



NATIONAL CONGRESS OF AMERICAN INDIANS

April 11, 2020

The Honorable Steven T. Mnuchin
Secretary
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

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Re: CARES Act and Tribal Governments

Dear Secretary Mnuchin:

On behalf of the National Congress of American Indians (NCAI), the oldest, largest and most representative organization comprised of American Indian and Alaska Native tribal governments and their citizens, I write to provide comments on the appropriation to Tribal governments under Title V, Section 5001 of the recently passed Coronavirus Aid, Relief, and Economic Security (CARES) Act.

Tribal Government Appropriation

Title V, Section 5001 of the CARES Act amended the Social Security Act to add a new Title VI, Section 601, establishing the Coronavirus Relief Fund. 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."

a. Requirement for Payment

Section 601(b) outlines when payments of appropriated amounts must be made and requires Treasury to make such payments to Tribal governments, in amounts you determine appropriate, no later than 30 days from the date of enactment. For this reason, completion of a meaningful consultation process – in a timely manner – will be critical to fulfilling the purpose of the appropriated funds.

b. Process for Determining Amounts to be Disbursed to Tribal Governments

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."

1 See, CARES Act, Section 601(a) generally.

2 Id. at Section 601(c)(7).

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”).”³

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].”⁴ 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. It should not be lost upon Treasury, that corporations, just as the case is here with respect to Alaska Native regional and village corporations, serve the interests of shareholders, and not the interests of “citizens.” Furthermore, these corporations are subject to the laws and regulations of a sovereign that is on par with tribal nations . . . the State of Alaska.

Despite not qualifying as “Tribal governments” under the Act for purposes of distributions, Treasury and Interior must nevertheless include Alaska regional and village corporations established pursuant to ANCSA in its consultation under Section 601(c)(7).

The scope of consultation, as detailed in Section 601(c)(7), is to determine methodology for disbursement of funds to Tribal governments, which must be based upon the increased expenses of a “Tribal government (or a tribally-owned entity of such Tribal government)” relative to aggregate expenses in Fiscal Year (FY) 2019. Based on this consultation, your office is mandated to determine specific allocation amounts that ensure the entire \$8,000,000,000 is distributed to Tribal governments

³ See, Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 5301, § 5304(e) (emphasis added).

⁴ Id.

for FY 2020.

c. Use of Funds

Section 601(d) further emphasizes that Treasury must only disburse funds to Tribal governments – political bodies that serve the interests of citizens. This provision defines eligible uses of the funds, and references only governments, *i.e.*, “A State, Tribal government, [or] unit of local government”.

These funds will be critical to assist Tribal governments in withstanding the impacts of COVID-19. Treasury and Interior are therefore urged to conduct and complete meaningful consultation as soon as possible in order to allocate the appropriate amounts to all federally recognized American Indian and Alaska Native Tribal governments. In doing so, Treasury and Interior should resist any suggestions from non-Tribal government entities to confuse this duty with a broader mandate, not supported by the law, to distribute the Section 601 funds beyond the federal recognized Tribal governments.

In closing, NCAI appreciates Treasury and Interior’s swift action to implement their consultation duties under the CARES Act, and looks forward to the completion of a well-reasoned distribution formula for Tribal governments. If you have any further questions or comments, please feel free to contact myself or NCAI CEO Kevin J. Allis at kallis@ncai.org. Thanks for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to be 'F. Sharp', written in a cursive style.

Fawn Sharp
President
National Congress of American Indians