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## SBA Allows Tribal Casinos to Apply to Newly Replenished Paycheck Protection Program

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On April 24, 2020, the Small Business Administration (“SBA”) determined that tribal casinos are eligible for the Paycheck Protection Program (“PPP”), just as funding for the program is replenished. In an Amended Interim Final Rule, SBA clarified that businesses receiving legal gaming revenue and otherwise meeting the qualification requirements for the PPP are now eligible to apply. The same day, President Trump signed the [Paycheck Protection Program and Health Care Enhancement Act](#) into law, providing, among other things, more than \$250 billion in additional unrestricted funds for the PPP and an additional \$60 billion for smaller lending institutions. The SBA resumed accepting PPP applications on April 27, 2020 at 10:30am EST.

The SBA’s April 24<sup>th</sup> Amended Interim Final Rule removes some restrictions set out in the original SBA guidance that was published on April 2, 2020 to implement the initial \$349 billion distribution. The original Interim Final Rule excluded casinos and lenders from eligibility due to SBA’s incorporation of a 1953 rule (now found at 13 CFR 120.110) that barred granting Section 7(a) loans to certain entities, including financial businesses and gaming businesses. Although the SBA soon released an FAQ on April 8<sup>th</sup> stating generally that “Tribal business concerns” were eligible, the additional April 14 Interim Final Rule failed to clarify the restriction and, as a result, tribal gaming and lending businesses were largely rejected by implementing banks. The SBA still deems lending businesses ineligible for the PPP.

The exclusion of tribal gaming and lending businesses was a common concern of tribal leaders at an SBA consultation regarding implementation of the PPP held on April 14<sup>th</sup>. Several members of Congress also identified the issue as problematic in a [letter](#) sent to Secretaries Mnuchin and Bernhardt on April 16<sup>th</sup>. Ultimately, three tribes filed suit in U.S. District Court, claiming that the SBA violated the terms of a coronavirus relief bill when it barred lawfully operating tribal casinos and lenders from applying to the PPP. (*Flandreau Santee Sioux Tribe v. Carranza*, No. 4:20-cv-04070 (D.S.D., filed Apr. 24, 2020). Other non-tribal businesses have filed suit challenging only the exclusion of lenders.

It is unclear if the *Flandreau* lawsuit will continue or if any remedy exists for the tribal businesses’ exclusion from the first round of PPP funding. It is also unclear if the applications of tribal businesses initially excluded by SBA’s implementing regulations will be given any priority in the second round of funding, given that SBA has a significant backlog from the first round of applications.

The one clear change is that tribal gaming is eligible to apply for the PPP. For Tribal businesses seeking PPP funding, please see our [Practical Tips for Tribal Organization Access to the SBA Paycheck Protection Program](#).

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