



Casinos and CARES Act Funding

by Kris Nixon

Casinos have experienced many issues throughout 2020 related to the COVID-19 pandemic. All were shut down for a period of time, some are still closed, and there are wide ranging economic effects to casinos and related tribes. Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act this past March to provide assistance to families, small businesses, and state, local and tribal governments with the primary goals of providing relief to those that were affected by the pandemic and preserving jobs for American industries. Tribal governments were provided relief funds under the CARES Act through the Coronavirus Relief Fund (CRF) administered by the Treasury Department.

What Purposes Can the Funds Be Used For?

In general, the CRF funds should only be used to cover expenses that:

- Are necessary expenditures incurred due to the public health emergency.
- Were not accounted for in the budget most recently approved as of March 27, 2020.
- Were incurred from March 1, 2020 through December 30, 2020.

The Treasury Department has provided guidance for tribal governments on their website (home.treasury.gov) through several documents including Frequently Asked Questions (FAQ), by which we can determine that funds can be passed through to casinos. Question 10 under section B provides that funds can be transferred to “political subdivisions” of governments, to which casinos would be included.

The FAQ Question 24 provides that tribes can provide grants to small business for business interruption caused by required closures. If the tribe has determined that the casino incurred costs in relation to business interruption caused by the closures, those costs could be eligible expenses under the CARES Act. The FAQ Question 45 also provides that recipients can be provided funds to cover the expenses incurred to publicize the resumption of activities and the steps taken to ensure a safe experience. Personal protective equipment for the casino is another allowable cost.

One exception to the spending limitations noted above are audit costs. Recipients and sub-recipients subject to the Single Audit Act may use CRF funds to cover a reasonable proportionate share of the audit costs in relation to the pandemic after the December 30, 2020 deadline, as long as

they are reported to the Treasury Office of Inspector General by the quarter ending September 2021.

Documentation of the Use of Funds

While the guidance is not out yet on the requirements for audits over the funds, funds passed through to the tribe will be subject to the Single Audit Act and your auditors will most likely audit those funds. Therefore, the documentation that the expenses are incurred in accordance with the guidance is important.

For example, a casino wants to improve their surveillance system. If this had been budgeted prior to March, or is not directly related to the pandemic, then this would not be an allowable expense. However, if the purpose of the surveillance upgrade was for contact tracing, and it was documented properly to demonstrate that this was necessary for the public health emergency, then it could be an allowable expense. We recommend tribes and casinos fully document how each expense under the CRF meets the three criteria noted above.

Other Considerations of Passing Funds to Casinos

The Single Audit Act applies to any entity that spends more than \$750,000 of federal funding, including expenses under the CRF, in a fiscal year. The guidance is also clear that it applies to sub-recipients of tribes who have spent funds, which could include casinos.

Will the Single Audit Act apply to your casino? The answer is: it depends. If the casino is a separate legal entity, also referred to as a component unit, then in general the expenses related to the casino should be reported under the casino and the CRF funding should be provided to the casino. And pending further guidance, the casino would be subject to the Single Audit Act. However, there has been discussion that if the casino is an enterprise fund, GASB standards may allow the tribe to record the COVID expenses related to the casino, and not have the casino subject to the Single Audit Act (the funds spent by the tribe would still be subject to the Single Audit Act). We recommend that you work with the auditor of the casino and the tribe to determine if a single audit would be required.

If the casino is now subject to a single audit, there are many ramifications. First of which, there could be stricter requirements for procurement and internal controls that might not be currently in place at the casino. These should be reviewed and the casino should ensure compliance with those additional

requirements prior to spending the funds. Single audits also require that the financial statements be uploaded to the Federal Audit Clearinghouse. If CRF funds are the only federal funding the casino has, the casino can have a program audit which does not require the financial statements to be submitted to the Federal Audit Clearinghouse.

The Office of Management and Budget releases a compliance supplement every year to give auditors guidance on how to audit funding under the Single Audit Act. They have announced they will release a supplement to the 2020 compliance supplement to address the CARES Act funding, including the CRF funds. Until the compliance supplement is released, there will be many questions on how the funding should be documented, what entities will be subject to the Single Audit Act, and what requirements auditors are going to be tasked to audit.

Conclusion

The FAQ is clear, if CRF funds are not spent, or not spent in accordance with the guidance, the funds will have to be paid back to the Treasury. Therefore, it is important that casinos and tribes have a solid plan to spend the funds, document how the funds were spent in accordance with the funding requirements, and ensure there is a plan to comply with the Single Audit Act, if required. Casinos should work with management of the tribe, tribal council, tribal attorneys and the auditors of the casino and tribe to ensure they are in compliance with the funding to retain the funds for the purpose of providing relief to the tribe and those in the community that have been affected by the pandemic. ♣

Kris Nixon is a partner with Stauffer & Associates, a certified public accounting firm. He can be reached by calling (509) 344-3200 or email kris@stauffer-cpa.com.



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