



March 26, 2020

# American Indian Provisions in the CARES Act

On March 26, the Senate approved the Coronavirus Aid, Relief, and Economic Security (CARES) Act (H.R. 748) by a vote of 96-0. The \$2 trillion measure is the largest economic rescue package in American history. The bill will now go to the House, with a voice vote scheduled for March 27. Below is a summary of funding provisions pertinent to Indian tribes and their citizens.

## Tribal Governments and Economies

The CARES Act seeks to make sure that Indian tribes and tribally-owned businesses have critical relief, including equal access to federal COVID-19 economic recovery resources. It provides tribes and their government-owned enterprises access to **\$8 billion** in funding to support COVID-19 response and manage costs.

Governments and businesses alike are experiencing a revenue shortfall due to the COVID-19 pandemic. Tribes, which must rely on tribal business revenue to fund essential government services, from health care to public safety feel acutely the economic impact caused by COVID-19. Tribal industries contribute \$50+ billion/year to tribal governments and the American economy, employing thousands of people. The COVID-19 pandemic has devastated tribal businesses, threatening tribal governments' ability to provide basic services or bolster programs to respond to the pandemic.

The \$8 billion relief fund that will be administered by the Department of the Treasury is reserved for tribal governments and tribally-owned entities to use in 2020 due to COVID-19. The Treasury Secretary must develop a model to distribute the funding in consultation with the Secretary of the Interior and Indian tribes.

In addition to the direct relief funded through Treasury, tribes will be eligible for the Small Business Act Section 7(a) Paycheck Protection Program. That program will provide 100% federal loan guarantees up to \$10 million to cover costs like employee salaries, paid sick leave/medical leave, mortgages/rents, and employee health insurance premiums.

Further, the CARES Act allows Indian tribes to be reimbursed for half of their incurred unemployment benefit costs through Dec. 31, 2020.

The CARES Act also provides **\$453 million** for the Bureau of Indian Affairs to provide additional support to tribal government programs; support welfare assistance and social services; expand public safety and emergency response capabilities; increase BIA teleworking infrastructure; and meet increased staffing and overtime costs.

## Health Care

The CARES Act provides **\$1.032 billion** in additional support for the Indian Health Service (IHS), including for medical services, equipment, supplies and public health education at IHS direct service, tribally operated, and urban Indian health care facilities; more funding for purchased/referred care; and resources for telehealth services, electronic

health records improvement, and disease surveillance by tribal epidemiology centers. The IHS has struggled to meet the healthcare needs of its patient population due to lack of adequate funding, staffing shortages, and remote locations, all of which are problems exacerbated by COVID-19. The surge of funding provided by the CARES Act will help the IHS manage the challenges of COVID-19 in facilities serving Indian country.

To help tribes address these problems directly, the CARES Act include **\$125 million** in grants from the Centers for Disease Control and Prevention is allocated to tribes to prevent, prepare for and respond to the coronavirus.

A further **\$15 million** is available to tribes, tribal organizations, urban Indian health organizations or tribal health or behavioral health service providers to respond to the coronavirus.

Another **\$15 million** is allocated under the Public Health and Social Services Emergency Fund to tribes for COVID-19 response.

Finally, the Distance Learning and Telemedicine (DLT) Program will receive **\$25 million**, which will go toward initial capital assets for equipment (e.g., video conferencing equipment, computers) that operate via telecommunications to rural end-users of telemedicine and distance learning. Broadband facilities (if owned by the applicant) are also eligible. Federally recognized tribes are eligible to apply for DLT grants.

### **Nutrition**

The Food Distribution Program for Indian Reservations through the U.S. Department of Agriculture will receive **\$100 million** to provide USDA commodity foods to low-income households, including the elderly, living on Indian reservations. In addition, \$50 million is authorized for costs relating to food purchases and \$50 million is reserved for facilities improvements and equipment upgrades.

Indian reservations suffer high rates of food insecurity vis-à-vis the national average. In addition, many reservations are considered food deserts, where access to fresh produce and nutrient-rich food is scarce. The CARES Act provides a further **\$20 million** for the delivery of nutrition services to American Indians, Alaska Natives and Native Hawaiian elders under the Older Americans Act.

Related to nutrition and the availability of healthy food, diabetes remains a dire problem in many Indian communities. Under the CARES Act, mandatory funding for the Special Diabetes Program for Indians is extended at FY2020 levels (i.e., **\$150 million per year**) through November 2020.

### **Education**

The Department of Education is authorized to waive provisions of the Elementary and Secondary Education Act, except civil rights laws, that are necessary and appropriate due to the COVID-19 declaration of disaster for all Bureau of Indian Education schools, including tribal self-determination or “638” contract schools and tribal “297 grant schools.

The Bureau of Indian Education (BIE) will receive **\$69 million** for response needs at BIE-funded schools.

Further, BIE funded programs will receive a 0.5% (**\$153.75 million**) set-aside.

For the Indian Child Care Development Block Grant, the CARES Act provides between **\$70 million–\$96 million** for Indian child care programs serving low-income families, including for continued payments to child care providers during center closures and to provide emergency child care for health care workers, emergency responders and other COVID-19 “front line” workers.

American Indian and Alaska Native students will get the same benefits as all other students with federal loans.

### **Housing and Technology**

Under the Department of Housing and Urban Development Office of Native American Programs, the CARES Act

provides **\$200 million** for the Native American Housing Assistance and Self Determination Act (NAHADSA) Block Grant program with a formula designed to assist Tribally Designated Housing Entities most in need of funding related to COVID-19 response. An additional **\$100 million** is provided for the Indian Community Development Block Grant to respond to COVID-19 in tribal communities.

Infrastructure development of housing and utilities in Indian Country lags far behind other American communities. Indian country needs approximately 68,000 additional housing units, while current funding provides only about 1,000 units to be built per year. Further, 9% of housing on Indian reservations and 25% of housing in Alaska Native villages still lack complete plumbing or running water compared to an average of .5% for the country. Overcrowded homes also remain a major issue, which could contribute to the spread of COVID-19—14% of Indians living on reservations and 27% of Natives in Alaska villages live in overcrowded conditions, compared to 3% across the country.

In addition to funds for Indian Housing Block Grants, the CARES Act allocates a further **\$100 million** for the Broadband Loan and Grant Program authorized by section 779 of the Consolidated Appropriations Act of 2018.

### **Next Steps**

Once the CARES Act is signed into law, the next step will be to work with various federal agencies to ensure that funding is provided in a timely and well-organized manner. Each agency will be required to come up with regulatory guidance regarding how to apply for available funds, as well as mechanisms to push funding out to eligible applicants. We will continue to provide input into these processes as agencies begin to implement the CARES Act.

***[Click here to read more Brownstein alerts on the legal issues the coronavirus threat raises for businesses.](#)***

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*This document is intended to provide you with general information regarding funding provisions in the CARES Act related to Indian tribes and citizens. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorneys listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.*