



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

APR 23 2020

ACTION MEMORANDUM FOR SECRETARY MNUCHIN

SUBJECT: Treatment of Alaska Native Corporations under the Title V of the CARES Act

FROM: Brian Callanan, General Counsel

Under section 601 of the Social Security Act (the "Act"), as added by Title V of the CARES Act,¹ the Secretary of the Treasury is required to make payment from the Coronavirus Relief Fund (the "Fund") in the aggregate amount of \$8 billion to Tribal governments.²

The term "Tribal government" is defined in section 601(g)(5) of the Act as the recognized governing body of an Indian Tribe.³ Section 601(g)(1) of the Act in turn defines the term "Indian tribe" by reference to the Indian Self-Determination and Education Assistance Act, which is administered by the Secretary of the Interior and the Secretary of Health and Human Services.⁴ Section 601(c)(7) of the Act requires that the Secretary of the Treasury consult with the Secretary of the Interior regarding his determination of the amount to be paid to Tribal governments from the Fund.

RECOMMENDATION

Based on the legal analysis provided by the Solicitor of the Department of the Interior (included as Attachment 1), with which I concur, I recommend that you determine that Alaska Native regional and village corporations, as defined in or established pursuant to the Alaska Native Claims Settlement Act,⁵ are eligible to receive payments from the Coronavirus Relief Fund in the amounts to be determined pursuant to section 601(c)(7) of the Social Security Act.

 Approve

 Disapprove

 Let's Discuss

ATTACHMENT

1. Letter from the Solicitor of the Department of the Interior dated April 21, 2020.
2. Draft Website Press Release.

¹ Pub. L. 116-136; 134 Stat. 281.

² 42 U.S.C. § 801(a)(2).

³ *Id.* at § 801(g)(5).

⁴ *Id.* at § 801(g)(1).

⁵ 43 U.S.C. § 1601 *et seq.*

FINAL DOCUMENT



United States Department of the Interior
OFFICE OF THE SOLICITOR
1849 C Street N.W.
Washington, DC 20240

The Honorable Brian Callanan
General Counsel
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Mr. Callanan:

On April 20, 2020, the Department of the Treasury's Office of General Counsel requested the views of the Department of the Interior (Department) on whether Alaska Native Corporations (ANCs) are eligible for funding under Title V of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).¹ After a careful review of the statute and additional materials provided by my office, I can confirm that it is the Department's position that ANCs are eligible for such funding.

The Indian Self Determination and Education Assistance Act (ISDEAA)² definition of "Indian tribe," incorporated by the CARES Act into Section 601 of the Social Security Act, explicitly includes "any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688)."³ As courts have held, it is unquestionable that such entities are "Indian tribes" for the specific purpose of ISDEAA eligibility.⁴ Thus, it is not necessary for ANCs to be considered "federally-recognized Indian tribes" in order to qualify as an "Indian tribe" under the ISDEAA.⁵

In light of ANCs' status as "Indian tribes," the question with regard to CARES Act eligibility is how the Act's separate definitional requirement of being a "recognized governing body" of an "Indian tribe" affects ANCs. As courts have held, the "definition of an Indian tribe changes depending upon the purpose of the regulation or statutory provision under consideration."⁶ The plain text of the CARES Act provides the most persuasive argument in favor of including ANCs as eligible for Section 601 funding. Under Section 601, a "Tribal government," which is the "recognized governing body" of an "Indian tribe," qualifies for funding. The phrase "recognized governing body" is not defined. However, the phrase "Indian tribe" clearly includes

¹ Pub. L. No. 116-136.

² Pub. L. No. 93-638, codified as amended at 25 U.S.C. §§ 5301-5423.

³ 25 U.S.C. § 5304(e).

⁴ See, e.g., *Cook Inlet Native Ass'n v. Bowen*, 810 F.2d 1471, 1476 (9th Cir. 1987) (noting that "the plain language of the [ISDEAA] allows business corporations created under the [Alaska Native Claims Settlement Act] to be recognized as tribes" for ISDEAA purposes).

⁵ *Central Council of Tlingit and Haida Indian Tribes v. Chief, Branch of Justice Svs., Bureau of Indian Affairs*, 26 IBIA 159 (1994); accord U.S. Dep't of the Interior, Office of the Solicitor, Memorandum of Charles Solter, May 21, 1976.

⁶ *Dille v. Council of Energy Res. Tribes*, 801 F.2d 373, 376 (10th Cir. 1986).

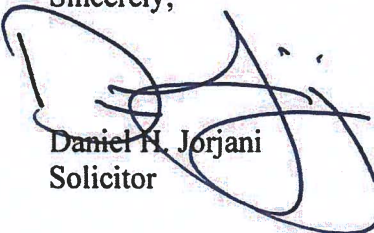
ANCs. Under this reading, the specific inclusion of ANCs as “Indian tribes” should override any perceived ambiguity of the more general, undefined phrase of “recognized governing body” of an “Indian tribe.”⁷ That is, Section 601 demands including the ANC equivalent of a federally-recognized tribal government (most likely, a Board of Directors), within the definition of “recognized governing body” solely by virtue of ANC inclusion in the ISDEAA definition of “Indian tribe.”

A second argument in favor of including ANCs is supported by the significant body of case law concerning instances in which a tribal business, consortium, or agency constitutes a “tribe” for various statutory or common law purposes. The fact that Congress did not define the phrase “recognized governing body” can be read as an acknowledgment to this body of law and variance in practice across tribes. Rather than specify the precise contours of a “governing body” in a potentially underinclusive manner, Congress instead laid out the entities themselves that qualify as Indian tribes per the ISDEAA (federally-recognized Indian tribes and ANCs), and then included the more general caveat that Section 601 applicants must be the actual “governing body” of an ISDEAA “tribe.” The purpose of such phrasing would simply be to ensure that Section 601 applicants are the “tribal” bodies with whom the United States is entreating on a government-to-government basis (at least for ISDEAA purposes), regardless of formal title, as opposed to a subsidiary tribal business or government agency.

Finally, Congress’s ultimate goal in enacting Section 601 was to compensate for funds lost due to the coronavirus pandemic. ANCs act as economic vehicles in Alaska on behalf of their shareholders, the vast majority of which are members of federally-recognized Indian tribes. To the extent that Section 601 funding helped ensure ANC viability during the pandemic, the ultimate beneficiaries (at least in part) would be tribal members.

If you or your team have questions or require further assistance, please feel free to contact Kyle Scherer, Deputy Solicitor for Indian Affairs, at 202-740-0683 or me at 202-706-9018.

Sincerely,



Daniel H. Jorjani
Solicitor

⁷ See, e.g., *RadLAX Gateway Hotel v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (the “specific governs the general” in “statutes . . . in which a general authorization and a more limited, specific authorization exist side-by-side”).

**Coronavirus Relief Fund
Payments to Tribal Governments
April 23, 2020**

Payment amounts to Tribal governments from the Coronavirus Relief Fund (the “Fund”) are to be determined by the Secretary of the Treasury in consultation with the Secretary of the Interior and Indian Tribes.¹

The Department of the Treasury (“Treasury”) appreciates the participation by a great number of Indian Tribes in this consultation process and the submissions made by Indian Tribes in response to Treasury’s request for information relevant to the allocation of payments to be made to Tribal governments. Treasury’s recently posted guidance and frequently asked questions regarding the eligible uses of payments reflect its consideration of comments provided during this consultation. Treasury continues to review the Tribal governments’ submissions as they relate to a determination of the allocation of payments to Tribal governments. Once this determination is made, Treasury will post details of the allocation on this website.

Treasury has been advised by the Department of the Interior of its conclusion that Alaska Native regional and village corporations as defined in or established pursuant to the Alaska Native Claims Settlement Act² are Tribes whose governing bodies are eligible to receive payments from the Fund in the amounts to be determined by the Secretary of the Treasury, and Treasury concurs in that conclusion. In determining the appropriate allocation of payments to Tribal governments, Treasury intends to take steps to account for overlaps between Alaskan native village membership and Alaska Native corporation shareholding or benefits receipt.

¹ See section 601(c)(7) of the Social Security Act, as added by section 5001(a) of the CARES Act.

² 43 U.S.C. 1601 et seq.