



National
Congress of
American
Indians



THE NATIONAL CENTER
For American Indian Enterprise Development



April 8, 2020

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
S-230 U.S. Capitol Building
Washington, DC 20510

The Honorable Charles Schumer
Minority Leader
U.S. Senate
S-221 U.S. Capitol Building
Washington, DC 20510

Dear Majority Leader McConnell and Minority Leader McCarthy:

This letter is on behalf of the undersigned American Indian and Alaska Native organizations. We are writing to request tribal inclusion in the emergency legislation presently being considered within two key areas: amendments to the Title V Coronavirus Relief Fund and Title I, involving the Paycheck Protection Program and the Emergency Economic Injury Disaster Loans Grants Program.

I. Proportionally Increase Tribal Set Aside in the Coronavirus Relief Fund

The Coronavirus Relief Fund (CRF), established through Section 5001 of the CARES Act, provides a total of \$150 billion in federal fiscal support for tribal, state, and local governments, with eligibility dependent upon the location, level of government, and use of potential funds. The origin of this fund was focused on addressing the impending economic devastation governments faced due to declining revenues which fund government services.

Tribal governments—which number 574—have experienced significant impacts and are projected to lose over \$40 billion in critical revenue as a result of the pandemic. To address the impact on these governments, which serve some of the most socio-economically disadvantaged populations in the United States, the CARES Act provided a minimum set-aside of \$8 billion for the 574 tribal nations. While Indian Country is grateful for this allocation, additional resources are necessary to meet the needs of our communities, particularly as we are battling the ongoing spread of COVID-19 within our communities.

Accordingly, we request that any increase to the CRF includes a proportional increase of at least 5.33 percent of the total additional amount for the tribal set-aside. In other words, if the emergency legislation increases the CRF by \$150 billion, we request a proportional increase to the tribal set aside by at least \$8 billion. Further, we also support a retroactive amendment that provides governments flexibility to address lost revenue and supplement eligible personnel and administrative costs as a result of COVID-19 response.

II. Technical Amendments to the SBA Paycheck Protection Program to Remove Barriers for Tribal Business Concerns

Title I of the CARES Act provides for two loan programs that are newly available to Tribal Business Concerns (TBCs) to provide immediate loans to retain payroll and retain the solvency of businesses. Section 1102 of the CARES Act creates the Paycheck Protection Program (PPP) which provides cash-flow assistance through 100 percent federally guaranteed loans to employers who maintain their payroll during the pandemic. Section 1110 involves the SBA's Economic Injury Disaster Loans (EIDLs) which offers up to \$2 million in loans for small businesses to help overcome the temporary loss of revenue they are experiencing.

TBCs were included within both of these provisions. However, due to technical issues in the statutory language, SBA's restrictive reading of the statute, and the actions of lenders, TBCs are facing barriers in accessing these loans to the detriment of their workforces who they are attempting to vigorously retain to sustain and rebuild their battered economies.

To address these issues, we request that the emergency legislation do the following:

1. Ensure that the definition of TBC is clear and does not subject TBCs to inapplicable HUBzone requirements;
2. Ensure, as intended, that any TBC is eligible for Section 7(a) loans;
3. Ensure, as intended, that TBCs are exempt from affiliation rules to prevent lender confusion;
4. Protect all applicants from non-statutory restrictions imposed by lenders; and
5. Include community development financial institutions (CDFI) (which include Native CDFIs) as eligible lenders.

We have previously addressed these issues with SBA and Treasury in the enclosed letter requesting the issuance of supplemental guidance and believe the following technical amendments are necessary to accomplish Congress' intent to facilitate the quick and efficient disbursement of these loans.

The CARES Act is amended as follows:

SEC. 1102. PAYCHECK PROTECTION PROGRAM.

(a) IN GENERAL.—Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended—

...

(2) by adding at the end the following...

“(36) *PAYCHECK PROTECTION PROGRAM.*—

(A) *DEFINITIONS.*—

(X) the term ‘Tribal business concern’ means a small business concern that is

(aa) wholly owned by one or more Indian tribal governments, or by a corporation that is wholly owned by one or more Indian tribal governments; or

(bb) that is owned in part by one or more Indian tribal governments, or by a corporation that is wholly owned by one or more Indian tribal governments, if all other owners are either United States citizens or small business concerns.

...

“(D) *INCREASED ELIGIBILITY FOR CERTAIN SMALL BUSINESSES AND ORGANIZATIONS.*—

“(i) *IN GENERAL.*— During the covered period, in addition to small business concerns, any business concern, nonprofit organization, veterans organization, or any Tribal Business concern described in Section 31(b)(2)(C) shall be eligible to receive a covered loan without regard to 13 CFR section 120.110, provided that such business is engaged in lawful business if the business concern, nonprofit organization, veterans organization, or Tribal business concern employs not more than the greater of –

(I) 500 employees; or

(II) If applicable, the size standard in number of employees established by the Administration for the industry in which the business concern, nonprofit organization, veterans organization, or Tribal business concern operates.

(iv) *WAIVER OF AFFILIATION RULES.*—During the covered period, the exemptions in section 121.103 of title 13, Code of Federal Regulations shall apply to Tribal Business concerns, and the provisions applicable to affiliations under section 121.103 of title 13, Code of Federal Regulations, or any successor regulation, are waived with respect to eligibility for a covered loan for—

(v) *EMPLOYEE.*—For purposes of determining whether a business concern, non-profit organization, veterans organization, or Tribal business concern ~~described in section 31(b)(2)(C)~~ employs not more than 500 employees under clause (i)(I), the term ‘employee’ includes individuals employed on a full-time, part-time, or other basis.

(F) *ALLOWABLE USES OF COVERED LOANS.*—

(ii) *DELEGATED AUTHORITY.*—

(II) *CONSIDERATIONS.*— In evaluating the eligibility of a borrower for a covered loan with the terms described in this paragraph, a lender shall not impose non-statutory considerations and shall only consider whether the borrower—

(iii) *ADDITIONAL LENDERS.*—The authority to make loans under this paragraph shall be extended to additional lenders, including community development financial institutions, as determined by the Administrator and the Secretary of the Treasury to have the necessary qualifications to process, close, disburse and service loans made with the guarantee of the Administration.

SEC. 1110. EMERGENCY EIDL GRANTS.

(a) DEFINITIONS.—In this section—

(2) the term “eligible entity” means—

(E) a tribal small business concern with not more than 500 employees that is (i) wholly owned by one or more Indian tribal governments, or by a corporation that is wholly owned by one or more Indian tribal governments; or (ii) that is owned in part by one or more Indian tribal governments, or by a corporation that is wholly owned by one or more Indian tribal governments, if all other owners are either United States citizens or small business concerns, as described in section 31(b)(2)(C) of the Small Business Act (15 U.S.C. 657a(b)(2)(C)), with not more than 500 employees.

III. Conclusion

In summary, we strongly urge Congress to ensure tribal governments receive a proportional increase to the Coronavirus Relief Fund and provide technical amendments to remove unintended barriers Tribal Business Concerns are experiencing in accessing these critical loans to sustain their workforces and economies.

Sincerely,

National Congress of American Indians
Native American Financial Officer’s Association
Native American Contractors Association
National Center for American Indian Enterprise Development
National Indian Gaming Association
United South and Eastern Tribes Sovereignty Protection Fund

Enclosure



National
Congress of
American
Indians



THE NATIONAL CENTER
For American Indian Enterprise Development



April 2, 2020

The Honorable Jovita Carranza
Administrator
U.S. Small Business Administration
409 3rd Street, SW
Washington, DC 20416

The Honorable Steven Mnuchin
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Administrator Carranza and Secretary Mnuchin:

On behalf of the organizations listed below, representing hundreds of Indian tribes and their tribal business enterprises and other native-owned businesses, we write to urge you to ensure prompt implementation of Sections 1101 - 1109 of the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, Public Law 116-136, adding a new subparagraph “(F)” paragraph “(36) PAYCHECK PROTECTION PROGRAM” (PPP) to the Small Business Administration (SBA) Section 7(a) loan program to provide relief to the broadest range of tribal- and other native-owned business concerns as Congress intended.

To our knowledge, the forms and guidance so far released on the PPP application mention “tribal concerns” and provide a check box for “Tribal” without explanation, and an information sheet for borrowers which states, “Additional guidance may be released as appropriate.” We appreciate the speed in release of the general guidance, to date. Yet, to avoid delays in processing applications from Tribal business concerns, we believe that the SBA and Department of the Treasury should provide more interpretive guidance to SBA personnel, SBA-certified lenders, and any other lenders approved to issue PPP loans, as contemplated under Section 1109(d)(2)(B)(1).¹ Congress intended to provide the new PPP loan relief to any tribally-owned business enterprises that meet the PPP size requirements.

New paragraph 36(D)(i) explicitly includes “any” Tribal Business Concern, as defined with reference to the HUBZone provisions, as an eligible borrower under the PPP loan program. Consistent with Congressional intent to apply the relief broadly, the PPP statutory provisions do not limit the types of tribal entities that are eligible borrowers. It is clear that as long as a Tribal Business Concern is conducting a lawful activity and meets the other statutory requirements under new paragraph 36, the Tribal Business Concern is eligible for the PPP loan program.

¹ The Secretary can issue regulations and guidance to include “Terms and conditions that, to the maximum extent practicable, are consistent with the terms and conditions required under the following provisions of paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as added by section 1102 of this Act: (i) Subparagraph (D), pertaining to borrower eligibility.”

Also consistent with the HUBZone program, Tribal Business Concerns are exempt from the Affiliate Rules in 13 CFR Part 121. Thus, Tribal Business Concern applicants are not affiliates of the tribe and are not affiliates of other tribally-owned companies, including holding companies and other subsidiaries. Therefore, any tribal business concern that operates under its own industry category should be eligible to apply for a PPP loan.

To expedite the loan process, we ask that SBA provide guidance on the appropriate PPP loan application information and supporting documentation required of Tribal Business Concerns that apply for the PPP loan program. First, it is essential that both the borrowers and the lenders know up front the definition of Tribal Business Concern, such concerns' eligibility for the PPP loan program, and their exemption from the affiliate rules. To that end, the lender guidance should reflect that Tribal Business Concerns need not answer questions about ownership and affiliation, other than to disclose which tribe(s) has/have the ownership stake in the enterprise. Since there are no minimum ownership requirements, proof of ownership is unnecessary. Second, as most Tribal Business Concerns are non-taxable entities that file no federal income tax returns, they should not be required or requested to provide income tax forms and documentation. Consultation on the appropriate types of loan documentation would be very helpful in advance of any supplemental guidance publication. Third, because the PPP loans are 100 percent guaranteed by the SBA, Tribal Business Concerns should not be expected to, nor have to, waive immunity from suit. Lenders should be instructed not to ask for, nor require, sovereign immunity waivers as a condition for issuing the loan. Any waiver requirement should be removed from bank loan documents.

Further, in accordance with new paragraph 36(P)(iv), Tribal Business Concerns should receive priority processing as they are considered socially and economically disadvantaged, and are typically located in underserved and rural markets. In addition, Tribal Business Concerns are often the largest employers in rural communities serving an outsized role in providing relief to Americans that may need aid and employment.

Finally, new paragraph 36(F)(iii), providing for "Additional Lenders," permits the SBA Administrator and Treasury Secretary to extend authority to make loans under the program if the lender has qualifications to process, close, and disburse loans. Native Community Development Financial Institutions (CDFIs) are Treasury-certified entities that provide access to capital in underbanked communities across 26 states. Native CDFIs already service many of the targeted small businesses in their home communities, and would serve as efficient and streamlined centers for offering small business relief in many Native communities. While there are 69 Treasury-certified Native CDFIs and several more "Emerging Native CDFIs," only a small fraction of these financial institutions currently participate as SBA lenders; therefore, most Native CDFIs will not be able to disburse loans, despite their proven capability. The SBA Administrator and Treasury Secretary should extend authority to Native CDFIs to make loans under the PPP loan program.

Indian Country is prepared to engage in consultation with you, or your delegates. However, because time is of the essence, we strongly recommend that you provide separate supplemental guidance to lenders that reflects the unique nature and circumstances of Tribal Business Concerns.

This supplemental guidance should also address the areas identified above related to application information and documentation requirements.

Thank you for your prompt consideration.

Sincerely,



Kevin J. Allis
Chief Executive Officer
National Congress of American Indians



Jason Giles
Executive Director
National Indian Gaming Association



Joseph Valandra
Executive Director
Native American Contractors Association



Chris James
President and CEO
National Center for American Indian
Enterprise Development



Jackson S. Brossy
Executive Director
Native CDFI Network