

# Overview of the CARES Act Stimulus for Tribes

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*Presented by:*

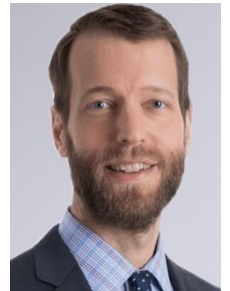
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## Agenda

- Overview of Federal Legislation
  - James Nichols, Senior Attorney, Dorsey & Whitney; Chickasaw
- Overview of OMB & GASB Updates
- Financial Management Considerations
  - Corrine Wilson, CPA, Principal and National Tribal Practice Leader, REDW; Ft. McDermitt Paiute-Shoshone





# Coronavirus Aid to Indian Tribes – Key Provisions of CARES Act and other Federal Legislation

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# Coronavirus Stimulus 1 and 2

# Coronavirus Preparedness and Response Supplemental Appropriations Act (Stimulus 1)

**Minimum \$40 million dollars for:**

- tribes, tribal organizations, urban Indian health organizations, or health service providers to tribes**
- to carry out surveillance, epidemiology, laboratory capacity, infection control, mitigation, communications, and other preparedness and response activities**

# **Families First Coronavirus Response Act (Stimulus 2)**

- **Free coronavirus testing, paid leave, enhances Unemployment Insurance, expands food security initiatives, and increases federal Medicaid funding**
- **\$64 million to IHS for COVID-19 diagnostic testing**
- **Nutrition services for older Indians**

# Coronavirus Aid, Relief, and Economic Security (“CARES”) Act (Stimulus 3)

# Title I: Paycheck Protection Program

- **Up to \$10 million to cover costs like employee salaries, paid sick leave, mortgage or rent, and employee health insurance premiums**
- **Loans forgivable in whole or in part where businesses have retained their employees and maintained wage levels**
  - **Loan forgiveness analysis and calculation is complicated and depends on the nature of expenditures (some expenses, such as certain interest payments are allowable expenditures, but not reimbursable), percentage of employees retained, and percentage of wages maintained**



# PPP Issues for Tribes

- **PPP incorporates the standard Small Business Act Eligibility Rules**
- **Some good aspects, some problematic aspects:**
  - **Affiliate rules do not apply to tribally-owned businesses**
    - **Tribe with three 400-employee enterprises has three eligible loan recipients (not 1200 employees, and thus ineligible)**
  - **Legal entity requirements could be problematic for some tribes**
    - **Separate legal entity is eligible, but Tribal d/b/a may not be eligible**
  - **Possible restrictions on eligibility for gambling enterprises**

# **Title II: Payroll Tax Provisions and Unemployment Insurance**

## **Employee Retention Credit**

- Payroll tax reduction/refund for up to \$5,000 per employee**
- Refundable to the employer if it exceeds tax liability**
- Employer must be able to demonstrate business disruption related to COVID-19 – full or partial suspension of operations; gross receipts reduced by at least 50% compared to same quarter in prior year**

# Title II, cont'd.

- **Delayed Payment of Payroll Taxes**
  - 50 percent of such taxes are deposited no later than December 31, 2021 and the remainder deposited no later than December 31, 2022
  - PPP participants not eligible
- **Unemployment Insurance**
  - Tribes reimbursed for half their incurred unemployment benefit costs through December 31, 2020

# **Title IV: Coronavirus Economic Stabilization Act**

- **Up to \$500 billion for low-interest loans to mid-size businesses – 500-10,000 employees**
- **Eligibility rules to be determined by Treasury**
- **Statutory eligibility language covers tribes or tribal businesses**
  - **Tribes can submit comments to Treasury urging creation of eligibility rules favorable to tribes**

# Title V: Coronavirus Relief Fund

- **\$8 billion reserved for distribution to Tribal governments to be distributed by April 24, 2020**
- **Treasury consultation on allocation method is ongoing**
- **To be used for “necessary expenditures”:**
  - **incurred due to the public health emergency with respect to the Coronavirus Disease 2019;**
  - **not accounted for in the government budget most recently approved as of March 27, 2020; and**
  - **were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020**

# Relief Fund Concerns

- **The Inspector General of the Department of the Treasury (“IG”) has authority for monitoring and oversight of the receipt, disbursement, and use of Coronavirus Relief Funds.**
- **Funds used for an in-eligible purpose will be booked as a debt owed to the Federal Government.**
  - **Amounts recovered will be deposited into the general fund of the Treasury.**
- **The CARES Act provides \$35 million to the IG for oversight and recoupment activities**

# BIA and IHS Emergency Appropriations

- **The Emergency Appropriations for Coronavirus Health Response and Agency Operations include an additional \$1 billion for the IHS and \$453 million for the BIA**
  - **BIA: \$400 million of the BIA appropriation must be made available to meet the direct needs of Tribes**
    - **public safety and justice programs, deep cleaning of facilities, personal protective equipment, information technology to improve teleworking capability, welfare assistance and social services programs (including assistance to individuals)**
  - **IHS: \$450 million shall be distributed to IHS direct-service health programs**
    - **Public health support including funding for PRC programs and Catastrophic Health Emergency Fund (“CHEF”) reimbursements**



# Overview of OMB & GASB Updates



## OMB Guidance

- OMB Memo 20-17
  - Extends Single Audits deadlines, 6 months beyond due date for fiscal year-ends through June 30, 2020 (2CFR200.512)
  - Entities may request Indirect Cost Rate extensions for up to one year (2CFR200.414(c))
  - Salaries and Project Activities – Awarding agencies may allow costs to resume activities supported by the award, salaries and benefits per grantee’s policy of paying salaries in unexpected/extraordinary circumstances; must maintain supporting records to substantiate costs due to interruption of operations or services 2CFR200.403; .404; .405

## OMB Guidance Memo 20-17

- Allowability of Costs not normally charged to awards – cancellation of events, travel or other activities, pausing or re-starting of grant-funded activities due to public health emergency may be allowed by Award Agencies, 2CFR 200.403; .404;.405
  - Awarding agencies must advise recipients they should not assume additional funds are available to cover additional costs
  - Awardees must retain appropriate supporting documentation
  - Awarding agencies may post guidelines or point of contact on their websites

## OMB Guidance Memo 20-17

- Procurement – Awarding Agencies may waive procurement requirements for geographical preferences, contracting small and minority, women businesses and labor surplus firms. 5 CFR200.319(b) and 2CFR200.321
- Grant No-cost extensions – Awarding Agencies may extend grants that were to expire by 12/31/20 for up to 12 months 2CFR200.308

## OMB Guidance Memo 20-17

- Extensions of financial, performance other reporting – Awarding Agencies may grant delays of reporting up to 3 months beyond normal due dates; grantees may draw federal funds without the timely submission 2CFR200.327; .328

## GASB Standards

- GASB Board is discussing the delay of implementing several standards applicable for fiscal year ends after 6/30/18, including GASB-87 Leases and GASB-84 Fiduciary Activities.
- GASB Website: <https://gasb.org/home>



# Financial Management Considerations

## Financial Management in Crisis

- Tribes should include in essential staff, their key financial and procurement staff
- Due to the COVID-19 appropriations, someone to assist with tracking and applying for federal assistance
- See our Handout – Tribal COVID-19 Federal Summary
  - FMLA COVID-19 Families First Leave and allowable Retirement Plan Revisions
  - Payroll Tax Credits
  - Unemployment Insurance 50% cost reimbursement
  - Other Federal Funding, FEMA, CDC, USDA, DHHS, BIA, BIE, HUD

## Tips - Financial Management in Crisis

- Accounting – see our Handout, “Financial Steps for Tribes During COVID-19”
  - Establish general ledger codes to track COVID-19 related expenses
  - Review sole source procurement requirements and establish sole source documentation as needed
  - Ensure accounting system back-ups are in place and implement mitigating controls for those who may need to work remote
  - Coordinate with HR on COVID-19 related leave to track, establish a leave code in payroll system



## Tips - Financial Management in Crisis (cont'd)

- Risk Management
  - Review insurance policies for any potential claims, required notifications or identify exclusions that may apply for the crisis
  - Identify plans for temporary closures of businesses, facilities for costs and contingencies

## Tips - Financial Management in Crisis (cont'd)

- Cash Flow
  - Identify existing cash resources, both restricted by federal funding and unrestricted and/or any available cash reserves
  - Identify costs (outflows) for a weekly/monthly basis
    - payroll and related; operating, fixed and variable; debt service
    - Crisis specific costs supplies, equipment, public health related, public safety related
    - Prioritize costs for the anticipated term of the crisis; look for opportunities for reductions/savings or if needed, deferred costs
  - Identify resources (inflows) to meet costs
    - See REDW's Handout on available federal resources
    - Collection of accounts receivable and grant receivables
    - Any incoming lease revenues

## Tips - Financial Management in Crisis (cont'd)

- Cash Flow (cont'd)
  - Review vendor agreements and payables processing, develop guidelines to manage payables and vendor payments
  - Review existing debt service requirements and provisions; may need legal and financial experts to assist with dealing with difficult to meet debt service
- Other
  - Gather directives issued for financial items such as:
    - Administrative and COVID-19 leaves

## Tips - Financial Management in Crisis (cont'd)

- Other (cont'd)
  - Gather executive/government directives issued for financial items such as:
    - Listing of essential staffing still working
    - Regulatory requirements for public health/safety
  - Capital Assets
    - Listing of temporarily closed facilities and identified costs due to closures, e.g., security and maintenance

## Tips - Financial Management in Crisis (cont'd)

- Other (cont'd)
  - Re-opening costs
    - Costs to restock supplies, educate employees
    - Costs for deep cleaning/sanitizing and communications for staff and visitors
    - Estimate cash flows for 3-6 months after opening
  - Grants and Contracts
    - Review OMB Memo 20-17 for various extensions and waivers that can be requested

## GAAP Subsequent Event Disclosures

- Audits will need disclosures about the significant financial impacts of COVID-19
- Consider financial information of related estimates or projections of revenues and budget impacts

## Watch out for Fraudsters/Scammers

- Don't fall for online or telephone offers for in-home patient testing kits
- Emails/Text scams – don't click on links from sources you don't know
- Don't fall for vendor calls stating they have your order if you didn't place an order
- See our Handout on FTC Scams

## Any questions?



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