

REDDING RANCHERIA TRIBAL GOVERNMENT POLICIES

Chapter TP 11-500

COVID-19 Expanded Small Business Grant Program



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SECTION 1: PURPOSE

The purpose of this Policy is to establish a COVID-19 Expanded Small Business Grant Program to address the economic impact from the COVID-19 pandemic in accordance with the American Rescue Plan Act (ARP Act).

SECTION 2: BACKGROUND AND INTENT

On March 17, 2020, in response to the COVID-19 global pandemic, Redding Rancheria Tribal Council adopted Resolution #023-03-17-20 that declared a tribal emergency and resulted in the closure of government buildings and businesses. Redding Rancheria has utilized federal funding from the Coronavirus, Aid, Relief, and Economic Security Act (CARES Act) to deal with the initial impacts from COVID-19.

On March 11, 2021, President Joe Biden signed the ARP Act into law to address, in part, the ongoing economic impacts from COVID-19. The ARP Act provides federal funding to be used by tribal governments to use the funds: (i) "To respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to small businesses, nonprofits, and/or impacted industries such as tourism, travel, and hospitality"; and (ii) "To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers".

The intent of this Policy is to establish what payments, from funding received from the ARP Act, are necessary to address the economic impacts due to COVID-19 and to determine eligibility criteria for administering a COVID-19 Expanded Small Business Grant Program in accordance with the ARP Act.

SECTION 3: DEFINITIONS

As used in this Policy, the following terms shall mean:

- (a) Tribe-Owned Small Business: Means a business that is wholly owned by the Redding Rancheria, operates in Shasta County or Trinity County, and maintains fewer than 500 employees.
- (b) Member-Owned Small Business: Means a business and/or nonprofit that is wholly owned or majority owned by a member of the Redding Rancheria, operates in Shasta County or Trinity County, and maintains fewer than 500 employees.
- (c) Community-Owned Small Business: Means a business and/or nonprofit that is wholly owned or majority owned by a resident of Shasta County or Trinity

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County, operates in Shasta County or Trinity County, and maintains fewer than 500 employees.

- (d) Eligible Small Business: Any Tribe-Owned Small Business, Member-Owned Small Business, or Community-Owned Small Business that has experienced negative economic impacts due to COVID-19 during the period beginning March 3, 2021, and ending December 31, 2024.
- (e) Eligible Employee: Any current employee of an Eligible Small Business who makes less than \$95,000, which is approximately 150 percent of California's average annual wage for all occupations, as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics.
- (f) Guidance: The term "Guidance" as used herein shall refer to the Interim Final Rule published by U.S. Department of the Treasury at 31 CFR Part 35, titled "Coronavirus State and Local Fiscal Recovery Funds", as subsequently updated, as well as the Fact Sheet, Frequently Asked Questions (FAQs), and PowerPoint Presentations, which were shared at the information sessions held by U.S. Department of the Treasury on May 13, 2021 and May 18, 2021. The foregoing U.S. Department of the Treasury documents and information sessions are not a substitute for Administrative Procedure Act compliant regulations, and the Tribe's decision to model grant assistance after the foregoing is not a waiver of any rights that the Tribe may otherwise have under the law.
- (g) Maximum Grant Amount: The grant amount allowable, under this Policy, to any Eligible Small Business shall not exceed the amount of necessary and reasonable expenses due to COVID-19 (including allowable costs from business interruption) that meet all requirements of the ARP Act. The Tribe, through its Tribal Council, retains final discretion to approve the Maximum Grant Amount.
- (h) Qualifying Expenditures: Necessary and reasonable Costs of Business Interruption, Premium Pay, and Compliance Costs incurred by an Eligible Small Business during the period beginning March 3, 2021 and December 31, 2024.
 - (1) Costs of Business Interruption: Reasonable and necessary costs incurred by an Eligible Small Business to maintain operations during a mandatory shut down for COVID-19 announced pursuant to tribal

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emergency orders or any applicable local, state, or federal emergency orders; or such reasonable or necessary costs to assist an Eligible Small Business to maintain operations due to a voluntary closure, cutback or interruption in business to promote social distancing or otherwise reduce the spread of COVID-19. These costs for the Eligible Small Business shall be considered new expenses that were not accounted for in its most recent budget as of March 3, 2021.

- (2) Premium Pay: Costs related to paying Eligible Employees an increased hourly rate for a temporary period or a lump sum payment. Per Eligible Employee, these payroll benefits cannot exceed \$13 per hour or \$25,000 in the aggregate. These costs for the Eligible Small Business shall be deemed as unexpected payroll expenses that were not accounted for in its most recent budget as of March 3, 2021.
- (3) Compliance Costs: Costs related to acquiring and distributing medical and protective supplies, improving telework capabilities, disinfecting business facilities, consulting fees, legal fees, account fees, and other related costs for COVID-19 and the ARP Act compliance, capital expenditures to address COVID-19 (subject to paragraph 6), and providing paid sick and paid family and medical leave to employees to enable compliance with public health precautions concerning COVID-19.
- (4) Disallowed Costs: No grant funds under this Policy shall be eligible for use to (i) make contributions to “rainy day” funds; (ii) deposit into pension funds; (iii) offset reductions in net tax revenue; (iv) provide non-federal match for other federal programs; (v) make payments of interest or principal on existing debt, or fees for new debt; satisfy settlement agreements or judgments. Any funds distributed to an Eligible Small Business and used for any purpose that would violate the ARP Act or this Policy shall be returned to the Redding Rancheria Tribal Government for reprogramming to other COVID-19 mitigation permitted by the ARP Act.
- (5) No Duplication: Grant funds may not be used for duplicate expenses that are covered by other sources, including insurance.
- (6) Limit on Capital Expenditures: Grant funds must be used for necessary and reasonable expenses due to the current COVID-19 public health emergency. Thus, capital expenses with a useful life beyond the current COVID-19 public health emergency must be reasonable taking into account available alternatives, urgency, and

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effectiveness in meeting the needs at hand. Capital projects must be completed in time to address the current COVID-19 public health emergency. The Tribe, through its Tribal Council, retains final discretion to determine issues of necessity and reasonableness, taking into account the goals of the ARP Act.

- (7) ARP Act Limitations: All Qualifying Expenditures must be for (i) necessary expenses due to COVID-19 as defined herein, (ii) that were not accounted for in the most recent budget of the Eligible Small Businesses as of March 3, 2021, and (iii) are incurred by the Eligible Small Businesses between March 3, 2021 and December 31, 2024.
- (i) Tribal Council: Redding Rancheria Tribal Council, the duly elected governing body of the Redding Rancheria.
- (j) Application: Written document submitted to Tribal Council or its delegated agent that requests direct financial support from funding received from the ARP Act and allocated to the COVID-19 Expanded Small Business Grant Program as described in Section 7. All Applications must be on a form approved by Tribal Council. The Application shall require certification of ARP Act compliance and the return of funds not used for Qualifying Expenditures. There will be a separate Application for each grant fund identified in Section 7.

SECTION 4: DELEGATED AUTHORITY (Reserved)

SECTION 5: AUTHORIZED PROGRAMS AND SERVICES (Reserved)

SECTION 6: FINDINGS

- (a) On March 11, 2021, the President of the United States of America signed the ARP Act into law. The ARP Act was intended to provide expeditious emergency aid to individuals, families, and businesses affected by the COVID-19 pandemic. The ARP Act established and funded the Coronavirus State and Local Fiscal Recovery Funds (hereinafter referred to as “ARP Funds”), which included twenty billion dollars for tribal governments to mitigate the harm caused by the COVID-19 pandemic.
- (b) The U.S. Department of the Treasury published an Interim Final Rule at 31 CFR Part 35, as subsequently updated, confirming their view that eligible expenses under the ARP Act may include, among other things, expenditures: (i) “To respond to the public health emergency or its negative

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economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality”; and/or (ii) “To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers”.

- (c) The U.S. Department of the Treasury also published a series of FAQs, which have subsequently been updated, which describe a broad range of expenses that U.S. Department of the Treasury believes to be permissible uses of the ARP Funds including but not limited to programs for small businesses to assist with “impacts of periods of business closure”, “COVID-19 prevention or mitigation tactics”, “payroll and benefits costs”, and “costs to retain employees”.
- (d) U.S. Department of the Treasury was expressly asked in tribal consultation meetings to comment on the administration of small business grants to tribal-owned and operated businesses, including tribal gaming facilities, and the Tribe, through legal counsel, reached out to U.S. Department of the Treasury to seek input in the development of this COVID-19 Expanded Small Business Grant Program.
- (e) This Policy is intended to fully comply with the ARP Act, and available input from U.S. Department of the Treasury, in the absence of regulations adopted with adequate notice and comment, by setting forth the provisions for using the ARP Funds for small business grants for the limited purpose of reimbursing Eligible Small Businesses for Qualifying Expenditures.
- (f) The Redding Rancheria Tribal Government lacks parity with states, local governments, and the federal government in exercising taxing authority. Tribal Council is unable to levy property taxes because of the federal trust status of the land. In addition, Tribal Council does not levy income taxes on tribal members because Tribal members’ income is already taxed by the federal and state governments. If the Redding Rancheria Tribal Government imposed a third income tax on its Tribal members, it would create an additional and inequitable tax on Tribal member income not experienced by other citizens of the United States and State of California. Moreover, recent case law affirms the authority of local governments to levy and collect sales tax on transactions involving non-Indians that occur on reservation trust land. If the Redding Rancheria Tribal Government tried to levy and collect sales tax on these transactions, it would create a double

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tax burden on the consumer and likely derail the transaction. As such, the Redding Rancheria Tribal Government has not tried to levy and collect sales tax on transactions that occur on reservation trust land.

- (g) Pursuant to the Indian Gaming Regulatory Act, the Redding Rancheria Tribal Government funds essential government services, in part, from gaming revenues received as part of a revenue allocation plan approved by the U.S. Department of the Interior, Bureau of Indian Affairs, Office of Indian Gaming.
- (h) The success of the Tribe's gaming operation depends on the strength of the local economy. The COVID-19 pandemic has wreaked havoc on the local economy and has had a negative impact on patrons, employees, vendors, and other small businesses in the local community that support the tourism, travel, and hospitality industries.
- (i) Tribal Council further finds that any small business in the local community associated with the tourism, travel, and hospitality industries are deemed critical infrastructure necessary to support Tribal operations, including but not limited to hotels, restaurants, and gas stations.
- (j) Employees working in the tourism, travel, and hospitality industries come in contact with the public frequently and will play a vital role in reopening the economy as stay-at-home orders are lifted, businesses reopen, and mask mandates end.
- (k) Eligible Small Business, as defined herein, has been adversely impacted by the interruption in business as a direct result of the COVID-19 pandemic such that its ability to continue to operate is in jeopardy. These small businesses play a vital role in the local economy such that were these businesses unable to recover from the interruption in their business, the toll on employees and the local economy would be severe. These small businesses play a role in protecting the health and well-being of the local economy. Critically, Tribal Council has determined that the assistance called for herein is necessary to enable these small businesses to continue operations through the end of the COVID-19 pandemic. As the economy continues to reopen, new strains of the COVID-19 virus will emerge. An Eligible Small Business that receives the ARP Funds under this Policy will be in a position to cover the costs of Qualifying Expenditures.

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- (l) Tribal Council finds that implementing this Policy is consistent with the ARP Act and an effective means to carry out the stated objectives of the ARP Act.

SECTION 7: COVID-19 EXPANDED SMALL BUSINESS GRANT FUNDS

- (a) Fund Authorization: The Redding Rancheria COVID-19 Expanded Small Business Grant Program shall be funded with allocations from the ARP Funds as authorized by Tribal Council and consistent with the ARP Act. The allocation of the ARP Funds for the COVID-19 Expanded Small Business Grant Program shall be separately accounted for to ensure compliance with the ARP Act and other applicable laws. Grant Program funds shall be accounted for as a new expense in the Tribal Government's 2021 budget.
- (b) Appropriate Procedures: The authorization of use of the ARP Funds allocated to the COVID-19 Expanded Small Business Grants Program shall be by Tribal Council resolution.
- (c) Restrictions on use of the ARP Funds: Tribal Council shall not authorize financial relief to Eligible Small Businesses for costs that have been reimbursed by other funding sources; including grants, loans, or settlements of insurance claims.
- (d) Pre-Award Assistance: An Eligible Small Business that received pre-award assistance subject to repayment upon the completion of grant program requirements is required to apply the amount of the final award first to repay pre-award expenses; provided that:
 - (1) Such expenses were advanced to meet emergency COVID-19 needs on condition of repayment; and
 - (2) Such expenses meet all requirements for ARP Act compliance and are considered Qualifying Expenditures.
- (e) Audit: No later than December 15, 2024, Tribal Council shall authorize an audit of the ARP Funds allocated to the COVID-19 Expanded Small Business Grant Program to certify that all money was spent in accordance with the ARP Act and this Policy. Any money not spent in accordance with the ARP Act or this Policy shall revert to the Tribe's General Fund to be spent in accordance with the ARP Act.

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- (f) COVID-19 Expanded Small Business Grant Funds
- (1) Tribe-Owned Small Business Grant Fund: An Eligible Small Business that is a Tribe-Owned Small Business may submit an Application to Tribal Council to seek reimbursement to cover costs of Qualifying Expenditures. On an Application-by-Application basis, Tribal Council will allocate by resolution the necessary ARP Funds to the Tribe-Owned Small Business Grant Fund for disbursement to the applicable Tribe-Owned Small Businesses.
 - (2) Member-Owned Small Business Grant Fund: An Eligible Small Business that is a Member-Owned Small Business may submit an Application for financial relief to Member Benefits in accordance with TP 3-900, Small Business Grants Committee. Member Benefits will verify the information in the Applications and then present the Applications to Tribal Council for consideration. Tribal Members may only submit one Application for consideration. All award amounts shall be \$5,000, conditioned upon the Tribal Member certifying in the Application that the Member-Owned Small Business has experienced or expects to experience at least \$5,000 in costs of Qualifying Expenditures. Tribal Council will allocate by resolution the necessary ARP Funds to the Member-Owned Small Business Grant Fund for disbursement to the applicable Member-Owned Small Businesses.
 - (3) Community-Owned Small Business Grant Fund: An Eligible Small Business that is a Community-Owned Small Business may submit an Application for financial relief to Tribal Council. A Community-Owned Small Business may only submit one Application for consideration. All award amounts shall be \$5,000, conditioned upon the Community Member certifying in the Application that the Community-Owned Small Business has experienced or expects to experience at least \$5,000 in costs of Qualifying Expenditures. Tribal Council will allocate by resolution the necessary ARP Funds to the Community-Owned Small Business Grant Fund for disbursement to the applicable Community-Owned Small Businesses.

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SECTION 8: TRIBAL COUNCIL RESPONSIBILITY AND OVERSIGHT

Tribal Council is responsible for administering the COVID-19 Expanded Small Business Grant Program and shall:

- (a) Review and evaluate Applications;
- (b) Determine whether the required information and materials are provided in Applications;
- (c) Approve, disapprove or modify Applications; and
- (d) Audit the COVID-19 Expanded Small Business Grant Program.

Tribal Council retains final discretion in construing this Policy, taking into account the goals and requirements of the ARP Act, including without limitation, determinations of necessary and reasonable expenses, and the design and implementation of programs needed to address the COVID-19 public health emergency.

SECTION 9: GRANT SUBMISSION

Upon approval of this Policy by Tribal Council, an Eligible Business shall have until December 1, 2024, to submit its Application(s) to Tribal Council. An Eligible Business may submit multiple Applications, so long as it provides adequate documentation and support for all Qualifying Expenditures.

SECTION 10: WAIVER OF SOVEREIGN IMMUNITY

Nothing in this Policy shall be construed or interpreted as a waiver of the sovereign immunity of the Redding Rancheria.

Legislative History:

Originally adopted by Tribal Council Resolution #035-06-01-21 dated June 1, 2021.