



# NATIONAL CONGRESS OF AMERICAN INDIANS

May 29, 2020

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

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## Re: Request that Treasury Respond to Tribal Inquiries on Economic Support Assistance under the Coronavirus Relief Fund

On behalf of the National Congress of American Indians (NCAI), the oldest and largest organization made up of American Indian and Alaska Native Tribal governments and their citizens, I write to request that the United States Department of Treasury (Treasury) update its Frequently Asked Questions (FAQs) to address tribal inquiries and provide Tribal governments safe harbor protections for “economic support” expenses provided to tribal citizens using Coronavirus Relief Fund (CRF) dollars.

The coronavirus-19 (COVID-19) has caused immeasurable damage in Indian Country and the rate of infection and loss of life continues to rise in tribal communities. Two months after Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), Indian Country continues to await emergency relief funds from the Departments of Education, Interior, Commerce, and Treasury. Within the CRF, Tribal governments await disbursement of \$3.2 billion in urgently needed funds. Amidst these delays, the socio-economic impact of the pandemic is growing and Tribal governments are working to meet the growing response and recovery needs of their tribal citizens.

### A. Tribal Governments Have Sought Clarification from Treasury on Economic Support Assistance

Over the past few weeks, Treasury has distributed 60% of the tribal CRF funds. Of the distributed funds, Tribal governments are encountering another roadblock: ambiguous guidance on “economic support” expenditures that expose governments and citizens to risks if an expenditure is later deemed impermissible by the Treasury Inspector General.

Presently, two Treasury documents address “economic support” expenditures. On April 22, 2020 Treasury issued “Guidance for State, Territorial, Local, and Tribal Governments” which provides that necessary COVID-19 related expenditures may include “expenditures incurred to respond to second-order effects of the emergency, such as by providing economic support to those suffering from employment or business interruptions due to COVID-19-related business closures.” On May 4, 2020 and May 28, 2020 Treasury updated its FAQs on the CRF to provide that a governmental stay-at-home order was not a condition of a qualifying economic

support expense. The FAQs further provided that facilitation of “livestock depopulation” is a permissible economic support expense.

Notably, the Guidance and FAQs are silent on whether governments may provide economic support via stimulus checks to citizens similar to the “economic assistance payments” provided in the CARES Act. Numerous Tribal governments have contacted Treasury asking for confirmation that these expenditures are permitted. They have been met with either silence or re-directed to the Guidance and FAQs which are similarly silent on the topic. As a result, Tribal governments have reached out to Congressional offices seeking direction and have received a myriad of interpretations and have even been advised to contact the Department of Interior for their advice.

This confusion over tribal economic stimulus payments exposes Tribal governments to significant risks. If the Treasury Inspector General later deems these expenditures disallowable, Tribal governments are subject to recoupment of funds and their citizens may be subject to individual tax burdens and potentially Internal Revenue Service audits. Subjecting Tribal governments and citizens to such a risk is inequitable particularly when they are experiencing unprecedented economic distress.

As the administrator of the CRF, only Treasury can provide clear direction to CRF recipients. Treasury has previously updated its FAQs to provide direction on economic support for a unique question like livestock depopulation and just updated its FAQs addressing questions over other issues (e.g. loans by governments). The question of whether CRF disbursements may be used for economic stimulus payments affects over 500 Tribal governments and numerous citizens. Accordingly, we request that Treasury immediately address tribal inquiries on these payments by updating its FAQs to provide certainty and security for Tribal governments and their citizens.

## **B. Updates to the Coronavirus Relief Fund FAQs Must Contain Safe Harbor Protections**

Since Tribal governments have received no direction that economic stimulus assistance is prohibited or subject to restrictions, any updated FAQs should include a safe harbor that ensures that additional guidance is:

1. prospective and addresses future expenditures;
2. effective thirty days from the date of the FAQs’ issuance; and
3. provides immunity from recoupment, tax liability, and audits, for prior expenditures made by a Tribal government based on a good faith certification.

A safe harbor is necessary and equitable because Tribal governments have repeatedly sought direction economic stimulus assistance under the CRF and been met with silence, re-direction, and confusing advice. Congress intended the CRF to aid governments in responding to this pandemic and entrusted Treasury with providing guidance to recipients. Further, Treasury has a trust responsibility to Tribal governments and, accordingly, should assist governments that have been seeking clarification in good faith to stay in compliance and meet the urgent needs of their citizens.

In conclusion, we look forward to working with Treasury to address tribal concerns regarding the implementation and remaining disbursement of the tribal set aside within the Coronavirus Relief

Fund. If you have further questions, please contact me at [kallis@ncai.org](mailto:kallis@ncai.org) or Derrick Beetso, General Counsel, [dbeetso@ncai.org](mailto:dbeetso@ncai.org).

Sincerely,

A handwritten signature in black ink, appearing to be 'KA', with a long horizontal flourish extending to the right.

Kevin Allis  
Chief Executive Officer  
National Congress of American Indians