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April 17, 2020

The Honorable Mitchell McConnell
Senate Majority Leader
United States Senate
S-230 U.S. Capitol Building
Washington, DC 20510

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
1236 Longworth, H.O.B.
Washington, DC 20515

The Honorable Charles Schumer
Senate Minority Leader
United States Senate
S-221 U.S. Capitol Building
Washington, DC 20510

The Honorable Kevin McCarthy
House Minority Leader
U.S. House of Representatives
2468 Rayburn, H.O.B.
Washington, DC 20515

Re: SBA Paycheck Protection Program - Need for Amendment to Respect Congressional Intent to Provide Relief for "Any Tribal Business."

Dear Senate Majority Leader McConnell, Senate Minority Leader Schumer, Speaker Pelosi and House Minority Leader McCarthy:

I write on behalf of the California Tribal Chairpersons' Association (CTCA) to request that Congress include an amendment in the next COVID-19 Bill to clarify that "Any Tribal Business" that meets the size standards for the Paycheck Protection Program is eligible to receive assistance to maintain employees during the National Public Health Emergency, including small tribal gaming businesses.

The National COVID-19 Public Health Emergency and Economic Security Crisis

On March 13, 2020, President Trump declared that the Coronavirus (COVID-19) was a National Disaster, which has resulted in an unprecedented National COVID-19 Public Health Emergency and Economic Crisis. "This pandemic has the potential to cause severe consequences for our country's national and economic security" President Trump warned. The President called upon the State, Local, and Tribal Governments to coordinate with the Federal Government to fight COVID-19. President Trump explained:

the Federal Government, through the Department of Health and Human Services (HHS) and its component, the Centers for Disease Control and Prevention (CDC), has authority to take the necessary steps "to prevent the introduction, transmission, or spread of communicable diseases from foreign countries

into the States or possessions, or from one State or possession into any other State or possession,” 42 U.S.C. § 264(a), in close coordination with State, local, and tribal officials.

In addition, the Federal Government has responsibility for securing our borders and overseeing entry of foreign nationals into our country in the interest of the United States.

As the National COVID-19 Public Health Emergency unfolded, based upon guidance from the Centers for Disease Control (CDC), President Trump issued Coronavirus Guidelines for America: 30 Days to Stop the Spread, on March 29, 2020 advising Americans to: “Avoid Social Gatherings in groups of 10 or More People.

Indian Gaming and Tribal Governments

Indian gaming is Indian hospitality, whereby Indian tribes invite visitors to come to Indian lands for recreation, entertainment, relaxation and social gatherings. Tribal Governments are responsible governments, and Indian nations and tribes answered the call of the President, the CDC, and State Governors to temporarily close public facilities, including Indian gaming casinos and resorts. Tribal Governments have joined the national effort to “shelter-in-place” to allow the Coronavirus to pass over the American people.

Indian gaming is Tribal Government gaming, which generates funding for essential tribal government services including: Education, Health Care, Law Enforcement and Public Safety, Fire Protection, Water and Sanitation, Child and Elder Care, Cultural Centers and Museums. Through Indian gaming, Tribal Governments create jobs, hundreds of thousands of jobs: 315,000 direct jobs and more than 700,000 direct and indirect jobs. In rural areas, much of Indian gaming is small business, with less than 500 employees.

Accordingly, when Congress established the Paycheck Protection Program for Indian tribes, Tribal Governments were pleased that Indian Gaming employees should be protected by the CARES Act. The Paycheck Protection Program is designed to save jobs and business operations. Congress created the new program to give **any business**, including “any ... Tribal business concern described in section 31(b)(2)(c),” that meets the 500 employee or industry size standards necessary resources to preserve employee jobs during this time.

Under the heading “**Increased Eligibility**,” Congress extended coverage of the program to “any business” under the size threshold,

and expressly included “any ... Tribal business concern” that meets the HUB Zone program definition of Tribally owned business, codified at 15 U.S.C. §637a(b)(2)(C). The relevant provision of the CARES Act is below:

SEC. 1102. PAYCHECK PROTECTION PROGRAM.

(a) IN GENERAL.—Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended—

...

(2) by adding at the end the following..

“(36) PAYCHECK PROTECTION PROGRAM.—

...

“(D) INCREASED ELIGIBILITY FOR CERTAIN SMALL BUSINESSES AND ORGANIZATIONS.—

*“(i) IN GENERAL.—During the covered period, in addition to small business concerns, **any** business concern, nonprofit organization, veterans organization, or **Tribal business concern described in section 31(b)(2)(C)** shall be eligible to receive a covered loan if the business concern, nonprofit organization, veterans organization, or Tribal business concern employs not more than the greater of—*

“(I) 500 employees; or

“(II) if applicable, the size standard in number of employees established by the Administration for the industry in which the business concern, nonprofit organization, veterans organization, or Tribal business concern operates.”

Yet, a few days after Congress and the President enacted the CARES Act, the Small Business Administration (SBA) released its Interim Final Rule on April 2, 2020 (Docket No. SBA-2020-0015) based upon its Standard Operating Procedure (SOP). SBA’s Final Rule does not comply with the CARES Act because it is based on SBA’s SOP, which limits small business eligibility for loans, including 13 C.F.R. § 120.110, which makes those businesses that generate more than one-third of their revenue from legal gambling ineligible for the Paycheck Protection Program loans, and directly conflicts with the increased eligibility for all Tribal business concerns provided in the CARES Act. This time of National Emergency is no time for SOPs, because Congress intended to establish *Increased Eligibility* for small businesses under the Paycheck Protection Program in the CARES Act.

Numerous Senators and Congressmen wrote to Treasury and SBA requesting an administrative clarification that would remove the

restriction on legal gaming from 13 C.F.R. § 120.110. On Monday, SBA issued its clarification, which instead of removing the regulatory rule, merely amends it to permit “Mom and Pop” businesses that earn \$1,000,000 or less per year. That does not provide regulatory relief to small tribal gaming and we can no longer wait for further regulatory relief, given the lack of understanding of the SBA at the “tribal consultation” call on April 14, 2020.

Accordingly, we respectfully call upon you to attach an amendment to the next CARES Act legislation to the mandate that the SBA follow the law by removing the SBA regulatory and SOP limitations on the “Increased Eligibility” for “any ... tribal business concern” to restore Congress’s original intent. A copy of the requested amendment is attached.

Thank you for your thoughtful consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bo Mazzetti".

Bo Mazzetti, Chairman
California Tribal Chairpersons' Association

AMENDMENT:

The CARES Act is amended as follows:

SEC. 1102. PAYCHECK PROTECTION PROGRAM.

(a) IN GENERAL.—Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended—

...

(2) by adding at the end the following...

“(36) PAYCHECK PROTECTION PROGRAM.—

...

“(D) INCREASED ELIGIBILITY FOR CERTAIN SMALL BUSINESSES AND ORGANIZATIONS.—

“(i) IN GENERAL.—

AMENDMENT:

Increased Eligibility:

Section 1102(a)(2)(D)(i) is amended as follows: after “any business concern, nonprofit organization, veterans organization, or Tribal business concern described in section 31(b)(2)(C) shall be eligible to receive a covered loan,” add the following: “without regard to 13 CFR section 120.110 provided that such business is engaged in lawful business;” before “if the business concern....

Section ----. Is amended by adding, by adding the following: Affiliation Rules for Indian tribes. Business concerns owned and controlled by Indian Tribes, or wholly-owned entities of Indian Tribes, are not considered affiliates of such entities.

Section ----. is amended by adding the general rule of statutory construction for legislation related to Indian tribes: “(-) STATUTORY CONSTRUCTION.—Ambiguities in the CARES Act or other National COVID-19 Emergency, as added by this Act, shall be resolved in favor of Indian tribal governments and deference shall be given to Indian tribal governments for the programs administered and authorized by the tribe to benefit the general welfare of the tribal community.”

*(iii) ADDITIONAL LENDERS—The authority to make loans under this paragraph shall be extended to additional lenders, **including community financial development institutions**, as determined by the Administrator and the Secretary of the Treasury to have the necessary qualifications to process, close, disburse and service loans made with the guarantee of the Administration.*

Section ----. Definition of Indian tribe. The term "Indian tribe" means any Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act.