



USET

SOVEREIGNTY PROTECTION FUND

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Transmitted Electronically

April 17, 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

Re: USET SPF Comments on the Implementation of Section 1102 of the CARES Act

Dear Administrator Carranza and Secretary Mnuchin,

We write on behalf of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) to provide comment to the Small Business Administration (SBA), in consultation with U.S. Department of Treasury (Treasury), regarding the implementation of Section 1102 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act—the Paycheck Protection Program (PPP). USET SPF urges SBA to ensure that Indian Country has broad, flexible access to relief under the PPP, as intended by Congress, so that we may continue to support our employees and local economies during this time of great uncertainty.

USET SPF is a non-profit, inter-Tribal organization advocating on behalf of thirty (30) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico¹. USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations, and assisting our membership in dealing effectively with public policy issues.

The purpose of the PPP, and all of Title I of the CARES Act, is to provide certainty and support to workers during the COVID-19 emergency. As businesses of all sizes and industries are forced to temporarily close their doors or otherwise experience steep reductions in revenue, it is critically important that employees be offered the stability of continued pay and/or economic relief. In establishing the PPP, Congress sought to ensure that small businesses of all types had access to forgivable loans to maintain payroll. In acknowledgement of the role that our businesses play in supporting economies across the country and the federal trust obligation, Congress explicitly included Tribal Business Concerns (TBCs), without regard for industry, as eligible for these loans. As SBA proceeds with additional rulemaking or guidance, it must ensure that Tribal Nations and TBCs are meaningfully and broadly included as eligible entities.

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe—Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is strength in Unity

Confirm the Eligibility of All Tribal Businesses Meeting Size Criteria

USET SPF, along with others throughout Indian Country, was surprised and deeply concerned to learn that in its Interim Final Guidance, SBA deems TBCs that operate in the gaming industry ineligible for the PPP. As SBA should well know, Tribal Nations engage in gaming and other industries in order to generate the revenue that funds essential government services to our people—services that the federal government consistently fails to fund, despite the federal trust obligation. In addition to supporting our governmental activities, TBCs are also critical to Tribal and local economies. They employ hundreds of thousands of people across the country, and are often the primary employer in rural areas. With TBCs as a community anchor, additional businesses are attracted, jobs are created, and billions of dollars contributed in economic output.

Like other small businesses, the economic downturn resulting from the COVID-19 emergency is impacting TBCs. Tribal gaming operations are particularly impacted, with all gaming entities in the USET SPF region currently shut down to promote public health objectives. As USET SPF member Tribal Nations work to maintain government services, we are also seeking to provide support to our employees during this public health crisis and economic upheaval. This is the objective of Congress in establishing the PPP—to provide a broad range of small businesses, including all TBCs, with the resources needed to do right by employees. Congress did not restrict TBC access to the PPP by industry. Instead, in an effort to apply broad relief across the small business sector, Section 1102 of the CARES Act expressly includes **any** Tribal business concern as defined by the Small Business Act—not SBA’s regulations. SBA, then, is acting counter to the intent of Congress in applying its 1953 regulations to the PPP. While we are aware that the SBA has recently revised its rules to include, “expanded eligibility,” these revisions would still bar nearly all TBCs in the gaming industry from access to the PPP. This is not an acceptable solution to Tribal Nation concerns and still not in keeping with the intent of Congress. USET SPF insists that SBA must act to confirm that all TBCs meeting the size criteria within Section 1102 are eligible for the PPP.

Exempt Tribal Businesses from Affiliation Rules

SBA must also make clear that TBCs are exempt from any affiliation rules in order to avoid confusion and disparate treatment by lenders. SBA’s regulations do exempt TBCs from these rules. However, this has not been clarified for lenders, and in the absence of clarity, many are applying these rules to TBCs under the PPP. In an effort to expedite the lending process, lender guidance must confirm that TBCs are not required to answer any questions regarding affiliation on application forms, other than indicating which Tribal Nation has ownership of a given TBC.

Uphold Tribal Sovereignty by Protecting Applicants from Non-Statutory Lender Requirements

Similarly, lenders must be prohibited from applying non-statutory requirements to TBCs, such as waiver of sovereign immunity or the attachment of tax returns, as a condition of PPP loans. As an agency of the federal government, SBA has a responsibility to uphold and protect Tribal sovereignty, including Tribal sovereign immunity. SBA’s guidance to lenders must reflect this obligation.

Extend Lender Authority to Native CDFIs

SBA has the authority under Section 1102 to extend lending authority to additional qualified lenders. Native Community Development Financial Institutions (CDFIs) have been certified by Treasury to lend to underserved communities across 26 states. Despite a majority not currently participating as SBA lenders, they are poised and certified to provide this service in Indian Country. SBA and Treasury should ensure Native CDFIs are extended the authority to lend under the PPP.

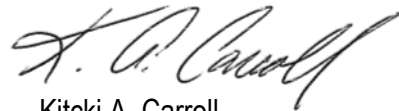
Conclusion

As SBA and Treasury seek to implement the PPP in fulfillment of Congressional intent and the spirit of the law, TBCs must be meaningfully and broadly included. This involves removing all arbitrary barriers to access that have been imposed during interim rulemaking. These barriers serve no valid purpose. Rather, they unfairly disadvantage Tribal Nations and our employees during a time of economic crisis. To continue to apply the PPP in this way represents a failure to uphold obligations to Tribal Nations, as well as American wage earners. USET SPF urges that these barriers be removed immediately. Should you have questions or require further information, please do not hesitate to contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs at Lmalerba@usetinc.org or 615-838-5906.

Sincerely,



Kirk Francis
President



Kitcki A. Carroll
Executive Director