

# United States Senate

WASHINGTON, DC 20510

October 23, 2020

The Honorable Steven Mnuchin  
Secretary  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue Northwest  
Washington, DC 20220

The Honorable Mark Meadows  
Chief of Staff  
The White House  
1600 Pennsylvania Ave NW  
Washington, DC 20500

Dear Secretary Mnuchin and Mr. Meadows:

We greatly appreciate your efforts to continue to work with Congress to provide additional relief and assistance to all Americans during this unprecedented global pandemic. We write about tribal governments and tribal communities in our states that have been devastated by the pandemic and how updated Treasury guidance regarding the COVID Relief Fund deadline can help address continued needs in Indian Country.

It is difficult to articulate the depth of impact the Coronavirus has had on tribal communities. Tribal communities live with the historical trauma of viral disease spread in their communities, including the Smallpox, Spanish Flu, Polio, Tuberculosis, and the Hantavirus. These outbreaks are not simply a footnote in a history book for tribes, these viruses have killed large numbers of their great-grandfathers, -grandmothers, mothers, fathers and children and to this day, tribal communities in the southwest still face threats of the Black Plague. Now, COVID-19 is devastating these same communities; robbing tribes of their elders, and in some places, the last of their fluent native language speakers.

Recognizing this, we acted. Working closely with the Trump Administration, we passed a historic measure of assistance to Tribal governments providing \$8 billion to the Tribal Coronavirus Relief Fund. These funds were provided to assist tribes across the country in fighting and mitigating the impacts of this virus on their communities. However, without a clarification in the guidance from Treasury, many tribes will not be able to fully use these funds to fight and mitigate the impact of the virus on their communities. Thus, we are writing today to ask the Administration to once again work with us and provide an important clarification to the Tribal Coronavirus Relief Funds guidance that will ensure that these desperately needed funds that we all fought so hard to secure will be able to stay in Indian Country to assist Tribes.

Specifically, the CARES Act specifies that funds administered through the Coronavirus Relief Fund (CRF) must be used for unbudgeted expenses that respond to the Coronavirus crisis, and that the expenses be incurred by December 30, 2020. The Treasury Guidance provides that “performance or delivery must occur during the covered period” (March 2020-December 2020) even if payment does not occur in 2020. Unfortunately, Tribes have had limited time/access to use these funds and through no one’s fault, there was a delay in distributing the funds and litigation regarding eligibility to receive funds, which resulted in tribes having six months or

fewer to expend funds. Thus, while tribes will be able to purchase masks and other short-term life goods before the end of 2020, the requirement that “performance or delivery must occur during the covered period” severely handicaps tribes’ ability to use these funds for some of their most pressing needs in responding to Coronavirus and largely defeats the purpose of the fund.

For example, for tribes in our States who have limited space or a limited number of health care facilities, and desire to expand the size or increase the number of such facilities to respond to the Coronavirus, such projects cannot reasonably be completed in 2020 and would likely be completed in 2021. Pursuant to the guidance provided only amounts which relate to construction completed in 2020 would qualify as “incurred” and as a valid use of funds – despite such projects being the most pressing and necessary uses of such funds in responding to the pandemic. Also, Treasury has indicated that CRF payments may be used for upgrading public health infrastructure, such as providing individuals and families access to running water to help reduce the further spread of the virus, but still requires construction and related that expenses must be incurred by December 30, 2020. Under the current definition of incurred costs, such improvements are nearly impossible to construct within this timeframe.

Thus, we are asking that Treasury issue clarifying guidance related to the definition of “incurred costs” to improve the effectiveness of the COVID Relief Fund. Specifically, we request the following language be included in updated Treasury CRF guidance:

*Expenditures will be considered eligible as “incurred expenses” if a contract for services or for the design, planning, engineering or construction of a project related to the COVID-19 public health emergency is executed by December 31, 2020, and the services and/or the construction of the project will be substantially completed by no later than December 31, 2021.*

Updating the guidance to allow tribes and other CRF eligible entities to complete essential public health infrastructure projects will honor the intent of the CARES Act and address the ongoing needs of communities during the pandemic. We appreciate your consideration of this important matter and look forward to working with you to ensure Congress and the Administration continue to addresses the pandemic needs of all Americans, including Native Americans.

Sincerely,



Steve Daines  
United States Senator



Martha McSally  
United States Senator