



National
Congress of
American
Indians



April 17, 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:

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, thank you for your continued support for Indian Country during the 2019 novel coronavirus (COVID-19) pandemic. COVID-19 knows no jurisdictional boundaries. Indian Country must continue to be included in any pandemic response and recovery legislation. The recommendations outlined in this letter encompass critical ongoing funding and policy needs to help protect and prepare American Indian and Alaska Native communities to effectively respond to COVID-19.

The urgency, infection rate, and death toll of the COVID-19 pandemic continues to intensify. While pandemic response legislation has included Indian Country, the duration and severity of the COVID-19 pandemic necessitates significantly more resources to protect and preserve human life and address the grave economic impacts tribal nations face, as they close government operations and tribal enterprises to protect the health of their citizens and surrounding communities.

American Indian and Alaska Native communities are disproportionately impacted by the health conditions that the Centers for Disease Control and Prevention (CDC) notes increase risk for a more serious COVID-19 illness, including respiratory illnesses, diabetes, and other health conditions. We urge you to include the following requests as you work on any current, and future supplemental package to stem the COVID-19 pandemic. In addition to the specific funding and policy requests outlined below, tribal nations are strongly urging maximum flexibility in the use of new and existing funds to be able to comprehensively address COVID-19 response efforts.

This letter is one of three letters addressing: economic development and employment; tribal governance and housing/community development; and human services. The urgent and essential policy recommendations included in this letter cover tribal governance and housing/community development.

TRIBAL GOVERNANCE

- **Provide \$950 million in additional funding for Bureau of Indian Affairs Tribal Priority Allocations programs.**

Background: Decades of neglect, underfunding, and inaction on behalf of the federal government have left tribal governments and their citizens severely under-resourced and at extreme risk during the COVID-19 crisis. Tribal nations' existing systems of service delivery and infrastructure will experience greater stress and/or reach their breaking points prior to that of other units of government, as tribal nations seek to maintain essential services, as well as dedicate resources to the unique circumstances of COVID-19 response. In accordance with federal trust and treaty obligations, it is vital that Congress act to provide immediate, substantial support to tribal nations to maintain and augment essential government services during this time of national emergency. Failure to support the governmental activities of tribal nations will be disastrous for tribal nations, Native people, and surrounding communities and will result in an incomplete response to this crisis, affecting the nation at-large. Like all governments across the United States, tribal nations are working diligently to immediately respond to the COVID-19 pandemic. The response is ongoing, and the costs associated with it will continue to rise.

The CARES Act includes \$453 million for the Operation of Indian Programs. Thank you, again, for your continued support for Indian Country, but the ongoing and intensifying nature of the COVID-19 pandemic requires additional resources. Tribal nations are requesting \$950 million in additional funding for Indian Affairs Tribal Priority Allocation (TPA) programs and TPA-like programs (e.g., Criminal Investigations & Police Services & Detention/Corrections) to fund essential tribal services. Responding to this pandemic is cost-intensive, and it impacts all aspects of tribal governance and life in tribal communities. Congress must ensure tribal nations have additional funding for COVID-19 response and recovery activities.

Legislative Text: *For expenses necessary for the operation of Indian programs, as authorized by law, including the Snyder Act of November 2, 1921 (25 U.S.C. 13), the Indian Self-Determination and Education Assistance Act of 1975 (25 U.S.C. 5301 et seq.), \$950,000,000 for tribal priority allocations; provided that federally recognized Indian tribes and tribal organizations of federally recognized Indian tribes may use their tribal priority allocations for unmet costs related to COVID-19 response and recovery:*

- **Provide authority for interagency transfers, withdrawals and credits that tribal nations can access to address COVID-19 and its impacts so that funding can be disbursed to tribal nations quickly.**

Background: COVID-19 response funding will not serve its purpose if it is not quickly made available to tribal nations working on the ground. Time is of the essence as the federal government seeks to provide immediate resources and relief to Indian Country. However, all federal agencies and funding mechanisms are not created equal when it comes to expeditious and broad distribution of dollars to tribal nations. Currently, there are numerous barriers that exist within a variety of federal agencies and their respective funding structures that will result in unequal and delayed access to funding intended for Indian Country. In order to facilitate rapid deployment of resources to tribal nations, it is critical that federal agencies be vested with broad authority to transfer funding for Indian Country to sister agencies with existing processes, agreements, and partnerships conducive to this goal, including Indian Self-Determination and Education Assistance Act (ISDEAA) contracts and compacts at IHS, BIA, and beyond. This will ensure the greatest level of

and quickest access to resources for tribal nations, as well as necessary flexibility to account for diversity across Indian Country.

Legislative Text: *At a Tribal Nation's or Tribal Nation Organization's request or at the discretion of a Federal agency, any amount available under law to any Federal agency for any purpose related to addressing the coronavirus or its impacts may be withdrawn from one appropriation account and credited to another or to a working fund to facilitate the prioritized and rapid deployment of coronavirus relief within Indian country as that term is defined in 18 U.S.C. § 1151. This authority applies to Indian specific funding and also to other funding for which Tribal Nations or Tribal Nation Organizations are eligible recipients. Except as specifically provided by law, an amount authorized to be withdrawn and credited is available for the same purpose and subject to the same limitations provided by the law appropriating the amount. A withdrawal and credit is made by check and without a warrant.*

- **Authorize COVID-19 funding disbursement to tribal nations using existing funding mechanisms already in place when possible.**

Background: Many tribal nations already have in place funding mechanisms through which they receive federal funding. In order to facilitate rapid deployment of COVID-19 resources to tribal nations, it is critical that tribal nations and American Indian and Alaska Native organizations are able to receive funding through existing funding mechanisms, processes, agreements, and partnerships, including ISDEAA contracts and compacts. When paired with interagency transfer authority, tribal nations would be able to receive COVID-19 funding from across federal agencies through their existing funding mechanism.

We want to emphasize that use of such funding mechanisms should not affect the allocation of COVID-19 funding made available to each tribal nation. We only suggest that, once funding allocation determinations have been made, funding available to a particular tribal nation or American Indian and Alaska Native organization be made available through existing funding mechanisms at the option of the tribal nation or American Indian and Alaska Native organization.

Legislative Text: *Any and all amounts available under law to any Federal agency for any purpose related to addressing the coronavirus and its impacts, regardless of what agency they are apportioned to, must be made available, at the option of a Tribal Nation or a Tribal Nation Organization, to be transferred to Tribal Nations and Tribal Nation Organizations through any existing funding mechanism, including but not limited to contracts, grants, compacts, or annual funding agreements under the Indian Self-Determination and Education Assistance Act if applicable, to facilitate the prioritized and rapid deployment of coronavirus relief within Indian country as that term is defined in 18 U.S.C. § 1151. Federal agencies shall amend existing funding mechanisms on an expedited basis to the extent necessary to disburse such funds.*

- **Ensure federal agencies serving Indian Country have personnel, staffing infrastructure, and resources available to distribute funds and resources.**

Background: With Indian Country advocating for a massive infusion of resources from the federal government, it is critical that the federal government have the necessary personnel and other infrastructure to rapidly distribute these resources. Under the unique circumstances posed by COVID-19, the federal employees that support distribution of funding to Tribal Nations must be deemed essential, so that transfers can be conducted without interruption.

Legislative Text: *During any Federal quasi-shutdown or telework effort, all funds directed to tribal governments and programs will continue to be paid out in a timely manner. All personnel necessary for the delivery of tribal health and safety in Indian country, as defined in 18 U.S.C. § 1151, and tribal government operations and finances, shall be deemed “essential” at the Departments of the Interior, Housing and Urban Development and Agriculture.*

- **Provide not less than \$75 million in new funding for BIA’s Welfare Assistance Fund (BIA, Operation of Indian Programs, Human Services, Welfare Assistance).**

Background: Unemployment as a result of COVID-19 has reached historic levels. COVID-19 is impacting employment and family security in tribal communities with layoffs in both public and private sector businesses. As the pandemic continues, many tribal governments and tribal businesses are running out of resources to retain workforces and stabilize local labor markets. With many tribal communities already experiencing high levels of unemployment and poverty, additional income assistance and emergency services is needed to stabilize families impacted by COVID-19. BIA Welfare Assistance contains five separate programs that tribal nations operate. They are Child Assistance, Emergency Assistance, Non-medical institutional and custodial care of adults, Burial Assistance, and General Assistance. These programs provide resources for families and adults who are not eligible for state services or when state services are not available. Key among these programs is General Assistance which provides income assistance for tribal members who are temporarily unemployed and not able to work. This is especially important in rural areas where many tribal communities are located and where state services are limited or not available.

Legislative Text: *Provided further, That not less than \$75 million shall be for welfare assistance payments: Provided further, That amounts received from funds provided under this heading in this Act for welfare assistance programs shall not be included in the statutory maximum for welfare assistance funds included in Public Law 116–94, the Further Consolidated Appropriations Act, 2020*

- **BIA regulations at 25 CFR Part 20.329 for Emergency Assistance under the Welfare Assistance Program should be updated to include individuals or families who are affected by COVID-19.**
- **BIA regulations at 25 CFR 20.330 should be temporarily waived to increase individual Emergency Assistance payments from \$1,000 to \$5,000.**

Background: Emergency Assistance is available under the Welfare Assistance program as a one-time funding source for eligible applicants. As workforces in tribal communities are displaced due to closures or miss work due to quarantines, there is a need to expand certain programs to provide certain economic relief to those tribal citizens affected by the spread of COVID-19. Overcrowding of households is persistent in tribal communities. Homes in Indian Country are often multi-family

and multi-generational. Regulations that limit tribal nations' ability to provide assistance to displaced workforces and multi-generational families should be immediately updated to accommodate for increased resources in Welfare Assistance programs. Increasing the payment threshold for Emergency Assistance payments will provide tribal nations the flexibility to support vulnerable populations and displaced workforces during their ongoing COVID-19 responses.

***Legislative Text:** Provided further, That Emergency Assistance payments can be provided to individuals for families affected by COVID-19: Provided further, that the maximum Emergency Assistance payment standard shall be \$5,000 for Emergency Assistance payments until September 30, 2021:*

- **Provide not less than \$20 million in new funding for BIA's Indian Child Welfare Act Fund (BIA, Operation of Indian Programs, Human Services, Indian Child Welfare Act).**

***Background:** Indian Child Welfare Act (ICWA) funding supports tribal government efforts to ensure tribal children at risk or in out of home care and their caregivers are not further traumatized by disruptions to their placements as a result of COVID-19. The funding shall support emergency services such as respite care to foster care and relative caregivers, case management services to support medical and social services coordination for children at risk of placement in out of home care and those currently in out of home care, and emergency placement services to children who are displaced from their foster care, relative care, or group care placement because of medical issues related to COVID-19 health concerns.*

***Legislative Text:** Provided further, That not less than \$20 million shall be for the Indian Child Welfare Act Fund, for which the funding shall support emergency services such as respite care to foster care and relative caregivers, case management services to support medical and social services coordination for children at risk of placement in out of home care and those currently in out of home care, and emergency placement services to children who are displaced from their foster care, relative care, or group care placement because of medical issues related to COVID-19:*

- **Provide not less than \$75 million in new funding for BIA Office of Justice Services (OJS) Criminal Investigations and Police Services.**
- **Provide not less than \$35 million in new funding for BIA OJS Detention/Corrections.**

***Background:** The Criminal Investigations and Police Services and Detention/Corrections programs both support public safety and police and detention services in Indian Country, and both are extremely underfunded programs, as documented in the BIA OJS Tribal Law and Order Act reports to Congress. COVID-19 has ramped up public safety response needs and inmate safety needs, and tribal nations will need additional funding and personnel to address the growing public safety threat from COVID-19.*

***Legislative Text:** Provided further, That not less than \$75 million shall be for Criminal Investigations and Police Services: Provided further, That not less than \$35 million shall be for Detention/Corrections.*

HOUSING AND COMMUNITY DEVELOPMENT

- **Provide \$600 million in additional funding to the Indian Housing Block Grant formula distribution portion, with up to \$150 withheld for the Indian Community Development Block Grants and Imminent Threat projects tribal nations propose as a direct response to COVID-19 issues in their communities.**

Background: To directly respond to COVID-19, new funds to tribal housing programs can lead to the quick development of temporary housing for health professionals and safer assisted living housing for tribal citizens. Tribal communities also see overcrowded homes at a rate of 16 percent, roughly eight times the national average, which inhibits tribal communities from practicing safe ‘social distancing’ techniques that are required by the COVID-19 pandemic. Funding new construction across the board will help alleviate issues of overcrowding.

Tribal nations have the capacity and demonstrated success in use of similar funding. In 2009, tribal nations received \$510 million in stimulus funding, which directly led to the creation of 1,954 new housing units, and the rehabilitation of 13,338 units. HUD and tribal nations used over 99 percent of the funds that were provided, which surpassed many other programs that received stimulus funding. Additionally, tribal housing programs selected to receive \$200 million in competitive grant funding in December 2019 will be able to build close to 1,200 new units. The tribal nations selected and awarded represented only 25 percent of the applications, so there is demonstrated need and projects that are ready to go.

There are also the economic benefits associated with funding tribal housing programs. The National Association of Home Builders estimates that every 100 homes constructed adds 394 local jobs, \$28.7 million in local income, and \$3.6 million in taxes or revenue to local governments. Specifically, funding tribal housing programs creates these jobs and spending in rural communities that are most in need.

Legislative Text: *For an additional amount for ‘Native American Housing Block Grants’, as authorized under title I of the Native American Housing Assistance and Self-Determination Act of 1996 (‘NAHASDA’) (25U.S.C. 4111 et seq.), \$600,000,000 to remain available until September 30, 2023: Provided, That \$450,000,000 of the amount provided under this heading shall be distributed according to the same funding formula used in fiscal year 2020: Provided further, That the Secretary shall obligate funds allocated by formula within 30 days of enactment of this Act: Provided further, That the amounts distributed through the formula shall be used for new construction, acquisition, rehabilitation including energy efficiency and conservation, and infrastructure development: Provided further, That in selecting projects to be funded, recipients shall give priority to projects for which contracts can be awarded within 180 days from the date that funds are available to the recipients: Provided further, that the Secretary may obligate \$150,000,000 which shall be available for grants to Indian tribes for carrying out the Indian Community Development Block Grant program under title I of the Housing and Community Development Act of 1974, notwithstanding section 106(a)(1) of such Act, and, notwithstanding any other provision of law: Provided further, that the Secretary shall obligate this funding by September 30, 2020: Provided further, that the Secretary shall give priority to those projects that*

would respond to emergencies that constitute imminent threats to health and safety: Provided further, that new housing construction is an eligible activity: Provided further, that not to exceed 20 percent of any grant made with funds appropriated under this paragraph shall be expended for planning and management development and administration.

- **Include direct tribal eligibility for any appropriations that are earmarked to other general federal housing programs, and in particular federal homeless assistance programs.**

Background: Homeless populations are among the most vulnerable to the spread of COVID-19, and a significant vector for additional transmission. Tribal nations and tribal housing programs have been struggling to address increased homelessness, and vulnerability to homelessness, but in doing so have had to divert funds that would otherwise be dedicated to maintenance and construction to finding and securing emergency shelter for the most vulnerable. Having direct access to homelessness funding would enable tribal nations to directly and immediately address this critical problem on the ground.

Legislative Text: *Notwithstanding any other provision of existing law, Indian tribes and Tribally Designated Housing Entities (as those terms are defined in title I of the Native American Housing Assistance and Self-Determination Act of 1996 (“NAHASDA”)) (25 U.S.C. 4111 et seq.) shall be eligible to receive any Homelessness Assistance funding provided under this Act.*

Thank you for your consideration of the recommendations outlined in this letter. We look forward to working with you to ensure that Indian Country’s concerns and priorities are comprehensively addressed, as we respond to the COVID-19 pandemic emergency.

Sincerely,

National Congress of American Indians
National American Indian Housing Council
National Indian Child Welfare Association
Self-Governance Communication and Education Tribal Consortium
United South and Eastern Tribes Sovereignty Protection Fund