NEW FEDERAL LEGISLATION IN RESPONSE TO THE ONGOING COVID-19 PANDEMIC

On December 27, 2020, House Resolution (H.R.) 133, Coronavirus Response and Relief Supplemental Appropriations Act, 2021, was signed into law. The law did not provide for state or local relief, but extended the deadline for the expenditures of the Coronavirus Relief Funds (CRF) to December 31, 2021. The language of the legislation can be found here. A legislative summary for H.R. 133 can be found here. Highlights from the NCAI legislative summary are included below.

CRF FUNDS

Section 1001 of H.R. 133 extends the date for state, local, and tribal governments to use the CRF funds from December 31, 2020 to December 31, 2021. No additional funds are provided to governments nor is there any flexibility in the use of funds. During the January 6, 2021 White House Intergovernmental Weekly call, Counselor to the Secretary of the Treasury, Dan Kowalski, affirmed the extension date.

CDFI

$3 billion for emergency Community Development Financial Institutions (CDFI) support, with $25 million for grants to CDFIs serving Native American, Alaska Natives, and Native Hawaiian communities.

EMPLOYER ASSISTANCE

Extension of Emergency Unemployment Relief for Governmental Entities: The CARES Act covered 50% of the unemployment costs for reimbursement employers, including tribal governments, is extended to March 14, 2021.

Extension of Credits for Paid Sick and Family Leave: Under the Family First COVID legislation, employers were able to claim a payroll tax credit. The IRS has recently determined that tribal employers are eligible for these tax credits. See 19g here.

Employee Retention Tax Credit (ERTC): For eligible tribal governments and enterprises, the ERTC is extended to June 30, 2021 with amendments;
- Increases the credit rate from 50% to 70% of qualified wages;
- Allows business with less than 500 employees to advance the credit; and
- Employers who receive PPP loans may still qualify for ERTC if wages paid are not forgiven by PPP loans.

PAYCHECK PROTECTION PROGRAM

Second round of PPP ($284.45 billion) for eligible business with less than 300 employees who have at least a 25% reduction in gross revenues between 2019-2020. Max loan is 2.5 times the average monthly payroll and capped at $2 million.
TRIBAL BROADBAND CONNECTIVITY GRANT

Authorizes $1 billion to expand broadband, remote learning, telework, and telehealth access and adoption by grants to qualifying entities, including Tribal governments, colleges or universities, tribal organizations, Alaska Native Corporations, or Department of Hawaiian Homelands. The Dept. of Commerce’s Assistant Secretary of Communications must expend the funds by Sept. 30, 2021, and recipients must use funds within a year of receipt.

CREATION OF OFFICE OF MINORITY BROADBAND INITIATIVES

This new office will support the development and deployment of emerging technologies and broadband by colleges, including tribal colleges and universities.

EMERGENCY BROADBAND CONNECTIVITY FUND

$3.2 billion to FCC to provide ISP broadband subsidiaries for low-income individuals. Includes a $75 subsidy for eligible households on tribal lands.

FCC BROADBAND MAP

Appropriates $65 million to FCC to create broadband data maps required under the Broadband DATA Act, including tribal lands.

FCC COVID-19 TELEHEALTH PROGRAM

An additional $249,950,000 appropriated for FCC to distribute under its existing COVID-19 Telehealth Program. Tribal health providers may be eligible.
A total of $25 billion has been set aside to assist households that are not able to pay rent or utilities due to COVID-19 pandemic, with $800 million set aside for tribal communities.

On January 7, 2021, the U.S. Department of Treasury announced eligible grantees, including Indian tribes or tribally designated housing entities must "complete information by 11:59 p.m. EDT on January 12, 2021."

If the information is not provided to the Treasury, the eligible grantee may not receive an Emergency Rental Assistance Payment and the "Treasury is required to reallocate those funds to those tribes that have elected to participate in the program."

Information about the Emergency Rental Assistance Program can be found here. To submit information for the Emergency Rental Assistance Program, please click here.

NCAI has sent a letter to the Secretary of the Department of Treasury requesting consultation. The letter can be found here.

On January 8, 2021, Governor Newsom proposes 2021-22 budget for funding to immediately address COVID-19 response and relief efforts for Californians. The $227.2 billion budget includes:
- $372 million to speed up administration of vaccines;
- $14 billion on economic recovery, including support for those who have lost their jobs or small businesses, or are facing eviction. Support would be through:
  - Direct cash payments of $600 million through a Golden State Stimulus,
  - Extending new protections to keep people in homes, and
  - Relief grants for small businesses;
- $90 billion in school funding;
  - $2 billion to support and accelerate safe return to in-person instruction,
  - $4.6 billion to support students from impacts of COVID-19, and
  - $400 million for school-based mental health services.
More on the proposed budget can be found in the news release.

SHAWNEE TRIBE v. MNUCHIN
On January 5, 2021, the D.C. Circuit Court of Appeals issued their opinion in the Shawnee Tribe's case and agreed that the U.S. Department of Treasury likely underpaid the Tribe (and other tribes) through the use of population data that did not capture true membership numbers. The Court of Appeals did not decide the case on its merits but said that the Treasury Secretary's use of Indian Housing Block Grant data to determine membership for tribes may be "in violation of the authorizing statute." (pg. 15 of the Opinion).

ALASKA NATIVE CORPORATIONS
On January 8, 2021, the United States Supreme Court issued its list of petitions it will hear. Included in the list are the challenges by Alaska Native Corporations (ANCs) that they are entitled to a share of the $8 billion in Coronavirus Relief Funds. The appeal comes after the D.C. Circuit ruled that ANCs are not "Indian tribes" eligible for relief under the CARES Act.

QUESTIONS? CONTACT CILS
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