



1899 L Street, NW, Suite 1200
Washington, DC 20036

T 202.822.8282
F 202.296.8834

HOBBSSTRAUS.COM

September 24, 2021

GENERAL MEMORANDUM 21-007

Economic Development Administration Final Rule Expands the Definition of Tribal Entities Eligible to Receive Certain Grants to Include For-Profit Tribal Corporations

On September 24, 2021, the Economic Development Administration (EDA) of the U.S. Department of Commerce published a [final rule](#) in the FEDERAL REGISTER to expand the definition of Tribal entities eligible to receive grants under the Public Works and Economic Development Act of 1965 (PWEDA) to include for-profit Tribal corporations so long as they are wholly owned by, and established exclusively for the benefit of, a Tribe. Previously, EDA's regulations limited the types of eligible tribal entities to non-profits. The final rule is effective today.

Background. The PWEDA was enacted to provide grants for public works and development facilities, other financial assistance and the planning and coordination needed to alleviate conditions of substantial and persistent unemployment and underemployment in economically distressed areas and regions. PWEDA defines "Indian Tribe" as any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or Regional Corporation (as defined in or established under the Alaska Native Claims Settlement Act ([43 U.S.C. 1601 et seq.](#))), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. [42 U.S.C. 3122\(7\)](#). Further, "Indian Tribes", as defined by PWEDA, are eligible for a 100% grant rate, across all of EDA's PWEDA programs.

Reasoning. The notice explains that, "In deference to the special government-to-government relationship that exists between the U.S. Government and [Indian tribes] and recognizing their sovereign interest in determining their own organizational arrangements, EDA has historically interpreted the term 'Indian Tribe' broadly to include a range of Tribally controlled entities in addition to an Indian tribe's primary governing body ... [including] a non-profit Indian corporation (restricted to Indians), Indian authority, or other non-profit Indian tribal organization or entity; provided that the Indian tribal organization or entity is wholly owned by, and established for the benefit of, the Indian Tribe or Alaska Native Village." However, in the notice EDA states they were not able to find supporting language or documentation that explains the previous "non-profit" limitation in the older regulations.

In the notice EDA acknowledges that, "Under Federal policies of self-determination, Tribes play a similar role as state and local governments and are generally responsible for providing basic services within the Tribe (e.g., roads, water, electricity, and telecommunications). To generate revenue to provide these services, Tribes can create

corporations to participate in the private marketplace through tourism, manufacturing, and services sectors."

Change Made by the Final Rule. EDA explains in the notice that, "Under the new definition of 'Indian Tribe,' a for-profit entity may be eligible for EDA assistance provided that it is wholly owned by a Tribe and organized for the benefit of the Tribe. Eligibility is not limited to any particular type of entity. Indian corporations, Section 17 corporations, state-chartered corporations, and Limited Liability Corporations (among others) are all potentially eligible."

Please let us know if we may provide additional information about the Economic Development Administration's final rule to expand the definition of tribal entities eligible to receive PWEDA grants to include for-profit tribal corporations.

###

Inquiries may be directed to:

Joe Webster (jwebster@hobbsstrauss.com) or

Moriah O'Brien (mobrien@hobbsstrauss.com)