



# Health Care Reform in Indian Country

Self-Governance Communication & Education

*Self-Governance Tribes Striving Towards Excellence in Health Care*

## OVERVIEW OF THE AMERICAN RESCUE PLAN ACT AND PROVIDER RELIEF FUND REPORTING

Webinar

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**IHS Tribal Self-Governance Advisory Committee**

Self-Governance Communication and Education

# **Part I - Funding for Tribal Health Care Providers**

**American Rescue Plan Act**

**Provider Relief Fund Reporting  
Requirements**



# American Rescue Plan Act

- Enacted March 11, 2021
- \$1.9 trillion total -- \$31.2 billion to Tribal governments and Native communities.
- \$20 billion in Coronavirus Relief Funds for tribal governments
  - Funds to be spent by December 31, 2024 (no new flexibility)
- \$6.094 billion in new funding for IHS and tribal health providers – available until expended



# Tribal Health Coronavirus Funding in the American Recovery Plan Act

## **\$6.094 billion in funding provided to Indian Health Service**

- \$2 billion for lost reimbursements
- \$500 million for additional health care services, including PRC
- \$84 million for urban Indian organization operations
- \$140 million for IT, telehealth infrastructure, and electronic health records
- \$600 million for COVID-19 vaccine-related activities
- \$1 billion for COVID-19 surveillance, diagnosis, and mitigation
- \$240 million for public health workforce and related activities
- \$420 million for mental health and substance abuse
- \$600 million for construction, maintenance, equipment, and related activities
- \$10 million for the delivery of potable water

Funding available until expended.

## **\$8.5 billion for the Provider Relief Fund targeted and rural providers**

Disclaimer: This presentation is not intended to be legal advice and tribes should check with their counsel before making any determinations regarding use of funds.



# General Funding Provisions – IHS

Funding provided “one time, non-recurring funds through unilateral modifications and/or amendments to ... existing ISDEAA agreements.” (IHS, DTLL, April 16, 2021)

- IHS does not discuss the permissible use of funds, but acknowledges that tribes have requested maximum flexibility in permissible uses.
- Some of the funds must be used to respond to coronavirus. Others do not.
- The funds can be used retroactively, but only to prevent, prepare for, and respond to COVID-19. The Act specifies that expenses can be used to “restore amounts, either directly or indirectly directly or through reimbursement, for obligations for the purposes specified in this section that were incurred to prevent, prepare for, and respond to COVID–19” between January 31, 2020 and enactment (March 11, 2021).
- Senate Committee on Indian Affairs has provided clarification that costs incurred after enactment are also permissible



# \$2 billion for Lost Reimbursements

Purpose and Permitted Uses: “lost reimbursements in accordance with section 207 of the Indian Health Care Improvement Act (25 U.S.C. 1621f)”

**Allocation:** \$1.920 billion was allocated to IHS federal health programs and Tribal health programs (THPs) with existing distribution methodologies.

- Proportionate increases based on Hospitals and Health Clinics, Dental Health, Alcohol and Substance Abuse, and Mental Health Funding amounts, as IHS claims that these are “revenue-generating” funding lines in the IHS budget
- IHS is taking the position that Contract Support Costs do not apply to these funds

\$80 million for Urban Indian Organizations (UIOs)



# \$500 million for Additional Health Care Services, including Purchased/Referred Care

Purpose and Permitted Uses: “additional health care services, services provided through the purchased/ Referred Care program, and other related activities”

**Allocation:** IHS allocated \$480 million to IHS and THPs within existing methodologies based on Hospital and Health Clinics and PRC funding amounts.

- Contract support Costs may be added to this funding. IHS and Tribal Health Programs will negotiate these amounts after payments are made

\$20 million provided to Urban Indian Organizations.



# \$140 million for Information Technology, Telehealth Infrastructure, and the IHS Electronic Health Records System

**Purpose and Permitted Uses:** “information technology, telehealth infrastructure, and the Indian Health Service electronic health records system”

**Allocation:** IHS allocated \$67 million to IHS Federal health programs and THPs using existing methodologies for Hospitals and Health Clinics, Mental Health, and Alcohol and Substance Abuse funding amounts.

- Contract support Costs may be added to this funding. IHS and Tribal Health Programs will negotiate these amounts after payments are made

\$3 million will be provided to Urban Indian Organizations

\$70 million will be allocated for the IHS Electronic Health Record (EHR) modernization efforts





# \$600 million for COVID-19 Vaccine-related Activities

Purpose and Permitted Uses: “necessary expenses to plan, prepare for, promote, distribute, administer, and track COVID–19 vaccines...”

Funds can also be used to mitigate the spread of COVID-19 and improve public health workforce

**Allocation:** IHS allocated \$526 million to IHS federal health programs and Tribal health providers with proportionate increased based on Hospitals and Health Clinics, PRC, Public Health Nursing, and Community Health Representatives funding amounts

- Contract support Costs may be added to this funding. IHS and Tribal Health Programs will negotiate these amounts after payments are made

\$24 million will be provided to Urban Indian Health Programs

\$50 million to “maintain systems improvements necessitated by the Agency’s role in vaccine distribution”



# \$1.5 billion to Detect, Diagnose, Trace, Monitor, and Mitigate COVID-19 Infections

Purpose and Permitted Uses: “shall be for necessary expenses to detect, diagnose, trace, and monitor COVID–19 infections, activities necessary to mitigate the spread of COVID–19, supplies necessary for such activities...and for other related activities”

Funds can also be used interchangeably with COVID-19 vaccine funds and public health workforce funds from the Act

**Allocation #1:** IHS allocated \$1 billion in the first distribution. \$960 million went to Federal health care programs and Tribal health programs based on Hospitals and Health Clinics, PRC, Mental Health, Alcohol and Substance Abuse, Public Health Nursing, and Community Health Representatives funding amounts.

- Contract support Costs may be added to this funding.

\$40 million to Urban Indian Organizations



# \$1.5 billion to Detect, Diagnose, Trace, Monitor, and Mitigate COVID-19 Infections

Purpose and Permitted Uses: “shall be for necessary expenses to detect, diagnose, trace, and monitor COVID–19 infections, activities necessary to mitigate the spread of COVID–19, supplies necessary for such activities...and for other related activities”

**Allocation #2:** On June 16, IHS allocated the remaining \$500 million of this funding. Of this \$500 million, \$211 million will go to Federal health care programs and THPs based on Hospitals and Health Clinics, PRC, Mental Health, Alcohol and Substance Abuse, Public Health Nursing, and Community Health Representatives funding amounts.

- Contract support Costs may be added to this funding.

Additional \$9 million to Urban Indian Organizations

\$280 million to the National Supply Service Center



# \$240 million for Public Health Workforce and Related Activities

Purpose and Permitted Uses: “necessary expenses to establish, expand, and sustain a public health workforce to prevent, prepare for, and respond to COVID–19, other public health workforce-related activities ... and for other related activities;”

Funds can also be used interchangeably with COVID-19 vaccine funds and COVID-19 mitigation funds from the Act

**Allocation:** IHS allocated \$225 million to IHS Federal health programs and THPs using existing distribution methodologies for Hospitals and Health Clinics, Public Health Nursing, Health Education, and Community Health Representatives.

- CSC may be added to this funding

\$10 million to UIOs

\$5 million for systems improvements to support additional hiring



# \$420 million for Mental Health and Substance abuse

Purpose and Permitted Uses: “for necessary expenses related to mental health and substance use prevention and treatment services ...and for other related activities”

May also be used for Health IT and Facilities purposes “as related to mental health and substance use prevention and treatment services”

**Allocation:** \$378 million will be provided to IHS federal health programs and THPs using existing methodologies for Mental Health and Alcohol and Substance Abuse funding

- CSC may be added to this funding

\$17 million to support UIOs

\$25 million for “nationwide mental health and substance abuse prevention support activities”



# \$600 million for Construction, Maintenance, Equipment, and Related Activities

Purpose and Permitted Uses: lease, purchase, construction, alteration, renovation, or equipping of health facilities to respond to COVID–19, and for maintenance and improvement projects necessary to respond to COVID–19 under section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a), the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.), the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.), and titles II and III of the Public Health Service Act (42 U.S.C. 202 et seq.) with respect to the Indian Health Service”

## **Allocation:**

- \$357 million to IHS Federal health programs and THPs according to Maintenance and Improvement distribution methodology (funds are not limited to this purpose)
  - CSC may be added
- \$167 million for Sanitation Construction according to the Sanitation Deficiency System
- \$23 million IHS Federal health programs and THPs for equipment, according to the annual allocation formula
  - CSC may be added
- \$29 million for “additional facilities support and environmental health activities”
- \$24 million for UIOs



# \$10 million for the Delivery of Potable Water

Purpose and Permitted Uses: for carrying out section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a) for expenses relating to potable water delivery.

42 U.S.C. 2004a uses:

- to construct, improve, extend, or otherwise provide and maintain... essential sanitation facilities...
- To acquire lands, or rights or interests therein, including sites, rights-of-way, and easements, and to acquire rights to the use of water...
- to make such arrangements and agreements with appropriate public authorities and nonprofit organizations or agencies and with the Indians to be served by such sanitation facilities...
- to transfer any facilities provided under this section, together with appurtenant interests in land, with or without a money consideration...

**Allocation:** “IHS will centrally manage and allocate \$10 million to IHS Federal health programs and THPs on a case-by-case basis for potable water delivery.”



# \$8.5 billion Provider Relief Fund—Rural Health

**Purpose and Permitted Uses:** Targeted to providers in rural areas

## **Rural providers defined:**

- “(A) a—
- “(i) provider or supplier located in a rural area (as defined in section 1886(d)(2)(D)); or
- “(ii) provider treated as located in a rural area pursuant to section 1886(d)(8)(E);
- “(B) a provider or supplier located in any other area that serves rural patients (as defined by the Secretary), which may include, but is not required to include, a metropolitan statistical area with a population of less than 500,000 (determined based on the most recently available data);
- “(C) a rural health clinic (as defined in section 1861(aa)(2));
- “(D) a provider or supplier that furnishes home health, hospice, or long-term services and supports in an individual’s home located in a rural area (as defined in section 1886(d)(2)(D)); or
- “(E) any other rural provider or supplier (as defined by the Secretary).”

- At this time, HHS has not released additional guidance on the application of these funds or other conditions related to this tranche of funding.





# Provider Relief Fund– Reporting Requirements

**Reporting guidelines:** On June 11, 2021, HRSA updated reporting guidance and adjusted the use of funds deadlines.

- Recipients have to spend and report on funds in a specific period based on when funds are received.

	<b>Payment Received Period (Payments Exceeding \$10,000 in Aggregate Received)</b>	<b>Deadline to Use Funds</b>	<b>Reporting Time Period</b>
<b>Period 1</b>	From April 10, 2020 to June 30, 2020	June 30, 2021	July 1 to September 30, 2021
<b>Period 2</b>	From July 1, 2020 to December 31, 2020	December 31, 2021	January 1 to March 31, 2022
<b>Period 3</b>	From January 1, 2021 to June 30, 2021	June 30, 2022	July 1 to September 30, 2022
<b>Period 4</b>	From July 1, 2021 to December 31, 2021	December 31, 2022	January 1 to March 31, 2023



# Provider Relief Fund—Reporting Requirements

**Reporting guidelines:** The guidance notes that recipients must report “using their normal method of accounting (cash or accrual basis).”

Recipients must report on use of funds in the following order:

1. Interest Earned on PRF Payments
  2. Other Assistance Received
  3. Use of Skilled Nursing Facility (SNF) and Nursing Home Infection Control Distribution Payments (if applicable)
  4. Use of General and Other Targeted Distribution Payments
  5. Net Unreimbursed Expenses Attributable to Coronavirus
  6. Lost Revenues Reimbursement
- **Lost Revenue Guidance:** Recipients can choose to calculate lost revenues using one of the following options, up to the amount:
    - i. the difference between actual patient care revenues;
    - ii. the difference between 2020 budgeted and actual patient care revenues. Budgets in this case must have been established before March 27, 2020.
    - iii. Calculated by any reasonable method of estimating revenue  
Lost revenues should be calculated based on the period of funding availability for which you are reporting.
  - Those choosing to use option iii should provide a narrative about the methodology and will be more likely to be audited.



# Provider Relief Fund—Reporting Requirements

**Reporting guidelines:** The guidance also specifies 12 data elements that will be necessary for reporting.

1. Demographic Information
2. Subsidiary Questionnaire
3. Acquired / Divested Subsidiaries
4. Interest Earned on PRF Payments
5. Tax and Single Audit Information
6. Other Assistance Received
  - Must include funding received each quarter from these sources: Department of the Treasury and/or Small Business Administration (SBA) Assistance; Federal Emergency Management Agency (FEMA) Programs; CARES Act Testing; Local, State and Tribal Government Assistance; Business Insurance; and Other Assistance
7. Use of SNF and Nursing Home Infection Control Distribution Payments (if applicable)



# Provider Relief Fund—Reporting Requirements

**Reporting guidelines:** The guidance also specifies 12 data elements that will be necessary for reporting.

## 8. Use of General and Other Targeted Distribution Payments

- Those entities that have received 10,001 and \$499,999 during each Payment Period are required to report on General Administrative Expenses and Health Care Related Expenses.
- Those that received \$500,000 or more during each PRF Payment Period are required to report on these categories with additional subcategories outlined in the guidance.

## 9. Net Unreimbursed Expenses Attributable to Coronavirus

## 10. Lost Revenues Attributable to Coronavirus

## 11. Personnel, Patient and Facility Metrics

## 12. Survey

- Questions regarding the impact of payments during the period of availability including overall operation; retention of staff and prevention of furlough (or rehiring of staff from furlough); ability to care for and / or treat patients with COVID-19; Impact on business or patient services.



# **Part 2 – Non-Health-Related Developments in Stimulus Bill**



## American Rescue Plan contained additional funds for Tribal Governments:

- Coronavirus Relief Fund – \$20 billion
- Capitol Improvement Funding – \$100 million
- Direct Appropriations to BIA for Distribution for Tribes - \$900 million



# ARPA – Fiscal Recovery Funds “FRF”

## Basics:

### \$20 billion for Tribal Governments

- \$1 billion divided equally among tribes
- \$19 billion allocated split 65%-35% of tribal enrollment & employment

- Tribal FRF funds allocated among all tribes according to above formulas, based on tribally submitted information.
  - Equal Share and Employment Numbers have been sent out, or will shortly for tribes that submitted numbers by the June 21 cutoff date.
- Remaining \$6.65 billion will be allocated based on employment data submitted by tribes by **JULY 9, 2021 AT 11:59 PST.**
- Funds similar to CARES Act Coronavirus Relief Fund, but are more flexible and can be used for more purposes.
- Funds must be “incurred” (for ARPA: obligated) by Dec. 31, 2024.



# ARPA – Fiscal Recovery Funds “FRF”

ARPA FRF USES – Costs must be incurred after March 3, 2021 (but can address harms from earlier).

There are four main allowable uses of FRF funds:

- 1) Spending to respond to Public Health Needs and spending to Address Economic Impacts Caused by the COVID-19 Emergency.
- 2) Providing Premium Pay to eligible workers providing essential work
- 3) For governmental Revenue Loss caused by COVID-19 in order to provide governmental services.
- 4) For funding Water, Sewer, and Broadband Infrastructure.





# ARPA – Fiscal Recovery Funds “FRF”

## Revenue Loss – A defined set of funds based on Loss in General Revenue / Shortfalls

Revenue Replacement funds may be used for any governmental services that the government would usually provide (subject to certain limitations).

Calculation of reduction in revenue at December 31 of each year between 2020 and 2023, compared the last full fiscal year before January 27, 2020 (the base year revenue) plus a growth rate (the greater of 4.1% or the actual growth rate of three fiscal years prior to COVID).

“General revenue” for tribes includes all enterprise revenue, including gaming funds. “General revenue” is the revenue from a Tribe’s own sources, not federal funds (e.g., CRF, FRF funds).

Tribes can calculate revenue loss for 2020 right away.



# ARPA – Fiscal Recovery Funds “FRF”

## Revenue Loss – A defined set of funds based on Loss in General Revenue / Budget Shortfalls

Eligible uses for “revenue loss” funds are broad and encompass most governmental purposes: maintenance of infrastructure or pay-go spending for building new infrastructure, including roads; modernization of cybersecurity, including hardware, software, and protection of critical infrastructure; health services; environmental remediation; school or educational services; and the provision of police, fire, and other public safety services including courts

NO spending on: outstanding debt, rainy day or reserve funds, paying settlements or judgments, pension deposits, certain non-federal matches if barred by statute.

Generally, very flexible, but also limited by calculation of loss!



# ARPA – Fiscal Recovery Funds “FRF”

## Revenue Loss – A defined set of funds based on Loss in General Revenue / Budget Shortfalls

Calculation of Loss will be a set limit of funds for eligible “revenue loss” uses each year.

Example: If a Tribe receives \$10 million, but its calculation of loss revenue for the year is \$500,000, they may only use \$500,000 for broad governmental purposes under “revenue loss” spending.

There will be a new calculation each year, so there will be pot of “lost revenue” funds each year.

Tribes may use other FRF funds for any allowable use, but uses are somewhat narrower.



# ARPA – Fiscal Recovery Funds “FRF”

## Public Health Needs

Tribes may spend FRF on “public health” uses, and “should identify an effect of COVID-19 on public health, including either or both of immediate effects or effects that may manifest over months or years, and assess how the use would respond to or address the identified need.”

Examples of eligible uses:

- COVID-19 mitigation and prevention
- Medical Expenses
- Behavioral Health Care
- Public Health and Public Safety Staff
- Job Promotion and Public Employment Support (“back to work” bonus, job training, and employment support like child care or transportation).
- Vaccine Incentives are allowed



# ARPA – Fiscal Recovery Funds “FRF”

## Public Health Needs – Uses Presumed Eligible when Services are Provided by a Tribe

Treasury emphasizes the need to address disparities in public health outcomes, including the disproportionate impact of the pandemic on Native communities. To this end, Treasury provides that the following services will be presumed to be permissible FRF uses when provided by Tribal governments:

- Funding community health workers to help community members access health services and services to address the social determinants of health;
- Funding public benefits navigators to assist community members with navigating and applying for available public benefits or services;
- Housing services to support healthy living environments and neighborhoods conducive to mental and physical wellness;
- Remediation of lead paint or other lead hazards to reduce risk of elevated blood lead levels among children; and
- Evidence-based community violence intervention programs to prevent violence and mitigate the increase in violence during the pandemic.



# ARPA – Fiscal Recovery Funds “FRF”

## Economic Impact Payments

Fairly broad set of uses, but a Tribe must “consider whether an economic harm exists and whether this harm was caused or made worse by the COVID-19 public health emergency.”

Aid to individuals or businesses that did not experience a negative economic impact from the public health emergency would not be an eligible use under this category. FAQs (2.17) allow a recipient to identify groups who have been harmed, but generally, the more targeted or tailored the relief, the better.

Eligible uses include: assistance to unemployed workers, deposits into unemployment funds, expenses to improve efficacy of economic relief programs (e.g., studies on how to improve), payments to small businesses and non-profits, and rehiring governmental staff. Household assistance allowed too.

Aid to travel, hospitality, and tourism industries allowed: must be publicly reported.



# ARPA – Fiscal Recovery Funds “FRF”

## Economic Impact Payments

Aid to Households Allowed - food assistance; rent, mortgage, or utility assistance; counseling and legal aid to prevent eviction or homelessness; cash assistance, with certain limitations; emergency assistance for burials, home repairs, weatherization, or other needs; internet access or digital literacy assistance; job training; or survivor's benefits.

Direct cash assistance allowed if need justifies it, but must be “reasonably proportionate” to harm. Treasury states payments “grossly in excess” of federal relief payments could be subject to recoupment.



# ARPA – Fiscal Recovery Funds “FRF”

## Economic Impact Payments – Presumption of Allowed Uses when Provided by Tribes

- Investments in housing and neighborhoods, including services to address homelessness; affordable housing development; and housing vouchers, residential housing, or housing navigation assistance to assist in moving to areas with economic opportunity;
- Expenditures to address educational disparities, including new, expanded, or enhanced early learning services; assistance to high-poverty school districts; and evidence-based educational services and practices to address academic and/or behavioral health needs; and
- Expenditures to promote healthy childhood environments, including new or expanded high-quality childcare; home visiting programs; and enhanced services for child welfare-involved families.





# ARPA – Fiscal Recovery Funds “FRF”

## Premium Pay for Essential Workers Critical to “health and well-being” of residents.

- Pay of up to \$13 per hour in addition to normal wage for eligible work during the health emergency, up to \$25,000 per worker maximum.
- Workers must have been working in person, not remotely, to qualify.
- Tribes have latitude to decide worker sectors eligible. Examples include workers maintaining governmental operations, healthcare, public health and safety, childcare, education, janitors and sanitation, transportation, food production and services, and social services.
- Grants to employers with essential workers are allowed, but must be reported.
- Justification required if increase is > 150% of pay.



# ARPA – Fiscal Recovery Funds “FRF”

## Infrastructure Development

### Water & Sewer

Tribes can use funds for water projects that would be eligible for EPA’s Drinking Water State Revolving Fund or Clean Water State Revolving Fund projects. Essentially: drinking water access and systems, waste and pollution treatment, and source protection activities.

Allowed: construction of systems, improvement, maintenance, storage, lead pipe replacement. Green projects encouraged.

Agricultural and Industrial water projects likely not eligible without a residential service nexus, or if a pollution treatment/source protection activity. Dams & reservoirs generally not allowed under EPA programs.



# ARPA – Fiscal Recovery Funds “FRF”

## Infrastructure Development

### Broadband

Broadband projects are eligible.

Eligible projects to reliably deliver minimum speeds of 100 Mbps download and 100 Mbps upload. In cases where it is impracticable due to geography, topography, or financial cost to meet those standards, projects must reliably deliver at least 100 Mbps download speed, at least 20 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.

Projects must also be designed to serve unserved or underserved households and businesses, defined as those that are not currently served by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed.



# ARPA – Fiscal Recovery Funds “FRF”

## Reporting & Other

Tribal governments must provide an interim report to Treasury by August 31, 2021 that provides a summary of expenditures by category from the date of the award to July 31, 2021. Tribal governments must also provide quarterly Project and Expenditure reports to Treasury, with the first due on October 31, 2021 and covering from the date of the award to September 30, 2021.

Records must be retained for at least five years after funds have been expended. (Date for expenditure can stretch to Dec. 31, 2026).

Funds can be used for administrative purposes, consultants/administrators, legal, accounting, and other support related to the funds.

Funds can be transferred to tribal organizations under same terms.



# Treasury - Capital Improvement Fund

## \$10 Billion to Tribes, States, & Local Governments

Tribes will split a \$100 million set-aside, around \$170,000 each, but no less than \$50,000 for “to carry out critical capital projects directly enabling work, education, and health monitoring, including remote options, in response to the public health emergency with respect to the Coronavirus Disease (COVID–19).”

Treasury is interpreting this as broadband projects

Guidance and Applications are forthcoming, unavailable as of yet.



# ARPA - BIA Direct Appropriations

**\$900 Million to BIA; \$772.5 million distributed to Tribes via ISDEAA Agreements or direct service**

Potable Water Delivery - \$20 million

Housing Improvement - \$100 million

Aid to Tribal Governments / Tribal Priority Allocations - \$700 million

Law Enforcement and Detention Centers - \$30 million

Social Services - \$30 million

Withheld for Oversight and Exigencies - \$12.5 million

Administrative Oversight - \$7.5 million



# Questions?

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