

Flandreau Santee Sioux Tribe

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April 3, 2020

The Honorable Jovita Carranza
Administrator
U.S. Small Business Administration
409 3rd Street, SW Washington, D.C. 20416

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

RE: Small Business Administration – Business Loan Program Temporary Changes; Paycheck Protection Program Interim Final Rule [Docket No. SBA-2020-0015]

Dear Administrator Carranza and Secretary Mnuchin:

The Flandreau Santee Sioux Tribe (the “Tribe”) hereby expresses its concern with the United States Small Business Administration (“SBA”) Interim Final Rule for the Business Loan Program Temporary Changes; Paycheck Protection Program (“PPP”) because the SBA has specifically excluded critical business components of the Tribe by enacting SOPs contrary to the clear language and Congressional intent of the CARES Act.

The Tribe employs 400 employees, and on Wednesday, April 1, 2020, it had the largest furlough and layoff in its history due to the COVID-19 Pandemic. The Tribe now has over 250 employees who are unemployed, and who are struggling to provide for their families. This is a substantial figure for a county with average employment of a total of 2,774 employees¹. The CARES Act was passed specifically to help the Tribe and its businesses, and because the SBA removed certain businesses from the PPP, it hindered the already struggling Tribe from providing for its employees and community.

The Royal River Casino and Hotel (the “Company”) represents the largest economic entity of the Tribe. The closure of the Company to protect employees and the public, left 225 employees furloughed. The Company plays a vital role in the South Dakota economy and pays at least **\$11,500,000** per year to vendors, for company-related activities. Of a total **\$8,652,778** that the Company spends on its 250 employees, **\$6,344,568** per year is spent on payroll. The PPP would

¹Quarterly Census of Employment and Wages (QCEW) for Total, All Industries in South Dakota in the third quarter of 2019. See:

<https://www.southdakotaworks.org/vosnet/analyzer/results.aspx?enc=WxhnJpW73xdC2UsP5jKg2WtCTXqi/dxZH2mGIpdU6W8=>

provide **\$1,321,785** to supplement employees, and ensure that they can meet their basic needs during this pandemic, while allowing the Company to survive in complete shutdown.

Congress created the PPP to help small businesses preserve jobs for their employees by providing loans for payroll and other purposes while they are shut down as a result of the pandemic. The PPP provision in the CARES Act expressly includes “any... tribal business concerns” as defined in the HUBZone program (Sec. 31 of the Small Business Act) that are under 500 employees as being eligible for PPP loans. The provision that includes “tribal business concern” is titled “INCREASED ELIGIBILITY FOR CERTAIN SMALL BUSINESSES AND ORGANIZATIONS” – a direct reference that Congress clearly intended to override the SBA’s existing regulation during the covered period – and include any tribal business that is under 500 employees without regard to the industry of the tribal business. Congress went even further and waived affiliation rules for specific North American Classification System Codes beginning with 72, which include, among other classifications, Casino Hotels (721120), further expressing the intent for gaming facilities to be included.

However, SBA’s interim final rule ignores the expressed intent of Congress referencing existing regulation 13 C.F.R. Part 120.110, which deems Tribal Government-owned businesses and Indian gaming operations ineligible for standard SBA loans. **If the interim final rule is not clarified to align with Congress’ intent, it will inflict significant negative impacts to tribal government economies, those of our neighboring communities, and unnecessarily increase unemployment in many already economically distressed areas.**

Without a tax base to generate governmental revenue, the Tribe relies on the tribal government-owned enterprises to generate revenue to fund essential government services to Native communities across Indian Country in the form of health care, education, public safety, housing and social services. The Tribe depends on Casino revenues to directly fund the shortfalls that the federal government does not fund, even funding intended to meet treaty obligations of the Tribe. Casino revenues also employ tribal government employees, fund economic development activities, provide emergency funding for tribal members, supplement tribal members general needs, provide higher education to tribal members, and a variety of other mechanisms that are pivotal to the community’s existence.

The PPP is designed to protect employees and businesses in survival mode, and is not a reckless government spend to expand the gaming industry. The Tribe urges the Department of Treasury and the Small Business Administration to issue additional guidance to the Paycheck Protection Program to clarify that **any tribal business** that meets the qualifications set forth in the PPP provision of the CARES Act is eligible for the PPP program for the duration of the covered period.

Without this clarification, the Flandreau Santee Sioux Tribal economy will have an uphill battle to combat this pandemic, and in the meantime, the tribal community will be crippled. The need for immediate action is dire to support the primary economic driver in Indian Country, and the Tribe therefore appreciates your consideration of this letter. Questions or comments regarding this letter may directed to Seth Pearman, Attorney General for the Flandreau Santee Sioux Tribe

Letter from President Reider

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at Seth.Pearman@fsst.org, and Patty Marks, Fredericks Peebles & Patterson, LLP, Washington, D.C. Counsel to the Tribe at pmarks@ndnlaw.com.

Sincerely,



Anthony Reider
Tribal President

cc: The Honorable Senator John Thune – South Dakota
The Honorable Senator Mike Rounds – South Dakota
The Honorable Representative Dusty Johnson – South Dakota
The Honorable Representative Tom Cole, Co-Chair, Native American Caucus
The Honorable Representative Deb Haaland, Co-Chair, Native American Caucus
The Honorable Senator John Hoeven, Chairman, US Senate Committee on Indian Affairs
The Honorable Senator Martha McSally – Arizona
The Honorable Representative Kendra Horn - Oklahoma
The Honorable Representative Nydia Velázquez, Chairwoman of the House Small Business Committee
The Honorable Representative Jose Serrano, Chairman, House Subcommittee on Commerce, Justice, Science, and Related Agencies
The Honorable Representative Betty McCullum - Minnesota
Tara Sweeney, Asst. Secretary of Indian Affairs, Interior
John Tahsuda, III, Principal Deputy Assistant Secretary – Indian Affairs, Interior