

Treasury Tribal Advisory Committee

April 22, 2020

The Honorable Steven Mnuchin
Secretary of the Treasury
1500 Pennsylvania Ave., NW
Washington, D.C. 20220
Tribal.consult@treasury.gov

Re: TTAC CARES Act Relief Funding Recommendations

Dear Secretary Mnuchin:

Congress, through the Tribal General Welfare Exclusion Act of 2014, Pub. L. 113-168, established the Treasury Tribal Advisory Committee (“TTAC”), a seven-member tribal advisory committee to advise the Secretary of the Treasury on taxation of Indian tribes and other matters. This correspondence relates to issues, as listed below, associated with the distribution of the \$8 billion appropriated to Indian tribal governments through the CARES Act Coronavirus Relief Fund (“CRF”). This letter is offered to you by TTAC to advance the government-to-government relationship between the Department of Treasury (“Treasury”) and federally recognized Indian tribes and Alaska Native entities. We, the TTAC members, provide the following recommendations:

1. Develop an equitable distribution to tribal governments:

We urge Treasury to use the allotted time to develop the proper formulae and procedures for distribution of the CRF in accordance with federal law including the CARES Act and the canons of construction for Indian law. The CARES Act permits Treasury thirty (30) days from the effective date of the CARES Act, April 26, 2020, to distribute CRF funds to tribal governments. CARES Act directs the Secretary of Treasury to determine, after consultation with the Secretary of the Interior and Indian tribes, the amount and manner funds will be distributed to the tribal governments.

Treasury, in conjunction with Department of the Interior (“DOI”), convened tribal consultations via conference calls on April 2, 2020 and April 9, 2020, and accepted written comments until April 13, 2020. Treasury developed the Treasury Certificate for Tribal Governments (“Certificate”), perhaps in conjunction with DOI. Treasury bears the onus of determining the amounts and manner of distribution to the tribal governments. The Certificate required the tribal population, number of employees, tribal expenditures, and land base. This information would ostensibly contribute to a method for distribution of the CRF funds to tribal governments. Treasury should distribute funds directly to Tribes and not use DOI processes as an intermediary for distribution.

Most tribal governments would prefer to give more weight to the actual impacts of this pandemic, population, and employees in development of the distribution method. These factors represent the human aspects to which the governments owe their greatest focus and for whom Congress drafted Title VI of the CARES Act. We refer you once again to the Congressional Colloquy of March 27, 2020 as a means to understand Congressional intent and incorporate that intent in the distribution of funds. “Expenditures” relate closely to the two aforementioned categories since government services and economic development rely on those expenditures which COVID-19 reduced or eliminated. Tribal land base varies widely between tribes and may have no correlation to the ravages of COVID-19. Factoring land base into the formulation may have

unintended consequences for Treasury in the distribution of the CRF funds since it is not an indicator of need or population. A base for all tribes respecting their sovereign governmental status should be considered essential given the number of comments supporting this approach. It is important that all of our federally recognized tribes receive some relief during this crisis.

2. A distribution method inclusive of ANCs is contrary to the government-to-government relationship between tribal governments and the United States Government and contrary to established law:

Treasury would arrive at a balanced distribution if it applied any or all of the Certificate factors to the 574 recognized tribal governments in Alaska and the lower 48 states. Treasury cannot offer an equitable and balanced distribution if it includes the 230 for-profit Alaska Native Corporations (“ANCs”) as recipients for the CRF tribal governments. The ANCs are state-chartered corporations created for the benefit of shareholders not constituents. The ANCs are Alaska-based, global corporations focused on returns and profits as opposed to the tribal government mission of providing for the health, welfare, and safety of its citizens and employees.

Andrew Guy, President of the ANC Calista Corporation, summed up the difference between ANCs and tribal governments in his letter to you dated February 12, 2020: “While ANCs are incorporated under Alaska state law, our business activities improve the quality of life for Alaska Native people as shareholders, similarly to how federally recognized American Indian and Alaska Native tribal governments provide for their citizens – through the operation of enterprises to generate revenue to provide services and other benefits.” Mr. Guy highlighted distinctions between ANCs and American Indian or Alaska Native tribal governments. First, tribal governments do not seek their charter or authority from state law but rather invoke their inherent powers of self-governance via their unique standing as governments recognized in the U.S. Constitution and affirmed by the U.S. Supreme Court. Second, ANCs and tribal governments both seek to provide for their shareholders or citizens, the former through a dividend-based income stream generated from the profits of their many ventures and the latter through a collection of government-based revenues, grants, and federal funding. ANCs provide a unique and excellent revenue source for its Alaska Native shareholders, but they are businesses not governments. ANCs should seek relief from the ramifications of COVID-19 through the same provisions as other large corporations instead of leveraging their way into the limited funding source for tribal governments. And third, to recognize ANCs would be fundamentally altering the political status of tribal governments acknowledged by the federal government since its inception in 1789.

3. Department of Treasury is responsible for determining amounts and methods of distribution:

Since the passage of the CARES Act Treasury convened two calls with tribal governments and solicited comments from tribal governments resulting in hundreds of letters. Not all tribal leaders were able to express their comments due to limited time on the calls. It communicated with tribal governments over the two calls and Dear Tribal Leader Letters. Treasury consulted with DOI on various matters relevant to the CARES Act CRF funds for tribal governments. Congress directed Treasury to develop the method of CRF funds distribution in consultation with tribal governments that adheres to the letter and intent of the law and creates a path that strengthens government-to-government relationship between Treasury and tribal governments.

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Congress relegated DOI and its internal expertise to the role of consultant to Treasury for the purposes of creating an equitable distribution of the CRF for tribal governments. DOI compiles annually, pursuant to Pub. L. 103-454, the list of tribal entities recognized by and eligible for funding and services by virtue of their status as Indian Tribes. The January 6, 2020 list contained 574 federally recognized tribes and Alaska Native entities. The list contained no ANCs and it never has.

Tribal government opinions are as varied and unique as the tribes themselves, something Treasury personnel garnered through the consultation calls and written submissions. All tribes agree their governance systems are unique to their cultures and peoples. Tribal governments enjoy sharing and teaching other governments about their tribes, history, and culture. Tribal governments excel when treated with parity and respect through government-to-government engagement.

Tribal government leadership became disheartened when they witnessed non-governmental tribal entities, like the ANCs, interpret incorrectly, and solely for their benefit, legislation drafted to assist 574 tribal governments through the COVID-19 crisis. Congress intended the benefits of the CRF allocation to flow to tribal governments in recognition that, unlike corporate enterprises, governments provide funding for essential government services including but not limited to governance, public safety, education, natural resource management, elder services, transportation and health care. As you are well aware, tribal governments do not have a tax base to utilize in the provision of these services. ANCs shareholders will benefit from the CRF for tribal governments through the allocation distributed to their native village governments. ANCs are important economic enterprises and have access to a broad array of programs available to other American corporations including the Paycheck Protection Program, Employee Retention Credit, and the Federal Reserve's Loan Facility program.

ANCs have long sought parity with tribal governments. Congress did not intend for them to be governments but rather economic development engines for their Alaskan Native shareholders. If Congress intended otherwise it would have drafted the 1971 Alaska Native Claims Settlement Act (Pub. L. 92-203) to clearly state such an intent. We urge Treasury to maintain the status quo as it develops the methods for distribution of the CRF for tribal governments. If the ANCs wish to be recognized as tribal governments, they should use the established channels such as a congressional fix or DOI's federal recognition process.

4. Release of confidential information:

As you are aware confidential information submitted by tribal nations pursuant to requirements of the CRF for tribal governments became public. Treasury did not release the information, but it serves as a reminder to all of us, especially the keepers of the collected sensitive information, to remember the confidential nature of tribal information. Tribes worked with Congress to enshrine confidentiality into law, agencies have promulgated regulations echoing those laws, and tribes reiterate this in consultations. It takes only one misstep to ruin decades of procedures, practices, and good intentions. The leak of confidential information forces tribes and the DOI almost back to the starting line on this matter. TTAC urges the Department to treat the tribal data as though it were your own federal confidential data. We ask for an investigation on how this data was released. We further ask that Treasury work to mitigate the unforeseen, negative consequences of this release of data.

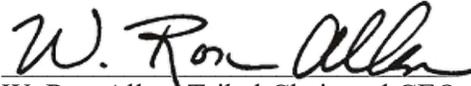
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Thank you in advance for your assistance to date and in the future. TTAC appreciates the Treasury's important role in the short and long term in Indian country and tribal governments look forward to building a government-to-government relationship with Treasury. We appreciate the work of President Trump and Secretary Mnuchin in addressing the shortfalls in Indian country during this COVID-19 pandemic crisis and its impacts on American Indian and Alaska Native communities and economies.

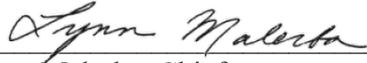
Sincerely,



Lacey Horn, TTAC Chairperson
(Cherokee Nation)



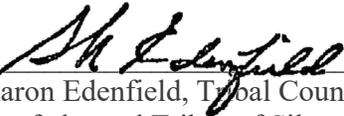
W. Ron Allen, Tribal Chair and CEO
(Jamestown S'Klallam Tribe)



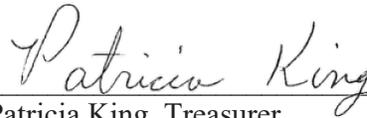
Lynn Malerba, Chief
(Mohegan Tribe)



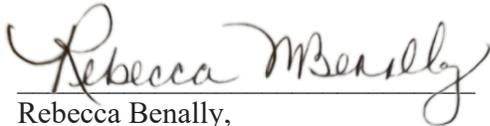
Eugene Magnuson, TTAC Vice-Chairperson
(Pokagon Band of Potawatomi)



Sharon Edenfield, Tribal Council Member
(Confederated Tribes of Siletz Indians)



Patricia King, Treasurer
(Oneida Nation)



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Cc: Secretary David Bernhardt, U.S. Department of the Interior
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