

# How Can the CARES Act Help My Tribe? A Briefing on Economic Stimulus for Tribes

Article By:

Christine L. Swanick

Wilda Wahpepah

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Tribal leaders and federal officials this week will begin the task of implementing the economic relief programs of the Coronavirus Aid, Relief and Economic Security Act (or “Act”) passed by Congress on March 27, 2020. The U.S. Department of the Interior will host the first consultations with Tribes to discuss funding formulas and eligibility rules of the \$8 billion Tribal Stabilization Fund through a teleconference on Thursday, April 2, and on Thursday, April 9. The Tribal Stabilization Fund is one of three initiatives in the Act that Tribes and their business entities may use to mitigate the downturn of their economic enterprises. Highlights of the three programs and how they might help your Tribe and Tribal businesses follow:

## **U.S. Department of Treasury Tribal Stabilization Fund[1]:**

- **Sets aside \$8 billion of the Coronavirus Relief Fund for payments to Tribal governments for increased expenditures of the Tribal government or a tribally controlled entity of the Tribal government;**
- **Payments may be used to cover costs that (i) are necessary expenditures incurred due to the COVID-19 public health emergency; (ii) were not accounted for in the most recently approved budget of the Tribal government or tribally controlled entity; and (iii) were incurred from March 1, 2020 to December 30, 2020.**

Section 601 of the Act establishing the Coronavirus Relief Fund reserves \$8 billion in emergency relief funds for “payments to Tribal governments.”[2] For purposes of Section 601, the term “Indian Tribe” has the meaning set forth in section 4(e) of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 4304(e).[3] The term “Tribal government” means the recognized governing body of an Indian Tribe.[4] Payments are to be made not later than 30 days after the enactment of the Act.

[T]he amount paid under this section for fiscal year 2020 to a Tribal government shall be the amount the Secretary shall determine, in consultation with the Secretary of the Interior and Indian Tribes, that

is based on increased expenditures of each such Tribal government (or a tribally-owned entity of such Tribal government) relative to aggregate expenditures in fiscal year 2019 by the Tribal government (or tribally-owned entity) and determined in such manner as the Secretary [of Treasury] determines appropriate to ensure that all amounts available under section (a)(2)(B) for fiscal year 2020 [by September 30, 2020] are distributed to Tribal governments.[5]

Funds may be used “to cover only those costs of the State, Tribal government or unit of local government that – (1) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19); (2) were not accounted for in the budget most recently approved as of the date of enactment of this section for the State or government; and (3) were incurred during the period that begins on March 1, 2020 and ends on December 30, 2020.”[6]

Additionally, in order to receive payment, the Tribal government must provide the Treasury Secretary with a certification that the Tribal government’s proposed uses of the funds are consistent with the uses outlined above.[7] The certification must be signed by the Chief Executive for the Tribal government.

### **U.S. Small Business Administration Loan 7(a) Program**[8]

- **Includes Tribal business concerns in the Paycheck Protection Program in which loan guarantees are available to cover payroll, employment-related and certain operational and debt costs**
- **Tribal business concerns are businesses that are wholly owned by a Tribe or by a corporation owned by a Tribe with no more than 500 employees or that meets the “size standard” for their industry established by the SBA**

Section 1102 of the Act amends Section 7(a) of the Small Business Act, 15 U.S.C. § 636(a), to establish the Paycheck Protection Program, a \$349 billion loan guarantee program, and extend the program to eligible Tribal business concerns.[9] Under the Paycheck Protection Program, the federal government guarantees 100 percent of loans of up to \$10 million made from February 15, 2020 through June 30, 2020 for specified purposes.

Tribal business concerns are defined by reference to 15 U.S.C. § 657a(b)(2)(C)), which states:

(C) a small business concern —

(i) that is wholly owned by one or more Indian tribal governments, or by a corporation that is wholly owned by one or more Indian tribal governments; or

(ii) that is owned in part by one or more Indian tribal governments, or by a corporation that is wholly owned by one or more Indian tribal governments, if all other owners are either United States citizens or small business concerns[.]

Tribal business concerns are eligible if they employ no more than (i) 500 employees; or (ii) if applicable, the size standard in number of employees established by the Small Business Administration for the industry in which the Tribal business concern operates. For purposes of determining whether the Tribal business concern employees not more than 500 employees, the term

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“employee” includes individuals employed on a full-time, part-time or other basis.[10]

Eligible uses for loans are payroll costs, costs related to the continuation of group health care benefits during periods of paid sick, medical or family leave, and insurance premiums, employee salaries, commissions or similar compensations, payments of interest on any mortgage obligation, rent, utilities and interest on any other debt obligations that were incurred before the covered period.[11]

The Act expands eligibility of the 7(a) program by including: (1) sole proprietors, independent contractors, and eligible self-employed individuals; (2) business concerns with more than one physical location that employ not more than 500 employees per physical location and are assigned a North American Industry Classification System (NAICS) code of 72 (Accommodation and Food Services) (including Hotels with a casino on the premises, NAICS Code 721120); (3) nonprofit organizations and veterans organizations.

The Act waives the “affiliation rules” of 13 C.F.R. § 121.103 (which are the rules the SBA uses to determine how to count the affiliates of a business in determining the business’ size and thus eligibility) for: (1) businesses that have not more than 500 employees and are assigned a NAICS code beginning with 72 (Accommodation and Food Services); (2) for any business concern operating as a franchise that has a franchise identifier code assigned by the SBA; and (3) for any business concern that receives financial assistance from a company licensed under Section 301 of the Small Business Investment Act of 1958 (providing for the organization of small business investment companies).

The maximum amount of a loan is \$10 million.

### **U.S. Department of Treasury’s Loans and Guarantee Loans[12]**

- **Includes Indian Tribes in loan and loan guarantee fund to cover coronavirus-related losses**

Section 4002 establishes the Coronavirus Economic Stabilization Act of 2020 and extends eligibility to Indian Tribes and their businesses for a \$454 billion dollar loan and loan guarantee fund. The bill authorizes the Secretary to make loans, loan guarantees and other investments to support eligible businesses, States and municipalities that do not exceed \$500 billion dollars and provide the subsidy amounts necessary for such actions in accordance with the Federal Credit Reform Act of 1990.[13] While \$46 billion dollars is set aside for loans and loan guarantees for passenger and cargo air carriers and businesses critical for maintaining national security, the balance of the appropriation, \$454 billion dollars, is set aside for loans and loan guarantees to, and other investments in, programs or facilities established by the Board of Governors of the Federal Reserve System to provide liquidity to the financial system that supports lending to eligible businesses, States or municipalities by (i) purchasing obligations or other interests directly from issuers of such obligations or other interests; (ii) purchasing obligations or other interests in secondary markets or otherwise; or (iii) making loans, including loans or other advances secured by collateral.[14]

The Act defines the term “State” to include, among other entities, “any Indian Tribe.”[15] An “eligible business” is an air carrier or a business that has not otherwise received “adequate economic relief in the form of loans or loan guarantees provided under this Act.”[16]

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The Treasury Secretary is directed to have application materials ready 10 days after enactment.

### **Other Sections Relevant to Tribal Organizations**

In addition to the three economic programs, the Act includes initiatives to encourage development of the healthcare workforce serving Tribes and tribal organizations.

- Title III, Part IV – Health Care Workforce.
  - 3401. Reauthorization of Health Professions Workforce Programs – Includes a provision that allows the Secretary to give priority, in awarding grants under this Part, “to qualified applicants that train residents in rural areas, including for Tribes or Tribal Organizations in such areas.”[17]
  - 3403. Education and Training Relating to Geriatrics. – Amends Section 753 of the Public Health Service Act (42 U.S.C. 294c) such that in awarding grants, contracts, and cooperative agreements, the Secretary “shall give priority to applicants with programs/activities that are expected to...serve older adults in Indian Tribes or Tribal organizations.”[18]

[1] Title VI, Sec. 601.

[2] Sec. 601(a)(2)(B).

[3] Under the Indian Self-Determination and Education Assistance Act, “‘Indian tribe’ means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.”

[4] Sec. 601(g)(1), (5).

[5] Sec. 601(c)(7).

[6] Sec. 601(d).

[7] Sec. 601(e).

[8] Title I, Section 1101.

[9] Sec. 1102(a)(1)(B).

[10] Sec. 1102(a)(2)”(36)(D)(i)”.

[11] Sec. 1102(a)(2)”(36)(F)(i)”.

[12] Title IV, Section 4001.

[13] Sec. 4003(a).

[14] Section 4003(b)(4).

[15] Sec. 4002(10)(E).

[16] Sec. 4002(4)(A), (B).

[17] Title III, Part IV, Sec. 3401(3)

[18] Sec. 3403(a)(5)(A)(ii)

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National Law Review, Volumess X, Number 92

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