

Congress of the United States
Washington, DC 20515

April 7, 2020

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

RE: CARES Act Tribal Government Stabilization Fund Distribution

Dear Secretary Mnuchin,

On behalf of our Native American constituents, and the Tribal Governments in the State of California, we are writing you today regarding the implementation of the Coronavirus Relief Fund in Section 5001 of H.R. 748, the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law 116-136). As you are aware, subsection (c)(7) of the CARES Act provides specific guidelines for how the U.S. Department of Treasury, in consultation with the Department of the Interior, and Indian Tribes, should allocate the \$8 billion in funding provided to Tribal governments.

Although funding to States (subsections (c)(1-5)) and U.S. Territories (subsection (c)(6)) may be based on population, funding provided to Tribal governments does not permit the Department to allocate this funding under a population-based formula. Rather, Congress specifically required that any amounts paid to Tribes be based upon the increased expenditures, relative to the aggregate expenditures in fiscal year 2019, of each Tribal government or tribally-owned entity. Funding distributed based on population, land area, or other metrics should not be primary considerations in determining funds allocated to each Tribe from the relief fund. Rather, we encourage the Department to consider total employment as determined by IRS W-2 or Form 941 data, or actual tribal expenditures as determined by annual Unified Audits, as the primary component of any funding formula. We urge the Department to consider the distribution formula proposed by the California Nations Indian Gaming Association and Tribal Association of Sovereign Governments in correspondence we have attached to this letter.

California is home to more than 20 percent of all tribal governments in the United States and their government enterprises are major employers in our state. The state's 64 tribal casinos represent 26.7 percent of the entire tribal gaming market throughout the United States, and California's casino gaming market is second only to Nevada's. These tribal government

employers did the right thing by closing these businesses promptly to protect public health, and many are continuing to support our economy by keeping their staff on payroll even while their facilities are shuttered. If the Department were to utilize a population-based formula, these employers and their 63,000 employees would be left with little ability to access the funding Congress authorized specifically to support tribal government employers.

Finally, it is worth stating again that Treasury and the Inspector General should take a broad view of “increased expenditures,” under the grant fund. As explained in a colloquy on the date of enactment of the law, and echoed by our earlier bi-partisan letter, these expenditures should include any expense a tribal government or enterprise incurs during the pandemic that is in excess of the revenue the tribe is currently bringing in.

We appreciate this Administration’s strong leadership and commitment to the health, safety, and economic security of all Americans during this unprecedented national emergency. We look forward to continuing to work with you.

Sincerely,


DOUG LAMALFA
Member of Congress


PAUL COOK
Member of Congress


KEN CALVERT
Member of Congress


TOM McCLINTOCK
Member of Congress


DEVIN NUNES
Member of Congress

CC: The Honorable David Bernhardt, Secretary, U.S. Department of the Interior



April 6, 2020

Steven Mnuchin, Secretary
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220
tribal.consult@treasury.gov

David Bernhardt, Secretary
Tara Sweeney, Assistant Secretary - Indian Affairs
United States Department of the Interior
1849 C Street, NW
Washington, D.C. 20240
consultation@bia.gov

RE: FORMULA FOR DISTRIBUTION OF \$8 BILLION TRIBAL CORONAVIRUS RELIEF FUND

Dear Secretary Mnuchin, Secretary Bernhardt, and Assistant Secretary Sweeney:

On behalf of the California Nations Indian Gaming Association (CNIGA), the largest association of Tribal Governments in the State of California, we respectfully submit these recommendations to guide your development of a methodology for distributing \$8 billion of tribal stabilization funding allocated in the Title VI, Sec. 601 of the CARES Act.

Based on the Treasury Department's indication that it will distribute funding pursuant to a formula rather than an application process, **we strongly urge you to adopt the formula below, which prioritizes the actual economic impact of COVID-19.** Such a formula is the only way the Treasury Department timely comply with the CARES Act and achieve the Act's purpose of stabilizing individual tribal economies.

DISTRIBUTION FORMULA

STEP 1: Provide a \$1,000,000 **minimum distribution** to each Tribe to ensure that even the smallest Tribes have funding to address their economic needs during the pandemic

STEP 2: Distribute \$1,500,000,000 among all Tribes *pro rata* based on each Tribe's enrolled tribal member **population** to ensure that larger Tribes have additional funding to address their economic needs

STEP 3: Distribute the remainder of the \$8,000,000,000 fund to each Tribe *pro rata* based on **economic impact**, measured by total wages paid by the Tribe and all of its wholly owned enterprises in 2019, as documented using W-3 data, and as necessary, using Tribal 941 data. At the request of the Inspector General of the Department of the Treasury, Tribes may be required to self-certify.

This formula directly advances the economic stabilization purpose of the CARES Act by

Protecting the sovereign right of California tribes to operate gaming on their lands.

relying primarily on an objective indicator of tribal economic activity that is a current and accurate measure of the impact COVID-19 is having on each Tribe's economy. Moreover, the proposed formula addresses all Tribes' government stabilization needs, regardless of whether a Tribe has commercial enterprises, as it also accounts for wages paid to tribal government employees.

Any alternative methodology that gives exclusive or primary consideration to tribal population or other demographic data that have **no nexus to the economic costs wrought by COVID-19**, will not just violate the CARES Act but will create billion-dollar windfalls for a few Tribes while depriving hundreds of Tribes (and their neighboring communities) of the urgent economic stimulus that Congress intended.

Based on the foregoing, we strongly urge you to adopt the three-step formula proposed above. In addition, to ensure compliance with the April 27, 2020 deadline, we recommend distributions be made directly from the Treasury Department to each Tribe using existing Treasury accounts and payment mechanisms.

On behalf of the California Nations Indian Gaming Association, we thank you for your consideration and your support as we navigate the unprecedented economic crisis caused by COVID-19.

Respectfully,

A handwritten signature in black ink, appearing to read 'James Siva', written in a cursive style.

Chairman James Siva
California Nations Indian Gaming Association



TRIBAL ALLIANCE OF SOVEREIGN INDIAN NATIONS

An intergovernmental association of tribal governments throughout Southern California

April 6, 2020

The Honorable Steven Mnuchin
Secretary of Treasury
1500 Pennsylvania Ave. NW
Washington, D.C. 20220

The Honorable David Bernhardt
Secretary of the Interior
1849 C St. NW
Washington, D.C. 20240

TRIBAL GOVERNMENTS:

AGUA CALIENTE BAND OF
CAHUILLA INDIANS

AUGUSTINE BAND OF
CAHUILLA INDIANS

CAHUILLA BAND OF
INDIANS

CHEMEHUEVI INDIAN
TRIBE

MORONGO BAND OF
MISSION INDIANS

PECHANGA BAND OF
LUISEÑO INDIANS

SAN MANUEL BAND OF
MISSION INDIANS

SANTA ROSA BAND OF
CAHUILLA INDIANS

SANTA YNEZ BAND OF
CHUMASH INDIANS

SOBOBA BAND OF
LUISEÑO INDIANS

TORRES MARTINEZ
DESERT CAHUILLA INDIANS

TWENTY-NINE PALMS BAND OF
MISSION INDIANS

Dear Secretaries Mnuchin and Bernhardt:

On behalf of the Tribal Alliance of Sovereign Indian Nations (TASIN), an intergovernmental association of federally recognized tribal governments throughout Southern California, we write to provide you input on developing a methodology or formula to allocate the \$8 billion set aside for Tribal governments and tribally owned business entities from the Coronavirus Relief Fund in Section 5001 of the recently enacted Coronavirus Aid, Relief, and Economic Security (CARES) Act.

As you may be aware, California accounts for nearly 30 percent of all tribal Government gaming in the United States. Our 109 federally recognized tribal governments employ more than 63,000 people, and contribute at least \$7.8 billion to the State's economy each year.

Based on the initial consultation on April 2, 2020, it is our understanding that funding for Tribes under Section 5001 will be allocated based on a formula. It is imperative that any distribution formula takes into account the clear intent of the CARES Act:

to help keep employees connected to their employers. As such, TASIN respectfully requests the methodology or formula for distribution of these funds factor in wage or employment data as expressed by the legislative history, since employees are far and away the largest expenditure any tribal enterprise makes. This employment data can be self-reported and/or verified by referencing the W-3 or Form 941 of tribal governments and their enterprises. Alternatively, Interior and Treasury could reference data provided by a Unified Audit. By basing the funding formula on wage and employment data, your Departments will ensure that the formula captures the plain reading of the statute and congressional intent.

Following this logic, the Tribal Alliance of Sovereign Indian Nations endorses the following funding distribution formula:

STEP 1: Provide a \$1,000,000 **minimum distribution** to each Tribe to ensure that even the smallest Tribes have funding to address their economic needs during the pandemic.

STEP 2: Distribute \$1,500,000,000 to each Tribe *pro rata* based on each Tribe’s enrolled tribal member **population** to ensure that larger Tribes have additional funding to address their economic needs.

STEP 3: Distribute the remainder of the \$8,000,000,000 fund to each Tribe *pro rata* based on **economic impact, measured by total wages paid** by the Tribe and all of its wholly owned enterprises in 2019. If requested to do so, Tribes may be required to self-certify.

This formula directly advances the economic stabilization purpose of the CARES Act by relying primarily on an objective indicator of tribal economic activity that is a current and accurate measure of the impact COVID-19 is having on each Tribe’s economy. Moreover, the proposed formula addresses all Tribes’ government stabilization needs, regardless of whether a Tribe has commercial enterprises, as it also accounts for wages paid to tribal government employees.

On the contrary, a formula based exclusively or primarily on population would fail to satisfy your responsibilities under the law. Simply put, population is not a proxy for aggregate changes in government expenditures related to the COVID-19 pandemic. For instance, while the population of each tribal nation will remain relatively unchanged between 2019 and 2020, government revenues and expenditures will be staggeringly different.

Finally, we would like to offer our view that the Department of Treasury and the Inspector General should take a broad view of “increased expenditures,” under the grant fund. As explained in a colloquy on the date of enactment of the law, and echoed by many tribal leaders during the first consultation, these eligible uses of the fund should include any expense a tribal government or enterprise had previously budgeted-for, but due to the pandemic is now in excess of the revenue the tribe is currently bringing in.

Thank you for your consideration of our comments. We deeply appreciate your leadership during this extraordinarily difficult time. Please do not hesitate to contact me, or have your staff contact TASIN’s Executive Director, Jacob Mejia, at Jmejia@Pechanga-pdc.com.

Sincerely,



LYNN VALBUENA
Chairwoman



CATALINA CHACON
Vice Chairwoman



STEVEN ESTRADA
Secretary



ROSEMARY MORILLO
Treasurer