

Tribal Government Financial Reporting Framework Summary

Summary:

- Issue: Currently, if a tribal government entity uses the commercial (FASB) financial reporting framework, a dual audit opinion may be issued: 1) an adverse opinion on generally accepted accounting principles (GASB) financials and 2) a clean opinion on compliance with FASB standards.
- Ask: 1) The Financial Accounting Foundation (FAF) to convene and provide oversight of a workgroup of stakeholders in respect to the standards of financial accounting and reporting of tribal governments, including the tribal government community, GASB, FASB, and the AICPA. 2) The purpose of the workgroup is to find a solution that will both accommodate the tribal government governance model and allow a clean audit opinion on FASB financial statements. 3) The technical solution may include a “hierarchy” standard similar to the FASAB, a change in the definition of an investment, a government, a post-implementation review (PIR), or a separate financial reporting model.

Background Information:

The tribal government model of using economic revenue in lieu of a tax base evolved out of necessity and is unique in the family of governments recognized in the U.S. Constitution. Accounting standards centered primarily on tax revenue to fund government operations do not serve the interests of all governmental entities.

Tribal government and their business enterprises entities generally issue financial statements using the governmental financial reporting framework (GASB). In some circumstances, tribal entities that meet the definition of a government (gaming enterprises, tribally-owned banks, 501(c)(3) non-profits, and other business enterprises) select the commercial (FASB) financial reporting framework. The American Institute of Certified Public Accountants (AICPA) and other standard setters have acknowledged that the use of FASB is more predominant in tribal governments due to the reliance on economic development to fund government functions, due to the lack of a tax base utilized by other governmental agencies. Considerations that lead a tribe to select the FASB framework might include: a tribe acquires an entity that uses the FASB framework; regulatory requirements of the Securities and Exchange Commission (SEC), Federal Deposit Insurance Corporation, or other federal agency; stipulations in contractual arrangements including loan covenants; access to capital markets; being in industries that GASB does not provide guidance; and/or laws or regulations of the tribe.

The AICPA has provided “non-authoritative” guidance that allows auditors to issue a dual audit opinion on FASB financial statements. The auditor’s report contains an adverse opinion for GASB financials stated at the beginning of the report and a second clean opinion on compliance with

FASB standards stated at the end of the report. An adverse opinion may convey to users of the financial statements that the financial statements are misrepresented, misstated, or does not accurately reflect financial performance.

One of the main tenants as an auditor is to provide assurance that financial statements are presented fairly, which increases the confidence in the tribe, reduces investor risk, and reduces the cost of capital. A dual audit opinion requires educating all users of financial statements on interpreting the results. Confusing opinions counteract the objectives of accounting standards and consequently impact the economic health of Indian Country.

Recommendation:

The FAF provides oversight, administration, financing, and appointments of the GASB and the FASB. Its mission is to *"establish and improve financial accounting and reporting standards to provide useful information to investors and other users of financial reports and to educate stakeholders on how to most effectively understand and implement those standards."*

To fully support this mission and show an understanding of tribal governance, requires the appointment of a workgroup with all stakeholders involved to find a solution that will both accommodate the tribal government governance model and allow a clean audit opinion on FASB financial statements. That solution may include a technical fix to the definition of a government or an investment to accommodate the tribal government economic development revenue generation model. It may also include a "hierarchy" standard, similar to the FASAB, a Post Implementation Review of certain standards to evaluate the effectiveness of the standard-setting process in respect to tribal governments for both the FASB and the GASB.

Supplementary Information: The Tribal Economic Governance Model

Long before the establishment of the United States of America, tribal governments negotiated treaties with other nations, engaged in commerce and trade, provided for their people, and governed themselves. Through treaties, statutes, executive orders, and judicial decisions, tribes have retained sovereign rights. Today, the U.S. government recognizes more than 500 tribal governments in 35 states. These federally recognized tribes are domestic sovereigns, along with states and local governments.

Agreements between the United States and tribal governments contained promises of federally provided programs and services such as healthcare, education, law enforcement, and housing in exchange for lands and peace. However, these promises, commonly known as the U.S. trust responsibility, have always fallen short. Making matters more difficult, tribal governments do not have a viable tax base and lack the ability to tax federal trust lands.

As a result of federal shortfalls and a limited tax base, tribal governments have been forced to adjust. Tribal governments have come to rely on revenues generated from economic development to provide government programs and services. And, unlike state and local governments, elected tribal officials have the added responsibility and financial obligation of continuing ceremonial and cultural programs. The longevity of tribal governments and their role to maintain and enhance the well-being of tribal citizens through the provision of programs like the General Welfare Exclusion results in financial information and policy demands that differ from those of a local government. While the results of this reliance on economic activity are mixed, many tribal governments rely on this revenue in the same manner that state and local governments rely on tax revenues to provide a broad variety of vital services to citizens.

Financial accountability in reporting and investment decisions to meet public accountability is defined by each tribal government. Tribes do not have the same type of constituency as state and local governments. Moreover, using economic revenue in lieu of a tax base requires that tribes engage in competitive business markets that state and local governments do not undertake. Therefore, maintaining the confidentiality of financial data and information about other activities is important to tribal governments. Tribes keep financial information private unless other arrangements are agreed to, such as when a tribe accepts federal grants and contracts.¹

Some of the principal environmental differences in investments between a tribe and local government are the organizational purpose, the source of revenue, the potential for longevity, and the fact that tribes are not on par with states regarding the SEC registration requirements and other rules applicable to financing and investments. Tribal governments are excluded from in the SEC definition of a “government body” and are therefore not exempt from registration requirements. This lack of exemption causes tribally-issued debt to be more costly and cumbersome to underwrite and maintain. In addition, tribes are prohibited from entering into investments in the same manner as local government pensions.

¹ The confidentiality of tribe financial information was recognized by the National Indian Gaming Commission and per 25 CFR Part 517, tribes may deny certain requests under the Freedom of Information Act.

While the tribal economic governance model is both acknowledged and supported by the federal government, there is little education available. The circumstances of tribal government operations and environments reveal the appropriate capacity building needs.

Supplementary Information: Definition of a Government

The following definition of a governmental entity specifically relates to whether to apply GAAP under GASB or FASB standards (paragraph 1.01 of SLG):

- Public corporations and bodies corporate and politic are governmental entities.
- Other entities are governmental entities if they have one or more of the following characteristics:
 - a) Popular election of officers or appointment (or approval) of a controlling majority of the members of the organization's governing body by officials of one or more state or local governments
 - b) The potential for unilateral dissolution by a government with the net position reverting to a government
 - c) The power to enact and enforce a tax levy

Financial Accounting Foundation Hierarchy:

