

Coronavirus Relief Fund
Allocations to Tribal Governments
May 5, 2020

The CARES Act reserves \$8 billion from the Coronavirus Relief Fund (the Fund) for payments to Tribal governments and provides that the allocation of payments to Tribal governments is to be determined by the Secretary of the Treasury in consultation with the Secretary of the Interior and Indian Tribes.¹

Consultation process

In accordance with Treasury’s Tribal consultation policy, Treasury and the Bureau of Indian Affairs conducted two telephonic Tribal consultations with Tribal leaders and received written comments from Indian Tribes. Treasury also appreciates the submissions made by Indian Tribes in response to Treasury’s request for information.

Allocation determination

The CARES Act provides that the Tribal allocation is to be “based on increased expenditures of each such Tribal government (or a tribally-owned entity of such Tribal government) relative to aggregate expenditures in fiscal year 2019 by the Tribal government (or tribally-owned entity)” and “determined in such manner as the Secretary [of the Treasury] determines appropriate to ensure that all amounts” are distributed to Tribal governments.²

Based on a reasonable assessment of the reliability, verifiability, and relevance of available data and after consulting with the Bureau of Indian Affairs and Indian Tribes, Treasury has determined that it is reasonable and appropriate to allocate payments based on a formula takes into account population data, employment data, and expenditure data. This determination is also based on considerations of administrative feasibility—a particularly important factor in light of the need for prompt payment to Tribal governments to meet immediate needs.

By necessity and due to the statutory design, any allocation formula will yield only an estimate of increased eligible expenditures, and the statute therefore grants the Secretary discretion to devise a formula that the Secretary deems appropriate to ensure that all amounts are distributed to Tribal governments.³ It is of course unknown at present what a Tribal government’s increased expenditures will be over the course of the period beginning March 1, 2020, and ending December 30, 2020, during which expenses to be covered using payments from the Fund may be incurred.⁴ Treasury determined that it would not be appropriate to rely entirely on Tribal governments’ fiscal year 2019 expenditures in making allocations, *e.g.*, by providing payments to each Tribal government based on a fixed percentage of such Tribal government’s fiscal year 2019 expenditures.

Treasury believes the allocation of payments should be focused on, to the extent administratively feasible, necessary expenditures that are due to the public health emergency, which are the only expenditures that may be made using payments from the Fund.⁵ Treasury observed wide variability in expenditures reported by Tribal governments that appears to be related to differences in the extent to which Tribes and tribally-owned businesses engage in business activities. Although Treasury interprets the CARES Act to permit the provision of certain economic support to affected businesses, not all business expenses will be eligible. Treasury expects that Indian Tribes with less extensive tribally-owned businesses (and therefore

¹ See section 601(c)(7) of the Social Security Act, as added by § 5001(a) of the CARES Act.

² See *id.*

³ See *id.*

⁴ See *id.* at section 601(d)(3).

⁵ See *id.* at section 601(d)(1).

lower overall expenditures) will have a proportionately greater increase in eligible expenditures than those Tribes whose prior year expenditure amount would include expenditures associated with large tribally-owned businesses.

In contrast, Tribal population is expected to correlate reasonably well with the amount of increased expenditures of Tribal governments related directly to the public health emergency, such as increased costs to address medical and public health needs. The Federal government also has reliable and consistently-prepared data for this key variable, discussed further below, that permits payments to be made at this time. Given the importance of providing funding as soon as possible to Tribal governments to address health and human services costs and other costs directly related to COVID-19, Treasury has determined to distribute 60 percent of the \$8 billion reserved for Tribal governments immediately based on population.

Treasury will distribute the remaining 40 percent of the \$8 billion reserved for Tribal governments based on employment and expenditures data of Tribes and tribally-owned entities. The use of employment data is expected to correlate reasonably well with expenditures related to effects of the emergency, such as the provision of economic support to those experiencing unemployment or business interruptions due to COVID-19-related business closures. Data relating to expected increased expenditures is expected to correlate reasonably well with the variability in the per person costs of service delivery in different tribal environments. Treasury believes it is important to ensure that this data is as consistent across Tribal governments as possible and for that reason intends to request additional information in the near future from Tribal governments as to their employment and expenditures. Treasury intends to determine the specific weight given to employment and expenditure data after receiving such additional submissions. Final payments will be made after data on employment and expenditures are received, reasonably verified, and accounted for in the allocation formula.

Treasury determined that the total number of land acres held by the Tribal government and any tribally-owned entity would not provide a useful indicator of increased expenditures. Although the total number of land acres can indicate increased costs of providing services over a larger area, particularly in remote locations, there are some areas that are so sparsely populated that reliance on this factor likely would overstate the increased marginal costs of Tribal governments in these areas.

Tribal population data

For purposes of the payments based on Tribal population, Treasury will refer to the Tribal population data used by the Department of Housing and Urban Development (HUD) in connection with the Indian Housing Block Grant (IHBG) program.⁶ This population data is based on Census Bureau data, and Tribal governments are familiar with it and have already been provided the opportunity to scrutinize and challenge its accuracy.⁷

The IHBG program allocation formula uses the American Indian and Alaska Native population count as determined by the Census of each Tribe's "formula area."⁸ Although the definition of "formula area" was developed by HUD for the specific context of the IHBG program, the formula area corresponds broadly with the area of a Tribal government's jurisdiction and other areas to which the Tribal government's

⁶ The IHBG formula includes total American Indian and Alaska Native (AIAN) population as part of the needs component. The remainder of the IHBG formula will not be referenced by Treasury in making payments from the Fund.

⁷ See 24 C.F.R. §§ 1000.330(c), 1000.336.

⁸ See *id.* at § 1000.302.

provision of services and economic influence extend. The IHBG formula area is also useful because it incorporates adjustments to address overlapping jurisdictions.

The IHBG population data used by Treasury for the Fund allocation is available from HUD.⁹ For Indian Tribes not included in the IHBG population data, HUD provided population figures at Treasury's request. Treasury will not include state-recognized Tribes that participate in the IHBG program but that are not Indian Tribes as defined by Title V of the CARES Act. Treasury will follow the IHBG practice of calculating a payment amount for each Tribal government based on single-race and then multi-race data and allocating the larger calculation amount for each Tribe.¹⁰

Minimum payment amount

The population-based allocation will assign a minimum payment of \$100,000 to the smallest Indian Tribes as set forth in step 2, below. Only Tribal governments with a population of less than 37 will receive the minimum payment. The decision to apply a minimum payment to such Indian Tribes reflects the greater relative significance that variations in population would have at the low end of the range and the greater marginal costs that small Indian Tribes have in providing services to their people. The establishment of this minimum amount also reflects the clear desire expressed by a substantial number of Indian Tribes during the Tribal consultation process and is set at an amount that should allow funds to be used by Tribes of this size for eligible expenditures.

Alaska Native corporations

As previously stated, Treasury, after consultation with the Department of the Interior, has concluded that Alaska Native regional and village corporations as defined in or established pursuant to the Alaska Native Claims Settlement Act are eligible to receive payments from the Fund. Payments are not being made to the Alaska Native corporations at this time due to pending litigation.

Population-based component of allocation formula

The allocation will result from Treasury taking the following steps:

- Step 1. Calculate the pro-rata payment for each Tribal government based on single-race and then multi-race data for each Tribe's IHBG formula area, and use the larger result for each Tribal government.
- Step 2. Assign a minimum payment of \$100,000 to those Tribal government that would otherwise receive less than that amount under step 1.
- Step 3. For Tribal governments that would receive a payment greater than the minimum, a pro-rata reduction is made for those amounts above the minimum for each Tribe so that the total amount for all Tribes does not exceed \$4.8 billion.

⁹ See <https://www.hud.gov/sites/dfiles/PIH/documents/FY%202020%20Estimate%20Allocation%20Single-Multi.xlsx>.

¹⁰ Prior to 2000, the Census required a person to choose a single racial category. Starting in 2000, a person was allowed multiple responses. For example, a person with mixed ancestry could report that they were both AIAN and Asian. Since 2006, successive appropriations acts have directed HUD to run the IHBG formula twice—once counting the needs of all persons who report that they are AIAN, whether they say they are AIAN alone or AIAN in combination with some other race, and then again counting only the needs of persons who identify solely as AIAN. A Tribe's allocation is based on the definition—either AIAN alone or the broader definition of multi-race AIAN—which provides it with a higher share of total funds. See, e.g., Further Consolidated Appropriations Act, 2020, Public Law 116-94, Div. H, Title II; 133 Stat 2534, 2985.