

**Congress of the United States**  
Washington, DC 20515

April 14, 2020

The Honorable Steven T. Mnuchin  
Secretary of the Treasury  
U.S. Department of the Treasury  
1500 Pennsylvania Ave. NW  
Washington, DC 20220

The Honorable David Bernhardt  
Secretary of the Interior  
Department of the Interior  
1849 C Street, N.W.  
Washington, D.C. 20240

Re: Coronavirus Relief Fund, Tribal Set-Aside of \$8 Billion

Dear Secretary Mnuchin and Secretary Bernhardt,

In the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Congress provided \$8 billion for Tribes as a set-aside in the \$150 billion Coronavirus Relief Fund. This inclusion represents an important recognition of Tribal governmental parity. Among a number of Tribal specific provisions included in the CARES Act, including supplemental appropriations and access to the enhanced Small Business Administration's 7(a) program, the \$8 billion is the largest direct funding to Tribes. We had previously written to you about a minimum payment to each Tribe, ending the letter with a reminder of the expansive definition of "Indian tribe" used in the statute. As the Alaska delegation, we write again to urge you to take into consideration the unique circumstances in Alaska and to distribute the funds in a way that provides flexibility for each Tribe to choose how it receives the federal funding as well as to plan, administer, and deliver services using the payments.

We are sure you have become quite accustomed to hearing from the three of us that Alaska is different, and this instance is no exception. In the 1970's, federal Indian policy was changing and a new era was born with the passage of the Alaska Native Claims Settlement Act (ANCSA), creating corporations throughout the state, almost completely leaving the reservation system of the Lower-48 behind. Prior to the passage of ANCSA, Alaska Natives had organized themselves into Native associations across 12 regions in the state, based upon a common heritage and interests. These geographical delineations would be used in the creation of regional corporations after the passage of ANCSA.

All of the Native associations, or their successors, still exist today, contemporarily referred to as intertribal or tribal consortia, or tribal organizations. Some regions have an additional regional tribal consortium in order to effectively administer federal programs, such as those carried out with the Bureau of Indian Affairs (BIA) and Indian Health Service (IHS) under the Indian Self Determination and Education Assistance Act (ISDEAA). Alaska Natives often take a "regional approach" to harness economies of scale and consolidate technical capacity, while also providing a support system for smaller Tribes with less capacity. The "regional approach" is also a product of federal law. For the delivery of services on IHS's behalf and Native American Housing Assistance and Self Determination Act (NAHASDA) funding, Congress has placed a moratorium on eligible entities, essentially limiting the funds to regional tribal consortia to ensure economies of scale and capacity.

Similar to a state providing assistance to local governments, many Alaska Tribes look to their regional tribal consortia for the support, resources, and help they need to service their communities. These smaller Tribes often authorize an intertribal consortium or a tribal organization to carry out services on its behalf. By pooling resources and centralizing staffing and administrative functions, the tribal consortia have demonstrated that they can deliver services and projects across broad geographic areas to their member communities while reducing overhead. They do so pursuant to Tribal government resolutions and ordinances that delegate key governmental functions to their jointly-owned regional tribal organization and pursuant to an intertribal organization or consortium agreement entered into by all Tribes to be served. The success of Indian Self-Determination in Alaska in large part can be traced back to the ability of Tribes in Alaska working together, cooperating, and combining resources into tribal consortia or organizations to deliver a level of services few believed possible.

**The Coronavirus Relief Funds must be distributed in a manner that takes into consideration the unique circumstances in Alaska and respects (as DOI has done for decades) the sovereign authority of each Tribal government to choose how it wishes to receive and use federal funding and to plan, administer, and deliver governmental programs and services.**

We wish to point out that the generally accepted practice of Tribes authorizing tribal organizations or consortia under ISDEAA should be an option for receiving CARES Act funding.

### **1) Importance of ANCSA Village and Regional Corporations in COVID-19 Response**

Alaska Native people are heavily dependent on the economic contributions of Alaska Native regional and village corporations (ANCs). The vast majority of ANC earnings are funneled to their communities as dividends, scholarships, and donations to organizations. Many ANCs are operating in sectors hit hard by the COVID-19 crisis. Like tribal enterprises in the Lower-48, the impact of the pandemic on ANCs in Alaska is reduced incomes and increased unemployment. Tribes across the nation are working to address these impacts on their people without a tax base.

The CARES Act included the ISDEAA definition of Indian tribe,<sup>1</sup> an acknowledgement that Alaska Native people should not be left out because of the different federal Indian policy that exists in our state. Footnote and definition directly below.

Section 5304(e) of the Indian Self Determination and Education Assistance Act notes that:

**“‘Indian tribe’ means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village OR regional OR village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 USC 1601 et. seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.”**

In each region of Alaska, there is a complex landscape of governance, land ownership, roles, and relationships. ANCs were created by Congress in 1971 to extinguish aboriginal title to Native lands in Alaska. It also created an equitable way for land and resource distribution, management, and protection of traditional tribal homelands. Through ANCSA, the U.S. Government transferred approximately 44 million acres to Alaska Native regional and village corporations. ANCs have a mandate under ANCSA

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<sup>1</sup> 25 U.S.C. § 5304(e).

to provide and promote financial and socio-economic benefits to their shareholders. Many ANCs today go beyond support for their shareholders by extending benefits to shareholder descendants.

Thank you for including ANCSA lands in your submission request from applicants. Many of the needs in Alaska villages are rooted in the fact that the communities are located in such remote areas, and outside of the federal and state owned lands, ANC's tend to be the major landowner in these areas.

## **2) Important Role of Tribal Organizations and Consortia in Alaska.**

As mentioned above, Alaska Tribes' use of consortia has improved service delivery and provided economies of scale in one of the most rural of states. In 2019, using BIA self-governance compacts, 10 different tribal consortia delivered services for a total number of 167 Tribal governments. Tribes and tribal organizations assumed control of Indian Health Service (IHS) operations in Alaska in the 1980s and 1990s. Unlike some of the larger Tribal governments in the Lower-48 states, geographic remoteness and small population sizes prevents most individual Alaska Tribes from being able to meet the full range of their communities' healthcare needs on their own. To meet these unique challenges, regional tribal health organizations and consortia were formed to take advantage of economies of scale and expertise in providing health services to these often small, isolated tribal communities. And as mentioned above, eligible recipients of healthcare funding from IHS are limited by a moratorium, in federal law, to under 30 Tribes and tribal health organizations or consortia.

The sources of statutory authority for tribal organizations date back to when the ISDEAA was enacted in 1975 as Pub. L. 93-638. Section 4 of that Act, defined a "tribal organization" as:

"the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities..."<sup>2</sup>

Statutory provisions of the ISDEAA establish that once a consortium receives the authorization from its member Tribe to administer BIA and IHS programs, the federal agency must deem the consortium to be an "Indian tribe" for the purposes of the ISDEAA. When Congress permanently established self-governance for IHS, it clarified the statutory terms in Title V of the ISDEAA with an additional subsection:

"In any case in which an Indian tribe has authorized another Indian tribe, an intertribal consortium, or a tribal organization to plan for or carry out programs, services, functions, or activities (or portions thereof) on its behalf under this section, the authorized Indian tribe, intertribal consortium, or tribal organization shall have the rights and responsibilities of the authorizing Indian tribe (except as otherwise provided in the authorizing resolution or in this title). In such event, the term 'Indian tribe' as used in this section shall include such other authorized Indian tribe, intertribal consortium, or tribal organization."<sup>3</sup>

Tribal organizations, operating as arms of Indian Tribes, provide high quality and efficiently run programs. Because ISDEAA confers intertribal consortia with the rights of their authorizing Tribal

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<sup>2</sup> 25 U.S.C. § 5304(l)

<sup>3</sup> 25 U.S.C. § 5381(b)

governments, such consortia have the ability to receive Coronavirus Relief Fund reimbursements for costs incurred combatting the COVID-19 pandemic on Tribal governments' behalf, if the Tribe so chooses.

**a. Federal and Alaska State Court decisions confirm that intertribal ISDEAA consortia are arms of Tribal governments**

Federal and State court decisions confirm that when an intertribal consortium has been authorized by Tribal governments to provide services and administer funds under the ISDEAA, the intertribal consortium is an "arm" of those Tribal governments. The federal court in the *Wilson* case, for example, determined that the tribal organization in that case to be the arm of its member Tribes based on a five-part test, which included the following three considerations:

- Tribal health organizations in Alaska exist to "assure that all Alaska Natives have access to a comprehensive, integrated, and tribally-controlled health care delivery system."
- The management structure of tribal health organizations formed by Tribal governments ensure that Tribal governments exercise control of the organization by electing a representative to serve on the Board of Directors.
- The financial relationship shows that tribal organizations are arms of the Tribe because they have been created to provide all services associated with federal programs and services to Alaska Natives in their regions and where these tribally-coordinated organizations serve in the shoes of the Tribe to provide these governmental services, including receiving "tribal shares" under ISDEAA for the benefit of the Alaska Native people.

**3) Need for Flexibility for Alaska Indian Tribes, including an option of designating a tribal organization to receive and administer CARES Act funding on a Tribe's behalf.**

Given points listed above, we request that Treasury include flexibility for the use of Coronavirus Relief Funds for Indian Tribes, especially those in Alaska. Given the use of tribal consortia and organizations in the state, it is essential that Tribes are afforded the ability to designate award of their portion of the Relief Funds to their respective regional organization. Alaska's Tribes must be able to use their resources in a way that provides relief to their communities in the way that works for them. In our State, that means allowing a partnership between a Tribal government, or ANC, with a tribal organizations/consortia it considers to be useful, and in many cases crucial, to achieving the goals of the Coronavirus Relief Fund. This approach will allow participation by the tribal organizations or consortia in situations deemed necessary by Native communities.

At a minimum, we request that the Departments of Treasury and Interior issue guidance that allows an Indian Tribe the option of designating the tribal organization[s] that the Tribal government wishes to direct the receipt and administration of CARES Act funding. This mechanism would permit Tribes and tribal organizations to operate within the parameters of their currently existing relationships in which tribal organizations often serve as the Tribal government's fiscal intermediary or subcontractor for their federal program and funding administration, including personnel management, financial systems management and program performance and financial accountability and reporting. The Departments of Treasury and Interior should respect the sovereignty of Indian Tribes to authorize a tribal organization to administer its allocation of CARES Act funding on their behalf.

## Conclusion

The needs in Alaska's Native communities are great, and we know that the relief funds will be put to good use. Many of our villages do not have running water, so they cannot heed the number one admonition to "wash your hands." Still others are surrounded by open-air sewage lagoons and do not have flush toilets. Very few villages have a doctor or even a nurse and must rely on community health aids to provide medical care with very limited resources. There are no ambulances to take anyone to the hospital, nor roads to take them on. Housing is limited, multi-generational living situations common, so social distancing is challenging, keeping in mind that most of the state is still covered in snow, spring has yet to come. Likewise, things like hand sanitizer, masks, and wipes are nearly non-existent as such items can only be ordered through the mail – and mail service has been disrupted with the bankruptcy of our largest rural air carrier. We cannot overstate the dire situations our villages are facing.

We believe circumstances dictate creativity and Alaskans know how to do more with less. On one of the consultations, Mr. Kowalski stated that he wanted to hear creative solutions. We believe that we have presented a creative solution to ensuring that our constituents are not left behind, while allowing you to keep your statutory obligation of getting the money out the door within 30 days.

We are grateful for all you are doing, the sacrificing you are making, the hours you are logging not to mention your willingness to think big, to think creatively, and to include those who are most vulnerable in our coronavirus response. Your hard work, dedication, and can-do attitude exemplify the best of what makes this country great. On behalf of all Alaskans, thank you!

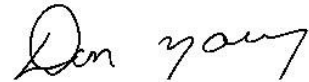
Sincerely,



LISA MURKOWSKI  
United States Senator



DAN SULLIVAN  
United States Senator



DON YOUNG  
Congressman for All Alaska