



TFA

Monthly Newsletter

May 2020

IN THE NEWS

Coronavirus Relief Fund Tribal Allocations: U.S. Treasury Misses the Mark

By William Crader, CFA

We begin by acknowledging that determining the “appropriate” distribution of the \$8 billion tribal government allocation within the Coronavirus Relief Fund is inherently a herculean task. That said, unfortunately, even after six hours of telephonic consultations with tribal leaders, countless comments from numerous tribes and tribal organizations, and untold hours of internal deliberation, the U.S. Treasury’s allocation determination has grossly missed the mark in addressing Indian Country’s economic hardship caused by the COVID-19 pandemic shutdown.

Under the premise the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) is intended to [“address the economic fallout of the COVID-19 pandemic in the United States,”](#) the Fund’s purpose is to address increased expenditures associated with the pandemic shutdown. Although several factors were asked to be certified by Tribes by April 17,

the initial round of allocations will be based 60% on tribal housing service populations (*as determined by the Department of Housing and Urban Development (HUD), and not population figures certified by tribal governments*) and 40% on employment and expenditures, with the latter based on “additional submissions.” Bear in mind that any amounts potentially available to Alaska Native Corporation, which factor into the pro-rata calculations, are being held back pending resolution of litigation. Lastly, these funds were supposed to be distributed 30 days after being put into law (or April 27). It’s now May 6.

One simple solution would have been for the Treasury Department and DOI to act as a source of [business interruption insurance](#), effectively covering tribal government “tax revenues”. Unlike state and municipalities, many tribes primarily rely on tribal gaming operations in the form of distributions from these and

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COVID-19 Casino Tracker

4/1/20 – AmericanGaming.org

Coronavirus Relief Fund Guidance For State, Territorial, Local, And Tribal Governments

4/1/20 – BIA.gov

California Tribe Prevails In Long-Running Land-Into-Trust Endeavor

4/7/20 – WorldCasinoDirectory.com

3 Fundamental Fixes Needed For Tribes To Bridge The Digital Divide

4/17/20 – NativeBusinessMag.com

Embracing Our New Normal Today And Tomorrow

4/21/20 – IndianGaming.org

Native American Bank Issues Million Of Dollars In Small Business Loans, More To Come

4/23/20 – NativeBusinessMag.com

AGA Applauds New Regulations Allowing Gaming Companies To Apply For Small Business Loans

4/24/20 – AmericanGaming.org

The President Signs Interim COVID-19 Relief Bill Featuring A \$750M Set Aside For Tribal Nations & The PPP Interim Rule Is Updated To Allow Gaming Eligibility

4/24/20 – NCAI.org

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other economic enterprises as their “tax revenue” source. Tribal gaming (and corporate gaming) is uniquely impacted by this shutdown – over \$13 billion of lost revenue during the shutdown to date. Many tribes fear that their business interruption insurance will not cover losses associated with the pandemic. If not, some tribes will litigate, but business interruption funds will not come easy in any event.

NCAI’s letter of March 29, 2020 captures perfectly tribes’ overall recommended approach in stating that “increased expenditures” should include [“expenditures that otherwise would have been funded but for the loss of revenue.”](#) Recouping this lost revenue would not only have helped to stabilize tribal governments during the pandemic shutdown, but also offer help to non-tribal businesses that heavily rely on tribal economies for revenue. Some tribes have and will litigate the distribution formula; others may be forced to accept the formula that’s been adopted, lacking the resources to raise legal challenges, regardless of whether the formula is fair or appropriately addresses the actual financial fallout experienced by their tribal governments. It is also clear the current allocation methodology will place increased pressure on certain tribes to resume gaming operations in order to start generating cash flow as quickly as possible (that opens the door for increased friction

with state and local governments with regards to social distancing measures being taken to mitigate the impact of the coronavirus).

Separately, the CARES Act (and previous stimulus bills) should have addressed impacts that are specific and unique to tribal governments. Again, [NCAI addressed this very need](#) on April 9 when it issued its legislative priorities suggesting an additional \$20 billion may be needed for tribal governments.

We cannot reiterate enough how difficult the task is to assess and fairly distribute support to Indian Country. However, it appears the U.S. Treasury and Department of the Interior have ignored the voice of Indian Country and created a solution that does not correlate with the tremendous need created by shutting down tribal economies. The initial allocations began to be received today – now the question becomes how those funds will be spent as [in-](#)



[terpreted under guidance issued by the U.S. Treasury](#) on April 22, 2020. This guidance was driven primarily by how state and local governments will need to address additional expenditures created by the pandemic. The guidance largely ignores the acute and unique needs of Indian Country – we will need to wait to see how this plays out with pending litigation and limited insight offered as to how the remaining 40% of the Fund will be allocated to tribes. Stay tuned for more updates.

Many thanks to those who reviewed and commented on this article, including Sara Dutschke Setshwalo, Chairwoman of the Lone Band of Miwok Indians and Partner at Kaplan Kirsh Rockwell. We are closely monitoring the reopening of gaming in Indian Country. The [AGA’s COVID-19 Casino Tracker](#) provides an easy way to see which casinos across the United States have resumed business operations.

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