



Alert – Key Actions for Local Governments to Secure Federal Coronavirus Relief Funds

Four federal legislative packages are providing billions of dollars of support to local governments to respond to the COVID-19 crisis, with resources for virus emergency response, public health activities, social services, housing assistance, education system stabilization, economic and infrastructure improvements, and other key areas. See www.StrategiesDC.com/covid-19-resources-.html for more information.

Beyond these federal program resources, Congress and the U.S. Treasury has pushed monies out to states and units of local government to react to the pandemic, most significantly the Coronavirus Relief Fund. On April 23, Treasury Secretary Steven Mnuchin released guidance describing what activities are eligible for Coronavirus Relief Fund spending. However, direct guaranteed support is provided only to very large local governments with population over 500,000, the use of the Coronavirus Relief Fund is limited to only direct virus response activities, and the funding levels are not sufficient to respond to the operational revenues crisis and real needs of local governments.

On April 24, Congress enacted a Phase 3.5 Coronavirus relief bill (the Paycheck Protection and Health Care Enhancement Act) which does not include additional funding for states and local governments to cover revenue and operational losses. While Senate Democrats and the U.S. Treasury Secretary have conveyed a commitment to include such local government funding in subsequent legislation, the President has provided mixed and conflicting messages, and Senate Majority Leader Mitch McConnell is opposed to such action, even stating publicly that states and local governments are not due any additional resources and instead should take advantage of bankruptcy. More recently, Senator McConnell conveyed his view that a federal infrastructure funding package would not be pursued because of concerns about federal spending.

To ensure that there are necessary resources for cities and counties to recover and rebuild from the virus crisis, Sustainable Strategies DC urges local government leaders to take the following four actions:

1. **Press Governors to Dedicate Coronavirus Relief Funds to Local Governments in their States:** Under the CARES Act, States are fully authorized to push Coronavirus Relief Funds down to the local government level where cities and counties are struggling to meet the health crisis challenge. In West Virginia, for example, Governor Jim Justice publicly pledged to provide 45% of the State's \$1.25 billion to localities. Communities, working in collaboration with their state municipal/county associations, must organize and formally request Coronavirus Relief Funds from state government leaders. If your locality is located in a county with >500,000 population, the federal Coronavirus Relief Fund share for localities in that county were allocated directly to the county, not through the state government, so you must press your county leadership to distribute your municipality's share of these Relief Funds.

2. **Account for Costs Deemed Eligible in U.S. Treasury’s Coronavirus Relief Fund**
Guidance: The U.S. Treasury has identified activities which are eligible for Coronavirus Relief Fund spending. See [guidance](#) for a list of eligible expenditures. While this Treasury guidance fails to allow localities to use these Relief Funds to fill critical operational revenue needs and ties funding to only “necessary expenditures incurred due to the public health emergency,” this guidance does allow some important costs to be covered including public health expenses, medical expenses, certain payroll expenses, food delivery, distance learning, telework costs for public employees, family and sick leave, support for homeless populations, unemployment insurance costs, small business interruption grants, and other activities. Local governments should carefully account for these costs dating back to March 1, 2020 (and forward until December 31, 2020). If successful in urging your governor or county administration to share Coronavirus Relief Funds at the local government level, these are the expenses that you will need to know and report.
3. **Coordinate within Your State on Future Federal Coronavirus Recovery Legislation:**
There is strong interest in Congress to change the law to authorize the use of the CARES Act’s Coronavirus Relief Funds to plug local/state budget holes, as well as to appropriate much more money to local and state governments for recovery efforts. However, there are strong headwinds from Senate Majority Leader Mitch McConnell, who does not want to see such legislation passed. Local governments, municipal/county associations, and governor’s offices need to work together. Contact your Governor and state legislators to ensure that they are pressing for this critically needed federal funding for state and local stability.
4. **Advocate to Congress for Coronavirus Relief Fund Fixes and More Federal Funding:**
The federal resources that have been allocated by Congress are not enough for cities, counties, and states to tackle the public health crisis, maintain critical government operations, recover economically, and maintain fiscal viability. Contact your congressional delegation and push for legislation that authorizes the Coronavirus Relief Fund to fill shortfalls in government revenue, as well as appropriates new direct resources to localities for recovery efforts, including coverage for revenue and operational losses, economic development efforts, infrastructure development, and other activities that create jobs. Ask your U.S. Senators to co-sponsor the bipartisan Cassidy-Menendez legislation for local and state relief funds, and ask your U.S. House Member to co-sponsor HR 6467, the “Coronavirus Community Relief Act.”

Contact the Sustainable Strategies DC team if you need assistance on this effort,
at Sarah.Marin@StrategiesDC.com or 202.308.7125

Coronavirus Relief Fund
Guidance for State, Territorial, Local, and Tribal Governments
April 22, 2020

The purpose of this document is to provide guidance to recipients of the funding available under section 601(a) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). The CARES Act established the Coronavirus Relief Fund (the “Fund”) and appropriated \$150 billion to the Fund. Under the CARES Act, the Fund is to be used to make payments for specified uses to States and certain local governments; the District of Columbia and U.S. Territories (consisting of the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands); and Tribal governments.

The CARES Act provides that payments from the Fund may only be used to cover costs that—

1. are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
2. 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
3. were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.¹

The guidance that follows sets forth the Department of the Treasury’s interpretation of these limitations on the permissible use of Fund payments.

Necessary expenditures incurred due to the public health emergency

The requirement that expenditures be incurred “due to” the public health emergency means that expenditures must be used for actions taken to respond to the public health emergency. These may include expenditures incurred to allow the State, territorial, local, or Tribal government 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.

Funds may not be used to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify under the statute. Although a broad range of uses is allowed, revenue replacement is not a permissible use of Fund payments.

The statute also specifies that expenditures using Fund payments must be “necessary.” The Department of the Treasury understands this term broadly to mean that the expenditure is reasonably necessary for its intended use in the reasonable judgment of the government officials responsible for spending Fund payments.

Costs not accounted for in the budget most recently approved as of March 27, 2020

The CARES Act also requires that payments be used only to cover costs that were not accounted for in the budget most recently approved as of March 27, 2020. A cost meets this requirement if either (a) the cost cannot lawfully be funded using a line item, allotment, or allocation within that budget *or* (b) the cost

¹ See Section 601(d) of the Social Security Act, as added by section 5001 of the CARES Act.

is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation.

The “most recently approved” budget refers to the enacted budget for the relevant fiscal period for the particular government, without taking into account subsequent supplemental appropriations enacted or other budgetary adjustments made by that government in response to the COVID-19 public health emergency. A cost is not considered to have been accounted for in a budget merely because it could be met using a budgetary stabilization fund, rainy day fund, or similar reserve account.

Costs incurred during the period that begins on March 1, 2020, and ends on December 30, 2020

A cost is “incurred” when the responsible unit of government has expended funds to cover the cost.

Nonexclusive examples of eligible expenditures

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.
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.
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.

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

Nonexclusive examples of ineligible expenditures²

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.

² In addition, pursuant to section 5001(b) of the CARES Act, payments from the Fund may not be expended for an elective abortion or on research in which a human embryo is destroyed, discarded, or knowingly subjected to risk of injury or death. The prohibition on payment for abortions does not apply to an abortion if the pregnancy is the result of an act of rape or incest; or in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed. Furthermore, no government which receives payments from the Fund may discriminate against a health care entity on the basis that the entity does not provide, pay for, provide coverage of, or refer for abortions.

³ See 42 C.F.R. § 433.51 and 45 C.F.R. § 75.306.

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.

**Coronavirus Relief Fund
Frequently Asked Questions
April 22, 2020**

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.

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.