

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
Updated as of May 4, 2020**

The following answers to frequently asked questions supplement Treasury’s Coronavirus Relief Fund (“Fund”) Guidance for State, Territorial, Local, and Tribal Governments, dated April 22, 2020, (“Guidance”).¹ Amounts paid from the Fund are subject to the restrictions outlined in the Guidance and set forth in section 601(d) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”).

Eligible Expenditures

Are governments required to submit proposed expenditures to Treasury for approval?

No. Governments are responsible for making determinations as to what expenditures are necessary due to the public health emergency with respect to COVID-19 and do not need to submit any proposed expenditures to Treasury.

The Guidance says that funding can be used to meet 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. How does a government determine whether payroll expenses for a given employee satisfy the “substantially dedicated” condition?

The Fund is designed to provide ready funding to address unforeseen financial needs and risks created by the COVID-19 public health emergency. For this reason, and as a matter of administrative convenience in light of the emergency nature of this program, a State, territorial, local, or Tribal government may presume that payroll costs for public health and public safety employees are payments for services substantially dedicated to mitigating or responding to the COVID-19 public health emergency, unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise.

The Guidance says that a cost was not accounted for in the most recently approved budget if the cost is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation. What would qualify as a “substantially different use” for purposes of the Fund eligibility?

Costs incurred for a “substantially different use” include, but are not necessarily limited to, costs of personnel and services that were budgeted for in the most recently approved budget but which, due entirely to the COVID-19 public health emergency, have been diverted to substantially different functions. This would include, for example, the costs of redeploying corrections facility staff to enable compliance with COVID-19 public health precautions through work such as enhanced sanitation or enforcing social distancing measures; the costs of redeploying police to support management and enforcement of stay-at-home orders; or the costs of diverting educational support staff or faculty to develop online learning capabilities, such as through providing information technology support that is not part of the staff or faculty’s ordinary responsibilities.

Note that a public function does not become a “substantially different use” merely because it is provided from a different location or through a different manner. For example, although developing online

¹ The Guidance is available at <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>.

instruction capabilities may be a substantially different use of funds, online instruction itself is not a substantially different use of public funds than classroom instruction.

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 Department if they have not been used in a manner consistent with section 601(d) of the Social Security Act.

May a unit of local government receiving a Fund payment transfer funds to another unit of government?

Yes. For example, a county may transfer funds to a city, town, or school district within the county and a county or city may transfer funds to its State, 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 outlined in the Guidance. For example, a transfer from a county to a constituent city would not be permissible if the funds were intended to be used simply to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify as an eligible expenditure.

Is a Fund payment recipient required to transfer funds to a smaller, constituent unit of government within its borders?

No. For example, a county recipient is not required to transfer funds to smaller cities within the county's borders.

Are recipients required to use other federal funds or seek reimbursement under other federal programs before using Fund payments to satisfy eligible expenses?

No. Recipients may use Fund payments for any expenses eligible under section 601(d) of the Social Security Act outlined in the Guidance. Fund payments are not required to be used as the source of funding of last resort. However, as noted below, recipients may not use payments from the Fund to cover expenditures for which they will receive reimbursement.

Are there prohibitions on combining a transaction supported with Fund payments with other CARES Act funding or COVID-19 relief Federal funding?

Recipients will need to consider the applicable restrictions and limitations of such other sources of funding. In addition, 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, are not eligible uses of Fund payments.

Are States permitted to use Fund payments to support state unemployment insurance funds generally?

To the extent that the costs incurred by a state unemployment insurance fund are incurred due to the COVID-19 public health emergency, a State may use Fund payments to make payments to its respective state unemployment insurance fund, separate and apart from such State's obligation to the unemployment insurance fund as an employer. This will permit States to use Fund payments to prevent expenses related to the public health emergency from causing their state unemployment insurance funds to become insolvent.

Are recipients permitted to use Fund payments to pay for unemployment insurance costs incurred by the recipient as an employer?

Yes, Fund payments may be used for unemployment insurance costs incurred by the recipient as an employer (for example, as a reimbursing employer) 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.

The Guidance states that the Fund may support a “broad range of uses” including payroll expenses for several classes of employees whose services are “substantially dedicated to mitigating or responding to the COVID-19 public health emergency.” What are some examples of types of covered employees?

The Guidance provides examples of broad classes of employees whose payroll expenses would be eligible expenses under the Fund. These classes of employees include 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. Payroll and benefit costs associated with public employees who could have been furloughed or otherwise laid off but who were instead repurposed to perform previously unbudgeted functions substantially dedicated to mitigating or responding to the COVID-19 public health emergency are also covered. Other eligible expenditures include payroll and benefit costs of educational support staff or faculty responsible for developing online learning capabilities necessary to continue educational instruction in response to COVID-19-related school closures. Please see the Guidance for a discussion of what is meant by an expense that was not accounted for in the budget most recently approved as of March 27, 2020.

In some cases, first responders and critical health care workers that contract COVID-19 are eligible for workers’ compensation coverage. Is the cost of this expanded workers compensation coverage eligible?

Increased workers compensation cost to the government due to the COVID-19 public health emergency incurred during the period beginning March 1, 2020, and ending December 30, 2020, is an eligible expense.

If a recipient would have decommissioned equipment or not renewed a lease on particular office space or equipment but decides to continue to use the equipment or to renew the lease in order to respond to the public health emergency, are the costs associated with continuing to operate the equipment or the ongoing lease payments eligible expenses?

Yes. To the extent the expenses were previously unbudgeted and are otherwise consistent with section 601(d) of the Social Security Act outlined in the Guidance, such expenses would be eligible.

May recipients provide stipends to employees for eligible expenses (for example, a stipend to employees to improve telework capabilities) rather than require employees to incur the eligible cost and submit for reimbursement?

Expenditures paid for with payments from the Fund must be limited to those that are necessary due to the public health emergency. As such, unless the government were to determine that providing assistance in the form of a stipend is an administrative necessity, the government should provide such assistance on a reimbursement basis to ensure as much as possible that funds are used to cover only eligible expenses.

May Fund payments be used for COVID-19 public health emergency recovery planning?

Yes. Expenses associated with conducting a recovery planning project or operating a recovery coordination office would be eligible, if the expenses otherwise meet the criteria set forth in section 601(d) of the Social Security Act outlined in the Guidance.

Are expenses associated with contract tracing eligible?

Yes, expenses associated with contract tracing are eligible.

To what extent may a government use Fund payments to support the operations of private hospitals?

Governments may use Fund payments to support public or private hospitals to the extent that the costs are necessary expenditures incurred due to the COVID-19 public health emergency, but the form such assistance would take may differ. In particular, financial assistance to private hospitals could take the form of a grant or a short-term loan.

May payments from the Fund be used to assist individuals with enrolling in a government benefit program for those who have been laid off due to COVID-19 and thereby lost health insurance?

Yes. To the extent that the relevant government official determines that these expenses are necessary and they meet the other requirements set forth in section 601(d) of the Social Security Act outlined in the Guidance, these expenses are eligible.

May recipients use Fund payments to facilitate livestock depopulation incurred by producers due to supply chain disruptions?

Yes, to the extent these efforts are deemed necessary for public health reasons or as a form of economic support as a result of the COVID-19 health emergency.

Would providing a consumer grant program to prevent eviction and assist in preventing homelessness be considered an eligible expense?

Yes, assuming that the recipient considers the grants to be a necessary expense incurred due to the COVID-19 public health emergency and the grants meet the other requirements for the use of Fund payments under section 601(d) of the Social Security Act outlined in the Guidance. As a general matter, providing assistance to recipients to enable them to meet property tax requirements would not be an eligible use of funds, but exceptions may be made in the case of assistance designed to prevent foreclosures.

May recipients create a “payroll support program” for public employees?

Use of payments from the Fund to cover payroll or benefits expenses of public employees are limited to those employees whose work duties are substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

May recipients use Fund payments to cover employment and training programs for employees that have been furloughed due to the public health emergency?

Yes, this would be an eligible expense if the government determined that the costs of such employment and training programs would be necessary due to the public health emergency.

May recipients use Fund payments to provide emergency financial assistance to individuals and families directly impacted by a loss of income due to the COVID-19 public health emergency?

Yes, if a government determines such assistance to be a necessary expenditure. Such assistance could include, for example, a program to assist individuals with payment of overdue rent or mortgage payments to avoid eviction or foreclosure or unforeseen financial costs for funerals and other emergency individual needs. Such assistance should be structured in a manner to ensure as much as possible, within the realm of what is administratively feasible, that such assistance is necessary.

The Guidance provides that eligible expenditures may include expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures. What is meant by a “small business,” and is the Guidance intended to refer only to expenditures to cover administrative expenses of such a grant program?

Governments have discretion to determine what payments are necessary. A program that is aimed at assisting small businesses with the costs of business interruption caused by required closures should be tailored to assist those businesses in need of such assistance. The amount of a grant to a small business to reimburse the costs of business interruption caused by required closures would also be an eligible expenditure under section 601(d) of the Social Security Act, as outlined in the Guidance.

The Guidance provides that expenses associated with the provision of economic support in connection with the 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, would constitute eligible expenditures of Fund payments. Would such expenditures be eligible in the absence of a stay-at-home order?

Fund payments may be used for economic support in the absence of a stay-at-home order if such expenditures are determined by the government to be necessary. This may include, for example, a grant program to benefit small businesses that close voluntarily to promote social distancing measures or that are affected by decreased customer demand as a result of the COVID-19 public health emergency.

May Fund payments be used to assist impacted property owners with the payment of their property taxes?

Fund payments may not be used for government revenue replacement, including the provision of assistance to meet tax obligations.

May Fund payments be used to replace foregone utility fees? If not, can Fund payments be used as a direct subsidy payment to all utility account holders?

Fund payments may not be used for government revenue replacement, including the replacement of unpaid utility fees. Fund payments may be used for subsidy payments to electricity account holders to the extent that the subsidy payments are deemed by the recipient to be necessary expenditures incurred due to the COVID-19 public health emergency and meet the other criteria of section 601(d) of the Social Security Act outlined in the Guidance. For example, if determined to be a necessary expenditure, a government could provide grants to individuals facing economic hardship to allow them to pay their utility fees and thereby continue to receive essential services.

Could Fund payments be used for capital improvement projects that broadly provide potential economic development in a community?

In general, no. If capital improvement projects are not necessary expenditures incurred due to the COVID-19 public health emergency, then Fund payments may not be used for such projects.

However, Fund payments may be used for the expenses of, for example, establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity or improve mitigation measures, including related construction costs.

The Guidance includes workforce bonuses as an example of ineligible expenses but provides that hazard pay would be eligible if otherwise determined to be a necessary expense. Is there a specific definition of “hazard pay”?

Hazard pay means additional pay for performing hazardous duty or work involving physical hardship, in each case that is related to COVID-19.

The Guidance provides that ineligible expenditures include “[p]ayroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency.” Is this intended to relate only to public employees?

Yes. This particular nonexclusive example of an ineligible expenditure relates to public employees. A recipient would not be permitted to pay for payroll or benefit expenses of private employees and any financial assistance (such as grants or short-term loans) to private employers are not subject to the restriction that the private employers’ employees must be substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

May counties pre-pay with CARES Act funds for expenses such as a one or two-year facility lease, such as to house staff hired in response to COVID-19?

A government should not make prepayments on contracts using payments from the Fund to the extent that doing so would not be consistent with its ordinary course policies and procedures.

Questions Related to Administration of Fund Payments

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 Department of the Treasury of amounts received from 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.

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

May recipients deposit Fund payments into interest bearing accounts?

Yes, provided that if recipients separately invest amounts received from the Fund, they must use the interest earned or other proceeds of these investments only to cover expenditures incurred in accordance with section 601(d) of the Social Security Act and the Guidance on eligible expenses. If a government deposits Fund payments in a government’s general account, it may use those funds to meet immediate cash management needs provided that the full amount of the payment is used to cover necessary

expenditures. Fund payments are not subject to the Cash Management Improvement Act of 1990, as amended.

May governments retain assets purchased with payments from the Fund?

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 rules apply to the proceeds of disposition or sale of assets acquired using payments from the Fund?

If such assets are disposed of prior to December 30, 2020, the proceeds would be subject to the restrictions on the eligible use of payments from the Fund provided by section 601(d) of the Social Security Act.

TRIBAL GUIDANCE FOR THE USE OF CORONAVIRUS RELIEF FUNDS

The Department of Treasury has made payments to Tribes¹ from the \$8 billion Coronavirus Relief Fund (“CRF Funds”). We write to provide additional, Tribal-specific guidance regarding how these funds may be spent.

Treasury has released its own *Guidance* and *Frequently Asked Questions* documents regarding the use of these funds.² Our Tribal Guidance is meant to be read alongside the Treasury documents. We hope this will help Tribes consider appropriate uses for CRF Funds. That said, we cannot guarantee that Treasury or your auditors will agree with our interpretation. We will update this document if Treasury issues additional clarifications that impact our assessments below.

This is general guidance. There will be many unique and different situations presented as Tribes apply the complex COVID-19 funding rules. Please contact us if you are unsure about a particular situation. It is much easier, and much less expensive, to avoid a problem up front than to try to solve the problem after an audit.

A. Statutory Restrictions.

Congress placed restrictions on how CRF Funds may be spent. Specifically, the Act states:

USE OF FUNDS—A State, Tribal government, and unit of local government shall use the funds provided under a payment made under this section to cover only those costs of the State, Tribal government, or unit of local government 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 the date of enactment of this section for the State or government; and

¹ We use the term “Tribe” throughout this document to refer to Tribal entities receiving distributions from the \$8 billion Tribal set-aside in the COVID Relief Fund. There is currently a dispute over which Tribal entities are eligible for payments from the Fund and this guidance is not meant to state an opinion on that issue. Instead, we aim to provide information for any entity that ultimately receive payments from the Fund.

² Treasury’s Guidance can be found at <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf> and here: <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked-Questions.pdf>.

(3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

Pub. L. 116-136, § 601(d).

Thus, the CARES Act has three important restrictions on spending CRF Funds: the expenditures (1) must be necessary due to COVID-19; (2) must not have been in the Tribe's most recent budget (i.e., not routine, previously budgeted expenditures); and (3) must be incurred from March 1 to December 30, 2020. The CARES Act further provides:

If the Inspector General of the Department of the Treasury determines that a State, Tribal government, or unit of local government has failed to comply (with the use of funds section), the amount equal to the amount of funds used in violation of such subsection shall be booked as a debt of such entity owed to the Federal Government.

Id. § 601(f).

This means that if Treasury determines that a Tribe's CRF Funds were not used for an allowable purpose, the Tribe may be required to return those funds to Treasury. Thus, it is important to make sure the funds are spent for an allowable purpose, or the Tribe may need to pay Treasury back after an audit. If the CRF Funds have been spent, repayment will have to come from other Tribal funds.

B. Track and Document the CRF Funds and Other CARES Act Funds.

It is critically important that Tribes carefully track and account for the expenditures of the CRF Funds. We believe there is a high likelihood that many Tribes will be subject to an audit by the Treasury Inspector General regarding the use of CRF Funds.

1. Separate Accounts. We recommend Tribes establish a separate bank account or subaccount to separately account for the CRF Funds that are received and how those funds are spent. When charges are booked to the CRF account, the documentation should identify in detail what the expenditure was for and how it was linked to COVID-19 (more on this below).

2. Other COVID-19 Funds. Additionally, Tribes are receiving COVID-19 relief funds from other federal sources, including the Bureau of Indian Affairs, Indian Health Service, the HHS Provider Relief Fund, HUD, the Agriculture Food Distribution program, the Administration on Aging Elders' Nutrition Program, and Head Start, among others.

These funds also have restrictions on use and usually require a direct tie to the COVID-19 public health emergency. We recommend that you document the use of other COVID-19 Funds and do not mix the various funds. You are not required to use CRF Funds as a last resort, but you cannot use CFR Funds for expenses that are being reimbursed through another funding source or program.

Relatedly, we know a number of Tribes have entered into MOUs with FEMA or States to allow for reimbursement of expenses pursuant to the Stafford Act. Tribes must be careful to avoid duplicate reimbursement. An expenditure reimbursed under the Stafford Act cannot also be an allowable CRF expenditure, and vice versa.

3. Return or Pass-Through Excess CRF Funds. Some Tribes have told us that they may not be able to use all their CRF Funds for allowable purposes in the short time frame the CARES Act requires for expenditure.

There are two available options: (1) the Tribe can return any excess CRF Funds to Treasury or (2) pass the CRF Funds through to Tribal entities that can make allowable use of the funds. For example, a Tribe that is not able to spend all its CRF Funds for general operations could pass the excess through to its Tribal health program to help pay for COVID-19 related expenditures or to local governments for allowable expenditures.

C. Allowable Expenditures

Treasury's guidance and FAQs discuss six categories of eligible expenditures for the use of CRF Funds. Below, we elaborate on these six categories with a focus on Tribal governments.

These categories are not mutually exclusive. Some expenses may be eligible under several categories Treasury has identified.

1. Direct Medical Expenses

This category of expenditures is self-explanatory:

- COVID-19 related expenses of public hospitals, clinics, and similar facilities.
- Expenses of establishing public medical facilities and other measures to increase COVID-19 treatment capacity (including mitigation measures), 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.

a. Other resources. A Tribe should consider exhausting other resources that may have narrower restrictions for these types of costs before spending the CRF Funds, such as funding received from the Indian Health Service specifically for COVID-19 testing and diagnostics, from Health and Human Services (HHS) or CDC for additional healthcare costs due

to COVID-19, from SAMHSA or HRSA to respond to increased mental health needs caused by COVID-19-related job losses or to pay for the increased cost of providing care using non-traditional service delivery mechanisms, such as telemedicine.

b. Medical construction/capital improvements. If a Tribe wishes to use CRF Funds for medical construction, the Tribe should carefully document that the construction is needed to address COVID-19 treatment capacity or improve COVID-19 mitigation measures relating to public health.

Medical construction projects could include improving water and sanitation systems to ensure that people have potable water and other facilities to wash their hands and comply with CDC guidelines regarding COVID-19 mitigation. It could include redesign and remodeling costs of existing facilities to improve social distancing and minimize contacts with internal clinic surfaces, or temporary facilities or the COVID-19-related conversion of existing facilities, such as opening tents next to medical facilities for drive-by testing or isolated COVID-19 treatment or for facilities to treat or quarantine patients.

c. Short timeframe. We want to underscore in this context the narrow window to spend CRF Funds. Costs cannot be used for expenses that will occur next year. The funds need to be spent on costs incurred by December 30, 2020.

d. Revenue losses are not allowable expenses. Please note that as of this writing CRF Funds may **not** be used to make up for lost income or lost government revenues due to COVID-19. There are currently bills proposed in Congress that may change that and we will update this document should those go through.

2. Public Health Expenses

This category of expenditures relates to public health expenditures:

- Expenses for communication and enforcement by 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 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.

a. Community events and facilities. Items within this category include expenses necessary to manage events in the community, *i.e.*, food distribution, testing, or other supply distribution events that occur because of the COVID-19 public health emergency. This should include costs of utilizing school gyms or vacant hotel rooms to quarantine patients, to house vulnerable individuals (such as the homeless), or otherwise to take measures to mitigate the spread of the disease.

b. Disinfectants and cleaning. The cost of disinfecting and cleaning public areas include Tribal businesses and facilities accessible to the public, such as Tribal hotels, casinos, convenience stores, and parks, along with Tribal buildings and other Tribal facilities.

Tribes preparing for fishing season may use CRF Funds to install additional hand sanitizing or hand washing stations on docks, or masks for fishermen getting off boats and entering public areas and towns. Increased costs for additional cleaning of boat launch areas, public restrooms, or other areas that may need near-constant disinfecting during high use times are allowable.

c. Supplies and storage. This category includes the purchase and storage of COVID-19-related supplies. CRF Funds may be used to pay the costs of storage for these supplies, such as refrigeration or additional warehouse space or temporary staging facilities. For Tribes affected by interruptions due to shipments caused by COVID-19 (such as the bankruptcy of one of the major rural air carriers in Alaska), funds can be used to cover the increased transport costs to barge supplies or hiring a chartered flight to deliver mail, food and other essential goods.

d. Public safety. Additional costs to the Tribe of enforcing curfews or stay at home orders are allowable. Costs of setting up incident command centers or partnering with local governments on COVID-19 response are allowable.

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

This category has generated many questions. Treasury has issued guidance on what it means to be “substantially dedicated” to COVID-19 response, but Treasury’s guidance is far from clear and is subject to change.

a. Payroll for dedicated staff. We suggest that Tribes consider any staff member dedicating more than 50% of their time to mitigating or responding to the COVID-19 public health emergency is “substantially dedicated” to COVID-19 response and therefore be an eligible CRF expenditure under the Treasury guidelines. Hazard pay is allowable.

1. Administrative staff. We think “similar employees” includes staff necessary to administer and manage the CRF Funds, such as the Tribal finance staff or administrative team. For some positions, this may require detailed tracking of time spent on COVID-19-related or non-COVID-19 tasks. Several Tribes have asked whether specific time employees spend on COVID-19 tasks are reimbursable. This is where a threshold is important. For instance, if the Finance Director is spending 3 out of 40 hours each week on COVID-19 matters, that would not likely meet the **substantially** dedicated standard and would not likely be reimbursable from the Fund. But, if that same Finance Director is spending 25 out of 40 hours each week on COVID-19 tasks, then it would likely be an allowable expenditure.

2. Special purpose staff. Payroll costs for Tribal project staff who are solely dedicated to COVID-19-related matters are allowable. For instance, the Treasury FAQs give the example that conducting a recovery planning project or recovery coordination office would be an eligible expenditure. To the extent the Tribe hires grant writers specifically to target COVID-19 funds, those costs would be allowable. Or, if the Tribe hires staff solely to do food distribution for impacted community members, that would be allowable.

b. COVID-19-related leave costs. CRF Funds can be used to pay for COVID-19-related leave, even for employees that are not substantially dedicated to COVID-19 response. CRF Funds can be used for expenses associated with compliance with the Families First Coronavirus Response Act leave mandates (both the two weeks of paid emergency sick leave and the expanded Family Medical Leave Act for parents who are home—and cannot telework—because children are not in school). Any increased unemployment insurance or worker’s compensation costs due to COVID-19 are allowable CRF expenditures.

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

- 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 closing to enable compliance with COVID-19 precautions.
- Expenses to improve telework capabilities for public employees to enable compliance with COVID-19 public health precautions.
- COVID-19 related expenses of maintaining detention/jail facilities, 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 to mitigate COVID-19 effects and enable compliance with COVID-19 public health precautions.

a. Broadband and hardware. Allowable expenses under this category include, we think, securing broadband or improving internet capacity in areas of a Tribal community that do not have currently have reliable access. Hardware, e.g., laptops, desktops, wireless hot spots, as well as subsidizing or funding the cost of internet services for individual Tribal members and/or their households could also be eligible, provided the expenditures are tied to distance learning and telework. Again, the Tribe should document that this kind of infrastructure is necessary to facilitate Tribal members' and employees' distance learning and telework due to the COVID-19 public health emergency.

b. Food. The purchase and delivery of food and food storage equipment, such as freezers for Tribal members, are allowable expenditure if COVID-19 is interrupting normal food supply chains or deliveries or to support social distancing mandates in the tribal community. If a Tribe has a Tribal cattle or buffalo herd and determines a take is in the interest of public health, these costs, including the cost of the animal and the butchering costs, are allowable CRF Fund expenditures.

c. Public health infrastructure. This category encompasses the water and sewer infrastructure improvements, expansions and upgrades we mentioned earlier, so long as necessary to facilitate compliance with COVID-19 mitigation measures and completed within the expenditure period.

d. Public facility mitigation. Costs associated with improving COVID-19 mitigation in public facilities, such as Tribal administration buildings, stores, casinos, hotels, clinics are allowable CRF expenditures. We think this includes installing Plexiglas at stores or around slot machines, purchasing touchless scanning thermometers or inserts for thermometers that are being used repeatedly, upgrading air handling systems to mitigate the spread of the COVID-19 virus, replacing surfaces with easier to disinfect materials, purchasing masks and gloves for employees who interact with the public, and increased PPE and cleaning equipment for janitorial and custodial staff.

e. Detention facilities. Tribes may expend CRF Funds to cover COVID-19 related costs in detention facilities. This can include costs in maintaining social distancing, cleaning, disinfecting, and testing. Tribes may choose to release lower-level offenders under electronic monitoring or house arrest programs instead to relieve some of the burden within the facility. The costs of that monitoring or for transitional or alternative housing facilities would be an allowable expenditure.

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

- Expenditures related to the provision of grants to small businesses to reimburse the costs of businesses interruption caused by required closures.
- Expenditures related to a Tribal government payroll support program.

a. Grants to small businesses. Many are familiar with the SBA’s paycheck protection program for small businesses and the stimulus checks provided by the government to individuals. This category allows for Tribes to establish similar programs to help support small businesses, families and individuals impacted by the COVID-19 public health emergency.

For instance, a Tribe could establish a grant program for small businesses owned by the Tribe or Tribal members to pay costs due to business interruption, such as paying furloughed staff or rent while their business is shut down. Tribal businesses including convenience stores, hotels, campgrounds, restaurants, and casinos, as well as individual Tribal members’ businesses that suffered a loss of revenues due to closure or had decreased business because of the COVID-19 public health emergency, could be eligible for such a grant.

Under such a grant program, the Tribe would need to define what businesses are “small business,” and similarly define the eligibility criteria. The recipient could then use the grant to satisfy debt and pay staff, to the extent those expenses are not already covered by other federal relief funds. We would be pleased to assist Tribes interested in developing a grant program consistent with Treasury’s guidance.

b. Emergency family assistance. Tribes could establish a Tribal grant program to provide emergency financial assistance to Tribal members and families impacted by the loss of income due to COVID. This could include rent, mortgage, utility bills, and food expenses. Treasury’s FAQs specifically states that “Such assistance should be structured in a manner to ensure as much as possible, within the realm of what is administratively feasible, that such assistance is necessary.” Again, we believe the suppling meat from tribal herds or purchasing and distributing fish from tribal fishermen would be allowable expenditures.

c. Grant program forms. We recommend that if a Tribe is going to establish a grant program of this type that the Tribe create a form for Tribal members to use to apply for assistance. The form should require them to verify that their income has been impacted by COVID-19 and they need assistance. If a Tribe has a general welfare program, this new grant program would be a temporary expansion of that program. Administrative costs, including the costs of repurposing current staff or hiring additional staff to run this program, would also be allowable.

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

This is a fairly broad catch-all for expenditures due to COVID-19 not already covered by the other categories. The key here is that the Tribe must determine the expense is “reasonably necessary” for the function of government during the COVID-19 public health emergency. This could include, we think, costs of extra Council meetings to take up resolutions due to COVID-19, the costs of additional legal fees to answer COVID-19-related questions, or the costs of additional cleaning in Tribal building to facilitate work done on-site by essential employees. If you are unsure of whether certain expenses would qualify, feel free to reach out for additional guidance.

7. Nonexclusive examples of ineligible expenditures.

The following is a list of examples of costs that according to Treasury guidance would not be eligible expenditures of payments from the Fund.

- Damages covered by insurance. This is because costs that have been covered from other sources are not allowable expenditures.
- Payroll or benefits expenses for public employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency. Again, given the statutory limits, expenditures for public employees' payroll must be tied to those working substantially on matters related to the COVID-19 public health emergency.
- 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. Again, there can be no duplicate reimbursement for a program.
- Reimbursement to donors for donated items or services. Again, costs covered from other sources are not allowable.
- Workforce bonuses other than hazard pay or overtime linked to responding to the COVID-19 public health emergency. These regular or non-COVID-related bonuses are not required due to COVID.
- Severance pay. We believe Treasury would take the position this pay is not required due to COVID.
- Legal settlements. Similarly, we believe Treasury would view such settlements as not required due to COVID.

D. Conclusion.

Our guidance document, like the Treasury documents, is far from exhaustive. We hope these examples clarify the types of CRF Fund expenses that are allowable, and would be pleased for the opportunity to assist you in determining how the CRF Funds can be used to meet your Tribe's individual needs. Please let us know how we can help.

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