

KEWEENAW BAY INDIAN COMMUNITY

2021 TRIBAL COUNCIL

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KEWEENAW BAY INDIAN COMMUNITY CORONAVIRUS ECONOMIC IMPACT PAYMENT PLAN

June 2, 2021

* * *

- WHEREAS, the Tribal Council of the Keweenaw Bay Indian Community ("Community") has determined that significant hardships are being experienced by the Community and its members as a result of the COVID-19 pandemic, resulting from, among other things, (1) the necessity for the Community to suspend certain tribal government operations, programs, services, and revenue-raising enterprises and to furlough employees who are members of the Community and members of their families, and (2) the necessity for other area employers to suspend operations and to furlough employees who are members of the Community and members of their families; and
- WHEREAS, the Tribal Council believes it is imperative and will promote the general welfare of the Community and its members to distribute funds to or for the benefit of its members on an emergency basis during the COVID-19 pandemic to assist youth Community members in making necessary payments for food, housing, utilities, and other living expenses for themselves and their family members; and
- WHEREAS, on September 26, 2014, the U.S. federal government enacted the Tribal General Welfare Exclusion Act of 2014, Pub. L. 113-168, 128 Stat. 1883 (codified at 26 U.S.C. § 139E) which immunized from federal income taxation certain benefits provided by federally-recognized Indian tribes to their citizens, spouses, and dependents; and
- WHEREAS, the Tribal Council has determined that it is necessary to provide the emergency distributions to or for the benefit of youth Community members on a nontaxable basis in accordance with the requirements of the federal Tribal General Welfare Exclusion Act of 2014, thereby preserving the availability of tribal funds for use in addressing the many anticipated and unanticipated needs of the Community and its members during the COVID-19 pandemic; and

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WHEREAS, the Internal Revenue Service has issued Revenue Procedure 2014-35 and Notice 2015-34, *Application of the General Welfare Exclusion to Indian Tribal Government Programs that Provide Benefits to Tribal Members*;

WHEREAS, the Coronavirus State and Local Fiscal Recovery Funds is a program authorized by the American Rescue Plan Act ("Act"). This initiative provides \$350 billion in emergency funding for eligible state, local, territorial, and Tribal governments to help turn the tide on the pandemic, address its economic fallout, and lay the foundation for a strong and equitable recovery; and

WHEREAS, the Community has received funds through the Coronavirus State and Local Fiscal Recovery Funds Program and determines that it is necessary and appropriate to allocate of a portion of those funds for a one-time distribution for youth members of the Community.

NOW, THEREFORE, BE IT

RESOLVED, that the Tribal Council hereby establishes the Coronavirus Relief Fund General Welfare Support Program in accordance with the following program guidelines:

I. Establishment of the Program.

The Tribal Council hereby establishes the Coronavirus Relief Fund General Welfare Support Program (the "Program").

II. Purpose of the Program.

- A. The purpose of the Program is to provide financial assistance to Youth Tribal Members to assist them during the COVID-19 pandemic in making necessary payments for food, housing, utilities, and other living expenses.
- B. The Tribal Council is recognized by the United States as having the sovereign authority to provide certain benefits to its members free of income tax liability as the result of the application of General Welfare Doctrine established pursuant to the Tribal General Welfare Exclusion Act of 2014, Pub. L. 113-168, 128 Stat. 1883 (codified at 26 U.S.C. § 139E) and Internal Revenue Service guidance documents Revenue Procedure 2014-35 and Notice 2015-34, *Application of the General Welfare Exclusion to Indian Tribal Government Programs that Provide Benefits to Tribal Members*.
- C. The purpose of this Program policy is to (i) establish guidelines for applicants applying for benefits under the Program, (ii) provide guidance to staff administering the Program, and (iii) ensuring consistency with the Tribal General Welfare Exclusion Act and relevant Internal Revenue Service guidance.

III. The Need for the Program.

The Tribal Council hereby finds and determines that:

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- A. The Program is needed to assist Youth Tribal Members during the COVID-19 pandemic in making necessary payments for food, housing, utilities, and other living expenses.
- B. The benefits provided under the Program shall be made from the Coronavirus State and Local Fiscal Recovery Funds Program payment that the U.S. Treasury distributed to the Community on May 21, 2021.
- C. In establishing the Program, the Community does not intend to alleviate the U.S. government of its treaty and trust responsibilities to provide funding for the general welfare of Community members. Nothing contained in this Program policy shall be considered as a waiver of the Community's right to seek and receive other federal funds for the benefit of Community members.

IV. Nature of Program Benefits.

- A. Consistent with Section 5.01(1) of Rev. Proc. 2014-35, benefits provided from the Program may take the form of a cash payment payable by check.
- B. Benefits provided from the Program are provided in a manner consistent with applicable federal law and IRS guidance, are not compensation for services, are not lavish and extravagant, and thus are not subject to federal or state income tax. Accordingly, said benefits shall not be includable as income by any government agency.
- C. Youth Tribal Members should not include Program benefits as reportable income for any purpose.
- D. The Community shall provide assistance on a case-by-case basis to any Youth Tribal Member who is subject to investigation or audit by any government agency in connection with Program benefits.
- E. Youth Tribal Members who meet the eligibility requirements will receive a one-time benefit of \$500, which the Tribal Council has determined to be an appropriate level of nontaxable emergency support at this time, given the available resources and other needs within the Community, to assist the Youth Tribal Members in addressing their needs for food, housing, utilities, and other living expenses for themselves and members of their families.

V. Funding of the Program.

The Program shall be funded by the Coronavirus State and Local Fiscal Recovery Funds Program payment that the U.S. Department of Treasury distributed to the Community.

VI. Program Eligibility Requirements.

- A. *Eligibility.* Benefits provided from the Program shall be available to Youth Tribal Members.
- B. *Definition of Youth Tribal Member.* For purposes of determining benefit eligibility for the Program, an "Youth Tribal Member" is a Community member who:

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1. is ages 17 and under as of May 1, 2021;
 2. An enrolled member or eligible to be enrolled of the Keweenaw Bay Indian Community as of May 1, 2021; and
 3. Reside in Baraga and Marquette Counties.
- C. *Incarcerated Members.* Incarcerated Youth Tribal Members are eligible for Program benefits under certain circumstances. If a Youth Tribal Member is currently in jail, their residence as of March 20, 2021 will be where it was prior to their incarceration. However; if said Member is in prison they are ineligible for Program benefits due to the fact that needs are being satisfied by the prison.
- D. *Equal Treatment of Tribal Council Members.* Nothing herein contained shall serve as, or be construed as, providing any favorable or discriminatory treatment in favor of members of the Tribal Council, *provided*, that Tribal Council members shall be eligible to receive benefits under this Program on the same basis as Community members generally.

VII. Program Administration.

- A. The Community's Enrollment Director shall act as the Benefits Coordinator of the Program and shall work with the Program Committee as appointed by employment position by the Tribal Council.
- B. The Benefits Coordinator shall have the authority to make determinations in accordance with this Policy as to the eligibility of individuals to receive the one-time distribution. In addition, the Benefits Coordinator shall have the following duties:
 1. Keep accurate and complete records of all applications for benefits and all determinations made as to the eligibility of tribal members for the one-time emergency distribution, together with the evidence or documentation relied upon to make such determinations;
 2. Provide an accurate and complete accounting of the administration of the Program to the Tribal Council as directed by the Tribal Council.
- C. The Benefits Coordinator shall not be held liable for any errors or omissions which may arise in the good faith exercise of the Benefit Coordinator's authorities or duties.
- D. The date of disbursements of the Coronavirus State and Local Fiscal Recovery Funds Program funds is to be determined by the Tribal Council.

VIII. Disputes as to Eligibility.

- A. All disputes as to the eligibility of an individual to receive the one-time emergency distribution shall be determined in the first instance by the Benefits Coordinator. An

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adverse decision of the Benefits Coordinator as to such eligibility of an individual may be appealed to the Program Committee.

- B. A recipient of the one-time emergency distribution may be required to forfeit their eligibility or re-pay the distribution where it is determined that the recipient has misrepresented their eligibility.
- C. In the event a member was not approved for Program benefits by the Program Committee, documentation as required in this Policy will be accepted up to 30 days following the date of benefit distribution. The Program Committee will review the documentation within five (5) business days and determine if the member meets the requirements outlined in this Policy. If a majority of the Program Committee agrees that the member has proven they meet the Guidelines, benefits will be issued. If a majority of the Program Committee does not believe that the member meets the requirements of this Policy, the member will have one more opportunity to provide the needed documentation. If they still have not proven to the Program Committee that they satisfy the requirements of this Policy and the Program Committee denies their benefits, this decision will be final.

IX. No Alienation of Beneficial Interest.

In no event shall any beneficial interest in the one-time emergency distribution be anticipated, alienated, inherited, or assigned by or to any third party by the Program participant. The eligibility of any individual to receive the one-time emergency distribution shall terminate upon the death of the individual, or upon a decision of the Tribal Council to terminate the Program. Notwithstanding anything contrary contained in this Article IX, an accrued but yet unpaid payment of the emergency distribution may be applied by the deceased Member's personal representative, executor, or executrix, or rightful heirs, toward the deceased Member's outstanding funeral expenses payable to a funeral home.

X. Modification and Termination.

The Tribal Council shall retain the authority to modify the terms and conditions governing the Program, or to terminate the Program, without prior notice to any individual.

XI. Interpretation.

In accordance with the Tribal General Welfare Exclusion Act of 2014, Pub. L. 113-168, 128 Stat. 1883, §2(c) (codified at 26 U.S.C. § 139E), ambiguities in the interpretation and application of this Program policy regarding the income tax immunity of any Program benefits provided to Youth Tribal Members shall be resolved in favor of the Community and said Members and deference shall be afforded the Community and said Members regarding the administration of this policy.

Approved on the 2nd day of June, 2021 by the Tribal Council of the Keweenaw Bay Indian Community.

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CERTIFICATION

We, Warren C. Swartz, Jr., President and Kim Klopstein, Secretary of the Keweenaw Bay Indian Community, do hereby certify that this Resolution No. KB-028-2021 to be a true and exact copy as approved by the Tribal Council of the Keweenaw Bay Indian Community at a duly called meeting held on June 2, 2021 there being a quorum present, by a vote of: 9 In Favor, 1 Opposed, and 0 Abstentions, as follows:

Vice President, Gary F. Loonsfoot, Jr.:	<u>AYE</u>	NAY	ABSTAIN	NOT PRESENT
Secretary, Kim Klopstein:	<u>AYE</u>	NAY	ABSTAIN	NOT PRESENT
Assistant Secretary, Toni J. Minton:	AYE	NAY	ABSTAIN	<u>NOT PRESENT</u>
Treasurer, Doreen G. Blaker:	<u>AYE</u>	NAY	ABSTAIN	NOT PRESENT
Councilperson, Robert R.D. Curtis, Jr.:	<u>AYE</u>	NAY	ABSTAIN	NOT PRESENT
Councilperson, Eddy Edwards:	AYE	<u>NAY</u>	ABSTAIN	NOT PRESENT
Councilperson, Dale F. Goodreau:	<u>AYE</u>	NAY	ABSTAIN	NOT PRESENT
Councilperson, Randall R. Haataja:	<u>AYE</u>	NAY	ABSTAIN	NOT PRESENT
Councilperson, Susan J. LaFerner:	<u>AYE</u>	NAY	ABSTAIN	NOT PRESENT
Councilperson, Rodney Loonsfoot:	<u>AYE</u>	NAY	ABSTAIN	NOT PRESENT
Councilperson, Don Messer:	<u>AYE</u>	NAY	ABSTAIN	NOT PRESENT
President, Warren C. Swartz, Jr.:	AYE	NAY	ABSTAIN	NOT PRESENT
	(If Required)			


Warren C. Swartz, Jr., President


Kim Klopstein, Secretary