



USET

SOVEREIGNTY PROTECTION FUND

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Transmitted Electronically

April 8, 2020

The Honorable Steven Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

The Honorable David Bernhardt
Secretary
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

Re: USET SPF Comments on Distribution of CARES Act Title V Tribal Set Aside

Dear Secretaries Mnuchin and Bernhardt,

We write on behalf of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) to provide comment to the U.S. Department of Treasury (Treasury) and the U.S. Department of the Interior (Interior) regarding the implementation of Title V of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The Coronavirus Relief Fund was established to provide relief to all units of government across the United States, including Tribal governments, as they seek to respond to the current public health crisis. In administering and distributing the \$8 billion set aside for Tribal governments, we urge you to ensure there is both equity and flexibility as the funds are dispersed. Because we are making the reasonable assumption that all Tribal Nations will face financial impacts as a result of the COVID-19 pandemic, this process must be inclusive of all Tribal Nations and reflect the great diversity found across Indian Country.

USET SPF is a non-profit, inter-Tribal organization advocating on behalf of thirty (30) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico¹. USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations, and assisting our membership in dealing effectively with public policy issues. Collectively, our member Tribal Nations represent diverse cultures, backgrounds, structures, and socio-economic interests—much like those found more broadly throughout Indian Country.

If distributed fairly, the funding available under Title V of the CARES Act will be a critical source of relief for all federally-recognized Tribal Nations. Like other units of government, Tribal Nations are responsible for the provision of governmental services to our citizens (and oftentimes, the surrounding community),

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe—Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is strength in Unity

including public safety and justice, emergency management, health, housing, education, and social services. Unlike other units of government, Tribal Nations lack access to many resources that the U.S. family of government enjoys, including certain funds, supplies, and infrastructure, capital and tax revenue, many direct federal programs, housing, and others, despite federal trust and treaty obligations. Decades of neglect, underfunding, and inaction on behalf of the federal government have left Indian Country severely under-resourced and at extreme risk during this COVID-19 crisis. Our existing systems of service delivery and infrastructure are likely to experience greater stress than those of other units of government, as we seek to maintain essential services and deliver upon our commitments, as well as dedicate resources to the unique circumstances of COVID-19 response.

In providing a set aside for Tribal Nations, the law recognizes that Tribal government revenue has been significantly diminished and that there will be unanticipated expenses that Tribal Nations will experience while working to manage the impacts of this crisis. In addition, by clearly including Tribally-owned entities, the CARES Act acknowledges the role that economic entities play in supporting governmental purposes. It is critical, then, that the funding distribution methodology and allowable expenses reflect this reality, and not rely on an oversimplified process that does not reflect the intent of the law. USET SPF provides the following recommendations in order to ensure relief reaches all Tribal Nations and is flexible enough to ensure Tribal governments are able to determine its best use.

Ensure All Tribal Nations have Access to Baseline Funding

USET SPF joins many others in Indian Country in calling for guaranteed minimum funding for all 574 federally recognized Tribal Nations under the Coronavirus Relief Fund. As the coronavirus spreads across the United States, no Tribal Nation will avoid its impact, including the incursion of substantial, unexpected costs. Regardless of individual circumstances, each Tribal Nation is facing at least some level of expense, and it is anticipated that their costs will continue to rise as the crisis unfolds, that threatens the continuity of essential government services and other obligations. Much in the same way each state will receive baseline funding under Title V, so too should each Tribal Nation. USET SPF is recommending that a certain percentage of the total \$8 billion set aside, at least 15 percent, be allocated to providing Tribal Nations with certainty under this provision. Establishing a floor will ensure all Tribal Nations are able to access relief under the fund, while still ensuring that a substantial balance (85%) remains to provide resources for those with additional higher levels of expense.

Prevent Unfair Distribution of Fund Balance

Similarly, USET SPF recommends that a cap on total funding be established to ensure further equity in distribution. As the CARES Act was being drafted, Indian Country had advocated for a total of \$20 billion in set aside funding. The \$8 billion set aside that was ultimately enshrined in law, while significant, is highly unlikely to fully address the total expenses and losses incurred by Tribal Nations during the COVID-19 pandemic. And while the Coronavirus Relief Fund was established to provide support to governments during this time of uncertainty, it is not intended to make any one government whole. With this in mind, capping Coronavirus Relief Fund distributions, either as a percentage of total expenses or as a total dollar amount, will offer a balanced methodology for allocating remaining funds.

Population and/or Land Base are not Accurate Proxies for Coronavirus Expenses

USET SPF opposes a formula-based distribution methodology that relies on Tribal population and/or land base. While we recognize that the CARES Act requires the expeditious disbursement of relief funds, relying on these arbitrary factors to allocate resources will fail to reflect the depth of actual COVID-19-related expenses for many Tribal Nations. For example, a Tribal Nation with severely deficient health facilities or housing infrastructure may have been forced to build temporary facilities for treatment or isolation of patients. Another Tribal Nation may be treating a greater number of positive cases due to its proximity to a

large urban center. Neither of these highly probable scenarios is reflective of population size or land base, but both are directly related to the coronavirus emergency.

Utilize Existing Mechanisms for Expedient Funding Distribution

In order to ensure rapid deployment of relief funds, USET SPF urges the utilization of existing funding mechanisms, processes, agreements, and partnerships, including ISDEAA contracts and compacts. This will assist Treasury in complying with the law, while also streamlining and simplifying distribution for Tribal Nations.

Use of Funds Guidance

USET SPF joins many others across Indian Country in urging Treasury and Interior to avoid imposing a prescriptive list of allowable expenses for Tribal Nations. This strategy would undermine Tribal sovereignty and the broad language of the CARES Act, as well as fail to account for the variety of expenses Tribal Nations are facing. While we are seeking guidance to ensure our use of funds will withstand any future Office of Inspector General audits, Tribal Nations must be afforded the necessary flexibility to determine where to focus these resources. Similarly, we are also seeking clarity and certainty in the recoupment procedure outlined in Title V. We ask that guidance also include a description of the process for collecting debt and opportunities for appeal.

Reporting and Audit Requirements

In recognition of our sovereign status, Tribal Nations must not be subject to greater reporting, audit, or other types of compliance requirements than those imposed upon the states. Similarly, Tribal Nations should need only self-certify COVID-19-related expenses in order to access funding, given the oversight and recoupment provisions already in law.

Conclusion

USET SPF urges the equitable and expeditious disbursement of the Tribal set aside in keeping with Tribal sovereignty, the diversity of Indian Country, and Congressional intent. These funds will do more than provide critical resources and certainty to Tribal governments during this unprecedented crisis; they will also be a vital part of ensuring a comprehensive, all-of-government response to COVID-19. An incomplete response will be detrimental to Indian Country and the nation as a whole. We encourage you to keep this in mind, as you craft distribution guidance in the coming days. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 615-838-5906.

Sincerely,



Kirk Francis
President



Kitcki A. Carroll
Executive Director