

RESOLUTION OF THE
NAABIK'ÍYÁTI' STANDING COMMITTEE
24th NAVAJO NATION COUNCIL -- Second Year, 2020

AN ACTION RELATING TO THE NAABIK'ÍYÁTI' COMMITTEE; SUPPORTING THE NAVAJO NATION EXECUTIVE BRANCH POSITION STATEMENT RELATING TO A RECOMMENDATION FOR THE IMPLEMENTATION OF TITLE V, CORONAVIRUS RELIEF FUNDING FOR TRIBAL GOVERNMENTS TO THE U.S. DEPARTMENT OF INTERIOR AND U.S. DEPARTMENT OF THE TREASURY

WHEREAS:

- A. The Naabik'íyáti' Committee is empowered to coordinate with all committees, Chapters, branches and entities concerned with all Navajo appearances and testimony before Congressional committees, and departments of the United States government. 2 N.N.C. § 701 (A) (8).
- B. The novel coronavirus ("COVID-19") has caused a global pandemic and has hit the Navajo Nation especially hard. As of April 10th, the Navajo Nation reported 558 cases of COVID-19 and 22 deaths from the virus.
- C. The Navajo Nation anticipates these numbers to climb due to the chronic health conditions experienced by many tribal members. As a result of these chronic health conditions, an increased number of tribal members will need to be hospitalized.
- D. In an effort to reduce the spread of COVID-19 the President of the Navajo Nation extended the previously declared State of Emergency on the Navajo Nation and required government offices remain closed through April 26, 2020 in Executive Order 002-20.
- E. The Navajo Nation Department of Health issued a Public Health Emergency Order requiring Navajo Nation residents to stay at home to mitigate the risk of spreading COVID-19 and to preserve the health and safety of all individuals residing on the Navajo Nation. Public Health Emergency Order No. 2020-003.


- F. The Navajo Nation Department of Health also issued a Public Health Emergency Order extending the Stay at Home Order and implementing a curfew from 8:00 p.m. through 5:00 a.m. for Navajo Nation residents. Public Health Emergency Order No. 2020-004.
- G. The Navajo Nation finds itself in a precarious position as its revenues have declined and its costs related to fighting the COVID-19 pandemic have increased.
- H. The Navajo Nation has proposed a four-part methodology for apportioning distribution relief to tribes and also provided general comments as indicated in **Exhibit A**.

NOW, THEREFORE, BE IT RESOLVED:

The Navajo Nation Council supports the Navajo Nation Executive Branch position statement, "Recommendation for the Implementation of Title V, Coronavirus Relief Funding for Tribal Governments to the U.S. Department of Interior and U.S. Department Of The Treasury" attached as **Exhibit A**.

CERTIFICATION

I, hereby certify that the foregoing resolution was duly considered by the Naabik'iyáti' Committee of the 24th Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 15 in Favor, and 00 Opposed, on this 16th day of April 2020.


Honorable Seth Damon, Chairman
Naabik'iyáti' Committee

Motion: Honorable Mark A. Freeland

Second: Honorable Daniel E. Tso

Chairman Seth Damon not voting



April 10, 2020

United States Department of the Treasury
Secretary Steven Mnuchin
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

United States Department of Interior
Secretary David Bernhardt
1849 C Street, N.W.
Washington, D.C. 20240

Via email to tribal.consult@treasury.gov and consultation@bia.gov

Re: Recommendation for the Implementation of Title V, Coronavirus Relief Funding for Tribal Governments

Dear Secretary Mnuchin and Secretary Bernhardt,

On behalf of the Navajo Nation (Nation), this letter provides comments and recommendations for the implementation of Title V of the Coronavirus Aid, Relief and Emergency Security (CARES) Act, Coronavirus Relief Funding for Tribal Governments.

I. The Navajo Nation and the COVID-19 Pandemic

The Nation is the largest Native American Indian tribe in the United States. The Nation's reservation totals more than 27,000 square miles, roughly the size of West Virginia. It has more than 300,000 enrolled tribal members, half of whom reside on the Nation's reservation, which spans portions of Arizona, Utah, and New Mexico. The Nation also employs more than 8,000 individuals across its tribal government and more than a dozen business enterprises. Those enterprises include, among others, a gaming enterprise, a utility authority, a hospitality enterprise, and an oil and gas company.

COVID-19 came to the forefront for the Nation in mid-March. The Nation declared a State of Emergency on March 13, 2020 (Navajo Nation Office of the President and Vice President, Executive Order 01-20), directing that the Nation temporarily close non-essential Nation government operations (putting non-essential employees on administrative leave) and public schools. A few days later, on March 17, the Nation learned of its first confirmed case of COVID-19. Two weeks later, on March 31, a second Executive Order (Navajo Nation Office of the President and Vice President, Executive Order 02-20) extended the closure of non-essential Nation government operations, directed all Navajo citizens to leave their homes only for essential activities, and closed public schools for the remainder of the academic year. Despite these measures, as of April 8, the Nation had 488 confirmed cases of COVID-19 – more than half of the confirmed cases in Indian Country – and 20 deaths. Unfortunately, the Nation expects these numbers will continue to climb. Compounding the high rate of infection, many tribal members

have chronic health conditions that place them at a higher risk of needing emergency medical care and of death. In fact, the Navajo Nation's President Jonathan Nez and Vice-President Myron Lizer are each in self-quarantine due to being in close proximity to a first responder who later tested positive for COVID-19.

Although the Nation experienced its first case of COVID-19 less than a month ago, the Nation has already spent millions on COVID-19 expenses and has lost millions more in revenue across its enterprises. The Nation expects that these expenses and revenue losses will increase substantially in the weeks and months to come.

The Nation's revenue sources include, among others, royalties from oil and coal, leases of land and rights-of-ways, taxes, and interest income. The COVID-19 pandemic has left almost no industry untouched. As demand for products and services across all industries has decreased, the Nation's tax and royalty revenues have plummeted. Travel restrictions have greatly reduced the demand for oil as the world forgoes air travel and even road travel, except for essential trips for groceries or medicine. Perhaps most significantly, the closure of casinos due to restrictions on gatherings of more than ten people has cost the Nation tens of millions of dollars in anticipated revenue.

Yet, while the Nation's revenues fall, its expenses continue to increase. Although non-essential government was closed, the Nation continued to have personnel expenses from paid administrative leave, adjusted schedules, and migrating personnel to working from home. New and unexpected expenses such as purchasing gloves, cleaning supplies, sanitation equipment and services, COVID-19 testing kits, and respirators are straining the Nation's budget. In addition, despite its mounting losses, the Nation has continued to pay the vast majority of the workforce it had in place prior to the crisis.

Without critical sources of revenue that are now absent due to the COVID-19 pandemic, the Nation cannot meet its existing obligations, much less respond to the hardship caused to businesses and individuals as a result of the pandemic.

II. The Coronavirus Relief Fund

Title V of the CARES Act contains a Coronavirus Relief Fund of \$150 billion, at least \$8 billion of which is earmarked for tribes and must be distributed by April 27, 2020. Specifically, the statute requires that a tribal government receive an amount "based on increased expenditures of each such tribal government (or tribally-owned entity of such tribal government) relative to expenditures in fiscal year 2019. . . ." It further requires that funds must be used only for i) "necessary expenditures incurred due to the public health emergency with respect to [COVID-19]"; ii) not accounted for in the most recently approved tribal budget; and iii) incurred from March 1, 2020 to December 30, 2020.

The statute further requires the Inspector General of the Department of the Treasury to conduct monitoring and oversight of the receipt, disbursement, and use of funds made available. Amounts not used consistent with the intended purposes of the statute will be booked as a debt of the tribe owed to the federal government.

III. Proposed Methodology for the Distribution of Relief Funds to Tribes

The Coronavirus Relief Fund provides financial relief to states, territories, and tribal governments. However, the provisions applicable to states and tribal governments differ. Most significantly, states are apportioned relief funds based on a guaranteed minimum amount plus an allocation based on the state's population. There is no such minimum amount or population criterion for tribes. Instead, the statute provides that each tribe's allocation must be determined by the Secretary of the Treasury based on such tribe's "increased expenditures" for 2020 as compared to aggregate expenditures for 2019.

The Nation believes that it would be difficult, if not impossible, for the Secretary of the Treasury to determine, in April 2020, each tribe's COVID-19 expenditures for the entirety of 2020. The full impact of COVID-19 pandemic is still unclear. Further, any process that requires 574 tribes to submit information to the Department of the Treasury and Department of the Interior in order to receive funds will only delay distribution. But there can be no delay, as the statute requires the entire \$8 billion to be distributed by April 27. There is no time to waste. For this reason, the Nation believes that a methodology must be used as a proxy to fairly and equitably estimate the additional expenditures of each tribe.

Attached as Appendix A is the Nation's proposed methodology for the distribution of coronavirus relief funds to tribes. Like the Title V allocation formula for states, the Nation's proposed methodology incorporates both a minimum or base share, plus an adjustment based on population. However, the Nation's proposal also considers a tribe's geographical characteristics (land share) and the number of its government and business employees. Due to the diversity of tribes, there is no single metric that would be fair to everyone. The Nation believes that this four-part methodology would be fair to tribes of all size, location, and structure. This methodology also uses data inputs that are objective and easily obtainable.

Base Share. Like the statutory allocation for states, the Nation's proposed methodology recommends that a base share be distributed to each tribe. The Nation recommends that \$500,000 of the Fund be distributed to each of the 574 federally recognized tribes. This would total \$287 million, or approximately 3.6% of the Coronavirus Relief Fund for Tribes (Fund).

A base share recognizes that COVID-19 has impacted every tribal community in the country, no matter its location or size. Consequently, every tribe should receive relief. The Nation recommends that the base share be substantial enough so that it provides much-needed relief to every tribe, but not be so high that some tribal communities will have difficulty utilizing the entire amount for COVID-19-related purposes. For tribes receiving only the base amount, the Nation recommends a rebuttable presumption that the funds were utilized solely for COVID-19 expenditures. This would reduce the Inspector General's oversight burden of the Fund.

Land Share. The Nation's proposed methodology recommends that \$800,000,000 (10% of the Fund) be distributed on a sliding scale to federally recognized tribes with a reservation of 10 square miles or more:

- Tribes with at least 10 square miles of reservation land and up to 50 square miles would receive \$1 million;

- Tribes with more than 50 square miles of reservation land and up to 100 square miles would receive \$2 million;
- Tribes with more than 100 square miles of reservation land and up to 200 square miles would receive \$4 million;
- Tribes with more than 200 square miles of reservation land and up to 400 square miles would receive \$6 million;
- Tribes with more than 400 square miles of reservation land and up to 700 square miles would receive \$8 million;
- Tribes with more than 700 square miles of reservation land and up to 1,000 square miles would receive \$10 million; and
- For reservation lands greater than 1,000 square miles, tribes would receive \$10 million, plus \$2 million for each additional 1,000 square miles over 1,000.

A methodology using a land share recognizes that providing services to a larger area requires more resources and costs more money. Within Indian Country, these areas are often spread out over long distances and lack infrastructure, making access to necessities like food and health care difficult. Specifically, within the Nation's largely rural reservation, 27% of households lack electricity, 30% of households lack running water, and less than 25% of roads are paved.

Employee Share. The Nation's proposed methodology recommends an employee share of \$2 billion (25% of the Fund). A tribe's employee share amount would be based on its number of employees as compared to the total number of employees for all tribes. For the purposes of the calculation, employees of the tribal government or any tribal enterprise should be included.

A methodology using an employee share recognizes that, unlike states, many tribes have substantial business enterprises. A tribe that may have a small population or a small reservation may nevertheless have substantial business operations. Many of these businesses have been shut down for over a month and will require significant expenditures to resume and continue their operations. At the same time, many tribes, including the Nation, are continuing to pay their employees while on administrative leave. The Nation and other tribes are accomplishing this despite the fact that their businesses have no incoming revenue. Moreover, unlike states, tribes have a limited tax base, compounding the impact of this crisis. An employee share recognizes these factors that are unique to tribal governments.

For purposes of determining the number of a tribe's government and business employees, the Nation recommends that the Secretary of the Treasury use data from IRS Forms 941 or base the number on a tribal certification.

Population Share. The Nation's proposed methodology recommends a population share of nearly \$5 billion (61.4% of the Fund). A tribe's population share amount would be based on its number of enrolled members as compared to the total enrolled members of all tribes.

A population share would be consistent with the statute's approach to the allocation for state governments. Although Title V specifies that census data should be used for states and local governments, the Secretary is not required to use such data for tribes, and the Nation recommends that the Secretary not use it for this purpose. The Nation believes that census data is flawed because it allows individuals to self-report their tribal affiliation. This results in a Native population that is much higher than the actual number of enrolled tribal members. The Nation believes that each tribe should be able to certify to the Secretary the number of its enrolled members. If a tribe does not submit such information, the Secretary could use the data published in 2005 as part of the American Indian Population and Labor Force Report. Although five years older than the most recent census data (2010), the Nation believes that this report contains a much more useful indicator of the Native population in the United States.

IV. Other General Comments

The Nation offers the following general comments regarding the administration of the CARES Act relief funds reserved for tribes. The Nation believes it is imperative to maintain tribal autonomy, provide flexibility surrounding the use of funds given the uncertainties associated with addressing this unprecedented public health crisis and how long it will last, and serve the broad intent of Title V to address and mediate the hardships caused by the COVID-19 pandemic. Fundamentally, each tribal government – and not the federal government – is in the best position to determine the needs of its member and employee populations.

The Nation urges that tribal governments and tribally owned entities be permitted to use relief funds not just for unanticipated expenditures related to COVID-19, but also for those expenditures that are usually funded with anticipated revenue. Those expenditures might include at least the following:

- Expenditures that otherwise would have been funded but for the loss of revenue;
- Expenses associated with the diminished capacity or closure of governments or entities; including, but not limited to, maintenance costs to keep facilities viable for reopening, costs for converting the facility to another use, costs associated with reopening facilities, and costs associated with providing teleworking equipment and training or securing adequate IT infrastructure;
- Payroll and related expenses for employees while governments or entities are at diminished capacity or closed;
- Costs of financing incurred due to increased expenditures;
- Tribally funded unemployment benefits;
- Costs of financing or refinancing necessary for continued operations; and
- Differences in revenues transferred to tribal government accounts in 2020 relative to the same period in 2019.

Ensuring coverage for the loss of revenue was expressly highlighted on March 27, 2020, during a House of Representatives colloquy (Mr. Gallego: "I want to memorialize that. . . the funds. . . are intended to help cover the loss of revenues that would have otherwise been collected . . . to cover the wages of their employees."; see also statements of Mr. Cole, Mr. Reed, and Mr. Kildee.). The Nation believes that the reference in the colloquy to "loss of revenues" can be interpreted consistently with the statutory requirement that the Fund be used for "increased expenditures." The Nation believes that all of the above-identified expenses fit within the meaning of "increased expenditures."

Finally, the Nation is opposed to a maximum allocation. The statutory formula in Title V for determining a state's allocation does not contain a cap, and the Nation believes that is a sensible approach that should be extended to tribes as well. Putting a cap on a tribe's allocation would be unfair because it fails to recognize the significant differences in needs across tribes. While all tribes are suffering the impacts of the COVID-19 pandemic, large tribes have borne and will bear more of the financial burden due to their reservation size as well as tribal member and employee populations. Put simply, larger tribes must provide more resources to more people over a larger area. The associated expenditures will be immense and are more than likely to greatly exceed any allocation cap.

V. Conclusion

The Nation appreciates the opportunity to comment on this important legislation. COVID-19 has affected tribes in different ways. But it is clear it has impacted all of us substantially. The Nation encourages the Department of the Treasury and Department of the Interior to distribute relief funds to all tribes in a fair and equitable manner, and ensure that such funds can be used flexibly.

Sincerely,

Jonathan Nez, *President*
THE NAVAJO NATION

Myron Lizer, *Vice President*
THE NAVAJO NATION

Seth Damon, *Speaker*
24th NAVAJO NATION COUNCIL

APPENDIX A

PROPOSED METHODOLOGY FOR DISTRIBUTION OF CARES ACT \$8 BILLION TRIBAL RELIEF FUND

1. **Base Share** (\$287,000,000) (3.6% of Fund)
 - a. \$500,000 for each of 574 federally recognized tribes
2. **Land Share** (\$800,000,000) (10% of Fund)
 - a. \$1,000,000 for Reservation land of 10 – 50 square miles
 - i. 50 tribes
 - ii. Subtotal = \$50,000,000
 - b. \$2,000,000 for Reservation land of 50 – 100 square miles
 - i. 17 tribes
 - ii. Subtotal = \$34,000,000
 - c. \$4,000,000 for Reservation land of 100 – 200 square miles
 - i. 20 tribes
 - ii. Subtotal = \$80,000,000
 - d. \$6,000,000 for Reservation land of 200 – 400 square miles
 - i. 14 tribes
 - ii. Subtotal = \$84,000,000
 - e. \$8,000,000 for Reservation land of 400 – 700 square miles
 - i. 9 tribes
 - ii. Subtotal = \$72,000,000
 - f. \$10,000,000 for Reservation land of 700 – 1,000 square miles
 - i. 9 tribes
 - ii. Subtotal = \$90,000,000

g. For Reservation land greater than 1,000 square miles, \$10,000,000, plus \$2,000,000 for each additional 1,000 square miles over 1,000

i. 27 tribes

ii. Subtotal = \$390,000,000

3. Employee Share (\$2,000,000,000) (25% of Fund)

a. $\text{Tribe's Employee Share Percentage} = \text{Tribe's number of employees (government and business)} \div \text{Combined total number of employees of all tribes}$

b. $\text{Tribe's Employee Share Amount} = \text{Tribe's Employee Share Percentage} \times \$2,000,000,000$

4. Population Share (\$4,913,000,000) (61.4% of Fund)

a. $\text{Tribe's Population Share Percentage} = \text{Tribe's enrolled members} \div \text{Total enrolled members of all tribes}$

b. $\text{Tribe's Population Share Amount} = \text{Tribe's Population Share Percentage} \times \$4,913,000,000$

NAVAJO NATION

480

4/16/2020

Navajo Nation Council Special Session

04:01:43 PM

Amd# to Amd#

Consent: Legislation 0050-20

PASSED

MOT Freeland, M

0053-20; 0087-20

SEC Tso, D

0089-20

Yeas : 15

Nays : 0

Excused : 0

Not Voting : 8

Yea : 15

Begay, E

Charles-Newton

Henio, J

Tso, D

Begay, K

Crotty

Nez, R

Tso, O

Begay, P

Daniels

Slater, C

Yellowhair

Brown

Freeland, M

Stewart, W

Nay : 0

Excused : 0

Not Voting : 8

Halona, P

Smith

Tso, E

Wauneka, E

James, V

Tso, C

Walker, T

Yazzie

Presiding Speaker: Damon