Secretary Mnuchin and Acting Director Vought:

On behalf of the Native American Finance Officers Association (NAFOA) representing over 120 tribal nations we write to express our concerns and potential solutions regarding the unique challenges Indian tribal governments and their enterprises face in administering Coronavirus Relief Fund (CRF) money. Specifically, we address statements made by the Treasury Department in its CRF Frequently Asked Questions (FAQs) published May 28, 2020.

NAFOA has actively worked toward acceptable solutions that include Indian Tribal Governments in parity with other governments while protecting unique tribal assets and authorities and making participation a reasonably practical possibility for Indian Tribal Governments. NAFOA has convened meetings with diverse tribal, accounting, and law professionals to collate and refine these questions and concerns.

Issue: Single Audit requirement for Tribal Entity businesses and enterprises receiving CRF transfers or grants jeopardizes proprietary financial data to public disclosure.

Solution: Allow for a Program-specific audit, defined in 2 CFR §200.507, for Tribal Entity businesses and enterprises receiving CRF transfers and protect Indian Tribal Government authority to withhold public disclosure of proprietary financial and business information.

Indian Tribal Governments have concerns about the guidance in the updated CRF FAQs, issued May 28, 2020, concerning the Single Audit requirements Treasury seeks to apply. Many Indian Tribal Governments are planning to use a portion of their CRF allocation to provide allowable assistance to their Tribal Entity businesses or enterprises to meet costs incurred due to the COVID-19 public health emergency. The wording on page nine of the FAQs, copied below, would appear to impose a Single Audit requirement on most Tribal Entity businesses and enterprises where the Tribes transfers $750,000 or more in CRF funds to a Tribal Entity for that Tribal Entity to expend to meet such incurred costs.

If a State transfers Fund payments to its political subdivisions, would the transferred funds count toward the subrecipients’ total funding received from the federal government for purposes of the Single Audit Act?
Yes. The Fund payments to subrecipients would count toward the threshold of the Single Audit Act and 2 C.F.R. part 200, subpart F re: audit requirements. Subrecipients are subject to a single audit or program specific audit pursuant to 2 C.F.R. § 200.501(a) when the subrecipients spend $750,000 or more in federal awards during their fiscal year.

Some Tribal Entity businesses and enterprises may not be able to fully benefit from the intended CRF stimulus if their proprietary financial information is at risk of being made publicly available. Under the Single Audit Act, the audit package of an Indian Tribal Government, at its discretion, may be withheld from being placed on the Federal Audit Clearinghouse website. Further, separately prepared gaming audits that are submitted to the National Indian Gaming Commission (NIGC) are not publicly disclosed in accordance with NIGC regulations. State and local governments are, by definition, public entities and thus their government-owned and operated enterprises have no equivalent need to protect proprietary and confidential business information from the public which owns them.

As a result, Indian tribal governments should be given deference to choose whether or not to disclose proprietary financial information or be able to engage in a program-specific audit, as defined in 2 CFR §200.507, to satisfy CRF compliance requirements. This is already captured under the portions of the Uniform Guidance the Treasury Department has indicated would apply to the CRF and Treasury should expressly indicate this is allowable. Program-specific audits would cover the same audit metrics as a Single Audit, but safeguard tribal data from disclosure.

A program-specific audit would permit a Tribal Entity business or enterprise to comply with CRF audit compliance requirements without being forced to reveal sensitive financial and operating information for public inspection. Such program-specific audits are typically used for federal grants provided to for-profit entities for compliance purposes. This option would also provide flexibility to those tribal businesses which engage in essential services funded through federal financial assistance, i.e. grants and contracts, the ability to continue to be subject to a Single Audit. These mechanisms for those programs, including, but not limited to: telecommunication entities, housing authorities, and various healthcare facilities, are already in place and continue to be a workable conduit for compliance and accountability.

**Issue:** Audit costs are allowable, but cost incurred would likely be six months subsequent to December 30, 2020.

**Solution:** Allow CRF administrative costs to be allocated and used until expended.

The CRF FAQs on page nine indicate audit costs would be allowed as an eligible CRF expenditure. But as a practical matter, for many Indian Tribal Governments this is not helpful as an audit typically is not started until subsequent to close of the program activity year. In this case, the CRF statute lists the end of the period as December 30, 2020. Treasury should clarify that audit and other administrative wind up costs of CRF activities should be made allowable if they reasonably must occur after December 30, 2020.
Issue: CRF as currently construed only allows for direct costs and creates a situation that administrative costs would likely be commingled costs that would negatively impact federal cost principles for the consistent treatment of indirect costs by the CRFs singular cost principals, and creates additional administrative burdens to segregate and account for such costs.

Solution: Allow use of an Indian Tribal Government’s Approved Indirect Cost Rate(s) for indirect costs related to CRF expenditures.

Under the current Treasury Guidance and FAQs there is asymmetrical treatment of direct and indirect costs common among other federal financial assistance that Indian tribal governments are familiar with and obtain approval from the Interior Business Center in compliance with 2 CFR 200 Uniform Guidance. Many costs can either be identified specifically with a final cost objective, i.e. direct costs, and others can be identified as incurred for a common or joint objective that can’t be readily isolated to a singular final cost objective or funding source, i.e. indirect costs. Many direct costs cannot be administered without necessary expenses shared by multiple programs via an indirect cost pool. These may include, but are not limited to: accounting, audit, human resources, payroll, rent, utilities, salaries, travel, equipment lease, insurance, and others. For example, isolating the cost for supporting the salary of an emergency responder mitigating COVID-19 is not the only associated cost. The indirect costs associated with the burdensome steps of processing, documenting and approving those costs not budgeted need to be covered as an eligible CRF expenditure.

Additionally, directly charging the CRF account for certain administrative costs (like the Single Audit) may not be allowable for an Indian Tribal Government with an approved indirect cost rate. A Tribe’s indirect cost rate agreement and the Uniform Guidance 2 CFR 200.403(d) require that a Tribe accord consistent treatment of these costs across its federal and non-federal funding, including its indirect cost pool. A cost may not be assigned to a federal award as a direct cost if any other cost incurred for the same purpose, in like circumstances, has been allocated to the federal award as an indirect cost.

In the CRF guidance and FAQs there are multiple references to costs associated with salaries and overall administrative items. The wording on page eight of the CRF FAQs, copied below, shows inconsistencies in administration of costs associated with indirect cost pool, contrary to 2 CFR 200.413 and .414.

May Fund payments be used for expenditures related to the administration of Fund payments by a State, territorial, local, or Tribal government?
Yes, if the administrative expenses represent an increase over previously budgeted amounts and are limited to what is necessary. For example, a State may expend Fund payments on necessary administrative expenses incurred with respect to a new grant program established to disburse amounts received from the Fund.

Treasury should clarify that an Indian Tribal Government has the flexible authority to recover indirect costs associated with its CRF expenditures from its CRF funds. Otherwise, it will be a heavy and unnecessary burden for Indian Tribal Governments to have to isolate costs associated with CRF
expenditures not budgeted in an indirect cost pool. This is the reason indirect costs are used to allow for those items not budgeted.

Accordingly, we urge the Treasury Department to allow Indian Tribal Governments to utilize their federally-approved indirect cost rate(s). Indian Tribal Governments already have streamlined controls and administrative support aligned to meet their approved indirect cost rate(s) associated with their existing federal financial assistance. Those few Indian Tribal Governments without an indirect cost rate are able to apply to use a standard *de minimus rate* of ten (10) percent for indirect costs.

Allowing the use of an Indian Tribal Government’s approved indirect cost rate for indirect costs related to CRF expenditures would be the least burdensome of administrative options and would cover the costs of the extra work required to properly administer the CRF monies in Indian Country.

**Convene a Meeting to Discuss with Treasury and OMB and Interior**

NAFOA remains committed to ensuring tribal inclusion on critical issues related to economic development and financial management. We strongly recommend the Treasury Department and OMB take full consideration of the measures referenced above and take consideration of the unique status and role of Indian Tribal Governments in the administration of CRF monies. We urge the Treasury Department and OMB to carefully consider all comments received by Indian Tribal Governments, Tribal Entity businesses and enterprises, and the Tribal organizations who support them.

In addition, we hope the Treasury Department and OMB in coordination with the Interior Business Center, in charge of indirect cost rates for Indian Tribal Governments, and the Department of Interior Office of the Inspector General, who is the cognizant agency for Single Audits, convene to discuss these items at your earliest convenience.

Thank you for the opportunity to submit comments and we look forward to a continued dialogue on these and other issues as they may arise. For further clarification or comments please contact Emery Real Bird, Financial Management Policy Specialist, at (202) 945-7750 or at Emery@nafoa.org.

Respectfully Submitted,

Dante Desiderio
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