



United States Department of the Interior
OFFICE OF THE SOLICITOR
Washington, D.C. 20240

To: Jason Freihage, Deputy Assistant Secretary – Management
From: Bryan Shade, Attorney-Advisor
Date: June 26, 2020
Subject: Reprogramming CARES Act Division B, Title VII – Operation of Indian Programs Tribal Priority Allocations

You asked whether tribes may reprogram Tribal Priority Allocation (TPA) funds received under CARES Act Div. B, Title VII - Operation of Indian Programs between TPA accounts in order to prevent, prepare for, and respond to coronavirus. Yes, tribes may reprogram TPA funds received under CARES Act Div. B, Title VII – Operation of Indian Programs (Title VII) between TPA accounts for purposes of coronavirus prevention, preparedness, and response.

I. Background.

The CARES Act provided an additional \$453 million to the Bureau of Indian Affairs (BIA) for Operation of Indian Programs (OIP) to prevent, prepare for, and respond to the COVID-19 pandemic.¹ The additional funding may be used for “public safety and justice programs, executive direction to carry out deep cleaning of facilities, purchase of personal protective equipment, purchase of information technology to improve teleworking capability, welfare assistance and social services programs (including assistance to individuals), and assistance to tribal governments... .”² Title VII required that not less than \$400 million be made available to meet the direct needs of tribes but provided no further directive regarding how the funds should be allocated among tribes. In addition, funding provided under the CARES Act could be transferred to tribes under the Indian Self-Determination and Education Assistance Act (ISDEAA).³

BIA identified \$420 million to award directly to tribes via the ATG and WA programs.⁴ Specifically, BIA allocated \$20 million to the WA program⁵ and \$380 million to the ATG program.⁶ The remaining \$20 million was set aside in an internal reserve account to address

¹ Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, Div. B, Title VII, at 709, 10 (2020).

² *Id.*

³ *Id.* (“That funds provided under this heading in this Act, *if* transferred to tribes and tribal organizations under the Indian Self-Determination and Education Assistance Act, will be transferred on a one time basis and that these non-recurring funds are not part of the amount required by 25 U.S.C. § 5325). Emphasis added.

⁴ Letter from Tara Sweeney, Asst. Sec’y, Indian Affairs, U.S. Dep’t of Interior, to Tribal Leaders (April 13, 2020), https://www.bia.gov/sites/bia.gov/files/assets/as-ia/opa/pdf/IA%209185%20DTLL%20CARES%20Distributions_508.pdf

⁵ *Id.*

⁶ *Id.*

emerging tribal needs.⁷ All \$420 million was distributed to tribes under ISDEAA contracts or self-governance funding agreements. The funding methodology for both the WA and ATG awards was based solely on tribal enrollment data. Tribes with smaller populations received as little as \$1,000 for COVID-related WA. A number of those small tribes have indicated to BIA officials that the awards were too small to support COVID-related WA and have expressed a desire to reprogram those funds to ATG in order to maximize the impact of those funds.

II. Reprogramming Tribal Priority Allocations

The Indian Affairs Manual at Part 26 provides guidance regarding reprogramming, or, “movement of funds from one account to another within the same appropriation.”⁸ Generally, reprogramming of Operation of Indian Programs funds cannot exceed \$1 million or 10% in cumulative increases or decreases without congressional approval; however, there is no such restriction regarding reprogramming between accounts designated as Tribal Priority Allocations (TPA).⁹

Title VII authorizes funds to be made available as TPA funds for tribal response and capacity building activities.¹⁰ TPA is the BIA budget formulation process that allows tribal government involvement in setting the priorities for locally operated programs.¹¹ Tribes may prioritize TPA funding across different budget areas, including tribal government, human services, natural resources management, real estate services, public safety and justice, community and economic development, and executive direction and administrative services.¹²

Consequently, because Title VII funds are made available as TPA funds and such TPA funds may be reprogrammed between TPA accounts, Title VII funds may be reprogrammed between TPA accounts in accordance with 26 IAM 5 to allow tribes to prevent, prepare for, and respond to coronavirus in accordance with Division B, Title VII of the CARES Act.

III. Conclusion.

Tribes may reprogram TPA funds received under CARES Act Div. B, Title VII – Operation of Indian Programs between TPA accounts for purposes of coronavirus prevention, preparedness, and response.

⁷ *Id.*

⁸ 26 IAM 5.4(A) (August 26, 2001).

⁹ *Id.*

¹⁰ Pub. L. No 116-136 at 710.

¹¹ 25 CFR § 46.2.

¹² See U.S. Dep’t of Interior, Bureau of Indian Affairs, *Budget Justification and Performance Information Fiscal Year 2020 26* (2020).