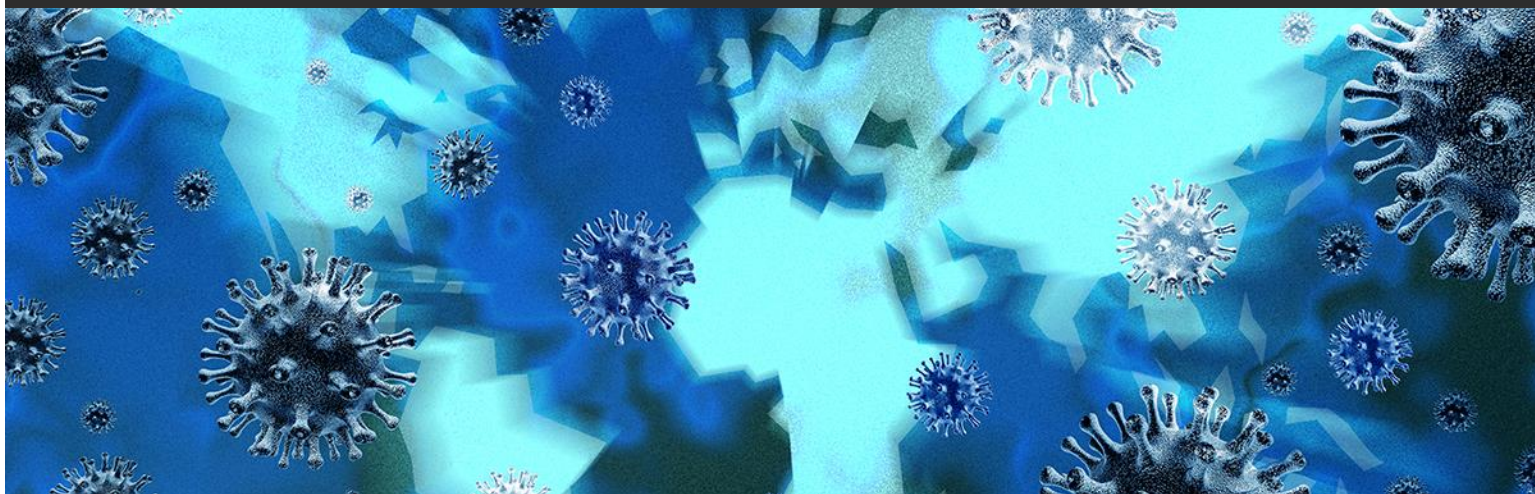


Alert | Health Emergency Preparedness Task Force: Coronavirus Disease 2019



April 8, 2020

Economic Relief to Tribes and Tribal Small Businesses Under the CARES Act

This alert provides a summary of certain economic relief that tribes and tribal small businesses may be eligible to receive under the recently enacted CARES Act. Please note that the relief listed in this alert may not be available in every instance, and that the information herein is subject to the fluid situation of the coronavirus pandemic and the updated regulatory guidance that agencies release daily.

SBA - Paycheck Protection Program—Loan With Forgiveness

- **What is the Paycheck Protection Program?**
 - The Paycheck Protection Program (PPP) provides cash-flow assistance through 100% federally guaranteed loans to employers, including qualified tribal businesses, who maintain their payroll during the Coronavirus Disease 2019 (COVID-19) emergency. Generally, if employers retain their employees in payroll and use PPP funds for authorized purposes, including employee compensation, all or most of the PPP loans may be forgiven. Each eligible entity is limited to one PPP loan.

- **How much can be borrowed?**
 - The maximum loan is equal to 250% of an employer's average monthly payroll costs.
 - The maximum loan amount available is the lesser of:

- \$10 million; or
 - The borrower's total average monthly payroll for the past 12 months or calendar year 2019, excluding compensation above \$100,000/employee, *multiplied by* 2.5, plus the unrealized share of any 7(a) loan already approved under the borrower's fiscal year 2020 budget.
- **What can PPP loans be used for?**
 - A borrower must use loan funds to:
 - Meet payroll costs;
 - Cover employee benefits (e.g., costs related to group health care benefits during period of paid sick, medical, or family leave, and insurance premiums, allowance for separation or dismissal, payment of any retirement benefit);
 - Pay employee salaries, commissions or similar compensation, and state and local taxes assessed on compensation;
 - Pay rent, mortgage interest payments, utilities, and interest on debts incurred before the covered period.
- **What amounts are forgiven under a PPP loan?**
 - A borrower will be eligible for loan forgiveness of amounts made for eligible purposes during an eight-week period from the PPP loan origination date (Covered Period), for all of the above listed purposes, except interest on debts incurred.
 - However, not more than 25% of the loan forgiveness amount may be attributable to non-payroll costs. .
 - The total amount forgiven is limited to the principal amount borrowed.
- **What are the loan terms?**
 - 1.0% fixed rate, six-month deferral, loan due in two years, to the extent not forgiven.
- **How long will PPP loans be available?**
 - This program is retroactive to February 15, 2020 and will continue until June 30, 2020. Loans are available through June 30, 2020.
- **What tribal entities are eligible to receive PPP assistance?**
 - Tribal small business concerns that are eligible to participate in the PPP include those that: (1) are directly or indirectly owned by a tribal government, or together with one or more US citizens or small business concerns; and (2) have fewer than 500 employees, or the applicable size standard in number of employees for the North American Industry Classification System (NAICS) industry as provided by the SBA, if higher ("Tribal Small Businesses").
 - Under SBA's affiliation rules, businesses that are owned and controlled by tribes or wholly-owned tribal entities will not be considered affiliates of other tribal businesses or entities because of common ownership or common management; however, affiliation may be found for other reasons.

- **What documentation is required?**
 - The PPP requires a good faith certification that: (1) the loan is necessary due to the uncertainty of current economic conditions caused by COVID-19; (2) the borrower will use the funds to retain workers and maintain payroll, mortgage, lease, and utility payments; and (3) the borrower does not have an application pending and has not received a loan for the same purpose and duplicative amounts.

- **Are there any priorities for tribal business under the PPP?**
 - Yes, depending on business size, some tribal small businesses may qualify for priority under the PPP. Specifically, the PPP prioritizes underserved and rural borrowers, including small disadvantaged businesses (which can include tribally-owned businesses within the size requirements under SBA regulations).

- **Are there any collateral or personal guarantee requirements for PPP Loans?**
 - No, collateral or personal guarantees are not required under PPP loans.

- **Can the amount of PPP loan forgiveness be reduced?**
 - Yes, if a borrower reduces employee salaries or wages, the number of employees, or both during the covered period, then the loan amount available for forgiveness will be reduced proportionally by: (a) any reduction in employees retained compared to the prior year; and (b) the reduction in pay of any employee beyond 25% of their prior year compensation. Note that the 25% reduction threshold will not apply to employees who earned more than \$100,000 in 2019.
 - Still, if a business borrower rehires or ends the salary reduction before June 30, 2020, the salary reduction or layoff rules will not affect forgiveness of the PPP loan.

- **What is the PPP loan forgiveness process?**
 - Borrowers apply for forgiveness with the lender (SBA-approved bank) directly. Forgiveness documentation includes: (1) documentation verifying the number of employees on payroll and pay rates, including federal and state payroll and income tax filings, and unemployment insurance filings; (2) payment receipts of mortgage, lease, and utility obligations; (3) certification by a representative that the documentation provided is true and accurate; and (4) any other materials that document employee retention.

- **Where do I get a PPP loan?**
 - Apply through your local bank or one of the many [other SBA approved lenders](#).

- **When will PPP loans be available?**
 - Friday, April 3 for tribal small businesses.
 - Friday, April 10 for independent contractors and self-employed individuals.

- **What is needed to apply?**

- Complete the PPP loan application and provide payroll documentation to an approved lender that is available to process the application. To calculate the amount of a PPP loan that your business may be eligible for, use the following methodology:

Step 1: Aggregate payroll costs from the last twelve months or from calendar year 2019 for employees whose principal place of residence is the United States.

Step 2: Subtract any compensation paid to an employee in excess of an annual salary of \$100,000 and/or any amounts paid to an independent contractor or sole proprietor in excess of \$100,000 per year.

Step 3: Calculate average monthly payroll costs (divide the amount from Step 2 by 12).

Step 4: Multiply the average monthly payroll costs from Step 3 by 2.5.

Step 5: If applicable, add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020, less the amount of any “advance” under an EIDL COVID-19 loan (because it does not have to be repaid – see below).

SBA - Emergency Economic Injury Disaster Loans

- **What is the Economic Injury Disaster Loan Program?**

- SBA’s Economic Injury Disaster Loans (EIDLs) offer up to \$2 million in loans for small businesses to help overcome the temporary loss of revenue they are experiencing. These loans may be used to pay fixed debts, payroll, accounts payable, and other bills that can't be paid because of the disaster's impact.
- These loans are more flexible and can cover more than the PPP forgivable loans.

- **What tribal entities are eligible to receive EIDLs?**

- Tribal small businesses (defined above) are eligible to receive EIDLs. Tribal governments are not eligible.

- **What tribal organizations are not eligible to receive an EIDL?**

- Tribal small businesses whose primary purpose is gambling, businesses that derive more than one-third of their annual gross revenue from legal gambling activities, casinos and race tracks, and businesses that do not meet the SBA’s small business eligibility criteria are not eligible for EIDL assistance.

- **What is the interest rate on EIDLs?**

- The interest rate is 3.75% for small businesses up to a maximum of 30 years.
- Terms are determined on a case-by-case basis, based upon each borrower's ability to repay. SBA has announced that it will allow deferment of any payments through December 31, 2020 to help borrowers during this unprecedented time.

- **Can I receive an emergency advance on the EIDL?**
 - Yes, following application, a tribal small business may request an emergency grant of an advance on the loan, of up to \$10,000, which the SBA must distribute within three days of receipt. A tribal small business will not be required to repay advance payments under any circumstances, even if the EIDL application is denied. The advance may be used to keep employees on payroll, pay for sick leave, meet increased production costs due to supply chain disruptions, or pay business obligations, including debts, rent, and mortgage payments.
- **Where do I get an EIDL?**
 - Unlike the PPP (where you apply to your local bank), the EIDL is available directly through the SBA's website.
- **When will EIDLs be available?**
 - Between January 31, 2020 and December 31, 2020.
- **What can EIDLs be used for?**
 - The EIDL may be used to: (1) provide paid sick leave to employees unable to work due to the direct effect of COVID-19, or maintain payroll to retain employees during business disruptions or substantial slowdowns; (2) meet increased costs to obtain materials or production costs due to supply chain disruptions; (3) make rent or mortgage payments; or (4) pay business obligations, including debts, rent, and mortgage payments that cannot be met due to revenue losses.
- **Can a tribal business receive a PPP loan and an EIDL?**
 - Yes, to the extent that the EIDL is used for a purpose other than those permitted for PPP loans. If you took out an EIDL between January 31, 2020 and April 3, 2020 and used the loan funding for payroll costs, the PPP loan must be used to refinance the EIDL loan.

Treasury - Tribal Economic Stabilization Fund

- **What is the Economic Stabilization Fund?**
 - The relief fund provides \$150 billion to states, tribal governments, and units of local government for necessary expenditures incurred in responding to the COVID-19 outbreak.
 - \$8 billion is specifically set aside for making payments to tribal governments and tribally-owned entities.
- **How will these funds be distributed?**
 - The Treasury Secretary will determine the amount allocated to a tribal government based on increased expenditures of each tribal government (or tribally-owned entity) related to the aggregate expenditures in 2019 by such tribal government (or tribally-owned entity). The Secretary must develop such funding distribution model in consultation with the Secretary of the Interior and tribes.

- **What can these funds be used for?**
 - The funds apply to necessary, previously unaccounted expenditures incurred due to the COVID-19 public health emergency between March 1, 2020 and December 30, 2020.
 - Note that the Treasury Inspector General has ability to recoup funds that were not used for an appropriate purpose.

Government Contractors – Paid Leave

- **What is this program?**
 - Subject to appropriations, the stimulus package includes a provision that provides paid leave for employees working on contracts with the federal government. The measure allows agencies to modify the terms of a contract to reimburse contractors for the cost of providing paid leave, including sick leave, to employees or subcontractors unable to perform work onsite due to a facility closure and who cannot telework.
- **How does this program work?**
 - It allows federal agencies to reimburse federal contractors and subcontractors for paid leave and paid sick days provided to their employees when the contractors are unable to fulfill the work under their contracts because they are: (a) unable to access a federal facility; or (b) are otherwise restricted due to COVID-19.
- **Are there any restrictions on this program?**
 - Yes: (1) reimbursement by the government is discretionary; (2) subject contracts must be modified to provide for reimbursement; (3) reimbursement is limited to the minimum contract billing rates and cannot exceed an average of 40 hours per week for paid leave, including sick leave; (4) the reimbursed expense must be to retain employees (or subcontractors) in a “ready state,” including to protect the life and safety of government and contractor personnel; (5) reimbursable expenses are limited to those incurred between Jan. 31, 2020 and Sept. 30, 2020; (6) reimbursable expenses are limited to those employees or subcontractors that cannot perform work on a federally approved site, including a federally owned or leased facility or site, due to facility closures or other restrictions, and who cannot telework because their job duties cannot be performed remotely during the public health emergency; and (7) the contractor must offset reimbursements under the authority of Section 3610 by the amount of any credits the contractor receives under other sections of the CARES Act and under the recently enacted Families First Coronavirus Response Act.

Other Potential Economic Relief to Tribes and Tribal Businesses

- **U.S. Department of Treasury's Loans and Guarantee Loans - Emergency Relief and Taxpayer Protections:** Tribes and tribal businesses may be eligible for the \$454 billion loan guarantee fund.
- **FEMA - Disaster Relief Fund:** Authorizes \$45 billion to provide for the immediate needs of state, local, tribal, and territorial governments to protect citizens and assist in recovery from the effects of COVID-19. Reimbursable activities may include medical response, personal protective equipment, National Guard deployment, coordination of logistics, safety measures, and community services nationwide. \$25 billion is allocated to disaster relief under the Stafford Act. \$15 billion is allocated for any other disaster relief pursuant to the Balanced Budget and Disaster Relief Act. Unlike the Tribal Economic Stabilization Fund, this Disaster Relief Fund is available until it is expended.

- **HUD - Indian Housing:** Provides \$300 million for activities and assistance under the Native American Housing Assistance and Self-Determination Act (NAHASDA), which includes \$200 million to prevent, prepare for, and respond to COVID-19, including maintaining normal operations and funding eligible affordable housing activities under NAHASDA. \$100 million is allocated to the Indian Community Development Block Grant program for imminent threats to health and safety as a result of COVID-19.
- **USDA - Commodities: Food Distribution Program on Indian Reservations (FDPIR):** The bill provides \$100 million to FDPIR for purposes of food distribution on reservations to prevent, prepare for, and respond to COVID-19. \$50 million is allocated to facility improvements and equipment upgrades, and \$50 million is allocated to the costs for additional food purchases.
- **FEMA - Emergency Management Performance Grants:** Commits \$100 million for state, local, territorial, and tribal governments to support coordination, communications, and logistics.
- **DOI - Direct Tribal Assistance:** BIA is allocated \$453 million, of which at least \$400 million must be made available to meet the direct needs of tribes: (a) provide aid to tribal governments; (b) support welfare assistance and social service programs, including assistance to tribal members affected by the coronavirus crisis; (c) carry out deep cleaning of facilities; (d) purchase personal protective equipment; (e) expand public safety and emergency response capabilities; (f) increase BIA capacity for teleworking so the agency is better prepared to assist tribes; and (g) meet increased staffing and overtime costs.
- **DOI - Healthcare and Education:** Includes \$2 billion in funding to provide necessary resources to assist native communities and tribal governments in preparing for and responding to the threat of coronavirus; increase funding for health care services, equipment and staffing at tribal health care facilities; and support tribal schools, colleges and universities. Highlights include:
 - **IHS:** Provides \$1.032 billion to IHS, to remain available until September 30, 2021, to prevent, prepare for, and respond to coronavirus, including for: (a) public health support; (b) electronic health record modernization; (c) telehealth and other information technology upgrades; and (d) purchased/referred care, the catastrophic health emergency fund, urban Indian organizations, tribal epidemiology centers, community health representatives, and other activities to protect the safety of patients and staff.
 - \$65 million is allocated to electronic health record stabilization and support.
 - \$450 million is allocated for distribution directly to IHS directly operated programs, tribes operating Indian Self-Determination and Education Assistance Act programs, and through contracts or grants with urban Indian organizations.
 - \$125 million is allocated to the IHS facilities account.
 - The CARES Act also includes a \$125 million set-aside for public health through the Centers for Disease Control and Prevention (CDC); a minimum of \$15 million is set aside for mental and behavioral health services through the Substance Abuse and Mental Health Services Administration (SAMHSA); and a minimum of \$15 million is set aside for health surveillance through the Health Resources and Services Administration (HRSA). The Special Diabetes Program for Indians is also funded through November 30, 2020.
 - **BIA:** BIA is allocated \$453 million to: (a) provide aid to tribal governments; (b) support welfare assistance and social service programs, including assistance to tribal members affected by the coronavirus crisis; (c) carry out deep cleaning of facilities; (d) purchase personal protective

equipment; (e) expand public safety and emergency response capabilities; (f) increase BIA capacity for teleworking so the agency is better prepared to assist tribes; and (g) meet increased staffing and overtime costs. This legislation requires that at least \$400 million of the allocation must be made available to meet the direct needs of tribes.

- **BIE:** Provides \$69 million for response needs at BIE-funded schools, including staffing, transportation, information technology, telework, and cleaning activities and assistance for tribal colleges and universities across the country to help respond to the crisis. \$20 million is allocated to tribal universities and colleges. One-half of 1% of the \$30.75 million Education Stabilization Fund is also allocated for programs operated and funded by the BIE. The CARES Act also allocates funding to the U.S. Department of Education Title III Program, including \$50 million to tribal colleges and universities, \$25 million to Alaska Native and Native Hawaiian-serving institutions, and \$6 million for Native American-serving, non-tribal institutions. \$1.046 billion was also generally allocated to Minority Serving Institutions, which includes tribal colleges and universities, Alaska Native and Native Hawaiian-serving institutions, and Native American serving non-tribal institutions. \$8.8 billion was allocated to Child Nutrition Programs to remain available until September 30, 2021, to prevent, prepare for, and respond to coronavirus; BIE schools receive funding through the Child Nutrition Program.
- **CDC:** Allocated \$1.5 billion to support states, local governments, territories, and tribes in their efforts to conduct public health activities, including: (a) purchase of personal protective equipment; (b) surveillance for coronavirus; (c) laboratory testing to detect positive cases; (d) contact tracing to identify additional cases; (e) infection control and mitigation at the local level to prevent the spread of the virus; and (f) other public health preparedness and response activities. \$125 million is set aside for tribes, tribal organizations, urban Indian organizations, and other health service providers to tribes.
- **Health Resources and Services Administration (HRSA):** The bill includes \$275 million for HRSA, including \$180 million to support rural critical access hospitals, rural tribal health and telehealth programs, and poison control centers. At least \$15 million of this funding must be allocated to tribes, tribal organizations, urban Indian health organizations, or health service providers to tribes.
- **Office of Child Care - Indian Child Care Development Block Grant:** Provides between \$70-96 million for Indian child care programs that serve low-income families to help defray the costs of COVID-19 response, including for continued payments to child care providers during center closures and to provide emergency child care for health care workers, emergency responders, and other COVID-19 “front line” workers. \$4.5 million is also set aside for tribes through the Family Violence and Protection and Services Act for tribal domestic violence shelters.
- **Administration for Community Living:** \$20 million was allocated to the Older Americans Act, Tribal Nutrition Program, which provides funds for the delivery of nutrition and supportive services to American Indian, Alaska Native, and Native Hawaiian elders.

For more detail on small business loan programs, please see the GT Alert [“Congress Passes CARES Act: Overview of the Relief Available to Small and Other Business Concerns.”](#)

For more details on programs available through federal financial regulatory agencies to businesses of all sizes, please see the GT Alert [“COVID-19 Federal Legislative and Regulatory Economic Stabilization Programs – What Your Business Needs to Know.”](#)

For more information and updates on the developing situation, visit [GT’s Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#) or [GT’s Economic Stimulus Team](#).

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