



June 19, 2020

The Honorable Mike Crapo, Chair  
Senate Banking Committee  
534 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Sherrod Brown, Ranking  
Senate Banking Committee  
534 Dirksen Senate Office Building  
Washington, DC 20510

Re: Economic Stabilization Fund – Establish a Lending Facility for Tribal Governments

Dear Chairman Crapo and Ranking Member Brown:

We write to express our concerns with implementation of the CARES Act, Title IV, the Economic Stabilization Fund (“the Stabilization Fund”), and the failure to establish a lending facility to serve the unique financing needs of Tribal Governments. Without a lending facility to help Indian Tribes and Tribal Government-owned enterprises meet growing financial obligations during the nearly three-month economic shutdown due to the coronavirus, a number of Tribal enterprises will fail, and Tribal and nearby rural economies will never recover.

From a health care standpoint, the virus has placed a spotlight on the longstanding health care disparities on Indian lands. Native Americans have the highest rates of diabetes, heart disease, and asthma, making them more susceptible to contracting the coronavirus. Understaffed hospitals and health care centers couple with over-crowded homes and the lack of clean running water has triggered the spread of the virus in Native communities. The result: If Indian Tribes were counted as states, the five most-infected states in the country would all be Indian Tribes. The per capita infection rate on the Navajo Nation surpassed the State of New York on Memorial Day with 2,680 cases per 100,000 people compared with 1,890 in New York. Two Pueblos in the State of New Mexico suffer infection rates of more than 3,000 per 100,000 citizens—10 times the State’s rate.

These health impacts have been incurred despite swift and early action taken by Tribal Government leadership. Knowing that prior pandemics inflicted death and trauma on Tribal communities at rates four times the national average, Indian Tribes closed enterprise operations and issued lockdown orders in early March to help slow and stop the spread of the coronavirus.

Without a tax base to generate governmental revenue, Indian Tribes rely on government-owned enterprises to generate revenue for essential services, including health care, education, public safety, housing and social services, to their communities. In Indian Country, a large majority of these government-owned enterprises are in the hospitality industry: Indian gaming, hotels, restaurants, and related services. The sole purpose of these government-owned enterprises is to generate revenue, which is required by both federal and tribal law to be distributed to the Tribal Government to be used for governmental purposes.

The impacts of shuttering business operations have hit Tribal Government revenues much harder than state and local government revenues. While a number of state governments project

revenue shortfalls of 15-30% in the short term, Tribal Government revenues—generated by Tribal enterprises—were completely eliminated during operation closures. With essentially no revenue coming in, Tribal Government-owned entities continue to face the financial obligations of governing and keeping Tribal Government-owned enterprises viable – so that our workers have jobs to return to when we defeat this pandemic.

The characteristics of Tribal Government debt and financing are unlike the nature of state and municipal government debt. Indian Tribes occupy lands held in trust for their benefit by the United States. These trust lands cannot be leveraged or used as collateral. The majority of Tribal Government and Tribal-enterprise debt is private bank debt. It is not publicly traded as is common in the state and municipal markets. As a result, a Stabilization Fund lending facility that focuses on traditional publicly traded government debt with market ratings and collateralization requirements makes them inaccessible to tribal governments.

### ***Faulty Implementation of the CARES Act's Stabilization Fund***

The CARES Act Stabilization Fund sought to support the credit needs and protect liquidity of both corporate entities and government / municipal entities. Section 4002(10)(E) expressly defines the term “State” to include the several States, the District of Columbia, U.S. territories and possessions, multi-State entities, and “any Indian Tribe”.

However, instead of establishing a unique lending facility to meet the financing needs of Indian Tribes within the Municipal Liquidity Facility, the Treasury Department included Tribal Government-owned businesses in the Main Street Lending Program. The terms of these facilities prohibit the borrowing business from making distributions, effectively making the Main Street program unusable by Tribal Governments, and there is no direct ability for a Tribal Government to borrow for its governmental purposes. As noted above, Indian Tribes established their enterprises to generate revenue, which must be distributed to the Tribal Government to be used for governmental purposes, as required by tribal and federal laws. These revenues stand in the place of tax revenues that states receive and tribes do not. These revenues aren't “dividends,” but are properly characterized as the necessary liquidity governments need to generate in order to deliver essential government services.

At the same time, the current Municipal Liquidity Facility (“MLF”) will also not work for Indian Country. The Fed-established terms for the MLF are limited to notes that do not reflect existing private bank debt of Tribal Governments and their enterprises, require maturation dates of no more than 3 years, and require eligible issuers to prove market ratings that the great majority of Tribal Governments have not sought to obtain. If the intent is for state governments to be able to use the facility and then lend funds downstream to Tribal Governments within their state, that intent needs to be clarified.

To make the CARES Act's Economic Stabilization Fund available to Indian Tribes, we urge you to amend the provisions of the Stabilization Fund in the next COVID-19 related legislative relief package as follows:

- *Tribal Municipal Liquidity Facility*—Expressly include all federally recognized Indian tribes without population limitations in the Municipal Liquidity Facility as originally intended by the clear text of the CARES Act. To prevent unintended barriers, we request that Section 4003(c)(3)(E)— Government Participants, be amended to create a tribal set aside that reserves at least \$50 billion for tribal debt purchasing and \$30 billion for loan guarantees, and to provide for Treasury consultation to create a program that addresses the unique debt and liquidity needs of tribal governments and their enterprises. The first amortizing payment

should be due no earlier than 365 days given that tribal government revenues from enterprises have ceased. Consideration should be given to a favorable loan term of up to ten-years, with the going treasury interest rate to match the term.

- *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 pre-pandemic 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.

While this legislative relief is pending, there is also much that the Federal Reserve Bank and Treasury can do immediately by revision of the Term Sheets and FAQs for the Municipal Liquidity Facility and Main Street Lending Program. Consistent with each of your statements and the testimony at the Committee's recent hearings on May 19 and June 2, there is authority under Section 13(3) of the Federal Reserve Act and Title IV of the CARES Act for extending these lifelines downstream beyond just states and large municipalities, including to tribal governments.

We request that you urge the Fed and Treasury to confirm:

1. That a Tribal Government located within (in whole or in part) a State is an "other governmental entity" as used in the "Eligible Use of Proceeds" section of the MLF term sheet – and that a State borrower may use MLF proceeds to aid or lend to such a Tribal Government.
2. That a Tribal Government with eligible existing debt that otherwise qualifies for the Main Street Expanded Lending Facility is not precluded because it is a "tribal government" and not a "tribal business" under the SBA rules and guidance to date.

The current implementation of the \$454 billion CARES Act's Economic Stabilization Fund is greatly appreciated, but does not properly take into consideration the unique financial needs of Tribal Governments and their enterprises. The reasons stated above warrant the full attention of Congress and the Administration to take all appropriate and immediate action to support the distinctive financing needs of Tribal Governments. Without your support, Tribal Government distressed debt will adversely impact not only tribal economies, 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.

Thank you for your consideration of these requests. Your help in establishing a properly fashioned lending facility to meet the needs of Indian Country will help tribal communities, and not make worse the already devastating health impacts of COVID-19, and prevent a long-term economic depression.

Sincerely,

National Congress of American Indians

National Indian Gaming Association