CARES Act Update:
Eligible Expenditures for Coronavirus Relief Funds

The CARES Act created the Coronavirus Relief Fund to provide $150 billion for payments to states, tribal governments, and units of local government for fiscal year 2020. The payments have already been made to states. Large local governments with populations of over 500,000 also received direct distributions.¹

The CARES Act provides that funds may be used by a state, tribal government, or local government to cover only those costs that:

- are necessary expenditures incurred due to the COVID-19 public health emergency;
- were not accounted for in the state or local government budget most recently approved as of March 27, 2020; and
- were incurred between March 1, 2020 and December 30, 2020.

Treasury Department FAQ Guidance²

On April 22, 2020, the U.S. Treasury Department released FAQ guidance. Initially, the FAQ guidance addressed just four questions. First, the FAQ guidance makes clear that any funds not spent by December 30, 2020 will be required to be returned to the Treasury. Second, the guidance furthers Congressional intent that the funds be shared with local governments, including smaller local governments. The guidance provides that the State may transfer funds to a local government to cover eligible expenses.³ Third, the FAQ guidance notes that purchased assets may be retained. Finally, the guidance provides that the state or local government should keep sufficient records to demonstrate that funds were properly spent.

Note, the initial FAQ guidance has since been updated to include the following fifth question, including (underlining added) language providing flexible guidance on payment of public health and public safety payroll costs:

Treasury’s Coronavirus Relief Fund guidance states 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 do I determine whether payroll expenses for a given employee satisfy the “substantially dedicated” condition?

The Coronavirus Relief 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,   

³ On April 27, 2020, the Governor announced an allocation of almost $300 million of the funds to cities and counties that did not receive direct distributions. https://www.governor.wa.gov/news-media/inslee-announces-distribution-funding-local-governments-federal-stimulus-package
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.

**Treasury Department Guidance regarding Eligible Expenditures**

The U.S. Treasury Department also released guidance setting forth its interpretation of what expenditures meet the statutory requirement that funds be used to pay unbudgeted necessary expenditures incurred due to the COVID-19 public health emergency.

**Incurred due to the COVID-19 Public Health Emergency**

The guidance interprets the term “incurred due to the COVID-19 public health emergency” to include both expenses incurred directly to respond to the emergency 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.” This language makes clear not only that the State and local governments may use the funds to address secondary effects – including economic effects – of the COVID-19 public health mitigation measures, but also that the State and local governments may use the funds to make grants for these purposes.

**Necessary Expenditures**

The guidance states that funds must be used for expenditures and may not be used to replace lost revenues. “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 guidance interprets the term necessary “broadly” and defers to the reasonable judgment of state and local government officials to determine whether an expenditure is reasonably necessary for its intended use.

**Unbudgeted**

The guidance interprets what expenditures are unbudgeted, e.g. “were not accounted for in the state or local government budget most recently approved as of March 27, 2020.” If “(a) the cost cannot lawfully be funded using a line item, allotment, or allocation within that budget or (b) the cost is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation” the cost can be considered unbudgeted.

The “most recently approved budget” is interpreted to refer to the “enacted budget for the relevant fiscal period” and to exclude subsequent supplemental appropriations or budget amendments made in response to COVID-19. Expenditures paid from reserves also are considered unbudgeted.

---

**Illustrative Examples**

The guidance includes a number of nonexclusive, illustrative examples of eligible expenditures, listed below.

<table>
<thead>
<tr>
<th>Category of Eligible Expense Examples</th>
<th>Treasury Examples of Eligible Expenses</th>
</tr>
</thead>
</table>
| Medical expenses                     | • 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. |
| Public health expenses               | • 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. |
| 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 COVID19 public health emergency | See FAQ guidance summarized above, for public health and public safety payroll costs. |
| 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 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. |
| 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 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. |

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

The guidance also includes a few examples of ineligible expenses. Examples of ineligible expenses include the State share of Medicaid; damages covered by insurance; payroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding 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; reimbursement to donors for donated items or services; workforce bonuses other than hazard pay or overtime; severance pay; and legal settlements.

The CARES Act also makes the funds subject to the policy riders that apply to federal public health funding, such as the Hyde Amendment.
Summary

State and local government costs that have been incurred\(^5\) or will be incurred prior to December 30, 2020 may be eligible for funding, depending on the nature of the expenditure. Although the guidance does not permit states and local governments to use Coronavirus Relief Funds to replace lost tax or other revenues, the guidance does provide some flexibility to allocate the funds to a range of expenditures. Eligible expenses are not limited to the direct expenses of responding to COVID-19, but include expenditures to address secondary, including economic, impacts associated with Stay at Home orders and other public health measures.

State and local government organizations continue to advocate for additional federal funding and other financing tools to address COVID-19 impacts, specifically to address the steep decline in sales tax and other revenues resulting from the sudden halt in business activity necessitated by the COVID-19 public health emergency, as part of CARES 2 or other stimulus legislation.

If you have any questions regarding this information, please contact us. Additional COVID-19 resources are available on our website at [https://www.pacificalawgroup.com/covid-19-resources/](https://www.pacificalawgroup.com/covid-19-resources/).

<table>
<thead>
<tr>
<th>Name</th>
<th>Email</th>
<th>Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alison Benge</td>
<td><a href="mailto:Alison.Benge@pacificalawgroup.com">Alison.Benge@pacificalawgroup.com</a></td>
<td>206.602.1210</td>
</tr>
<tr>
<td>Deanna Gregory</td>
<td><a href="mailto:Deanna.Gregory@pacificalawgroup.com">Deanna.Gregory@pacificalawgroup.com</a></td>
<td>206.245.1716</td>
</tr>
<tr>
<td>Stacey Lewis</td>
<td><a href="mailto:Stacey.Lewis@pacificalawgroup.com">Stacey.Lewis@pacificalawgroup.com</a></td>
<td>206.245.1714</td>
</tr>
<tr>
<td>Jon Jurich</td>
<td><a href="mailto:Jon.Jurich@pacificalawgroup.com">Jon.Jurich@pacificalawgroup.com</a></td>
<td>206.245.1717</td>
</tr>
<tr>
<td>Faith Li Pettis</td>
<td><a href="mailto:Faith.Pettis@pacificalawgroup.com">Faith.Pettis@pacificalawgroup.com</a></td>
<td>206.245.1715</td>
</tr>
<tr>
<td>Will Singer</td>
<td><a href="mailto:Will.Singer@pacificalawgroup.com">Will.Singer@pacificalawgroup.com</a></td>
<td>206.602.1216</td>
</tr>
</tbody>
</table>


A Note: This publication is for informational purposes and does not provide legal advice. It is not intended to be used or relied upon as legal advice in connection with any particular situation or facts. The information herein is provided as of the date it is written. Copyright © 2020 Pacifica Law Group LLP. All rights reserved.

To subscribe to our mailing list, please contact Mia Wiltse at Mia.Wiltse@pacificalawgroup.com.

\(^5\) Per the guidance a “cost is ‘incurred’ when the responsible unit of government has expended funds to cover the cost.”