

United States Senate
WASHINGTON, DC 20510

April 8, 2020

The Honorable Steven Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue Northwest
Washington, D.C. 20220

The Honorable Jovita Carranza
Administrator
U.S. Small Business Administration
409 Third Street Southwest
Washington, D.C. 20416

Dear Secretary Mnuchin and Administrator Carranza,

As the U.S. Department of Treasury and the Small Business Administration (SBA) continue to implement the Paycheck Protection Program (PPP) created by the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136), we write to urge you to clarify that Tribal business concerns includes any tribal business that is under 500 employees without regard to the industry of the tribal business, including gaming enterprises.

When Congress created PPP, it specified that “any . . . tribal business concern” that met the threshold requirements under the Small Business Act, specifically under the HUBZone program, would be eligible for these loans. It is unambiguous that Congress intended for any tribally-owned business under 500 employees to be eligible for the PPP’s important payroll relief. Thus, application of existing eligibility requirements under 13 C.F.R. Part 120, as the Small Business Administration interim final rule reflects, is not only unnecessary but also a misreading of congressional intent.

Tribes do not have a traditional tax base to generate government revenue and as a result, it is even more critical that any Tribal business concern, including gaming enterprises, are deemed eligible for PPP loans. Tribal casinos, including those with less than 500 employees, comprise of hotels, conference centers, restaurants, and entertainment venues, which make them some of the biggest employers and income generators for Tribal and non-Tribal communities currently in need of economic relief. These government-owned enterprises fund essential government services to their communities, including government operations, community services for the general welfare of Tribal members like healthcare and education, and public safety needs.

When Congress passed the Indian Gaming Regulatory Act (IGRA), it recognized that Tribes have the inherent authority under the U.S. Constitution to engage in gaming activities to promote economic development, self-sufficiency, and strong Tribal governments. To prohibit eligibility based on reference to an existing regulation is not only contrary to the plain meaning of the CARES Act but also fails to acknowledge IGRA, a unique statutory basis for generating Tribal revenue based on gaming activities.

Finally, it is important to also note that Congress intended to apply PPP broadly and flexibly to Tribal businesses in particular. Tribal governments are unique political entities with a government-to-government relationship with the United States, which owes trust and treaty obligations to all 574 federally recognized Indian tribes. Congress helps fulfill these obligations in part by passing laws and ensuring access to federal programs for their benefit. The CARES Act must therefore be interpreted to affirm that Tribal business concerns are eligible to apply for PPP loans, regardless of how much income is derived from gaming activity.

We have heard the calls from Indian Country and we urge you to immediately clarify that all Tribal business concerns are eligible for PPP.

Thank you for your attention to this important matter. We look forward to working with you to continue to uphold the federal government's Tribal trust and treaty responsibilities and government-to-government relations with Indian Tribes regarding the response to the COVID-19 pandemic.

Sincerely,



Tom Udall
U.S. Senator



Maria Cantwell
U.S. Senator



Jon Tester
U.S. Senator



Catherine Cortez Masto
U.S. Senator



Tina Smith
U.S. Senator

/signed electronically/

Martin Heinrich
U.S. Senator



Tammy Baldwin
U.S. Senator



Elizabeth Warren
U.S. Senator



Dianne Feinstein
U.S. Senator



Debbie Stabenow
U.S. Senator

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Kamala D. Harris
U.S. Senator



Patty Murray
U.S. Senator