



March 20, 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 Schumer:

This letter is on behalf of the undersigned American Indian and Alaska Native organizations, which collectively serve all 574 federally-recognized American Indian and Alaska Native tribal nations. The recommendations outlined in this letter encompass critical funding and policy concerns to help protect and prepare American Indian and Alaska Native communities to effectively respond to the current 2019 novel coronavirus (COVID-19) pandemic.

Tribal communities are among the most vulnerable populations in the United States, facing extraordinary economic challenges. These challenges have been exacerbated by the catastrophic impact that the closure of essential tribal businesses already is having on the ability of tribes to pay for fundamental tribal government services, to continue to pay tribal employees, and to honor tribal financial commitments. Without your assistance to help stabilize tribal economies, the impact on tribal governments and tribal communities will be disproportionately disastrous. Four immediate economic stabilization priorities are described below and legislative text has been drafted to support sections II and IV.

This letter is one of three letters addressing: economic development and employment; tribal governance and housing/community development; and health, education, and nutrition. The language included in this letter covers tribal economic development and employment.

I. Provide at least \$20 billion allocated for direct federal relief grants to tribal governments and their enterprises.

Without a tax base, tribes rely on their tribal businesses to generate revenue to fund essential government services in the form of health care, education, public safety, housing and social services. Tribal government gaming is the primary driver of these services – indeed, federal law mandates that tribal gaming revenues be used for government purposes. In the last week, hundreds of Indian gaming, hotel, and hospitality operations have shut down to prevent transmission of the coronavirus and to protect the safety of guests and employees. Tribal governments are implementing these closures as an exercise of their sovereignty for the greater good, and in coordination with state governors and through tribal government emergency declarations.

The shutdown of the \$39.1 billion tribal gaming industry effectively constitutes shutting down the 12th largest employer in the United States, and it already is creating a ripple effect through much of rural America. Tribal gaming directly, and indirectly, create more than 766,000 jobs nationwide and generate substantial ancillary revenues. Approximately 250 tribal governments across 29 states operate 520 gaming facilities—and the majority of these operations are the primary employers and economic engines in rural communities nationwide.

An additional 350,000 jobs for Americans are aided through supply and support of tribal operations. Tribal gaming generates more than \$34 billion in direct and indirect wages and \$17 billion in positive fiscal impacts to state and local government budgets. The loss of tribal gaming revenue soon will negatively impact local governments, states, and the federal government as well. In total, Indian gaming operations generated a total of \$17,243,917,654 paid to the U.S. Treasury and state government revenues in 2018 alone. If Congress fails to help stabilize this industry, the consequences will be dire.

Tribal government enterprises also operate numerous non-gaming and thousands of small businesses, which also provide employment and desperately needed revenue for tribal governments and communities. It is critical that Phase 3 COVID-19 provide for the economic stabilization of tribes and their enterprises.

- ***Provide at Least \$20 Billion to a Tribal Fiscal Stabilization Fund in the U.S. Department of Treasury.***

For many tribes, revenue from tribally owned businesses provides the vast majority of operating revenue for government services such as healthcare, education, and public safety. Many tribes receive only a small portion of their funding from the federal government. Indian Country industries contribute over \$50 billion per year to tribal governments and the American economy. The pandemic has had a devastating effect on these businesses, threatening the ability of tribes to provide basic government services. We must ensure tribal enterprises have access to economic relief and resources to maintain solvency of tribal governments. Therefore, we propose a Fund, through the U.S. Department of the Treasury that will provide grants to tribal governments and tribal enterprises based upon lost revenues.

II. Provide at least \$2 Billion for a Tribal Forbearance, Loan, & Guarantee Fund Allocated for Assistance to Tribal Governments and their Enterprises to Replace Lost Revenue.

Tribal governments nationwide have declared public health and safety emergencies, closing government-owned enterprises. Many tribes are also cooperating with state governors nationwide to help stop community spread of the coronavirus. Indeed, with the unprecedented challenges the COVID-19 virus is presenting, our tribal governments and enterprises are cooperating on an unprecedented basis. Tribal government-owned enterprises are often the sole non-federal source of government revenue for tribal government treasuries.

Tribal government-enterprise closures will deeply impact tribal government treasuries, forcing reduction in the delivery of essential government services. However, at the same time - many

tribal governments and tribal government-owned enterprises will face financial pressures and potential defaults due to the lack of government revenue at least in the short term-six month window (180 days). Due to the unprecedented nature of this nationwide crisis, tribal governments seek the provision above to stem the financial crisis that will soon impact much of Indian Country and to help address shortfalls in essential tribal government programs and services in light of this unprecedented pandemic.

- ***Provide \$2 Billion to a Tribal Loan Guarantee Fund to Address Credit Emergencies.***

Tribal enterprise closures will deeply impact tribal government treasuries, forcing reduction in the delivery of essential government services. At the same time, many tribal governments and tribal government-owned enterprises will face financial pressures and potential defaults due to the lack of government revenue at least in the short term-six month window (180 days). Due to the unprecedented nature of this nationwide crisis, tribal governments seek emergency access to loans and guarantees to provide for government and business continuity.

- ***Provide Tribal Governments and Enterprises Temporary Forbearance.***

The suspension of loan payments and interest accrual should apply to all entities owned and operated by Indian tribes that have closed an operation to protect the public health and stop the spread of COVID-19. These temporary changes would come at no cost to the United States taxpayer. Banks and lenders will not lose out on contractual agreements. Instead, agreements with tribal governments and tribal government-owned entities will be temporarily paused to help all Americans through the pandemic.

III. Provide not less than \$110 million in additional funding and waive restrictions on Small Business Administration (SBA) and Treasury programs for Native American Contractors and Native Community Development Financial Institutions to provide for emergency funds and waiver of program restrictions.

The COVID-19 pandemic provides an unprecedented threat to the solvency of Native American small businesses. Native American Contractors (NACS) and Native Community Development Financial Institutions (NCDFI) are critical to the growth and existence of Native American small businesses and also provide critical support in federal contracting. During this period of national financial distress, emergency relief and a waiver of program restrictions are needed to enable NACs and NCDFIs to avoid bankruptcy and support their communities and business partners and aid the national recovery.

NACS

NACS create economic development in Indian Country through small businesses and government contracting and are vital participants in the delivery of federal services. The impacts of the COVID-19 pandemic have disproportionately impacted small businesses and waiver of federal restrictions on existing SBA programs and an increase in program technical assistance is needed to bolster these businesses to recover and provide support in the national recovery.

- ***Allow Tribal Access to the SBA 7 Loan Program***

Presently, tribal governments and their entities are not able to receive loans from the SBA. Tribal businesses are often the only small businesses on reservation. These business' existence is threatened by the present fiscal crisis, and they need access to emergency 7(a) SBA loans. Additionally, assistance is needed for technical assistance providers for small businesses to incorporate business disruption planning into their work.

- ***Ensure NACS and Participants in the SBA Small Disadvantaged Business Program Can Access COVID-19 Contracting Opportunities.***

During this crisis, federal agencies will need to utilize programs and policies that provide them with maximum flexibility and expedited procurement processes. NACS and other small disadvantaged businesses must be able to access federal procurement opportunities.

- ***The Provisions of the 2020 NDAA, Raising the Cap on Sole Source Contracts, should be Applied to All Federal Agencies.***

The 2020 NDAA raised the cap to \$ 100 million for sole-source contracts awarded by DOD agencies subject to justification or approval. To enable NACS to access all federal procurement opportunities, we recommend bringing civilian contracts in line with the provisions of Section 823 of the 2020 NDAA.

- ***Exempt the SBA from Category Management.***

To support the recovery of NACs and small businesses through contracting, the Small Business Administration should be exempted from the requirements of category management which presently is increasing barriers to needed federal procurement.

- ***NACS Should be Included in Relief Provided to Federal Employees.***

Any relief provided to federal employees, such as continued pay, related to the COVID-19 pandemic, including for any government shutdowns, should also apply to federal contractors. The impacts on NACs and small business are massive and must be offset in order to ensure survival of these vital businesses.

NCDFIs

NCDFIs provide access to capital in low-income and underbanked Native American communities and offer services that include: small business and consumer loans, mortgages, and check cashing. As of March 20, 2020, a survey of NCDFIs showed that 89% make loans to small businesses that will be impacted by the COVID-19 economic slowdown. Native CDFIs will be forced to restructure loans to foodservice, construction and professional services among other key industries. The following are Congressional actions that will help avoid severe economic disruptions to Native CDFIs, small businesses, and low-income consumers.

- **Allocate Not Less Than \$100 Million to the Native American CDFI Assistance (NACA) Fund.**

Appropriate \$100 million to the Treasury's Native American CDFI Assistance (NACA) fund for emergency supplemental funding in FY 2021. Emergency funding will provide technical and financial assistance to Native CDFIs that must restructure loans to small businesses and consumers impacted by the COVID-19-related economic downturn. Investment in the NACA fund will help get capital to low-income, high-poverty communities for small business support through an existing and successful mechanism.

- **Extend Matching Requirement Waiver for Native CDFIs Receiving NACA Awards.**

For the past several years, Congress has waived the matching funds requirement for Native CDFIs receiving Native American CDFI Assistance (NACA) funding through the Treasury's CDFI Fund. This is a revenue-neutral option to allow additional capital to flow to underbanked communities. With tribes facing additional constraints from COVID-19 responses, any matching requirement will make it more difficult to get capital to Native CDFIs.

IV. Provide parity to ensure individual and employer emergency assistance is accessible to tribal governments, their enterprises, and employees.

Tribal governments are often some of the largest employers in their respective regions. And, because they are usually located within their aboriginal homelands, they do not have the capacity or desire to move location during economic downturns, like some corporations may do. Additionally, tribal governments do not have tax bases through which to generate revenue like state and local governments. Thus, tribal governments rely on federal funding and revenues generated from tribally-owned enterprises to fund their government operations, programs, and infrastructure.

- **Ensuring Inclusion of Indian Tribes in Tax Credits for Employers.**

Public Law 116-127 failed to include tribal governments in the provisions providing tax credits to employers who incur losses related to their continuation of employee payments during the closures associated with the coronavirus pandemic. This language must be amended to ensure tribal governments have access to the emergency relief available to aid employers in responding to the pandemic.

- **Addressing Unemployment Insurance Reimbursement Disparities.**

Under the Federal Unemployment Tax Act (FUTA), most employers pay the FUTA quarterly and share costs for unemployment benefits in their states' unemployment system. Certain non-profits, states and their subdivisions, and tribes can elect not to pay the quarterly FUTA tax and instead reimburse state unemployment funds dollar-for-dollar for actual unemployment related costs incurred by their former employees.

With the widespread closure of tribal offices and enterprises and accompanying layoffs, tribes that reimburse under this model face massive and unforeseen reimbursement payments and lack the funds due to declining revenues. An amendment is needed to Public Law 116-127 that adds a new section at the end of Division D to require the Secretary of Labor to transfer amounts equal to what tribes owe for reimbursements in state accounts within 30 days of the applicable due date. Reimbursements owed by tribes would be deferred until states receive the corresponding grant payments from the Department of Labor, at which time the obligations would be extinguished.

- **Protecting Tribal Fisheries.**

Tribal fisheries are a vital component of the tribal economy and the primary source of income for many families. The COVID-19 pandemic is having grave impacts on tribal treaty fisheries due to fisheries being cancelled and lack of an available market. Legislation is needed that supports tribal treaty fishers by providing them a stable income during this crisis.

- **Suspension of 401(k) Loan Payments, Extension of Time Period Prior to 401(k) Default, and Relaxed Hardship Distributions.**

Tribal government and enterprise employees have sustained economic loss during the pandemic. Their financial distress would be eased by the suspension of 401(k) loan payments, extension of the grace period for 401(k) loan payments prior to default, and relaxation of hardship distributions that eliminated the 6 month ban on 401(k) contributions until the national emergency declaration period is complete.

V. Conclusion

As you continue to work to advance the interests of the American people in negotiations over “Phase 3” COVID-19 relief, we urge you in the strongest possible terms to provide emergency direct and related assistance to address the devastating loss to tribal government revenues which is presently impacting the ability of tribes to provide for the health, safety, and welfare of their communities.

Sincerely,

National Congress of American Indians
Native CDFI Network
Native American Financial Officers Association
Native American Contractors Association
National Center for American Indian Enterprise Development

PROPOSED LEGISLATIVE LANGUAGE

- ***Provide at Least \$20 Billion to a Tribal Fiscal Stabilization Fund in the U.S. Department of Treasury.***

\$20,000,000,000 for the Coronavirus Tribal Relief Fund within Department of the Treasury, which shall be distributed as grants by the Secretary of the Treasury to Indian tribes or tribally-owned entities. Allocation and distribution of such grant funding shall be at the Secretary's discretion but shall be based upon lost revenues, as demonstrated by revenues received in the aggregate in fiscal year 2019 by the tribe or tribally-owned entity. The Secretary shall award grants to eligible entities until such amounts of the Fund are expended. For the purposes of this Act, Indian tribe has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

- ***Provide \$2 Billion to a Tribal Loan Guarantee Fund to Address Credit Emergencies.***

The Secretary of the Treasury shall make loans to Tribes equal to the amount of revenue the Tribe and any Tribally owned or operated business generated in the corresponding month in the year prior to enactment. These loans shall be for ten years, at an interest rate no greater than the prior week's average daily market rate for the U.S. Treasury's 10 year bond and shall be issued by the Treasury's Federal Financing Bank. The first amortizing payment shall be due no earlier than 180 days after issuance and no later than 365 days. These loans shall be subject to repayment only from revenue from existing and future tribal businesses and not be subject to garnishment of any other programs or other transfers of federal aid to tribal governments.

\$2 billion shall be appropriated and Treasury shall accept the first \$10 billion of eligible loan requests, with no more than \$25 billion in total lending unless additional appropriations are authorized. For the purposes of this Act, Indian tribe shall be as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

- ***Provide Tribal Governments and Enterprises Temporary Forbearance.***

Indian tribes and tribal enterprises shall be granted a period of forbearance of 180 days from the date of enactment of this Act from financial obligations on loans without the accrual of interest, fees, or penalties during this 180-day forbearance period and such tribes shall not be considered in default on these loans so that Indian tribes can continue to provide essential governmental services for their communities. The term of the loan agreement shall be extended a corresponding 180 days. Indian tribes and tribal entities shall resume full payments on loan agreements upon the expiration of the 180-day forbearance period under the new term.

- ***Allow Tribal Access to the SBA 7 Loan Program.***

SEC. 3. 7(A) LOAN PROGRAM.

(b) INCREASED ELIGIBILITY FOR PRIVATE NONPROFIT ORGANIZATIONS AND MEDIUM-SIZED BUSINESSES.-During the covered period, the following entities are eligible to receive a loan made under section 7(a) of the Small Business Act (15 U.S.C. 636(a)):

(1) A private nonprofit organization.

(2) A business concern that is not more than 300 percent larger than the applicable size standard established for categorizing a business concern as a small business concern under section 3(a) of the Small Business Act (15 U.S.C. 632(a)).

(3) A business concern as defined under 15 U.S.C. 632(p)(3)(C)), under section 3(a) of the Small Business Act.

- ***Increase Access to the SBA 7(j) Program.***

IN GENERAL- Section 7(j)(2) of the Small Business Act (15 U.S.C. 636(j)(2)) is amended by adding after (j)(2)(E), "(F) assistance in each of the above categories specifically tailored towards planning for, or recovering from, the event of a natural disaster, act of terrorism, other man-made disaster, or significant business disruption."

AUTHORIZATION OF APPROPRIATIONS.- There is authorized to be appropriated \$10,000,000 to Section 7(j) of the Small Business Act (15 U.S.C. 636(j)), within which not less than \$4,000,000 shall be available until expended for assistance to small business concerns under 15 U.S.C. 637(a)(4)(A)(i)(II) - (III) and (a)(4)(A)(ii)(II) - (III)."

- ***Ensure NACS and Participants in the SBA Small Disadvantaged Business Program Can Access COVID-19 Contracting Opportunities.***

Procurement – Inclusion of Small Disadvantaged Businesses under 15 USC §644

(a) Any acquisitions, procurements, or contracts for goods and service of all types to be awarded under the provisions of this ACT shall include and be subject to the provisions applicable to the Small Disadvantaged Business Program as defined in section 8(a) of the Small Business Act (15 USC §644) and the regulations of the Small Business Administration 13 CFR § 124.1002.

(b) For the purposes of this legislation, the term “contract” includes a prime contract, a task order, a delivery order, a blanket purchase agreement, and a basic ordering agreement.

- ***The Provisions of the 2020 NDAA, Raising the Cap on Sole Source Contracts, Should be Applied to All Federal Agencies.***

(a) MODIFICATION OF JUSTIFICATION AND APPROVAL REQUIREMENT FOR SOLE-SOURCE CONTRACTS AWARDED BY FEDERAL GOVERNMENT AGENCIES.—

This Section specifically addresses and overrides the National Defense Authorization Act for Fiscal Year 2010, Pub. L. 111-84, §811 (2009). (Public Law 111–84; 123) in respect to civilian agency contracts in that —

(1) no justification and approval is required under such section for a sole-source contract awarded by any civilian (non-DOD) federal government agency in a covered procurement for an amount not exceeding \$100,000,000; and

(2) the appropriate official designated to approve the justification for a sole-source contract awarded by a civilian (non-DOD) federal government agency in a covered procurement exceeding \$100,000,000 is the head of the procuring activity (or the head of the procuring activity's delegate) for that agency.

Not later than 90 days after the date of the enactment of this Act, the Federal Acquisition Regulation shall be revised to reflect the changes above.

- ***Exempt the SBA from Category Management.***

MODIFICATION OF CATEGORY MANAGEMENT REQUIREMENTS FOR ALL CIVILIAN FEDERAL AGENCIES AND THE DEPARTMENT OF DEFENSE FOR CONTRACTS ELIGIBLE UNDER THE U.S. SMALL BUSINESS PROGRAMS INCLUDING SECTION 8(A) BUSINESS DEVELOPMENT PROGRAM.

This Section amends the National Defense Authorization Act for Fiscal Year 2010, Pub. L. 111-84, §811 (2009). (Public Law 111–84; 123) in respect to civilian federal agencies and Department of Defense contracts in that —

(1) Any acquisition for a contract to be awarded under the procedures of the section 8(a) Business Development Program (including an acquisition for commercial items) shall:

(A) be exempt from the procedural requirements of agency-level or government wide guidance on category management, best in class solutions, common contract solutions, or successor strategies for contract consolidation; and

(B) be disregarded when measuring attainment of any goal or benchmark established under agency-level or government wide guidance on category management, best in class solutions, common contract solutions, or successor strategies for contract consolidation, unless considering the acquisition aids the achievement of such goal or benchmark.

(2) After a contract has been awarded under the section 8(a) Business Development Program (including an acquisition for commercial items), it shall not be removed and placed in category management, best in class solutions, common contract solutions, or successor strategies for contract consolidation.

(3) In this subsection, the term “contract” includes a prime contract, a task order, a delivery order, a blanket purchase agreement, and a basic ordering agreement.

Not later than 90 days after the date of the enactment of this Act, the Federal Acquisition Regulation shall be revised to reflect the changes above.

- ***NACS Should be Included in Relief Provided to Federal Employees.***

Any relief provided to federal employees, such as continued pay, related to the COVID-19 pandemic, including for any government shutdowns, should also apply to federal contractors. The impacts on NACs and small business are massive and must be offset in order to ensure survival of these vital businesses.

- **Appropriate Not Less Than \$100 Million to the Native American CDFI Assistance (NACA) Fund.**

For an additional amount for the “Native American Community Development Financial Institutions Assistance (NACA) Fund Program Account”, \$100,000,000, to remain available until September 30, 2021, for qualified applicants under the fiscal year 2020 funding round of the Community Development Financial Institutions Program. Provided, That for the purpose of the fiscal year 2020 funding round, the following statutory provisions are hereby waived: 12 U.S.C. 4707(e) and 12 U.S.C. 4707(d).

- **Extend Matching Requirement Waiver for Native CDFIs Receiving NACA Awards.**

For assistance provided pursuant to section 108 of the Community Development Banking and Financial Institutions Act of 1994 ([12 U.S.C. 4707](#)) to benefit Native Community Development Financial Institutions, as defined by the Secretary of the Treasury, section 108(e) of such Act shall not apply.

- **Ensuring Inclusion of Indian Tribes in Tax Credits for Employers.**

SEC. __. TRIBAL ELIGIBILITY FOR TAX CREDITS.

(a) An Indian Tribe, band, nation, pueblo, or other organized group or community recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians shall be entitled to the payroll credit in Section 7001 and Section 7003 of H.R.6201 if it—

- (1) employs 50 or more employees for each working day during each of the 20 or more calendar workweeks in the current or preceding calendar year;*
- (2) has implemented Tribal public health emergency leave policies consistent with what is mandated by Section 3102 of the Families First Coronavirus Response Act;*
- (3) is subject to Section 3111(a) or Section 3221(a) of the Internal Revenue Code of 1986; and*
- (4) has paid an excise tax imposed under Section 3111(a) or Section 3221(a) of the Internal Revenue Code of 1986.*

- **Addressing Unemployment Insurance Reimbursement Disparities.**

Notwithstanding any other provision of law, Indian fishermen, engaged in fishing rights related activity, as defined under 26 U.S.C. 7873(b)(1) that have been unable to engage in fishing rights related activities due to the COVID-19 pandemic are eligible for unemployment assistance. Such assistance shall be available to an Indian fisherman as long as the COVID-19 outbreak continues in the State in which they reside, but no longer than 26 weeks. Such assistance for a week of unemployment assistance shall not exceed the maximum weekly amount authorized under the unemployment compensation law of the State in which the Indian fisherman resides. In the alternative, if an Indian Tribe chooses to reimburse Indian Tribal fisherman for losses directly related to fishing rights related activity, as defined under 26 U.S.C. 7873 (b)(1), there shall be allowed as a credit against the taxes imposed by sections 3101, 3111, and 3306 (b) of the Internal Revenue Code of 1986 for each calendar quarter an amount equal to 100 percent

of the wages paid by the Indian Tribe to any employee who receives wages comparable with the reimbursements provided Indian Tribal fisherman with respect to such calendar quarter.

- **Protecting Tribal Fisheries.**

Notwithstanding any other provision of law, the Internal Revenue Code of 1986 shall not treat a qualified plan as violating any requirement of the Internal Revenue Code merely because the Plan allows for one or more of the following assistance measures through December 31, 2020:

- (a) automatic suspension of loan payments for an individual who has sustained an economic loss by reason of COVID-19. Such automatic suspension of loan payments shall also provide for reamortization over the remaining five-year repayment period;*
- (b) an extended grace period for employee 401(k) loan repayment before a loan default would occur; or*
- (c) provides for employer contributions during the six (6) month period following a hardship distribution.*

- **Suspension of 401(k) Loan Payments, Extension of Time Period Prior to 401(k) Default, and Relaxed Hardship Distributions.**

Notwithstanding any other provision of law, the Internal Revenue Code of 1986 shall not treat a qualified plan as violating any requirement of the Internal Revenue Code merely because the Plan allows for one or more of the following assistance measures through December 31, 2020:

- (a) automatic suspension of loan payments for an individual who has sustained an economic loss by reason of COVID-19. Such automatic suspension of loan payments shall also provide for reamortization over the remaining five-year repayment period;*
- (b) an extended grace period for employee 401(k) loan repayment before a loan default would occur; or*
- (c) provides for employer contributions during the six (6) month period following a hardship distribution.*