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Lynn Trujillo
Cabinet Secretary

Nadine Padilla
Deputy Cabinet Secretary

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: carmenb.morin@state.nm.us/ (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 eligible for the Fund:

- **Is it in connection with the current COVID-19 public health emergency?**
- **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.
 - **If not, 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.
 - **If not, is it assistance to address increased expenses?**
- **Was the cost incurred during March 1, 2020 to December 30, 2020?**
- **Was the cost not 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

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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 not be reimbursed from another source (i.e., insurance or another fund)?**
- **The expenditure will not be used to replace revenue?**

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CORONAVIRUS RELIEF FUND EXPENSE GRID FOR TRIBAL GOVERNMENTS

CURRENT AS OF SEPTEMBER 30, 2020

Government Employees			
<ul style="list-style-type: none"> ○ + 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 ○ + <i>Or</i> 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 <i>substantially different use</i> 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 			
<ul style="list-style-type: none"> ○ - 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 ○ - Revenue replacement 			
Expense Category	Permissible	Caution	Not Permissible
<i>Medical staff and administration employees</i>	Any employee pay, benefits, or training required to address COVID-19 (FAQ 2 and 3).	Example: Employees whose pay has been budgeted for and lacks adequate time keeping for hours/shifts dedicated to addressing COVID-19.	Example: Positions pay, benefits, and training costs were originally budgeted for through tribal funds or other grants.
<i>Public health employees</i>	Employees whose duties are substantially dedicated to addressing COVID-19 (includes that have been reassigned from former public health position) (FAQ 2 and 3).	Example: PH employees whose work duties have been adjusted, however lacking proper documentation.	Example: Employees whose duties have no connection to addressing COVID-19.
<i>Public safety employees</i>	Additional personnel required to enforce curfews, border checks, welfare checks, or to enforce community orders to slow/stop community spread. (FAQ 2 and 3).	Example: Any situation lacking proper documentation of assignment or new work duties.	Example: Employees permitted to work entirely from home for regular assigned duties, unrelated to addressing COVID-19
<i>School administrative Staff</i>	--No further details--	Whose services are substantially dedicated to 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.	--No further details--
<i>Teachers & classroom Aides</i>	Allowable for positions required specifically to address COVID-19 (FAQ 2 and 3).	Whose services are substantially dedicated to mitigating or responding to the COVID- 19 public health	Examples: <ul style="list-style-type: none"> • Not for positions previously budgeted

	<p>Examples:</p> <ul style="list-style-type: none"> • tribe would like to decrease class size and thus requires the hiring of additional teachers to remain compliant with public health orders. • IT Staff: Includes pay for all staff that are enhancing distance learning capabilities for students. 	<p>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.</p>	<p>for through tribal funds or grants.</p> <ul style="list-style-type: none"> • 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)
<p><i>Furloughed Employees</i></p>	<p>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).</p>	<p>--No further details--</p>	<p>--No further details--</p>
<p><i>All other Employees hired to assist COVID-19 employees or employees substantially dedicated to COVID-19 response</i></p>	<p>Whose services are substantially dedicated to mitigating or responding to the COVID- 19 public health emergency (FAQ 2 and 3). Examples:</p> <ul style="list-style-type: none"> • corrections facility staff to enable compliance with COVID-19 public health precautions through work such as enhanced sanitation or enforcing social distancing measures • redeploying police to support management and enforcement of stay-at-home orders • diverting educational support staff or faculty to develop online learning capabilities, such as through providing information technology support that is not part of 	<p>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.</p>	<p>Employees whose position is not recognized by the tribal government as “necessary” or “substantially dedicated” to addressing COVID-19 (FAQ 2).</p>

	<p>the staff or faculty’s ordinary responsibilities.</p> <ul style="list-style-type: none"> • 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. 		
<i>Equipment</i>	<p>If a recipient would have decommissioned equipment or not renewed a lease on particular office space or equipment but decides to continue to use the equipment or to renew the 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). Examples:</p> <ul style="list-style-type: none"> • Office equipment • Construction equipment • Medical equipment • Technological equipment • Distribution equipment • Any equipment necessary to decrease the spread of COVID-19 between public safety personnel and the public • PPE • Thermal 	<p>To the extent the expenses were previously unbudgeted and are otherwise consistent with section 601(d) of the Social Security Act outlined in the Guidance, such expenses would be eligible (FAQ13).</p>	<p>Unnecessary in response to the public health emergency. (FAQ13). Any equipment that would normally be purchased through budget or grant funding.</p>
<i>Hazard pay, generally</i>	<p>Hazard pay means additional pay for performing hazardous duty</p>	<p>Both hazard pay and overtime pay for employees that are not substantially</p>	<p>General non-hazardous work during a state of emergency. (FAQ 29).</p>

	<p>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). Examples of allowable situations where medical staff or administrative support:</p> <ul style="list-style-type: none"> • comes in contact with COVID-19 positive individual or possibly infected individual • or assigned to area involving frequent contact with the public 	<p>dedicated may only be covered using the Fund if the hazard pay and overtime pay is for COVID-19-related duties (G). Beware of hazard pay for undocumented or unrelated hours.</p>	
<p><i>Payroll, payroll expenses, and benefit costs</i></p>	<p>NOTE: This is distinct from Hazard Pay</p> <p>Payroll 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 (G3).</p> <ul style="list-style-type: none"> - Additional pay hours designated specifically due to COVID-19 - Allowable for positions required specifically to address COVID-19. Example: tribe may require certain staff to be physically present in a school building to provide support. 	<p>Proper timekeeping is necessary to justify which time was dedicated specifically to COVID-19. Any hours lacking proper designation, assignment, documentation risk improper fund use.</p>	<p>Payroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency. (G6.3). Not for positions previously budgeted for through tribal funds or grants.</p>
<p><i>Teleworking stipends for equipment</i></p>	<p>Reimbursement basis is preferred (FAQ 14).</p>	<p>Only if tribal government determines the form of stipends is administratively necessary (FAQ 14).</p>	<p>No stipend or reimbursement if employees' teleworking duties have no connection to addressing COVID-19. No flat rate stipends for eligible expenses unless deemed necessary (FAQ 14).</p>

Training	Fund 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 style="list-style-type: none"> • Must be to specifically to address COVID-19, includes training to addresses unique community or population needs • Training specifically related to reducing the spread of COVID-19 during policing and firefighting 	Training minimally related to related to addressing COVID-19.	Examples: <ul style="list-style-type: none"> • Any training not related to COVID-19 or community response needs. • Any training unrelated to COVID-19 or would normally be paid for through budget or grant funding.
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Tribal Government			
<ul style="list-style-type: none"> ○ + 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 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 ○ + 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 			
<ul style="list-style-type: none"> ○ - 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 ○ - Revenue replacement 			
Expense Category	Permissible	Caution	Not Permissible
Leased equipment	Must be related to addressing COVID-19. If a recipient would have decommissioned equipment or not renewed a lease on particular office space or equipment but decides to continue to use the equipment or to renew the	To the extent the expenses were previously unbudgeted and are otherwise consistent with section 601(d) of the Social Security Act outlined in the Guidance, such expenses would be eligible (FAQ13).	Unnecessary in response to the public health emergency. (FAQ13). Examples: <ul style="list-style-type: none"> • Any equipment that would normally be purchased through budget or grant 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).		<ul style="list-style-type: none"> 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			
<ul style="list-style-type: none"> + 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 + <i>Or</i> 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 <i>substantially different use</i> 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 			
<ul style="list-style-type: none"> - 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 - Revenue replacement 			
Expense Category	Permissible	Caution	Not Permissible

<p><i>Assistance for services</i></p>	<p>Payments may be used to assist individuals with enrolling in a government benefit program for those who have been laid off due to COVID-19 and thereby lost health insurance (FAQ18). Examples:</p> <ul style="list-style-type: none"> • 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 	<p>To the extent that the relevant government official determines that these expenses are necessary and they meet the other requirements (FAQ18).</p>	<p>--No further details--</p>
<p><i>Broadband</i></p>	<p>To provide broadband access to rural areas with an immediate need throughout the current pandemic for school and work. Examples:</p> <ul style="list-style-type: none"> • Hotspots • Equipment such as modem • Applicable fees 	<p>Expansion of rural broadband capacity to assist with distance learning and telework would only be permissible if they are necessary for the public 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).</p>	

<i>Education</i>	Expenses incurred in association with the safe reopening of schools (FAQ 53). Examples: <ul style="list-style-type: none"> • 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 	--No further details--	--No further details--
<i>Equipment</i>	Equipment rental and operation (FAQ 5/4/20, CRF V.3). Examples: <ul style="list-style-type: none"> • Thermometer • Sanitization systems • Water stations 	--No further details--	--No further details--
<i>Emergency assistance</i>	Economic support in connection with the COVID-19 public health emergency, emergency assistance to individual and family (FAQ 5/4/20 CRF V.3:) Examples: <ul style="list-style-type: none"> • Childcare • Food • Supplies • Transportation • Utilities 		

<i>Food assistance</i>	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: <ul style="list-style-type: none"> • Food pickup • Food delivery • Supplies (i.e., boxes, silverware, one-time use packets, etc.) • Groceries • Food vouchers 	--No further details--	--No further details--
<i>Financial support</i>	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: <ul style="list-style-type: none"> • 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 necessary expenditure. 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 necessary (FAQ23).	--No further details--
<i>Funeral assistance</i>	Funerals and unforeseen financial costs (FAQ 5/4/20, CRF v.3)	--No further details--	--No further details--

<i>Homelessness</i>	Expenses of actions to facilitate 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: <ul style="list-style-type: none"> • Temporary shelter and housing • Personal protective equipment and supplies 	--No further details--	--No further details--
<i>Housing assistance</i>	A consumer grant program to prevent eviction and assist in preventing homelessness (FAQ20, CRF V.3); to mitigate COVID-19 effects ; enable compliance with COVID-19 public health precautions (FAQ 5/4/20). Examples to provide homes for victims of domestic violence, displacement, financial hardship, quarantine requirements: <ul style="list-style-type: none"> • Temporary housing placement • Hotel, motel, Air BnB stay • Build homes for placement 	Assuming that the recipient considers the grants to be a necessary expense incurred due to the COVID-19 public health emergency and the grants meet the other requirements (FAQ20).	Providing assistance to recipients to enable them to meet property tax requirements would not be an eligible use of funds (FAQ20). Exceptions may be made in the case of assistance designed to prevent foreclosures.
<i>Individual assistance for or personal hygiene</i>	Upgrade critical public health infrastructure for individuals and families in rural and tribal areas to allow them to maintain proper hygiene and defend themselves against the virus (FAQ 54). Examples: <ul style="list-style-type: none"> • Access to running water • Hygiene products • Cleaning products • Water filtration system • Water distribution system • Water for livestock • Building material (i.e., pipes, hardware, etc.) • Professional services 	As required by the CARES Act, expenses associated with such upgrades must be incurred by December 30, 2020.	--No further details--
<i>Livestock reduction</i>	Facilitate livestock depopulation incurred by producers due to supply chain disruptions (FAQ 19).	To the extent these efforts are deemed necessary for public health reasons or as a form of economic support as a result of the COVID-19 health emergency (FAQ 19).	--No further details--

Medical	(CRF 3) Examples: <ul style="list-style-type: none"> • Emergency medical response expense • Establishing public telemedicine capabilities for COVID- 19- related treatment • Operating public telemedicine capabilities for COVID-19- related treatment 	--No further details--	--No further details--
Per capita	A per capita payment to residents of a particular jurisdiction with an assessment of individual need (FAQ43).	--No further details--	A per capita payment to residents of a particular jurisdiction without an assessment of individual need 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 measures	Examples (G2): <ul style="list-style-type: none"> • 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 • Expenses for disinfection • Expenses for technical assistance to local authorities or other entities on mitigation of COVID-19-related threats to public health and safety 	--No further details--	--No further details--

	<ul style="list-style-type: none"> • Business expenses to communicate new measures, train and supply • Expenses for quarantining individuals • Public announcements 		
<i>Rent relief</i>	Fund payments may be provided to non-profits for distribution to individuals in need of financial assistance, such as rent relief (FAQ44).	Regardless of how the assistance is structured, the financial assistance provided would have to be related to COVID-19 (FAQ44).	--No further details--
<i>Solid Waste</i>	Costs associated with increased solid waste capacity as a result of the public health emergency , such as relates to the disposal of used personal protective equipment, are an eligible expenditure (FAQ37).	--No further details--	--No further details--
<i>Tax anticipation notes (TANs)</i>	--No further details--	<p>If a government determines that the issuance of <i>tax anticipation notes (TANs)</i> 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:</p> <ul style="list-style-type: none"> • Necessary 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 	--No further details--

Telework assistance	Expenses to improve telework capabilities for employees to enable compliance with COVID-19 public health precautions (G4). Examples: <ul style="list-style-type: none"> • Desks • Chairs • Ergonomic setups • Computer • Software • Supplies • Equipment • Internet access • Training • Job search assistance 	--No further details--	--No further details--
Utilities assistance	Subsidy payments to electricity account holders, if deemed to be necessary expenditures incurred due to the COVID-19 public health emergency (FAQ27, FAQ 5/4/20 CRF V.3). Examples: <ul style="list-style-type: none"> • Electricity • Water • Propane • Disposal • Phone • Hardship grants • Essential services 	Fund payments may be used for subsidy payments to electricity account holders to the extent that the subsidy payments are deemed by the recipient to be necessary expenditures incurred due to the COVID-19 public health emergency and meet the other criteria (FAQ27).	Fund payments may not be used for government revenue replacement, including the replacement of unpaid utility fees (FAQ27).

Businesses			
<ul style="list-style-type: none"> ○ + 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 ○ + <i>Or</i> 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 <i>substantially different use</i> 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). 			
<ul style="list-style-type: none"> ○ - 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 ○ - Revenue replacement 			
Expense Category	Permissible	Caution	Not Permissible
Bonuses	<ul style="list-style-type: none"> • Hazard pay • Overtime • (G6.6) 	--No further details--	Workforce bonuses other than hazard pay or overtime. (G6.6)
Broadband	To provide broadband access to rural areas with an immediate need	Expansion of rural broadband capacity to	

	<p>throughout the current pandemic for school, work (FAQ36). Examples:</p> <ul style="list-style-type: none"> • Hotspots • Equipment such as modem • Applicable fees 	<p>assist with distance learning and telework would only be permissible if they are necessary for the public 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).</p>	
<i>Business assistance programs</i>	<p>There does not appear to be a limit on size of business or exclusion of tribal enterprises (CRF, FAQ 43).</p>	<p>Governments have discretion to determine how to tailor assistance programs they establish in response to the COVID-19 public health emergency. However, such a program should be structured in such a manner as will ensure that such assistance is determined to be necessary in response to the COVID-19 public health emergency and otherwise satisfies the requirements. No application needed to disperse assistance (FAQ43). Examples:</p> <ul style="list-style-type: none"> • Loan • Reimbursement • Grant 	<p>--No further details-- NOTE: grants under these programs cannot be used to replace forgone revenues</p>
<i>Business interruption loss due to closure</i>	<p>Expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures (G5).</p>	<p>--No further details--</p>	<p>--No further details--</p>
<i>Capital improvement</i>	<p>--No further details--</p>	<p>If capital improvement projects are not necessary expenditures incurred</p>	<p>In general, capital improvement projects that broadly provide potential economic development in a</p>

		<p>due to the COVID-19 public health emergency, then Fund payments may not be used for such projects (FAQ28). Examples:</p> <ul style="list-style-type: none"> • Temporary public medical facilities • Other measures to increase COVID-19 treatment capacity or improve mitigation measures • Related construction costs 	community are not allowed (FAQ28).
<i>Contact tracing</i>	Expenses associated with contact tracing are eligible (FAQ 16).	--No further details--	--No further details--
<i>Damages</i>	--No further details--	--No further details--	Damages covered by insurance (G6.2).
<i>Economic support for livestock</i>	Fund payments may be used to facilitate livestock depopulation incurred by producers due to supply chain disruptions (FAQ 19).	To the extent these efforts are deemed necessary for public health reasons or as a form of economic support as a result of the COVID-19 health emergency (FAQ 19).	--No further details--
<i>Employee reimbursement method</i>	The government should provide such assistance on a reimbursement basis to ensure as much as possible that funds are used to cover only eligible expenses (FAQ 14).	Expenditures paid for with payments from the Fund must be limited to those that are necessary due to the public health emergency (FAQ 14).	No flat rate stipends for eligible expenses unless deemed necessary (FAQ 14).
<i>Employment administrative leave</i>	--No further details--	Funds may be used for 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, only to cover costs that were not accounted for in the most recently approved budget (FAQ 48).	--No further details--

<i>Equipment</i>	<p>If a recipient would have decommissioned equipment or not renewed a lease on particular office space or equipment but decides to continue to use the equipment or to renew the 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). Examples:</p> <ul style="list-style-type: none"> • Office equipment • Construction equipment • Medical equipment 	<p>To the extent the expenses were previously unbudgeted and are otherwise consistent with section 601(d) of the Social Security Act outlined in the Guidance, such expenses would be eligible (FAQ13).</p>	<p>--No further details--</p>
<i>Grants</i>	<p>Governments may use Fund payments to support public or private hospitals to the extent that the costs are necessary expenditures incurred due to the COVID-19 public health emergency (FAQ 17). Other Examples:</p> <ul style="list-style-type: none"> • Office equipment • Construction equipment • Business modifications • Outdoor eating or similar accommodations 	<p>Private employers are not subject to the restriction that the private employers' employees must be substantially dedicated to mitigating or responding to the COVID-19 public health emergency. (FAQ 30). Examples:</p> <ul style="list-style-type: none"> • Grants • Short-term loans • Payroll / benefits • Hospitals • To cover interest and principal costs of a loan 	<p>Ineligible expenditures include payroll or benefits expenses for public employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency (FAQ 30).</p>
<i>Grants for small businesses</i>	<p>Small businesses to reimburse the costs of business interruption caused by required closures Governments have discretion to determine what payments are necessary. (FAQ 24). Examples of acceptable measures to promote social distancing or that are affected by decreased customer demand as a result of the COVID-19 public health emergency (FAQ 25, FAQ 32):</p> <ul style="list-style-type: none"> • Voluntary closure • Involuntary closure 	<p>Fund payments may be used for economic support in the absence of a stay-at-home order if such expenditures are determined by the government to be necessary. This may include, for example, a grant program to benefit small businesses that close voluntarily.</p>	<p>--No further details--</p>
<i>Grants for small businesses</i>	<p>To determine if funds would be considered gross income taxable to a business receiving the grant under the Internal Revenue Code (Code) when governments use Fund payments as described in the</p>	<p>A grant made to cover interest and principal costs of a loan, including interest and principal due after the period that begins on</p>	<p>--No further details--</p>

	<p>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-frequently-asked-questions (FAQ 51).</p>	<p>March 1, 2020, and ends on December 30, 2020 (the “covered period”), will be considered to be incurred during the covered period if</p> <ul style="list-style-type: none"> • (i) 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 necessary due to the public health emergency (FAQ 50). 	
<p><i>Grants for utilities</i></p>	<p>Examples:</p> <ul style="list-style-type: none"> • Electricity • Water • Propane • Disposal • Phone • Hardship grants 	<p>Fund payments may be used for subsidy payments to electricity account holders to the extent that the subsidy payments are deemed by the recipient to be necessary expenditures</p>	<p>Fund payments may not be used for government revenue replacement, including the replacement of unpaid utility fees. (FAQ 27).</p>

	<ul style="list-style-type: none"> Essential services 	<p>incurred due to the COVID-19 public health emergency and meet the other criteria (FAQ 27). Examples:</p> <ul style="list-style-type: none"> 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 holders 	
Grants for consumer assistance	<p>A consumer grant program to prevent eviction and assist in preventing homelessness (FAQ20, CRF V.3); to mitigate COVID-19 effects ; enable compliance with COVID-19 public health precautions (FAQ 5/4/20). Examples to provide homes for victims of domestic violence, displacement, financial hardship, quarantine requirements:</p> <ul style="list-style-type: none"> Temporary housing placement Hotel, motel, Air BnB stay Build homes for placement Temporary workspace 	<p>Exceptions may be made in the case of assistance designed to prevent foreclosures.</p> <p>Assuming that the recipient considers the grants to be a necessary expense incurred due to the COVID-19 public health emergency and the grants meet the other requirements (FAQ20).</p>	<p>Providing assistance to recipients to enable them to meet property tax requirements would not be an eligible use of funds (FAQ20).</p>
Hazard pay	--No further details--	--No further details--	<p>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).</p>
Housing	--No further details--	<p>Counties may not pre-pay with CARES Act funds for expenses such as a one or two-year facility lease, such as to house staff hired in response to COVID-19 if doing so would not</p>	<p>A government should not make prepayments on contracts using payments from the Fund (FAQ31).</p>

		be consistent with its ordinary policies and procedures (FAQ31).	
<i>Legal settlements</i>	--No further details--	--No further details--	No (G6.8).
<i>Livestock reduction</i>	Facilitate livestock depopulation incurred by producers due to supply chain disruptions (FAQ 19).	To the extent these efforts are deemed necessary for public health reasons or as a form of economic support as a result of the COVID-19 health emergency (FAQ 19).	--No further details--
<i>Loans</i>	Yes (FAQ 30 and 40). Examples: <ul style="list-style-type: none"> • Grants • Short-term loans • Payroll / benefits • Hospitals • To cover interest and principal costs of a loan • Voluntary closures • Involuntary closures 	Any amounts repaid by the borrower before December 30, 2020, must be either returned to Treasury upon receipt by the unit of government providing the loan or used for 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 the funds (FAQ 40).	Payroll or benefits expenses for public employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency (FAQ 30).
<i>Loans for small businesses</i>	Interest and principal amounts of a loan as part of small business assistance program (FAQ 8/10/20).	A grant or loan made to cover interest and 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 <ul style="list-style-type: none"> • (i) the full amount of the loan is advanced to the borrower within the 	--No further details--

		<p>covered period and</p> <ul style="list-style-type: none"> • (ii) the proceeds of the loan are used by the borrower to cover expenses incurred during the covered period. <p>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).</p>	
<i>Loans for small businesses – IRS – supplemental info</i>	To determine if funds would be considered gross income taxable to a 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-frequently-asked-questions (FAQ 51-52).	--No further details--	--No further details--
<i>Nonprofit assistance</i>	Non-profits may be used to distribute assistance. Regardless of how the assistance is structured, the financial assistance provided must be related to COVID-19 (FAQ 44).	--No further details--	--No further details--
<i>Payroll</i>	Payroll 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 (G3).	--No further details--	Payroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency. (G6.3).

<i>Payroll expenses</i>	<p>The Fund is designed to provide ready funding to address unforeseen financial needs and risks created by the COVID-19 public health emergency. For this reason, and as a matter of administrative convenience in light of the emergency nature of this program, a State, territorial, local, or Tribal government may presume 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 (FAQ 2). Examples:</p> <ul style="list-style-type: none"> • Classes of employees include public safety, public health, health care, human services • Similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency • Payroll and benefit costs associated with public employees who could have been furloughed or otherwise laid off but who were instead repurposed to perform 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 	<p>Unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise (FAQ 2).</p> <p>Eligible portion: As a matter of administrative convenience, the entire payroll cost of an employee whose time is substantially dedicated to mitigating or responding to the COVID-19 public health emergency is eligible, provided that such payroll costs are incurred by December 30, 2020. An employer may also track time spent by employees related to COVID-19 and apply Fund payments on that basis but would need to do so consistently within the relevant agency or department. (FAQ 47).</p>	--No further details--
<i>Payroll support program</i>	Expenditures related to a State, territorial, local, or Tribal government payroll support program (G5).	Employees whose work duties are substantially dedicated to mitigating or responding to the COVID-19 public health emergency (FAQ 21).	--No further details--
<i>Property taxes</i>	--No further details--	--No further details--	Fund payments may not be used for government

			revenue replacement, including the provision of assistance to meet tax obligations (FAQ26).
<i>Public health measures</i>	<p>Examples (G2):</p> <ul style="list-style-type: none"> • 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 • 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 • Construction equipment 	--No further details--	--No further details--
<i>Recovery planning</i>	<p>Expenses associated with conducting a recovery planning project or operating a recovery coordination office would be eligible if the expenses otherwise meet the criteria (FAQ 15). Examples:</p> <ul style="list-style-type: none"> • Reopening plan • Recovery planning 	--No further details--	--No further details--

	<ul style="list-style-type: none"> • Recovery / Reopening project • Recovery / Reopening Operation 		
Reporting	The expenses of an audit conducted 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).	--No further details--	--No further details--
Rent Relief	Lease renewal for business (FAQ 5/4/20).	<p>Fund payments may be 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:</p> <ul style="list-style-type: none"> • 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 <p>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 necessary.</p>	--No further details--
Severance pay	--No further details--	--No further details--	No (G6.7).
Sick leave	Expenses of providing paid sick, family, and medical leave to employees to enable compliance with COVID-19 public health precautions (G4).	--No further details--	--No further details--

<i>Solid Waste</i>	Costs to address increase in solid waste as a result of the public health emergency, such as relates to the disposal of used personal protective equipment, would be an eligible expenditure (FAQ37).	--No further details--	--No further details--
<i>Tax anticipation notes (TANs)</i>	--No further details--	<p>If a government determines that the issuance of <i>tax anticipation notes (TANs)</i> 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:</p> <ul style="list-style-type: none"> • Necessary payments to advisors and underwriters, associated with the issuance of the TANs <p>If a recipient must issue to make up for tax due date deferrals or revenue shortfalls</p>	--No further details--
<i>Telework</i>	<p>Expenses to improve telework capabilities for employees to enable compliance with COVID-19 public health precautions (G4). Examples:</p> <ul style="list-style-type: none"> • Desks • Chairs • Ergonomic setups • Computer • Software • Supplies • Equipment • Internet access • Training 	--No further details--	--No further details--
<i>Training programs</i>	Fund 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	--No further details--	--No further details--

	would be necessary due to the public health emergency. (FAQ 22).		
Unemployment	Recipients are permitted to use Fund payments to pay for unemployment insurance costs incurred by the recipient as an employer (for example, as a reimbursing employer) related to the COVID-19 public health emergency if such costs will not be reimbursed by the federal government pursuant to the CARES Act or otherwise (FAQ 10, G5).	--No further details--	Expenses that have been or will be reimbursed under any federal program, such as the reimbursement by the federal government pursuant to the CARES Act of contributions by States to State unemployment funds, are not eligible uses of Fund payments (FAQ 8, G6.4).
Vendor assistance	Fund recipients may upgrade critical 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).	--No further details--	--No further details--
Workers compensation	Increased workers compensation cost 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).	--No further details--	--No further details--

- **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.

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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 to 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 cost-effective 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-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.

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