

STATE OF NEW MEXICO INDIAN AFFAIRS DEPARTMENT

Office of the Secretary Willie Ortiz Building 2600 Cerrillos Road Santa Fe, NM 87505 Phone (505) 476-1600 Fax (505) 476-1601 www.iad.state.nm.us



Lynn Trujillo Cabinet Secretary

Nadine Padilla Deputy Cabinet Secretary

Michelle Lujan Grisham Governor

> Howie Morales Lieutenant Governor

November 19, 2020

Dear Honorable Tribal Leader,

The Indian Affairs Department (Department) has partnered with the Southwest Indian Law Clinic (SILC) at the University of New Mexico, School of Law to create guidance documents for CARES Act funding utilization. The Department saw the need for a comprehensive document that laid out allowable and unallowable expenditures. Relying on our partnership with the UNM School of Law, we tasked two student attorneys in the SILC program, Felisha Adams and Krista Jean Thompson with developing the CARES Act guidance document. This document was then shared with the Department of Finance and Administration (DFA) for review.

It is my hope that the guidance documents support your administration and procurement team as you work to spend the CARES Act funding before the December 30, 2020 deadline. Please note that the guidance document strives to clarify allowable and unallowable expenditures but relies heavily on the guidance provided by the U.S. Department of Treasury. Any questions related to CARES Act expenditures can always be directed to the Department and to DFA. The following individuals can be contacted with any questions related to CARES Act funding:

Department of Finance & Administration Carmen Morin, Program Manager/Tribal Liaison: <u>carmenb.morin@state.nm.us/</u> (505) 240-2504

Indian Affairs Department Stephanie Salazar, General Counsel: stephanie.salazar@state.nm.us/ (505) 690-4079

Respectfully,

Lynn Trujillo, Cabinet Secretary

Service · Respect · Community



#### CORONAVIRUS RELIEF FUND EXPENSE GRID FOR TRIBAL GOVERNMENTS AS OF SEPTEMBER 30, 2020

### Answering yes to these questions below means the expenditure is likely <u>eligible</u> for the Fund:

- Is it in connection with the current COVID-19 public health emergency?
- $\circ$   $\:$  Is it necessary "due to" or "to respond to" the public health emergency?
  - To support *reasonable*, *necessary* or *substantial*:
    - Proof of vulnerable population (i.e., senior citizens, rural areas, and high risk citizens) and their need for assistance.
    - Maintain documentation for all necessary, substantially dedicated, etc. expenditures.
    - <u>If not</u>, is it reasonably necessary for its intended use in the reasonable judgment of the government officials responsible for spending Fund payments?
      - Necessary expenditures incurred due to the public health emergency: The Department of the Treasury understands this term broadly to mean that the expenditure is reasonably necessary for its intended use in the reasonable judgment of the government officials responsible for spending Fund payments. It may include, supplies and operational expenses for actions taken to respond to the public health emergency. These may include expenditures incurred to allow the State, territorial, local, or Tribal government to respond directly to the emergency, such as by addressing medical or public health needs, as well as expenditures incurred to respond to second-order effects of the emergency, such as by providing economic support to those suffering from employment or business interruptions due to COVID-19-related business closures.
      - *Substantially dedicated*: It is presumed that payroll costs for public health and public safety employees are payments for services substantially dedicated to mitigating or responding to the COVID-19 public health emergency, unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise.
    - o <u>If not</u>, is it assistance to address increased expenses?
- Was the cost incurred during March 1, 2020 to December 30, 2020?
- Was the cost <u>not</u> included in the budget most recently approved as of March 27, 2020?
  - **Most recently approved budget:** A cost accounted for in the budget will still meet this requirement if either:
    - a) the cost cannot lawfully be funded using a line item, allotment, or allocation within that budget *or*
    - b) the cost is for a *substantially different use* from any expected use of funds in such a line item, allotment, or allocation.
    - Refers to the enacted budget for the relevant fiscal period for the government, without considering subsequent supplemental appropriations enacted or other budgetary adjustments made by that government in response to the COVID-19 public health emergency. A cost is not considered to have been "accounted for in

**DISCLAIMER. PLEASE NOTE**: The information in this document is subject to change without notice and should not be construed as a commitment by the New Mexico Indian Affairs Department ("NMIAD"). NMIAD assumes no responsibility for any errors that may appear in this document. In no event shall NMIAD be liable for incidental or consequential damages arising from use of this document or the Fund described in this document. It is recommended that for the most accurate and up to date information that Tribes contact or visit the website for the U.S. Department of the Treasury.

a budget" merely because it could be met using a budgetary stabilization fund, rainy day fund, or similar reserve account.

- Is it something that will <u>not</u> be reimbursed from another source (i.e., insurance or another fund)?
- The expenditure will <u>not</u> be used to replace revenue?

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### CORONAVIRUS RELIEF FUND EXPENSE GRID FOR TRIBAL GOVERNMENTS

CURRENT AS OF SEPTEMBER 30, 2020

	Covernmen	t Employees	
$\circ$ + In connection with		<b>1</b> V	
<ul> <li>+ In connection with the current COVID-19 public health emergency</li> <li>+ Necessary expenditures "due to" or "to respond to" the public health emergency</li> </ul>			
	ary for its intended use in the re		rnment officials responsible
for spending Fund pa			
	ss increased expenses		
	ounted for in the budget most re	ecently approved as of March 2	7. 2020
	re accounted for in the most red	• • • •	
	nded using a line item, allotme		
	t use from any expected use of		
	urred during March 1, 2020 to		
• - Were accounted for	in the budget most recently app	proved as of March 27, 2020	
• - Payments from the	Fund may not be used to cover	expenditures for which they wi	ll receive reimbursement
o - Revenue replaceme	nt		
Expense Category	Permissible	Caution	Not Permissible
Medical staff and	Any employee pay, benefits,	Example: Employees whose	Example: Positions pay,
administration	or training required to	pay has been budgeted for	benefits, and training costs
employees	address COVID-19 (FAQ 2	and lacks adequate time	were originally budgeted for
1 2	and 3).	keeping for hours/shifts	through tribal funds or other
		dedicated to addressing	grants.
		COVID-19.	
Public health employees	Employees whose duties are	Example: PH employees	Example: Employees whose
	substantially dedicated to	whose work duties have	duties have no connection
	addressing COVID-19	been adjusted, however	to addressing COVID-19.
	(includes that have been	lacking proper	
	reassigned from former	documentation.	
	public health position)		
	(FAQ 2 and 3).		Encode Encolorization
Public safety employees	Additional personnel	Example: Any situation	Example: Employees
	required to enforce curfews, border checks, welfare	lacking proper documentation of	permitted to work entirely from home for regular
	checks, or to enforce	assignment or new work	assigned duties, unrelated to
	community orders to	duties.	addressing COVID-19
	slow/stop community	duties.	
	spread. (FAQ 2 and 3).		
School administrative	No further details	Whose services are	No further details
School daministrative Staff		substantially dedicated to	
Siujj		mitigating or responding to	
		the COVID- 19 public health	
		emergency (FAQ 2 and 3).	
		Example: May be possible	
		for employees required to be	
		physically present in school	
		building.	
Teachers & classroom	Allowable for positions	Whose services are	Examples:
Aides	required specifically to	substantially dedicated to	Not for positions
	address COVID-19 (FAQ 2	mitigating or responding to	previously budgeted
	and 3).	the COVID-19 public health	

Furloyahad Employees	<ul> <li>Examples:</li> <li>tribe would like to decrease class size and thus requires the hiring of additional teachers to remain compliant with public health orders.</li> <li>IT Staff: Includes pay for all staff that are enhancing distance learning capabilities for students.</li> </ul>	emergency (FAQ 2 and 3). Example: May be available for teachers designated for special education or therapy classes, where significant time is spent educating parents during the COVID- 19 transition.	for through tribal funds or grants. although developing online instruction capabilities may be a substantially different use of funds, online instruction itself is not a substantially different use of public funds than classroom instruction. (FAQ 3) No further details
Furloughed Employees	If trained and repurposed to perform previously unbudgeted functions substantially dedicated to mitigating or responding to the COVID-19 public health emergency are also covered (FAQ 11 and 22).	No further details	No further details
All other Employees hired to assist COVID-19 employees or employees substantially dedicated to COVID-19 response	<ul> <li>Whose services are substantially dedicated to mitigating or responding to the COVID- 19 public health emergency (FAQ 2 and 3). Examples:</li> <li>corrections facility staff to enable compliance with COVID-19 public health precautions through work such as enhanced sanitation or enforcing social distancing measures</li> <li>redeploying police to support management and enforcement of stay-at-home orders</li> <li>diverting educational support staff or faculty to develop online learning capabilities, such as through providing information technology support that is not part of</li> </ul>	A government should not make prepayments on contracts using payments from the Fund to the extent that doing so would not be consistent with its ordinary course policies and procedures. (FAQ 31). Employees whose chief supervisor has reassigned their position to addressing COVID-19, yet the position has not been documented or formally recognized by the tribal government as "necessary" or "substantially dedicated" to addressing COVID-19.	Employees whose position is not recognized by the tribal government as "necessary" or "substantially dedicated" to addressing COVID-19 (FAQ 2).

Equipment	the staff or faculty's ordinary responsibilities. assisting COVID- 19 furloughed employees enroll in gov't benefits (unemployment, Medicaid, etc.) Employees whose position is clearly recognized or documented by the tribal government as "necessary" or "substantially dedicated" to addressing COVID- 19. If a recipient would have decommissioned equipment or not renewed a lease on particular office space or	To the extent the expenses were previously unbudgeted and are otherwise consistent with section 601(d) of the	Unnecessary in response to the public health emergency. (FAQ13). Any equipment that would
	equipment but decides to continue to use the equipment or to renew the lease <b>in order to respond</b> <b>to the public health</b> <b>emergency</b> , the costs associated with continuing to operate the equipment or the ongoing lease payments are eligible expenses (FAQ13). Examples: • Office equipment • Construction equipment • Medical equipment • Technological equipment • Distribution equipment • Any equipment necessary to decrease the spread of COVID-19 between public safety personnel	Social Security Act outlined in the Guidance, such expenses would be eligible (FAQ13).	normally be purchased through budget or grant funding.
Hazard pay, generally	and the public • PPE • Thermal Hazard pay means additional pay for performing hazardous duty	Both hazard pay and overtime pay for employees that are not substantially	General non-hazardous work during a state of emergency. (FAQ 29).

Payments from the fund may only be used to cover such hazard pay, not to be applied across the board individual or possibly infected individual or possibly infected specifically to COVID-19. Payroll expenses for public specifically to COVID-19. Payroll expenses for public specifically to cover (G3).  		or work involving physical	dedicated may only be	
Payments from the fund may only be used to cover such hazard pay, not to be applied across the board (FAQ 38). Examples of administratives wapport: • comes in contact with COVID-19 positive individual or possibly infected individual for assigned to area involving frequent publicthe hazard pay and overtime pay is for COVID-19. related duties (G). Beware of hazard pay for undocumented or unrelated hours.Payroll, Beware of hazard pay hours.Payroll or benefits expenses duties the publicPayroll, payroll expenses, and benefit series, and benefit series.NOTE: This is distinct from publicProper timekeeping is im expenses for publicProper timekeeping is im eras dedicated specifically to COVID-19. Any hours lacking proper designation, assignment, risk improper fund use.Payroll or benefits expenses time was dedicated busits in proper fund use.Payroll specifically to COVID-19 responding to the COVID-19 address COVID-19 A dutional pay hours designated specifically to to COVID-19Proper timekeeping is improper fund use.Payroll or benefits expenses time and bey is bor duties are not substantially dedicated to mitigating or responding to the COVID-19 address COVID-19 Additional pay hours designated specifically to to covID-19Payroll expense for publicTeleworking stipends for equipmentReinbursentent basis is previously budgeted for through tribal funds or speritically to positions require certain subfit to be physically prevent in a school support.Only if tribal government determines the form of speritically in provide for cigible copress unless defended for tipendes for cigible copress unless for cigible c			• •	
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eligible expenses unless deemed <b>necessary</b> (FAQ				
deemed necessary (FAQ				
				14).

Training	Fund payments may be used	Training minimally related	Examples:
	<ul> <li>rund payments may be used to cover employment and training programs for employees that have been furloughed due to the public health emergency, if the government determined that the costs of such employment and training programs would be necessary due to the public health emergency. (FAQ 22). Also: <ul> <li>Must be to specifically to address COVID-19, includes training to addresses unique community or population needs</li> <li>Training specifically related to reducing the spread of COVID-19 during policing and firefighting</li> </ul> </li> </ul>	to related to addressing COVID-19.	<ul> <li>Any training not related to COVID- 19 or community response needs.</li> <li>Any training unrelated to COVID-19 or would normally be paid for through budget or grant funding.</li> </ul>

	Tribal Government				
0	+ In connection with	the current COVID-19 public h	ealth emergency		
0	+ Necessary expendit	ures "due to" or "to respond to"	' the public health emergency		
0	+ Reasonably necessa	ry for its intended use the re	asonable judgment of the gover	mment officials responsible	
	for spending Fund pay	yments			
0	+ Assistance to address	ss increased expenses			
0	+ Costs were not acco	ounted for in the budget most re	ecently approved as of March 2'	7, 2020	
0	+ Or if such costs wer	re accounted for in the most rec	ent budget, they may meet the	requirement if (a) the cost	
	cannot lawfully be fur	nded using a line item, allotmer	nt, or allocation within that bud	get or (b) the cost is for a	
			funds in such a line item, allotn	nent, or allocation.	
0	+ The Costs were incu	urred during March 1, 2020 to l	December 30, 2020		
0		in the budget most recently app			
0	- Payments from the H	Fund may not be used to cover	expenditures for which they will	ll receive reimbursement	
0	- Revenue replacement	nt			
Expen	Expense CategoryPermissibleCautionNot Permissible			Not Permissible	
	Leased equipment	Must be related to	To the extent the expenses	Unnecessary in response to	
		addressing COVID-19. If a	were previously unbudgeted	the public health	
		recipient would have	and are otherwise consistent	emergency. (FAQ13).	
	decommissioned equipment with section 601(d) of the Examples:				
	or not renewed a lease on Social Security Act outlined • Any equipment that				
	particular office space or in the Guidance, such would normally be				
		equipment but decides to	expenses would be eligible	purchased through	
		continue to use the	(FAQ13).	budget or grant	
		equipment or to renew the		funding.	

	lease in order to respond to the public health emergency, the costs associated with continuing to operate the equipment or the ongoing lease payments are eligible expenses (FAQ13).		• No pre-paid equipment or lease payments
Financial Assistance	Expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures (G5). Example: May assist tribal members with utility service assistance, if family income is affected by COVID-19.	Example: Payments toward tribally owned utility payment for all individuals living on the reservation or within a Pueblo. May need to determine what is administratively necessary. All accounts or tribal member accounts.	Example: May not charge additional fees to recoup loss of revenue for program funding.
Supply purchases for tribal members	As long as the supplies are considered reasonable to address or assist the community address COVID-19 (G).	Example: Supply expenses that are not clearly in response to COVID-19, related to a previously budgeted supply purchase, or undocumented with substantiation.	Example: Any supply purchases previously budgeted for, expenses eligible for federal reimbursement, and any expenses not directed toward addressing COVID- 19.
Teleworking stipends	Reimbursement basis is preferred (FAQ 14)	Only if tribal government determines the form of stipends is administratively necessary (FAQ 14,36,28).	Example: No stipend or reimbursement if employees' teleworking duties have no connection to addressing COVID-19.
Workers compensation	Yes (FAQ 12).	No further details	No further details

### **Tribal members**

- + In connection with the current COVID-19 public health emergency
- + Necessary expenditures "due to" or "to respond to" the public health emergency
- + Reasonably necessary for its intended use in the reasonable judgment of the government officials responsible for spending Fund payments
- + Assistance to address increased expenses
- + Costs were not accounted for in the budget most recently approved as of March 27, 2020
- $\circ$  + *Or* if such costs were accounted for in the most recent budget, they may meet the requirement if (a) the cost cannot lawfully be funded using a line item, allotment, or allocation within that budget or (b) the cost is for a *substantially different use* from any expected use of funds in such a line item, allotment, or allocation.
- o + The Costs were incurred during March 1, 2020 to December 30, 2020
- o Were accounted for in the budget most recently approved as of March 27, 2020
- o Payments from the Fund may not be used to cover expenditures for which they will receive reimbursement
- - Revenue replacement

Assistance for	Payments may be used to assist	To the extent that the	No further details
services	individuals with enrolling in a	relevant government	
50177005	government benefit program for	official determines that	
	those who have been laid off due	these expenses are	
	to COVID-19 and thereby lost	<b>necessary</b> and they meet	
	health insurance (FAQ18).	the other requirements	
	Examples:	(FAQ18).	
	• Transportation to		
	appointments		
	• Support for tele / online		
	appointments		
	• Equipment / access for		
	tele / online support		
	Online / hotspot access		
	• Sign up for Medicaid,		
	Medicare, TANF, etc.		
	• Signup or payments of		
	insurance benefits		
Broadband	To provide broadband access to	Expansion of rural	
	rural areas with an immediate need	broadband capacity to	
	throughout the current pandemic	assist with distance	
	for school and work. Examples:	learning and telework	
	Hotspots	would only be	
	• Equipment such as	permissible if they are	
	modem	necessary for the public	
	• Applicable fees	health emergency. The	
	**	cost of projects that	
		would not be expected to	
		increase capacity to a	
		significant extent until the	
		need for distance learning	
		and telework have passed	
		due to this public health	
		emergency would not be	
		necessary due to the	
		public health emergency	
		and thus would not be	
		eligible uses of Fund	
		payments (FAQ36).	

Education	Expenses incurred in association	No further details	No further details
Luucunon	with the safe reopening of schools		
	(FAQ 53). Examples:		
	• In-person learning		
	Distance learning		
	Laptops personal		
	protective equipment for		
	students, staff, visitors		
	• Up to \$500 per K-12		
	student before		
	documentation required		
	Additional facilities		
	Technological		
	improvements (G4)		
	• Signs		
	Supplies		
	Software		
	• To ensure compliance		
	with COVID-19		
	precautions		
	• Desks		
	Chairs		
Equipment	Equipment rental and operation	No further details	No further details
	(FAQ 5/4/20, CRF V.3).		
	Examples:		
	• Thermometer		
	• Sanitization systems		
T	Water stations		
Emergency	Economic support in connection with the COVID-19 public health		
assistance	emergency, emergency assistance		
	to individual and family (FAQ		
	5/4/20 CRF V.3:)		
	Examples:		
	• Childcare		
	• Food		
	Supplies		
	Transportation		
	• Utilities		

Food assistance	Expenses for food delivery to residents, including, for example, senior citizens and other vulnerable populations, to enable compliance with COVID-19 public health precautions (G4). Examples: • Food pickup • Food delivery • Supplies (i.e., boxes, silverware, one-time use packets, etc.) • Groceries • Food vouchers	No further details	No further details
Financial support	Recipients may use Fund payments to provide emergency financial assistance to individuals and families directly impacted by a loss of income or if access denied due to closures and curfews (FAQ 24 and 25) due to the COVID-19 public health emergency (FAQ23). Examples of assistance programs: • Assist individuals with payment of overdue rent or mortgage payments to avoid eviction or foreclosure • Unforeseen financial costs for funerals • Childcare • Delivery assistance • Bill payment • Loans • Wood • Other emergency individual needs	If a government determines such assistance to be a <b>necessary</b> expenditure. Such assistance should be structured in a manner to ensure as much as possible, within the realm of what is <b>administratively</b> <b>feasible</b> , that such assistance is <b>necessary</b> (FAQ23).	No further details
Funeral assistance	Funerals and unforeseen financial costs (FAQ 5/4/20, CRF v.3)	No further details	No further details

Homelessness	Expenses of actions to facilitate	No further details	No further details
1101110105511055	compliance with COVID-19-		
	related public health measures,		
	such as expenses for care for		
	homeless populations provided to		
	mitigate COVID-19 effects and		
	enable compliance with COVID-		
	19 public health precautions (G4). Examples:		
	Temporary shelter and		
	housing		
	<ul> <li>Personal protective</li> </ul>		
	equipment and supplies		
Housing assistance	A consumer grant program to		Providing assistance to
3	prevent eviction and assist in	Assuming that the	recipients to enable them to
	preventing homelessness (FAQ20,	recipient considers the	meet property tax
	CRF V.3); to mitigate COVID-19	grants to be a <b>necessary</b>	requirements would not be an
	effects ; enable compliance with	expense incurred due to	eligible use of funds
	COVID-19 public health	the COVID-19 public	(FAQ20).
	precautions (FAQ 5/4/20). Examples to provide homes for	health emergency and the grants meet the other	Exceptions may be made in
	victims of domestic violence,	requirements (FAQ20).	Exceptions may be made in the case of assistance
	displacement, financial hardship,	requirements (17Q20).	designed to prevent
	quarantine requirements:		foreclosures.
	Temporary housing		
	placement		
	• Hotel, motel, Air BnB stay		
	Build homes for		
	placement		
Individual assistance	Upgrade critical public health	As required by the	No further details
for	infrastructure for individuals and	CARES Act, expenses	
or personal hygiene	families in rural and tribal areas to	associated with such	
	allow them to maintain proper	upgrades must be	
	hygiene and defend themselves against the virus (FAQ 54).	incurred by December 30, 2020.	
	Examples:	50, 2020.	
	Access to running water		
	<ul> <li>Hygiene products</li> </ul>		
	Cleaning products		
	• Water filtration system		
	• Water distribution system		
	• Water for livestock		
	• Building material (i.e.,		
	pipes, hardware, etc.)		
	Professional services		
Livestock	Facilitate livestock depopulation	To the extent these efforts	No further details
reduction	incurred by producers due to	are deemed necessary for	
	supply chain disruptions (FAQ	public health reasons or	
	19).	as a form of economic	
		support as a result of the	
		COVID-19 health	
		emergency (FAQ 19).	

Medical	(CRF 3) Examples:	No further details	No further details
memet	Emergency medical		
	response expense		
	<ul> <li>Establishing public telemedicine capabilities</li> </ul>		
	for COVID- 19- related		
	treatment		
	• Operating public		
	telemedicine capabilities for COVID-19- related		
	treatment		
Per capita	A per capita payment to residents	No further details	A per capita payment to
	of a particular jurisdiction with an		residents of a particular
	assessment of individual need (FAQ43).		jurisdiction without an assessment of individual need
	(1 AQ+3).		would not be an appropriate
			use of payments from the
			Fund (FAQ43).
Property Taxes	No further details	No further details	Fund payments may not be
			used to assist impacted property owners with the
			payment of their property
			taxes or government revenue
			replacement, including the
			provision of assistance to meet tax obligations
			(FAQ26).
			Exceptions may be made in the case of assistance
			designed to prevent
			foreclosures.
Public health	Examples (G2):	No further details	No further details
measures	• Expenses for communication and		
	enforcement by State,		
	territorial, local, and		
	Tribal governments of public health orders		
	related to COVID-19		
	• Expenses for acquisition		
	and distribution of		
	medical and protective supplies, including		
	sanitizing products and		
	personal protective		
	equipment		
	<ul> <li>Expenses for disinfection</li> <li>Expenses for technical</li> </ul>		
	• Expenses for technical assistance to local		
	authorities or other entities		
	on mitigation of COVID-		
	19-related threats to public		
	health and safety		

	Ducinoss		
	Business expenses to communicate new		
	measures, train and supply		
	<ul> <li>Expenses for quarantining individuals</li> </ul>		
Dent vellef	Public announcements	Depending of how the	No further details
Rent relief	Fund payments may be provided to non-profits for distribution to	Regardless of how the assistance is structured,	No further details
	individuals in need of financial	the financial assistance	
	assistance, such as rent relief	provided would have to	
	(FAQ44).	be related to COVID-19	
		(FAQ44).	
Solid Waste	Costs associated with increased	No further details	No further details
Solia Musie	solid waste capacity <b>as a result of</b>	Tto further details	Tto further detuils
	the public health emergency,		
	such as relates to the disposal of		
	used personal protective		
	equipment, are an eligible		
	expenditure (FAQ37).		
Tax anticipation	No further details	If a government	No further details
notes (TANs)		determines that the	
		issuance of <i>tax</i>	
		anticipation notes (TANs)	
		is <b>necessary</b> due to the	
		COVID-19 public health	
		emergency, the	
		government may expend	
		payments from the Fund	
		on the interest expense	
		payable on TANs by the	
		borrower and unbudgeted	
		administrative and	
		transactional costs	
		(FAQ35). Examples:	
		Necessary	
		payments to advisors and	
		underwriters,	
		associated with	
		the issuance of	
		the TANs.	
		<ul> <li>If a recipient</li> </ul>	
		must issue to	
		make up for tax	
		due date deferrals	
		or revenue	
		shortfalls	
		on or many	

Telework	Expenses to improve telework	No further details	No further details
assistance	capabilities for employees to		
	enable compliance with COVID-		
	19 public health precautions (G4).		
	Examples:		
	• Desks		
	Chairs		
	<ul> <li>Ergonomic setups</li> </ul>		
	• Computer		
	Software		
	• Supplies		
	• Equipment		
	Internet access		
	Training		
	Job search assistance		
Utilities assistance	Subsidy payments to electricity	Fund payments may be	Fund payments may not be
	account holders, if deemed to be	used for subsidy	used for government revenue
	necessary expenditures incurred	payments to electricity	replacement, including the
	due to the COVID-19 public	account holders to the	replacement of unpaid utility
	health emergency (FAQ27, FAQ	extent that the subsidy	fees (FAQ27).
	5/4/20 CRF V.3). Examples:	payments are deemed by	
	• Electricity	the recipient to be	
	• Water	<b>necessary</b> expenditures	
	• Propane	incurred due to the	
	• Disposal	COVID-19 public health emergency and meet the	
	• Phone	other criteria (FAQ27).	
	Hardship grants	outer criteria (I'AQ27).	
	Essential services		

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- + In connection with the current COVID-19 public health emergency
- + Necessary expenditures "due to" or "to respond to" the public health emergency
- + Reasonably necessary for its intended use in the reasonable judgment of the government officials responsible for spending Fund payments
- + Assistance to address increased expenses
- o + Costs were not accounted for in the budget most recently approved as of March 27, 2020
- $\circ$  + *Or* if such costs were accounted for in the most recent budget, they may meet the requirement if (a) the cost cannot lawfully be funded using a line item, allotment, or allocation within that budget or (b) the cost is for a *substantially different use* from any expected use of funds in such a line item, allotment, or allocation.

+ The Costs were incurred during March 1, 2020 to December 30, 2020\* There does not appear to be a limit on size of business or exclusion of tribal enterprises (CRF, FAQ 43).

• - Were accounted for in the budget most recently approved as of March 27, 2020

• - Payments from the Fund may not be used to cover expenditures for which they will receive reimbursement

0 – Revenue replacement			
Expense Category	Permissible	Caution	Not Permissible
Bonuses	Hazard pay	No further details	Workforce bonuses other
	• Overtime		than hazard pay or overtime.
	• (G6.6)		(G6.6)
Broadband	To provide broadband access to rural	Expansion of rural	
	areas with an immediate need	broadband capacity to	

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necessary broadly provide potential	-			
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		due to the COVID-19	community are not allowed
		public health	(FAQ28).
		emergency, then Fund	
		payments may not be	
		used for such projects	
		(FAQ28). Examples:	
		Temporary	
		public medical	
		facilities	
		• Other measures	
		to increase	
		COVID-19	
		treatment	
		capacity or	
		improve	
		mitigation	
		measures	
		• Related	
		construction	
Contract tracing	Emerges associated with contact	costs No further details	No forther details
Contact tracing	Expenses associated with contact tracing are eligible (FAQ 16).	no further details	No further details
Damages	No further details	No further details	Damages covered by
Dumuges			insurance (G6.2).
Economic support	Fund payments may be used to	To the extent these	No further details
for livestock	facilitate livestock depopulation	efforts are deemed	
JUT IIVESIOCK	incurred by producers due to supply	<b>necessary</b> for public	
	chain disruptions (FAQ 19).	health reasons or as a	
		form of economic	
		support as a result of	
		the COVID-19 health	
		emergency (FAQ 19).	
Employee	The government should provide such	Expenditures paid for	No flat rate stipends for
reimbursement	assistance on a reimbursement basis	with payments from the	eligible expenses unless
method	to ensure as much as possible that	Fund must be limited to	deemed necessary (FAQ 14).
	funds are used to cover only eligible	those that are	
	expenses (FAQ 14).	necessary due to the	
		public health	
		emergency (FAQ 14).	
Employment	No further details	Funds may be used for	No further details
administrative leave		increased	
		administrative leave	
		costs of public employees who could	
		not telework in the	
		event of a stay at home	
		order or a case of	
		COVID-19 in the	
		workplace, <b>only</b> to	
		cover costs that were	
		not accounted for in	
		the most recently	
		approved budget	
		(FAQ 48).	

Equipment	If a recipient would have	To the extent the	No further details
Едигртені	decommissioned equipment or not	expenses were	
	renewed a lease on particular office	previously unbudgeted	
	space or equipment but decides to	and are otherwise	
	continue to use the equipment or to	consistent with section	
	renew the lease <b>in order to respond</b>	601(d) of the Social	
	to the public health emergency, the	Security Act outlined in	
	costs associated with continuing to	the Guidance, such	
	operate the equipment or the ongoing	expenses would be	
	lease payments are eligible expenses	eligible (FAQ13).	
	(FAQ13). Examples:		
	Office equipment		
	Construction equipment		
	<ul> <li>Medical equipment</li> </ul>		
Grants	Governments may use Fund	Private employers are	Ineligible expenditures
Orunis	payments to support public or private	not subject to the	include payroll or benefits
	hospitals to the extent that the costs	restriction that the	expenses for <b>public</b>
	are <b>necessary</b> expenditures incurred	private employers'	employees whose work
	due to the COVID-19 public health	employees must be	duties are not substantially
	emergency (FAQ 17). Other	substantially dedicated	dedicated to mitigating or
	Examples:	to mitigating or	responding to the COVID-
	Office equipment	responding to the	19 public health emergency
	Construction equipment	COVID-19 public	(FAQ 30).
	<ul> <li>Business modifications</li> </ul>	health emergency.	
	<ul><li>Outdoor eating or similar</li></ul>	(FAQ 30). Examples:	
	accommodations	Grants	
	accommodations	• Short-term	
		loans	
		Payroll /	
		benefits	
		Hospitals	
		To cover	
		interest and	
		principal costs	
		of a loan	
Grants for small	Small businesses to reimburse the	Fund payments may be	No further details
businesses	costs of business interruption caused	used for economic	
Justicoses	by required closures Governments	support in the absence	
	have <b>discretion</b> to determine what	of a stay-at-home order	
	payments are <b>necessary</b> . (FAQ 24).	if such expenditures are	
	Examples of acceptable measures to	determined by the	
	promote social distancing or that are	government to be	
	affected by decreased customer	necessary. This may	
	demand as a result of the COVID-19	include, for example, a	
	public health emergency (FAQ 25,	grant program to	
	FAQ 32):	benefit small	
	Voluntary closure	businesses that close	
	Involuntary closure	voluntarily.	
Grants for small	To determine if funds would be	A grant made to cover	No further details
businesses	considered gross income taxable to a	interest and principal	
	business receiving the grant under	costs of a loan,	
	the Internal Revenue Code (Code)	including interest and	
	when governments use Fund	principal due after the	
	payments as described in the	period that begins on	

	Guidance to establish a grant	March 1, 2020, and	
	program to support businesses,	ends on December 30,	
	please see the answer provided by	2020 (the "covered	
	the Internal Revenue Service (IRS)	period"), will be	
	available at	considered to be	
	https://www.irs.gov/newsroom/cares-	incurred during the	
	act-coronavirus-relief-fund-	covered period if	
	frequently-asked-questions (FAQ	• (i) the full	
	51).	amount of the	
	<i>c z</i> ).	loan is	
		advanced to the	
		borrower	
		within the	
		covered period	
		and	
		• (ii) the	
		proceeds of the	
		loan are used	
		by the	
		borrower to	
		cover expenses	
		incurred during	
		the covered	
		period	
		• if these	
		conditions are	
		met, the	
		amount of the	
		grant will be	
		considered to	
		have been used	
		during the	
		covered period	
		for purposes of	
		the requirement	
		that expenses	
		be incurred	
		within the	
		covered period	
		• need to be	
		determined by	
		the recipient to	
		be necessary	
		due to the	
		public health	
		emergency	
		(FAQ 50).	
Grants for utilities	Examples:	Fund payments may be	Fund payments may not be
	• Electricity	used for subsidy	used for government
	• Water	payments to electricity	revenue replacement,
	Propane	account holders to the	including the replacement of
	<ul><li>Disposal</li></ul>	extent that the subsidy	unpaid utility fees. (FAQ
	Phone	payments are deemed	27).
		by the recipient to be	
	Hardship grants	<b>necessary</b> expenditures	
		inpenditures	

	• Essential services	incurred due to the	
		COVID-19 public	
		health emergency and	
		meet the other criteria	
		(FAQ 27). Examples:	
		Grants to	
		individuals	
		facing	
		economic	
		hardship to	
		allow them to	
		pay their utility	
		fees and	
		thereby	
		continue to	
		receive	
		essential	
		services	
		Direct subsidy	
		payment to all	
		utility account	
	A	holders	Durani din a serietara di
Grants for	A consumer grant program to	Exceptions may be	Providing assistance to
consumer	prevent eviction and assist in	made in the case of	recipients to enable them to
assistance	preventing homelessness (FAQ20,	assistance designed to	meet property tax
	CRF V.3); to mitigate COVID-19	prevent foreclosures.	requirements would not be
	effects ; enable compliance with		an eligible use of funds
	COVID-19 public health precautions $(TAO 5/4/20)$	Assuming that the	(FAQ20).
	(FAQ 5/4/20). Examples to provide	recipient considers the	
	homes for victims of domestic	grants to be a	
	violence, displacement, financial hardship, quarantine requirements:	<b>necessary</b> expense incurred due to the	
	• • •	COVID-19 public	
	Temporary housing	health emergency and	
	placement	the grants meet the	
	• Hotel, motel, Air BnB stay	other requirements	
	• Build homes for placement	(FAQ20).	
TT 1	Temporary workspace	· · · ·	Henry and any state of the state
Hazard pay	No further details	No further details	Hazard pay means additional
			pay for performing
			hazardous duty or work
			involving physical hardship, in each case that is related to
			COVID-19. Payments from
			the fund may only be used to
			cover such hazard pay, not
			to be applied across the
			board (FAQ 38).
Housing	No further details	Counties may not pre-	A government should not
nousing		pay with CARES Act	make prepayments on
		funds for expenses such	contracts using payments
		as a one or two-year	from the Fund (FAQ31).
		facility lease, such as to	
		house staff hired in	
		response to COVID-19	
		if doing so would not	
		in doing be would not	

		be consistent with its	
		ordinary policies and	
		procedures (FAQ31).	
Legal	No further details	No further details	No (G6.8).
-			
settlements		<b>T</b>	
Livestock	Facilitate livestock depopulation	To the extent these	No further details
reduction	incurred by producers due to supply chain disruptions $(FAO, 10)$	efforts are deemed	
	chain disruptions (FAQ 19).	<b>necessary</b> for public health reasons or as a	
		form of economic	
		support as a result of	
		the COVID-19 health	
		emergency (FAQ 19).	
Loans	Yes (FAQ 30 and 40). Examples:	Any amounts repaid by	Payroll or benefits expenses
Louis	• Grants	the borrower before	for public employees
	• Short-term loans	December 30, 2020,	whose work duties are not
	• Payroll / benefits	must be either returned	substantially dedicated to
	Hospitals	to Treasury upon	mitigating or responding to
	• To cover interest and	receipt by the unit of	the COVID-19 public health
	principal costs of a loan	government providing	emergency (FAQ 30).
	<ul> <li>Voluntary closures</li> </ul>	the loan or used for	
	Involuntary closures	another expense that qualifies as an eligible	
		expenditure under	
		section 601(d) of the	
		Social Security Act.	
		Any amounts not	
		repaid by the borrower	
		until after December	
		30, 2020, must be	
		returned to Treasury	
		upon receipt by the unit	
		of government lending	
T	Interest and minainal amounts of a	the funds (FAQ 40).	No further details
Loans for small businesses	Interest and principal amounts of a loan as part of small business	A grant or loan made to cover interest and	no further details
Dusinesses	assistance program (FAQ 8/10/20).	principal costs of a	
		loan, including interest	
		and principal due after	
		the period that begins	
		on March 1, 2020, and	
		ends on December 30,	
		2020 (the "covered	
		period"), will be	
		considered to be	
		incurred during the	
		covered period if • (i) the full	
		• (1) the full amount of the	
		loan is	
		advanced to the	
		borrower	
		within the	

		covered period	
		and	
		• (ii) the	
		proceeds of the	
		loan are used	
		by the	
		borrower to	
		cover expenses	
		incurred during	
		the covered	
		period.	
		If these conditions are	
		met, the amount of the	
		grant will be	
		considered to have	
		been used during the	
		covered period for	
		purposes of the	
		requirement that	
		expenses be incurred	
		within the covered	
		period. need to be	
		determined by the	
		recipient to be	
		<b>necessary</b> due to the	
		public health	
T	To determine if from do moreld he	emergency (FAQ 50).	No furth or dataile
Loans for small	To determine if funds would be	No further details	No further details
businesses – IRS –	considered gross income taxable to a		
supplemental info	business receiving the grant under		
	the Internal Revenue Code (Code)		
	when governments use Fund		
	payments as described in the		
	Guidance to establish a grant		
	program to support businesses,		
	please see the answer provided by		
	the Internal Revenue Service (IRS) available at		
	https://www.irs.gov/newsroom/cares-		
	act-coronavirus-relief-fund-		
	<u>frequently-asked-questions</u> (FAQ 51-		
	52).		
Nonnefit	Non-profits may be used to distribute	No further details	No further details
Nonprofit	assistance. Regardless of how the	no futulei detalis	no futulet detalls
assistance	assistance is structured, the financial		
	assistance is structured, the financial assistance provided <b>must be related</b>		
D	to COVID-19 (FAQ 44).	No further details	Davroll or banafita average
Payroll	Payroll expenses for public safety,	no further details	Payroll or benefits expenses
	public health, health care, human		for employees whose work
	services, and similar employees		duties are not substantially
	whose services are substantially		dedicated to mitigating or
	dedicated to mitigating or responding		responding to the COVID-
	to the COVID- 19 public health emergency (G3).		19 public health emergency. (G6.3).
	emergency ((13)		

D 11		TT 1 1 1 C	
Payroll expenses	The Fund is designed to provide	Unless the chief	No further details
	ready funding to address unforeseen	executive (or	
	financial needs and risks created by	equivalent) of the	
	the COVID-19 public health	relevant government	
	emergency. For this reason, and as a	determines that specific	
	matter of administrative convenience	circumstances indicate	
	in light of the emergency nature of	otherwise (FAQ 2).	
	this program, a State, territorial,		
	local, or Tribal government may	Eligible portion: As a	
	presume that payroll costs for public	matter of administrative	
	health and public safety employees	convenience, the entire	
	are payments for services	payroll cost of an	
	substantially dedicated to mitigating	employee whose time	
	or responding to the COVID-19	is substantially	
	public health emergency (FAQ 2).	dedicated to mitigating	
	Examples:	or responding to the	
	* ·		
	Classes of employees     include multiplication and the second seco	COVID-19 public	
	include public safety, public	health emergency is	
	health, health care, human	eligible, provided that	
	services	such payroll costs are	
	Similar employees whose	incurred by December	
	services are substantially	30, 2020. An employer	
	dedicated to mitigating or	may also track time	
	responding to the COVID-19	spent by employees	
	public health emergency	related to COVID-19	
	• Payroll and benefit costs	and apply Fund	
	associated with public	payments on that basis	
	employees who could have	but would need to do so	
	been furloughed or otherwise	consistently within the	
	laid off but who were instead	relevant agency or	
	repurposed to perform	department. (FAQ 47).	
	previously unbudgeted		
	functions substantially		
	dedicated to mitigating or		
	responding to the COVID-19		
	public health emergency		
	• Other eligible expenditures		
	include payroll and benefit		
	costs of educational support		
	staff or faculty responsible		
	for developing online		
	learning capabilities		
	necessary to continue		
	educational instruction in		
	response to COVID-19-		
	related school closures		
Payroll support	Expenditures related to a State,	Employees whose work	No further details
program	territorial, local, or Tribal	duties are substantially	
	government payroll support program	dedicated to mitigating	
	(G5).	or responding to the	
		COVID-19 public	
		health emergency	
		(FAQ 21).	
Property taxes	No further details	No further details	Fund payments may not be
			used for government

Γ

			revenue replacement,
			including the provision of
			assistance to meet tax
			obligations (FAQ26).
Public health	Examples (G2):	No further details	No further details
measures	• Expenses for communication		
	and enforcement of public		
	health orders related to		
	COVID-19 by State,		
	territorial, local, and Tribal		
	governments		
	• Expenses for acquisition and		
	distribution of medical and		
	protective supplies, including		
	sanitizing products and		
	personal protective		
	equipment, for medical		
	personnel, police officers, social workers, child		
	protection services, and child		
	welfare officers, direct		
	service providers for older		
	adults and individuals with		
	disabilities in community		
	settings, and other public		
	health or safety workers in		
	connection with the COVID-		
	19 public health emergency		
	• Expenses for disinfection of		
	public areas and other		
	facilities, <i>e.g.</i> , nursing		
	homes, in response to the		
	COVID-19 public health		
	emergency Expanses for technical		
	• Expenses for technical assistance to local authorities		
	or other entities on		
	mitigation of COVID-19-		
	related threats to public		
	health and safety		
	• Expenses for public safety		
	measures undertaken in		
	response to COVID-19		
	• Expenses for quarantining		
	individuals		
	Office equipment		
Decouerry al and	Construction equipment	No further details	No further details
Recovery planning	Expenses associated with conducting a recovery planning project or	no further details	no further details
	operating a recovery coordination		
	office would be eligible if the		
	expenses otherwise meet the criteria		
	(FAQ 15). Examples:		
	Reopening plan		
	Recovery planning		

	Recovery / Reopening		
	<ul><li>project</li><li>Recovery / Reopening</li></ul>		
	Operation		
Reporting	The expenses of an audit conducted	No further details	No further details
Keponing	under the Single Audit Act would be		
	eligible expenditures, subject to the		
	limitations set forth in 2 C.F.R. §		
	200.425 (FAQ 56.11).		
Rent Relief	Lease renewal for business (FAQ	Fund payments may be	No further details
· ·	5/4/20).	used to provide	
		emergency financial	
		assistance to	
		individuals and	
		families directly	
		impacted by a loss of	
		income due to the	
		COVID-19 public health emergency, if a	
		government determines	
		such assistance to be a	
		necessary expenditure	
		(FAQ 23). Examples:	
		• A program to	
		assist	
		individuals	
		with payment	
		of overdue rent	
		or mortgage	
		payments to	
		avoid eviction or foreclosure	
		or unforeseen	
		financial costs	
		Funerals	
		Other	
		individual	
		emergency	
		needs	
		Such assistance should	
		be structured in a	
		manner to ensure as	
		much as possible,	
		within the realm of what is	
		administratively	
		feasible, that such	
		assistance is <b>necessary</b> .	
Severance pay	No further details	No further details	No (G6.7).
Sick leave	Expenses of providing paid sick,	No further details	No further details
	family, and medical leave to		
	employees to enable compliance with		
	COVID-19 public health precautions		
	(G4).		

	Costa ta address in sussa in calid	No further details	No foutbox dataila
Solid Waste	Costs to address increase in solid waste as a result of the public health	No further details	No further details
	emergency, such as relates to the		
	disposal of used personal protective		
	equipment, would be an eligible		
	expenditure (FAQ37).		
Tax anticipation	No further details	If a government	No further details
notes (TANs)		determines that the	
		issuance of <i>tax</i>	
		anticipation notes	
		(TANs) is necessary	
		due to the COVID-19	
		public health	
		emergency, the	
		government may	
		expend payments from the Fund on the interest	
		expense payable on	
		TANs by the borrower	
		and unbudgeted	
		administrative and	
		transactional costs	
		(FAQ35). Examples:	
		<ul> <li>Necessary</li> </ul>	
		payments to	
		advisors and	
		underwriters,	
		associated with	
		the issuance of	
		the TANs	
		If a recipient must issue	
		to make up for tax due date deferrals or	
		revenue shortfalls	
Telework	Expenses to improve telework	No further details	No further details
2000 // 0110	capabilities for employees to enable		
	compliance with COVID-19 public		
	health precautions (G4). Examples:		
	• Desks		
	Chairs		
	Ergonomic setups		
	• Computer		
	• Software		
	• Supplies		
	• Equipment		
	• Internet access		
	• Training		
Training programs	Fund payments may be used to cover	No further details	No further details
	employment and training programs		
	for employees that have been furloughed due to the public health		
	emergency, if the government		
	determined that the costs of such		
	employment and training programs		
	programs		

	would be <b>necessary</b> due to the public		
	health emergency. (FAQ 22).		
Unemployment	Recipients are permitted to use Fund	No further details	Expenses that have been or
	payments to pay for unemployment		will be reimbursed under
	insurance costs incurred by the		any federal program, such as
	recipient as an employer (for		the reimbursement by the
	example, as a reimbursing employer)		federal government pursuant
	related to the COVID-19 public		to the CARES Act of
	health <b>emergency if such costs will</b>		contributions by States to
	<b>not be reimbursed</b> by the federal		State unemployment funds,
	government pursuant to the CARES		are not eligible uses of Fund
	Act or otherwise (FAQ 10, G5).		payments (FAQ 8, G6.4).
Vendor assistance	Fund recipients may upgrade critical	No further details	No further details
	public health infrastructure, such as		
	providing access to running water for		
	individuals and families in rural and		
	tribal areas to allow them to maintain		
	proper hygiene and defend		
	themselves against the virus (FAQ		
	54).		
Workers	Increased workers compensation cost	No further details	No further details
	<b>^</b>		ivo futilier details
compensation	to the government due to the		
	COVID-19 public health emergency		
	incurred during the period beginning		
	March 1, 2020, and ending		
	December 30, 2020, is an eligible		
	expense (FAQ12).		

#### • IMPORTANT TERMS

- **Fund** Fund payments to State, territorial, local, and tribal governments are not considered grants but are "other financial assistance" under 2 C.F.R. § 200.40. (FAQ 6).
- **Incurred**: Finally, the CARES Act provides that payments from the Fund may only be used to cover costs that were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020 (the "covered period").
- **Most recently approved budget:** The CARES Act also requires that payments be used only to cover costs that were not accounted for in the budget most recently approved as of March 27, 2020. A cost meets this requirement if either
  - (a) the cost cannot lawfully be funded using a line item, allotment, or allocation within that budget *or*
  - (b) the cost is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation.
  - Refers to the enacted budget for the relevant fiscal period for the particular government, without taking into account subsequent supplemental appropriations enacted or other budgetary adjustments made by that government in response to the COVID-19 public health emergency. A cost is not considered to have been accounted for in a budget merely because it could be met using a budgetary stabilization fund, rainy day fund, or similar reserve account.
- **Legislative intent for funding**: Economic support in connection with the COVID-19 public health emergency.
- **Necessary expenditures incurred due to the public health emergency:** The Department of the Treasury understands this term broadly to mean that the expenditure is reasonably necessary for its intended use in the reasonable judgment of the government officials responsible for spending Fund payments.

- Expenditures must be used for actions taken to respond to the public health emergency. These may include expenditures incurred to allow the State, territorial, local, or Tribal government to respond directly to the emergency, such as by addressing medical or public health needs, as well as expenditures incurred to respond to second-order effects of the emergency, such as by providing economic support to those suffering from employment or business interruptions due to COVID-19-related business closures.
- **Reporting:** For more details see National Governors Association, Coronavirus Relief Fund Eligibility Items .
- **Requirements or Criteria:** set forth in section 601(d) of the Social Security Act outlined in the Guidance, these expenses are eligible.
- **Substantially dedicated:** Treasury has included payroll and benefits expenses for public safety, public health, health care, human services, and similar employees whose services are *substantially dedicated* to mitigating or responding to the COVID- 19 public health emergency.
  - The *full amount* of payroll and benefits expenses of substantially dedicated employees may be covered using payments from the Fund.
  - Treasury has not developed a precise definition of what "substantially dedicated" means given that there is not a precise way to define this term across different employment types.
  - The relevant unit of government should maintain documentation of the "substantially dedicated" conclusion with respect to its employees.
  - If an employee is not substantially dedicated to mitigating or responding to the COVID-19 public health emergency, his or her payroll and benefits expenses may not be covered *in full* with payments from the Fund. A *portion* of such expenses may be able to be covered.
- SOURCES
  - CRF: National Governors Association, Coronavirus Relief Fund Eligibility Items
  - FAQ: Coronavirus Relief Fund Frequently Asked Questions Updated as of September 2, 2020
  - G: Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments Updated September 2, 2020
  - FAQ for State CARES Act Funding Application

#### **DISCLAIMER. PLEASE NOTE:**

The information contained in this document is not legal advice and any expenditure should be made after consulting independent legal counsel. The information in this document is subject to change without notice and should not be construed as a commitment by the New Mexico Indian Affairs Department ("NMIAD"). NMIAD assumes no responsibility for any errors that may appear in this document. In no event shall NMIAD be liable for incidental or consequential damages arising from use of this document or the Fund described in this document. It is recommended that for the most accurate and up to date information that Tribes contact or visit the website for the U.S. Department of the Treasury.

\* In a complimentary effort to supplement the significant efforts of the New Mexico Indian Affairs Department to ensure integral, efficient, and effective CARES Act fund use by New Mexico Tribes for answering the safety needs of their unique communities, this document was drafted by Felisha Adams and Krista Thompson (2021 Juris Doctor Candidates, under the supervision of Samuel Winder) from the Southwest Indian Law Clinic of the University of New Mexico School of Law.

[End of document]

#### CARES Act Q&A's submitted to the New Mexico Indian Affairs Department

## 1. Can a Pueblo or Tribe purchase melons and other fresh vegetables for its' tribal members?

Yes. A Pueblo or Tribe may purchase melons and other fresh fruits if the expense facilitates compliance with measures intended to mitigate, address, or respond to COVID-19. Purchasing fresh produce to distribute to local residents would incentivize members or residents to refrain from travelling outside of the Pueblo and ultimately decrease the risk of exposure. Any purchase should be well-documented to demonstrate the produce was in fact distributed or prepared specifically in response to COVID-19.

A tribal government may feel inclined to purchase large quantities of produce, however Pueblos and Tribes are unable to "pre-pay" for produce that may be delivered after the December 30 deadline. In the event produce is purchased and the order arrives after the deadline, proper documentation should demonstrate there was a supply-chain challenge or another circumstance outside of the Pueblo or Tribes' control.

2. Are grant programs designed to provide day care assistance an allowable cost? Yes. A grant program providing assistance to parents or guardians for day care payments would fall within the allowable expenses as long as the costs meet the 3 main fund requirements. Examples of eligible grant recipients would be those who have experienced or will experience an adverse financial consequence as a result of being quarantined, being furloughed or laid off, having work hours reduced due to the public health emergency. A Pueblo or Tribe may find it necessary to adopt additional eligibility requirements depending on the number of applicants and funding designated for the grant.

The Pueblo or Tribe must ensure any grant funding for day care, does not overlap with CARES Act funding. For instance funding received from grants like Child Care Development Block Grant (CDBG) must not overlap or duplicate CARES Act expenses. However, if existing funds do not meet the existing needs of families, CARES Act funds may be used to fill those remaining gaps. Day care grants can only be expended up to December 30, 2020. Day care costs incurred after that date, would not be eligible. Pueblos and Tribes are also prohibited from pre-paying future day cares.

## 3. Is permanent procurement of buildings an eligible CARES Act expense? / Are construction of buildings an eligible CARES Act expense?

Potentially yes. Tribes are permitted to procure the construction of a building using CARES Act funds, as long as the building is being constructed as a *necessary response to addressing medical or public health needs specifically created by COVID-19*. Put simply, such a building must be used to provide necessary services to address COVID-19 in that specific community. In particular, under FAQ #58 published by the Treasury Department, a Pueblo or Tribe must (i) determine that it is not able to meet the need arising from the public health emergency in a cost-effective manner by leasing property or by improving property already owned and (ii) maintain documentation to support this determination.

Construction for a new building must fulfill each of the Act's eligibility requirements. The building must serve an existing need occurring between March 1, 2020 and December 30, 2020, and the building must be in service and meeting that need before December 30. In the event a tribal government is unable expend their CARES Act appropriation, additional emergency funding assistance for quarantine housing may be available under the ICDBG-CARES grant administered by U.S. Housing and Urban Development.

A Pueblo or Tribe that wants to purchase or improve real property using CARES Act funds should consult with the New Mexico Department of Finance and Administration and NMIAD as soon in advance as possible to make sure the project complies with federal guidance.

## 4. Are Pueblos or Tribes permitted to purchase mobile homes to use as isolation and quarantine units?

Yes. A Pueblo or Tribe would be permitted to purchase mobile homes using CARES Act funds, if their tribal government has used its reasonable judgement to determine mobile homes remain a *necessary response to addressing medical or public health needs specifically created by COVID-19.* The expenditure would be further substantiated if the mobile homes respond to second-order effects of the emergency, such as by providing economic support to those suffering from employment or business interruptions due to COVID-19-related business closures.

# 5. Are Pueblos or Tribes permitted to purchase of existing land and buildings to be used as temporary facility, quarantine sites and storage for PPE Equipment?

### Purchase of Existing land

Probably yes. The purchase of real property would be a logical purchase for the placement of a temporary facility to serve as a quarantine site and storage for PPE equipment, however this may be a risky expense and will require extensive substantiation. With proper documentation, the guidance provides that the Treasury Department's interpretation of the Act may still allow for the expense.

For additional information, please see the answer to question #3, above.

The tribal government should recognize that the timeline to acquire real property must be seamless to ensure the property is purchased and ready for the construction of the temporary facilities, including access to electricity and running water, and in service prior to December 30.

### *Temporary Facility – quarantine sites and storage for PPE Equipment*

Yes. A Pueblo or Tribe would be permitted to purchase a temporary building or facilities to be used as a quarantine site and PPE storage. Purchases should only be made if the Pueblo or Tribe is not able to meet the need arising from the public health emergency in a cost-effective manner by leasing property or equipment or by improving property already owned. The CARES Act requires the Pueblo or Tribe to use its judgement to determine whether the quarantine sites and PPE storage are a *necessary response to addressing medical or public health needs specifically created by COVID-19*. The expenditure would be further substantiated if the quarantine sites and storage ALSO respond to second-order effects of the emergency, such as by providing economic

support to those suffering from employment or business interruptions due to COVID-19-related business closures.

### 6. Vehicles

Possibly yes, as long as the vehicle purchase is necessary due to the public health emergency. Any vehicle purchase would have to comply with the requirements for acquiring equipment stated in the Treasury Department guidance, most notably that a Pueblo or Tribe must (i) determine that it is not able to meet the need arising from the public health emergency in a costeffective manner by leasing a vehicle and (ii) maintain documentation to support this determination

### 7. Temporary Food Storage Facility

Yes. A Pueblo or Tribe would be permitted to purchase a *Temporary Food Storage Facility*. The CARES Act simply requires a Pueblo or Tribe to use its reasonable judgement to determine whether a food storage facility would be a *necessary response to addressing medical or public health needs specifically created by COVID-19*. The expenditure would be further substantiated if the storage ALSO respond to second-order effects of the emergency, such as by providing economic support to those suffering from employment or business interruptions due to COVID-19. The related business closures.

A Pueblo or Tribe should quickly consider the timing of constructing the facility. In the event the food storage facility is not constructed and in service before December 30, the contractor and associated vendors should clearly communicate this to the Pueblo or Tribe. Otherwise, the expense may not be eligible for reimbursement. All communications are necessary for the Treasury Department's review.

Most importantly, the Pueblo must document that there was existing need for the storage facility at the time of contract and purchase of equipment. As explained in the Guidance, the need may be a direct response to COVID-19 or response to second-order effects of the emergency. For additional information, please see answer #3, above.

### **DISCLAIMER. PLEASE NOTE:**

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