

## Webinar: Overview of the Cares Act Stimulus for Tribes

April 7, 2020 | Corrine Wilson, REDW LLC & James Nichols, Dorsey & Whitney LLP

Owing to the large number of questions we received during the webinar, we were unable to address them all during the live session. So below, please find answers to the additional questions asked by participants, which have been provided by our speakers, [Corrine Wilson](#) and [James Nichols](#), as well as REDW's HR Consulting Senior Manager [Alicia Finley](#) and Principal [Chris Tyhurst](#). If you require further clarification, please contact the person associated with that particular Q&A.

QUESTIONS	ANSWERS – <a href="#">James Nichols</a>
Can hotel, food prep, and entertainment staff be separated from gambling staff and activities?	Assuming this refers to PPP/SBA, this requires legal analysis of the specific circumstances.
What about a Tribal LLC organized under Tribal Code?	Assuming this refers to PPP/SBA, this requires legal analysis of the specific circumstances.
Do unincorporated instrumentalities qualify as "enterprises" under PPP?	Assuming this refers to PPP/SBA, this requires legal analysis of the specific circumstances.
Regarding interest payments: What does allowable but not reimbursable mean?	Allowable means loan funds can be spent for a particular purpose, but may need to be repaid. Forgiveable/reimbursable means the expense is allowable and the loan funds spent can be forgiven.
Do the size requirements of SBA apply? For example, a tribe owns a gas station with fewer than 500 employees, but earns over the "annual receipt" limit in the SBA regulations. Is it ineligible?	This requires legal analysis specific to the business.
Do gaming employees fall under this?	It depends on the relief program at issue; needs legal analysis specific to the program and entity.
Could you please explain further why a tribal d/b/a may not be eligible for PPP? What is the reasoning?	SBA loan rules, which apply to PPP, have conditions relating to the legal entities eligible for loans. Applicability to a particular legal structure requires legal analysis of the specific circumstances.
Would you encourage Tribes to apply for the PPP for their Casinos?	All businesses should consider the relief programs that might be available, but it appears as of now that gambling businesses will not be eligible for PPP.
If you participate in the payroll tax deferral, can you also participate in the Title IV loan program (not the PPP program)?	Rules on the Title IV loan program are likely to be issued soon.
What is the best resource to develop an SBA plan to determine which programs we should start with on a greater than 500 employee Tribe?	An attorney with SBA expertise could help identify the eligible entities owned by the Tribe.
Are the Title IV loans available to apply for now?	In an <a href="#">April 8 Washington Post article</a> , Secretary Mnuchin said the mid-sized company loan program will be up and running this week.

## QUESTIONS

Our Tribal Government funds a few departments based on our permit revenue from their lake. Their lake is shut down (for at least a month); why would we not be allowed to apply for PPP?

We were advised not to do the Title IV loan because it requires the recipient to remain neutral in any union organizing effort during the term of the loan.

## ANSWERS – [James Nichols](#)

Eligibility depends on the specific circumstances of the enterprise.

The requirement to remain neutral in any union organizing effort is a provision of Title IV. The significance of this requirement will depend on the circumstances of the borrower.

## QUESTIONS

How would we contact Treasury on input for allocation method of \$8 billion?

Not accounted for in the gov. budget, can this include a surge in General Assistance programs?

Are costs associated with contributions to tribal trusts for minors or the payment of trustee fees covered expenses? Are offsetting the losses from investments in benefit programs covered expenses?

Can we ask for no cost extensions of non-Federal awards?

In drawing down funds, is the 3-day cash on hand rule not being considered?

## ANSWERS – [Corrine Wilson](#)

Tribal Leaders are encouraged to provide their input in writing no later than April 13 by emailing [consultation@bia.gov](mailto:consultation@bia.gov) and [tribal.consult@treasury.gov](mailto:tribal.consult@treasury.gov).

BIA is adding funding to existing Tribal BIA Social Services Programs for increased General Assistance Costs. See page 6 of our Federal Summary Handout.

We are not clear which resources for covered expenses you are referring to. Please reach out to James Nichols or Corrine Wilson to clarify.

Yes, See Handout OMB Memo 20-17.

This was not addressed in the OMB Guidance. Reach out to your federal agency to determine if they have relief for that specific part of the legislation.

## QUESTIONS

Are Tribes eligible to offer the emergency sick and family leave? Legislation is vague, referring only to private employers with fewer than 500 employees and public employers with more than 1 employee. We want to make sure Tribes get reimbursed if we go this route.

Are tribal governments eligible to take advantage of the Payroll tax relief incentives?

Employer retention credit isn't available to government employers. So tribal governments wouldn't be eligible; what about the casino activities? What if the casino is a dba of the tribal government?

## ANSWERS – [Alicia Finley](#)

Tribes that adopt FMLA and the EFMLEA should provide the benefit, whether public (government) or private (business). Tribal Governments are eligible even if they have over 500 employees; the Act is amending the language of FMLA eligibility for private businesses, but does not change the eligibility for government eligibility. The Payroll Tax Credit is for both public and private businesses.

Yes, Tribal Governments are eligible for Payroll Tax Relief, which is the employer portion of Social Security (FICA) taxes only.

True, Tribal Governments do not qualify for the credit; however, the Enterprises are eligible, even if dba under the Government. Tribes have received an exception to the affiliation rules (13 CFR § 121.103).

**QUESTIONS**

If tribe has partial shutdown, are they allowed to pay employees who are sent home, who do NOT tele-work, from federal or state funds?

**ANSWERS – [Alicia Finley](#)**

Yes. Under the Families First Coronavirus Response Act (FFCRA), employees who are subject to quarantine or isolation order, taking care of a family member under quarantine, or caring for a child whose school or place of care is closed for reasons related to COVID-19, are eligible for up to 12 weeks of leave at 2/3 of their regular pay, up to \$200/day. Employers can claim a tax credit for 100% of the wages paid under the Act through Dec. 31, 2020.

Can Title V cover payroll for employees who are asked to stay home due to social distancing?

There has not been any guidance provided on this at this point.

How can we get in contact with REDW HR if we have further question on leave?

You can call Alicia Finley at (505) 998-3432, or reach out via email at [afinley@redw.com](mailto:afinley@redw.com).

**QUESTIONS**

Under the IHCA it says that IHS will be used to pay for assisted living. I am wondering when this will be funded?

**ANSWERS – [Chris Tyhurst](#)**

The IHS will issue Dear Tribal Leader letters and notifications to awardees; unfortunately, they have not said when. See <https://www.ihs.gov/coronavirus/>