
Dear Secretary Mnuchin and Acting Commissioner Kautter:

NAFOA, in representing the economic interests of over 100 Indian tribal governments, has a clear mission to build and grow tribal government economies. We accomplish our mission by advocating for effective economic policy solutions. In furtherance of our mission, we welcome the opportunity to comment on the U.S. Department of the Treasury (Treasury Department) and the Internal Revenue Service request for public comment on recommendations for items that should be included on the 2018-2019 Priority Guidance Plan (PGP).

As you are aware, Indian Country has limited options when it comes to public financing. These limitations stem primarily from the fact that tribal governments, unlike state and local governments, are subject to the “essential governmental function” restriction on the issuance of tax-exempt governmental bonds. Under this restrictive test, even projects frequently financed by other governments have been disqualified when undertaken by tribes. Housing, utilities, recreational facilities, parking garages and even health care facilities have been treated as “non-essential” under present law.

The temporary Congressional solution — authorizing tribes to issue limited volumes of Tribal Economic Development Bonds (TEDBs) — has its own challenges. Initially, the very low caps placed on the amount of debt each tribe could issue, along with additional administrative hurdles, made TEDBs unattractive for many tribal governments. Now that some of these problems have been resolved, tribes are utilizing TEDBs more freely, but the overall TEDB bond volume cap (recently estimated by IRS at less than $400 million) will soon be depleted. Once this amount is used up, additional allocations can be made only if Congress re-authorizes them.

NAFOA is writing to urge Treasury Department and IRS to add a guidance project to the 2018-2019 PGP confirming that tax-exempt debt issued pursuant to a TEDB allocation can be
refinanced. Past IRS notices have consistently clarified that similar types of specifically allocated
debt, such as Liberty Bonds, Gulf Opportunity Zone Bonds, and other disaster area bonds, can be
refinanced without a duplicative allocation. There is no reason to reach a contrary conclusion with
respect to TEDBs. Nevertheless, confirmation in the form of generally applicable guidance (e.g.,
a Notice) on which tribes can rely is urgently needed.
I would be happy to discuss NAFOA’s position further.

Please let me know if you have additional questions. Thank you in advance for your consideration.

Sincerely,

Dante Desiderio
Executive Director

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