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Indian Tribes and Alaska Native Corporations to Receive Billions of Dollars in Coronavirus Assistance - Navigating the Tribal Government Assistance Provisions in the CARES Act

by Skip Durocher

The nation's third Coronavirus relief bill, the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), was signed into law on Friday March 27, 2020. The CARES Act provides for rapid, substantial, financial assistance to Tribal governments—including Alaska Native Corporations. The CARES Act makes general provisions for distribution of some of the relief funds, but the precise mechanisms have not been announced. We expect that the U.S. Department of the Treasury ("Treasury"), the Indian Health Service ("IHS"), the Bureau of Indian Affairs ("BIA ") and other agencies will provide details.

The key provisions of the CARES Act for Tribes and ANCs are summarized below. Dorsey's Indian & Alaska Native Practice Group is ready to assist Tribes and ANCs in obtaining the CARES Act assistance that they need, and with other legal issues arising from the COVID-19 public health emergency, including:

- federal and state government relations, and disputes with federal, state, and local authorities or other third parties (Skip Durocher, Mary Streitz, James Nichols, Bonnie Paskvan (ANCs));
- applications for federal and state funding or emergency relief, and other Federal and State contracting and grant opportunities (Alex Hontos, James Nichols, Bonnie Paskvan (ANCs));
- Indian Self-Determination and Educational Assistance Act ("ISDEAA") and Indian Healthcare Improvement Act ("IHCIA") programs and funding (James Nichols);
- Tribal health program design, including maximizing eligibility for Medicare-Like Rates and coordination of Purchased/Referred Care ("PRC") and Tribal self-insurance (James Nichols and Tim Goodman);
- Indian Country taxation and tax relief provisions; per capita replacement programs; emergency assistance and other general welfare programs; Tribal law and governance (Mary Streitz);
- business disruption insurance and other insurance coverage issues (Skip Durocher);
- complying with the emergency paid sick leave and emergency family leave requirements under the Families First Coronavirus Response Act (Tim Goodman, Ryan Mick);
- dealing with furloughs and compensation reductions, including providing health

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insurance while on furlough or after termination, and other employee benefits matters (Tim Goodman, Ryan Mick);
- navigating impacts to credit facilities and access to capital, including as a result of the temporary closure of casinos and restructuring issues that may be encountered by Tribes and their suppliers or customers (Mike Pignato).

CARES ACT – Key Provisions for Tribal Governments

Coronavirus Relief Fund: $8 Billion Reserved for Tribal Governments, to Be Distributed within 30 Days

At least $8 billion of the $150 billion Coronavirus Relief Fund is reserved for payments to Tribal governments. The funds may be used for necessary expenditures incurred between March 1 and December 30, 2020 due to the COVID-19 public health emergency and not accounted for in the most recently approved Tribal government budget.

The Secretary of the Treasury is required to make payments from the fund "**not later than 30 days after the date of enactment**." The amount paid to each Tribal government will be determined by the Secretary of the Treasury, in consultation with the Secretary of the Interior and the Indian Tribes. It will be based on the increased expenditures of each Tribal government (including tribally-owned entities) relative to their expenditures in fiscal year 2019, and in such manner as the Secretary of the Treasury determines appropriate to ensure that all funds reserved for Tribes are distributed to Tribal governments.

The mechanism for carrying out these statutory distribution requirements has not been announced. There is likely to be an application and certification process, so Tribes should start tracking, and projecting, the following costs for COVID-19 related issues: staff time; outside experts, consultants, legal counsel, and other service providers in dealing with the outbreak; purchases of equipment; benefits paid to members and employees, and any other expenses.

Emergency Appropriations - $1.4 Billion to IHS and BIA with $850 Million Reserved for Address Direct Needs of Tribes

The Emergency Appropriations for Coronavirus Health Response and Agency Operations include an additional $1 billion for the IHS and $453 million for the BIA.

At least $450 million of the IHS appropriation shall be distributed to IHS direct-service health programs, to Tribes and Tribal organizations under ISDEAA, and through contracts or grants with urban Indian organizations under title V of the IHCIA. The funds must be used to prevent, prepare for, and respond to COVID-19, including for public health support, electronic health record modernization, telehealth and other information technology upgrades, health services provide by PRC programs, Catastrophic Health Emergency Fund ("CHEF") reimbursements, and other activities to protect the safety of patients and health program staff.

With increased funding available for PRC and CHEF, it is critical that Tribes ensure that they are maximizing the utilization of PRC—including through coordination with Tribal self-insurance programs—and perfecting applications for CHEF reimbursement.

At least $400 million of the BIA appropriation must be made available to meet the direct needs of Tribes, including one-time transfers under ISDEAA funding agreements. The funds must be used to prevent, prepare for, and respond to COVID-19, including: public safety and justice programs, deep cleaning of facilities, purchase of personal protective equipment, purchase of information technology to improve teleworking capability, welfare assistance and social services programs (including assistance to individuals), and assistance to tribal governments. Funds distributed from the BIA appropriation shall not be included in the statutory maximum for welfare assistance funds.

Additional Health, Welfare, and Education Funding

The stimulus package also provides for an additional $125 million in funding for Tribes from the Centers for Disease Control, $300 million in housing grants, $100 million for food distribution programs, $69 million for operation of Indian Education Programs, and $15 million for substance abuse and mental health services. Tribal schools are eligible for waivers of statutory and regulatory provisions in Elementary and Secondary Education Act of 1965 and General Education Provisions Act.

Relief for Tribal Businesses and Employees

Tribal businesses are eligible for the Small Business Act loans provided for in the CARES Act, which will provide 100 percent federal loan guarantees up to $10 million to cover costs such as employee salaries, paid medical leave, mortgage or rent payments, and employee health insurance premiums. Loans are generally available to Tribal businesses with 500 or fewer employees, and the "affiliate" rules—which would otherwise require aggregating all employees of entities under common management or ownership—do not apply to Tribes. This means that even Tribes with substantial gaming enterprises may have other tribal businesses that qualify for the loans. Loan forgiveness and payment deferment may also be available to some borrowers.

Tribal fisheries are eligible for assistance from a $300 million fund that will be administered by the Department of Commerce, including direct relief payments for:

- revenue losses greater than 35 percent compared to the prior 5-year average revenue; and,
- **any** negative impacts to subsistence, cultural, or ceremonial fisheries.

The CARES Act provides for substantial increases in unemployment benefits and authorizes federal reimbursement for up to 50% of the cost of unemployment compensation paid by Tribal governments.