



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 Sys., Bureau of Indian Affairs*, 26 IBIA 159 (1994); accord U.S. Dep't of the Interior, Office of the Solicitor, Memorandum of Charles Soller, May 21, 1976.

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

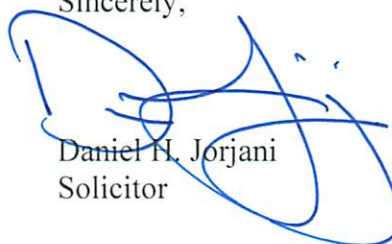
ANCs. Under this reading, the specific inclusion of ANCs as “Indian tribes” should override any perceived ambiguity of the more general, undefined phrase of “recognized governing body” of an “Indian tribe.”⁷ That is, Section 601 demands including the ANC equivalent of a federally-recognized tribal government (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 N. 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”).