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CARES Act Overview – Michael Godbe

The Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law 116-136) is the Federal Government's first law passed in response to the Coronavirus. It became law on March 27, 2020 (full text at: <https://www.congress.gov/bill/116th-congress/house-bill/748>), and has many different components.

Funding to Tribes Delayed

The law reserves \$8,000,000 of relief funds for making payments to “Tribal governments” and states that the US Treasury shall pay this money to Tribal governments “not later than 30 days after” March 27, 2020. However, the meaning of “Tribal government” is disputed and has caused the delivery of these funds to be delayed.

On May 5, 2020, the US Treasury announced that it would release 60% of the \$8 billion (\$4.8 billion) based on population data, to begin on May 5, 2020. (For Press Release, see: <https://home.treasury.gov/news/press-releases/sm998>). The remaining 40% of the \$8 billion will be distributed based on the Tribal government's employment figures and higher COVID-19-related expenditures, to be delivered “at a later date.” The funds for Tribal Governments being disputed in the litigation below will be “held back” until the litigation is resolved.

The Treasury has represented that the remaining 40% of the \$8 billion will begin to be delivered no later than June 5, 2020.

CARES Act Litigation

There are 4 active cases related to the CARES Act relief funds reserved for Tribal governments. All four are being litigated in the DC Circuit Court and name Steven Mnuchin in his official capacity as Secretary of the Treasury as the Defendant:

1. *Confederated Tribes of the Chehalis Reservation et al. v. Mnuchin* (Filed April 17, 2020)
2. *Cheyenne River Sioux Tribe v. Mnuchin* (Filed April 22, 2020)
3. *Ute Tribe of the Uintah and Ouray Indian Reservation v. Mnuchin* (Filed April 23, 2020)
4. *Agua Caliente Band of Cahuilla Indians et al. v. Mnuchin* (Filed April 30, 2020)

At issue in cases 1-3 is whether all of the \$8 billion will go to Tribes, or whether any portion of the money will go to for-profit Alaska Native regional and village corporations (ANCs). The Tribes argue that the term “Tribal government” does not include ANCs and that all \$8 billion should be disbursed directly to Federally Recognized Tribes. The US Treasury argues that the term “Tribal government” includes ANCs. The Plaintiff Tribes in cases 1-3 believe that the relief funds reserved for “Tribal government[s]” were meant for Tribes and not for-profit tribal corporations, and that if the Treasury gets its way, that Alaska Natives will receive a disproportionate amount of CARES act relief funds and Tribes in the other 49 states will be irreparably harmed.

The fourth case, *Agua Caliente Band v. Mnuchin*, does not deal with what is or isn't a “Tribal government”, but is essentially an effort to force the Treasury to disburse all of the \$8 billion immediately. The plaintiff Tribes contend that *any* delay in delivering the full \$8 billion to tribal governments violates the letter of the law and causes the plaintiff Tribes irreparable harm. The plain language of the CARES Act mandates that the treasury disburse all \$8 billion “no later than 30 days after” March 27, 2020. The Treasury did not do this.

On May 11, 2020 the *Agua Caliente* court denied the Tribes' request that all the funds be disbursed immediately, ruling that the Tribes had failed to show that the Treasury's delay in disbursing the remaining 40% (\$3.2 billion) of the \$8 billion was "so egregious" as to warrant the relief sought by the tribes. However, the Court clarified that its ruling does not mean that the Treasury has an "indefinite period to carry out Congress's command," and left open the possibility for the Tribes to renew their request if the Treasury continues to delay distribution of the funds. In an affidavit filed on May 15, 2020, the Treasury's attorney swore that payments of the remaining 40% of the \$8 billion would "commence no later than" June 5, 2020. (For affidavit, see: <https://www.indianz.com/News/2020/05/18/kowalski051520.pdf>).

How Can Tribes Spend CARES Act Funds Once Received:

Tribes may use CARES act relief funds to cover:

- Only those costs which "are necessary expenditures incurred due to the [Coronavirus] public health emergency";
- Only those costs which the Tribe incurs between March 1, 2020 and December 30, 2020;
- The funds cannot cover costs that were already accounted for in the Tribe's most recently approved budget as of March 27, 2020.

If the US Treasury determines that a Tribal government has misused funds, the funds used in violation of the above requirements "shall be booked as a debt" of the Tribe and "owed to the Federal Government."

How Can CILS Help?

- 1) Ensuring your tribe will be able to meet reporting requirements;
- 2) Assisting the tribe in assessing what its COVID-19 related costs and needs are;
- 3) Providing guidance on what is and is not allowable expenditures
- 4) Ensuring the tribe uploads supporting documents by May 26, 2020 when the Treasury portal (sam.gov) closes.

All CILS offices are currently accepting calls and providing legal assistance to tribes and individual Native Americans.

For assistance contact the CILS office closest to your tribal location at:

Escondido Office
(760) 746-8941

Bishop Office
(760) 873-3581

Eureka Office
(707) 443-8397

Sacramento Office
(916) 978-0960

PANDEMIC –EBT (P-EBT)

Due to COVID-19, families with children who are eligible for free or reduced-price meals at school will get financial support in the form of a food benefits card. Families may receive up to \$365 per eligible child on a P-EBT card to use on food and groceries.

May 8, 2020: P-EBT cards issued.

- o May 22, 2020: P-EBT online application available for families who did not receive a P-EBT card.

Application at: <https://ca.p-ebt.org/>.

- o June 30, 2020: online application closes. Final P-EBT cards will be issued 5-10 from close of application.
- o CDSS Guidance on the Pandemic: <https://cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACWDL/2020/ACWDL-Pandemic-EBT.pdf>

TRIBAL COVID-19 FUNDING RESOURCES

US DOJ - Coronavirus Emergency Supplemental Funding Program. Funds: Overtime; Equipment (including law enforcement and medical personal protective equipment); Hiring; Supplies (gloves, masks, sanitizer); Training; and Travel expenses. Grant information can be found at: <https://www.justice.gov/usao-edca/press-release/file/1265361/download>

DEADLINE May 29, 2020.

CDC – Supporting Tribal Public Health Capacity in Coronavirus Preparedness and Response. Noncompetitive. Grant is meant to assist tribes with the following public health activities and/or to reimburse costs incurred from January 20, 2020 onward: Emergency operations and coordination; health information technology; surveillance and epidemiology; laboratory capacity; communications; countermeasures and mitigation; recovery activities; other preparedness and response activities to COVID-19. Grant information can be found at:

<https://www.grants.gov/web/grants/view-opportunity.html?oppId=325942>

DEADLINE May 31, 2020.

FCC – COVID-19 Telehealth Program. Provides eligible health care programs support in purchasing telecommunications, information services, and connected devices necessary to provide telehealth services to patients in response to COVID-19. More information can be found at: <https://www.fcc.gov/covid-19-telehealth-program>.

There is currently no deadline.

EPA – State Environmental Justice Cooperative Agreement Program. Noncompetitive. Grant is to support activities and projects to improve the health and welfare of low income, minority, tribal, and indigenous communities. EPA will give special consideration to applications addressing the impacts of COVID-19 in communities with environmental justice concerns. Grant information can be found at:

<https://www.epa.gov/environmentaljustice/state-environmental-justice-cooperative-agreement-program#tab-2>

DEADLINE June 30, 2020.

Health Resources and Services Administration (HRSA) Federal Office of Rural Health Policy (FORHP). Grant will support recipients who seek to engage high-risk populations and provide substance use disorder/opioid use disorder prevention, treatment, and recovery services. For more information see:

<https://www.grants.gov/web/grants/view-opportunity.html?oppId=324246>

DEADLINE July 13, 2020.

USDA – The CARES Act Distance Learning and Telemedicine Program. Focuses on helping rural communities use telecommunications to connect teachers and medical service providers. For more information see:

<https://www.rd.usda.gov/programs-services/distance-learning-telemedicine-grants>.

DEADLINE July 13, 2020.

Administration for Community Living (ACL) – The CARES Act: Support Older Adults with People of Disabilities in the Community During COVID-19 Emergency. Grant will fund home-delivered meals, care services in the home, respite care and other support to families and caregivers, and more. For more information:

<https://acl.gov/news-and-events/announcements/supporting-community-living-during-covid-19-cares-act-and-civil>.

There is no deadline.

How Can CILS Help?

CILS staff can discuss whether the tribe is eligible for a grant and in preparing documentation.

For assistance contact the CILS office closest to your tribal location at:

Escondido Office
(760) 746-8941

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(760) 873-3581

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