

State Small Business Credit Initiative Program

Allocation to Tribal Governments

June 2021

The American Rescue Plan Act of 2021 (ARPA) reauthorizes and amends the Small Business Jobs Act (SBJA) of 2010, which established the State Small Business Credit Initiative (SSBCI) Program. ARPA provides a combined \$10 billion to State, territory, and Tribal governments to help address the economic fallout of the pandemic and lay the foundation for a strong and equitable recovery by providing direct support to jurisdictions for programs that increase access to credit for small businesses. This document describes Treasury’s methodology for allocating the funds to Tribal governments.¹

The ARPA allocates \$500 million for Tribal government programs. The addition of Tribal governments represents a significant expansion of the number of eligible jurisdictions to receive SSBCI funds. Tribal governments are expected to use their allocated funds to facilitate capital access programs, provide collateral support, facilitate loan participations, or enable credit guarantee or other credit support programs to support small businesses lending and investment.

Consultation Process

In accordance with Treasury’s Tribal consultation policy, Treasury hosted an information session for Tribal governments on May 13 and a Tribal consultation on May 27, 2021, to gather input from Tribal leaders on allocation methodologies, the design of programs, and administrative functions, such as the application process, reporting, and compliance. Over 200 participants attended the consultations and 17 Tribal leaders or designees provided input. Treasury received nine written comments. Treasury appreciates the participation of all who helped to inform this process. Treasury has also considered relevant information received in Treasury’s other programs providing support for Tribal governments.

Allocation Determination

ARPA provides that Treasury will allocate the \$500 million among the Tribal governments “in the proportion the Secretary determines appropriate, including with consideration to available employment and economic data regarding each such Tribal government.”² Treasury was guided by several key principles in determining how to allocate these funds given the limitations on available, consistent economic data across Tribes. These key principles are informed by comments provided through the consultation process and the Coronavirus State and Local Fiscal Recovery Funds (FRF) program methodology to the extent appropriate:

¹ The term “Tribal government” means the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published most recently as of the date of enactment of this paragraph pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

² Section 3003(b)(2) of the SBJA, as amended by section 3301(a) of ARPA.

- 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.
- 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 enrollment data and applies a minimum amount to be allocated to each Tribe.

- Tribal leaders provided recommendations covering several topics, including those regarding the use of enrollment data, small business needs, and a minimum allocation amount in the allocation formula.
- As discussed below, the enrollment data are generally available.
- Use of Tribal enrollment information is fair and equitable because these metrics are expected to correlate generally with a Tribe's need for funding and to reflect the credit needs of Tribal small businesses, including privately owned small businesses, more broadly. Enrollment is expected to correlate generally with the amount of resources needed for small businesses that interact with Tribal populations and encompass the wide array of businesses that provide goods and services to Tribal populations, including small businesses on Tribal lands, in areas where Tribal lands or members are located, and for small businesses owned by Tribal members, which collectively are the small businesses the allocation is designed to support (Tribal Small Businesses). Treasury determined Tribal enrollment provides a useful measure for this purpose because Tribes with larger enrollment generally are expected to have a greater number of Tribal Small Businesses to support.

Treasury considered utilizing employment data but determined that there was no available employment data that is appropriate to measure need for small business credit support across all Tribal governments. The Tribal employment data used for the FRF program's Tribal allocations were limited to employment of the Tribal governments and of Tribal government-owned entities,³ which does not reflect the employees of all small businesses owned by individual Tribal members or of other small businesses in the area where Tribal lands or Tribal members are located. Accordingly, Treasury determined that Tribal enrollment is a more appropriate measure for SSBCI because it is expected to reflect credit needs of Tribal Small Businesses more broadly. However, in recognition that this employment data reflects a diversity of employment conditions and that Tribes with small populations often make significant contributions to local economies, this methodology incorporates a minimum allocation (described below) to provide each Tribal government with a baseline level of funding to establish SSBCI programs. While Treasury acknowledges that no formula perfectly captures the particular needs of the Tribal

³ See Coronavirus State and Local Recover Funds Tribal Government Allocations (May 10, 2021), <https://home.treasury.gov/system/files/136/Tribal-Government-Allocation-Methodology.pdf>.

Small Businesses and Tribes, Treasury concluded that a formula based on enrollment would effectively satisfy the guiding principles in light of the prevailing circumstances.

Treasury also considered alternative metrics for the formula but determined there were no other available metrics that adequately and consistently reflected employment and economic conditions across all eligible Tribal governments. These measures included land size, COVID-19 incidence rates, and Tribal expenditures. However, these metrics are not designed to address the Tribal Small Business closures and job losses resulting from the economic effects of the COVID-19 pandemic, nor do these metrics reflect Tribal Small Businesses' credit needs. Moreover, land size and COVID-19 incidence rates presented significant drawbacks: the varying distribution of land holdings by Tribes raised concerns about the fair and equitable distribution of funds, and the lack of consistent data on COVID-19 incidence rates by Tribal governments precluded its use in a formula. Treasury also determined that collecting Tribal expenditure data from Tribes would not provide an advantage as compared to the enrollment information.

Tribal Enrollment Data

For Tribal enrollment data, Treasury will use self-certified enrollment numbers provided by Tribes. The Bureau of Indian Affairs collected enrollment numbers from Tribal governments in April 2021 and communicated to Tribes that this information may be shared with other federal agencies. The Bureau of Indian Affairs has shared this data with Treasury. For the small subset of Tribes that did not provide self-certified enrollment data, Treasury will use enrollment data submitted last year under the CRF.⁴

As Treasury does not have enrollment data for all subcomponents of Tribes, the Tribal government allocation will be made to the Tribal governments for which enrollment data is available. The purpose of the allocation to Tribal governments is to support credit programs for Tribal Small Businesses, including small businesses owned by members of any subcomponents of a Tribe. Treasury expects that Tribal governments will cooperate with any subcomponents of the Tribe in establishing SSBCI programs if those subcomponents have recognized governing bodies. This is the same approach as under the Coronavirus State and Local Fiscal Recovery Funds program and will allow Treasury to have consistent approach across programs for allocating funds to Tribal governments.

Allocation Formula

The methodology results in an amount allocated to a Tribal government based on Treasury's calculation of the pro-rata share of self-certified enrollment numbers,⁵ and subject to a minimum allocation amount. Treasury determined the minimum allocation amount by pro rating the statutory minimum to states (i.e., 0.9%) and applying to the Tribal governments (approximately 0.09%). This yields an amount that ensures no Tribal government allocation will be less than

⁴ Some eligible Tribal governments did not submit enrollment data last year or this year. For these Tribal governments, Treasury will use enrollment data from HUD's Indian Housing Block Grant program.

⁵ More specifically, this step sums Tribal enrollment to obtain total Tribal enrollment for all Tribes combined. Each Tribe's enrollment is then divided by total Tribal enrollment to obtain the share of enrollment for each Tribe. The tribal share is then multiplied by the amount being allocated.

\$432,000. Upon determining this amount and applying it to Tribal governments, the remainder of the funds are allocated pro rata.⁶

In addition, the initial allocations to Tribal governments include amounts allocated for very small businesses under Section 3003(f) of the SBJA, as amended by ARPA. Approximately \$40 million of the total very small business allocation has been reserved for Tribal governments, which is in proportion to Tribal governments' general allocation under Section 3003(b) relative to the allocation for states and territories. ARPA does not specify an allocation methodology for very small businesses, so Treasury determined to allocate these funds to Tribal governments according to the same formula based on enrollment data described above.

Initial allocations are subject to change depending on Tribal government participation, actual versus expected administrative expenses, and other allocations specified by Subtitle C of Title III of ARPA, which includes the reallocation of amounts not transferred, if any.

Application Timeline

While sharing this general description of its methodology, Treasury will communicate to Tribal governments the amount of their allocation by emailing the Tribal government directly with the allocation amount. Tribal governments that are interested in participating in SSBCI must submit a Notice of Intent (NOI) to apply by August 16, 2021. NOIs must be signed by an authorized representative of the Tribal government. If the authorized representative is a third party such as a lawyer, consultant, or intermediary, a Tribal resolution or other action delegating authority to sign the NOI also must be submitted.

Tribal governments may apply individually or jointly and may operate programs themselves or contract with third parties or other Tribal governments to operate programs. Treasury encourages Tribal governments with limited experience in small business financing programs to consider joint applications and working with third parties with a strong track record operating small business financing programs. SSBCI program applications are due December 11, 2021. Treasury will release guidance on applications in the near future.

The first one-third portion of a Tribe's allocation will be distributed after execution of an Allocation Agreement, and the Tribal government must demonstrate that, within 90 days of execution of the Allocation Agreement, the Tribal government is fully positioned to act on providing the kind of credit support that the program was established to provide. Treasury will transfer each successive one-third tranche after the Tribal government has certified that it has expended, transferred, or obligated 80 percent of the previously transferred one-third for Federal contributions to, or for the account of, programs that have delivered loans or investments to eligible businesses.

⁶ The minimum allocation was identified via an iterative process, where the minimum allocation was arrived at based on the enrollments of participating Tribal governments before calculating the pro rata amounts of the remaining funds to be allocated to the remaining Tribal governments.