

United States Senate
WASHINGTON, DC 20510

April 14, 2020

The Honorable Steven T. Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue NE
Washington, D.C. 20220

The Honorable David Bernhardt
Secretary
U.S. Department of the Interior
1849 C Street NW
Washington, D.C. 20220

Dear Secretaries Mnuchin and Bernhardt,

Congress designed the Coronavirus Relief Fund (CRF) established by Title V of the *CARES Act* to provide \$8 billion in critical relief to Tribal governments impacted by the COVID-19 pandemic. As the Administration undertakes its work to implement Title V, I write to clarify congressional intent regarding allowable uses and distribution of the Tribal portion of the CRF to Tribal governments.

Title V of the *CARES Act* limits eligibility for the Tribal portion of the CRF specifically to Tribal governments to ensure parity between states, territories, and Tribes. A Tribal government is the recognized governing body of a federally-recognized Indian Tribe that has a political relationship with the federal government; the law acknowledges this sovereign status and refers to Tribal governments alongside states and other units of local government throughout Title V.¹ Thus, the letter and the spirit of Title V's purpose – to provide economic stabilization of state, local, territorial, and Tribal governments impacted by COVID-19 so that they can continue essential government services – supports this conclusion. Non-governmental Tribal entities may well warrant relief under other *CARES Act* programs, but this funding in this title was intended for Tribal governments and should not be diverted. Any other interpretation would be contrary to congressional intent and an affront to the Indian canon of statutory construction that requires statutes to be construed favorably to Tribes' benefit.

It is also clear that Congress intended that Tribes be permitted to claim the full scope of expenditures incurred in the course of responding to and recovering from this public health crisis. The U.S. government has an obligation to provide for the operation of essential community programs for Indian Tribes and individual American Indians and Alaska Natives. However, due to decades of federal underfunding, Indian Tribes have struggled to keep these essential community programs running at a level that meets the full needs of their members. Indian Tribes – lacking the ability to establish a tax base – have sought to supplement federal funding shortfalls with revenues from other sources, including Tribally-owned business entities.

¹ Section 601(g); (c).

Many of my Congressional colleagues and I have fought to increase federal funding for these critical programs over the past few years but, despite these concerted efforts and notable progress, Tribes entered the COVID-19 crisis without sufficient resources to keep their communities running safely and respond effectively to the mounting economic and health threats caused by the coronavirus public health emergency.

With that understanding, Congress intended the Tribal portion of the CRF to have broad flexibility and deference to Indian Tribes on determining allowable uses to best meet the individual needs of each Tribe. The Fund must allow Tribes to continue operation of essential Tribal programs – including both safety-net public service programs and Tribally-owned business entities that generate operating funds for Tribal governments – that are strained by increased COVID-19 demands or COVID-19-caused revenue decreases.

During the final negotiations surrounding the drafting of the CRF text, you committed to providing the broad flexibility needed to meet this intent. Since then, many Members of Congress have reaffirmed this intent through statements in the Congressional Record, letters to your respective Departments, and other communications. I expect to see this intent fully reflected in any future CRF guidance or rules published by the Department of Treasury.

I end with a reminder that the U.S. government has specific trust and treaty responsibilities to American Indians and Alaska Natives. As with all provisions of the *CARES Act*, implementation of Title V requires respect for the inherent sovereignty of Indian Tribes and deference to Tribal views. The rapid consultation efforts undertaken by your Departments to date show that you understand the importance of these principles. But consultation can only truly be meaningful when a Department reflects the Tribal views received in its policy making. Unfortunately, after reviewing Treasury’s April 13th notice announcing the CRF Tribal Certification form, I fear your Departments failed on both counts.² It is incumbent upon you both to address this shortcoming in the following days and ensure implementation of the Tribal portion of the CRF abides by the express and stated views of Tribal leaders.

Thank you for your attention to this important matter. I look forward to continuing my work with you to ensure congressional intent is achieved and that Tribal views are reflected in your Departments’ *CARES Act* implementation work.

Sincerely,


Tom Udall Vice Chairman U.S. Senate Committee on Indian Affairs

² See, e.g., National Congress of American Indians, Letters to Steven T. Mnuchin (Apr. 11 & Apr. 14, 2020) (emphasizing that Tribal CRF funds should be distributed only to American Indian and Alaska Native Tribal governments pursuant to CARES Act mandate).