



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
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