



Growing tribal economies • Strengthening tribal finance

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April 6, 2020

United States Department of the Treasury  
Secretary Steven Mnuchin  
1500 Pennsylvania Avenue, NW  
Washington DC 20240

United States Department of Interior  
Secretary David Bernhardt  
1849 C Street, N.W.  
Washington, D.C. 20220

**RE: Guidance Recommendations for the Implementation of Title V, Coronavirus Relief Funding for Tribal Governments**

NAFOA represents over 120 tribal governments in advocating for sound economic policies to advance tribal economies and create best practices for tribal financial management. We respectfully offer our response on the implementation of Title V of Public Law 116-136, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), on behalf of our member tribes.

Title V of the CARES Act has the potential to provide flexible and prompt funding that tribal governments need during this time of uncertainty and unparalleled stress. The funding may become more critical for tribal governments as the health and economic crisis develops. Tribal governments need to serve and care for the well being of their people during this uncertain crisis as well as continue to be responsible stewards for the surrounding communities that rely on them. This responsibility is similar to other governments; however, tribal governments, in lieu of a tax base, rely on economic revenue to fund programs and services. The revenue from this equivalency of a tax base has not simply dipped, as experienced by other state and local governments, it has ceased to exist in many cases. All at a time when government expenses will rise, credit will diminish for economic enterprises, and existing expenditures will no longer have the revenue to support their initial planned expenditure.

Tribal government leaders, tribal representatives, and tribally centered organizations began debating Title V of the CARES Act before it was signed into law. Shortly after it was signed into law, the Department of the Treasury, in consultation with the Department of the Interior, formally entered the discussion by hosting a tribal government consultation on April 2, 2020 focused on reviewing Title V, the Coronavirus Relief Fund, of the CARES Act and soliciting input on the implementation of the Title. The input clarified both the diversity of tribal government and economic need as well as the diversity of distribution priorities for funding to manage the Coronavirus crisis. The input also made it clear that a single factor such as measuring impact

based on population would help some tribes but leave other impacts, such as economic, largely unaddressed for smaller population tribes with larger economic footprints unsupported.

Title V of the CARES Act has the potential to directly address these existing and forward-looking expenditure concerns for tribal governments. The intent of Title V of the CARES Act is to recognize the government expenditures no longer supported by diminished revenue and the unanticipated expenses that tribal governments will experience while trying to manage the impacts of this crisis. In addition, by clearly including tribally-owned entities, the law acknowledges the role that economic entities play in supporting governmental purposes by allowing for relief for tribally-owned entities.

The substantial tribal discourse through direct conversations, town hall discussions, and formal consultation with leaders and the Department of the Interior should form the guidance issued by the Department of the Treasury. **NAFOA, in listening to the diverse statements made by tribal governments, supports the accommodation of tribal relief based on the methodology defined in Title V as articulated under the Title IV amendment as the sole factor in allocating funds to tribal governments.** This single methodology will accommodate the greatest relief for all tribes regardless of government size and economic footprint. Tribal governments with larger populations will have greater expenditures to meet and will include those in their requests in a similar way that tribes with larger economic engines or land bases will be able to include their increased expenditures associated with relief. We strongly feel doing otherwise will compromise the intent of the law and make it more difficult to provide fair and timely access to the relief funds.

NAFOA would also like to recommend the following considerations for compliance and distribution:

#### Timely Distribution of Funds

A common theme repeated in all forums is expediting the relief funds as soon as possible and under a distribution method that would accommodate the release of funds quickly. It was made clear on the initial consultation that the Department of the Treasury wanted Title V funds released in a single distribution by April 24<sup>th</sup>, 2020, three days before the statutory deadline. Since the Department of the Treasury would likely require setting up a new facility, it appears that the funds should be distributed through existing contracts or direct service arrangements already in place.

#### A Streamlined Process – Tribal Government Certification of Needed Relief

The Departments of the Treasury and Interior should immediately establish a clear process for distribution of funds along with any tribal government certifications required to receive funding. A tribal or village government, through their respective governing body, should be able to submit a request for funding and certify use and compliance. It may be reasonable to include a statement in the certification that a tribal or village government will make every attempt to use the funds

in addition to specific tribal government assistance included in the CARES Act, Families First Coronavirus Response Act, and the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020.

#### Use of Funds – Government Relief & Tribally-Owned Entity

The use of funds should be focused on the intent and broad language of Title V. For purposes of accounting and any audit compliance, expenditures should consider two separate broad categories for expenditures, prior government activities expenses and prior business activities expenses as is commonly reported separately (see OMB waiver below).

Government expenditures should include those anticipated government expenditures that would have been met with planned revenue and those unanticipated government expenditures that will need to be met as a result of the on-going Coronavirus crisis between March 1, 2020 and December 31, 2020. Possible uses should include, but **not be limited to**, prior unmet governmental activities expenditures, payroll costs, full or supplemental costs associated with tribally provided or matched unemployment, any matching requirements, financing or refinancing necessary for continued operations or relief, increased government expenditures for the care and well-being of tribal citizens and other tribal or general citizens receiving services or general welfare, additional costs associated with securing protective gear, equipment, and health service workers in a highly competitive market.

Business expenditures should include those unanticipated business expenditures associated with diminished and idle facilities and tribal businesses, including **but not limited to**, operational and maintenance costs associated with keeping businesses and facilities secure and viable for eventual reopening, possible conversion costs for changes in facility use, maintenance and operational costs of businesses considered essential, costs associated with existing and new financing, additional costs associated with reopening and restocking facilities and businesses.

#### Office of Management and Budget (OMB) & Guidance Exceptions

Tribal governments are currently not permitted to utilize government expenditures for business activities expenses. In addition, other exceptions or reporting conflicts should be considered. The Department of Treasury should consider the following compliance clarifications:

- Any costs incurred by a tribal government as permitted by the language of the legislation is allowable when properly supported, and if there is a conflict with 2 CFR 200, Uniform Guidance, Subpart E, Cost Principles, the legislative language prevails.
- Tribes have the flexibility to determine which costs are allocated or shared to the various federal funding available related to the Coronavirus crisis, as long as costs are not duplicated, without having to conform and support costs as per 2 CFR 200.405 - Allocations of Costs or 2 CFR 200.430 - Compensation for Services. These

requirements would place an additional burden on tribal governments for support and then audit consequences if not addressed.

- Although Title V of the CARES Act allows for cost considerations within March 1, 2020 to December 31, 2020, per the Indian Self-Determination and Education Assistance Act funds should be available until expended for the purposes of the CARES Act.
- As per the Indian Self-Determination and Education Assistance Act, OMB guidance, and more recently in the data standards in the GREAT Act, additional tribal government financial reporting information should not be made publicly available other than what is already required.

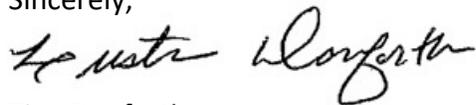
#### Redistribution of Funds

The Department of Treasury should make clear for compliance purposes that funds initially intended for a specific purpose can be repurposed during the duration of the relief period. For example, funds that may be spent on business debt and other business expenses that are not currently covered under business interruption insurance should be able to have those expenses be repurposed if those expenses are covered later if and when Congress provides pandemic relief assurances to insurers by effectively requiring coverage as happened during the 9/11 crisis.

#### Conclusion

Title V is intended to provide broad discretion for tribal governments to provide relief associated with the impacts of the Coronavirus crisis. The intent of the Title has been reinforced in colloquy and letters to the Department of the Treasury by those Senators and Congressional Representatives who had a heavy hand in writing the law. We would urge the Department of the Treasury to swiftly develop a certification process and compliance scheme so that tribal and village governments can submit their requests and begin the process of caring for their people with the reassurance of discretionary funding to meet the uncertainty of the crisis ahead of us all.

Sincerely,



Tina Danforth,  
President

CC via email Daniel Kowalski, Counselor to the Secretary of the Treasury  
Tara Katuk Mac Lean Sweeney, Assistant Secretary – Indian Affairs