



NATIONAL CONGRESS OF AMERICAN INDIANS

March 29, 2020

The Honorable Steven T. Mnuchin
Secretary
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Re: Implementation of Title V of the Coronavirus Aid, Relief, and Economic Security Act

Dear Secretary Mnuchin:

On behalf of the National Congress of American Indians (NCAI), the oldest and largest organization composed of American Indian and Alaska Native tribal nations and their citizens, I write to request your urgent attention to matters delegated to you under the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act relevant to Indian tribes.

Title V of the CARES Act adds a new Title VI to the Social Security Act (“Title VI”) to create a Coronavirus Relief Fund (the “Fund”), and reserves \$8 billion within the Fund for payments to tribal governments to use for expenditures incurred due to the public health emergency with respect to COVID-19. Title VI, Sec. 601(c)(7) requires the Secretary to determine, in consultation with the Secretary of the Interior and Indian tribes, the amounts paid to each tribal government based on increased expenditures of each such tribal government (or a tribally-owned entity of such tribal government) relative to their aggregate expenditures in fiscal year 2019.

The COVID-19 pandemic is inflicting significant adverse impacts on tribal economies and services. Unable to use a tax base to generate revenue, many tribal governments rely on tribally-owned business entities to generate revenue that funds basic programs and services for their communities. In response to the pandemic, and in order to protect public safety, tribal governments have closed their tribally-owned business entities. Without this critical source of revenue, tribal governments are struggling to maintain their workforce levels and honor their financial obligations and other commitments.

Because the \$8 billion in the Fund must be paid to each tribal government no later than April 27, we are writing with urgency to recommend that, as you provide guidance to tribal governments with regard to the Fund, you adhere to the congressional intent expressed in the floor colloquy between key members of the U.S. House Committees on Ways & Means, Natural Resources, and Appropriations while the CARES Act was being considered for final House passage on March 28, 2020. A copy of this colloquy is attached.

We also request that you work with the Secretary of the Interior and Indian tribes to take into account the full scope of increased expenditures that tribal governments and

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NCAI HEADQUARTERS

1516 P Street, N.W.
Washington, DC 20005
202.466.7767
202.466.7797 fax
www.ncai.org

tribally-owned entities have incurred and are likely to incur in the months ahead. To ensure that the CARES Act achieves Title V's purpose of helping to stabilize tribal governments and tribal economies, we urge the Secretary to take into account the wide array of costs shouldered by tribal governments and their tribally-owned entities as they respond to the pandemic.

Specifically, we urge that COVID-19 related "increased expenditures" be interpreted to include, but not be limited to, incurred and reasonably anticipated costs of a tribal government or their tribally-owned entity between March 1, 2020 and December 30, 2020, such as:

- expenditures that otherwise would have been funded but for the loss of revenue;
- expenditures associated with the diminished capacity or closure of governments or entities;
- payments, including payroll and related expenses, for employees while governments or entities are at diminished capacity or closed;
- costs of financing incurred due to increased expenditures; and
- differences in revenues transferred to tribal government accounts in 2020 relative to the same period in 2019.

We ask that you issue immediate interim guidance that confirms that the general categories of additional expenditures listed above include permissible uses of the Fund. Such guidance would assist tribal governments and tribally-owned entities as they make critical decisions in the coming days to respond to the ongoing pandemic. The Department should build on this initial guidance through a series of government-to-government consultations with Indian tribes and the Interior Department to finalize guidance.

Moreover, because of the statutory requirement to pay these amounts to tribal governments no later than April 27, we urge you to clarify in the interim guidance, or otherwise, that:

- payments will be made available by the Secretary to tribal governments for direct drawdown and receipt no later than April 27;
- if a tribal government chooses, payments should be made directly into any current funding agreement each tribal government has with the Department of the Interior, including but not limited to agreements authorized by the Indian Self-Determination and Education Assistance Act of 1975, as amended, or, if no such current funding agreement exists, to the tribal government in a simple funding instrument designed solely to facilitate timely payment and receipt by the tribal government; and

- only the terms and conditions of Title V of the CARES Act will govern the transfer to and expenditure by the tribal government of the payment amount received pursuant to Title V, and that neither the funding agreement instrument for receiving the payment amount nor the statutory authority for the funding agreement instrument will govern.

Tribal governments and the tribally-owned entities that fund them are on the front lines of the COVID-19 response in Indian Country. Stabilization of tribal governments and tribal economies is essential to combatting the disease, preserving jobs, and providing crucial services to American Indians and Alaska Natives during this crisis. Accordingly, we submit this letter to assist your implementation of Title V of the CARES Act, and we support commencement of consultation with tribal governments on administration of the Fund.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Allis', with a long horizontal flourish extending to the right.

Kevin J. Allis
Chief Executive Officer
National Congress of American Indians

Enclosure

cc The Honorable David Bernhardt
 Secretary
 Department of the Interior

Congress of the United States
Washington, DC 20515

March 27, 202

***Memorializing the Intent of the Tribal Portion of the Coronavirus Relief Fund in the
Coronavirus Aid, Relief, and Economic Security Act (CARES Act)***

[Mr. Gallego]. Madame Speaker, I rise to discuss the bill that we are voting on today, the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). This bill is incredibly important to all of our citizens and communities. Our country is going through a war with this new virus, and we need to get every resource possible out into our communities to help fight this pandemic. We also need to protect our workers and keep them paid so they can purchase the food and supplies they need to get their families through this crisis safely.

That is what I want to speak to today. One of the last provisions added to this bill was Title VI, which establishes a Coronavirus Relief Fund that provides \$150 billion for the Secretary of Treasury to disseminate to States, Tribal Governments and units of local government in fiscal year 2020. These funds are to severe financial pressure these governments are under during this public health emergency.

Specifically, the funds are intended to cover expenditures that were not accounted for in the budgets of these governments prior to the COVID-19 virus outbreak. For most of these governments, their budgets are based on the revenues they accounted for over the course of the fiscal year, including from revenues anticipated to be generated from business enterprises. These anticipated revenues are what these governments use to pay the wages of their employees.

I want to memorialize that it is the intent of this Chamber that the funds in the Coronavirus Relief Fund are intended to help cover the loss of revenues that would have otherwise been collected and generated by these governments to cover the wages of their employees. We need to make sure these employees continue to be paid and that every effort is made to prevent them from losing their jobs during this pandemic.

[Mr. Joyce]. I want to thank the gentleman from Arizona for raising this issue. As we prepared to appropriate supplemental funding for Indian Country through the Bureau of Indian Affairs budget, my colleagues and I became keenly aware of the need to mitigate the hardships that this pandemic has caused for Tribal governments who have to rely on business revenues—rather than taxes—to fund essential services for their Tribal members. In addition, Tribal governments are often the largest employers on reservations, where unemployment rates are already significantly higher than the rest of the country.

For these reasons, this bill directs that not less than \$400 million—nearly 90 percent of the Bureau of Indian Affairs supplemental appropriation—shall be made available to meet the direct needs of Tribes. For these same reasons, this bill directs that not less than \$450 million of the Indian Health Service supplemental appropriation be distributed to directly operated programs and to Tribes and Tribal organizations by utilizing existing contracts, compacts, and other agreements to speed up the process.

In addition, I was pleased to see and support an additional \$8 billion for payments to Tribal governments through the Coronavirus Relief Fund in this bill. Because of the Federal Government's unique government-to-government relationship with Indian Tribes, providing these funds to Tribes directly—rather than through the States—is the right approach. It is critical that the Secretaries of Treasury and the Interior consult with Tribal leaders immediately to determine the most expeditious, transparent, and fair method of allocating these funds.

[Mr. Cole.] I want to echo my colleague's good words on this topic. A key part of the relief package, was the tribal government stabilization fund. This fund would be used by tribal governments to offset the dramatic losses they are facing at this time. This funding would be used to help them continue to do the right thing and keep their employees on the job--paid, and supported--as our nation responds to, and recovers from the pandemic.

Title VI, Sec. 601(c)(7) provides \$8,000,000,000 in relief to tribal governments for losses of revenues and increased expenditures associated with COVID-19. The bill provides:

[T]he amount paid under this section for fiscal year 2020 to a Tribal government shall be the amount the Secretary shall determine, in consultation with the Secretary of the Interior and Indian Tribes, that is 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 determines appropriate to ensure that all amounts available under subsection (a)(2)(B) for fiscal year 2020 are distributed to Tribal governments.

Tribal governments or tribally-owned entities can demonstrate “increased expenditures” relative to 2019 by listing expenditures associated with the closure or diminished operation of business and government facilities, including payments made to employees or other entities while businesses or government operations are closed or operating in a limited capacity, as well as the difference in revenues transferred to tribal government accounts in 2020 versus the same period in 2019.

[Ms. Torres.] I want to thank the gentlemen for raising this important topic. Tragically, in recent days I've heard from many tribal nations in California, and they are really struggling. That's because they did the right thing to help our country combat this virus by closing their businesses. It is worth noting here for a moment, that they did so proactively and we are under no obligation to take such drastic steps. But, as we have come to expect from our leaders in the tribal community, they did the right thing because it was the right thing to do.

These closures have been nothing short of catastrophic. The very resources that had been used to fund the tribal government and provide services virtually evaporated overnight. These governments run, for the most part, on these tribal funds. The funds provided by the federal government via the Indian Health Service and the Bureau of Indian Affairs, and other federal programs, often only make up a very small percentage of the total cost of running Tribal governments. So, when these businesses closed, the Tribes knew that doing so would compromise their ability to serve their people during this time of crisis.

I heard these stories and knew that Congress had to respond. This \$8 billion fund will address this decrease in revenues and we have mandated that the Secretary of Treasury, works with the Secretary of Interior, to make sure that these decreased revenues are into their determination when making funds available to tribes.

[Mr. Reed.] I want to echo the remarks of my colleagues about the need for the Secretaries of the Treasury and Interior to incorporate into their analysis the unexpected costs of paying employees' wages and salaries along with the costs of maintaining facilities during closures of tribal government offices and enterprises. In my district, the Seneca Nation is one of the largest employers. They closed their government and business enterprises to try to help stop the spread of the COVID-19 virus. New York now has the largest number of COVID-19 cases in the country. Closing these businesses and offices is, unfortunately, a necessary action that needs to be taken to help stop the spread of the virus. Thankfully, the Seneca Nation has continued to pay the wages and salaries of their more than 3,000 employees. But, with their enterprises closed, they will not be able to continue to do so without some federal relief. The federal government has a trust responsibility to these tribal nations, and we also need to help our American workers. The tribal portion of the Coronavirus Relief Fund that is included in the CARES Act is intended to keep these workers paid. The lost revenues resulting from closures due to the COVID-19 virus are unexpected expenditures that need to be considered when distributing monies from this fund.

[Mr. Kildee.] I want to thank the gentleman from Arizona for raising this issue and seeking clarification. Yes, it is the intent of this chamber that States, Tribal governments, and local units of governments use the funds in the Coronavirus Relief fund to recover any necessary monies that they would have otherwise collected or generated in order to pay their employees and cover

costs but for the COVID-19 pandemic. As the legislation indicates, these funds are specifically targeted towards expenditures incurred between March 1, 2020 and December 30, 2020. I agree that it is important to try to keep American workers employed and paid during this time. And, I agree with your assessment that these governments rely on the collection of taxes and generation of revenues to pay the wages of these employees, and those costs were an anticipated expenditure to be allowable under the Coronavirus Relief Fund.

A handwritten signature in blue ink, appearing to read 'Ruben Gallego', with a long horizontal flourish extending to the right.

Ruben Gallego
Member of Congress