasury's deadlines. Treasury officials said the deadlines were intended to help the agency meet its goals of (1) getting funds out expeditiously and (2) maximizing tribal participation.<sup>55</sup>

Treasury decided that tribes that had not met Treasury's deadline for its first data request would not be eligible to receive a CRF Tribal Set-Aside payment for either tranche. As a result, eight of 574 tribes did not receive any payments from the CRF Tribal Set-Aside, according to Treasury officials. In addition, 15 of 574 tribes received a payment from the first tranche but did not receive a payment from the second tranche because they did not complete data submissions for the second tranche or withdrew their submissions. According to Treasury officials, two tribes

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<sup>54</sup>For example, Treasury officials told us that their CARES Act team operated two email boxes for coordinating with tribal governments on the CRF Tribal Set-Aside and, for the second data request, assigned each tribe a case manager who reached out through emails, phone calls, and text messages to make sure tribes' data submissions were complete. Treasury officials told us they continued to work with tribes to address missing or incomplete documentation beyond the extended deadlines for the second data request, and on June 10, 2020, Treasury decided to stop accepting additional submissions.

<sup>55</sup>According to Treasury officials, these goals were in tension with each other. Specifically, Treasury needed to have complete allocation factor information for all participating tribes so that it could calculate each tribe's individual share of the tranche. These officials said that Treasury needed to establish a deadline for data submissions so that they could start making payments as soon as possible. Treasury officials said that the agency decided to distribute two tranches so that they could get at least a portion of the funds out to recipients more quickly. As noted previously, to maximize tribal participation, Treasury extended its data submission deadlines and conducted direct outreach to tribes that had not responded.

informed Treasury that they did not wish to apply for the CRF Tribal Set-Aside and did not offer the reason, and Treasury officials did not ask these tribes or the other tribes why they did not file data submissions. One tribal official told us that her tribe did not submit data to apply for the second tranche because of confusion about the information required.

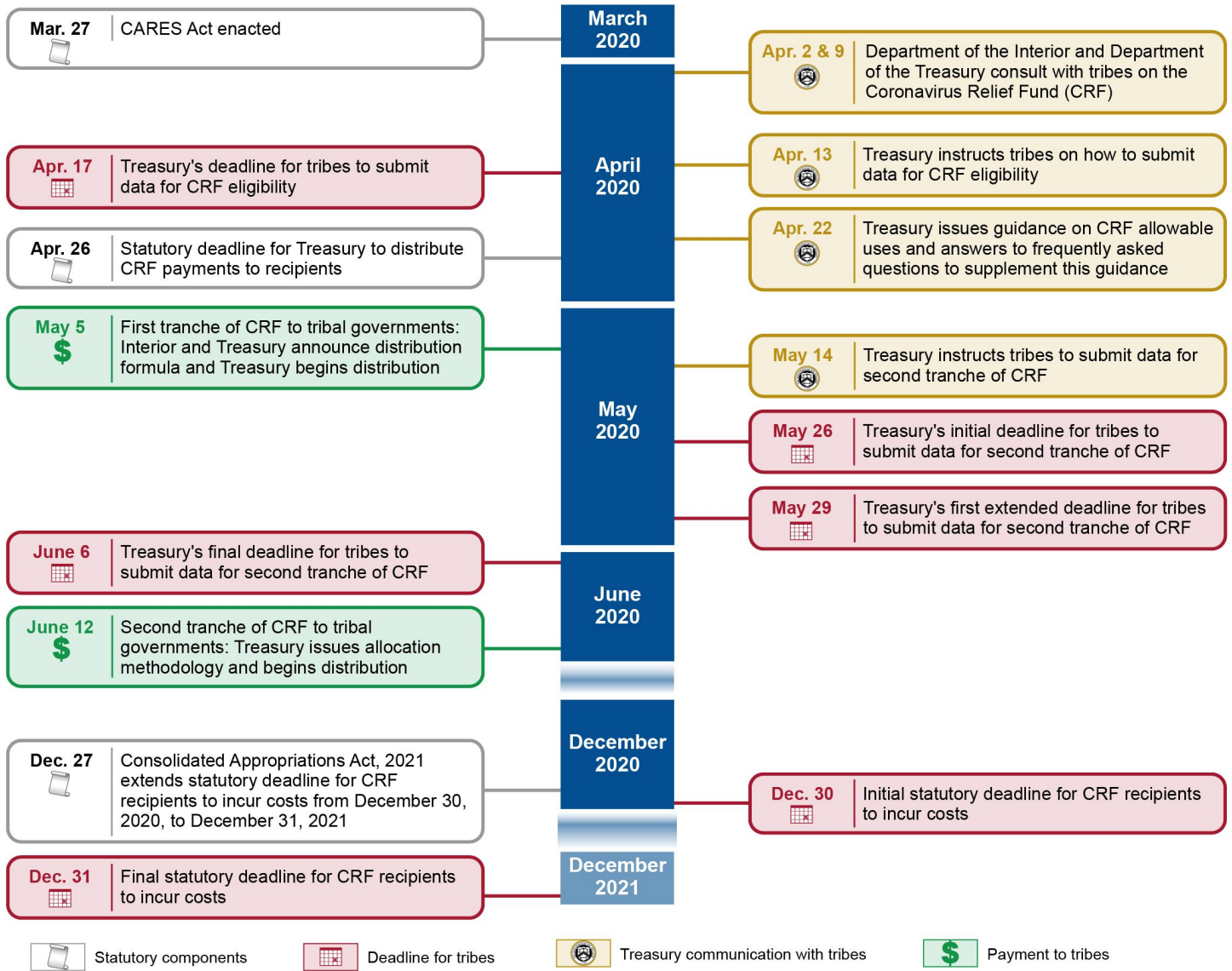
**Requirements for disbursement deadlines, allowable uses, and reporting.** The CARES Act required Treasury to disburse the CRF no later than April 26, 2020, and specified that states, territories, and local and tribal governments could use CRF disbursements for certain costs incurred between March 1, 2020, and December 30, 2020.<sup>56</sup> Treasury met the statutory deadline as to states, the District of Columbia, territories, and eligible units of local governments, but completed most of its CRF Tribal Set-Aside disbursements to tribes by June 17, 2020—more than 7 weeks after the CARES Act deadline to do so.<sup>57</sup> Treasury officials told us that a number of factors contributed to the agency’s delay in distributing payments, including the work necessary to interpret the statute and develop distribution formulas. Treasury officials further stated that the agency had challenges contacting certain tribes and obtaining complete data submissions, and Treasury ultimately extended its deadlines for data submissions to facilitate disbursement of payments to as many tribes as possible. Figure 3 shows the timeline of Treasury’s administration of the CRF Tribal Set-Aside, including Treasury’s communication with tribes, deadlines for tribes to submit data, and payments to tribes.

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<sup>56</sup>On December 27, 2020, the Consolidated Appropriations Act, 2021 amended the CARES Act to extend the deadline for CRF recipients to incur costs by 1 year, to December 31, 2021.

<sup>57</sup>[GAO-20-625](#). As mentioned above, a federal district court judge ordered Treasury to distribute most of the CRF Tribal Set-Aide by June 17, 2020. *Agua Caliente Band of Cahuilla Indians v. Mnuchin*, No. 20-cv-01136 (D.D.C. June 15, 2020). As explained below, Treasury did not distribute allocations to regional and village Alaska Native Claims Settlement Act corporations and certain other amounts.

**Figure 3: Timeline of Department of the Treasury’s Administration of the Coronavirus Relief Fund Tribal Set-Aside**



Source: GAO analysis of legislation and Treasury documents. | GAO-22-104349

**Text of Figure 3: Timeline of Department of the Treasury’s Administration of the Coronavirus Relief Fund Tribal Set-Aside**

- Mar. 27, 2020 - CARES Act enacted
- Apr. 2 & 9, 2020 - Department of the Interior and Department of the Treasury consult with tribes on the Coronavirus Relief Fund (CRF)

- Apr. 13, 2020 - Treasury instructs tribes on how to submit data for CRF eligibility
- Apr. 17, 2020 - Treasury's deadline for tribes to submit data for CRF eligibility
- Apr. 22, 2020 - Treasury issues guidance on CRF allowable uses and answers to frequently asked questions to supplement this guidance
- Apr. 26, 2020 - Statutory deadline for Treasury to distribute CRF payments to recipients
- May 5, 2020 - First tranche of CRF to tribal governments: Interior and Treasury announce distribution formula and Treasury begins distribution
- May 14, 2020 - Treasury instructs tribes to submit data for second tranche of CRF
- May 26, 2020 - Treasury's initial deadline for tribes to submit data for second tranche of CRF
- May 29, 2020 - Treasury's first extended deadline for tribes to submit data for second tranche of CRF
- June 6, 2020 - Treasury's final deadline for tribes to submit data for second tranche of CRF
- June 12, 2020 - Second tranche of CRF to tribal governments: Treasury issues allocation methodology and begins distribution
- Dec. 27, 2020 - Consolidated Appropriations Act, 2021 extends statutory deadline for CRF recipients to incur costs from December 30, 2020, to December 31, 2021
- Dec. 30, 2020 - Initial statutory deadline for CRF recipients to incur costs
- Dec. 31, 2021 - Final statutory deadline for CRF recipients to incur costs

Source: GAO analysis of legislation and Treasury documents. | GAO-22-104349

Treasury's initial disbursements from the CRF Tribal Set-Aside did not include the portion—approximately \$500 million of the \$8 billion appropriation—that Treasury allocated to Alaska Native regional and

village corporations (ANCs).<sup>58</sup> Treasury, in consultation with Interior's Office of the Solicitor, interpreted the definition of Indian tribes used in the CARES Act as including ANCs, making them eligible to receive payments from the CRF Tribal Set-Aside. However, several tribes sued Treasury over this interpretation, and the federal courts enjoined Treasury from disbursing the allocation to ANCs while the lawsuit was pending.<sup>59</sup> On June 25, 2021, the U.S. Supreme Court ruled that ANCs are Indian tribes under the Indian Self-Determination and Education Assistance Act and thus are eligible for disbursements from the CRF Tribal Set-Aside.<sup>60</sup> Treasury began making payments to ANCs on August 6, 2021.

In using the CRF payments, tribes were to follow Treasury guidance, which changed over time, sometimes without those changes being clearly communicated to tribes. In April 2020, Treasury issued its initial guidance to CRF recipients on the agency's interpretation of the CARES Act provision on use of CRF payments, as well as a FAQ document, but updated these documents several times into fall 2020.<sup>61</sup> In particular, Treasury updated its CRF guidance on such allowable uses twice (in June and September), and updated its FAQs seven times between May and October. According to Treasury officials, these updates were in response to recipient requests for clarity and refinement.

As we previously reported, for several months Treasury disseminated the updated materials to CRF recipients primarily by posting information on its website without clearly communicating to recipients that the

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<sup>58</sup>ANCs are for-profit corporations established pursuant to the Alaska Native Claims Settlement Act as vehicles for distributing the settlement's land and monetary benefits to Alaska Natives. For more information about ANCs, see GAO, *Regional Alaska Native Corporations: Status 40 Years after Establishment, and Future Considerations*, [GAO-13-121](#) (Washington, D.C.: Dec. 13, 2012). In April 2021, Treasury reduced the allocation to ANCs to approximately \$450 million because of court decisions recognizing that the agency's decision to use the HUD IHBG formula area population data for the allocation to tribes had the potential to undercount the number of people tribes are serving.

<sup>59</sup>*Confederated Tribes of the Chehalis Reservation v. Mnuchin*, No. 20-cv-1002 (D.D.C.) April 27, 2020); *Confederated Tribes of the Chehalis Reservation v. Mnuchin*, No. 20-5204 (D.C. Cir. Sept. 14, 2020).

<sup>60</sup>*Yellen v. Confederated Tribes of the Chehalis Reservation*, 594 U.S. \_\_ (2021).

<sup>61</sup>The CARES Act specified that the CRF could only be used for four purposes, while the CARES Act OIP could be used for any activity to prevent, prepare for, and respond to the coronavirus. Treasury's guidance included the agency's interpretation of the four purposes specified in the statute.



information had been updated.<sup>62</sup> For example, Treasury initially did not alert individual CRF recipients when it updated its guidance, and it did not identify which information was new or revised in the updated materials posted to the Treasury website. These updates included a May 4, 2020, FAQ update that stated CRF recipients should conduct needs determinations for financial assistance payments to individuals and a June 30, 2020, update clarifying the period in which costs must be incurred by CRF recipients to be eligible. On August 10, 2020, Treasury for the first time directly notified CRF recipients about its newly updated FAQs and clearly identified which information in the guidance was new.<sup>63</sup> Treasury continued to identify the new information for the three remaining updates to its guidance materials.

### Treasury OIG Oversight of CRF Use

As previously discussed, the CARES Act required Treasury's OIG to conduct monitoring and oversight of the receipt, disbursement, and uses of CRF payments. Treasury's OIG provided guidance to CRF recipients on reporting deadlines, reporting processes, and record retention requirements. It also conducted outreach and oversaw CRF recipient reporting.

- **Provided reporting guidance.** In July 2020, Treasury's OIG outlined its reporting and record retention requirements for CRF recipients through two memoranda, including the CRF reporting process and schedule.<sup>64</sup> The OIG directed CRF recipients to provide an interim report by July 17, 2020, and, starting in September 2020, to submit

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<sup>62</sup>GAO, *COVID-19: Federal Efforts Could Be Strengthened by Timely and Concerted Actions*, [GAO-20-701](#) (Washington, D.C.: Sept. 21, 2020).

<sup>63</sup>As discussed in [GAO-20-701](#), Treasury began notifying CRF recipients of its guidance updates after a meeting with GAO officials in which Treasury's lack of communication was discussed.

<sup>64</sup>Treasury OIG's memoranda explained that the reporting and record retention requirements it established are essential for the exercise of its responsibility to monitor and oversee the receipt, disbursement, and use of CRF payments and to recover funds in the event that it is determined a recipient failed to comply with the requirements of 42 U.S.C. § 801(d).

detailed quarterly reports through a GrantSolutions portal.<sup>65</sup> On August 31, 2020, the OIG issued guidance for CRF quarterly GrantSolutions report submissions and the OIG’s monitoring and review procedures.<sup>66</sup> In August 2020, Treasury’s OIG also issued an FAQ document that indicated CRF recipients could apply for a reporting extension and that Treasury OIG would assess the requests on a case-by-case basis. The OIG subsequently updated the reporting FAQs three times between September 2020 and March 2021, in response to CRF recipients’ questions and to reflect updated Treasury guidance.<sup>67</sup> These FAQs were separate from the FAQs Treasury developed regarding allowable uses of the CRF.

- **Conducted outreach to tribal recipients.** Treasury OIG officials told us they addressed several questions from tribal governments and organizations about the use and reporting of CRF payments.<sup>68</sup> In addition, they partnered with a tribal organization—the Native American Finance Officers Association (NAFOA)—to present a webinar to tribes about CRF reporting requirements. To encourage timely submissions, Treasury OIG sent email reminders to all CRF recipients 5 days before each quarterly reporting deadline, and another email reminder 1 day before the deadline, according to Treasury OIG officials. Although reporting extensions are available to CRF recipients, Treasury OIG officials told us they did not publicize the option to request an extension, aside from a response in Treasury OIG’s CRF reporting FAQs. They said they did not include information on extensions in reminder emails because they thought offering such an option up front would lead to a large number of requests.

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<sup>65</sup>GrantSolutions is a grant and program management federal shared service provider. The first detailed CRF report due September 21, 2020, covered the 4-month period of March 1, 2020, through June 30, 2020, which Treasury OIG refers to as “cycle 1.” All subsequent reports covered a 3-month calendar quarter.

<sup>66</sup>According to its guidance, Treasury OIG used GrantSolutions quarterly submission reviews to monitor CRF recipients’ reporting progress, determine outreach needs, and assess whether submissions were timely and followed instructions.

<sup>67</sup>Treasury OIG revised its CRF FAQs related to reporting and recordkeeping on September 21, 2020, November 25, 2020, and March 2, 2021. The March 2021 version was updated to reflect the Consolidated Appropriations Act, 2021 amendment to extend the deadline for CRF recipients to incur costs to December 31, 2021.

<sup>68</sup>Inquiries from tribal governments included policy questions and unique questions about eligible uses of CRF Tribal Set-Aside for tribally owned enterprises such as casinos and hotels.

- **Oversaw CRF recipient reporting and spending.** Treasury OIG officials told us that they monitored CRF recipients' compliance with reporting requirements and found that tribal government CRF recipients' reporting timeliness and accuracy improved over time as the agency increased its outreach to tribes. Specifically, in the first reporting cycle, 32 percent of tribal government CRF recipients were deemed noncompliant with reporting requirements—i.e., having failed to report complete information, or at all—according to Treasury OIG data. For the second reporting cycle, Treasury OIG officials increased outreach to tribes to remind them about the requirements and provide technical assistance. In some instances tribes were not aware of the reporting requirements, while others had experienced challenges related to staff capacity or technology that prevented them from meeting the reporting deadline. By the fifth cycle, tribal CRF recipients' reporting noncompliance decreased to 21 percent.<sup>69</sup>

To oversee CRF recipients' compliance with CRF use requirements, Treasury OIG officials told us they follow up on complaints of potential misuse of funds, conduct ongoing monitoring of CRF recipients' use of funds through quarterly report reviews, and conduct desk reviews.<sup>70</sup>

Treasury OIG officials told us they received numerous complaints alleging fraud related to the CRF or misuse of funds for noneligible activities, and they contacted all CRF recipients that were the subject of complaints to obtain more information and discuss CRF eligible uses, if necessary. As of August 2021, Treasury OIG had initiated one desk review for one CRF Tribal Set-Aside recipient, and zero audits.

We asked Treasury OIG officials whether tribes' use of the CRF Tribal Set-Aside would be evaluated based on the Treasury guidance in place at the time the tribes incurred costs, or based on final Treasury guidance that may not have been issued until after CRF recipients incurred costs—particularly considering the multiple revisions of Treasury's FAQ guidance

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<sup>69</sup>In the third reporting cycle, Treasury OIG officials realized that in several instances they needed to update their points of contact for personnel who should input data in the GrantSolutions portal, and worked with Interior OIG to access BIA's Tribal Leaders Directory to identify appropriate contacts. Additionally, in spring 2021, Treasury's Tribal Affairs and Office of General Counsel worked with approximately 40 tribal recipients that were noncompliant with CRF reporting requirements to try to provide additional assistance, according to Treasury officials.

<sup>70</sup>Desk reviews evaluate the CRF recipient's documentation supporting the uses of CRF payments and assess risk of unallowable use of funds. According to Treasury OIG, desk reviews may result in a site visit to the CRF recipient for a more in-depth review or a recommendation for audit.

from May through October 2020. Treasury OIG officials said they assess each instance of potential noncompliance on a case-by-case basis and did not have a standardized approach, but would take into consideration whether CRF guidance was not released or was not clear at the time a tribe used its CRF Tribal Set-Aside funds.

Treasury OIG officials told us that tribes, more than other CRF recipients, have faced a variety of extenuating circumstances that have impacted some tribes' ability to meet CRF reporting deadlines. In particular, tribes have been more likely to need CRF reporting extensions compared to other government entities, and they cited extenuating circumstances in their extension requests that included office shutdowns because of COVID-19 outbreaks, internet connectivity issues, and weather events such as wildfires. For the first three quarterly reporting cycles, 19 percent of tribal government CRF recipients were granted a reporting extension—generally from 1 to 7 days.<sup>71</sup> Reporting extensions for tribal government CRF recipients decreased to 7 percent for the fourth reporting cycle and increased to 10 percent in the fifth reporting cycle.<sup>72</sup> Treasury officials attributed the large volume of reporting extension requests from tribal governments to the limited staff resources and infrastructure of some tribes, especially tribes that are small and/or more remote.<sup>73</sup>

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## Agencies and Tribes Faced Various Challenges Regarding CARES Act Funds, but Lessons

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<sup>71</sup>Treasury OIG officials told us that they usually grant extensions of 1 to 7 days but sometimes allow an extension into the next reporting cycle for certain issues, such as a tribe experiencing turnover among personnel responsible for submittal.

<sup>72</sup>Treasury OIG granted CRF reporting extensions to between 0 and 9 percent of other government entities for CRF quarterly reporting cycles 1 through 5.

<sup>73</sup>According to Treasury OIG officials, they have not denied any extension requests since the first quarterly reporting cycle, when Treasury OIG denied eight extension requests for using a form letter that did not include specific details regarding the tribes' need for an extension. In those instances, Treasury OIG officials communicated their decision to deny the request and stated that the tribe would be considered noncompliant if the tribe did not submit its quarterly report by the due date. Treasury OIG did not notify the tribes that they could resubmit their extension request with additional information about need, and none of the tribes resubmitted their requests, according to Treasury OIG officials.

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## Learned Could Improve Future Federal Emergency Relief to Tribes

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### Treasury Faced Greater Challenges Than Interior and Experienced Delays Distributing CARES Act Funds to Tribes

According to officials we interviewed from Interior and Treasury, the agencies faced various challenges that slowed distribution of CARES Act funds to tribes, particularly funds from the CRF Tribal Set-Aside administered by Treasury. These officials identified challenges in the following areas:

- **Statutory language.** Interior and Treasury officials said that the CARES Act was insufficiently specific regarding the CRF Tribal Set-Aside, and Treasury officials said the work necessary to interpret the statute and develop distribution formulas consistent with the statute contributed to delays in CRF disbursements to tribes. For example, Treasury officials said the statute did not specify how Treasury should determine tribal governments' increased expenditures relative to their fiscal year 2019 expenditures. In addition, as discussed earlier, litigation resulted in the Supreme Court determining that ANCs were included in the statute's definition of Indian tribes and thus eligible to receive payments from the CRF Tribal Set-Aside.<sup>74</sup>
- **Distribution mechanisms.** Interior officials said that the agency's decision to distribute the CARES Act OIP appropriation through BIA's Aid to Tribal Government and Welfare Assistance programs meant that the agency needed to take extra steps when certain tribes wanted to reallocate these CARES Act funds to different programs in their contracts and compacts. According to Interior officials, these extra steps delayed disbursement from the CARES Act OIP appropriation by up to 2 days. Treasury faced greater challenges in distributing CARES Act funds to tribes because it had not previously implemented a statute that required the agency to make disbursements directly to tribes, according to Treasury officials. Treasury officials said that they were surprised to learn that BIA did not already have mechanisms in

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<sup>74</sup>*Yellen v. Confederated Tribes of the Chehalis Reservation*, 594 U.S. \_\_ (2021).

place to distribute checks to tribes. According to Treasury officials, since this infrastructure did not exist, they initially did not know whom to contact for certain tribes. Treasury thus had to create a new distribution mechanism, along with allocation methods and procedures, which Treasury officials said delayed distribution of the funds.

- **Obtaining sufficient and reliable tribal enrollment data.** Interior officials said that they did not maintain tribal enrollment data for all 574 tribes and it was a challenge to obtain and verify enrollment data from different sources, such as HUD's IHBG enrollment data.<sup>75</sup> According to Interior officials, some BIA regions had tribal enrollment data readily available for tribes within their regions, but for those that did not, BIA regional officials had to reach out to tribal enrollment offices to obtain the data.
- **Staff capacity.** Officials from Interior and Treasury said it was challenging to administer CARES Act funds while their agencies adapted to working from home because of the pandemic. In addition, officials from Treasury said that the CRF was not intended to be an ongoing source of funding, and Treasury did not create a CRF program office or dedicate program staff to administer the CRF. Moreover, according to Treasury officials, the CARES Act CRF appropriation was not available to pay for administrative expenses, such as salaries of Treasury employees, so Treasury had to set up and administer the CRF in a short time frame with existing staff resources. Treasury officials also said they faced administrative challenges meeting tribes' customer service needs for the CRF, such as helping tribes with limited internet connectivity submit data.
- **Treasury's limited experience working with tribes.** According to Treasury officials, the agency had some experience working with tribes on tax issues but had not implemented a large program to make payments to tribes prior to the passage of the CARES Act. Additionally, at the time Treasury began administering the CRF Tribal Set-Aside, it did not have an official staff position for working with tribes and it did not have staff with tribal expertise managing the CRF Tribal Set-Aside. Consequently, Treasury officials did not have in-depth knowledge of tribal governments and how they operate to make

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<sup>75</sup>The enrollment data that tribes submitted to Treasury were not available at the time Interior needed this information. As discussed above, Interior started distributing OIP payments to tribes on April 13, 2020, and Treasury's deadline for tribes to submit data to determine CRF Tribal Set-Aside allocations, including tribal enrollment data, was April 17, 2020.

informed policy decisions when implementing the CRF Tribal Set-Aside. For example, Treasury officials said they spent about 2 weeks following up with each tribe to better understand their data submissions.<sup>76</sup> Additionally, Treasury officials told us that they believed that tribes' increased expenditures would be greatest within a tribe's local area and, therefore, population within tribes' formula areas was a more appropriate proxy for increased expenditures than tribal enrollment data.<sup>77</sup> However, this belief does not take into account that many tribes provide services to members that do not live in their local formula area and the relative share of population would be undercounted for such tribes.<sup>78</sup> Additionally, some tribes have a formula area population of zero in the IHBG data because they do not have a reservation or other area where they are responsible for the provision of services. According to Treasury officials, they were aware of the limitations of using IHBG formula area population data and took steps to address them, such as requesting additional data on population from HUD for those tribes that had a zero population in the IHBG data.<sup>79</sup> However, Treasury did not discuss with tribes how the agency would address these known limitations; doing so could have allowed the agency to make changes or address issues prior to making payments using the data.

- **Communication.** Treasury officials said that missing, incorrect, or outdated contact information in BIA's Tribal Leaders Directory created a need to search for appropriate tribal contacts for communication about the CRF Tribal Set-Aside. Treasury officials said the directory did not have email addresses for 73 of the tribes and that Treasury

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<sup>76</sup>As previously mentioned, Treasury officials then determined that certified tribal enrollment data collected from tribes did not provide a consistent measure to be used as a basis for estimating tribes' increased expenditures because tribes' criteria for enrolling members vary. Tribes have inherent authority to determine requirements for membership in the tribe; however, some tribes' enrollment are subject to requirements in federal law or treaty. Consequently, enrollment requirements vary from tribe to tribe.

<sup>77</sup>As previously mentioned, Treasury officials said that a benefit of using the IHBG formula area population data as a proxy for increased expenditures was that it helped them avoid double-counting population for CRF recipients in Alaska. Specifically, the IHBG formula includes a process for identifying overlapping service areas.

<sup>78</sup>According to Treasury officials, this policy judgment that use of funds would be focused in local areas is not inconsistent with the fact that many tribes provide services outside those areas.

<sup>79</sup>Treasury officials said that one advantage of using the IHBG formula area population data from the IHBG program formula was that HUD had engaged in negotiated rulemaking with tribes to develop the formula.

received automatic error messages from some of the addresses in the directory. Treasury officials said they followed up through a mix of phone calls and email, and that doing so was complicated because certain tribal officials were not working in their offices during the pandemic. To address this challenge, Treasury officials said they worked with BIA and NAFOA to communicate with tribes, which officials said they considered very helpful because these entities had existing relationships and experience working with tribes.

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### Tribes Described a Variety of Challenges Accessing and Using Treasury's CRF Tribal Set-Aside

According to officials from five of the tribes we selected to interview,<sup>80</sup> they experienced minimal difficulty accessing and using payments from BIA's OIP appropriation, but representatives from selected tribal organizations and officials from selected tribes identified several challenges with accessing and using payments from Treasury's CRF Tribal Set-Aside. Specifically:

- **Agency officials' limited understanding of tribes.** Treasury's interactions with tribes reflected a limited knowledge about tribes and how they operate, according to representatives from all of the selected tribal stakeholder organizations, representatives from both academic research centers, and officials from five of the selected tribes. For example, a representative from one tribal organization said that the Treasury officials participating in the consultations did not show an understanding of the government-to-government relationship between the United States and tribes or respect for tribal sovereignty. In addition, officials from one tribe we interviewed said that people more familiar with how tribes operate would have known that the questions in Treasury's initial data request were problematic.<sup>81</sup> According to these officials, after Treasury asked tribes to upload a lot of information into the online portal, the agency quickly realized that the questions were entirely too broad to provide the information the

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<sup>80</sup>As discussed earlier, we selected these tribes because they received CARES Act funds and served different-sized member populations across different geographic locations and were willing to meet with us. This sample is nongeneralizable and, therefore, we cannot speak to the perspectives of any tribes we did not interview.

<sup>81</sup>Treasury officials said that BIA recommended the initial data request. However, Interior officials said that senior officials in the Office of the Assistant Secretary - Indian Affairs directly handled all of the policy decisions and coordination with Treasury.



agency wanted about so many different tribes; Treasury later revised its questions in a second data request. An official from another tribe we interviewed said that having to educate Treasury on tribal jurisdiction and policy issues was an insurmountable problem. For example, the official said that Treasury did not seem familiar with the intricacies of how tribes' funding and revenue generation works, which the official said was apparent when Treasury would issue a new version of its use of funds guidelines without notice and in response to numerous inquiries from tribes. Further, one tribal official told us that Treasury OIG officials requested sensitive information about tribal revenue and use of funds that the official said were not related to the tribe's use of its CRF Tribal Set-Aside payment.

- **Disputed CRF funding allocation methodology.** Representatives from all of the selected tribal stakeholder organizations, representatives from both academic research centers, and officials from five of the selected tribes raised concerns about Treasury's use of IHBG formula area population data to allocate the first tranche of the CRF Tribal Set-Aside. These IHBG data reflected a population of zero or a low population that approaches zero for certain tribes, affecting the amount these tribes received from the CRF Tribal Set-Aside. Additionally, tribal officials told us that enrollment is a better measure of need because many tribes provide services and assistance to tribal members that live outside their immediate service area. Officials from one tribe we interviewed said the IHBG formula area population data reflected about half of their tribe's enrollment, and officials we interviewed from two other tribes said that the IHBG data reflected about a third of their total enrollment.<sup>82</sup> As discussed earlier, three tribes sued Treasury over the use of the IHBG formula area population data, and those lawsuits were pending as of October 19, 2021.
- **Unclear or changing CRF guidance.** Adjusting to Treasury's changing guidance on allowable uses of funds further delayed tribes' implementation of projects and significantly increased their administrative burden, according to representatives from all of the selected tribal organizations and academic research centers, and

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<sup>82</sup>According to Treasury officials, the specific fraction of a tribe's enrollment represented by the IHBG formula area population was not necessarily indicative of how much funding a tribe should have received if Treasury had used enrollment as the allocation factor, because tribal allocations were relative to each other. Treasury officials said that they addressed this issue in April 2021 with reallocations. However, because the funds available for reallocation were limited, Treasury only provided additional payments to those tribes with disparities in the population-to-enrollment ratio above the 85<sup>th</sup> percentile range.

officials from five of the selected tribes. Officials from four selected tribes said that without authoritative guidance from Treasury when tribes first received CRF Tribal Set-Aside payments, the tribes faced a substantial risk to commit to expenditures because they would have to repay the funds if those expenditures were later determined unallowable. Officials from one of these tribes said Treasury's different iterations of guidance had a chilling effect on many tribes, which were concerned that expenditures that at the time were consistent with Treasury's CRF guidance would later be deemed unallowable by a subsequent version.<sup>83</sup> Officials from one tribe we interviewed said that because of the pandemic, tribes' general funds were already low on cash, so the tribe was concerned that it would not have the reserves to pay back Treasury if required to do so. In certain instances tribes delayed decisions about how to use the CRF Tribal Set-Aside while they sought clarity on the changing guidance to ensure compliance. For example, one tribal official said that his tribe invested an inordinate amount of time, effort, and legal fees to verify proposed expenditures were allowable, and by the time they received clarification from Treasury, only 2 to 3 months remained before the original statutory deadline for incurring costs. Additionally, officials from three selected tribes said that Treasury's changing guidance added requirements for use of CRF payments. For example, Treasury's October 2020 update to its FAQ document about the CRF included a new statement that recipients must justify the use of CRF payments to acquire property or equipment by first determining that they cannot meet their needs in a cost-effective manner by leasing property or equipment or by improving property already in their possession. Officials from one selected tribe said they perceived this update as an added requirement to conduct a cost analysis to justify each use of funds, which would require time and resources when the tribe was operating at extremely limited capacity and managing a crisis. These tribal officials said they saw nothing in the CARES Act requiring cost efficiency or analyses, and they believed the CARES Act was purposely silent on this point since, during an emergency such as a pandemic, costs may increase because of increased demands for certain goods such as personal protective equipment.<sup>84</sup>

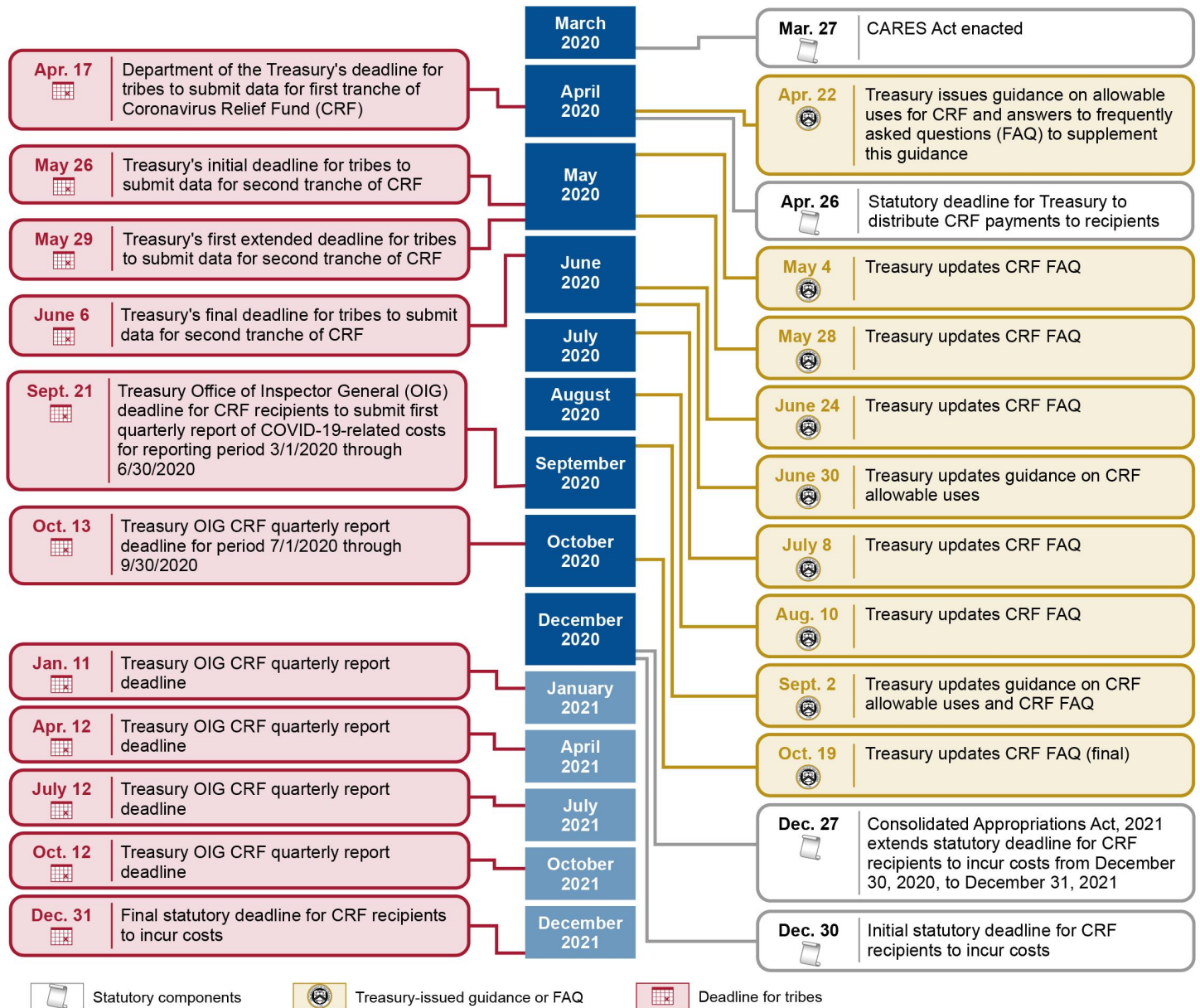
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<sup>83</sup>Officials from associations representing state and local governments also told us CRF recipients have reported a lack of clarity in Treasury guidance on the eligible use of funds. [GAO-20-701](#).

<sup>84</sup>According to Treasury officials, "cost-effective" was based on their interpretation of the CARES Act requirement that the CRF be used for "necessary expenditures."

Figure 4 shows the timeline of Treasury’s issuance of guidance and FAQs for CRF recipients, and the deadlines for tribes to submit data to Treasury and quarterly reports to Treasury’s OIG.

**Figure 4: Timeline of Coronavirus Relief Fund Tribal Set-Aside Deadlines and Guidance Materials**



Source: GAO analysis of legislation, Treasury documents, and Treasury OIG documents. | GAO-22-104349

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**Text of Figure 4: Timeline of Coronavirus Relief Fund Tribal Set-Aside Deadlines and Guidance Materials**

- Mar. 27, 2020 - CARES Act enacted
- Apr. 17, 2020 - Department of the Treasury's deadline for tribes to submit data for first tranche of Coronavirus Relief Fund (CRF)
- Apr. 22, 2020 - Treasury issues guidance on allowable uses for CRF and answers to frequently asked questions (FAQ) to supplement this guidance
- Apr. 26, 2020 - Statutory deadline for Treasury to distribute CRF payments to recipients
- May 4, 2020 - Treasury updates CRF FAQ
- May 26, 2020 - Treasury's initial deadline for tribes to submit data for second tranche of CRF
- May 28, 2020 - Treasury updates CRF FAQ
- May 29, 2020 - Treasury's first extended deadline for tribes to submit data for second tranche of CRF
- June 6, 2020 - Treasury's final deadline for tribes to submit data for second tranche of CRF
- June 24, 2020 - Treasury updates CRF FAQ
- June 30, 2020 - Treasury updates guidance on CRF allowable uses
- July 8, 2020 - Treasury updates CRF FAQ
- Aug. 10, 2020 - Treasury updates CRF FAQ
- Oct. 13, 2020 - Treasury OIG CRF quarterly report deadline for period 7/1/2020 through 9/30/2020
- Oct. 19, 2020 - Treasury updates CRF FAQ (final)
- Dec. 27, 2020 - Consolidated Appropriations Act, 2021 extends statutory deadline for CRF recipients to incur costs from December 30, 2020, to December 31, 2021
- Dec. 30, 2020 - Initial statutory deadline for CRF recipients to incur costs
- Jan. 11, 2021 - Treasury OIG CRF quarterly report deadline
- Apr. 12, 2021 - Treasury OIG CRF quarterly report deadline
- July 12, 2021 - Treasury OIG CRF quarterly report deadline
- Oct. 12, 2021 - Treasury OIG CRF quarterly report deadline

- Dec. 31, 2021 - Final statutory deadline for CRF recipients to incur costs

Source: GAO analysis of legislation, Treasury documents, and Treasury OIG documents. | GAO-22-104349

- **Short time frames to plan and incur costs.** Treasury completed CRF Tribal Set-Aside payments to tribes more than 7 weeks after the CARES Act disbursement deadline and announced the allocation methodology on the same day the agency issued the first tranche of CRF Tribal Set-Aside payments. Treasury's delayed disbursements resulted in a shorter window of time for tribes to plan for and incur costs before the original statutory deadline of December 30, 2020, to incur costs. Officials from one tribe also said that, given the delay, the tribe could not send the first relief payments to families from the CRF Tribal Set-Aside until late August 2020 because the tribe had to give people time to apply for relief based on their situations. The tribal officials said that this was a long time for people to wait when they were "starving and deciding between purchasing medicine and paying the electric bill." Moreover, officials from one tribe said that by the time Treasury's guidance seemed fairly stable, tribes only had one quarter to spend the money.<sup>85</sup>
- **Burdensome CRF reporting requirements.** Tribes experienced administrative burden in meeting the CRF quarterly reporting deadlines because several of the reporting requirements differed from tribes' typical reporting practices, according to representatives from a selected tribal stakeholder organization, representatives from both selected academic research centers, and officials from four of the selected tribes. For example, officials from four of the tribes we interviewed said that the majority of their grants require semiannual reporting or annual reporting, with 45-day time periods for reporting—not the 10 days stated in Treasury OIG CRF reporting guidance.<sup>86</sup>

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<sup>85</sup>Figure 4 shows that Treasury last updated its answers to FAQs to supplement guidance for CRF allowable uses on October 19, 2020. This final update to the FAQs was issued after two of the deadlines for CRF recipients to submit quarterly reports of COVID-19-related costs to Treasury's OIG.

<sup>86</sup>The CARES Act requires certain recipients to submit to agencies and the Pandemic Response Accountability Committee within 10 days of the end of each calendar quarter a report containing information on amounts received and projects or activities for which funds were expended or obligated, among other things. Pub. L. No. 116-136, § 15011(b)(2), 134 Stat. 281, 541 (2020). Treasury OIG incorporated this provision's 10-day deadline into its CRF reporting guidance because tribes' submissions to the OIG are transmitted to the committee and serve as these statutorily required reports.

Given the additional administrative burden and the loss of administrative capacity through attrition and, in some cases, death from COVID-19, officials from selected tribes said that they believed that tribes were set up to fail. Officials from one tribe said that the CRF reporting was unnecessarily time consuming because of the manual entry requirement and limited functionality of the Treasury OIG's reporting portal.<sup>87</sup> In particular, these officials said their tribe's first CRF quarterly report was about 350 pages long, and their second quarterly report was about 380 pages long and took two tribal staff a week to prepare—time they said could have been spent on other important tasks during the pandemic. Moreover, officials from this tribe said that Treasury OIG officials told them they could report data from the prior quarter as part of the next report. However, the tribal officials said Treasury OIG's reporting portal would not accept submissions outside the reporting time frame and that the system did not allow tribes to explain data submitted as part of the extension.<sup>88</sup>

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## Lessons Learned Could Improve Future Federal Emergency Relief to Tribes

Interior and Treasury officials, representatives from selected tribal organizations, and officials from selected tribes told us about lessons learned from several aspects of the agencies' administration of CARES Act funds that could inform future federal emergency relief to tribes. Some lessons reflect aspects of the agencies' implementation that went well, and in certain cases, the agencies have already applied lessons learned. Other lessons learned relate to areas that could be improved for future relief to tribes.

**Aspects of agency implementation that went well.** Certain aspects of Interior's implementation of BIA's CARES Act OIP appropriation went well and are lessons learned about the benefits of using existing mechanisms to distribute emergency relief to tribes, according to agency officials, representatives from selected tribal stakeholder organizations, and officials from five of the selected tribes. For example, Interior officials said

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<sup>87</sup>Treasury OIG officials told us that the GrantSolutions portal allows for data uploads but this feature was not made available to tribal governments because of the volume of recipients.

<sup>88</sup>Treasury officials said they worked with Treasury's OIG to help explore several reporting mechanisms. The officials said they selected GrantSolutions because most tribes had at least some familiarity with the reporting system.

distributing OIP payments using a preexisting program structure allowed the agency to provide relief to tribal governments more quickly because it did not have to develop new distribution or reporting mechanisms. Additionally, the CARES Act OIP payments could be used for any activity to prevent, prepare for, and respond to coronavirus, which Interior officials said provided tribes greater latitude to meet their unique pandemic-related needs and circumstances. Tribes with self-determination contracts or self-governance compacts had further flexibility to reprogram funds across different programs to meet their pandemic needs. Lastly, Interior's reporting requirements for CARES Act OIP payments made through self-determination contracts used existing reporting mechanisms and schedules that tribes were accustomed to and could meet without additional administrative burden during a crisis.

For Treasury, representatives from tribal stakeholder organizations and agency officials said that Treasury's partnership with NAFOA to provide outreach to tribes was particularly helpful. Specifically, Treasury worked with NAFOA to disseminate information about the CRF Tribal Set-Aside to tribal contacts and help ensure eligible tribes had relevant information to complete the application process and better understand allowable uses of CRF Tribal Set-Aside payments. Treasury OIG officials told us they also partnered with NAFOA to answer questions, disseminate information, and present a webinar on CRF reporting requirements. Additionally, for the second tranche of CRF payments, Treasury officials said the agency increased its tribal outreach efforts by assigning each tribe a case manager who followed up with tribes to ensure applications were complete.

**Lessons learned that have been applied.** Treasury officials stated that Treasury incorporated certain lessons learned from its administration of the CRF for its subsequent administration of the American Rescue Plan Act of 2021's (ARP Act) Coronavirus State Fiscal Relief Fund (CSFRF) Tribal Government Set-Aside, established after the CARES Act. Officials from four of the selected tribes said that the changes Treasury made to its administration of the ARP Act Fund were welcome improvements over its administration of the CRF. For example:

- **Increasing opportunities for tribes to provide input for the allocation methodology for these funds and using tribes' self-certified enrollment data as a factor for disbursement.** For example, Treasury hosted five region-based tribal consultations on the CSFRF Tribal Government Set-Aside to gather perspectives from tribal leaders on allocation methodologies, the use of funds, and

administrative functions such as reporting and compliance. According to Treasury officials, the regional consultations allowed more tribal participation and provided Treasury with a better understanding of regional perspectives. Additionally, Treasury decided to use self-certified enrollment data as one of the factors for disbursement because the agency determined that these data helped account for tribes that provide services to members that live outside their local area.

- **Increasing infrastructure for communications and technical support to tribes to access and use funds.** For example, Treasury developed a dedicated webpage for tribal governments to access information about the CSFRF Tribal Government Set-Aside. Treasury also held multiple information sessions about the Tribal Government Set-Aside that drew thousands of participants, according to Treasury officials.<sup>89</sup>
- **Providing tribes an opportunity to comment on allowable uses.** For example, Treasury released an Interim Final Rule on allowable uses of the CSFRF prior to disbursing payments.<sup>90</sup>
- **Adding staff with extensive experience working with tribes.** According to Treasury officials, the Office of Recovery Programs has a tribal team with tribal policy, organization, government, and enterprise experience to support the deployment of tribal funds. As of October, 2021, this team consisted of one detailee, one Policy Advisor, and a Senior Advisor. Treasury officials told us the Office of Recovery Programs previously had an additional Senior Advisor on detail, and has a Memorandum of Understanding with the National Telecommunications and Information Administration Tribal Broadband Connectivity Program for the Capital Projects Tribal Set-Aside.
- **Increasing the amount of time to prepare quarterly reports.** Recipients of payments from the CSFRF must submit quarterly reports within 30 days of quarter's end instead of within the 10 days of

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<sup>89</sup>For example, on June 30, 2021, Treasury held an information session for tribes on CSFRF. Treasury officials told us the session included information on reporting and compliance to familiarize tribes with the reporting process. Treasury also has a dedicated section on its website for reporting and compliance for tribes.

<sup>90</sup>86 Fed. Reg. 26786 (May 17, 2021).



quarter's end for CRF reports.<sup>91</sup> However, officials from one of the selected tribes said quarterly reporting requirements for the CSFRF could still impose administrative burden on tribes, as substantial resources are needed to meet quarterly reporting requirements. These officials identified opportunities to improve future federal reporting requirements, including semiannual or annual reporting and a reporting deadline 45 days after quarter's end, consistent with requirements they said exist for the majority of grants tribes receive.

- **Adopting a reporting system with greater functionality than GrantSolutions.** Specifically, Treasury will accept CSFRF reports through a new reporting system that allows users to upload data in batches rather than through manual entry.

Regarding statutory language, a lesson learned is providing clarity about, for example, tribal eligibility and having more time to spend relief funds, according to Treasury officials, representatives from all of the selected tribal stakeholder organizations and academic research centers, and officials from five of the selected tribes. Representatives from tribal organizations and officials from selected tribes said that the statutory language establishing the CSFRF reflected welcome improvements over the statutory language establishing the CRF Tribal Set-Aside. For example, the ARP Act specified that only tribal governments that are governing bodies of federally recognized tribes were eligible for the CSFRF Tribal Government Set-Aside, and thus excluded ANCs. Clarity on eligibility in the statute helped avoid litigation over agencies' interpretation of ANCs' eligibility. In contrast, litigation over ANCs' eligibility for the CRF Tribal Set-Aside resulted in Treasury holding approximately \$450 million of CRF Tribal Set-Aside for over 16 months before disbursing it. The ARP Act also provides a longer time frame for recipients to use payments from the CSFRF—over 3 years to incur costs, instead of the original 10 months for the CARES Act's CRF. The longer

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<sup>91</sup>The ARP Act requires states, territories, and tribal governments receiving payments from the fund to provide periodic reports to the Secretary of the Treasury with a detailed accounting of their use of funds and any other information the Secretary may require. 42 U.S.C. § 802(d)(2). The interim final rule Treasury issued requires states, territories, and tribal governments to submit one interim report and quarterly project and expenditure reports through December 31, 2026, within 30 days of each quarter's end. In contrast, Treasury's OIG established reporting requirements for CRF recipients based on the CARES Act requirement for certain recipients to submit reports to agencies and the Pandemic Response Accountability Committee within 10 days of each calendar quarter.

time frame provides tribes with more time to plan projects to maximize the cost-effectiveness of relief spending.

Another lesson learned is the importance of maintaining ongoing relationships between agencies and tribes, according to agency officials, representatives from selected tribal stakeholder organizations and academic research centers, and officials from five of the selected tribes. Interior and Treasury were among the federal agencies that submitted plans to OMB outlining actions the agencies would take to improve tribal consultation and coordination with tribal governments.<sup>92</sup> Interior and Treasury developed their action plans based on consultation with tribal leaders on tribal consultation policies. Both Interior's and Treasury's plans include action items to update the agencies' tribal consultation policy, educate agency officials and staff on matters related to tribes, and maintain up-to-date tribal contact information.<sup>93</sup> Interior officials said having readily available, reliable tribal enrollment data is critical to serving tribes and their members. In April 2021, following consultation with tribes, Interior began collecting enrollment data from tribes, which the agency intends to maintain to inform allocations at the Office of the Assistant Secretary – Indian Affairs and potentially other federal agencies. The actions identified in Interior's and Treasury's plans address certain challenges that representatives from tribal stakeholder organizations and officials from selected tribes identified to us.

**Areas for improvement.** Treasury officials said a lesson learned is that tribal consultations were critical to better understanding tribes' needs and concerns—particularly because Treasury had not previously worked with tribes on this scale. Yet, Treasury used IHBG formula area population data in its CRF Tribal Set-Aside allocation formula without consulting with tribes about its plans to use the IHBG data to make the allocations. Treasury officials said they did not consult with tribes about these plans because tribes had provided input on the IHBG data as part of the IHBG

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<sup>92</sup>These plans were due to OMB before April 26, 2021.

<sup>93</sup>Interior's plan contains six action items: 1) establish a centralized consultation website, 2) identify technology to improve notice to tribes, 3) update consultation policy, 4) educate Interior officials and staff on tribes, 5) establish a Secretary's Tribal Advisory Committee, and 6) review specific policies/processes tribes identified as inhibiting consultation for rescission or revision. Treasury's plan has three focus areas, each of which contain multiple action items: 1) update the tribal consultation policy and procedures for conducting tribal consultation, 2) improve Treasury awareness and accountability for holding tribal consultation, and 3) communication and outreach.

program's negotiated rulemaking. Treasury's tribal consultation policy does not specifically direct agency officials to consult about potential data sources that may be used to make decisions.

However, agencies are to consult with tribes on policies that have tribal implications, and Treasury's tribal consultation policy calls for a meaningful dialogue on policies.<sup>94</sup> In addition, federal standards for internal control for information and communication state that management should use quality information to achieve the entity's objectives, and federal standards for internal control for risk assessment state that management should identify, analyze, and respond to risks related to achieving the defined objectives.<sup>95</sup> In this case, the IHBG formula area population data Treasury used were not quality information for making CRF Tribal Set-Aside allocations. As discussed, in April 2021, Treasury acknowledged that IHBG formula area population data may typically be helpful in estimating a tribal government's increased expenditures, but in certain circumstances these data may prove insufficient.<sup>96</sup>

In addition, tribes may serve enrolled members regardless of their location; however, the data Treasury used are data on the number of people who identify as AI/AN and live within the tribe's assigned formula area for IHBG. Representatives from two of the selected tribal organizations, representatives from both academic research centers, and officials from four of the selected tribes we interviewed said the IHBG formula area population data did not accurately reflect the population tribes serve. In addition, officials from three of the selected tribes said that tribes did not have an opportunity to discuss with Treasury their concerns about the appropriateness of using these data for allocating the CRF Tribal Set-Aside. Until Treasury develops a policy to consult with tribes about data it is considering for use in making decisions, Treasury risks using data without engaging in a meaningful dialogue with tribes about any limitations of the data and how to address such limitations—not only depriving Treasury of information tribes could provide, but also potentially

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<sup>94</sup>Executive Order 13175 defines "policies that have tribal implications" as regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.

<sup>95</sup>[GAO-14-704G](#).

<sup>96</sup>Moreover, as discussed earlier, the IHBG formula area population data are one component of a complex formula so that tribes receive an equitable share of the appropriation for development and operation of low-income housing.

increasing the risk of litigation. In the case of the CRF Tribal Set-Aside, using the IHBG formula area population data as a proxy for increased expenditures resulted in litigation and delays in disbursements. In response to this litigation, Treasury officials said the agency allocated an additional \$75.7 million to 88 tribes from the remaining CRF Tribal Set-Aside in April 2021—almost a year after its initial payments to tribes. However, Treasury stated it would provide additional payments only to tribes with the most substantial disparities—the top 15 percent of tribes in a ranked list—because there were limited funds available for reallocation.<sup>97</sup> Consequently, these tribes did not receive emergency relief to help address the pandemic in a timely manner, as Congress intended.

Another lesson learned that representatives from selected tribal organizations and officials from selected tribes shared with us is the importance of transparent, two-way communication. Representatives from a selected tribal stakeholder organization, representatives from both academic research centers, and officials from four of the selected tribes said they learned about Treasury’s final CRF Tribal Set-Aside allocation methodology when Treasury announced it publicly and had started making payments. Treasury officials noted that Interior produced transcripts of the joint Interior-Treasury tribal consultation sessions that informed Treasury’s CRF policy decisions.<sup>98</sup> However, representatives from selected tribal stakeholder organizations and officials from four of the tribes we interviewed said that Treasury’s communications explaining its allocation methodology decisions were not transparent. Specifically, the representatives and tribal officials said that Treasury’s communication about its methodology was not two-way, because tribes were notified after Treasury had made its decisions and started making payments to tribes. Treasury officials said they did not initiate communication with tribes to notify them about how tribal input was considered in the CRF Tribal Set-Aside decision-making process, but they did respond to specific inquiries from tribes and tribal organizations.

Treasury’s tribal consultation policy states that consultation will inform Treasury’s development of regulation, published guidance, and other policy statements or actions. The policy states that the consultation

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<sup>97</sup>Treasury calculated each tribe’s ratio of IHBG formula area population to enrollment and then subtracted the ratio from 1. The top 15 percent of tribes as ranked by the resulting population-to-enrollment ratio were eligible for an additional payment.

<sup>98</sup>Transcripts of both joint Interior-Treasury tribal consultations are available on Interior’s website. The transcript of the April 2, 2020, joint Interior-Treasury tribal consultation is available on Treasury’s website.

process should develop transparent dialogue involving the appropriate participants. However, Treasury does not have procedures documented in its tribal consultation policy for how and when it will communicate with tribes about how the agency considered tribal input in its decision-making and the basis for any agency decisions; such procedures would enhance transparency. In our March 2019 report on certain federal agencies' tribal consultation efforts, we found that without including in policy the importance of communicating with tribes about how their input from project consultations was considered, agency officials may not be aware of expectations to communicate how agencies used tribal input and may not do so consistently.<sup>99</sup> As mentioned previously, Treasury modified its approach for developing the methodology for distributing the CSFRF Tribal Government Set-Aside and its guidance on allowable uses compared to its approach for the CRF Tribal Set-Aside. Agency officials said these modifications increased tribes' opportunities to provide comments on Treasury's decisions. Although increased opportunities to comment are a positive development, they are not transparent dialogue unless followed by communication from Treasury about how the agency considered tribal input in its decision-making and about the basis for agency decisions.<sup>100</sup> By documenting procedures for how and when Treasury will communicate with tribes about how Treasury considered tribes' input and the basis for agency decisions, Treasury could have better assurance that the agency will consistently be transparent and accountable in communicating with tribes about how Treasury considered tribes' input in agency decision-making going forward and as staff and administrations change.

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## Conclusions

COVID-19 has had a devastating impact on American's health and well-being, with disproportionately high impacts on AI/AN individuals and tribes. In response to the unprecedented crisis, the CARES Act appropriated at least \$9 billion for federal programs serving tribes and their members. In some cases, such as Interior's OIP appropriation, these appropriations were for existing programs. In other cases, the CARES Act established new programs to provide emergency relief, such as

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<sup>99</sup>[GAO-19-22](#).

<sup>100</sup>For example, Treasury held five regional consultations when developing its allocation methodology, and Treasury officials said the agency held informational sessions and briefings with tribal stakeholders on Treasury's implementation of the CSFRF.

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Treasury's CRF Tribal Set-Aside, that needed to be implemented quickly, under difficult circumstances, and without prior agency experience providing direct assistance to tribes.

Tribes reported several challenges accessing and using Treasury's CRF Tribal Set-Aside, which impacted some tribes' ability to receive payments and increased administrative burden when tribes' capacity was already strained. Treasury has recognized several lessons learned and applied some of them to its implementation of CSFRF assistance to tribes, such as increasing opportunities for tribal consultation on its allocation methodology. However, Treasury has not formalized these lessons learned into its tribal consultation policy. Until Treasury does so, it runs the risk that these lessons learned may be lost as staff and administrations change.

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## Recommendations for Executive Action

We are making the following two recommendations to Treasury:

The Secretary of the Treasury should document in the agency's tribal consultation policy that Treasury will consult with tribes on data the agency is considering for use in policy decisions with tribal implications, including consulting on how to identify any data limitations and address them, as appropriate. (Recommendation 1)

The Secretary of the Treasury should document in the agency's tribal consultation policy how and when agency officials are to communicate with tribes about how tribal input from consultation was considered in agency decision-making, and provide the basis for any agency decisions. (Recommendation 2)

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## Agency Comments

We provided a draft of this report to Interior and Treasury for review and comment. Treasury provided written comments, which are reproduced in appendix I, and stated that it agreed with the findings and recommendations in our report. Treasury also provided technical comments, which we incorporated as appropriate. Interior responded by email that they did not have comments on the draft report.

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We are sending copies of this report to the appropriate congressional committees, the Secretaries of the Interior and the Treasury, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff members have any questions about this report, please contact me at (202) 512-3841 or [ortiza@gao.gov](mailto:ortiza@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix II.

A handwritten signature in black ink, appearing to read 'A. Ortiz', with a stylized flourish at the end.

Anna Maria Ortiz  
Director, Natural Resources and Environment

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*List of Addressees*

The Honorable Patrick Leahy  
Chairman  
The Honorable Richard Shelby  
Vice Chairman  
Committee on Appropriations  
United States Senate

The Honorable Ron Wyden  
Chairman  
The Honorable Mike Crapo  
Ranking Member  
Committee on Finance  
United States Senate

The Honorable Patty Murray  
Chair  
The Honorable Richard Burr  
Ranking Member  
Committee on Health, Education, Labor, and Pensions  
United States Senate

The Honorable Gary C. Peters  
Chairman  
The Honorable Rob Portman  
Ranking Member  
Committee on Homeland Security and Governmental Affairs  
United States Senate

The Honorable Kyrsten Sinema  
Chair  
The Honorable James Lankford  
Ranking Member  
Subcommittee on Government Operations and Border Management  
Committee on Homeland Security and Governmental Affairs  
United States Senate



The Honorable Rosa L. DeLauro  
Chair

The Honorable Kay Granger  
Ranking Member  
Committee on Appropriations  
House of Representatives

The Honorable Frank Pallone, Jr.  
Chairman  
The Honorable Cathy McMorris Rodgers  
Republican Leader  
Committee on Energy and Commerce  
House of Representatives

The Honorable Bennie G. Thompson  
Chairman  
The Honorable John Katko  
Ranking Member  
Committee on Homeland Security  
House of Representatives

The Honorable Carolyn B. Maloney  
Chairwoman  
The Honorable James Comer  
Ranking Member  
Committee on Oversight and Reform  
House of Representatives

The Honorable Richard E. Neal  
Chairman  
The Honorable Kevin Brady  
Republican Leader  
Committee on Ways and Means  
House of Representatives

# Appendix I: Comments from the Department of the Treasury



**DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C.**

October 18, 2021

Anna Maria Ortiz  
Director, Natural Resources and Environment  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Ms. Ortiz:

Thank you for the opportunity to review the Government Accountability Office's (GAO) draft report entitled *Lessons Learned from Interior and Treasury's Administration of CARES Act Funds Could Improve Federal Emergency Relief to Tribes* (GAO-22-104349) (the Draft Report). The Draft Report examines efforts by the Department of the Interior and the Department of the Treasury (Treasury) to distribute funds to Tribes under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), including Treasury's administration of the Coronavirus Relief Fund's (CRF) \$8 billion Tribal set-aside.

We are pleased the Draft Report finds that Treasury's partnership with the Native American Finance Officers Association was effective in communicating critical information concerning the CRF application process and allowable uses of funds to Tribes. We also appreciate that the Draft Report acknowledges that Treasury has already incorporated several important lessons learned from CRF into a subsequent pandemic relief program, for example by consulting on use of Tribal data during our American Rescue Plan Act Tribal consultations and increasing opportunities for Tribes to provide input on certain aspects of program development, increasing infrastructure for communication and technical support to Tribes, providing Tribes an opportunity to comment on program requirements, adding staff with extensive experience working with Tribes, and adopting a recipient reporting system with enhanced functionality.

GAO recommends that Treasury update its Tribal consultation policy to include direction to consult Tribes on data Treasury is considering for use in decisions with Tribal implications. GAO also recommends that Treasury's Tribal consultation policy document how and when agency officials are to communicate with Tribes about how Tribal input from consultation was considered in agency decision-making and provide the basis for any agency decisions. Treasury accepts these recommendations. As noted above, Treasury has already put into practice several lessons learned from CRF on Tribal consultations and communications. In the coming months, Treasury will update its Tribal consultation policy to reflect these efforts.

Thank you again for the opportunity to review and comment on the Draft Report. We appreciate GAO's engagement on these important issues.

Sincerely,

/s/ Jacob Leibenluft

Jacob Leibenluft  
Chief Recovery Officer

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## Text of Appendix I: Comments from the Department of the Treasury

October 18, 2021

Anna Maria Ortiz

Director, Natural Resources and Environment

U.S. Government Accountability Office 441 G Street, NW

Washington, DC 20548

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**Appendix I: Comments from the Department of  
the Treasury**

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Tribal input from consultation was considered in agency decision-making and provide the basis for any agency decisions. Treasury accepts these recommendations. As noted above, Treasury has already put into practice several lessons learned from CRF on Tribal consultations and communications. In the coming months, Treasury will update its Tribal consultation policy to reflect these efforts.

Thank you again for the opportunity to review and comment on the Draft Report. We appreciate GAO's engagement on these important issues.

Sincerely,

Jacob Leibenluft

Chief Recovery Officer

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## Appendix II: GAO Contact and Staff Acknowledgments

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### GAO Contact

Anna Maria Ortiz, (202) 512-3841 or [OrtizA@gao.gov](mailto:OrtizA@gao.gov)

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### Staff Acknowledgements

In addition to the contact named above, Lisa Van Arsdale (Assistant Director), Jack Granberg (Analyst in Charge), Cindy Gilbert, Cynthia Norris, Dan C. Royer, Stuart Ryba, Jeanette M. Soares, and Michelle R. Wong made key contributions to this report.

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