

Summary of Provisions with Tips/Considerations

May 21, 2020

The following is a collection of resources for Native American Tribes relating to the first three Phases of authorized federal legislation passed in response to the COVID-19 crisis. This document is for informational purposes only, and may not be complete, so we advise Tribes to research any current or updated implementation regulations carefully. We also highly recommend that Tribes coordinate with their financial, executive, program and legal staff.

While information related to the COVID-19 outbreak is plentiful, published in many different places, and always evolving, we at REDW continue to do our utmost to assist Tribes through these challenging times. Be sure to visit the COVID-19 Resource Hub on our website at redw.com, or contact our professionals listed below for help.

Tribal Coronavirus Relief Fund (CARES Act – Phase 3)

OVERVIEW

\$8B Relief Fund – 60% distributed to Tribes week of 5/5/20 – Treasury distributed based on NAHASDA IHBG formulas, with a floor of \$100,000. The other 40% to be distributed, after electronic Tribal certifications of their data by 5/26/20 to Treasury, to include the number of employees by the Tribe and tribally owned entities, and the government expenditures and federal expenditures based on their 2019 audit/financial statements. Per the Act, funds are to be used for Tribal government and/or its business expenditures incurred due to the COVID-19 public health emergency in the face of revenue declines. See <https://home.treasury.gov/policy-issues/cares/state-and-local-governments>.

TIPS AND CONSIDERATIONS

- **Compliance** for recording expenditures – 1) costs are necessary due to COVID19 public health response; 2) costs were not accounted for in budget approved by march 27, 2020 for the government; and 3) costs were incurred during march 1-December 30, 2020.
- **Compliance** funds may not be used to fill revenue shortfalls (revenue replacement/losses are not a permissible use) that covers expenditures that would not qualify under the statute (related to COVID19).
- Tribes should establish GL Account(s) to track the COVID-19 related supporting expenditures, both government activities and business-type activities.
- Along with salaries/benefits, also consider costs for maintaining idle facilities or businesses shut down or limited operations due to COVID-19, e.g., maintenance costs, insurance, security, sanitizing; re-opening costs; communication to employees/customers; etc. Also non-budgeted costs incurred due to COVID-19.
- Keep in mind, these distributed amounts may be audited as federal expenditures in your next fiscal year or in some manner by the Treasury IG. Monitor published Treasury guidance and any documents you may receive from Treasury, for compliance.
- Once awards are made, assign Director to oversee the costs to be incurred and the allocations and charges to the award.

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SBA Paycheck Protection Program (CARES Act – Phase 3)

OVERVIEW

As of May 7, 2020, the SBA still had \$125 Billion of the total \$659 Billion of PPP loan funding available for lenders. This program provides for 100% Loan Guarantees; loans up to \$10M; Tribal businesses with 500 or less employees; covers salaries (capped at \$100K) and certain benefits; paid leave; rents or mortgage interest; utilities; employee health costs; etc. for 8 weeks after funding. The PPP Loan will be forgiven if used in full for allowable costs, salary/hourly wages were not reduced by more than 25% and there has been no reduction in Full-Time Equivalent employees within the covered period. Any amount of the PPP Loan that is not forgiven is then converted to a loan with loan payments deferred for 6 months at 1% fixed interest; due in 2 years. SBA and financial institution application.

TIPS AND CONSIDERATIONS

- PPP Loans – Up to \$10M; compile employee headcounts, salary and benefits; rent or mortgage costs; utilities; and financial information. Calculations necessary for loan application
- EIDL Loans – Up to \$2M; emergency advance of \$10K within 3 days of application that does not need to be repaid; payments up to 30 years at 3.75%. EIDL loans made by June 30, 2020 are eligible to apply for a PPP Loan or refinance their EIDL into a PPL loan.
- Require SBA application form 2483 (3/20)
- Compile prior year costs for employee headcounts and salaries and benefits; rent or mortgage costs; utilities. Calculations and support necessary for loan application.
- If obtained, establish fund for loan proceeds and costs; maintain debt agreement documentation and proper classification for financial statements and disclosures (short term or long-term debt)
- Track and prepare documentation for debt forgiveness provisions and any debt compliance provisions

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Main Street Expanded Loan Facility - MSELF (CARES Act – Phase 3)

OVERVIEW

\$600B for Loans to businesses up to 10,000 employees or up to \$2.5B in 2019 annual revenues, with a 95% purchase of the loans by federal reserve, special purpose vehicles on a recourse basis. Loans have a 4-year maturity; defer amortization of principal and interest for 1 year; minimum loan of \$1M; pre-payments permitted without penalty. Borrowers commit to refrain from use of proceeds to repay other loans; will use proceeds to maintain its payroll and train employees during term of loan;

TIPS AND CONSIDERATIONS

- Work with your financial institution for loan application, REDW can assist with financial data and application.
- If obtained, establish fund for loan proceeds and costs; maintain debt agreement documentation and proper classification for financial statements and disclosures (short term or long-term debt)
- Track and prepare documentation for any debt compliance provisions

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Unemployment Program (Families First Act – Phase 2)

OVERVIEW

Tribes may receive up to 50% of unemployment costs through December 31, 2020, disbursed through Treasury. Enhanced unemployment benefits to unemployed or furloughed employees. Need to verify your State's or Tribe's Unemployment Insurance Plans.

TIPS AND CONSIDERATIONS

- PUC/Pandemic Unemployment Compensation – Those on PUC get additional \$600 per week to July 31, 2020; PUC is not income for Medicaid or CHIP eligibility. Most States allow furloughed worker benefits.
- PEUC/Pandemic Emergency Unemployment Compensation – States extend 13 weeks of benefits once state benefit time limits are reached. Also, States can waive one-week waiting period for UI benefits.
- Benefits for workers that do not meet work history time requirements or part-time work-sharing requirements.
- Federal Treasury will pay states to reimburse nonprofits, government agencies, and Indian tribes for half of the costs they incur to pay for all unemployment benefits through December 31, 2020.
- Watch for Treasury regulations on implementation.
- Tribes should track employees furloughed.

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Emergency Family and Medical Leave (EFMLEA) (Families First Act – Phase 2)

OVERVIEW

Temporarily amends the FMLA: provides up to 12 weeks of leave, but changes the formula to allow up to 10 of those weeks to be protected paid leave for employees or family members under quarantine or needed at home to care for children due to school or day care closure. Paid benefit is limited to two-thirds of regular pay, up to \$200/day. Emergency Paid Sick Leave Act (EPSLA) provides up to two weeks of paid sick leave at 100% of pay, up to \$511 per day, and may be used prior to EFMLEA above. Expands FMLA eligibility to include employees who have been employed for at least 30 days.

TIPS AND CONSIDERATIONS

- Private employers with fewer than 500 employees, including tribal enterprises, must post this [DOL Poster](#)
- Consider establishing a code in payroll system for employees that are eligible for these leaves, separate from your regular sick or PTO leave.
- Tribes should track employees on this leave for both financial and HR purposes, e.g., return to work, health screenings, health insurance benefits, etc.

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Payroll Tax Relief (EFMLEA) (Families First Act – Phase 2)

OVERVIEW

Businesses and non-profits, including tribal governments and businesses of any size that are forced to fully or partially suspend operations or have a 50% reduction in quarterly receipts measured year-over-year due to COVID-19, but continue to pay employees during that period, are allowed to offset the employer's 6.2% share of Social Security taxes and the excess is refundable.

Employers with more than 100 Employees – Based on 2019 employment data, credit is based only on qualified wages paid to employees when an employee is not providing services during a suspension of business.

Employers with less than 100 Employees – Based on 2019 employment data, credit is based only on qualified wages paid to employees when an employee is not providing services during a suspension of business, or for a sharp business decline of gross receipts.

Payroll Tax Credit – Wages paid after March 12, 2020 and before January 1, 2021, a refundable payroll tax credit equal to 50% of the qualified wages paid. The total eligible wages per employee are \$10,000, resulting in a maximum credit of \$5,000 per employee. Wages include employee health insurance and wages paid for leaves, including EFMLEA leave. Payroll Tax credit is not allowed if PPP loans are obtained.

Deferred Payroll Taxes – Defers employer share of 2020 Social Security payroll taxes, 50% until 2021 and 50% in 2022. Deferrals not allowed if PPP loans are obtained.

TIPS AND CONSIDERATIONS

- If PPP loans are received, these payroll tax benefits are not available.
- Tribal accounting/payroll will need to identify applicable wages and benefits that qualify from March 12 to December 31, 2020.
- Employees who meet the eligibility should be determined with coordination of accounting/ payroll and HR departments.

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Retirement Plans (CARES Act – Phase 3)

OVERVIEW

Waives the 10% early withdrawal penalty tax on early withdrawals up to \$100,000 from a retirement plan or IRA for an individual, their spouse or dependent, who is diagnosed with COVID-19; or experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of child care due to COVID-19. Permits the tax payments due on the distribution over a three-year period and to repay into the plan over the next three years, repayments not subject to plan contribution limits. Also doubles the current retirement plan loan limits to the lesser of \$100,000 or 100% of the participant’s vested account balance; outstanding loan payments may be deferred through 12/31/20 for one year.

Required Minimum Distributions (RMDs) – Waives RMDs for calendar year 2020 for defined contribution plans – 401(k), 403(b), 457(b) and IRA plans, allowing individuals to keep funds in their retirement plans.

Single-employer Defined Benefit Plans Funding Relief – Delays the due date for contributions otherwise due during 2020 until January 1, 2021, contributions to include interest.

TIPS AND CONSIDERATIONS

- Permits retirement plans to adopt these rules immediately, provided the plan is amended on or before the last day of the first plan year beginning on or after January 1, 2022.
- Tribal retirement plan coordinators should get with their plan administrators and legal counsel to amend in line with the published provisions by Treasury.
- Employees who meet the eligibility should be determined with coordination of accounting/ payroll and HR departments.

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FEMA COVID-19 Response Funding and Telehealth (COVID-19 Response Act – Phase 1)

OVERVIEW

FEMA Funding to Tribes does not require a Disaster declaration, but must apply. May request assistance through State as sub-recipient or directly from FEMA. FEMA is to coordinate with Department of Health and Human Services for public health measures. Requires execution of a FEMA-Tribe Agreement and executive of an emergency plan that includes actions necessary to protect public health and safety pursuant to public health guidance. Costs eligible under activated emergency plans include management, control and reduction of immediate threats to public safety; emergency medical care; medical sheltering when existing facilities are overloaded or cannot accommodate needs. Tribes may request a waiver to the 25% required match. Allows HHS to release national stockpiles and waives certain Medicare, Medicaid and CHIP requirements. See <https://www.fema.gov/news-release/2020/03/26/coronavirus-COVID-19-fema-assistance-tribal-governments>

Telehealth Emergency Regulation Waiver – Allows DHHS to waive telehealth restrictions during the pandemic, patients may receive telehealth care from Medicare providers in their homes.

TIPS AND CONSIDERATIONS

- Tribes to apply to FEMA and may request technical assistance.
- Once awards are made, assign someone to oversee the costs to be incurred and then properly allocate and charge to the award. If match is not waived, track matching costs.
- Subject to Single Audit Act.

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CDC Tribal Set-aside (COVID-19 Response Act – Phase 1)

OVERVIEW

CDC has \$40M to directly fund Tribes, Tribal organizations and Urban Indian organizations that have expended funds for COVID-19 from January 20, 2020 up until March 6, 2020. CDC is taking grant applications. See <https://www.cdc.gov/tribal/cooperative-agreements/tribalcovid-ot20-2004.html>

TIPS AND CONSIDERATIONS

- Tribes will need to apply. Application deadline May 31, 2020.
- Assign someone to oversee the costs incurred and then properly allocate and charge to the award.
- Subject to Single Audit Act.

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IHS Tribal Set-aside (Families First Act – Phase 2)

OVERVIEW

IHS had \$134M appropriated, with \$64M to distribute to Tribes and IHS facilities (\$61M) and Urban programs (\$3M) for additional resources for COVID-19 response activities. Includes provision for no-cost sharing for American Indian/Alaska Natives regardless of where services have been authorized for testing of COVID-19. Funds may be used across any line items in services account. IHS to distribute through existing awards through Hospital and Clinic line items, as one-time, non-recurring funds, and allowable contract support funds may be negotiated after initial award. IHS will also distribute to its IHS federal health programs and service units. \$70M will go to Tribes and IHS facilities to complement the separate CDC funding, and the remaining \$40M will be used for personal protective equipment PPE and supplies for free distribution to Tribal and IHS facilities. See https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/documents/2020_Letters/DULL_DUIOLL_03272020.pdf.

TIPS AND CONSIDERATIONS

- Tribes to check IHS communications for modifications to their existing awards.
- Ensure costs are allowable per award conditions.
- Subject to Single Audit Act.

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Older Americans Act (Families First Act – Phase 2)

OVERVIEW

DHHS Grants for Indian Programs, Older Americans Act has \$10M to distribute to provide nutrition and other direct support services for disaster reimbursement and assistance funds to American Indian/Alaska Natives/Native Hawaiian elders. See <https://acl.gov/grants/disaster-assistance-state-units-aging-suas-and-tribal-organizations-major-disasters-0>

TIPS AND CONSIDERATIONS

- Tribes apply to may need to apply to DHHS as Cooperative Agreement
- Assign director to oversee the costs to be incurred and then properly allocate and charge to the award.
- Subject to Single Audit Act.

USDA Funding (Families First Act – Phase 2)

OVERVIEW

Several USDA programs received additional appropriations for the following programs that Tribes may currently also participate in for additional funding or waivers:

- Women, Infants and Children (WIC) Supplement, available through 9/30/21
- Commodity Assistance Program for Emergency Food Assistance, available through 9/30/21
- Supplemental Nutrition Assistance Program (SNAP) – Assistance for children who receive free or reduced lunches at their schools.
- Maintaining Essential Access to Lunch for Students (MEALS) – Allows waivers to accommodate increased federal costs requested by providers of meals and meal supplements under the federal school breakfast and lunch programs during school closures.
- Nutrition Programs: School Lunch and Breakfast, Child and Adult Care Food, and Summer Food – Waivers to allows meals served outside the school/care setting with appropriate safety measures; program waivers and adjustments for nutritional content.
- WIC program waivers also available for physical re-certifications and bloodwork; administrative waivers if requirement cannot be met due to pandemic.

TIPS AND CONSIDERATIONS

- Tribes watch for USDA communications for possible modifications to their existing awards and/or available waivers.
- Ensure costs are allowable per any specified award modification conditions.
- Subject to Single Audit Act.

IHS Special Funding and Special Diabetes Program (CARES Act – Phase 3)

OVERVIEW

IHS has \$1.032B to support IHS and Tribal health systems during the pandemic. IHS intends to distribute \$579M to Tribes and IHS facilities and \$30M to Urban programs. The funds cover intended legislated purposes through Hospitals and Clinics, Purchased Referred Care, Alcohol and Substance Abuse and Mental Health line items. Contract support may be added and negotiated after initial payments made. \$450M to distribute to IHS facilities, Tribes, Urban programs for medical services, equipment, supplies, health education, purchased/referred care, tele-health services. IHS will use \$65M for Electronic Health Records stabilization and support; and remaining \$367M will be determined after additional assessments and consultation, which includes \$125M for facilities activities.

See https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/documents/2020_Letters/DTLL_DUIOLL_04032020.pdf

Special Diabetes Program – Extends SDPI mandatory authorization at FY2020 levels through November 2020.

TIPS AND CONSIDERATIONS

- Tribes watch for IHS communications for modifications to their existing awards.

- Ensure costs are allowable per any specified award conditions.
- Subject to Single Audit Act.

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Testing and Testing-Related Activities in I.H.S., Tribal and Urban Indian Health Programs (PPHCEA)

OVERVIEW

The President signed the PPHCEA into law on April 24, 2020, providing \$750 million to the HHS Public Health and Social Services Emergency Fund for testing and testing related activities in IHS, Tribal, and Urban Indian Health programs. Per the statute, these funds can be used for necessary expenses to purchase, administer, process, and analyze COVID-19 tests, including support for workforce, epidemiology, and use by employers or in other settings. In addition, these funds can be used to scale up testing by public health, academic, commercial, and hospital laboratories, and community-based testing sites, health care facilities, and other entities engaged in COVID-19 testing. Funds may also be used to conduct surveillance, trace contacts, and perform other related activities related to COVID-19 testing. See

https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/documents/2020_Letters/DT_LL_DUIOLL_05192020.pdf

TIPS AND CONSIDERATIONS

- Tribes watch for IHS communications for modifications to their existing awards.
- Ensure costs are allowable per any specified award conditions.
- Subject to Single Audit Act.

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BIA and BIE Funding (CARES Act – Phase 3)

OVERVIEW

BIA was appropriated \$453M to Tribal Governments to support welfare assistance and social service programs; assist tribal members affected by the pandemic crisis; expand public safety and emergency response capabilities increase BIA capacity to telework for response to Tribe needs, meet increases staffing and overtime costs. BIA likely to distribute through existing Tribal awards, they are developing distribution allocations.

BIE was appropriated \$69M for education related needs to respond to the pandemic for salaries, equipment, online curriculum development, distance learning, facilities sanitation, transportation and other costs. Also US Department of Education is to develop procedures with BIE for a tribal set-aside of \$153.7M. Of the \$69M, \$20M is for tribal colleges and universities. Some DOE waivers are also available for various student requirements, e.g., annual testing, reporting.

TIPS AND CONSIDERATIONS

- Tribes and Tribal Schools should watch for communications for possible modifications to their existing awards.
- Tribes and Tribal Schools should watch for communications for possible waivers.
- Ensure costs are allowable per any specified award conditions.
- Subject to Single Audit Act.

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HUD Funding (CARES Act – Phase 3)

OVERVIEW

HUD Office of Native American Programs was appropriated \$200M for NAHASDA Block Grants to assist with prevention, preparation and response, including maintained normal operations and eligible affordable housing activities to the COVID-19 response. \$100M is for ICDGB grants to assist Tribes in response to pandemic. NAHASDA Tribes will receive a percentage of their FY2020 IHGB formula allocation.

See <https://www.hud.gov/sites/dfiles/PIH/documents/DTL%20IHGB%204-3-20.pdf>

HUD-ONAP will provide guidance on the funding.

TIPS AND CONSIDERATIONS

- Tribes/TDHEs should watch for communications for possible modifications to their existing awards, and notices of funding availability from HUD ONAP.
- Ensure costs are allowable per any specified award conditions.
- Subject to Single Audit Act.

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Other Tribal Funding (CARES Act – Phase 3)

OVERVIEW

USDA/Commodity Foods was appropriated \$100M to for increased foods to low-income and elderly households, including Indian reservations. See <https://www.fns.usda.gov/disaster/pandemic/COVID-19>

USDA/Broadband Loan and Grant Program – \$100M for Re-connect program to expand internet on reservations. See <https://www.usda.gov/reconnect>

USDA/Distance Learning and Telemedicine Program Grants – \$25M for capital assets video conferencing and computer equipment that operate via telecommunications to rural end-users of telemedicine and distance learning. Tribes are eligible for this funding. See <https://www.usda.gov/media/press-releases/2020/04/03/usda-announces-second-application-window-distance-learning-and>

DHHS/Older American Act, Tribal Nutrition was appropriated \$20M for delivery of nutrition services to American Indians, Alaska Native and Native Hawaiian elders.

See <https://acl.gov/about-acl/older-americans-act-oaa>

DHHS/Indian Child Care Development Block Grant – Appropriate \$70-96M for Indian Child Care Programs to defray costs of COVID-19 response, including for continued payments to child care providers due to care center closures; provide emergency child care for healthcare workers, emergency responder and other COVID-19 “front-line” workers. See <https://www.acf.hhs.gov/occ/resource/occ-COVID-19-resources>

DHHS/Low Income Home Energy Assistance Program – \$900M appropriated supplement to tribal LIHEAP. See <https://www.acf.hhs.gov/ocs/resource/liheap-dcl>

Institute for Museum and Library Services – \$50M appropriated to expand digital network access, internet accessible devised and technical support services, includes Tribal grantees. See <https://www.ims.gov/news/federal-government-invests-50m-museums-libraries-address-digital-divide-during-COVID-19>

TIPS AND CONSIDERATIONS

- Tribes should watch for communications for possible modifications to their existing awards, or application for other grant opportunities.
- Tribal Programs should stay abreast of any program waivers available to apply for, or that may be included in award modifications.
- Ensure costs are allowable per any specified award conditions.
- Subject to Single Audit Act.