April 10, 2020

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

The Honorable Jerome Powell
Chair of the Board of Governors
The Federal Reserve
2051 Constitution Avenue, NW
Washington, DC 20551

RE: Implementation of Title IV of Public Law 116-136, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

Dear Secretary Mnuchin and Chairman Powell,

On behalf of the tribal governments that we collectively represent in matters of economic development and governance, the Native American Finance Officers (NAFOA) and the National Congress of American Indians (NCAI) would like to express our appreciation for your willingness to accommodate the unique needs of Indian tribes in credit relief. We stand ready to work in partnership to create responsive and necessary solutions.

Title IV, the Economic Stabilization and Assistance to Severely Distressed Sectors of the U.S. Economy (Economic Stabilization Fund), has the potential to provide flexible and prompt financing and credit relief that tribal governments need during this time of uncertainty and unparalleled stress. Like other governments dealing with the impacts of this crisis, tribal governments need to provide front line care for the well-being of their people. However, tribal governments are much more vulnerable during this crisis since tribal governments are dealing with mitigating elevated health risk factors while also directly managing the devastating economic impacts caused by the shuttering of government enterprises.

Tribal governments, in lieu of a tax base, rely on economic revenue to provide fundamental government programs and services. The revenue from this equivalency of a tax base has not simply dipped, as experienced by other state and local governments, it has ceased to exist in most cases.
All at a time when government expenses will rise to meet the health crisis, credit will diminish for government-owned economic enterprises, and existing government expenditures will no longer have the revenue to support their initial purpose.

The reasons stated warrant the full attention of the federal government to take all appropriate and immediate action to ensure tribal government funding sources are supported. A key component of that tribal government support is ensuring their economic engines remain viable and are able to recover. Without action from the federal government, tribal government debt will be on a path to default impacting not just the tribal governments and their citizens, but the surrounding communities that rely on tribal enterprises for their support. Tribal governments are often the largest employers in their respective areas, states, and for some, entire regions. Taken together they would represent one of the top ten employers in the nation.

The stability and recovery of the tribal economies can be achieved with consideration of the unique aspects of the tribal debt market and a proportionately unique and discretionary response from the Department of Treasury and the Federal Reserve Bank. The intent of Congress was clear in including tribal governments in Title IV of the CARES Act such that the Federal Reserve Bank would provide financing opportunities in this economic crisis. However, we are concerned that the first facility for governments under this title does not allow direct access for tribal governments and further relies on an assumption that other government relief facilities and business relief facilities will assist tribal governments. We can assure you with centuries of experience, that is a false assumption and one that would have devastating economic consequences.

With the shared goal of building a system that will work for Indian Country, we are outlining the characteristics of tribal debt and the terms that will help guide the Department of the Treasury and the Federal Reserve Bank toward effective intervention. We will also continue to urge flexibility as the crisis continues to evolve along with its impacts and strongly request that you modify programs that fail to incorporate tribal governments needs as originally proposed.

**Tribal Debt Characteristics**

Tribal governments occupy lands held in trust for their use by the federal government. These trust lands can’t be leveraged or used as collateral. Debt issued to tribal governments is largely based on government (federal funds, enterprise, and lease) revenue as general obligations of the government or their political subdivisions. The tribal or tribal entity distressed debt is concentrated on a few large sectors that make up a large part of the Indian Country economy – gaming, hospitality, and natural resource extraction. These sectors are either shut down entirely or effectively shut down due to depressed pricing, as is the case with oil.

The majority of debt is private bank debt with one or more banks as lenders, not publicly traded as is common in the state and municipal markets. There are, however, a few outstanding public issuances (taxable and tax-exempt) that represent approximately $6 billion of the total tribal debt offerings. Larger issuances of public and private debt involve mostly banks with some participation by institutions and individuals. For these reasons restrictions that focus on market debt with credit ratings can create significant challenges. The Fed has used programs that provide banks financial incentives, liquidity, and credit support, for placement of direct loans for private
businesses (such as the Main Street Lending Program). Figuring a way to make this work for tribal government debt is critical.

Tribal governments have the ability to issue both taxable and tax-exempt debt with a majority issued as taxable. Tax-exempt debt for tribal governments for economic or private activity purposes differs from the tax-exempt debt issued by other governments. Tribal governments are prohibited from fully utilizing the tax-exempt debt market beyond the tightly defined purposes of essential government functions; leaving tribal governments no choice but to use commercial debt to fund marinas, conference centers, parking lots and other services commonly funded by state and local governments.

As a partial remedy for this restriction, the Department of the Treasury under the Tribal Economic Development Bond program authorized by Congress during the American Recovery and Reinvestment Act provided $2 billion in bonding authority for economic rebuilding purposes. Not all of these issuances have been rated, but all TED bonds have been registered at the Department of the Treasury. The entire allocation has been recently drawn down and is no longer an option. This means that existing tribal tax-exempt debt is either general obligation government debt for essential services or issued as Tribal Economic Development Bonds through the prior allocation.

Tribal debt is issued directly from the tribal government, its political subsidiaries, or directly from government-owned enterprises. The government subdivisions may include an economic development authority, a gaming authority, or a business entity listed as part of the governing body but separated for tax and business purposes.

Below are four specific potential terms on which you could intervene to fulfill your statutory and economic obligations to tribal governments. This list is a subset of potential solutions, intended to help you and your staff during these challenging times.

**Proposed Terms of Intervention**

- The Federal Reserve bank should purchase loans or lines or credit to facilitate better terms or credit for tribal governments and their authorities. Relief should be considered in two forms. First, direct purchasing of debt from banks and investors for temporary relief during the crisis.

  Second, consideration should be given to loan guarantees on new tribal debt to secure needed lines of credit during the crisis and for securing reasonable credit when revenue streams do recover and tribal governments need to re-issue the debt. During the last downturn, lending continued to be tight for tribal governments long after the recovery was taking place. Either could be accomplished through one of several existing Fed facilities, simply by modifying eligibility terms and work through financial institutions or Tribes.

- Current purchasing of debt should include setting aside $25 billion for direct purchasing of tribal government debt. The Federal Reserve Bank’s initial announcement of direct purchases of debt from cities greater than 1 million and counties greater than 2 million excludes all Tribes. The catch-all of having tribes go through a state governor’s offices is
a failure to acknowledge the direct government-to-government sovereign relationship that is the foundation of American Indian policy. The first amortizing payment should be due no earlier than 180 days after issuance and no later than 365 days given that tribal government revenues from enterprises have ceased. Consideration should be given to a favorable loan term of at least a five-years with the going treasury interest rate to match the term.

- Assistance from the funds established in Title IV should include loan guarantees for short-term credit facilities and for on-going enterprises that may need credit for restarting an enterprise, continued operations, including those that may be tied to similar revenue pledged for distressed debt. Loan guarantees should be pledged to secure approximately $30 billion in debt.

- The Federal Reserve Bank should consider the ability to purchase tribal debt based on tribal revenue prior to the crisis. The majority of tribal government debt is unrated making revenue a suitable criterion. However, tribal enterprises often have geographic and political competitive buffers that make loans viable. In addition, given the uncertainty of the crisis, these loans should be subject to repayment only from revenue from existing and future tribal businesses and not be subject to garnishment of any other programs or transfers of federal aid to tribal governments.

We would strongly urge the Department of the Treasury and the Federal Reserve Bank to immediately engage Indian Country on the Economic Stabilization Fund. Thank you in advance for your consideration of our requests. Please feel free to reach out to either organization through Dante Desiderio by phone at 202-631-2003 or by email at Dante@nafoa.org

Best regards,

Dante Desiderio,  
Executive Director

Kevin J. Allis,  
Chief Executive Officer  
National Congress of American Indians

CC: Gary Grippo, Deputy Assistant Secretary for Government Financial Policy  
Daniel Kowalski, Counselor to the Secretary for Domestic Affairs  
Lael Brainard, Federal Reserve Board Governor  
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