

KYRSTEN SINEMA
ARIZONA

317 HART BUILDING
WASHINGTON, DC 20510
(202) 224-4521

3333 E. CAMELBACK RD, SUITE 200
PHOENIX, AZ 85018
(602) 598-7327

20 E. OCHOA ST
TUCSON, AZ 85701
(520) 639-7080

<http://sinema.senate.gov>

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SPECIAL COMMITTEE ON AGING

Friday, April 24, 2020

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

The Honorable Jovita Carranza
Administrator
Small Business Administration
409 Third Street, S.W.
Washington, D.C. 20416

Dear Secretary Mnuchin and Administrator Carranza:

I am writing to express my concern with the treatment of tribal business concerns under the Paycheck Protection Program (PPP). I request that the Small Business Administration (SBA), in consultation with the U.S. Department of the Treasury, quickly address the serious economic distress that is being imposed on tribal gaming operations by the interim final rule titled "Business Loan Program Temporary Changes; Paycheck Protection Program – Additional Eligibility Criteria and Requirements for Certain Pledges of Loans."

Under section 2(b) of the interim rule, gaming operations, including tribal gaming operations, must certify that their revenues did not exceed \$1 million and comprised less than 50 percent of their total revenue in 2019. While the rule does depart from 13 CFR §120.110(g)'s requirement that not more than one-third of a business's gross annual revenue come from gaming, it is clear from the additional limitations imposed by the rule that it is not intended to apply to qualified tribal gaming operations, but rather only to much smaller non-tribal gaming businesses. The rule impairs the ability of qualified Indian tribes, already a historically marginalized population, to provide jobs in their communities. Furthermore, such a limited scope goes against the directives of the CARES Act and fails to recognize the importance of congressional action in previous emergency appropriations.

During the Great Recession, the American Recovery and Reinvestment Act of 2009 (111 P.L. 5, 123 Stat. 115), which was legislation meant to stimulate the economy and prevent further erosion of financial markets, placed specific limitations on funds for gaming operations. Section 1402 explicitly prohibited the issuance of Tribal Economic Development Bonds to finance class II and class III gaming operations. Section 1604 prohibited the use of any funds "appropriated or otherwise made available" in the act for "casino or other gambling establishment[s]".

The CARES Act made no such statements to limit availability of funds to certain enterprises under section 1102, which created the PPP. Instead, the act explicitly expanded access to needed capital

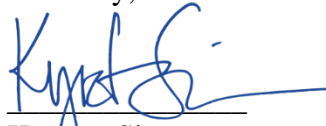
to entities previously prohibited from participation in the 7(a) loan program. Tribal business concerns are named as a class of business eligible for participation under this section, albeit with an obviously erroneous reference to the Small Business Act (P.L. 85-596, as amended by P.L. 114-125) that is corrected later in the same title of the law. Congress is well aware that tribal gaming operations are often tribal business concerns operated by tribal governments or as separate entities. Yet, Congress did not preemptively prohibit PPP funds for these entities. This lack of action, in spite of common knowledge, provides all the context necessary for the SBA and Treasury Department to determine congressional intent.

Unlike state and local governments, tribes do not have a tax base to generate revenue. Funding for tribal programs comes from tribally owned enterprises or the federal government. As a result of the COVID-19 pandemic, tribal funds are stretched by expenditures critical to protect public health and safety. Excluding a class of business that has been recognized as a primary employer on many tribal reservations from the PPP is unconscionable. This prohibition robs thousands, including many non-Indians who work at these establishments, of their paychecks and health insurance.

It is imperative that the SBA and Treasury Department act at once to amend the rule to allow full participation by tribal business concerns, without regard to their engagement in class II or III gaming as defined by section 4 of the Indian Gaming Regulatory Act (P.L. 100-497).

I appreciate your prompt attention to this matter. If you have any questions, please contact Anthony Papian on my staff at Anthony_Papian@hsgac.senate.gov.

Sincerely,



Kyrsten Sinema
United States Senator