

## EXHIBIT A

### CHOCTAW NATION GENERAL WELFARE ASSISTANCE CODE

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## **SECTION 1 TITLE.**

This Code shall be known as the General Welfare Assistance Code of the Choctaw Nation of Oklahoma.

## **SECTION 2 DEFINITIONS.**

For purposes of this Title, the following words and phrases shall have the meanings set forth below:

- A. “Administrative Entity(s)” means a department of the Tribal government that is authorized and funded, through an approved budget, to administer and provide, under the direction of the Chief, Assistance under an Approved Program under this Title;
  - B. “Applicant(s)” means a Member of the Nation who has applied for Assistance under this Title. It also includes an Identified Group, as defined in subsection M, below;
  - C. “Approved Program(s)” means any program or programs approved by the Chief to provide General Welfare Assistance to Applicants that is intended to qualify for treatment under the General Welfare Doctrine, as defined herein. It includes, for example, the payment or provision of services or benefits related to housing, education, employment training, elder or disabled status, cultural and religious programs or for other qualifying assistance, such as transportation costs, etc.;
  - D. “Assistance” or “General Welfare Assistance” means service, benefits or payments under an approved program, which are paid to or made on behalf of a beneficiary pursuant to this Title, provided, that such Assistance shall be owed back to the Nation from the Nation citizen recipient in the event the Assistance is deemed forfeited as provided for in Section 12 of this Title;
  - E. “Assistance Committee” means an existing committee of Choctaw Nation Associates appointed by the Chief which advises the Chief on the administration of Approved Programs under this Title. The Assistance Committee is responsible for proposing to the Chief, for approval, the guidelines for Approved Programs, including, but not limited to, Applicants’ eligibility, assistance levels, policies and procedures for approving assistance, and, if necessary, the forfeiting of such assistance;
  - F. “Associates” means an employee of the Choctaw Nation of Oklahoma.
  - G. “Beneficiary” means an enrolled citizen of the Choctaw Nation of Oklahoma entitled to receive welfare assistance payments or services pursuant to this Title;
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- H. "Chief" means the duly elected Chief of the Choctaw Nation of Oklahoma, or, at the discretion of the Chief and upon his specific and limited delegation of authority, the Assistant Chief or other person designated by the Chief.
- I. "Member " or "Nation Member " shall mean an individual who is an enrolled member of the Choctaw Nation of Oklahoma.
- J. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended;
- K. "Council" or "Tribal Council" means the duly elected governing body of the Choctaw Nation of Oklahoma;
- L. "General Welfare Doctrine" means the doctrine, as recognized by the U.S. Internal Revenue Service, permitting a sovereign tribal government, subject to certain conditions, to provide assistance to its Members without that assistance subjecting the recipients to federal income tax liabilities;
- M. "General Test" means the process used to presumptively conclude that Assistance is within the General Welfare Exclusion safe harbors described in IRS Revenue Procedure 2014-35 because such Assistance is: (1) paid by or on behalf of the Nation (2) under a social benefit program of the Nation, (3) based on either the needs of the Choctaw Nation itself or upon the individual needs of the Beneficiary recipient (which need not be financial in nature), and (4) not compensation for services or per capita payments.
- N. "Lavish" and/or "Extravagant" shall have the meaning determined by the Chief in his sole discretion based on all facts and circumstances, taking into account needs unique to the Nation as well as the social purpose being served by the particular Assistance at hand, except as otherwise may be required for compliance with final guidance issued under Internal Revenue Code Section 139E following consultation between the Nation and the IRS;
- O. "Identified Group" means Members who are members of an identified group, such as veterans.
- P. "Safe Harbor Program" shall refer to an Assistance program that meets the safe harbor requirements set forth herein and IRS Revenue Procedure 2014-35, as the same may hereafter be amended. Need shall be presumed for Assistance provided under a Safe Harbor Program.
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### **SECTION 3 PURPOSE.**

The Nation provides Assistance to Applicants and desires to affirm its sovereign right to do so on a non-taxable basis, pursuant to the General Welfare Doctrine. Both the United States Congress, through its enactment of the Tribal General Welfare Exclusion Act of 2014, and the Internal Revenue Service, through its traditional application of the general welfare doctrine and subsequent guidance, has recognized the sovereign right of Indian tribal governments to provide financial assistance to its Members under certain circumstances on a non-taxable basis. The purpose of this Title is to establish guidelines for 1) Applicants applying for Assistance and 2) Nation staff making eligibility determinations for Assistance. Further, it is the intent of the Tribal Council that all Assistance provided under this Title:

- A. Is made under an Approved Program;
- B. Is available to any Applicants who satisfy the program guidelines, subject to budgetary restraints;
- C. Is made under an Approved Program that does not discriminate in favor of the Chief, Assistant Chief, Executive Officers, or individual members of the Tribal Council;
- D. Is not provided as compensation for goods or services; and
- E. Is not lavish or extravagant under the facts and circumstances, as determined by the Chief.

### **SECTION 4 RATIFICATION OF PRIOR ACTS; LEGISLATIVE INTENT.**

- A. The Tribal Council, the legislative body of the Nation, has traditionally exercised the Nation's sovereign right to appropriate funds and authorize Assistance in order to promote the general welfare and best interests of the Nation;
  - B. The Chief, as the chief executive officer of the Nation, has traditionally exercised and administered, pursuant to the Nation's Constitution, the Nation's sovereign right to provide and administer Assistance in order to promote the general welfare and best interests of the Nation and its Members;
  - C. The enactment of this Title shall not be construed in a manner to invalidate any prior acts and exercises of the sovereign authority of the Nation in providing Assistance prior to the effective date of this Title and the Tribal Council hereby specifically ratifies its prior acts appropriating funds and authorizing Assistance;
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- D. The Tribal Council hereby further finds that all such appropriation and authorization of need-based Assistance provided to promote the general welfare of the Nation and its Members is, and has been intended to reflect, the sovereign act of a tribal legislative body under the General Welfare Doctrine; and
- E. This Title, therefore, does not create or establish new general welfare assistance rights or any related program. It merely memorializes, confirms and codifies existing procedures used by the Nation in administering its Assistance programs and services, which are hereby declared to be an inherent right of tribal sovereignty exercised by the Council and the Chief under the Constitution of the Choctaw Nation of Oklahoma. Finally, this Title is intended to establish a framework to improve the coordination and accomplishment of compliance with the General Welfare Doctrine when providing Assistance.

#### **SECTION 5 GENERAL WELFARE DOCTRINE.**

The Internal Revenue Service recognizes that Assistance to Applicants under a federally-recognized Indian tribe's constitutionally Approved Program for the promotion of the general welfare of the Indian tribe is excludable from the gross income of individual recipients of that Assistance. In addition, the Service, in IRS Revenue Procedure 2014-35, provided for safe harbor programs under which, if approved and in writing, recipient need is presumed and benefits are excluded from taxation. The Assistance authorized by this Title is intended to qualify for such favorable tax treatment under the General Welfare Doctrine to the fullest extent permitted by federal law. All amounts budgeted by the Nation for Assistance shall remain general assets of the Nation until payments are disbursed or until services and benefits are provided. Further, Assistance authorized by this Title shall be an unfunded arrangement and shall be limited to funds appropriated at the discretion of the Council and expended at the discretion of the Chief. Finally, Assistance is not subject to information reporting by the Nation to the Internal Revenue Service.

Without limitation, the following benefits shall be treated as non-taxable hereunder:

- A. Benefits that satisfy the requirements for the exemption under Internal Revenue Code Section 139E;
- B. Benefits that are provided under an IRS Safe Harbor Program;
- C. Benefits that qualify for exclusion under the IRS General Test of General Welfare exclusion; or
- D. Benefits that meet another express exemption under the Internal Revenues Code, such as
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the exemption provided for tribal medical expenses under Internal Revenue Code Section 139D, or that meet other recognized exemptions including, for example, resource or land-based exemptions under 25 USC Sections 117a-b, 1407 and 1408.

#### **SECTION 6 NON-RESOURCE DESIGNATION.**

Since the Assistance to Applicants is made from the assets of the Nation and, as such, all payments are subject to the availability of budgeted Nation government funds, the Nation does not guarantee Assistance under this Title. Assistance is paid on the basis of need and shall not be treated as a resource of an Applicant for any purpose. The Chief, pursuant to his constitutional authority, will reserve the right to cancel, adjust, modify or revoke any such Assistance that is treated as a resource of an Applicant.

#### **SECTION 7 GOVERNING LAW; SOVEREIGNTY.**

All the rights and liabilities associated with the enactment of this Title, or the Assistance made hereunder, shall be construed and enforced according to the laws of the Nation and applicable federal law. Nothing in this Title shall be construed as creating a cause of action or a liability against the Nation, the Chief, Tribal Council, members of Tribal Council, or any Associates of the Nation. The Nation reserves sovereign immunity and any other immunities available and none are hereby waived. Nothing in this Title or the related policies or procedures adopted for its implementation, if any, shall be construed to make applicable to the Nation any federal laws or regulations 1) which are otherwise inapplicable to the Nation, or 2) from which the Nation is entitled to exemption because of its sovereign status.

#### **SECTION 8 FEDERAL TRUST OBLIGATIONS.**

The Nation reserves the right to provide Assistance in circumstances where federal funding is insufficient to operate federal programs designed to benefit Applicants and when federal funding is insufficient to adequately and consistently fulfill federal trust obligations. The Nation's adoption of its Approved Programs is not intended to relieve or diminish the federal government of its funding and trust responsibilities. Nothing herein shall waive the Nation's right to seek federal funding for budget shortfalls or to enforce the trust beneficiary rights of the Nation and its Members. The Nation shall be entitled to government-to-government consultation and coordination rights in regard to this Title with the federal government.

#### **SECTION 9 NATION APPROVED PROGRAMS.**

The Chief has the constitutional authority to designate Approved Programs for which funds will be

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budgeted each fiscal year, consistent with the purposes of this Title. Each Approved Program shall be consistent with the General Welfare Doctrine as to purpose, eligibility, and funding.

#### **SECTION 10 PURPOSE OF APPROVED PROGRAMS.**

Each Approved Program shall be limited to purposes consistent with treatment under the General Welfare Doctrine. An Approved Program must be established and operated to promote the general welfare of the Nation, including purposes such as enhancing the promotion of:

- A. health,
- B. education,
- C. self-sufficiency,
- D. self-determination,
- E. Nation image and culture and tradition,
- F. entrepreneurship, and
- G. employment.

#### **SECTION 11 ELIGIBILITY AND APPLICATION PROCEDURES.**

Assistance intended to qualify for General Welfare Doctrine treatment shall be limited to enrolled Members of the Nation. Each Approved Program shall set forth the specific eligibility rules and limitations applied to that program. The Assistance Committee shall present program descriptions, which include eligibility rules and limitations, along with application forms and procedures, to the Chief for approval in accordance with this Title. Only those descriptions, application forms and procedures that are so approved by the Chief shall be considered to be in force and effect.

#### **SECTION 12 LIMITED USE OF ASSISTANCE PAYMENTS.**

All Assistance must be used for the purpose stated in the Approved Program description and in the Applicant's application. In the event that Assistance is used or pledged for a purpose inconsistent with the purpose set forth in an Approved Program or the Applicant's application, the payment will be deemed forfeited. The Administrative Entity responsible for the Approved Program under which the misused Assistance was made shall secure repayment from the Applicant. The Administrative Entity is also authorized to offset any other payments owed to such an Applicant, if an offset is necessary to secure repayment of Assistance under this Title.

#### **SECTION 13 PROGRAMS NOT LIMITED TO MEANS TESTING.**

Programs that qualify under Internal Revenue Code Section 139E or the IRS Safe Harbor shall not

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require a showing of individual need or means testing in order to achieve non-taxable treatment under the General Welfare Exclusion doctrine. The Nation reserves the right to provide Choctaw community-based programs and programs based on non-financial need which meet the General Test without means testing individual beneficiaries. The Nation recognizes that means testing can distort certain tribal cultural and community values. However, the Nation can have some programs which are financial need based in order to help those most in need of the assistance within available funding limitations.

#### **SECTION 14 LIMITATIONS ON WELFARE ASSISTANCE PAYMENTS.**

The Chief may adopt guidelines establishing the maximum assistance payments to be made to Applicants for certain specified purposes, based on recommendations of the Assistance Committee. Such guidelines shall also include factors to be used in determining whether the Chief should deviate from the payment limitations in certain circumstances and limitations with respect to the frequency of applications for Assistance.

#### **SECTION 15 ANNUAL BUDGETING; UNFUNDED PROGRAM.**

When applicable per program requirements, the Chief may annually designate those funding sources that are available for Approved Programs as part of the annual budgeting process. Notwithstanding anything to the contrary, the Assistance authorized hereunder shall be "unfunded" for tax purposes and no Applicant shall have an interest in or right to any funds budgeted for or set aside for Approved Programs until paid. Assistance funds shall remain assets of the Nation until distributed and the Approved Programs shall be administered at all times to avoid triggering of the doctrines of "constructive receipt" or "economic benefit."

#### **SECTION 16 FORFEITURE.**

Notwithstanding anything herein to the contrary, the Assistance Committee, acting under the direction of the Chief, may forfeit Assistance to any Applicant who is found by the Committee to have violated the terms of this Title, or the policies and procedures for any Approved Program. The Assistance Committee, acting under the direction of the Chief, may also forfeit Assistance should said Assistance be treated as a resource detrimental to the Nation or an Applicant. In the event of any such forfeiture, all Assistance provided to the Applicant pursuant to this Title shall be deemed a loan and shall be enforceable as such.

#### **SECTION 17 ANTI-ALIENATION.**

An Applicant's right to apply for Assistance is not subject to, alienation, sale, transfer, assignment,

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pledge, encumbrance, attachment or garnishment by creditors of the Applicant.

### **SECTION 18 GENERAL PROGRAM ADMINISTRATION.**

Each Approved Program shall be administered by the Administrative Entity to which it has been assigned by the Chief. All the powers and duties conferred on each respective Administrative Entity shall be exercised or performed by it, under the direction of the Chief and in the exercise of discretion granted it by the Chief regardless of whether the provision conferring such power or imposing such duty specifically refers to its discretion. All decisions of a given Administrative Entity regarding an Approved Program, within the scope of its authority, shall be binding and conclusive upon all Applicants under the Approved Program.

### **SECTION 19 PROGRAM GUIDELINES.**

Guidelines for Approved Programs shall be developed by the respective Divisions responsible for a given Assistance Program, coordinated with the Assistance Committee, if applicable, and approved by the Chief. At a minimum, such guidelines shall satisfy the requirements of this Title including the following:

- A. Indian General Welfare Benefits (Internal Revenue Code Section 139E) Programs that meet the following criteria for exemption under Internal Revenue Code Section 139E shall be treated as non-taxable Assistance under the General Welfare exclusion without the applicant having to demonstrate individual need:
    - 1. The program is administered under specified guidelines and does not discriminate in favor of the Chief, Assistant Chief, or any executive officer or any member of the Tribal Council;
    - 2. Program benefits are available to any Nation citizen who meets such guidelines;
    - 3. Program benefits are for the promotion of the general welfare;
    - 4. Program benefits are not lavish or extravagant; and
    - 5. Program benefits are no compensation for services.
  - B. Ceremonial Activities: Any items of cultural significance, reimbursement of costs or cash honorarium for participation in cultural or ceremonial activities for the transmission of tribal culture shall not be treated as compensation for services.
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C. Safe Harbor programs: Programs that meet the following general criteria for safe harbor treatment, and provide qualifying safe harbor benefits, shall be treated as non-taxable Assistance under the General Welfare Exclusion without the applicant having to demonstrate individual need:

1. General Criteria for Safe Harbor Treatment:

- a. The benefit is provided under a specific approved program of the Tribe;
- b. The program has written guidelines specifying how individuals may qualify for the benefit;
- c. The benefit is available to any Nation Member or identified group of Nation Members who satisfy the program guidelines, subject to budgetary restraints;
- d. The distribution of benefits from the program does not discriminate in favor of the Chief, Assistant Chief, or any executive officer or any member of the Tribal Council;
- e. The benefit is not compensation for goods or services; and
- f. The benefit is not lavish or extravagant under the facts and circumstances, as determined by the Chief.

2. Specific Safe Harbors: The following benefits may be provided under a Safe Harbor program (Note: the benefits listed in the parenthetical language herein are for example purposes only, and are not an exhaustive list):

- a. Housing programs. Programs relating to principal residences and ancillary structures that are not used in any trade or business, or for investment purposes that--
    1. Pay mortgage payments, down payments, or rent payments (including but not limited to security deposits) for principal residences;
    2. Enhance habitability of housing, such as by remedying water, sewage, or sanitation service, safety issues (including, but not limited to, mold remediation), or heating or cooling issues;
    3. Provide basic housing repairs or rehabilitation (including, but not limited to, roof repair and replacement);
    4. Pay utility bills and charges (including, but not limited to, water, electricity, gas, and basic communications services such as phone, internet, and cable);  
or
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5. Pay property taxes or make payments in lieu of taxes (PILOTs).
- b. Educational programs. Programs to --
    1. Provide students (including, but not limited to, post-secondary students) transportation to and from school, tutors, and supplies (including, but not limited to, clothing, backpacks, laptop computers, musical instruments, and sports equipment) for use in school activities and extracurricular activities;
    2. Provide tuition payments for students (including, but not limited to, allowances for room and board on or off campus for the student and members of the student's household) to attend preschool, school, college or university, online school, educational seminars, vocational education, technical education, adult education, continuing education, or alternative education;
    3. Provide for the care of children away from their homes to help their parents or other relatives responsible for their care to be gainfully employed or to pursue education; and
    4. Provide job counseling and programs for which the primary objective is job placement or training, including, but not limited to, allowances for expenses for interviewing or training away from home (including, but not limited to, travel, auto expenses, lodging, and food); tutoring; and appropriate clothing for a job interview or training (including, but not limited to, an interview suit or a uniform required during a period of training).
  - c. Elder and disabled programs. Programs for individuals who have reached age 55 or are mentally or physically disabled (as defined under applicable law, including, but not limited to, tribal government disability codes or laws) that provide --
    1. Meals through home-delivered meal programs or at a community center or similar facility;
    2. Home care such as assistance with preparing meals or doing chores, or day care outside the home;
    3. Local transportation assistance; and
    4. Improvements to adapt housing to special needs (including but not limited to grab bars and ramps).
  - d. Cultural and religious programs. Programs to --
    1. Pay expenses (including, but not limited to, admission fees, transportation, food, and lodging) to attend or participate in an Indian tribe's cultural, social, religious, or community activities such as pow-wows, ceremonies, games, and traditional dances;
    2. Pay expenses (including, but not limited to, admission fees, transportation, food, and lodging) to visit sites that are culturally or historically significant for the Nation, including, but not limited to, those on other Indian
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- reservations;
3. Pay the costs of receiving instruction about the Nation's culture, history, and traditions (including, but not limited to, traditional language, music, games and dances);
  4. Pay funeral and burial expenses and expenses of hosting or attending wakes, funerals, burials, other bereavement events, and subsequent honoring events; and
  5. Pay transportation costs and admission fees to attend educational, social, or cultural programs offered or supported by the Nation or another tribe.
- e. Other qualifying assistance programs. Programs to --
1. Pay transportation costs such as rental cars, substantiated mileage, and fares for bus, taxi, and public transportation between the Choctaw Nation, its reservation, service area, or service unit area and facilities that provide essential services to the public (such as medical facilities and grocery stores);
  2. Pay for the cost of transportation, temporary meals, and lodging of a Tribal Member while the individual is receiving medical care away from home;
  3. Provide assistance to individuals in exigent circumstances (including, but not limited to, victims of abuse), including, but not limited to, the costs of food, clothing, shelter, transportation, auto repair bills, and similar expenses;
  4. Pay costs for temporary relocation and shelter for individuals displaced from their homes (including, but not limited to, situations in which a home is destroyed by a fire or natural disaster);
  5. Provide assistance for transportation emergencies (for example, when stranded away from home) in the form of transportation costs, a hotel room, and meals; and
  6. Pay the cost of nonprescription drugs (including but not limited to traditional Indian tribal medicines).
3. Compensation Safe Harbor: For Safe Harbor Programs, and subject to amendments to Revenue Procedure 2014-35 hereafter, the Nation will presume that individual need is met for religious leaders or spiritual officials or leaders (including but not limited to ministers, spiritual leaders, medicine men, medicine women, and shamans) receiving the following benefits, and that the benefits do not represent Compensation for services: benefits provided under an Indian tribal governmental Program that are items of cultural significance that are not lavish or extravagant under the facts and circumstances, as determined by the Chief, or nominal cash honoraria provided to religious or spiritual officials or leaders (including, but not limited to, medicine men, medicine women, and shamans) to recognize their participation in cultural, religious, and social events (including, but not limited to, pow-wows, rite of passage ceremonies, funerals, wakes, burials, other bereavement events, and subsequent honoring events).
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4. Safe Harbor Effective Dates: Safe harbor treatment shall be afforded to any Program or benefit that otherwise satisfies the safe harbor rule as of, or after, December 6, 2012, or for any earlier taxable period for which the period of limitation on refund or credit under Internal Revenue Code Section 6511 has not expired.
5. Non-Safe Harbor Programs: Nothing in this Title or the IRS safe harbor guidance shall limit the Nation's right to provide Assistance outside of the safe harbor rules.
6. Any changes to the Safe Harbor programs as a result of the Indian General Welfare Exclusion Act of 2014 will be immediately incorporated, by reference, into this Title.

**SECTION 20 SEVERABILITY.**

If any provision of this Code shall be found to be unenforceable by a court of competent jurisdiction or to conflict with any provision of the Constitution of the Choctaw Nation of Oklahoma, such provision shall be deemed stricken and the rest of this Code shall remain in full force and effect.

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