



**KIVA Advisory Memorandum
American Rescue Plan Act (ARPA) of 2021
Bureau of Indian Affairs & Bureau of Indian Education
Funding Distribution Methodology
KIVA Institute, LLC - December 10, 2021**

Introduction

The KIVA Institute, LLC (KIVA) issues this Advisory Memorandum to provide information on the distribution of federal appropriations allocated to the Bureau of Indian Affairs (BIA) and Bureau of Indian Education under Section 11002(a) and Section 11005(a), respectively, of Public Law 117-58, the American Rescue Plan Act (ARPA) of 2021 to tribes and tribal organizations.

It is important to note that program categories and funding addressed in this Advisory Memorandum only relates to funds specifically allocated to the BIA and BIE, and which are to be (or have been) distributed to tribes and tribal organizations. The Advisory Memorandum does not include ARPA funding distributed directly to tribal governments by the U. S. Treasury under Section 9901-Subpart M of ARPA, Coronavirus State and Local Fiscal Recovery Funds (SLFRF).

Governing rules and regulations will differ between ARPA funds distributed directly to tribal governments by the U.S. Treasury; and ARPA funds distributed to tribes by the BIA and BIE. For example, ARPA funds distributed by the U.S. Treasury are available for use until December 31, 2026; while ARPA funds distributed by the BIA and BIE are available for use until funds are expended, which may be beyond December 31, 2026.

BIA and BIE will use Public Law 93-638, Indian Self-Determination & Education Assistance Act and Public Law 100-297, Tribally Controlled Schools Act, as the statutory authority and funding mechanism to incorporate ARPA Section 11002(a) and Section 11005(a) funds for recipient tribes and tribal organizations (school boards). Awards by the U.S. Treasury will be subject to the OMB Uniform Administrative Requirements (2 CFR Part 200). All ARPA awards will be subject to the Single Audit Act and its accompanying OMB Audit Compliance Supplements and Addenda.

KIVA Advisory Memoranda

KIVA previously issued two KIVA Advisory Memoranda on ARPA funding as follows:

- March 12, 2021 Memorandum: To provide a Summary of Section 9901 of ARPA which provides that:
 - Section 9901 provides \$219.8 billion to States, territories, and tribal governments including:
 - \$20.0 billion set-aside for tribal governments under the Coronavirus Relief Fund (CRF), of which \$1.0 billion to be distributed equally among tribal governments, and \$19.0 billion to be distributed using a funding methodology to be determined by the U.S. Treasury.
 - Section 11001(a) to provide \$6.094 billion to the Indian Health Service
 - Section 11002(a) to provide \$900.0 million to the Bureau of Indian Affairs
 - Section 11003(a) to provide \$750.0 million for Housing Assistance
 - Section 11004(a) to provide \$20.0 million for Native American Language Preservation.
 - Section 11005(a) to provide \$850.0 million for the Bureau of Indian Education.
- March 24, 2021 Memorandum: To bring focus to the \$20.0 billion Coronavirus Relief Fund (CRF) and recommend how tribal governments might use the one-time funds to address critical capital improvement needs.

ARPA Appropriations

Section 11002(a) of ARPA appropriated \$900.0 million to the BIA for distribution to tribal governments to address health and economic impacts of the COVID-19 pandemic, as follows:

1. \$100.0 million for Tribal Housing Improvements.
2. \$772.5 million for Tribal Government Services to include: Public Safety and Justice, Social Services, Child Welfare Assistance, and other related expenses.
3. \$7.5 million for related Federal Administrative Costs and Oversight; and
4. \$20.0 million to provide and deliver Potable Water.

ARPA provides that funds appropriated for the above programs will be excluded from the calculation of funds received by the “Small and Needy Tribes” program. The statute also provides that ARPA funds distributed by the BIA and awarded under Public Law 93-638 Indian Self-Determination Assistance Act and Public Law 100-297 Tribally Controlled Schools Act funding agreements are one-time funds and do not constitute the required funding calculation for Annual Funding Agreements awarded under Section 106(a)(1) of the Indian Self-Determination and Education Assistance Act.

Funding Distribution Methodology - BIA

This Advisory Memorandum will explain the BIA methodology on its distribution of ARPA funding to tribal governments under the above major funding and program categories, as follows:

1. Tribal Housing Improvements – (\$100.0 million).

Methodology: Tribal governments will receive a minimum allocation of \$60,000 under Category B of the HIP regulations. The remaining funds will be distributed on a pro rata basis using the most current tribal enrollment data as a base dataset.

2. Tribal Government Services: Aid to Tribal Governments – (\$772.5 Million).

Methodology:

a. Aid to Tribal Governments: \$700.0 million will be distributed through the Aid to Tribal Government (ATG) funding line that will allow tribes to reprogram funds across the ATG/TPA lines as necessary:

- i. Use 20 bands or similar enrollment levels for equitable funding among small and large tribes.
- ii. A minimum of \$50,000 for tribes up to 60 members.
- iii. Weighted amounts for top 4 largest tribes.
- iv. 20% increase over the highest band for the 1 tribe that has twice the enrollment number as the largest tribe in the highest band (\$3.5 million).
- v. 80% increase over the highest band for the 3 tribes that have 5 to 7 times the enrollment as the largest tribe in the highest band (\$8.0 million)

b. Law Enforcement & Detention: \$30.0 million will be allocated for Law Enforcement Services and Detention programs as follows:

- i. Funding will be split into two pots: \$8.0 million will be held for use to benefit direct service tribes; and \$22.0 million will be distributed based on existing OJS allocation of the base (recurring annual) funding level for OJS-funded, tribally-operated, public safety programs.
- ii. Detention and law enforcement base funding of each tribe will be added together; and the resulting total will be used to provide prorated the \$22.0 million allocation.
- iii. The corresponding distribution document and contract modification language will state that funding can be used to meet the needs of detention and law enforcement programs operated by tribes.

c. Law Enforcement Services (Unfunded Law Enforcement Programs): \$30.0 million is reserved to fund tribes that currently do not receive funding for Law Enforcement Services from the BIA.

- i. Funds will be provided through the Aid to Tribal Governments (TPA) funding line; and will primarily be distributed based on enrollment.

- ii. Funding can be used for tribal safety needs outside of a formal law enforcement program; and tribes can determine whether to reprogram the funds as necessary to other TPA program areas such as Tribal Courts (TPA).
3. BIA Administrative and Oversight: \$7.5 Million will be managed at the central office level to support maintaining a public health capability to have an informed Indian Affairs response to COVID-19, IT surge needs, facility adaptations for COVID-19 safety requirements, PPE, staff surge needs and project management.
4. Reserve Funds: \$12.5 million will be held at the central office to allocate for unexpected exigencies as they may occur.

Funding Distribution Methodology – BIE

The Bureau of Indian Education (BIE) funds and operates 183 elementary schools, secondary schools, and dormitories (over two-thirds are operated by tribes), serving 64 Indian reservations in 23 states; and serving about 46,000 students. BIE also operates two post-secondary schools and administers grants for 29 tribally controlled colleges and universities, and two tribal technical colleges. The BIE received \$850.0 million in ARPA Section 1005(a) funding which it programmed to be distributed as follows:

1. \$535.5 million (70%) for 183 K-12 schools in its school system based on Weighted Student Unit Formula.
2. \$229.5 million (30%) for Tribally Controlled Universities based on student count.
3. \$85.0 million (19%) to be managed by BIE School Operations for investments, such as the buildout of a Learning Management System and facility ventilation improvement project.

BIE also published a list of Allowable Expenses developed by the Department of Education related to school operations.

Allowable Uses/Expenses of ARPA Funds - BIA Section 1002(a) Funds

Addendum A - to this Advisory Memorandum is a compilation of Frequently Asked Questions (FAQs) regarding the allowable expenses relating to the use of ARPA funds allocated to the BIA. The Addendum categorizes the allowable expenses into the following categories:

- Category I – ARPA Funding Requirements & Restrictions
- Category II – Aid to Tribal Government Services Funding
- Category III – Welfare Assistance Grant (WAG) Funding
- Category IV – Tribal Housing Improvement (HIP) Funding
- Category V – Law Enforcement Services Funding

Category VI – Potable Water Funding

Category VII – Tribal Member Funding

Category VIII – Allowable Expenditures and Equipment for American Rescue Plan
Act: Aid to Tribal Government Services Funds

Category IX – Other FAQs

For Additional Information

Should you have any questions regarding this list, or questions not addressed, please contact us at; info@kivainstitute.com, or our website: www.kivainstitute.com.