

UPDATED GUIDANCE: CARES ACT CORONAVIRUS RELIEF FUND

State and Local Government

In response to this unprecedented National Emergency, Congress has appropriated funding across a broad range of Federal agencies to support States, Territories, Local Governments, Tribal Nations, and other entities providing critical and essential services.

One such initiative, the CARES Act Coronavirus Relief Fund provided relief directly from the U.S. Treasury to States, Territories and Tribal Governments, and municipalities with populations greater than 500,000 who applied for assistance by April 17, 2020.

The CARES Act set the following baseline eligibility parameters for use of payments from the Coronavirus Relief Fund:

- are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
- were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or government; and
- were incurred during the period that begins on March 1, 2020 and ends on December 30, 2020.

Today, April 23rd, 2020, U.S. Treasury Secretary Steve Mnuchin released further guidance on eligible use of payments from the Fund. A summary of the guidance is provided below.

HOW FUNDS CAN BE USED

The payment can be used for any expenditure incurred to respond directly to the emergency, such as by addressing medical or public health needs, as well as expenditures incurred to respond to second-order effects of the emergency, such as by providing economic support to those suffering from employment or business interruptions due to COVID-19-related business closures.

The Treasury also specified that expenditures using Funds payments must be “necessary” but clarified that the Department understands this term broadly to include any expenditure that is reasonably necessary for its intended use, in the reasonable judgement of the government officials responsible for expending Fund payments.

And finally, the CARES Act also added that stipulation that the expense had to be unbudgeted. The Treasury provided clarification that a cost is not considered to have been accounted for in a previously approved budget merely because it could be met using a budgetary stabilization fund, rainy day fund, or similar reserve fund.

Eligible expenditures include, but are not limited to, payment for:

1. Medical expenses such as:

- COVID-19-related expenses of public hospitals, clinics, and similar facilities.
- Expenses of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs.
- Costs of providing COVID-19 testing, including serological testing.
- Emergency medical response expenses, including emergency medical transportation, related to COVID-19.
- Expenses for establishing and operating public telemedicine capabilities for COVID-19 related treatment.

WITT O'BRIEN'S INSIGHT

 The guidance suggests that governments who received the payments can assist local healthcare providers with offsetting increased costs related to COVID-19 medical expenses, but they specifically use the term "public hospitals, clinics and similar facilities." It remains unclear if payment of the funds could be shared with private non-profit or private for-profit facilities depending upon how the term "similar facilities" is interpreted. For profit hospitals are excluded from FEMA assistance; however, non-profits are eligible, so it may be worth seeking clarification that allows for more expansive interpretation.

2. Public health expenses such as:

- Expenses for communication and enforcement by State, territorial, local, and Tribal governments of public health orders related to COVID-19.
- Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment, for medical personnel, police officers, social workers, child protection services, and child welfare officers, direct service providers for older adults and individuals with disabilities in community settings, and other public health or safety workers in connection with the COVID-19 public health emergency.
- Expenses for disinfection of public areas and other facilities, e.g., nursing homes, in response to the COVID-19 public health emergency.
- Expenses for technical assistance to local authorities or other entities on mitigation of COVID-19-related threats to public health and safety.
- Expenses for public safety measures undertaken in response to COVID-19.
- Expenses for quarantining individuals.

WITT O'BRIEN'S INSIGHT

 The guidance allows for governments to pay for disinfection of public areas and other facilities, such as nursing homes. 'Public Areas' could also be interpreted to include central congregating points, such as grocery stores and gas stations which have become essential facilities to public health and safety.

3. Payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

WITT O'BRIEN'S INSIGHT

 FEMA only pays for overtime associated with performing emergency work since it represents an increased cost burden; however, the guidance does not explicitly exclude straight time for employees who have been reassigned to COVID-19 work or other special overtime and other HR policies that may have been put into effect after the onset of the pandemic in order to sustain staffing levels. By pairing these funds together, governments can maximize cost recovery.

4. Expenses of actions to facilitate compliance with COVID-19-related public health measures, such as:

- Expenses for food delivery to residents, including, for example, senior citizens and other vulnerable populations, to enable compliance with COVID-19 public health precautions.
- Expenses to facilitate distance learning, including technological improvements, in connection with school closings to enable compliance with COVID-19 precautions.
- Expenses to improve telework capabilities for public employees to enable compliance with COVID-19 public health precautions.
- Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions.
- COVID-19-related expenses of maintaining state prisons and county jails, including as relates to sanitation and improvement of social distancing measures, to enable compliance with COVID-19 public health precautions.
- Expenses for care for homeless populations provided to mitigate COVID-19 effects and enable compliance with COVID-19 public health precautions.

WITT O'BRIEN'S INSIGHT

 FEMA sets a relative high bar for establishing that conditions warrant distribution of food, and to what populations the food can be distributed to, i.e., Those who test positive for COVID-19, high risk individuals such as those over 65, or other populations based on direction or guidance of appropriate public health officials. Using the two funding sources in combination may significantly increase effectiveness of meeting the needs of other vulnerable populations.

The Fund on the other hand, empowers local government officials to make the determination of what is "necessary" and defines this as "reasonable judgement of the government officials responsible for expending Fund payments". A potential strategy to protect residents while maximizing cost recovery might be seeking FEMA reimbursement for food distribution to populations that meet the FEMA eligibility criteria based on their guidance, and providing food distribution to other populations that fall outside of this criteria but meets 'reasonable judgement' using the payment from the Fund.

5. Expenses associated with the provision of economic support in connection with the COVID-19 public health emergency, such as:

- Expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures.
- Expenditures related to a State, territorial, local, or Tribal government payroll support program.
- Unemployment insurance costs related to the COVID-19 public health emergency if such costs will not be reimbursed by the federal government pursuant to the CARES Act or otherwise.

WITT O'BRIEN'S INSIGHT

 In some ways, food distribution may be a way to engage local food suppliers and restaurants in the protective measures to protect life and safety in your communities. This not only allows for blunting the economic impacts of these establishments otherwise remaining closed, but also reduces strain on central congregation points like grocery stores for vulnerable populations.

The guidance allows for the development of economic opportunity and revitalization programs. Governments may want to consider engaging with their local or regional economic development authority, committee or chamber of commerce to solicit feedback on programs designed to support the most impacted businesses in your community.

6. Any other COVID-19-related expenses reasonably necessary to the function of government that satisfy the Fund's eligibility criteria.

WITT O'BRIEN'S INSIGHT

 Costs associated with acquiring software and hardware to enable continuity of government would be considered eligible. The portion of these costs associated with front line workers performing COVID-19 mitigation, response of care is likely eligible for FEMA reimbursement, while the Fund could be utilized for the remaining portion of these costs.

HOW FUNDS CANNOT BE USED

Although the guidance provided a broad range of activities that the payment from the Fund can be used on, the Department also clearly identified that funds may not be used to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify under the statute.

Additionally, some costs eligible for reimbursement from other government payer programs is likewise ineligible. Similarly, any damages or expenses reimbursable by insurance cannot be covered by the Fund.

The following is a list of examples of costs that would not be eligible expenditures of payments from the Fund:

1. Expenses for the State share of Medicaid.³
2. Damages covered by insurance.
3. Payroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

4. Expenses that have been or will be reimbursed under any federal program, such as the reimbursement by the federal government pursuant to the CARES Act of contributions by States to State unemployment funds.
5. Reimbursement to donors for donated items or services.
6. Workforce bonuses other than hazard pay or overtime.
7. Severance pay.
8. Legal settlements.

OTHER IMPORTANT INFORMATION ABOUT USE OF FUNDS

May a State receiving a payment transfer funds to a local government?

Yes, provided that the transfer qualifies as a necessary expenditure incurred due to the public health emergency and meets the other criteria of section 601(d) of the Social Security Act. Such funds would be subject to recoupment by the Treasury Inspector General if they have not been used in a manner consistent with section 601(d) of the Social Security Act.

May governments retain assets purchased with these funds?

Yes, if the purchase of the asset was consistent with the limitations on the eligible use of funds provided by section 601(d) of the Social Security Act.

What records must be kept by governments receiving payment?

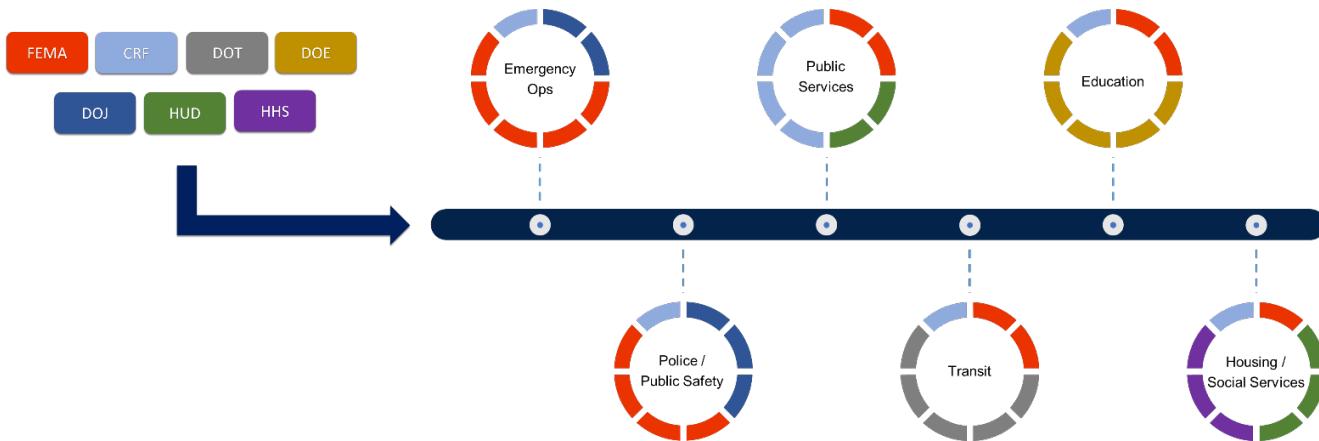
A government should keep records sufficient to demonstrate that the amount of Fund payments to the government has been used in accordance with section 601(d) of the Social Security Act.

Do governments have to return unspent funds to Treasury?

Yes. Section 601(f)(2) of the Social Security Act, as added by section 5001(a) of the CARES Act, provides for recoupment by the Inspector General of the Department of the Treasury of amounts received from the Coronavirus Relief Fund (the "Fund") that have not been used in a manner consistent with section 601(d) of the Social Security Act. If a government has not used funds it has received to cover costs that were incurred by December 30, 2020, as required by the statute, those funds must be returned to the Department of the Treasury.

MINIMIZING COST EXPOSURE BY MAXIMIZING COST RECOVERY

With this critical guidance from the U.S. Treasury, governments can finally begin to weave together effective strategies for minimizing the cost exposure by maximizing opportunities for cost recovery. Specifically, by weaving various forms of federal aid together, governments can blunt the impact of increased cost burdens and mitigate potential revenue losses.



Given the eligibility overlap that exists among the broad use of the Coronavirus Relief Fund and other federal disaster relief funding programs, and the inherent potential for duplicating benefits, we offer the following recommendations to maximize potential for federal aid while avoiding administrative/compliance pitfalls:

- Develop an overarching funding strategy that carefully evaluates all potential eligible expenses alongside all potentially available funding sources;
- Quantify and prioritize your funding needs to determine which programs best fit your budget needs based on availability of expedited fund, nature of funding as grant or loan, and conditions attached to funding;
- Understand the nature and limitations of each funding source to optimize available funding (i.e. which programs carry capped funding amounts, and which do not);
- Consider working with a qualified team of experts that can help your community navigate this process successfully.

On the following page, we take a closer look at some of the many overlapping expense areas served by numerous funding sources, and where you may want to look to for potential reimbursement opportunities. However, we also caution that not all expenses related to the categories we provided are explicitly allowable for the program in which some of the costs may be reimbursable.

Increased Expense Areas

Funding Source	Program Description	Emergency Operations	Police, Fire & Corrections	Transit & Public Works	Education	Local Hospitals & Clinics	Housing & Social Services	Public Utilities	Management & Community Development
U.S. Treasury Coronavirus Relief Fund	Fixed allocation to State and Local Governments for increased costs incurred preparing for, protecting against or treating COVID-19 virus	✓	✓	✓	✓	✓	✓	✓	✓
DHS / FEMA Public Assistance	Funding provided by FEMA to eligible governments, institutions or organizations for emergency protective measures related to COVID-19	✓	✓	✓	✓	✓	✓	✓	✓
DHS - Emergency Management Planning Grants	Planning Grants available to State, local governments to help plan for respond to emergency or disaster events	✓	✓	✓		✓		✓	✓
Health & Human Services Providers Relief Fund	Fixed allocation to eligible FFR Medicaid providers to offset the incurred cost of treating under or uninsured COVID-19 patients					✓	✓		
Health & Human Services SSBG, CCDBG & Others	Supplemental appropriations to existing Health & Human Services Programs, specifically social services, senior care and childcare					✓	✓		
Health & Human Services Center for Disease Control	Supplemental appropriation to CDC to offset costs associated with testing, vaccine development and pandemic tracing costs	✓				✓	✓		
Housing & Urban Development CDBG, ESG, HOPWA	Supplemental appropriation to HUD entitlement grantees, specifically housing support, and supporting homeless and AIDS populations			✓	✓	✓	✓		✓
Department of Justice Emergency Supplemental Funding	Supplemental grant opportunity to Law Enforcement, Corrections and Public Safety departments for COVID-19 response	✓	✓						
Department of Education HEERF, GEERF, ERSF Programs	Supplemental appropriation to existing DOE grantees specifically to address increased cost burdens associated with COVID-19 response				✓				
Department of Agriculture SNAP & Related Programs	Nutrition assistance programs for income limited households; funding to mitigate against supply chain disruptions because of COVID-19				✓		✓	✓	✓
Department of Transportation Federal Transit Authority	Supplemental appropriation for FTA grantees to offset incurred costs associated with preparing for or protecting against spread of COVID-19			✓	✓			✓	
Department of Interior Technical Assistance Programs	Additional grant opportunities for insular areas, specifically to support increased management and planning associated with COVID-19	✓		✓	✓	✓	✓	✓	✓

STILL HAVE QUESTIONS?

Witt O'Brien's has decades of experience helping State and local governments navigate these complex issues and can certainly assist your community with applying for assistance, evaluating eligibility for incurred or future cost, and with securing critical reimbursements to mitigate strain on your community's cash flow. Contact us to discuss your community's individual needs and learn how we can help support your COVID-19 response: covidhelp@wittobriens.com.