

GREAT PLAINS TRIBAL
CHAIRMEN'S ASSOCIATION, INC.

Mailing Address: US Post Office Box 988, Rapid City, SD 57701

April 13, 2020

The Honorable John Thune
U.S. Senator - South Dakota
511 Senate Dirksen Building
Washington, D.C. 20510

The Honorable John Hoeven
U.S. Senator - North Dakota
338 Senate Russell Building
Washington, D.C. 20510

The Honorable Mike Rounds
U.S. Senator - South Dakota
502 Senate Hart Building
Washington, D.C. 20510

The Honorable Kevin Cramer
U.S. Senator - North Dakota
400 Senate Russell Building
Washington, D.C. 20510

The Honorable Dusty Johnson
U.S. Representative—SD
1508 Longworth House Building
Washington, D.C. 20515

The Honorable Kelly Armstrong
U.S. Representative—ND
1004 Longworth House Building
Washington, D.C. 20515

Re: Alaska Native Corporations Are Not Eligible for Coronavirus Relief Funds

Dear Senators Thune, Hoeven, Rounds, Cramer, and Representatives Johnson and Armstrong:

Please do not allow Alaska Native Corporations to be counted as Tribal governments under the CARES Act Coronavirus Relief Fund (CRF). That would be contrary to the plain language of the CARES Act, and it would allow for ***double or triple counting*** of Alaska Natives since members of federally-recognized Alaska Native villages are also shareholders in Alaska Native Regional Corporations and Alaska Native Village Corporations.

The CARES Act allows for distributions to Tribal governments. In Alaska, the only Tribal governments are Alaska Native villages. They are listed on the Department of the Interior's List of Federally Recognized Tribes. Alaska Native Regional Corporations and Alaska Native Village Corporations are not Tribal governments. They are not listed on the Department of the Interior's List of Federally Recognized Tribes. They are state-chartered, for-profit corporations that were created pursuant to the Alaska Native Claims Settlement Act (ANCSA) of 1971 to receive and administer settlement funds and property on behalf of their shareholders, who are members of Alaska Native villages. There are thirteen (13) Alaska Native Regional Corporations and approximately 200 Alaska Native Village Corporations.

Treasury and BIA should not count Alaska Native villages as Tribal governments and then turn around and count Alaska Native Regional and Village Corporations as Tribal governments, too. This would lead to double or triple counting since, in all or nearly all cases, there are three layers for each Alaska Native village: federally-recognized Alaska Native village Tribal government; Alaska Native Village Corporation; and Alaska Native Regional Corporation.

ANCs Are Not Tribal Governments

The Alaska Inter Tribal Council is a non-profit organization that advocates on behalf of Alaska Tribal governments, i.e. Alaska Native villages. This organization does not include Alaska Native Regional or Village Corporations because they are not Tribal governments. It would be wrong to include ANCs as Tribal governments in the CRF allocation formula because that would be **double or triple counting** ANCs as Tribal governments in addition to the actual Tribal governments: Alaska Native villages.

Some ANCs may ask the Alaska congressional delegation to secure funding for the Corporations under the CRF, but ANCs are not "Tribal governments," as ANCSA makes clear. *Alaska Native Regional Corporations and Alaska Native Village Corporations are state chartered, stockholder-owned corporations, held by Alaska Natives. They are not Tribal governments.*

In contrast, Alaska Native villages are Indian Tribes and Tribal governments recognized by the Secretary of the Interior, as such, under the Federally Recognized Tribe List Act of 1994. Typically, for governmental purposes, the Administration has this definition of Indian Tribe: "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a." *Alaska Native Corporations are not included in this regular definition of Tribal governments.*

The Supreme Court addressed this issue in *Alaska v. Native Village of Venetie*, 522 U.S. 520 (1998), the Supreme Court explained:

In enacting ANCSA, Congress sought to end the sort of federal supervision over Indian affairs that had previously marked federal Indian policy. ANCSA's text states that the settlement of the land claims was to be accomplished

"without litigation, with maximum participation by Natives in decisions affecting their rights and property, without establishing any permanent racially defined

institutions, rights, privileges, or obligations, [and] *without creating a reservation system or lengthy wardship or trusteeship.*” [43 U.S.C.] §1601(b) (emphasis added).

To this end, ANCSA revoked “the various reserves set aside . . . for Native use” by legislative or Executive action, except for the Annette Island Reserve inhabited by the Metlakatla Indians, and completely extinguished all aboriginal claims to Alaska land. §§1603, 1618(a). In return, Congress authorized the transfer of \$962.5 million in state and federal funds and approximately 44 million acres of Alaska land to state-chartered private business corporations that were to be formed pursuant to the statute; all of the shareholders of these corporations were required to be Alaska Natives. §§1605, 1607, 1613. The ANCSA corporations received title to the transferred land in fee simple, and no federal restrictions applied to subsequent land transfers by them.

Id. at 523-524. Alaska Native Corporation lands are not Indian lands, as the Supreme Court ruled in *Alaska v. Native Village of Venetie*, because they “are neither ‘validly set apart for the use of the Indians as such,’ nor are they under the superintendence of the Federal Government. 522 U.S. at 532.

Congress Did Not Include ANCs in the CRF Distribution

Title V, Section 5001 of the CARES Act amended the Social Security Act to add a new Title VI, Section 601, establishing the CRF. Section 601(a)(B)(2) of the Social Security Act appropriates “\$8,000,000,000 . . . for making payments to Tribal governments.” “Tribal government” is defined at Section 601(g) as “the recognized governing body of an Indian tribe,” and consistently appears in the Act alongside references to “States,” and other “units of local government”, including “the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.”

Section 601(b) outlines when payments of appropriated amounts must be made and requires Treasury to make such payments to Tribal governments, in amounts Treasury determines appropriate, no later than 30 days from the date of enactment.

Section 601(c) details the process for determining how the funds will be disbursed to each State, unit of local government, and Tribal government. With respect to determining the amount to distribute to each Tribal government, the Act requires Treasury to consult with “the Secretary of the Department of the Interior and Indian Tribes.” Notably, the purpose of this tribal consultation process -- which is currently underway -- is to determine the “appropriate” method “to ensure that all amounts . . . are distributed to Tribal governments.”

For purposes of the consultation – but not the distribution of funds – the Act uses the term Indian Tribe, which is defined in Section 601(g). This definition cross-references the definition of “Indian tribe” within the Indian Self-Determination and Education Assistance Act (“ISDEAA”) (25 U.S.C. § 5304(e)). ISDEAA defines “Indian tribe” as “any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village *or regional or village*

corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [(“ANCSA”)].”

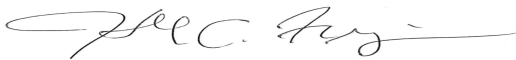
As such, in accordance with the CARES Act, Treasury, alongside the Secretary of the Interior, must consult all Tribal governments with respect to determining the methodology of the disbursement of funds to Tribal governments (as defined at Section 601(g) of the Act), and any such consultation must also include “regional or villages corporation[s] as defined in or

established pursuant to [ANCSA].” It is important to note the distinction between Alaska Native tribal villages and ANCSA regional or village corporations. Alaska Native tribal villages exercise sovereign governmental authority over their lands and citizens, possess a government-to-government relationship with the United States, and are “Tribal governments” under Section 601. Alaska regional or village corporations, on the other hand, are businesses incorporated under Alaska state law as authorized under ANCSA that do not have a political relationship with the federal government. Thus, they do not constitute “Tribal governments” under Section 601.

Treasury should not confuse inclusion for consultation purposes, as a means for justification of acknowledging a “Tribal government” status for purposes of determining eligibility to receive CARES Act relief funding under Title V. There is no question that the board of directors for an Alaska Native regional or village corporation, incorporated under state law, does not possess the same status as the “recognized governing body” of a federally recognized Indian Tribe listed on the Department of the Interior’s List of Federally Recognized Tribes. The Act uses the term “recognized governing body” in the definition of “Tribal government”, which clearly pertains to a political body that serves the interests of “citizens,” the “body politic,” not shareholders, regardless of who the shareholders may be, or represent.

While the Assistant Secretary for Indian Affairs is an Alaska Native, who has worked for the Arctic Slope Regional Corporation, we do not believe it would be proper for the BIA to advocate for ANC funding contrary to the Federally Recognized Indian Tribe List Act, 25 U.S.C. Sec. 479a. The Treasury Department must not allow for **double or triple counting** of any Indian Tribes when allocating Tribal government CRF funding. Thank you for your thoughtful consideration of this important issue.

Sincerely,



Harold Frazier, Chairman, Cheyenne River Sioux Tribe
Chairman, Great Plains Tribal Chairmen’s Association



Robert Flying Hawk, Chairman, Yankton Sioux Tribe

Vice-Chairman, Great Plains Tribal Chairmen's Association