



# NORTHERN CHEYENNE TRIBAL COUNCIL

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June 16, 2020

The Northern Cheyenne Tribe received \$16,629,190.79 in the first round of CARES Funding from the tribal government stabilization fund. On June 16, 2020 the Northern Cheyenne Tribe received a second round of funding in the amount of \$2,836,312.94. The total funding received between the two rounds of funding is \$19,465,503.73.

On an April 22, 2020 the treasury department released a guidance memo:

“The CARES Act provides that payments from the Fund may only be used to cover costs that—

1. are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19);
2. were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or government; and
3. were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.”

*Treasury Guidance Memo for State, Territorial, Local and Tribal Government Link:*

<https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>

On May 29, 2020 the National Congress of American Indians (NCAI) issued a letter to Treasury Secretary Mnuchin urging the federal government to provide clearer guidance and clarification to tribes.

*“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.”*

*NCAI Letter 5/29/2020 to Secretary Mnuchin Link:*

[http://www.ncai.org/Covid-19/administrative/Letter\\_re\\_Economic\\_Support\\_Assistance\\_Clarification\\_Final.pdf](http://www.ncai.org/Covid-19/administrative/Letter_re_Economic_Support_Assistance_Clarification_Final.pdf)

The Northern Cheyenne Tribe has received a large amount of comments from the membership providing feedback to tribal leadership outlining their feedback and ideas to be considered. Comments are still being solicited on the tribal website- or please feel free to reach out to your representatives to provide input.

The Tribe is currently consulting with our independent Tribal Auditor, Tribal Comptroller, and Tribal Attorney to ensure federal funding guidelines are met and adhered to. This CARES Act funding is a federal grant, like many of the federal awards and 638 programs. Federal requirements need to be adhered to, in order to prevent any disallowed costs that will be passed on to the next generation.

The Northern Cheyenne Tribe understands the hardships and economic impacts felt during this pandemic and are working tirelessly to help address immediate needs; but also looking at the infrastructure needs of our communities. Future generations and long term planning should be key considerations in the budget planning process.

I appreciate your time and hope to clarify and miscommunication that may exist around the cares act federal funding. We need to remain vigilant as we continue to take measures to fight off this virus from our homelands. My office is always available for questions or comments (406) 477-4851 or feel free to reach me via email [spottedelk.lane@gmail.com](mailto:spottedelk.lane@gmail.com) .

Respectfully,



Lane Spottedelk  
Tribal Council Representative  
Northern Cheyenne Tribe

**Coronavirus Relief Fund**  
**Guidance for State, Territorial, Local, and Tribal Governments**  
**April 22, 2020**

The purpose of this document is to provide guidance to recipients of the funding available under section 601(a) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). The CARES Act established the Coronavirus Relief Fund (the “Fund”) and appropriated \$150 billion to the Fund. Under the CARES Act, the Fund is to be used to make payments for specified uses to States and certain local governments; the District of Columbia and U.S. Territories (consisting of the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands); and Tribal governments.

The CARES Act provides that payments from the Fund may only be used to cover costs that—

1. are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
2. were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or government; and
3. were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.<sup>1</sup>

The guidance that follows sets forth the Department of the Treasury’s interpretation of these limitations on the permissible use of Fund payments.

***Necessary expenditures incurred due to the public health emergency***

The requirement that expenditures be incurred “due to” the public health emergency means that expenditures must be used for actions taken to respond to the public health emergency. These may include expenditures incurred to allow the State, territorial, local, or Tribal government to respond directly to the emergency, such as by addressing medical or public health needs, as well as 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.

Funds may not be used to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify under the statute. Although a broad range of uses is allowed, revenue replacement is not a permissible use of Fund payments.

The statute also specifies that expenditures using Fund payments must be “necessary.” The Department of the Treasury understands this term broadly to mean that the expenditure is reasonably necessary for its intended use in the reasonable judgment of the government officials responsible for spending Fund payments.

***Costs not accounted for in the budget most recently approved as of March 27, 2020***

The CARES Act also requires that payments be used only to cover costs that were not accounted for in the budget most recently approved as of March 27, 2020. A cost meets this requirement if either (a) the cost cannot lawfully be funded using a line item, allotment, or allocation within that budget *or* (b) the cost

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<sup>1</sup> See Section 601(d) of the Social Security Act, as added by section 5001 of the CARES Act.

is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation.

The “most recently approved” budget refers to the enacted budget for the relevant fiscal period for the particular government, without taking into account subsequent supplemental appropriations enacted or other budgetary adjustments made by that government in response to the COVID-19 public health emergency. A cost is not considered to have been accounted for in a budget merely because it could be met using a budgetary stabilization fund, rainy day fund, or similar reserve account.

***Costs incurred during the period that begins on March 1, 2020, and ends on December 30, 2020***

A cost is “incurred” when the responsible unit of government has expended funds to cover the cost.

***Nonexclusive examples of eligible expenditures***

Eligible expenditures include, but are not limited to, payment for:

1. Medical expenses such as:
  - COVID-19-related expenses of public hospitals, clinics, and similar facilities.
  - Expenses of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs.
  - Costs of providing COVID-19 testing, including serological testing.
  - Emergency medical response expenses, including emergency medical transportation, related to COVID-19.
  - Expenses for establishing and operating public telemedicine capabilities for COVID-19-related treatment.
2. Public health expenses such as:
  - Expenses for communication and enforcement by State, territorial, local, and Tribal governments of public health orders related to COVID-19.
  - Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment, for medical personnel, police officers, social workers, child protection services, and child welfare officers, direct service providers for older adults and individuals with disabilities in community settings, and other public health or safety workers in connection with the COVID-19 public health emergency.
  - Expenses for disinfection of public areas and other facilities, *e.g.*, nursing homes, in response to the COVID-19 public health emergency.
  - Expenses for technical assistance to local authorities or other entities on mitigation of COVID-19-related threats to public health and safety.
  - Expenses for public safety measures undertaken in response to COVID-19.
  - Expenses for quarantining individuals.
3. Payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

4. Expenses of actions to facilitate compliance with COVID-19-related public health measures, such as:
  - Expenses for food delivery to residents, including, for example, senior citizens and other vulnerable populations, to enable compliance with COVID-19 public health precautions.
  - Expenses to facilitate distance learning, including technological improvements, in connection with school closings to enable compliance with COVID-19 precautions.
  - Expenses to improve telework capabilities for public employees to enable compliance with COVID-19 public health precautions.
  - Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions.
  - COVID-19-related expenses of maintaining state prisons and county jails, including as relates to sanitation and improvement of social distancing measures, to enable compliance with COVID-19 public health precautions.
  - Expenses for care for homeless populations provided to mitigate COVID-19 effects and enable compliance with COVID-19 public health precautions.
5. Expenses associated with the provision of economic support in connection with the COVID-19 public health emergency, such as:
  - Expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures.
  - Expenditures related to a State, territorial, local, or Tribal government payroll support program.
  - Unemployment insurance costs related to the COVID-19 public health emergency if such costs will not be reimbursed by the federal government pursuant to the CARES Act or otherwise.
6. Any other COVID-19-related expenses reasonably necessary to the function of government that satisfy the Fund's eligibility criteria.

*Nonexclusive examples of ineligible expenditures<sup>2</sup>*

The following is a list of examples of costs that would *not* be eligible expenditures of payments from the Fund.

1. Expenses for the State share of Medicaid.<sup>3</sup>
2. Damages covered by insurance.
3. Payroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

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<sup>2</sup> In addition, pursuant to section 5001(b) of the CARES Act, payments from the Fund may not be expended for an elective abortion or on research in which a human embryo is destroyed, discarded, or knowingly subjected to risk of injury or death. The prohibition on payment for abortions does not apply to an abortion if the pregnancy is the result of an act of rape or incest; or in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed. Furthermore, no government which receives payments from the Fund may discriminate against a health care entity on the basis that the entity does not provide, pay for, provide coverage of, or refer for abortions.

<sup>3</sup> See 42 C.F.R. § 433.51 and 45 C.F.R. § 75.306.

4. Expenses that have been or will be reimbursed under any federal program, such as the reimbursement by the federal government pursuant to the CARES Act of contributions by States to State unemployment funds.
5. Reimbursement to donors for donated items or services.
6. Workforce bonuses other than hazard pay or overtime.
7. Severance pay.
8. Legal settlements.



# 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

**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

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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