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TRIBAL GOVERNMENT HEALTHCARE — CLIENT ALERT

TO: TRIBAL LEADERS AND BUSINESS CLIENTS
FROM: BIG FIRE LAW & POLICY GROUP
DATE: MAY 18, 2020
RE: CARES ACT LEGISLATIVE UPDATE

Our country and the world continue to grapple with the coronavirus pandemic (COVID-19). Some states and countries are beginning to lift stay at home orders as people become more restless under the toll that this public health and economic crisis is taking. The pandemic has ravaged the American economy and some parts of the country continue to see a rise in coronavirus cases and deaths and some are seeing a decrease in coronavirus cases and deaths. Indian Country is tragically experiencing some of the greater hotspots in the country such as the Navajo Nation.

This update is on the *Coronavirus Aid, Relief, and Economic Security Act* (“CARES Act”) that includes provisions for relief for tribal governments and H.R.6800 - the Health and Economic Recovery Omnibus Emergency Solutions Act (“HEROES Act”).

I. CARES ACT – CORONAVIRUS RELIEF FUND

On March 27, Congress passed the CARES Act and created the Coronavirus Relief Fund (“CRF”) for state, local and tribal governments to respond to COVID-19. The CRF set aside \$8 billion in immediate assistance for Tribal governments for expenses directly related to COVID-19 response. Expenses must have been unbudgeted and are not otherwise covered by the tribe’s budget.

The U.S. Department of the Treasury (“Treasury”) and the U.S. Department of the Interior held consultations with Indian tribes regarding methodology for distribution of the fund and collected requested information in an online portal in order to make the payment to Tribal governments.

Due to ongoing litigation over the inclusion of Alaska Native corporations in the distribution of the fund, only sixty percent of the fund has been distributed. See *The Confederated Tribes of the Chehalis Reservation et al v. Mnuchin* (D.D.C. Civil Action No. 2020-1002). The first of two expected payments was distributed the week of May 4.

As for distributing the remaining forty percent of the fund, Treasury is requesting additional information from Indian tribes. On May 14, Treasury issued a guidance seeking employment information and expenditure information that states, “This information will be required to be submitted by tribal governments through an electronic form that will be made available on Treasury’s website early in the week of May 17. The required information should not be submitted to Treasury other than through the electronic form.” Additional guidance may be coming from Treasury giving specific dates that information must be submitted by the Tribes.

See the “Guidance to Tribes for Completing Supplemental Request for Information” attached at the end of this document or at the following link:

<https://home.treasury.gov/system/files/136/Tribal-Employment-and-Expenditure-Submission-Instructions.pdf>

**Register Now: Join a "Tribal Forum" with Treasury regarding this guidance
Monday May 18, 2020 3:30pm EST**

**Hosted By:
National Congress of American Indians
Native American Finance Officers Association**

[REGISTER HERE](#)

II. HEROES ACT

On May 12, the HEROES Act was introduced in the U.S. House of Representatives. This \$3 trillion bill is considered the fifth coronavirus relief package.

Logging in at 1800 pages, some highlights for Indian Country include:

- adds \$20 billion to the CRF for tribal governments;
- clarifies that only federally recognized tribal governments are eligible for the CRF;
- clarifies that CRF can cover lost revenues;
- provides additional direct payments of up to \$1,200 per individual;
- provides \$1 billion for the Community Development Financial Institutions Fund with no less than \$25 million for financial and technical assistance, training, and outreach for Native American, Native Hawaiian, and Alaska Native communities;
- provides \$100 million for housing improvement;
- provides \$4 million for special domestic violence jurisdiction under title IX of the *Violence Against Women Act*;
- establishes voting rights protections on Indian reservations;
- provides \$2.1 billion to Indian Health Service; and
- provides \$1.5 billion to state and tribal governments for drinking water and wastewater treatment improvements including a maximum of 10 percent tribal set aside.

On May 15, the U.S. House of Representatives passed the HEROES Act by a vote of 208-199. It is not expected to be taken up by the U.S. Senate in the near future.

III. CARES ACT LITIGATION

Big Fire Law represents a tribe in *The Confederated Tribes of the Chehalis Reservation et al v. Mnuchin* (D.D.C. Civil Action No. 2020-1002). On April 27, the United States District Court for the District of Columbia granted a preliminary injunction in the tribes' favor. Alaska Native corporations are seeking to join the lawsuit to appeal the decision. On May 19, the Alaska Native corporations' reply brief on this issue is due, which is the court's next deadline in this litigation.

If you have any further questions regarding these issues please contact one of the following attorneys of Big Fire:

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Guidance to Tribes for Completing Supplemental Request for Information

The information submitted on this form will be used to determine the second distribution of the Coronavirus Relief Fund to Tribal governments using the [Coronavirus Relief Fund Tribal Allocation Methodology](#) posted on Treasury's website on May 5, 2020.

This information will be required to be submitted by tribal governments through an electronic form that will be made available on Treasury's website early in the week of May 17. The required information should not be submitted to Treasury other than through the electronic form.

Employment Information

Enter the number of employees shown on line 1 of IRS Form 941 for each quarter of calendar year 2019. Include information separately for employees that are employed by the Tribal government directly and employees that are employed by any entity of which the Tribal government owns at least 51% of the ownership interests. Do not include any independent contractors or employees of independent contractors. If an entity was not in existence or otherwise had no employees for any calendar quarter in 2019, enter N/A for that quarter for the number of employees.

If there is more than one employing entity or more than one Employer Identification Number (EIN) for either line in the form, provide a separate schedule with details for each employing entity.

For each employer, submit a pdf file or other electronic copy of the supporting Form(s) 941 or equivalent third-party payroll service provider report(s) in electronic form. Employer identification information (name and EIN) and the information on line 1 of Form 941 is required; other information may be redacted.

If an employer files IRS Form 944 rather than Form 941, check the box indicating that the employer does not file IRS Form 941. Employers who file Form 944 are exempt from reporting the quarterly number of employees on this form.

Expenditure Information

Enter total governmental expenditures for the 12 months of the 2019 fiscal year in the line labeled "Total governmental expenditures". Governmental expenditures include, but are not exclusive of, general government, public safety, health services, wellness services, substance abuse, general welfare and assistance, community services, cultural programs, education, recreation, housing, economic development, planning and development, sanitation, judicial, and similar activities, provided that capital outlays and debt service costs shall not be included within governmental expenditures.

In the line labeled "Total amount of federal financial assistance," include amounts representing federal financial assistance included in the "Total governmental expenditures" line.

Submit a worksheet that shows how the dollar amounts are derived. Include links or relevant pages from financial documents to support the figures. Information provided on this form should

be consistent with information presented by the relevant entity in any financial statement filed pursuant to the Single Audit Act or program-specific audit, as applicable.

SUPPLEMENTAL REQUEST FOR TRIBAL INFORMATION

Name of Tribe:

<u>NUMBER OF EMPLOYEES</u>	Calendar Year 2019			
	<u>Q1</u>	<u>Q2</u>	<u>Q3</u>	<u>Q4</u>
Employed by Tribe	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Employed by Tribal entities	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
If the Tribe does not file IRS Form 941, check here:	<input type="checkbox"/>			

SUPPLEMENTAL REQUEST FOR TRIBAL INFORMATION

Name of Tribe:

EXPENDITURES

Fiscal Year 2019

Total governmental expenditures

Total amount of federal financial assistance