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COVID-19 RESPONSE AND RECOVERY POLICY BRIEFS

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Proposal for a Fair and Feasible Formula for the Allocation of CARES Act COVID-19 Relief Funds to American Indian and Alaska Native Tribal Governments

by

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I. Summary

Title V of the CARES Act requires that the Act's funds earmarked for tribal governments be released immediately and that they be used for actions taken to respond to the COVID-19 pandemic. These may include costs incurred by tribal governments to respond directly to the crisis, such as medical or public health expenditures by tribal health departments. Eligible costs may also include burdens associated with what the U.S. Treasury Department calls "second-order effects,"[2] such as having to provide economic support to those suffering from employment or business interruptions due to pandemic-driven business closures.

Determining eligible costs is problematic. Title V of the CARES Act instructs that the costs to be covered are those incurred between March 1, 2020 and December 30, 2020. Not only does this create the need for some means of approximating expenditures that are not yet incurred or known, but the Act's emphasis on the rapid release of funds to tribes also makes it imperative that a fair and feasible formula be devised to allocate the funds across 574 tribes without imposing undue delay and costs on either the federal government or the tribes.

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[2] U.S. Department of the Treasury, *Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments, April 22, 2020*, https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf, accessed May 21, 2020.

Recognizing the need for reasonable estimation of the burdens of the pandemic on tribes, we propose an allocation formula that uses data-ready drivers of those burdens. Specifically, we propose a three-part formula that puts 60% weight on each tribe's population of enrolled citizens, 20% weight on each tribe's total of tribal government and tribal enterprise employees, and 20% weight on each tribe's background rate of coronavirus infections (as predicted by available, peer-reviewed incidence models for Indian Country).

We previously have found that Treasury's disbursement of the first tranche of $4.8 billion to tribes in early May was rife with errors and arbitrary allocations. As shown below, our proposal straightforwardly allows Treasury to correct these problems such that the overall $8 billion is allocated equitably across tribes.

II. Background

Title V of the Coronavirus Aid, Relief, and Economic Security (CARES) Act provides $150 billion in COVID-19 response funds for state, local, and tribal governments. The U.S. Treasury is required to "reserve... $8,000,000,000 of such amount for making payments to Tribal governments."[3] These $8 billion are to be allocated "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 available… are distributed to Tribal governments."[4] Finally, "[a] State, Tribal government, and unit of local government shall use the funds provided… to cover only those costs of the State, Tribal government, or unit of local government that (1) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19); (2) were not accounted for in the budget most recently approved as of the date of enactment of this section for the State or government; and (3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020."[5]

To implement the disbursement of Title V CARES Act relief funds to at least the 574 federally recognized tribes in a timely and administratively feasible manner, the Treasury Department has concluded that it will need to employ an allocation formula, and that: "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

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3 *CARES Act, Public Law 116-136, Sec. 5001*, https://www.congress.gov/bill/116th-congress/house-bill/748/text, accessed May 11, 2020.

4 *Ibid*.

5 *Ibid*.

governments."[6] In fact, beginning on May 5, Treasury began distribution of the first $4.8 billion in Title V Cares Act monies, using a formula entirely based on population (albeit, employing demonstrably faulty measures of tribal citizen populations).[7]

As it prepares to disburse the remaining $3.2 billion of Title V funds to tribes, Treasury now advises that it "has determined that it is reasonable and appropriate to allocate payments based on a formula [that] 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."[8] The Department has not yet released the formula it intends to use. Below, we propose a formula for allocation of the remaining Title V CARES Act funds to tribes that we believe is consistent with the guidance the Treasury Department has provided on the matter and feasible to implement.

III. Building an Allocation Formula

Policy Goals: In arriving at the formula to be used for the allocation of the remaining $3.2 billion of Title V CARES Act funds to tribes, sound public policy should take into account both *outcome goals* and *process goals*. The *outcome goals* are found in standards of equal treatment and fairness in light of pain being suffered and costs being borne tribal citizens, as well as in the overarching objectives of "Coronavirus Aid, Relief, and Economic Security" set out in the full title of the CARES Act and the specific objectives of Title V – i.e., aiding tribal governments in bearing the direct costs of responding to and dealing with the pandemic including direct costs and the "second-order" costs (as Treasury calls them) of economic support provided to those suffering from employment or business interruptions. The *process goals* are identified in Treasury's recognition of the need for an allocation formula that reasonably estimates such costs. The key goals here are administrative feasibility and rapidity of funds distribution.

We believe that the Treasury Department is correct when it concludes that a reasonable and administratively feasible formula for allocating CARES Act dollars will necessarily entail "only an estimate of increased eligible expenditures." In fact, the nature of the CARES Act requires estimation: Eligible costs are those incurred over March 1, 2020 and December 30, 2020, but the

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6 U.S. Department of the Treasury, *Coronavirus Relief Fund Guidance for Allocations to Tribal Governments, May 5, 2020*, https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Tribal-Allocation-Methodology.pdf, accessed May 21, 2020.

7 Akee, Randall K.Q., Eric C. Henson, Miriam R. Jorgensen and Joseph P. Kalt, *Policy Brief #2: Dissecting the U.S. Treasury Department's Round 1 Allocations*, Harvard Project on American Indian Economic Development and Native Nations Institute, May 18, 2020, available at https://ash.harvard.edu/files/ash/files/2harvard_nni_dissection_of_treasury_allocation_w_appendix_05_18_2020_vfin_for_dist_2_.pdf.

8 *Coronavirus Relief Fund Guidance*…, May 5, 2020, *op. cit.*

funds are to be distributed immediately and well before the latter date. As Treasury puts it: "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."[9]

We further agree that it is reasonable and appropriate that the chosen allocation formula "take[ ] into account population data, employment data, and expenditure data." Each of these factors – population, employment, and expenditures – should be expected to be drivers of the costs tribes are bearing and will bear in the coming months as they respond to and deal with the COVID-19 crisis: Holding the influence of other factors constant, tribal governments that have jurisdiction over larger numbers of citizens and a duty to serve those larger numbers can be expected to have greater expenditures associated with working to limit the spread of the coronavirus and to confront its health effects. Similarly, tribes with larger numbers of employees in the tribal government and in tribally-owned entities (such as tribal business enterprises) can be expected to have to bear greater costs associated with economic support provided to those suffering from employment or business interruptions. And expenditure data to date can measure eligible costs incurred and provide an indication of costs likely to be incurred going forward.

In short, the process and outcome goals to be targeted, and the general framework of incorporating population, employment, and expenditure information provide a reasonable starting framework for devising a proper allocation formula. The devil, however, will be in the details. Both tribes and Treasury should be concerned that the formula ultimately implemented does not create the impetus for costly and disruptive debate and/or litigation, and that the process of formula derivation not place onerous burdens of either information gathering and paperwork on tribes or the need for extensive and detailed before- or after-the-fact auditing on the Department. The United States and the American Indian tribes that are part of the United States are in demonstrable crisis. Speed and efficiency are of the essence in disbursing needed financial relief.

The Problem of Weights: While the case is solid for considering the factors of population, employment, and COVID-19 related expenditures, the most vexing problem – the problem most likely to generate dissention and unresolvable debate – is the problem of *weights*. That is, what weight should be given in an allocation formula to population? To employment? To expenditures? It should be obvious to all that, in the divvying up of a fixed sum of $8 billion among multiple interested parties, a larger piece of the pie for one tribe necessarily means that a smaller slice or slices of the pie for one or more other parties.

9 *Ibid*.

Even the use of a simple three-factor allocation formula using information on population, employment, and expenditures must deal with the problem of weights. This comes from the basic arithmetic of the problem Treasury needs to solve. For any specific tribe – say, Tribe Z – the share of the $8 billion of Title V CARES Act monies can be symbolized by the letter S_Z. The weight given to each tribe's population of tribal citizens, expressed as a share of the overall number of all tribes' enrolled citizens in the U.S., can be symbolized by w_1. Similarly, the weight on each tribe's employees as a share of the total of all tribal employees in the U.S. can be symbolized by w_2. In corresponding fashion, the weight put on each tribe's share of the overall national total of tribal COVID-19 expenditures can be labeled w_3. In a three-factor formula, the share of the $8 billion "pie" that Tribe Z receives would then be:

$$S_Z = w_1 \times \text{Population Share}_Z + w_2 \times \text{Employee Share}_Z + w_3 \times \text{Expenditure Share}_Z$$

As with any allocation formula for a "pie" of a fixed size, different weighting results in different tribes getting different amounts.[10] The general principle is that any gain for a tribe with a relatively large population of citizens would come from increasing the weight given to population in an allocation formula and corresponds to a loss for one or more other tribes with smaller populations who might benefit from more weight being put on employment or on expenditures. The gain of a tribe with a large base of pre-pandemic employees that would come from putting more weight on that factor would come at the expense of one or more other tribes that might prefer a higher weight on population or on direct COVID-19 expenditures. And so on. It should not be expected that all, or even most, parties will agree on the weights to be given to any formula's factors. That holds here with our proposal. But are there principles or approaches that reasonable people could agree on when it comes to devising an allocation formula for the Title V CARES Act dollars?

IV. Finding Grounds for Agreement

Notwithstanding this pessimism, we believe there are sound principles and reasons which can be agreed to and guide the derivation of a fair and feasible allocation formula for the Title V CARES Act funds earmarked for tribal governments.

Population: First among these concerns is population. There can be no disagreement that the 574 federally recognized tribes are *governments*. And, after decades of struggle to re-establish and exercise rights of inherent sovereignty, there should be no disagreement that these tribal governments should deal with the federal government of the United States on a government-to-government basis. Indeed, the principle is enshrined in the Constitution.

[10] An example of how a specific formula would work is provided in the attached Appendix.

As governments, the tribes are not mere social gatherings of American Indians and Alaska Natives (AIAN). Tribes are not clubs, populated by members. Tribes are governing entities, populated by *citizens* – persons to which tribal governments owe duties of service and over whom they have jurisdiction. This is not only legally the case, but it is the case in practice. Tribes differ in the degree to which their citizens reside within their tribal borders. But in the enduring and current era of federal policies of self-determination through self-government, tribe after tribe is reaching beyond its geographic borders to serve their off-reservation citizens; and, of course, it is a dominant characteristic of such tribal citizens that they routinely "come home" to their home reservations for services, to realize the cultural values of being in their home communities, and because they are citizens of the tribal nation.

For these reasons, the appropriate measure of population in a sound allocation formula is the number of enrolled tribal citizens immediately before the coronavirus pandemic struck the U.S. Unfortunately (and perhaps unwittingly), Treasury failed to utilize this measure of population in its allocation of the first $4.8 billion of Title V CARES Act monies. Instead, as we have previously discussed, the Department utilized a data series acquired from the Department of Housing and Urban Development's Indian Housing Block Grant (IHBG) program. Although reported with a lag by the Department of the Census, the series focuses on the racial make-up of the *residents* of reservations and related tribal areas, counting the population as residents who self-identify to the U.S. Census bureau as either (i) being solely AIAN or (ii) being AIAN in combination with one or more additional racial category (such as white or Hispanic). These data may be appropriate for purposes of a federal housing program that seeks to improve on-reservation housing for on-reservation residents. But they are wholly inappropriate data for the purposes of federal funding – i.e., the CARES Act – that is explicitly aimed at supporting the economic stability and functions of tribal *governments.* Treasury's use of the IHBG data series not only disrespects the fact that tribes are sovereign governments with populations of both resident and non-resident citizens. It also demonstrably results in grossly arbitrary allocations of CARES Act funds.[11]

In its initial request for information from tribes in April following the passage of the CARES Act, Treasury sought data to be used in its allocation of funds. Among the data items that tribes seeking funding were required to submit (under threat of federal penalty for misrepresentation) was the number of enrolled tribal citizens as of January 1, 2020 – i.e., right before the onset of the pandemic and its disruptions. The data so acquired remains in Treasury's possession, although it has not been released publicly. The promised formula for the coming round of allocations of the remaining $3.2 billion of Title V CARES Act funds should employ this as its measure of tribal population and to correct inequities resulting from Treasury's use of self-reported racial data in the Department's first round of Title V allocations.

[11] Akee, *et al*., *Dissection…*, *op. cit.*

As we explain below, it is readily feasible – and fair – to use the data on tribal enrolled citizen populations to adjust tribes' allocation of the total of $8 billion in Title V CARES Act funds to tribes to correct the Department's errors and arbitrary allocations made in its first round disbursement of the initial $4.8 billion in funds. This correction can be implemented by adjusting Round 2 allocations and without having to undertake the likely infeasible task of "clawing back" overpayments of Round 1 allocations that were the result of Treasury's use of a grossly flawed population measure.

Employment: Turning to the factor of employment, the case for including employment in the Round 2 allocation formula for the remaining Title V CARES Act funds is founded on the reality that the burdens – both direct and "second order"[12] costs – of the pandemic and its impacts on a tribal government, its citizens, and the tribal economy can reasonably be expected to go up as the size of the workforce employed by a tribe goes up. The human and budgetary costs of a tribe having to furlough (or otherwise bear costs to support) a workforce of 5,000 are going to be higher than for a tribe having to furlough (or otherwise bear costs to support) a workforce of 500.

Thus, we find that the use of tribes' aggregate employment figures across the tribal government and tribally-owned enterprises provides a reasonable basis for estimating the distribution of second-order pandemic costs across tribes. Regarding the feasibility of collecting the requisite data, Treasury already has collected data on tribal government and enterprise employee counts. It was item 3e in the Department's April request for certified tribal data.

Expenditures: As touched upon above, it is particularly difficult to calculate pandemic-driven tribal governmental expenditures because many of the expenditures eligible for "reimbursement" under the CARES Act have yet to be incurred – i.e., the Act allows tribes to count COVID-19 related expenses incurred through the end of the calendar year. We believe that directly forecasting eligible expenditures for each of the 574 individual tribes is wholly infeasible. Neither sufficient data nor the causal models of the myriad dimensions of costs – from direct expenditures on personal protective equipment (PPE) for tribal health workers to "second-order" costs that will depend on local economic conditions and rates of reopening – are realistically obtainable.

In fact, the infeasibility of forecasting COVID-19 expenditures is accompanied by likely insurmountable impediments to collecting consistent and useable data on expenditures that already have been made. Tribal governments sprang into action and did not have accounting mechanisms at the ready to measure or estimate new expenditures for COVID-19 mitigation, increased costs in other areas of healthcare arising from COVID-driven scarcities, and

[12] See discussion above and *Coronavirus Relief Fund Guidance…*, May 5, 2020, *op. cit*.

unpredictable losses arising from the repurposing of tribal resources (housing, social services staff, tribal police, casino kitchens, and so on) to meet immediate pandemic-response needs.

These considerations – the unpredictability of future COVID-related expenditures and the impediments to calculating past expenditures – mean that the reliability of any data on pandemic-driven expenditures that Treasury collects will be low, data will be noncomparable across tribes, and conclusions drawn from the data are likely to be easy targets for attack. These problems are compounded by the burden that would be placed on tribes by requiring them to somehow assemble potentially voluminous data on poorly articulated and ambiguous categories of costs intended to be "focused on, to the extent administratively feasible, necessary expenditures that are due to the public health emergency."[13]

Fortunately, there is a more scientific alternative. Throughout the progress of the pandemic, social scientists have worked to model the incidence of COVID-19, including disease incidence in American Indian communities. Such models are helpful because pandemic-driven expenditures would be expected to correlate with the underlying (or "background") propensity of a community to experience lower or higher rates of COVID-19 infection. A tribe subject to a (potentially) high incidence of the disease would be expected to have higher levels of pandemic-driven costs than a tribe subject to a (potentially) lower rate of the coronavirus, as the tribe with the higher background rate of infection struggles to combat the disease where and when it actually occurs and/or to prevent "potential" disease incidence from turning into "actual" incidence.

A recent study by researchers at the University of California, Los Angeles, and the University of Arizona has determined correlates of early COVID-19 infection rates on American Indian reservations and provides an eminently useable mechanism for measuring background rates of the severity of the COVID-19 problem.[14] The researchers – Randall K.Q. Akee, Nicolás E. Barceló, Stephanie Russo Carroll, and Desi Rodriguez-Lonebear (ABCR-L) – provide a model of background COVID-19 infection cases that is already peer-reviewed and tested for reliability.

Critically, this model takes into account many – if not all – of the variables concerned observers care about and point to as affecting the distribution of COVID-19 impact-related expenditures. Specifically, the model estimates the statistical "contribution" of these variables to disease incidence on reservations. It also takes account of the fact that different reservations are at different points on the incidence curve – some are still rising in number of cases per day,

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13 *Ibid*.

14 Akee, Randall K.Q., Nicolás E. Barceló, Stephanie Russo Carroll, and Desi Rodriguez-Lonebear, "American Indian Reservations and COVID-19: Correlates of Early Infection Rates in the Pandemic," *Journal of Public Health Management and Practice*, in press.

others are falling; some saw early outbreaks of the pandemic, others may have only recently seen severe problems arise.[15]

The ABCR-L Model measures the impact of numerous factors on the number of COVID-19 cases per 1,000 reservation residents. Specifically, it finds and calculates the contribution to a reservation's COVID-19 case rate of:

- The percent of homes that lack complete plumbing
- The reservation land base
- The percent of households that only speak English
- Average household income
- The percent of homes with more than one person per room
- The percent of households that are American Indian/Alaska Native
- The average age of residents
- The percent of residents who are male
- The percent of households that are married
- The percent of adults with a bachelor's degree or more
- State-specific background factors

A major benefit of this model is that it can be used to calculate a background rate of the severity of the threat and impact of COVID-19 for every tribe in the nation. The model does this in standard statistical fashion.[16] Simplifying in order to illustrate, suppose that the model finds that for tribes in, say, New Mexico, (1) the background of being in New Mexico contributes 6 cases per 1,000 reservation residents, (2) a 10% increase in the proportion of reservation homes lacking complete plumbing (a commonly used indicator of poverty) correlates with an additional 2 cases per 1,000 reservation residents, (3) each 10 square miles in a tribe's land base adds

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[15] To do so, the model includes what statisticians call "fixed effects" variables for the states in which each Native community is located, thereby recognizing COVID-19's uneven geographic spread across the U.S. Importantly, state fixed effects controls are doing other work in the model too: they control for *all* conditions that are, to a significant extent, similar within a particular state and more variable across states. These include not only the incidence of COVID-19 cases but also population density, availability of PPE, and access to health care.

[16] The ABCR-L Model, specified below, has been calculated as of mid-April 2020:

$$CovidCases_i = \propto + \beta_1 \times \%HomesLackCompletePlumbing_i + \beta_2 \times ReservationSizeSqKm_i + \beta_3 \times MedianHHIncome_i + \beta_4 \times \%HouseholdsSpeakEnglishOnly_i + X'\delta + \theta_s + \varepsilon_i$$

$CovidCases_i$ is the number of cases per 1,000 population per reservation i and comes from an *Indian Country Today* public-use data file. The vector X contains the following variables: percent of homes with more than one person per room, percent of American Indian/Alaska Native households, median age, percent male, percent of married households, percent of adults with a bachelor's degree or more. The variable θ_s is a state fixed-effect and varies across U.S. states. If deemed appropriate by the administration, this model can be readily updated to a more recent date since it uses publicly available or otherwise readily obtainable data. Alternatively, a model of deaths might be used, with similar control variables, if a determination is made that deaths are a more observable (and thus more accurate) measure of incidence and impact.

another 3 cases per 1,000 reservation residents, and (4) a $1,000 increase in average household income correlates with a *reduction* of 12 cases per 1,000 reservation residents. With these model results, it is straightforward to build up an estimated COVID-19 case rate for every tribe in New Mexico and, similarly, for every tribe in every other state.

With a statistically sound measure of case rates in hand for each tribe, the last two steps then entail (1) multiplying each tribe's estimated COVID-19 case rate per 1,000 reservation residents by the total number of reservation residents to arrive at the estimated total number of a tribe's underlying (perhaps prevented, but at a cost) COVID-19 cases, and (2) calculating the tribe's share of such cases out of the estimated total for all tribes. Recognizing that this share correlates with pandemic-driven expenditures, it becomes the value used to calculate each tribe's Expenditure Share in the proposed allocation formula shown above.

A key advantage of this approach is that the data needed to calculate numbers like "each 10 square miles in a tribe's land base adds another X cases per 1,000 reservation residents" and to plug into the model in order to build up any tribe's estimated rate of COVID-19 cases are either readily available publicly or have already been collected by Treasury. Most of the items in the bullet point list are available through the American Community Survey (ACS) of the Census Bureau. The exception are the measures of tribal land bases, and these were submitted in April 2020 via item 3f in the first data request the U.S. Department of Treasury made to tribal governments concerning the distribution of CARES Act funds.[17]

V. Proposal for a Fair and Feasible Formula

Guidelines for Hard Choices: The foregoing approaches and methodologies for measuring (1) tribal citizen populations, (2) the employment (and associated economic activity) supported by tribes, and (3) the drivers of pandemic-driven expenditures provide for a simple three-factor allocation formula as indicated in the arithmetic above. This, however, leaves the challenging problem of applying the w_1, w_2, and w_3 weights to complete the formula. If values can be assigned to the weights, the result is a straightforward formula that can feasibly be applied by Treasury.

Here, we believe that basic principles of fairness argue for consideration of reasonable arguments behind a "veil of ignorance." By this we mean, considering what is fair and reasonable without knowing the consequences for any individual recipient of the CARES Act funding, i.e., not knowing the outcome of a proposed weighting ahead of time.[18] Are there principles or

[17] This item determines the size of a tribe's land base to be inclusive of all of its trust, restricted fee, and fee-simple lands as of January 1, 2020.

[18] This approach is sometimes referred to as "Rawlsian justice", after the philosopher John Rawls. For a discussion, see *Original Position*, https://plato.stanford.edu/entries/original-position/, accessed May 21, 2020.

approaches to weighting the factors of citizen population, employment, and expenditures that reasonable people can agree to without knowing beforehand how those principles will affect the allocation of Title V Cares Act monies across tribes? Of course, in the case at hand, total "ignorance" does not make sense. Giving weight to population, for example, tends to push allocations toward larger tribes. Giving more weight to higher expected pandemic-driven expenditures gives more weight to tribes with larger land bases, rural tribes relative to urban tribes, and tribes with high rates of poverty. Giving more weight to employment gives more weight to tribes with strong economies. And so on.

Legitimate arguments can be made to justify weighting one factor more than another. In fact, the "pull" toward fairness of each of these kinds of arguments is *why* each of the three key factors belongs in the formula: We do care about the impact of the pandemic on poorer communities. We do care that pandemic-driven costs go up with the number of citizens over whom a tribe has responsibilities to serve. We do care that the human and financial costs of shutting down the tribal economy and having to support workers are simply greater when 5,000 workers are affected than when 50 or 500 workers are affected.

A Proposal for 60-20-20 Weights: In a sense, the political system has already spoken loudly with respect to the weighting of tribal populations in a Title V CARES Act allocation formula. Specifically, the political system has already resulted in allocating 60% of the available funding through the first round of Treasury disbursements – i.e., the $4.8 billion that has already been allocated is 60% of the available total of $8 billion. We propose that this be the weight given to population in the allocation of the $8 billion of Title V monies. In a sense, because it has already emerged from the political system, it is not worth fighting over (or at least, not worth fighting over anymore).

With respect to the weighting of employment and expenditures, if 60% of the "pie" is allocated based on population, 40% remains to be split between allocation based on tribal government and enterprise employment and projected pandemic-driven tribal expenditures. We propose to make this split equal, giving employment a weight of 20% and giving expenditures a weight of 20%. Each factor is important, and we see no basis for choosing to weight one more heavily than the other. Moreover, each is trying to get at essentially the same thing – i.e., the burdens of the pandemic on tribes. To a first order approximation, we would expect likely expenditures (both direct and those associated with supporting workforces and jobs adversely affected by COVID-19) and total tribal government and enterprise employment to move together.

Summary Formula: To summarize, then, we propose the following formula for allocation of the full $8 billion of Title V CARES Act monies:

1. Weight population at 60% and weight employment and expenditures each at 20% such that each tribe's share of the $8 billion is:

   S_Z = .6 x Population Share$_Z$ + .2 x Employee Share$_Z$ + .2 x Expenditure Share$_Z$

2. Measure **Population Share** based on the certified each tribe's enrolled citizenship as of January 1, 2020.[19]

3. Measure **Employee Share** based on each tribe's total of tribal government and tribal enterprise employees over the four quarters of 2019.[20]

4. Measure **Expenditure Share** based on each tribe's share of total baseline COVID-19 cases as estimated by the ABCR-L Model.

Implementation: To allocate the CARES Act Title V monies:

1. For each tribe, multiply the formula for **S_z** laid out above times $8 billion to get the total allocation, **A_z**, for each tribe.

2. Subtract the dollars, **B_z**, that each tribe received in the Round 1 allocation of $4.8 billion from that tribe's total allocation of **A_z** dollars.

3. Disburse **C_z** dollars to each tribe, where **$C_z = A_z - B_z$**.

Note that this implementation automatically adjusts for the errors and arbitrary allocations that were embedded in the Round 1 allocations by the Treasury Department. The proposed implementation applies a fair and feasible formula to the entire $8 billion of Title V CARES Act funding *because it is a fair allocation* whether the total to be allocated is $1 billion, $3.2 billion, $4.8 billion, $8 billion, or any amount more. If the formula indicates that a tribe received an over-allocation in Round 1, that tribe will receive a corrective amount less in the Round 2 allocation of $3.2 billion. If the formula indicates that a tribe received an under-allocation in Round 1, that

[19] There remains controversy and litigation over whether Alaska Native regional and village corporations (ANCs) should be eligible for disbursement of CARES Act monies under Title V of the Act. We do not take up this issue here. However, there is the prospect that, if Treasury were to utilize data on, for example, the number of an ANC's shareholders to measure that ANC's "population", significant double-counting (or more) of Alaska Native citizens of tribes would likely occur. The problem would arise under a shareholder-based measure of ANC "population" any time a shareholder is also a citizen of one of the federally recognized tribes in Alaska (which is the common case). We believe Treasury should take care to avoid such double- or multi-counting of the population of Alaska Native citizens.

[20] Focusing on employment over the full year avoids problems of seasonal fluctuations in employment.

tribe will receive a corrective amount more in the Round 2 allocation of $3.2 billion. But in the end, each tribe will have received its fair share of the total $8 billion.[21]

[21] Our analysis indicates that no tribe would be in the position of a negative disbursement in Round 2. I.e., the remaining $3.2 billion is sufficient to cover any sum of negative corrective adjustments arising from failure to use the formula and appropriate population measures in Round 1.

Appendix

Illustration of Formula Structure and Operation

To see how a specific set of weights would work, suppose that Treasury decided on an allocation formula that gave 50% weight to population, 25% weight to employees, and 25% weight to expenditures. These weights add up to 100% so that each dollar of CARES Act monies any tribe receives fully takes into account population, employees, and expenditures. *Purely for purposes of illustration*, now suppose that there are only two tribes in the whole United States, Tribe Y and Tribe Z. Tribe Y is relatively small and accounts for only 10% of the U.S. population of enrolled tribal citizens, 30% of the national total of tribal employees, and 20% of the national total of all tribes' combined pandemic-related expenditures. Tribe Z, on the other hand, is relatively large. It accounts for the other 90% of the U.S. population of enrolled tribal citizens, the other 70% of the national total of tribal employees, and the other 80% of the nation-wide total of pandemic-related expenditures by tribes.

With those characteristics of the two tribes, Tribe Y would receive a share of the Title V CARES Act funds equal to:

$$S_Y = w_1 \text{ x Population Share}_Y + w_2 \text{ x Employee Share}_Y + w_3 \text{ x Expenditure Share}_Y$$

$$= .5 \text{ x } 10\% + .25 \text{ x } 30\% + .25 \text{ x } 20\% = 17.5\%$$

Tribe Z would receive a share of the Title V CARES Act funds equal to:

$$S_Z = w_1 \text{ x Population Share}_Z + w_2 \text{ x Employee Share}_Z + w_3 \text{ x Expenditure Share}_Z$$

$$= .5 \text{ x } 90\% + .25 \text{ x } 70\% + .25 \text{ x } 80\% = 82.5\%$$

We can see in this illustration that the two tribes' shares add up to 100% (i.e., 17.5% + 82.5%). This means that splitting the "pie" 17.5% and 82.5% uses up the whole "pie" – i.e., it all gets allocated between the two tribes, Y and Z.

This compact and easy-to-follow example makes it clear why it might be so hard for Tribe Y and Tribe Z to agree on the weights on the three factors of population, employees, and expenditures. Suppose the weights on population and employees were flipped, so that population was weighted at .25 and employees were weighted at .5. Tribe Y would then receive:

$$S_Y = w_1 \text{ x Population Share}_Y + w_2 \text{ x Employee Share}_Y + w_3 \text{ x Expenditure Share}_Y$$

$$= .25 \text{ x } 10\% + .5 \text{ x } 30\% + .25 \text{ x } 20\% = 22.5\%$$

Tribe Z would receive a share of the Title V CARES Act funds equal to:

$$S_Z = w_1 \text{ x Population Share}_Z + w_2 \text{ x Employee Share}_Z + w_3 \text{ x Expenditure Share}_Z$$

= .25 x 90% + .5 x 70% + .25 x 80% = 77.5%

Tribe Y gains with these weights, raising its share of the “pie” to 22.5%. Tribe Z’s share falls to 77.5%.