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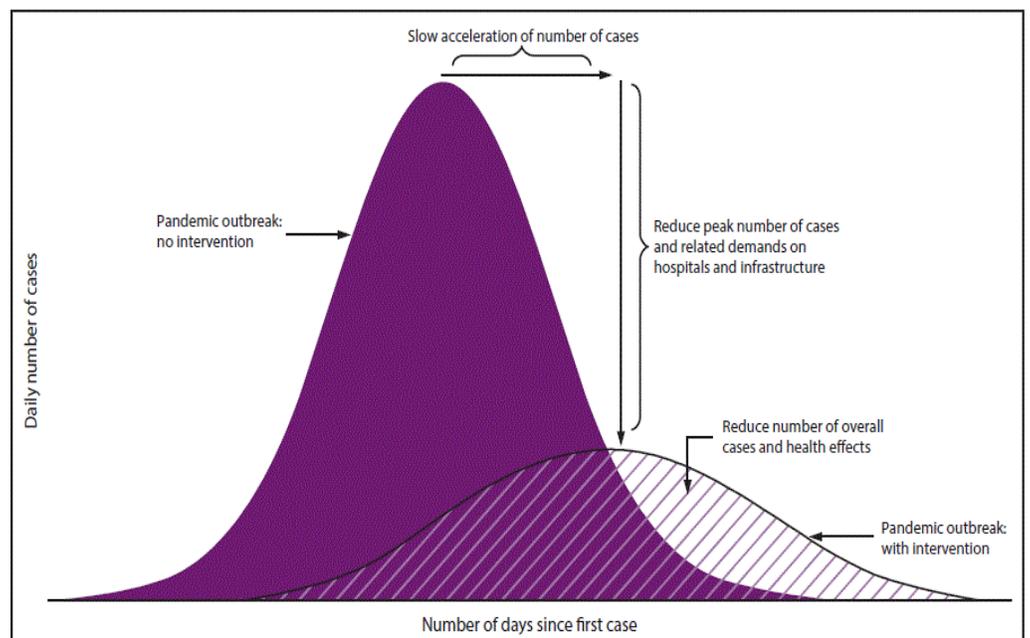
TRIBAL PAY ROLL PROTECTION & LOAN FORGIVENESS CLIENT ALERT

TO: TRIBAL LEADERS & BUSINESS CLIENTS
FROM: BIG FIRE LAW & POLICY GROUP LLP
DATE: APRIL 2, 2020
RE: TRIBAL GOVERNMENTS AND TRIBAL ECONOMIES

COVID-19 – TRIBAL UPDATE

The world continues to respond to the coronavirus pandemic (“COVID-19”). This is an unprecedented time in our history where economies have become shuttered and a lot of our daily lives have come to a standstill.

In the U.S., thirty states have issued stay at home orders. Non-essential businesses have been ordered closed. Essential services such as medical services, grocery stores, gas stations, pharmacies, banks, some restaurants (carry out/delivery only) may stay open or operate on reduced hours. Citizens are asked to exercise “social distancing” and stay six feet apart and are prohibited from gathering in groups larger than 10. Many schools and universities are closed for the rest of the school year. These drastic steps are being taken to “flatten the curve” and stop the spread of COVID-19 which will overwhelm our healthcare systems.



Source: Centers for Disease Control and Prevention



Tribal communities are not immune to coronavirus and are no exception to these efforts to stop the spread. Some have closed their borders, issued stay at home orders and imposed curfews on their citizens. This pandemic has also taken a toll on our communities and economies.

This update is on funding and programming that addresses tribal governments and tribal economies. On March 27, Congress passed that Coronavirus Aid, Relief, and Economic Security (“CARES Act”). The Act is a \$2 trillion stimulus package that is meant to be a lifeline for the American economy. The law provides financial boosts and safety nets for state, local and tribal governments and small businesses, which are the backbone of our economy, to endure COVID-19.

I. TRIBAL GOVERNMENTS

A. Coronavirus Relief Fund

1. Funds for Tribal Government

The CARES Act provides \$150 billion in a Coronavirus Relief Fund for immediate assistance for state, local and tribal governments to combat COVID-19. \$8 billion has been set aside to reimburse tribal governments for expenses directly related to COVID-19 response. Expenses must have been unbudgeted and are not otherwise covered by the tribe’s budget. While the law does not specify what these costs are, they may include:

- a. *Salaries.* The Tribe can seek reimbursement for salaries for employees even though those salaries are already covered by your existing budget if they are now working on COVID-related tasks. The best way to accomplish this is to lay them off from regular duties and rehire them specifically for the COVID-related duties that they are currently performing. It may be useful to create a COVID-19 taskforce for this purpose by Tribal resolution and to hire COVID-related personal under that emergency entity. Employees of this nature can include department heads, department employees, law enforcement, facilities operations and maintenance, etc.
- b. *Expenses.* Some expenses that are already within a tribe’s budget may now be related to COVID-19. For instance, equipment and expenses incurred by tribal departments that are carrying out COVID-19 duties may be reimbursable. For example, if law enforcement has increased patrols, gas may be reimbursable. If facilities and operations are now tasked with additional cleaning and sanitizing, supplies and materials may be reimbursable.
- c. *Legal Services.* Legal assistance related to COVID-19 response may be reimbursable.

2. Recordkeeping

Expenses should be documented, justified and recorded. Anything not properly recorded may not be reimbursable.

B. Unemployment

1. The CARES Act

The CARES Act expands and relaxes some of the rules for individuals to receive unemployment compensation. The law allows for tribes to be reimbursed for one-half of incurred unemployment benefit costs through December 31, 2020.

The benefit includes an additional \$600 a week in compensation above what an individual would normally be eligible for. The additional \$600 will only last until July 31, 2020. The Act also provides for an additional 39 weeks of eligibility for those individuals whose inability to work is related to COVID-19 such as an individual who has symptoms or a diagnosis of COVID-19 or has to care for a family member who has been diagnosed.

2. State Law

Eligibility for unemployment benefits may be expanded under state laws to individuals who are unable to come to work due to a work closure or a quarantine due to COVID-19. In the event that a person exhausts all of their expanded unemployment benefits, the CARES Act provides an additional 13 weeks of pandemic emergency unemployment compensation.

For more information:

- Contact your state's unemployment insurance program
- How Do I File for Unemployment Insurance?
<https://www.dol.gov/general/topic/unemployment-insurance>
- U.S. Department of Labor Announces New Guidance on Unemployment Insurance Flexibilities during COVID-19 Outbreak:
<https://www.dol.gov/newsroom/releases/eta/eta20200312-0>

C. Paid Sick and Family Leave Tax Credit

Employers who provide required leave to their employees and who employ less than 500 employees are eligible for a tax credit to offset the costs of such leave. This tax relief will be provided against quarterly payroll taxes.

II. TRIBAL ECONOMIES

The CARES Act provides \$349 billion to guarantee small business loans and expands small business loan programs to include Tribal governments, tribal businesses, tribal non-profits and other small businesses. These loans are intended to respond to the immediate harm caused by disruption from the pandemic and to provide additional economic stability for those businesses.

A. Small Business Loans

The CARES Act established the Paycheck Protection Program (“PPP”) for loans up to \$10 million that are 100 percent backed by the Small Business Administration (“SBA”). Funds for these loans may be available as soon as April 3, 2020. PPP loans will be administered through SBA’s 7(a) program and use the 1800 lenders already approved by the SBA.

- a. What times periods are covered?
 1. Covers period of February 15 - June 30, 2020
- b. Who is considered an eligible business:
 1. small business concerns,
 2. any business concern,
 3. 501 (c)(3) non-profit organizations,

4. 501 (c)(19) veteran's organizations, or
5. Tribal business concern that is:
 - (a) more than 51% owned by an Indian Tribe under section 31(b)(2)(C) of the Small Business Act that
 - (b) has 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 SBA, if higher.
6. Native 8(a) corporations.

Though not specifically spelled out, tribal casino hotels and casino food service may be eligible for loans under the PPP.

c. What can the funds cover?

1. Eight (8) weeks of payroll expenses (payroll expenses include employee compensation, payment for various forms of leave, allowance for dismissal or separation, group health care benefits including premiums, retirement benefits or payment of state or local taxes assessed on employee compensation). Any employee making more than \$100,000 may only have their salary included only up to \$100,000
2. mortgage or lease payments and utilities.

These loans can be forgiven if used for the specific instances listed above.

It is possible to also use the PPP loan for refinancing a previous SBA loan and to cover interest on other debt obligations, but these parts of the loan are not part of the forgiveness provisions.

For More Information:

- U.S. Department of the Treasury:
<https://home.treasury.gov/system/files/136/PPP%20Borrower%20Information%20Fact%20Sheet.pdf?fbclid=IwAR1TFa6WHIKtCsqr2EqpONokowVmF1SPZId2CqUVJJbo4iKTmluGKfUQHAs>
- Small Business Administration:
https://www.sbc.senate.gov/public/?a=Files.Serve&File_id=29FC1AE7-879A-4DE097D5-AB0A0CB558C8

B. Economic Injury Disaster Loan

The CARES Act expands and provides \$10 billion for SBA's Economic Injury Disaster Loans ("EIDL") for up to \$2 million loans for small businesses and private non-profits (less than 500 employees) that can show economic injury by COVID-19. In addition to applying for an EIDL, there is a \$10,000 emergency advance available upon request. The advance does not need to be repaid but should be used to keep employees on payroll and meet other business costs.

1. Who is eligible for an EIDL?
 - (a) small businesses including Tribal small businesses
 - (b) private non-profits
 - (c) sole proprietors

- (d) independent contractors
- (e) cooperatives and employee owned businesses

2. When?

- (a) loans can be backdated to January 31, 2020 and are available through December 31, 2020.

An entity eligible for an EIDL may also be eligible for a PPP loan and can re-finance the EIDL loan under the PPP loan. However, any advance received under EIDL would be subtracted from the amount forgiven in the PPP loan.

For More Information:

- SBA's Small Business Owner's Guide to the CARES Act
https://www.sbc.senate.gov/public/?a=Files.Serve&File_id=29FC1AE7-879A-4DE0-97D5-AB0A0CB558C8
- SBA's Disaster Assistance
<https://disasterloan.sba.gov/ela>

C. SBA Non-Disaster Loans

SBA offers other guaranteed loans (non-disaster) through the 7(a) program (not made under the PPP), 504 program and microloan program. These loans can cover debt relief and are not forgivable however SBA will cover all payments (principal, interest and fees) for six months.

For More Information:

- SBA Loans
<https://www.sba.gov/funding-programs/loans>

D. Treasury Backed Loans

The CARES Act authorizes the Secretary of Treasury to make up to \$500 billion in loans for eligible businesses. To obtain a Treasury-backed loan, a business may have more than 500 employees and has not received adequate economic relief under the PPP provisions (provided they were eligible for a PPP loan) or other provisions of the CARES Act. A business that receives assistance under Title I (SBA loans) is likely not eligible under this loan program unless they have documentation of inadequate relief. Unlike the SBA backed loans the Treasury still has to issue guidance on the applications of these loans. These loans are not subject to forgiveness.

For More Information:

- U.S. Department of the Treasury
<https://home.treasury.gov/>

III. INTERIOR ALL TRIBES CALL ON CARES ACT

The Assistant Secretary of Indian Affairs Tara Sweeney will be having an all tribes call regarding the Coronavirus Aid, Relief and Economic Security Act (“CARES Act”).

Date: Thursday, April 2, 2020

Time: 1 - 4:00 PM (Eastern)

Dial In: 888-950-5924

Passcode: 1682452

See Dear Tribal Leader Letter on next page.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our firm:

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United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAR 31 2020

ATTENTION: TIME SENSITIVE CONSULTATION INFORMATION
ALL-TRIBES CONSULTATION CALL
RE: CARES ACT TITLE VI, CORONAVIRUS RELIEF FUND

Dear Tribal Leader:

The Coronavirus Aid, Relief, and Economic Security (CARES) Act signed by President Trump on March 27, 2020, provides additional funding to assist Tribes in preventing, preparing for, and responding to coronavirus. The CARES Act includes a Coronavirus Relief Fund (CVF) that includes an \$8 billion set aside for Tribal governments, to be distributed no later than April 26, 2020.

Together with the U.S. Department of Treasury, I seek your input on developing a methodology or formula to allocate this \$8 billion to Tribal governments, as outlined in the CARES Act, and guidance on what qualifies as necessary expenditures incurred due to the coronavirus public health emergency. A compressed timeline is necessary, so that we may distribute the funds as soon as possible to address your needs in these unprecedented and uncertain times. I invite you, as the official leader of your Tribe, to join Indian Affairs and representatives of the U.S. Department of Treasury on two following scheduled consultation sessions:

Date	Time (Eastern Time)	Call-In Information
Thursday, April 2, 2020	1 p.m. – 4 p.m.	Phone number: 888-950-5924 Participant Code: 1682452
Thursday, April 9, 2020	1 p.m. – 4 p.m.	Phone number: 888-950-5924 Participant Code: 1682452

In the event you are unable to make the consultation call, please provide written comments and submit to consultation@bia.gov and tribal.consult@treasury.gov **no later than Monday, April 13, 2020.** I appreciate your input and leadership as we work together to ensure these funds provide the maximum protection and relief for your communities.

Sincerely,

Tara Sweeney
Assistant Secretary – Indian Affairs