

Local Assistance and Tribal Consistency Fund

Allocations to Eligible Tribal Governments

July 2022

Section 605 of the Social Security Act (the Act), added by Section 9901 of the American Rescue Plan (the ARPA), established the Local Assistance and Tribal Consistency Fund (LATCF), which provides \$2 billion across fiscal years 2022 and 2023 for use on any governmental purpose except for a lobbying activity to eligible revenue sharing counties and eligible Tribal governments. This document describes Treasury's methodology for allocating funds to eligible Tribal governments and summarizes Treasury's consideration of available data relating to economic conditions and the comments received during the Tribal consultations.

The Act appropriates \$500 million to eligible Tribal governments, reserving \$250 million for each of fiscal years 2022 and 2023, and directs the Secretary of the Treasury to allocate the funds taking into account economic conditions of each eligible Tribe.

Consultation process

In accordance with Treasury's Tribal consultation policy, Treasury hosted three Tribal consultations on the LATCF on February 8, 9, and 10, 2022, to gather input from Tribal leaders on allocation methodologies and the use of funds. Nearly 500 attendees from all regions of the country joined the consultations during which 55 Tribal leaders provided comments. Treasury also received 26 written comments. As described in Treasury's LATCF consultation summary, Tribal commenters had a diversity of opinions on a prospective allocation methodology. Treasury appreciates the participation of all who helped to inform this process.

Allocation determination

The Act provides that, of the \$2 billion available under the LATCF, "[f]or each of fiscal years 2022 and 2023, the Secretary shall reserve \$250,000,000 of the total amount appropriated under subsection (a) to allocate and pay to eligible Tribal governments in amounts that are determined by the Secretary taking into account economic conditions of each eligible Tribe."¹ Treasury was guided by several key principles in determining how to allocate these funds given the limitations on available, consistent economic data across Tribes:

- The methodology must take into account economic conditions of each eligible Tribe.
- The methodology should be informed by the Tribal consultations and should reflect Tribal sovereignty.
- The methodology should be based on data that allows Treasury to calculate Tribal allocations in a timely manner.

¹ 42 U.S.C. 805(b)(2).

- The methodology should be fair and equitable.

Consistent with these key principles, Treasury has determined that it is reasonable and appropriate to allocate payments using a formula that is based on self-certified enrollment and employment per capita data.

- The majority of commenters recommended using enrollment as the predominant factor because the size of Tribal citizenship is a critical factor in assessing the economic needs and conditions of their respective communities. Additionally, many Tribal leaders expressed that employment per capita is a key determinant in assessing their community's economic conditions because Tribal households rely on the Tribal government as the main source of employment. Per Tribal commenters, limited Tribal employment opportunities have a negative downstream effect on the economic conditions of Tribal households.
- As discussed below, self-certified Tribal enrollment and employment data are generally available.
- Tribal enrollment and employment per capita are expected to correlate generally with a Tribe's need for funding. Enrollment is expected to correlate generally with the amount of resources Tribes need. As Tribal governments suggested during consultations, Tribal enrollment provides a useful measure for this purpose because it reflects the scope of Tribal government services and assistance provided both within Tribal lands and to enrolled members living elsewhere.
- There is a strong relationship between employment per capita and economic conditions of the Tribe. Treasury expects that, in general, Tribes with higher employment per capita are generally more economically developed than those with lower employment per capita. Tribal employment contributes directly to Tribal household income, since the majority of Tribal members are employees of the Tribe. Tribal enterprise employment is generally indicative of the size and profitability of the Tribal enterprises and therefore of the extent of a Tribe's revenues.
- Tribal government employment is also indicative of Tribal economic conditions, as Tribes with greater resources have greater ability to hire more government employees to provide services (and employment) to their members. Having a greater number of Tribal government employees also allows Tribes to better compete for federal funding offered on a competitive basis as well as to avail themselves of other federal funding for which Tribes must expend additional administrative resources to apply and qualify.

Treasury considered several possible alternatives to the use of enrollment and employment data discussed above but found very serious shortcomings with each of the alternatives. Treasury considered alternative metrics for the formula, including available 2015-2019 American Community Survey (ACS) data from the United States Census Bureau on poverty rates, land

size, COVID-19 infection rates and deaths, Indian Health Service (IHS) data on Tribal households lacking access to clean water, Tribal expenditures, and other economic indicators. These data sets were either unavailable for all Tribes, contained incomplete data, and/or contained distortions due to sample size.

ACS provides a range of social and economic data sets, including unemployment and poverty levels in a respective surveyed area and includes individuals identifying as American Indian/Alaska Native (AI/AN) in a surveyed area. This data set was not utilized because ACS economic data is not available for all Tribes. Additionally, because the individuals being surveyed are those identifying as AI/AN in an area, ACS data does not provide data on the economic conditions of a Tribe's citizens, many of which may live off of Tribal lands and/or outside of Tribal statistical areas.

Land size, COVID-19 incidence rates, and Indian Housing Block Grant data were considered but presented significant challenges for the same reasons summarized in Treasury's explanation of its methodology for the SLFRF allocation.² Treasury also considered use of data from IHS regarding household access to clean water. But this data is not available for every Tribe, only relates to populations living on Tribal lands, and does not reflect the significant needs of Tribes for funding for projects other than water infrastructure.

Treasury considered information related to Tribes' participation in existing social service programs, particularly Supplemental Nutrition Assistance Program, Temporary Assistance for Needy Families, and the Low Income Home Energy Assistance Program, but not all Tribes operate such programs. Additionally, this information would not reflect the status of Tribal members living off of Tribal lands, who participate in these programs through the states in which they reside. Additionally, many small Tribes in both the lower 48 and in Alaska administer their social services through Tribal consortia that broadly serve all AI/AN in a region, and service delivery is not disaggregated by Tribal affiliation. Likewise, data regarding education levels, unemployment rates, and homelessness is incomplete or completely unavailable for many Tribes as many Tribes do not collect this data and those that do collect this data do not do so on a consistent basis.

Treasury also reviewed expenditure data. However, Treasury determined that this data is unlikely to accurately reflect the economic conditions of Tribes because of the variability among Tribes. For example, similarly sized Tribes may expend different amounts per citizen based on their self-assessed community needs rather than due to specific economic conditions.

Treasury also considered soliciting from Tribes self-certified data regarding poverty rates or other information concerning their economic conditions. For such data to provide meaningful information about each Tribe's economic conditions, the data would need to be prepared in a consistent manner. Based on Treasury staff analysis of its work with Tribes' administration of other Treasury pandemic relief programs, 94% of Tribal governments have had self-reported impairment of government operations due to the impacts of infections and deaths of Tribal

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

government staff; these Tribes in particular can be expected to face significant challenges collecting or compiling economic data.

Treasury considered additional data referenced in the Tribal consultations but determined that this data was either unavailable for all Tribes, incomplete, and/or did not provide a measurement of a Tribe's economic condition. While Treasury acknowledges that no formula perfectly captures the particular conditions of Tribes, Treasury concluded that a formula based on enrollment and employment would effectively take economic conditions into account and satisfy the other guiding principles outlined above.

Taking into account the available economic data and comments received during Tribal consultations discussed in the consultation summary, Treasury has determined that 90 percent of the available funds (\$225 million per fiscal year 2022 and 2023) will be based on pro rata shares of enrollment ("Enrollment Allocation") and 10 percent of available funds (\$25 million per fiscal year 2022 and 2023) will be based on banded employment per capita ("Enrollment-to-Employment Allocation"), as described below.³ Treasury will establish a per-Tribe minimum allocation⁴ of \$50,000 per fiscal year for Tribes with enrollment of at least 30 and \$25,000 per fiscal year for Tribes with enrollment below 30, and a maximum allocation⁵ of \$3 million per fiscal year. This methodology, using the data sources discussed below, will be used to determine allocations for both fiscal years 2022 and 2023.

In order to receive a payment, Tribal governments will be required to certify that it is their assessment that the economic conditions of the Tribal government are such that the Tribal government has a need for an award from Treasury in the amount of the initial fiscal year 2022 and 2023 allocations to provide services to members of the Tribe and others in its service community.

Tribal enrollment data

For Tribal enrollment data, Treasury will use the enrollment figures provided by Tribes in 2021 to the Bureau of Indian Affairs (BIA), which were also used by Treasury for purposes of the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) allocation. For the subset of Tribal governments that did not provide self-certified enrollment data to BIA, Treasury will use enrollment data submitted to Treasury for purposes of the Coronavirus Relief Fund (CRF) allocation. For those Tribal governments that did not submit enrollment data to BIA or to Treasury, Treasury will use enrollment data maintained by the Department of Housing and Urban Development (HUD) for purposes of the Indian Housing Block Grant (IHBG) program.

³ To calculate the allocations, Treasury banded Tribes into groups using the enrollment-to-employment ratio, which is the inverse of employment per capita. That is, Tribes with low enrollment-to-employment ratios (and thus high employment per capita) were sorted into the low groups and Tribes with high enrollment-to-employment ratios (and thus low employment per capita) were sorted into the high groups.

⁴ For the enrollment portion, there will be a minimum allocation of \$45,000 per Tribe with enrollment of at least 30 and \$22,500 per Tribe with enrollment below 30. For the employment per capita portion, there will be a minimum allocation of \$5,000 per Tribe with enrollment of at least 30 and \$2,500 per Tribe with enrollment below 30.

⁵ For the enrollment portion, there will be a maximum allocation per Tribe of \$2.7 million per fiscal year, and for the employment per capita portion, there will be a maximum allocation per Tribe of \$300,000 per year.

Tribal employment data

For Tribal employment data, Treasury will use the employment figures provided by Tribes to Treasury in connection with the SLFRF employment allocation.⁶

Allocation formula

The allocation is based on two parts: 90% of funds are allocated based on enrollment and 10% of funds are allocated based on employment per capita. The enrollment funds are subject to a maximum and minima and the employment per capita funds are subject to a separate maximum and minima. This methodology and data sources will be used to determine allocations for both fiscal years 2022 and 2023. Specifically, Treasury will use the following methodology to allocate funds:

- Treasury will allocate 90% of the funds (\$225,000,000) based on pro rata shares of enrollment, subject to a maximum of \$2,700,000, a minimum of \$45,000 for Tribes with enrollment of at least 30, and a minimum of \$22,500 for Tribes with enrollment below 30.
- Treasury will allocate 10% of the funds (\$25,000,000) based on employment per capita, subject to a maximum of \$300,000, a minimum of \$5,000 for Tribes with enrollment of at least 30, and a minimum of \$2,500 for Tribes with enrollment below 30. In particular, Treasury will sort Tribes into five groups based on their enrollment-to-employment ratios, such that group 1 has the lowest enrollment-to-employment ratios, group 2 has the second lowest ratios, group 3 has the third lowest ratios, group 4 has the second highest ratios, and group 5 has the highest ratios. Tribes in the same group will receive the same per capita allocation for this component of the funds, and the ratio of per capita allocations between groups will be determined by the group numbers. The relationship is set such that Tribes in group 2 will receive twice the per capita allocation of Tribes in group 1, Tribes in group 3 will receive three times the per capita allocation of Tribes in group 1, Tribes in group 4 will receive four times the per capita allocation of Tribes in group 1, and Tribes in group 5 will receive five times the per capita allocation of Tribes in group 1.

Payment schedule

⁶ See Coronavirus State and Local Fiscal Recovery Funds Allocations to Tribal Governments (Jul. 19, 2021), available at <https://home.treasury.gov/system/files/136/Tribal-Government-Allocation-Methodology.pdf>. More specifically, Treasury will sum reported Tribal government employment and Tribal entity employment for each quarter of 2019. Treasury will then calculate the non-zero annual average of the summed quarters one through four and use this non-zero annual average in the calculations. A small number of Tribes submitted an employment number of 0 for the SLFRF because they were unable to substantiate a particular level of employment. These Tribes received the \$1 million minimum, which was provided to Tribes that had employment of 67.75 and under. For consistency and in recognition of the amounts these Tribes already received from the SLFRF employment allocation, these Tribes will be assigned an employment number of 67.75 for the LATCF. Tribes that did not apply for SLFRF and thus did not submit enrollment and employment data will receive the minimum allocation.

Treasury expects to make two payments to eligible Tribal governments. The first payment will be available immediately and will be made to Tribes on a rolling basis. Treasury expects to make the second payment after the start of fiscal year 2023.

To receive payments, Tribal governments must submit their information online through the Treasury Submission Portal, which is available at treasury.gov/LATCF. Tribal governments will be required to complete payment information, sign an award agreement, and certify as to the Tribe's economic conditions. The award agreement will cover both tranches of payments, and Tribes need only submit the certification regarding economic conditions once.⁷ After a Tribal government's submission is received, Treasury expects that it will take approximately 4-5 business days for Treasury to review and process the payment. Once the information and documentation submitted is determined to be complete and accurate, the point of contact that a Tribal government designates in its online submission will receive information regarding the timing and amount of the first payment.

As previously noted, the deadline to complete the submission is October 31, 2022, at 11:59 PM AKDT. If a Tribal government does not complete its submission by that deadline, the Tribal government will not be eligible for either the first or second payment under the LATCF.

Treasury may reallocate funds unclaimed by Tribal governments by the deadline. The reallocated funds will be included in the second payment to Tribes that submitted the requisite information by the deadline.

In fiscal year 2023, Treasury expects to communicate to Tribal governments the amount of such reallocation, if any, and the date for the second payment.

⁷ Treasury will provide additional instructions, if any, on how to access the second payment in fiscal year 2023.