UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STATE OF COLORADO, *et al.*, Plaintiffs, v. U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, *et al.*, Defendants.	Civil Action No. 25-cv-121-MSM-LDA

UNITED STATES' SUPPLEMENTAL BRIEFING
IN SUPPORT OF ITS OPPOSITION TO
PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

As requested by the Court during the April 17, 2025 hearing on Plaintiffs' motion for a preliminary injunction, the United States hereby submits supplemental briefing regarding Plaintiffs' Constitutional claims. The United States Department of Health and Human Services ("HHS") complied with Congress's direction to make allocated amounts available to the Plaintiff states as part of the broad appropriation of funds in response to COVID-19. As a result, HHS's decision to terminate the grants at issue in this case did not violate the Constitution, including any separation of powers principles.

As stated in both its original brief and at argument, the government's position is that this Court does not have jurisdiction to hear Plaintiffs' claims in this case because, as clarified by the Supreme Court less than three weeks ago in a case nearly identical to this one, Plaintiffs' claims are quintessential breach of contract claims.

See *California v. United States Department of Education*, 604 U.S. ____ (2025), No. 24A910, 2025 WL 1008354, (April 4, 2025)[1]; ECF 68 at 9-20.

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[1] At the PI hearing, the Court asked questions about the weight it should give to a *per curium* decision issued by the Supreme Court on an application for injunctive relief. The government submits that the Supreme Court's decision in *California* should be treated as binding precedent on the issue of whether there is a likelihood of success on the merits as to the Court's jurisdiction to hear this case under the Tucker Act.

In *California*, five justices of the Supreme Court considered an issue, reached a conclusion, and provided their reasoning. However short, *California* is a ruling of our highest court and thus binding on all lower courts. If Supreme Court precedent "has direct application in a case" a district court "should follow the case which directly controls, leaving to [the Supreme Court] the prerogative of overruling its own decision." *Mallory v Norfolk Southern Railway Co*., 600 U.S. 122, 124 (2023) (cleaned up). "This is true even if the lower court thinks the precedent is in tension with some other line of decisions." *Id*.

The Supreme Court has also noted the precedential effect of its own *per curiam* decisions and found lower court decisions erroneous for failing to follow that precedent. *See, e.g.*, *Tandom v. Newsom*, 593 U.S. 61, 62 (2021) (citing *Roman Catholic Diocese of Brooklyn* v. *Cuomo*, 141 S.Ct. 63 (2020) (*per curiam*) (slip opinion)); *see also Gateway City Church v. Newsom*, 141 S.Ct. 1460 (2021) (holding that the Ninth Circuit's "failure to grant relief was erroneous," because the right to injunctive relief was "clearly dictated" by the Supreme Court's prior summary order on an application for injunctive relief in *South Bay United Pentecostal Church v. Newsom*, 592 U.S. _, 141 S. CT. 716 (2021)).

Moreover, even if this Court does not view the Supreme Court's ruling in *California* as strictly binding, it should follow that ruling on the issue of Tucker Act jurisdiction because there is no meaningful distinction between the two cases on that issue. As discussed at oral argument, all of the arguments the Plaintiff states make here about why the Tucker Act does not apply are precisely the arguments made by the Plaintiff states in *California*. A finding of likelihood of success on the merits is a finding necessary to enter a preliminary injunction. Even if, as the Court suggested at oral argument, the Court were to find that this case is distinguishable from *California* as to irreparable harm or other issues, the Court should still follow the ruling of the Supreme Court that, on these facts, there is no likelihood of success on the merits as to the Tucker Act issue and deny the motion for preliminary injunction on that basis.

In *California*, the Supreme Court held that the APA waiver of sovereign immunity does not extend to actions that challenge an agency's termination of a set of grants. Instead, the Tucker Act grants the Court of Federal Claims jurisdiction over those suits. In addition, as numerous courts have held, simply changing the description of claims and adding Constitutional counts in order to recharacterize a claim for money does not alter this Court's jurisdiction. *See id.*; *Suburban Mortg. Assocs., Inc. v. U.S. Dep't of Hous. & Urban Dev.*, 480 F.3d 1116, 1124 (Fed. Cir. 2007); *Christopher Vill., L.P. v. United States*, 360 F.3d 1319, 1328 (Fed. Cir. 2004); *Consol. Edison Co. of New York, Inc. v. U.S. Dep't of Energy*, 247 F.3d 1378 (Fed. Cir. 2001); *Village West Assocs. v. Rhode Island Hous. & Mortg. Fin. Corp.*, 618 F.Supp.2d 134, 139-40 (D.R.I. 2009).

However, even if this Court did have jurisdiction to review the Constitutional claims added by Plaintiffs here, they are unlikely to succeed on the merits. Plaintiffs essentially claim, through three counts titled "Separation of Powers, "Spending Clause," and "Equitable Ultra Vires," that HHS exceeded its authority—and usurped Congress's authority—by failing to comply with the direction Congress gave to HHS when it appropriated funding through multiple COIVD-19-related appropriations bills. Part of the difficulty of responding to Plaintiffs' claims, however, is that they never identify which of Congress's specific directions they contend HHS failed to follow.

In fact, with respect to the Plaintiff states, HHS not only abided by Congress's direction, but in multiple instances awarded *more* to the states than the

amounts specified by Congress by the dates specified in the relevant statutes. Therefore, HHS's discretionary decision-making with respect to the remaining funding is unreviewable. See *Lincoln v. Vigil*, 508 U.S. 182, 185-88 (1993); *Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am. v. Donovan*, 746 F.2d 855, 861 (D.C. Cir. 1984) (Scalia, J.)

There are multiple appropriations bills at issue in this case, and the money appropriated by Congress to HHS or its sub-agencies through these bills was distributed to the Plaintiff states by HHS through multiple funding streams. *See* Declaration of J. Legier ("Legier Decl. II"), attached hereto, at ¶¶ 6,8. The six appropriations bills raised by Plaintiffs are listed below, and the sections of each specific bill appropriating money to HHS—directly or through the Centers for Disease Control ("CDC") or the Substance Abuse and Mental Health Services Administration ("SAMHSA")—are attached hereto as Exhibits A-F for the Court's convenience:

- The American Rescue Plan Act of 2021 ("ARPA") Pub. L. No. 117-2, 135 Stat. 4 (2021) ("ARPA"), Ex. A;
- The Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (2020) ("CARES"), Ex. B;
- The Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, Pub. L. No. 116-123, 134 Stat. 146 (2020) ("CPRSA"), Ex. C;
- The Coronavirus Response and Relief Supplemental Appropriations Act, (2021) Pub. L. No. 116-260, 134 Stat. 1182 ("CRRSAA"), Ex. D;

- The Families First Coronavirus Response Act, Pub. L. No. 116–127, 134 Stat. 178 (2020) ("FFCRA"), Ex. E[2]; and
- The Paycheck Protection Program and Health Care Enhancement Act, Pub. L. No. 116-139, 134 Stat. 620 (2020) ("PPP"), Ex. F.

I. Appropriations to CDC and CDC Allocation to STLTs

The appropriations at issue here are, as in *Policy and Research v. HHS*, 313 F.Supp.3d 62 (D.D.C. 2018), much more like the lump sum appropriations at issue in *Lincoln* than other situations where Congress provided specific instructions about how the funds should be spent. HHS complied with the conditions set by Congress when it allocated, and in fact often exceeded, the amount Congress directed to be provided to the states within the timeframes set by Congress. As recognized in *Lincoln*, when Congress does not impose a statutory restriction on funding, an agency's decision about how to spend that funding is committed to agency discretion, and courts cannot intrude.

With respect to the CDC, some of the appropriations statutes direct, with varied wording, a minimum amount of funding to be provided to state, tribal, local, and territorial entities, commonly referred to by HHS as "STLTs." Legier Decl. II at ¶ 7. Some of these bills also specify the date by which the funding must

[2] The FFCRA did not allocate any appropriations directly to CDC or SAMHSA; instead, the only allocations were $1,000,000,000, to HHS as a whole, for the Public Health and Social Services Emergency Fund, and $250,000,000, also to HHS, for Aging and Disability Services Programs. *See* Ex. E. Congress did not direct HHS to provide any of those allocated funds to the states. Therefore, the FFCRA allocation is not relevant to the Plaintiff states' separation of powers claims in this case, and the government has omitted it from the charts below for clarity.

be made available and/or expended. To the extent that Congress provided instructions to the CDC about how it should spend the appropriated money with respect to the Plaintiff states, it is only through these provisos that set the minimum funding to be allocated to the STLTs.

For example, and as discussed during argument, the CARES Act provided $4.3 billion to the CDC, "to remain available until September 30, 2024, to prevent, prepare for, and respond to coronavirus, domestically or internationally: *Provided*, That not less than $1,500,000,000 of the amount provided under this heading in this Act shall be for grants to or cooperative agreements with States, localities, territories, tribes, tribal organizations, or health service providers to tribes . . . ." Pub. L. No. 116-136, 134 Stat. 281, 554-555 (2020).

Thus, although Congress appropriated $4.3 billion in coronavirus funding to the CDC through the CARES Act, it only directed that $1.5 billion of those funds should go to STLTs, to remain available until September 30, 2024. CDC, in its discretion, awarded over $2.1 billion – more than the amount Congressionally be allocated to the states – to STLTs by September 30, 2024. Legier Decl. II at ¶ 10. At that point, HHS had fulfilled Congress's mandate with respect to the Plaintiff states under the CARES Act. As of the date of the termination of the grants, the STLTs had spent over $1.8 billion of the awarded money – more than the amount appropriated to the states by Congress. *Id*.

HHS tracks each of its appropriated funding streams and the expenditure of those funds to each grant recipient. Legier Decl. II at ¶ 8. HHS has reviewed

the funding streams at issue in this case, and the chart below summarizes: 1) the total amount appropriated to CDC through these appropriations bills; 2) the date by which it must be obligated by CDC; 3) the amount designated by the bill for states; 4) the amount provided by the CDC to the states; and 5) the amount spent by the states as of April 14, 2025, under each appropriation. Legier Decl. II at ¶ 9-13.

Appropriations Bill	**Total Amount Appropriated to CDC**	**Amount Appropriated for CDC to Provide to STLTs**	**Amount Provided by CDC to STLTs**	**Amount spent by STLTs**
CPRSA (134 Stat. at 147)	$2,200,000,000, available until September 30, 2022	**$950,000,000**	**$1,120,474,306**	$1,099,398,182
CARES (134 Stat. at 554)	$4,300,000,000, available until September 30, 2024	**$1,500,000,000**	**$2,108,388,501**	$1,812,715,188
PPP (134 Stat. at 623-624)	$25,000,000,000 to HHS, available until expended	**$10,250,000,000**[3] through HHS	**$11,652,785,823**	$10,029,206,313
CRRSAA (134 Stat. at 1911)	$8,750,000,000, available until September 30, 2024	**$4,290,000,000**[4]	**$5,426,073,054**	$3,811,438,554
ARPA (135 Stat. at 38-39)	$1,000,000,000 for vaccine-related uses; available until expended	**$0**		

[3] PPP appropriated $11,000,000,000 to HHS for STLTs without specifying that the appropriation go through CDC. Of this $11 billion, PPP specified $750 million for the Indian Health Service, which is not part of this case and thus removed from the total in the chart above.

[4] CRRSAA appropriated a total of $4.5 billion to STLTs, specifying $210 million for the Indian Health Service, which is not part of this case. 134 Stat. at 1911. Under CRRSAA, in addition to the CDC-specific allocation, Congress appropriated $22.4 billion to HHS, to remain available until September 30, 2022, and directed that money go to the STLTs within 21 days of the date of enactment of the Act. HHS provided that money to CDC to obligate. In total, including both provisions, CDC awarded a total of $26.7 billion to STLTs. As of April 14, 2025, STLTs spent $17.9 billion of the CRRSAA total awarded to them by CDC, leaving a total of more than $8.8 billion unspent. Legier Decl. II at ¶ 12 n. 1.

As shown above, for each appropriation bill, CDC awarded to the states at least the full amount of money Congress directed to go to the STLTs, by the date set by Congress. With respect to both CPRSA and the CARES Act, the states then in fact spent more than the amount appropriated by Congress.[5]

And with respect to CRRSAA, in spite of extensions by the CDC beyond the date limit set by Congress, the states had not drawn down the money awarded by CDC by the time of the termination.[6] For each of these appropriations, therefore, the agency's decision to terminate agreements through which it had agreed to provide the states additional time to spend the appropriated funds, beyond the time frame set by Congress, is entirely consistent with Congress's direction in allocating the funds.

With respect to PPP, of the $25 billion allocated to HHS by Congress in that statute, Congress rescinded all but $243 million of the unobligated funds in the Fiscal Responsibility Act of 2023. *See* PL 118-5, June 3, 2023, 137 Stat at 23.[7]

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[5] Moreover, Congress decided to rescind all the unobligated balances made available to CDC under CARES, except for $446 million, in the Fiscal Responsibility Act of 2023. *See* PL 118-5, June 3, 2023, 137 Stat at 24.

[6] Similarly, Congress rescinded all the unobligated balances made available to CDC under CRRSAA, except for $177 million, in the Fiscal Responsibility Act of 2023. *See* PL 118-5, June 3, 2023, 137 Stat at 24.

[7] "All of the unobligated balances of funds made available in the second paragraph under the heading "Public Health and Social Services Emergency Fund" in title I of division B of Public Law 116–139, including any funds transferred from such heading that remain unobligated, with the exception of $243,000,000 and any funds that were transferred and merged with funds made available under the heading "Office of the Secretary—Office of Inspector General" pursuant to section 103 of title I of division B of Public Law 116–139."

Congress did not provide any additional instructions to the agency for how the remaining $243 million should be spent. HHS thus had complete discretion whether to leave any of the remaining $243 million with the states, or direct it to another use. Therefore, the agency complied with all limits set by Congress with respect to PPP allocations.

In addition to the above data, though ARPA did not appropriate specific amounts to be given to states, HHS data shows that HHS authorized nearly $19 billion to the states under ARPA in 2021, and that, as of April 14, 2025, states had still not spent over *$6.7 billion* of the funding HHS awarded.[8]

The agency has inherent authority to spend the money that Congress allocates consistent with the limits Congress sets. As set forth above, CDC complied with all of the directions from Congress for the agency's spending of the allocated funds on the states, including Plaintiff states. Therefore, the agency's decision to exercise its discretion within those limits is entirely consistent with separation of powers principles, and is an action "committed to agency discretion by law" for which the APA does not provide an avenue for review. 5 U.S.C. § 701(a)(2).

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[8] HHS awarded $18,964,597,077 to states under ARPA; states drew down $12,241,082,518 of this funding; and $6,723,514,559 remained unspent. Legier Decl. II at ¶ 13.

II. Appropriations to SAMHSA and SAMHSA Allocation Through Block Grants

In a similar way, two of the appropriation bills (CRRSAA and ARPA) also specified an amount of appropriated money to SAMHSA to be designated for community mental health services block grants and substance abuse prevention and treatment block grants – the block grants at issue in Plaintiffs' complaint. The other four appropriations bills (CPRSA, FFCRA, CARES, PPP) did not specify any amount for block grants or otherwise instruct SAMHSA to provide funding to the states. HHS has reviewed the funding streams at issue in this case, and the charts below summarize: 1) the total amount appropriated for SAMHSA to provide through block grants; 2) the amount provided by SAMHSA through block grants to states; and 3) the amount of the block grant funds spent as of April 17, 2025. *See* Declaration of K. John ("John Decl. II), attached hereto, at ¶ 6-12.

Appropriations Bill	Amount Appropriated for SAMHSA to Provide Through Block Grants	Amount Provided by SAMHSA Through Block Grants	Amount of Block Grant Funds Spent
ARPA (135 Stat. at 45-46) To be expended by the states by September 30, 2025	**$1,425,000,000** for substance abuse prevention and treatment block grants	**$1,474,612,375**	$949,188,857
	$1,425,000,000[9] for community mental health services block grants	**$1,474,585,317**	$887,366,456
CRRSAA (134 Stat. at 1913) The period of performance for all block grants funded under CRRSAA had ended prior to the terminations on March 24, 2025	**$1,650,000,000** for substance abuse prevention and treatment block grants	**$1,650,000,000**	$1,578,032,707
	$825,000,000[10] for community mental health services block grants	**$825,000,000**	$778,758,668

[9] Pursuant to 42 U.S.C. §§ 300x-9(b); 300x-35, SAMHSA must obligate 5% of appropriated funding for block grants for technical assistance, data collection, and program evaluation. Thus, the amount shown is the $1,500,000,000 appropriated by ARPA, less the 5% that SAMHSA could hold back for these purposes. In addition to the appropriated funds mentioned above, SAMHSA received an additional $100,000,000 in ARPA funds through an intra-departmental transfer of authority from the HHS Public Health and Social Services Emergency Fund ("PHSSEF"). The funds were evenly distributed between the SAPT and CMHS Block Grants. John Decl. II at ¶ 6-7.

[10] CRRSAA appropriated $1.65 billion total for community mental health services block grants, and directed HHS "to provide no less than 50 percent of funds directly to facilities defined in section 1913(c) of the PHS Act," rather than through the states. *See* 134 Stat. 1182 at 1913.

As with CDC, SAMHSA awarded the full amount appropriated by Congress to the states through block grants. With respect to CRRSAA, the period of performance for all block grants had already ended prior to the terminations on March 24, 2025. The Plaintiff states' ability to spend money under CRRSAA was thus not affected by the terminations. Instead, the states had left over $118 million in obligated funding unspent when the period of performance ended by the terms of those grants.[11] John Decl. II at ¶ 12.

With respect to ARPA, SAMHSA also made the full amount appropriated available to the states. Four years later, the states had not spent $1.1 billion of the awarded block grant funding. For the Plaintiff states in this case, the total amount of unspent block grant funds under ARPA as of April 17, 2025, totaled $625 million. John Decl. II at ¶ 8. To the extent the Court has separation of powers concerns with respect to the fact that HHS terminated the availability of these ARPA block grant funds six months prior to the September 25, 2025 date in the statute, the government respectfully submits that both the amount of funding at issue and the length of time that this money was left unspent by the Plaintiff states should factor into the Court's analysis of whether HHS truly acted contrary to Congress's intent and the extent to which the terminations are causing irreparable harm to the Plaintiff states such that emergency relief is warranted.

[11] Funding remains available during the close-out period for states to pay for expenditures made during the performance period.

As noted during argument, although access to remaining COVID-19 funding under current awards was terminated, other awards and annual funding remain available to the Plaintiff states for their regular public health activities. Where, for example, a current, active award depended on a mix of funding streams, HHS terminated access only to the COVID-19 funds and left available the annual appropriation. *See*, *e.g.*, ECF No. 4-1 at 38 (Termination notice for Epidemiology and Laboratory Capacity for Infection Disease Grants awards specified "Unobligated award balances of COVID-19 funding will be de-obligated by CDC. Award activities under other funding may continue consistent with the terms and conditions of the award.") These funds remain available and are intended to support STLTs as they undertake many of these same public health activities.

III. HHS Allocated Funds as Directed by Congress

As seen in the above charts, with respect to each appropriation statute, HHS made the full amount appropriated by Congress available to the Plaintiff states by the dates set by Congress, often awarding more than Congress required. In fact, under Plaintiffs' argument, HHS's decision to extend the availability of funding beyond the dates specified by Congress in most of the statutes went beyond the express direction by Congress. Plaintiffs correctly do not argue that this discretionary action violated the separation of powers.

Furthermore, after June 3, 2023, Congress chose not to provide specific instructions for the HHS funding that it left in place in the Fiscal Responsibility Act of 2023. With respect to the Plaintiff states, after that point, HHS's choice to

fund or not fund specific grants did not violate, and could not have violated, any separation of powers principles.

To the extent that the Plaintiff states' separation of powers argument turns on an argument that HHS did not follow Congress's directions for spending set forth in other provisions of the COVID appropriations statutes, beyond those directing money to the states through the grant agreements at issue in their Amended Complaint, the Plaintiff states do not have standing to challenge those agency decisions.

Whether the termination of grants that HHS used to provide the Plaintiff states with the amounts appropriated by Congress violated the terms of those agreements – including the applicable regulations – is a question that cannot be addressed by this Court. But HHS complied with the conditions set by Congress for the amount that must go to the STLTS. The states in this case are demanding funds that Congress either did not appropriate to them or that the states chose not to use during the years the funds were made available. HHS's decision to terminate the award of funding that exceeded what Congress appropriated did not violate Congress's direction. Plaintiffs' claims that denial of those funds violated the Constitution therefore cannot succeed.

Dated: April 24, 2025

Respectfully submitted,

THE UNITED STATES OF AMERICA,
By its Attorneys,

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CERTIFICATION OF SERVICE

I hereby certify that, on April 24, 2025, I filed the foregoing document through this Court's Electronic Case Filing (ECF) system, thereby serving it upon all registered users in accordance with Federal Rule of Civil Procedure 5(b)(2)(E) and Local Rules Gen 304.

/s/ Kevin Love Hubbard

KEVIN LOVE HUBBARD
Assistant United States Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STATE OF COLORADO, *et al.*, Plaintiffs, v. U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, *et al.*, Defendants.	Civil Action No. 25-cv-121-MSM-LDA

DECLARATION OF JAMIE LEGIER

Pursuant to 28 U.S.C. § 1746, I, Jamie Legier, declare as follows:

1. I am the Director of the Office of Grants Services at the Centers for Disease Control and Prevention ("CDC"), the United States Department of Health and Human Services ("HHS").

2. In that capacity, my official duties include providing fiscal stewardship across the agency, and I serve as the agency's principal advisor and liaison on all aspects of grants, including grants financial management activities.

3. I have experience with HHS's record systems regarding grant awards issued by CDC, a sub-agency of HHS. These records are made in the course of regularly conducted business activity at or near the time of relevant events by a person with knowledge of these events.

4. In the course of preparing this declaration, I have examined the office records available to me regarding grants awarded by CDC.

5. At issue in this litigation are grants provided by CDC to prevent, prepare for, and mitigate against COVID-19. These grants were issued in the midst of the COVID-19 pandemic, utilizing supplemental funds appropriated through a number of appropriations acts passed by Congress in response to the COVID-19 pandemic.

6. In response to the COVID-19 public health emergency, CDC, either directly or by and through HHS, received supplemental funding from the following appropriations bills:

- The Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, Pub. L. No. 116-123, 134 Stat. 146 (2020) ("CPRSA");
- The Families First Coronavirus Response Act, Pub. L. No. 116–127, 134 Stat. 178 (2020) ("FFCRA");
- The Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (2020) ("CARES");
- The Paycheck Protection Program and Health Care Enhancement Act, Pub. L. No. 116-139, 134 Stat. 620 (2020) ("PPP");
- The Coronavirus Response and Relief Supplemental Appropriations Act, (2021) Pub. L. No. 116-260, 134 Stat. 1182 ("CRRSAA"); and
- The American Rescue Plan Act of 2021 ("ARPA") Pub. L. No. 117-2, 135 Stat. 4 (2021) ("ARPA").

7. With respect to the CDC, some of these bills specify, with varied wording, a minimum amount of funding to be provided to state, tribal, local, and territorial entities, commonly referred to by HHS as "STLTs" and the date by which the funding must be made available or obligated by CDC.

8. I am aware, in my role at CDC, that both HHS and CDC track each of the appropriated funding streams and the expenditure of those funds to each grant recipient.

9. For the CPRSA, Congress appropriated $2.2 billion to CDC, of which $950,000,000 was specifically appropriated for awards to STLTs, to remain available until September 30, 2022. As of April 14, 2025, CDC made available $1,120,474,306 to the STLTs, and the STLTs spent $1,099,398,182 of the awarded CPRSA funds.

10. For the CARES Act, Congress appropriated $4.3 billion to CDC, of which $1.5 billion was specifically appropriated for awards to STLTs, to remain available until September 30, 2024. As of April 14, 2025, CDC made available $2,108,388,501 to the STLTs, and the STLTs spent $1,812,715,188 of the awarded CARES Act funds.

11. For the PPP, Congress appropriated $11,000,000,000 to HHS for STLTs in total, without specifying that the appropriation go through CDC. Of this appropriation, Congress specified that $750,000,000 be appropriated for the Indian Health Service, resulting in $10,250,000,000 billion appropriated for non-Indian Health Service STLTs. HHS also transferred another $282,311,516 to CDC, and Congress separately appropriated another $1,000,000,000 directly to CDC under the PPP. As of April 14, 2025, CDC made available $11,652,785,823 to the STLTs, and the STLTs spent $10,029,206,313 of the awarded PPP funds.

12. For the CRRSAA, Congress appropriated $8.75 billion to CDC, of which $4.29 billion was specifically appropriated for awards to STLTs, to remain available until September 30, 2024. As of April 14, 2025, $5,426,073,054 was made available to the STLTs from CRRSAA funds, and the STLTs spent $3,811,438,554 of the awarded CRRSAA funds.[1]

13. For the ARPA, Congress appropriated $1 billion to CDC. CDC received another $17,964,597,077 from HHS and CMS under ARPA. As of April 14, 2025, $18,964,597,077 was made available to the STLTs, and the STLTs had spent $12,241,082,518 of the awarded ARPA funds. As of April 14, 2025, HHS records show $6,723,514,559 of unspent ARPA funds that had been awarded to STLTs.[2]

I HEREBY DECLARE, to the best of my knowledge and belief, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

EXECUTED this April 24, 2025, in Atlanta, GA.

/s/ Jamie Legier

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[1] In addition to this CDC-specific allocation under CRRSAA, Congress appropriated $22.4 billion to HHS, to remain available until September 30, 2022, and directed that money go to the STLTs within 21 days of the date of enactment of the Act. HHS provided that money to CDC for the sub-agency to obligate. In total, including both provisions, CDC awarded a total of $26.7 billion to STLTs. As of April 14, 2025, STLTs spent $17.9 billion of the CRRSAA total awarded to them by CDC, leaving a total of more than $8.8 billion unspent.

[2] In my prior declaration in this matter, dated April 14, 2025, I provided an estimate of $5.8 billion of unspent or expired funding that had been appropriated directly to CDC for COVID-19 grants. That number did not include broader HHS COVID-19 funding that had been made available to STLTs through CDC.

UNITED STATES DISTRICT COURT
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STATE OF COLORADO, *et al.*, Plaintiffs, v. U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, *et al.*, Defendants.	Civil Action No. 25-cv-121-MSM-LDA

DECLARATION OF KURT JOHN

Pursuant to 28 U.S.C. § 1746, I, Kurt John, declare as follows:

1. I am the Director of the Office of Financial Resources, Substance Abuse and Mental Health Services Administration ("SAMHSA"), the United States Department of Health and Human Services ("HHS").

2. In that capacity, I provide fiscal stewardship across SAMHSA and serve as the agency's principal advisor and liaison on all aspects of budget, grants, contracts, and financial management activities.

3. I have experience with HHS's/SAMHSA's record systems regarding grant awards. These records are made in the course of regularly conducted business activity at or near the time of relevant events by a person with knowledge of these events.

4. In the course of preparing this declaration, I have examined the office records available to me regarding grants awarded by SAMHSA.

5. I have reviewed the chart of SAMHSA block grants in the United States' Supplemental Briefing in Support of Its Opposition to Plaintiffs' Motion for a Preliminary Injunction and the information contained in the chart is accurate.

6. Under the American Rescue Plan Act ("ARPA"), Congress appropriated $1,500,000,000 for the Substance Abuse Prevention and Treatment ("SAPT") Block Grant and $1,500,000,000 for the Community Mental Health Services Block ("CMHS") Block Grant. The SAPT and CMHS authorizing statutes require that SAMHSA obligate five percent of the block grant appropriations for technical assistance, data collection and program evaluation. Thus, $1,425,000,000 was appropriated for both SAPT and SMHS block grants through SAMSHA. In addition to the appropriated funds mentioned above, SAMHSA received an additional $100,000,000 in ARPA funds through an intra-departmental transfer of authority from the HHS Public Health and Social Services Emergency Fund ("PHSSEF"). The funds were evenly distributed between the SAPT and CMHS Block Grants.

7. In accordance with the appropriations and authorizing statutes, SAMHSA made awards totaling $1,474,612,375 under the SAPT Block Grant and $1,474,585,317 under the CMHS Block Grant. The Plaintiff states were allocated $834,868,156 of the ARPA SAPT Block Grant funding and $820,703,645 of the ARPA CMHS Block Grant funding. The purpose of these awards was to enhance

COVID-19 testing and mitigation efforts for individuals with substance use and mental health needs and to address substance abuse prevention, treatment, and recovery needs in response to the COVID-19 Public Health Emergency ("PHE").

8. As of April 17, 2025, the states in total (non-plaintiff and plaintiffs) had drawn $949,188,857 in ARPA SAPT funding and $887,366,456 in ARPA CMHS funding. As of April 17, the Plaintiff states had drawn $538,482,482 in SAPT ARPA funding and $491,781,201 in CMHS ARPA funding. As of April 17, 2025, for the Plaintiff states, $328,922,444 in CMHS ARPA funding and $296,385,674 in SAPT ARPA funding – a total of $625,308,118 – remained undisbursed in SAMHSA's accounting system. For all states, $1.1 billion of ARPA CMHS and SAPT funding remained undisbursed in SAMHSA's accounting system.

9. Under the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA), Congress appropriated $1,650,000,000 for the SAPT Block Grant and $1,650,000,000 for the CMHS Block Grant. The CRRSAA directed that SAMHSA award no less than 50 percent of the CMHS Block Grant appropriation to community mental health centers.

10. In accordance with the appropriations and authorizing statutes, SAMHSA awarded states $1,650,000,000 under the SAPT Block Grant and $825,000,000 under the CMHS Block Grant. The Plaintiff states were allocated $934,751,557 of the CRRSAA SAPT Block Grant funding and $459,325,985 of the

CRRSAA CMHS Block Grant funding. The purpose of these awards was to provide critical mental health services in response to the COVID-19 PHE.

11. With respect to the CRRSAA-funded grants, the period of performance had already expired at the time of the grant terminations.

12. As of April 17, 2025, the states in total had drawn $1,578,032,707 in CRSSA SAPT funding and $778,758,668 in CRRSAA CMHS funding. As of April 17, the Plaintiff states had drawn $897,903,037 in SAPT CRRSA funding and $436,744,393 in CMHS CRRSA funding. As of April 17, 2025, for the Plaintiff states, $36,848,520 of CRSSA SAPT funding and $22,581,592 of CRSSA CMHS funding – a total of $59,430,112 - remained undisbursed in SAMHSA's accounting system. For all the states, $118.2 million of CRRSAA CMHS and SAPT funding remained undisbursed in SAMHSA's accounting system.

I HEREBY DECLARE, to the best of my knowledge and belief, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

EXECUTED this April 24, 2025, at Washington, DC.

/s/ *Kurt John*

Exhibit A

AMERICAN RESCUE PLAN ACT OF 2021

Pl 117-2, March 11, 2021, 135 Stat 4

Sec. 2302. Funding For Vaccine Confidence Activities.

In addition to amounts otherwise available, there is appropriated to the Secretary for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $1,000,000,000, to remain available until expended, to carry out activities, acting through the Director of the Centers for Disease Control and Prevention—

(1) to strengthen vaccine confidence in the United States, including its territories and possessions;

(2) to provide further information and education with respect to vaccines licensed under section 351 of the Public Health Service Act (42 U.S.C. 262) or authorized under section 564 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bbb–3); and

(3) to improve rates of vaccination throughout the United States, including its territories and possessions, including through activities described in section 313 of the Public Health Service Act, as amended by section 311 of division BB of the Consolidated Appropriations Act, 2021 (Public Law 116–260).

Sec. 2701. Funding For Block Grants For Community Mental Health Services.

In addition to amounts otherwise available, there is appropriated to the Secretary of Health and Human Services (in this subtitle referred to as the "Secretary") for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, $1,500,000,000, to remain available until expended, for carrying out subpart I of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.), subpart III of part B of title XIX of such Act (42 U.S.C. 300x–51 et seq.), and section 505(c) of such Act (42 U.S.C. 290aa–4(c)) with respect to mental health. Notwithstanding section 1952 of the Public Health Service Act (42 U.S.C. 300x–62), any amount awarded to a State out of amounts appropriated by this section shall be expended by the State by September 30, 2025.

Sec. 2702. Funding For Block Grants For Prevention And Treatment Of Substance Abuse.

In addition to amounts otherwise available, there is appropriated to the Secretary for fiscal year 2021, out of any money in the Treasury not otherwise appropriated,

$1,500,000,000, to remain available until expended, for carrying out subpart II of part B of title XIX of the Public Health Service Act (42 U.S.C. 300x–21 et seq.), subpart III of part B of title XIX of such Act (42 U.S.C. 300x–51 et seq.), section 505(d) of such Act (42 U.S.C. 290aa4(d)) with respect to substance abuse, and section 515(d) of such Act (42 U.S.C. 290bb–21(d)). Notwithstanding section 1952 of the Public Health Service Act (42 U.S.C. 300x–62), any amount awarded to a State out of amounts appropriated by this section shall be expended by the State by September 30, 2025.

Exhibit B

CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT

Pl 116-136, March 27, 2020, 134 Stat 281

Title VIII

Department Of Health And Human Services

CDC–Wide Activities And Program Support

For an additional amount for "CDC-Wide Activities and Program Support", $4,300,000,000, to remain available until September 30, 2024, to prevent, prepare for, and respond to coronavirus, domestically or internationally:

Provided, That not less than $1,500,000,000 of the amount provided under this heading in this Act shall be for grants to or cooperative agreements with States, localities, territories, tribes, tribal organizations, urban Indian health organizations, or health service providers to tribes, including to carry out surveillance, epidemiology, laboratory capacity, infection control, mitigation, communications, and other preparedness and response activities:

Provided further, That every grantee that received a Public Health Emergency Preparedness grant for fiscal year 2019 shall receive not less than 100 percent of that grant level from funds provided in the first proviso under this heading in this Act:

Provided further, That of the amount in the first proviso, not less than $125,000,000 shall be allocated to tribes, tribal organizations, urban Indian health organizations, or health service providers to tribes:

Provided further, That the Director of the Centers for Disease Control and Prevention ("CDC") may satisfy the funding thresholds outlined in the preceding two provisos by making awards through other grant or cooperative agreement mechanisms:

Provided further, That of the amount provided under this heading in this Act, not less than $500,000,000 shall be for global disease detection and emergency response:

Provided further, That of the amount provided under this heading in this Act, not less than $500,000,000 shall be for public health data surveillance and analytics infrastructure modernization:

Provided further, That CDC shall report to the Committees on Appropriations of the House of Representatives and the Senate on the development of a public health surveillance and data collection system for coronavirus within 30 days of enactment of this Act:

Provided further, That of the amount provided under this heading in this Act, $300,000,000 shall be transferred to and merged with amounts in the Infectious Diseases Rapid Response Reserve Fund ("Reserve Fund"), established by section 231 of division B of Public Law 115–245:

Provided further, That the Secretary of Health and Human Services, in consultation with the Director of the CDC, shall provide a report to the Committees on Appropriations of the House of Representatives and the Senate every 14 days, for one year from the date from any such declaration or determination described in the third proviso of section 231 of division B of Public Law 115–245, that details commitment and obligation information for the Reserve Fund during the prior two weeks, as long as such report would detail obligations in excess of $5,000,000, and upon the request by such Committees:

Provided further, That funds appropriated under this heading in this Act may be used for grants for the rent, lease, purchase, acquisition, construction, alteration, or renovation of non-federally owned facilities to improve preparedness and response capability at the State and local level:

Provided further, That funds provided under this heading in this Act may be used for purchase and insurance of official motor vehicles in foreign countries:

Provided further, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Substance Abuse And Mental Health Services Administration

Health Surveillance And Program Support

For an additional amount for "Heath Surveillance and Program Support", $425,000,000, to remain available through September 30, 2021, to prevent, prepare for, and respond to coronavirus, domestically or internationally:

Provided, That of the amount appropriated under this heading in this Act, not less than $250,000,000 is available for Certified Community Behavioral Health Clinic Expansion Grant program:

Provided further, That of the amount appropriated under this heading in this Act, not less than $50,000,000 shall be available for suicide prevention programs:

Provided further, That of the amount appropriated under this heading in this Act, not less than $100,000,000 is available for activities authorized under section 501(o) of the Public Health Service Act:

Provided further, That of the funding made available under this heading in this Act, not less than $15,000,000 shall be allocated to tribes, tribal organizations, urban Indian health organizations, or health or behavioral health service providers to tribes:

Provided further, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Exhibit C

CORONAVIRUS PREPAREDNESS AND RESPONSE SUPPLEMENTAL APPROPRIATIONS ACT, 2020

Pl 116-123, March 6, 2020, 134 Stat 146

Title III

Department Of Health And Human Services

Centers for Disease Control and Prevention;
CDC–Wide Activities And Program Support

For an additional amount for "CDC–Wide Activities and Program Support, $2,200,000,000, to remain available until September 30, 2022, to prevent, prepare for, and respond to coronavirus, domestically or internationally:

Provided, That not less than $950,000,000 of the amount provided shall be for grants to or cooperative agreements with States, localities, territories, tribes, tribal organizations, urban Indian health organizations, or health service providers to tribes, to carry out surveillance, epidemiology, laboratory capacity, infection control, mitigation, communications, and other preparedness and response activities:

Provided further, That $475,000,000 of the funds made available in the preceding proviso shall be allocated within 30 days of the date of enactment of this Act:

Provided further, That every grantee that received a Public Health Emergency Preparedness grant for fiscal year 2019 shall receive not less than 90 percent of that grant level from funds provided in the first proviso under this heading in this Act, and not less than $40,000,000 of such funds shall be allocated to tribes, tribal organizations, urban Indian health organizations, or health service providers to tribes:

Provided further, That the Director of the Centers for Disease Control and Prevention ("CDC") may satisfy the funding thresholds outlined in the preceding two provisos by making awards through other grant or cooperative agreement mechanisms:

Provided further, That each grantee described in the third proviso under this heading in this Act shall submit a spend plan to the CDC not later than 45 days after the date of enactment of this Act:

Provided further, That of the amount provided under this heading in this Act, not less than $300,000,000 shall be for global disease detection and emergency response:

Provided further, That of the amount provided under this heading in this Act, $300,000,000 shall be transferred to and merged with amounts in the Infectious

Diseases Rapid Response Reserve Fund ("Reserve Fund"), established by section 231 of division B of Public Law 115–245:

Provided further, That the Secretary of Health and Human Services, in consultation with the Director of the CDC, shall provide a report to the Committees on Appropriations of the House of Representatives and the Senate every 14 days, for one year from the date from any such declaration or determination described in the third proviso of section 231 of division B of Public Law 115–245, that details commitment and obligation information for the Reserve Fund during the prior two weeks, as long as such report would detail obligations in excess of $5,000,000, and upon the request by such Committees:

Provided further, That funds appropriated under this heading in this Act may be used for grants for the construction, alteration, or renovation of non-Federally owned facilities to improve preparedness and response capability at the State and local level:

Provided further, That funds may be used for purchase and insurance of official motor vehicles in foreign countries:

Provided further, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Exhibit D

CORONAVIRUS RESPONSE AND RELIEF SUPPLEMENTAL APPROPRIATIONS ACT, 2021

Consolidated Appropriations Act, 2021,
Pl 116-260, December 27, 2020, 134 Stat 1182

Division M; Title III

Centers for Disease Control and Prevention;

CDC–Wide Activities and Program Support
(including transfer of funds)

For an additional amount for "CDC–Wide Activities and Program Support", $8,750,000,000, to remain available until September 30, 2024, to prevent, prepare for, and respond to coronavirus, domestically or internationally:

Provided, That amounts appropriated under this heading in this Act shall be for activities to plan, prepare for, promote, distribute, administer, monitor, and track coronavirus vaccines to ensure broad-based distribution, access, and vaccine coverage:

Provided further, That of the amount appropriated under this heading in this Act, not less than $4,500,000,000 shall be for States, localities, territories, tribes, tribal organizations, urban Indian health organizations, or health service providers to tribes:

Provided further, That of the amount in the preceding proviso, $210,000,000, shall be transferred to the "Department of Health and Human Services—Indian Health Service—Indian Health Services" to be allocated at the discretion of the Director of the Indian Health Service and distributed through Indian Health Service directly operated programs and to tribes and tribal organizations under the Indian Self-Determination and Education Assistance Act and through contracts or grants with urban Indian organizations under title V of the Indian Health Care Improvement Act:

Provided further, That the amount transferred to tribes and tribal organizations under the Indian Self-Determination and Education Assistance Act in the preceding proviso shall be transferred on a one-time, non-recurring basis, is not part of the amount required by 25 U.S.C. 5325, and may only be used for the purposes identified under this heading in this Act, notwithstanding any other provision of law:

Provided further, That the amounts identified in the second proviso under this heading in this Act, except for the amounts transferred pursuant to the third proviso under this heading in this Act, shall be allocated to States, localities, and territories

according to the formula that applied to the Public Health Emergency Preparedness cooperative agreement in fiscal year 2020:

Provided further, That of the amounts identified in the second proviso under this heading in this Act, except for the amounts transferred pursuant to the third proviso under this heading in this Act, not less than $1,000,000,000 shall be made available within 21 days of the date of enactment of this Act:

Provided further, That of the amounts identified in the second proviso under this heading in this Act, except for the amounts transferred pursuant to the third proviso under this heading in this Act, not less than $300,000,000 shall be for high-risk and underserved populations, including racial and ethnic minority populations and rural communities:

Provided further, That the Director of the Centers for Disease Control and Prevention ("CDC") may satisfy the funding thresholds outlined in the second, fifth, sixth, and seventh provisos by making awards through other grant or cooperative agreement mechanisms:

Provided further, That amounts appropriated under this heading in this Act may be used to restore, either directly or through reimbursement, obligations incurred for coronavirus vaccine promotion, preparedness, tracking, and distribution prior to the enactment of this Act:

Provided further, That the Director of the CDC shall provide an updated and comprehensive coronavirus vaccine distribution strategy and a spend plan, to include funds already allocated for distribution, to the Committees on Appropriations of the House of Representatives and the Senate and the Committee on Energy and Commerce of the House of Representatives and Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of enactment of this Act:

Provided further, That such strategy and plan shall include how existing infrastructure will be leveraged, enhancements or new infrastructure that may be built, considerations for moving and storing vaccines, guidance for how States, localities, territories, tribes, tribal organizations, urban Indian health organizations, or health service providers to tribes, and health care providers should prepare for, store, and administer vaccines, nationwide vaccination targets, funding that will be distributed to States, localities, and territories, how an informational campaign to inform both the public and health care providers will be executed, and how the strategy and plan will focus efforts on high-risk and underserved populations, including racial and ethnic minority populations:

Provided further, That such strategy and plan shall be updated and provided to the Committees on Appropriations of the House of Representatives and the Senate and the Committee on Energy and Commerce of the House of Representatives and

Committee on Health, Education, Labor, and Pensions of the Senate every 90 days through the end of the fiscal year:

Provided further, That amounts appropriated under this heading in this Act may be used for grants for the construction, alteration, or renovation of non-Federally owned facilities to improve preparedness and response capability at the State and local level:

Provided further, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Substance Abuse and Mental Health Services Administration;

Health Surveillance and Program Support

For an additional amount for "Heath Surveillance and Program Support", $4,250,000,000, to prevent, prepare for, and respond to coronavirus, domestically or internationally:

Provided, That of the amount appropriated under this heading in this Act, $1,650,000,000 shall be for grants for the substance abuse prevention and treatment block grant program under subpart II of part B of title XIX of the Public Health Service Act ("PHS Act"):

Provided further, That of the amount appropriated under this heading in this Act, $1,650,000,000 shall be for grants for the community mental health services block grant program under subpart I of part B of title XIX of the PHS Act:

Provided further, That of the amount appropriated in the preceding proviso, the Assistant Secretary is directed to provide no less than 50 percent of funds directly to facilities defined in section 1913(c) of the PHS Act:

Provided further, That of the amount appropriated under this heading in this Act, not less than $600,000,000 is available for the Certified Community Behavioral Health Clinic Expansion Grant program:

Provided further, That of the amount appropriated under this heading in this Act, not less than $50,000,000 shall be available for suicide prevention programs:

Provided further, That of the amount appropriated under this heading in this Act, $50,000,000 shall be for activities and services under Project AWARE:

Provided further, That of the amount appropriated under this heading in this Act, not less than $240,000,000 is available for activities authorized under section 501(o) of the PHS Act:

Provided further, That the Assistant Secretary may prioritize amounts appropriated in the preceding proviso to eligible states that did not receive amounts made available for such purpose under the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116–136):

Provided further, That of the amount appropriated under this heading in this Act, $10,000,000 shall be for the National Child Traumatic Stress Network:

Provided further, That from within the amount appropriated under this heading in this Act in the previous provisos, a total of not less than $125,000,000 shall be allocated to tribes, tribal organizations, urban Indian health organizations, or health or behavioral health service providers to tribes:

Provided further, That with respect to the amount appropriated under this heading in this Act the Substance Abuse and Mental Health Services Administration shall maintain the 20 percent set-aside for prevention, but may waive requirements with respect to allowable activities, timelines, or reporting requirements for the Substance Abuse Prevention and Treatment Block Grant and the Community Mental Health Services Block Grant as deemed necessary to facilitate a grantee's response to coronavirus:

Provided further, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Office of the Secretary

Public Health and Social Services Emergency Fund
(including transfer of funds)

For an additional amount for "Public Health and Social Services Emergency Fund", $22,945,000,000, to remain available until September 30, 2024, to prevent, prepare for, and respond to coronavirus, domestically or internationally, including the development of necessary countermeasures and vaccines, prioritizing platform-based technologies with U.S.-based manufacturing capabilities, the purchase of vaccines, therapeutics, diagnostics, necessary medical supplies, as well as medical surge capacity, and other preparedness and response activities:

Provided, That funds appropriated under this paragraph in this Act may be used to develop and demonstrate innovations and enhancements to manufacturing platforms to support such capabilities:

Provided further, That the Secretary of Health and Human Services (referred to under this heading as "Secretary") shall purchase vaccines developed using funds made available under this paragraph in this Act to respond to an outbreak or pandemic related to coronavirus in quantities determined by the Secretary to be adequate to address the public health need:

Provided further, That the Secretary may take into account geographical areas with a high percentage of cross-jurisdictional workers when determining allocations of vaccine doses:

Provided further, That products purchased by the Federal government with funds made available under this paragraph in this Act, including vaccines, therapeutics, and diagnostics, shall be purchased in accordance with Federal Acquisition Regulation guidance on fair and reasonable pricing:

Provided further, That the Secretary may take such measures authorized under current law to ensure that vaccines, therapeutics, and diagnostics developed from funds provided in this Act will be affordable in the commercial market: *Provided further*, That in carrying out the preceding proviso, the Secretary shall not take actions that delay the development of such products:

Provided further, That products purchased with funds appropriated under this paragraph in this Act may, at the discretion of the Secretary of Health and Human Services, be deposited in the Strategic National Stockpile under section 319F–2 of the Public Health Service Act:

Provided further, That of the amount appropriated under this paragraph in this Act, not more than $3,250,000,000 shall be for the Strategic National Stockpile under section 319F–2(a) of such Act: *Provided further*, That funds appropriated under this paragraph in this Act may be transferred to, and merged with, the fund authorized by section 319F–4, the Covered Countermeasure Process Fund, of the Public Health Service Act:

Provided further, That of the amount appropriated under this paragraph in this Act, $19,695,000,000 shall be available to the Biomedical Advanced Research and Development Authority for necessary expenses of manufacturing, production, and purchase, at the discretion of the Secretary, of vaccines, therapeutics, and ancillary supplies necessary for the administration of such vaccines and therapeutics:

Provided further, That funds in the preceding proviso may be used for the construction or renovation of U.S.-based next generation manufacturing facilities, other than facilities owned by the United States Government:

Provided further, That the Secretary shall notify the Committees on Appropriations of the House of Representatives and the Senate 2 days in advance of any obligation in excess of $50,000,000, including but not limited to contracts and interagency agreements, from funds provided in this paragraph in this Act:

Provided further, That amounts appropriated under this paragraph in this Act may be used to restore, either directly or through reimbursement, obligations incurred for coronavirus vaccines and therapeutics planning, development, preparation, and purchase prior to the enactment of this Act:

Provided further, That funds appropriated under this paragraph in this Act may be used for the construction, alteration, or renovation of non-federally owned facilities for the production of vaccines, therapeutics, diagnostics, and ancillary medical supplies where the Secretary determines that such a contract is necessary to secure sufficient amounts of such supplies:

Provided further, That not later than 30 days after enactment of this Act, and every 30 days thereafter until funds are expended, the Secretary shall report to the Committees on Appropriations of the House of Representatives and the Senate on uses of funding for Operation Warp Speed, detailing current obligations by Department or Agency, or component thereof broken out by the coronavirus supplemental appropriations Act that provided the source of funds:

Provided further, That the plan outlined in the preceding proviso shall include funding by contract, grant, or other transaction in excess of $20,000,000 with a notation of which Department or Agency, and component thereof is managing the contract:

Provided further, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

For an additional amount for "Public Health and Social Services Emergency Fund", $22,400,000,000, to remain available until September 30, 2022, to prevent, prepare for, and respond to coronavirus, domestically or internationally, which shall be for necessary expenses for testing, contact tracing, surveillance, containment, and mitigation to monitor and suppress COVID–19, including tests for both active infection and prior exposure, including molecular, antigen, and serological tests, the manufacturing, procurement and distribution of tests, testing equipment and testing supplies, including personal protective equipment needed for administering tests, the development and validation of rapid, molecular point-of-care tests, and other tests, support for workforce, epidemiology, to scale up academic, commercial, public health, and hospital laboratories, to conduct surveillance and contact tracing, support development of COVID–19 testing plans, and other related activities related to COVID–19 testing and mitigation:

Provided, That amounts appropriated under this paragraph in this Act shall be for States, localities, territories, tribes, tribal organizations, urban Indian health organizations, or health service providers to tribes for necessary expenses for testing, contact tracing, surveillance, containment, and mitigation, including support for workforce, epidemiology, use by employers, elementary and secondary schools, child care facilities, institutions of higher education, long-term care facilities, or in other settings, scale up of testing by public health, academic, commercial, and hospital laboratories, and community-based testing sites, mobile testing units, health care facilities, and other entities engaged in COVID–19 testing, and other related activities related to COVID–19 testing, contact tracing, surveillance, containment, and mitigation which may include interstate compacts or other mutual aid agreements for such purposes:

Provided further, That amounts appropriated under this paragraph in this Act shall be made available within 21 days of the date of enactment of this Act:

Provided further, That of the amount appropriated under this paragraph in this Act, $790,000,000, shall be transferred to the "Department of Health and Human Services—Indian Health Service—Indian Health Services" to be allocated at the discretion of the Director of the Indian Health Service and distributed through Indian Health Service directly operated programs and to tribes and tribal organizations under the Indian Self-Determination and Education Assistance Act and through contracts or grants with urban Indian organizations under title V of the Indian Health Care Improvement Act:

Provided further, That the amount transferred to tribes and tribal organizations under the Indian Self-Determination and Education Assistance Act in the preceding proviso shall be transferred on a one-time, non-recurring basis, is not part of the amount required by 25 U.S.C. 5325, and may only be used for the purposes identified under this paragraph in this Act, notwithstanding any other provision of law:

Provided further, That amounts appropriated under this paragraph in this Act, except for the amounts transferred pursuant to the third proviso under this paragraph in this Act, shall be allocated to States, localities, and territories according to the formula that applied to the Public Health Emergency Preparedness cooperative agreement in fiscal year 2020:

Provided further, That of the amount appropriated under this paragraph in this Act, except for the amounts transferred pursuant to the third proviso under this paragraph in this Act, not less than $2,500,000,000, shall be for strategies for improving testing capabilities and other purposes described in this paragraph in high-risk and underserved populations, including racial and ethnic minority populations and rural communities, as well as developing or identifying best practices for States and public health officials to use for contact tracing in high-risk and underserved populations,

including racial and ethnic minority populations and rural communities and shall not be allocated pursuant to the formula in the preceding proviso:

Provided further, That the second proviso under this paragraph in this Act, shall not apply to amounts in the preceding proviso:

Provided further, That the Secretary of Health and Human Services (referred to in this paragraph as the "Secretary") may satisfy the funding thresholds outlined under this paragraph in this Act for funding other than amounts transferred pursuant to the third proviso under this paragraph in this Act by making awards through other grant or cooperative agreement mechanisms:

Provided further, That the Governor or designee of each State, locality, territory, tribe, or tribal organization receiving funds pursuant to this paragraph in this Act shall update their plans, as applicable, for COVID–19 testing and contact tracing submitted to the Secretary pursuant to the Paycheck Protection Program and Health Care Enhancement Act (Public Law 116–139) and submit such updates to the Secretary not later than 60 days after funds appropriated in this paragraph in this Act have been awarded to such recipient:

Provided further, That not later than 60 days after enactment of this Act, and every quarter thereafter until funds are expended, the Governor or designee of each State, locality, territory, tribe, or tribal organization receiving funds shall report to the Secretary on uses of funding, detailing current commitments and obligations broken out by the coronavirus supplemental appropriations Act that provided the source of funds:

Provided further, That not later than 15 days after receipt of such reports, the Secretary shall summarize and report to the Committees on Appropriations of the House of Representatives and the Senate and the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate on States commitments and obligations of funding:

Provided further, That the Secretary shall make publicly available the plans submitted by the Governor or designee of each State, locality, territory, tribe, or tribal organization and the report on use of funds provided under this paragraph:

Provided further, That funds an entity receives from amounts described in the first proviso in this paragraph may also be used for the rent, lease, purchase, acquisition, construction, alteration, renovation, or equipping of non-federally owned facilities to improve coronavirus preparedness and response capability at the State and local level:

Provided further, That the Secretary shall provide a report to the Committees on Appropriations of the House of Representatives and the Senate on obligation of funds to eligible entities pursuant to the sixth proviso, summarized by State, not later than

30 days after the date of enactment of this Act, and every 60 days thereafter until funds are expired:

Provided further, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

For an additional amount for "Public Health and Social Services Emergency Fund", $3,000,000,000, to remain available until expended, to prevent, prepare for, and respond to coronavirus, domestically or internationally, which shall be for necessary expenses to reimburse, through grants or other mechanisms, eligible health care providers for health care related expenses or lost revenues that are attributable to coronavirus:

Provided, That these funds may not be used to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse:

Provided further, That recipients of payments under this paragraph shall submit reports and maintain documentation as the Secretary determines are needed to ensure compliance with conditions that are imposed by this paragraph for such payments, and such reports and documentation shall be in such form, with such content, and in such time as the Secretary may prescribe for such purpose:

Provided further, That "eligible health care providers" means public entities, Medicare or Medicaid enrolled suppliers and providers, and such for-profit entities and not-for-profit entities not otherwise described in this proviso as the Secretary may specify, within the United States (including territories), that provide diagnoses, testing, or care for individuals with possible or actual cases of COVID–19:

Provided further, That the Secretary shall, on a rolling basis, review applications and make payments under this paragraph in this Act:

Provided further, That funds appropriated under this paragraph in this Act shall be available for building or construction of temporary structures, leasing of properties, medical supplies and equipment including personal protective equipment and testing supplies, increased workforce and trainings, emergency operation centers, retrofitting facilities, and surge capacity:

Provided further, That, in this paragraph, the term "payment" means a pre-payment, prospective payment, or retrospective payment, as determined appropriate by the Secretary:

Provided further, That payments under this paragraph shall be made in consideration of the most efficient payment systems practicable to provide emergency payment:

Provided further, That to be eligible for a payment under this paragraph in this Act, an eligible health care provider shall submit to the Secretary an application that includes a statement justifying the need of the provider for the payment and the eligible health care provider shall have a valid tax identification number:

Provided further, That for any reimbursement by the Secretary from the Provider Relief Fund to an eligible health care provider that is a subsidiary of a parent organization, the parent organization may, allocate (through transfers or otherwise) all or any portion of such reimbursement among the subsidiary eligible health care providers of the parent organization, including reimbursements referred to by the Secretary as "Targeted Distribution" payments, among subsidiary eligible health care providers of the parent organization except that responsibility for reporting the reallocated reimbursement shall remain with the original recipient of such reimbursement:

Provided further, That, for any reimbursement from the Provider Relief Fund to an eligible health care provider for health care related expenses or lost revenues that are attributable to coronavirus (including reimbursements made before the date of the enactment of this Act), such provider may calculate such lost revenues using the Frequently Asked Questions guidance released by the Department of Health and Human Services in June 2020, including the difference between such provider's budgeted and actual revenue budget if such budget had been established and approved prior to March 27, 2020:

Provided further, That of the amount made available in the third paragraph under this heading in Public Law 116–136, not less than 85 percent of (i) the unobligated balances available as of the date of enactment of this Act, and (ii) any funds recovered from health care providers after the date of enactment of this Act, shall be for any successor to the Phase 3 General Distribution allocation to make payments to eligible health care providers based on applications that consider financial losses and changes in operating expenses occurring in the third or fourth quarter of calendar year 2020, or the first quarter of calendar year 2021, that are attributable to coronavirus:

Provided further, That, not later than 3 years after final payments are made under this paragraph, the Office of Inspector General of the Department of Health and Human Services shall transmit a final report on audit findings with respect to this program to the Committees on Appropriations of the House of Representatives and the Senate:

Provided further, That nothing in this section limits the authority of the Inspector General or the Comptroller General to conduct audits of interim payments at an earlier date:

Provided further, That not later than 60 days after the date of enactment of this Act, the Secretary of Health and Human Services shall provide a report to the Committees on Appropriations of the House of Representatives and the Senate on obligation of funds, including obligations to such eligible health care providers, summarized by State of the payment receipt:

Provided further, That such reports shall be updated and submitted to such Committees every 60 days until funds are expended:

Provided further, That the amounts repurposed in this paragraph that were previously designated by the Congress as an emergency requirement pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 are designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985:

Provided further, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Exhibit E

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

Pl 116-127, March 18, 2020, 134 Stat 178

Title V

Department Of Health And Human Services

Administration for Community Living

Aging And Disability Services Programs

For an additional amount for "Aging and Disability Services Programs", $250,000,000, to remain available until September 30, 2021, for activities authorized under subparts 1 and 2 of part C, of title III, and under title VI, of the Older Americans Act of 1965 ("OAA"), of which $160,000,000 shall be for Home-Delivered Nutrition Services, $80,000,000 shall be for Congregate Nutrition Services, and $10,000,000 shall be for Nutrition Services for Native Americans:

Provided, That State matching requirements under sections 304(d)(1)(D) and 309(b)(2) of the OAA shall not apply to funds made available under this heading in this Act:

Provided further, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Office of the Secretary

Public Health And Social Services Emergency Fund

For an additional amount for "Public Health and Social Services Emergency Fund", $1,000,000,000, to remain available until expended, for activities authorized under section 2812 of the Public Health Service Act (42 U.S.C. 300hh–11), in coordination with the Assistant Secretary for Preparedness and Response and the Administrator of the Centers for Medicare & Medicaid Services, to pay the claims of providers for reimbursement, as described in subsection (a)(3)(D) of such section 2812, for health services consisting of SARS–CoV–2 or COVID–19 related items and services as described in paragraph (1) of section 6001(a) of division F of the Families First Coronavirus Response Act (or the administration of such products) or visits described in paragraph (2) of such section for uninsured individuals:

Provided, That the term "uninsured individual" in this paragraph means an individual who is not enrolled in—
(1) a Federal health care program (as defined under section 1128B(f) of the Social Security Act (42 U.S.C. 1320a-7b(f)), including an individual who is eligible for medical assistance only because of subsection (a)(10)(A)(ii)(XXIII) of Section 1902 of the Social Security Act; or

(2) a group health plan or health insurance coverage offered by a health insurance issuer in the group or individual market (as such terms are defined in section 2791 of the Public Health Service Act (42 U.S.C. 300gg-91)), or a health plan offered under chapter 89 of title 5, United States Code:

Provided further, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Exhibit F

PAYCHECK PROTECTION PROGRAM AND HEALTH CARE ENHANCEMENT ACT

Pl 116-139, April 24, 2020, 134 Stat 620

Division B—Additional Emergency Appropriations For Coronavirus Response

Title I

Department Of Health And Human Services

Office of the Secretary
Public Health And Social Services Emergency Fund
(including transfer of funds)

For an additional amount for "Public Health and Social Services Emergency Fund", $75,000,000,000, to remain available until expended, to prevent, prepare for, and respond to coronavirus, domestically or internationally, for necessary expenses to reimburse, through grants or other mechanisms, eligible health care providers for health care related expenses or lost revenues that are attributable to coronavirus:

Provided, That these funds may not be used to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse:

Provided further, That recipients of payments under this paragraph in this Act shall submit reports and maintain documentation as the Secretary of Health and Human Services (referred to in this paragraph as the "Secretary") determines are needed to ensure compliance with conditions that are imposed by this paragraph in this Act for such payments, and such reports and documentation shall be in such form, with such content, and in such time as the Secretary may prescribe for such purpose:

Provided further, That "eligible health care providers" means public entities, Medicare or Medicaid enrolled suppliers and providers, and such for-profit entities and not-for-profit entities not otherwise described in this proviso as the Secretary may specify, within the United States (including territories), that provide diagnoses, testing, or care for individuals with possible or actual cases of COVID–19:

Provided further, That the Secretary shall, on a rolling basis, review applications and make payments under this paragraph in this Act:

Provided further, That funds appropriated under this paragraph in this Act shall be available for building or construction of temporary structures, leasing of properties, medical supplies and equipment including personal protective equipment and testing

supplies, increased workforce and trainings, emergency operation centers, retrofitting facilities, and surge capacity:

Provided further, That, in this paragraph, the term "payment" means a pre-payment, prospective payment, or retrospective payment, as determined appropriate by the Secretary:

Provided further, That payments under this paragraph in this Act shall be made in consideration of the most efficient payment systems practicable to provide emergency payment:

Provided further, That to be eligible for a payment under this paragraph in this Act, an eligible health care provider shall submit to the Secretary an application that includes a statement justifying the need of the provider for the payment and the eligible health care provider shall have a valid tax identification number:

Provided further, That, not later than 3 years after final payments are made under this paragraph in this Act, the Office of Inspector General of the Department of Health and Human Services shall transmit a final report on audit findings with respect to this program to the Committees on Appropriations of the House of Representatives and the Senate:

Provided further, That nothing in this paragraph limits the authority of the Inspector General or the Comptroller General to conduct audits of interim payments at an earlier date:

Provided further, That not later than 60 days after the date of enactment of this Act, the Secretary shall provide a report to the Committees on Appropriations of the House of Representatives and the Senate on obligation of funds, including obligations to such eligible health care providers summarized by State of the payment receipt:

Provided further, That such reports shall be updated and submitted to such Committees every 60 days until funds are expended:

Provided further, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

For an additional amount for "Public Health and Social Services Emergency Fund", $25,000,000,000, to remain available until expended, to prevent, prepare for, and respond to coronavirus, domestically or internationally, for necessary expenses to research, develop, validate, manufacture, purchase, administer, and expand capacity for COVID–19 tests to effectively monitor and suppress COVID–19, including tests for both active infection and prior exposure, including molecular, antigen, and

serological tests, the manufacturing, procurement and distribution of tests, testing equipment and testing supplies, including personal protective equipment needed for administering tests, the development and validation of rapid, molecular point-of-care tests, and other tests, support for workforce, epidemiology, to scale up academic, commercial, public health, and hospital laboratories, to conduct surveillance and contact tracing, support development of COVID–19 testing plans, and other related activities related to COVID–19 testing:

Provided, That of the amount appropriated under this paragraph in this Act, not less than $11,000,000,000 shall be for States, localities, territories, tribes, tribal organizations, urban Indian health organizations, or health service providers to tribes for necessary expenses to develop, purchase, administer, process, and analyze COVID–19 tests, including support for workforce, epidemiology, use by employers or in other settings, scale up of testing by public health, academic, commercial, and hospital laboratories, and community-based testing sites, health care facilities, and other entities engaged in COVID–19 testing, conduct surveillance, trace contacts, and other related activities related to COVID–19 testing:

Provided further, That of the amount identified in the preceding proviso, not less than $2,000,000,000 shall be allocated to States, localities, and territories according to the formula that applied to the Public Health Emergency Preparedness cooperative agreement in fiscal year 2019, not less than $4,250,000,000 shall be allocated to States, localities, and territories according to a formula methodology that is based on relative number of cases of COVID–19, and not less than $750,000,000 shall be allocated in coordination with the Director of the Indian Health Service, to tribes, tribal organizations, urban Indian health organizations, or health service providers to tribes:

Provided further, That the Secretary of Health and Human Services (referred to in this paragraph as the "Secretary") may satisfy the funding thresholds outlined in the first and second provisos under this paragraph in this Act by making awards through other grant or cooperative agreement mechanisms:

Provided further, That not later than 30 days after the date of enactment of this Act, the Governor or designee of each State, locality, territory, tribe, or tribal organization receiving funds pursuant to this Act shall submit to the Secretary its plan for COVID–19 testing, including goals for the remainder of calendar year 2020, to include: (1) the number of tests needed, month-by-month, to include diagnostic, serological, and other tests, as appropriate; (2) month-by-month estimates of laboratory and testing capacity, including related to workforce, equipment and supplies, and available tests; and (3) a description of how the State, locality, territory, tribe, or tribal organization will use its resources for testing, including as it relates to easing any COVID–19 community mitigation policies:

Provided further, That the Secretary shall submit such formula methodology identified in the first proviso under this paragraph in this Act to the Committees on Appropriations of the House of Representatives and the Senate one day prior to awarding such funds:

Provided further, That such funds identified in the first and second provisos under this paragraph in this Act shall be allocated within 30 days of the date of enactment of this Act:

Provided further, That of the amount appropriated under this paragraph in this Act, not less than $1,000,000,000 shall be transferred to the "Centers for Disease Control and Prevention—CDC-Wide Activities and Program Support" for surveillance, epidemiology, laboratory capacity expansion, contact tracing, public health data surveillance and analytics infrastructure modernization, disseminating information about testing, and workforce support necessary to expand and improve COVID–19 testing:

Provided further, That of the amount appropriated under this paragraph in this Act, not less than $306,000,000 shall be transferred to the "National Institutes of Health—National Cancer Institute" to develop, validate, improve, and implement serological testing and associated technologies for the purposes specified under this paragraph in this Act:

Provided further, That of the amount appropriated under this paragraph in this Act, not less than $500,000,000 shall be transferred to the "National Institutes of Health—National Institute of Biomedical Imaging and Bioengineering" to accelerate research, development, and implementation of point of care and other rapid testing related to coronavirus:

Provided further, That of the amount appropriated under this paragraph in this Act, not less than $1,000,000,000 shall be transferred to the "National Institutes of Health—Office of the Director" to develop, validate, improve, and implement testing and associated technologies; to accelerate research, development, and implementation of point of care and other rapid testing; and for partnerships with governmental and non-governmental entities to research, develop, and implement the activities outlined in this proviso:

Provided further, That funds in the preceding proviso may be transferred to the accounts of the Institutes and Centers of the National Institutes of Health (referred to in this paragraph as the "NIH") for the purposes specified in the preceding proviso:

Provided further, That the transfer authority provided in the preceding proviso is in addition to all other transfer authority available to the NIH:

Provided further, That of the amount appropriated under this paragraph in this Act, not less than $1,000,000,000 shall be available to the Biomedical Advanced Research and Development Authority for necessary expenses of advanced research, development, manufacturing, production, and purchase of diagnostic, serologic, or other COVID–19 tests or related supplies, and other activities related to COVID–19 testing at the discretion of the Secretary:

Provided further, That of the amount appropriated under this paragraph in this Act, $22,000,000, shall be transferred to the "Department of Health and Human Services—Food and Drug Administration—Salaries and Expenses" to support activities associated with diagnostic, serological, antigen, and other tests, and related administrative activities:

Provided further, That the amount appropriated under this paragraph in this Act may be used for grants for the rent, lease, purchase, acquisition, construction, alteration, renovation, or equipping of non-federally owned facilities to improve preparedness and response capability at the State and local level for diagnostic, serologic, or other COVID–19 tests, or related supplies:

Provided further, That the amount appropriated under this paragraph in this Act may be used for construction, alteration, renovation, or equipping of non-federally owned facilities for the production of diagnostic, serologic, or other COVID–19 tests, or related supplies, where the Secretary determines that such a contract is necessary to secure, or for the production of, sufficient amounts of such tests or related supplies:

Provided further, That funds appropriated under this paragraph in this Act may be used for purchase of medical supplies and equipment, including personal protective equipment and testing supplies to be used for administering tests, increased workforce and trainings, emergency operation centers, and surge capacity for diagnostic, serologic, or other COVID–19 tests, or related supplies:

Provided further, That products purchased with funds appropriated under this paragraph in this Act may, at the discretion of the Secretary, be deposited in the Strategic National Stockpile under section 319F–2 of the Public Health Service Act:

Provided further, That of the amount appropriated under this paragraph in this Act, $600,000,000 shall be transferred to "Health Resources and Services Administration—Primary Health Care" for grants under the Health Centers program, as defined by section 330 of the Public Health Service Act, and for grants to federally qualified health centers, as defined in section 1861(aa)(4)(B) of the Social Security Act:

Provided further, That sections 330(e)(6)(A)(iii), 330(e)(6)(B)(iii), and 330(r)(2)(B) of the Public Health Service Act shall not apply to funds provided under the previous proviso:

Provided further, That of the amount appropriated under this paragraph in this Act, $225,000,000 shall be used to provide additional funding for COVID–19 testing and related expenses, through grants or other mechanisms, to rural health clinics as defined in section 1861(aa)(2) of the Social Security Act, with such funds also available to such entities for building or construction of temporary structures, leasing of properties, and retrofitting facilities as necessary to support COVID–19 testing:

Provided further, That such funds shall be distributed using the procedures developed for the Provider Relief Fund authorized under the third paragraph under this heading in division B of the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116–136); may be distributed using contracts or agreements established for such program; and shall be subject to the process requirements applicable to such program:

Provided further, That the Secretary may specify a minimum amount for each eligible entity accepting assistance under the two previous provisos:

Provided further, That up to $1,000,000,000 of funds provided under this paragraph in this Act may be used to cover the cost of testing for the uninsured, using the definitions applicable to funds provided under this heading in Public Law 116–127:

Provided further, That not later than 21 days after the date of enactment of this Act, the Secretary, in coordination with other appropriate departments and agencies, shall issue a report on COVID–19 testing:

Provided further, That such report shall include data on demographic characteristics, including, in a de-identified and disaggregated manner, race, ethnicity, age, sex, geographic region and other relevant factors of individuals tested for or diagnosed with COVID–19, to the extent such information is available:

Provided further, That such report shall include information on the number and rates of cases, hospitalizations, and deaths as a result of COVID–19:

Provided further, That such report shall be submitted to the Committees on Appropriations of the House and Senate, and the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate, and updated and resubmitted to such Committees, as necessary, every 30 days until the end of the COVID–19 public health emergency first declared by the Secretary on January 31, 2020:

Provided further, That not later than 180 days after the date of enactment of this Act, the Secretary shall issue a report on the number of positive diagnoses, hospitalizations, and deaths as a result of COVID–19, disaggregated nationally by race, ethnicity, age, sex, geographic region, and other relevant factors:

Provided further, That such report shall include epidemiological analysis of such data:

Provided further, That not later than 30 days after the date of the enactment of this Act, the Secretary, in coordination with other departments and agencies, as appropriate, shall report to the Committees on Appropriations of the House and Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions of the Senate on a COVID–19 strategic testing plan:

Provided further, That such plan shall assist States, localities, territories, tribes, tribal organizations, and urban Indian health organizations, in understanding COVID–19 testing for both active infection and prior exposure, including hospital-based testing, high-complexity laboratory testing, point-of-care testing, mobile-testing units, testing for employers and other settings, and other tests as necessary:

Provided further, That such plan shall include estimates of testing production that account for new and emerging technologies, as well as guidelines for testing:

Provided further, That such plan shall address how the Secretary will increase domestic testing capacity, including testing supplies; and address disparities in all communities:

Provided further, That such plan shall outline Federal resources that are available to support the testing plans of each State, locality, territory, tribe, tribal organization, and urban Indian health organization:

Provided further, That such plan shall be updated every 90 days until funds are expended:

Provided further, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.