

Summary of Tribal Consultations Relating to the Local Assistance and Tribal Consistency Fund

Overview

The Local Assistance and Tribal Consistency Fund (Section 605 of the Social Security Act as added by the American Rescue Plan Act (ARPA)) provides for a total of \$2 billion over fiscal years 2022 and 2023 for payment to eligible revenue sharing counties and eligible Tribal governments. It includes a \$500 million set aside (\$250 million for FY 2022 and for FY 2023) for eligible Tribal governments. Under the statute, the Secretary determines the allocation of these funds, “taking into account economic conditions of each eligible Tribe.” In accordance with Treasury’s Tribal consultation policy, Treasury held three Tribal consultations 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.

Tribal nations in the United States operate as sovereign nations with vastly different structures, economies, and populations. The feedback delivered by 55 Tribal leaders during these consultations and in 26 written comments reflect this diversity.

Feedback from Tribal Leaders

Tribes expressed a variety of opinions on how Treasury should allocate funds during consultations. The majority of Tribal commenters emphasized the unique federal treaty and trust relationship with all Tribes and described their particular economic conditions and constraints in light of their specific historical-political legal relationship with the United States, which informed their geography and resources. For example, many treaty Tribes frequently cited underfunding of treaty related resources as an issue impacting their community’s economic wellbeing while many Tribes that are in PL-280 states referenced unfunded public safety and justice costs as contributing to negative economic conditions for their community.

Type of Data for the Allocation Formula

With regard to types of data to measure economic conditions, pursuant to the allocations formula, the data below were referenced by Tribal leaders:

1. Enrollment
2. COVID-19 Infection/Death rates
3. Poverty rates
4. Housing conditions and availability of housing.
5. Education levels
6. Volume of federal underfunding.
7. Suicide rates
8. Substance abuse rates
9. Household access to water
10. Tribal members receiving financial assistance
11. Tribal Employment

- a. The majority of Tribes that referenced employment requested that low employment relative to their population be considered as evidence of the limited workforce options for their Tribal citizenry.
 - b. A few Tribes requested that high employment constitute a need factor because they asserted that they economically support more individuals due to their high employment.
12. Volume of payments from Tribal, State, and Local Fiscal Recovery Funds
13. Land Base
- a. Some Tribes requested that land base be taken into account while others requested that lack of a land base be a factor.
 - b. Some Alaska Tribes argued that ANSCA land should be considered to the extent that land base is a factor.
14. Lost Revenue

Often, recommendations on appropriate data were directly opposed by subsequent commenters. For example, some Tribes requested that lost revenue be considered as such loss impacted the delivery of government services to their Tribal citizenry. Other Tribal leaders argued that consideration of such revenue would advantage those that had commercial enterprises at the expense of Tribes that had none.

While Tribes had differing opinions regarding specific data sources, the majority of commenters highlighted that all Tribes have some form of negative economic conditions as a result of federal policy and that, given the limited amount of funding available from this program, the funds should benefit as many Tribes as possible rather than privileging a few. A few commenters suggested an equal split, but commenters from large and midsized Tribes opposed this approach, arguing that Tribes with low populations would receive significantly more funds per capita under an equal split formula.

Additionally, the majority of commenters requested that enrollment be the single most important factor in the allocation formula, as they argued that the size of a Tribe's population determines the government services that Tribes provide to improve their citizenship's economic well-being. Some Tribes requested that enrollment be the sole metric for any formula and referenced Interior's distribution of Tribal ARPA funds based on Tribal population as an example. Additionally, the majority of Tribes supported a minimum and maximum to ensure an equitable distribution of funds.

Method of Collection

The majority of commenters highlighted the significant capacity constraints of Tribal government staff due to the death of government employees, long-term illnesses and/or disabilities due to COVID-19 infections, and burnout, that contributed to loss of Tribal government employment. Many Tribes noted that 1-4 staff were managing over 20 recovery programs, including reporting.

Within this context, a few commenters requested that existing Tribal data that is either self-certified or that is held by another department be used to reduce the administrative burdens on

submission for Tribal government staff. The majority of Tribes, however, strongly opposed the use of non-Treasury data on the grounds that other department data is incomplete, inaccurate, or not available for their Tribe. Some Tribes highlighted opposition to Treasury's use of the Indian Housing Block Grant formula for Coronavirus Relief Fund population allocation as an example of this issue. Commenters generally agreed that any data Treasury may seek from Tribes, to be used as an additional factor outside of enrollment, should be Tribally self-certified data.

Eligible Uses

Nearly all Tribes that commented requested that Treasury permit Tribal governments broad flexibility and deference in defining "a governmental purpose" for use of funds. Tribes opposed any restrictive definition of governmental purpose, including use of the "essential governmental function" standard for Indian tribal governments under Section 7871(c) of the Internal Revenue Service Code.