

U.S. Department of the Treasury

State Small Business Credit Initiative Program

Allocation to Tribal Governments

Updated November 10, 2021

The American Rescue Plan Act of 2021 (ARPA) reauthorizes and amends the Small Business Jobs Act of 2010 (SBJA), which established the State Small Business Credit Initiative (SSBCI) Program. The ARPA provides up to \$10 billion for state, territory, and Tribal governments to help address the economic fallout of the COVID-19 pandemic and lay the foundation for a strong and equitable recovery by providing 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 as part of the main capital allocation. Tribes may also receive more funding as part of the very small business allocation, allocation for business enterprises owned and controlled by socially and economically disadvantaged individuals (SEDI-owned businesses), and incentive funds related to SEDI-owned businesses. The addition of Tribal governments significantly expands the number of eligible jurisdictions to receive SSBCI funds, compared to the previous SSBCI implementation under the SBJA. 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, 2021, 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 also 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 that provide support for Tribal governments.

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 as of March 11, 2021 pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. § 5131). *See* 12 U.S.C. § 5701(19).

Main Capital Allocation Methodology

Key Principles

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 and consistent economic data across Tribes. These key principles are informed by the statutory purpose of SSBCI, comments provided through the consultation process, and Treasury’s engagement with Tribes related to the Coronavirus State and Local Fiscal Recovery Funds (FRF) program methodology:

- 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 decided to allocate payments using a formula that is based on enrollment data, subject to a minimum amount to be allocated to each Tribal government.

- Tribal leaders provided recommendations covering several topics, including regarding the use of enrollment data, small business needs, and a minimum allocation amount in the allocation formula.
- As discussed below, enrollment data is generally available and will enable timely allocation calculations.
- 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. 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 (collectively, Tribal Small Businesses), which are the small businesses the allocation is designed to support. 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.

Allocation Formula

Treasury will allocate amounts to a Tribal government based on that Tribal government’s enrollment divided by the enrollment of all Tribal governments, subject to a minimum allocation

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

percentage for Tribal governments based on the SSBCI main capital allocation’s statutory minimum (Section 3003(b) of the SBJA, as amended by ARPA). Treasury determined the preliminary minimum allocation amount by (1) multiplying the statutory minimum allocation percentage (0.9%) for each state, territory, and the District of Columbia by 56 to determine the aggregate minimum allocation percentage for those SSBCI participants, (2) dividing the resulting figure by the number of Tribal governments participating in SSBCI to determine the proportional minimum percentage allocation for each Tribal government, and (3) multiplying the result by the Tribal allocation (\$500 million) to determine the dollar amount of the minimum allocation for each Tribal government.³ This approach yields a preliminary minimum allocation amount for each Tribal government of \$432,000. This minimum allocation amount will increase if some Tribal governments do not participate in the program. After allocating the minimum amounts, the remaining funds will be allocated, as described above, based on enrollment data.⁴ Subsequent recalculations of the main capital allocation will use this same methodology.

Tribal Enrollment Data

The SSBCI statute’s definition of “Tribal government” includes “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 [as of March 11, 2021] pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).”⁵ The Bureau of Indian Affairs collected enrollment numbers from these recognized governing bodies 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 a small subset of Tribal governments that did not provide self-certified enrollment data, Treasury will use enrollment data submitted to Treasury in 2020 under the Coronavirus Relief Fund.⁶ Finally, Treasury does not have self-certified or other enrollment data for some component bands and component reservations, which are known as subcomponents of Tribes, identified in the published list. Therefore, the Tribal government allocations will be made to the Tribal governments for which enrollment data is available. Treasury expects that Tribes will cooperate with their component bands and component reservations in establishing SSBCI programs if those entities have recognized governing bodies. This is the same approach as under the FRF program and will provide a consistent approach across programs for allocating funds to Tribal governments.

Alternative Methodologies Considered

Treasury considered using employment data but determined that there were no available employment data that are 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

³ Tribal minimum allocation amount = $(0.009 * 56 / (\text{the number of participating Tribal governments})) * \500 million

⁴ 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.

⁵ 12 U.S.C. § 5701(19).

⁶ Some eligible Tribal governments did not submit enrollment data in 2020 or 2021. For these Tribal governments, Treasury will use enrollment data from HUD’s Indian Housing Block Grant program.

entities,⁷ which do 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. 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 to provide each Tribal government with a baseline level of funding to establish SSBCI programs.

Treasury also considered alternative metrics for the formula, but determined there were no other available metrics that appropriately and consistently reflected employment and economic conditions across all eligible Tribal governments. These measures included land size, COVID-19 incidence rates, and Tribal expenditures. These metrics do not adequately relate to Tribal Small Business closures, job losses resulting from the economic effects of the COVID-19 pandemic, or 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 their use. Treasury also determined that collecting Tribal expenditure data from Tribes would not provide an advantage as compared to the enrollment information.

Very Small Business Allocation

The preliminary 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' main capital allocation relative to the main capital allocation for states, the District of Columbia, and territories under Section 3003(b) of the SBJA. The statute does not specify an allocation methodology for very small businesses, and Treasury will use the same enrollment-based methodology as the main capital allocation described above, except without a minimum allocation per Tribal government for this allocation. Treasury has already informed Tribal governments of the amounts of these allocations. Subsequent recalculations of the very small business allocation will use this same methodology.

Allocation for SEDI-owned Businesses

Section 3003(d) of the SBJA, as amended by ARPA, provides that Treasury must allocate \$1.5 billion based on the needs of business enterprises owned and controlled by socially and economically disadvantaged individuals (SEDI-owned businesses). As with the very small business allocation, Treasury will divide this amount into a portion for states and territories and a portion for Tribal governments in a manner consistent with the division of funds under the main capital allocation. Treasury determined that these allocations reasonably reflect the needs of SEDI-owned businesses in these jurisdictions and are also consistent with the purpose underlying

⁷ 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>.

the statutory main capital allocation. Thus, approximately \$100 million of the total SEDI allocation will be allocated among Tribal governments.

Each Tribal government's share of these funds will be determined using the same enrollment-based methodology as the main capital allocation described above, except without a minimum allocation per Tribal government for this allocation. Subsequent recalculations of the allocation for SEDI-owned businesses will use this same methodology.

Treasury determined that the use of enrollment data reflects the needs of Tribal SEDI-owned businesses, as Tribal members and communities have faced a longstanding lack of access to capital and investment. Treasury also determined that such an approach is consistent with the key principles set forth above. In particular, (1) this methodology reflects Tribal sovereignty in deferring to self-certified enrollment data; (2) Tribal leaders have provided consistent feedback that population levels are an important factor in allocation formulas; (3) the methodology allows Treasury to calculate this allocation in a timely manner; and (4) the methodology is fair and equitable because enrollment data are expected to correlate with the credit needs of Tribal SEDI-owned businesses, including privately owned small businesses, on- and off- reservation.

Disbursements of this allocation will occur at the same time as the disbursements of the SSBCI main capital and very small business allocations.

Incentive Funds

Pursuant to Section 3003(e) of the SBJA (as amended by the ARPA), Treasury will increase the amount of SSBCI funds that eligible jurisdictions (including Tribal governments) can obtain, beyond jurisdictions' allocated amounts for the second and third tranches of main capital, for eligible jurisdictions "that demonstrate robust support" for SEDI-owned businesses by meeting the needs of SEDI-owned businesses in the deployment of prior allocation amounts. A total of \$800 million of the \$1 billion incentive allocation will be available for eligible jurisdictions as initial eligible amounts. Treasury will determine and announce the distribution of the remaining \$200 million at a later date. Of the \$800 billion of initial eligible amounts, \$59 million will be available to Tribal governments, in proportion to Tribal governments' main capital allocation relative to the main capital allocation for states and territories.

The initial eligible amounts for each Tribal government are based on the same enrollment-based methodology, without a minimum per Tribal government, as described above for the \$1.5 billion allocation for SEDI-owned businesses, which Treasury determined appropriately reflects the needs of Tribal SEDI-owned businesses. Subsequent recalculations of the initial eligible amounts will use this same methodology.

Initial eligible amounts are not considered allocated; Tribal governments may be eligible to receive their initial eligible amounts if they meet the needs of SEDI-owned businesses through the processes and disbursement schedule described in the SSBCI Capital Program Policy Guidelines on Treasury's website.

Application Timeline

Treasury will communicate to Tribal governments the amount of their allocations by e-mailing the Tribal governments directly with their allocation amounts. Tribal governments that are interested in participating in SSBCI must submit a Notice of Intent (NOI) to apply by December 11, 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 to SSBCI 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 must be initiated by December 11, 2021, and completed by February 11, 2022. Treasury will release additional guidance on applications in the near future. For more information on SSBCI applications, please refer to the notice posted on Treasury's website at <https://home.treasury.gov/system/files/136/Notice-Regarding-Applications-for-the-State-Small-Business-Credit-Initiative-SSBCI.pdf>.

Preliminary allocations are subject to change depending on Tribal government participation, actual administrative expenses, and other factors under the SSBCI statute and Treasury guidance. Treasury may also recalculate allocations after the December 11, 2021 deadline to submit an NOI and initiate an application. If not all Tribal governments participate in SSBCI, a recalculation will be performed by Treasury before December 31, 2021, and individual allocations will be communicated by e-mailing Tribal governments directly. After the February 11, 2022 deadline to complete an application, another recalculation may similarly occur.

The first one-third of a Tribal government'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.