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U.S. Department of the Treasury Updates FAQs on the \$150B Coronavirus Relief Fund, Questions Remain

This analysis updates Manatt Insights' previous analysis to reflect May 4-issued [Frequently Asked Questions](#) (FAQs) about the Coronavirus Relief Fund and May 5-issued [guidance](#) on allocations to tribal governments.

The Big Picture

The Coronavirus Aid, Relief, and Economic Security Act ([CARES Act](#))¹ contains resources to help states address immediate budget needs due to COVID-19. The centerpiece of the state aid is a \$150 billion “Coronavirus Relief Fund,” which obligated the Secretary of the Treasury to make payments for COVID-19 response efforts to states, territories, tribal governments, and certain local governments. On April 13, the U.S. Department of the Treasury (the Treasury Department) posted brief initial distribution and registration information for governments eligible for payment. On April 22, the Treasury Department released additional details expanding on the costs that may be covered by the Coronavirus Relief Fund and, on May 4, it provided further clarifications. This issue brief provides an overview of the Coronavirus Relief Fund and the Treasury Department’s guidance to date.

Unlike other CARES Act funds, the Coronavirus Relief Fund was not replenished by the April 24 “Stimulus 3.5” legislation.² Congress may consider additional funding for states and localities next month when it resumes negotiations about the next round of stimulus funding, but the issue of support for states is emerging as a point of disagreement between House and Senate leadership as they begin these negotiations.

Future stimulus legislation also could include clarifications regarding the use of the Coronavirus Relief Fund, in response to requests from states to broaden allowable uses of the funding, as described in more detail below. Although recent guidance updates have helped to answer some questions regarding eligible uses of the Coronavirus Relief Fund, questions remain.

Background

Section 5001 of the CARES Act established the \$150 billion Coronavirus Relief Fund. State allocations were determined based on the state’s population—relative to the population of all 50 states—with a minimum floor of \$1.25 billion per state (of the total amount, \$3 billion was reserved for the District of Columbia and the territories, collectively, and \$8 billion was

¹ [P.L. 116-136](#).

² [Paycheck Protection Program and Health Care Enhancement Act, P.L. 116-139](#).

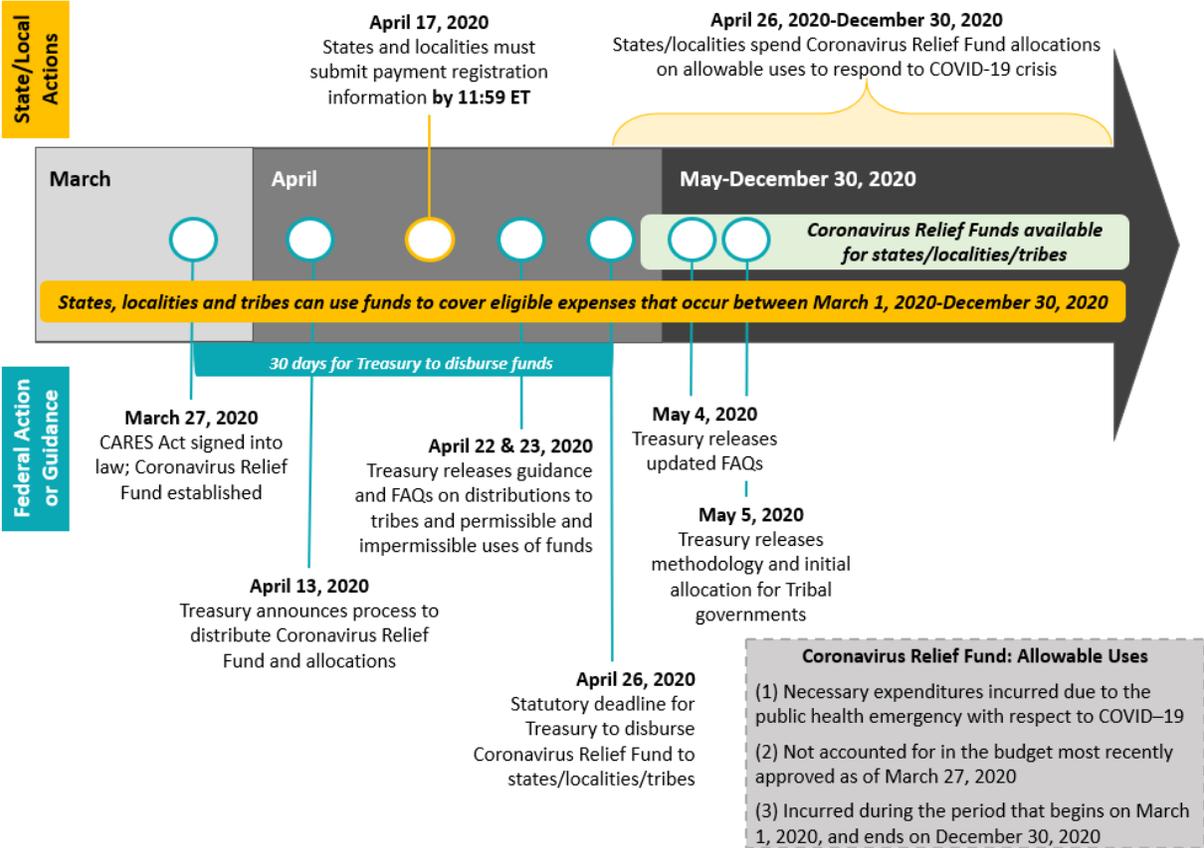
reserved for the tribal governments). Local governments with populations of 500,000 or more were permitted to apply directly to the Treasury Department for a specified share of their state’s funding. Any funding provided to local governments was subtracted from the amount otherwise made available to their state government.

The CARES Act included broad guidelines for the Coronavirus Relief Fund, which provide that this funding may only be used to cover costs that:

- are necessary expenditures incurred due to the public health emergency with respect to COVID-19;
- were not accounted for in the budget most recently approved as of March 27 (the date of enactment of the CARES Act) for the state or government; and
- were incurred between March 1 and December 30.

The CARES Act allocated funding for the Inspector General of the Treasury Department to conduct oversight activities and authorized the recoupment of funding used in ways that do not comply with this provision. The bill also required the Treasury Department to initiate payments within 30 days of enactment of the legislation—that is, by April 26. Figure 1 below describes key dates related to the Coronavirus Relief fund, as described in more detail below.

Figure 1. Timeline for Disbursement and Use of Coronavirus Relief Fund



Disbursement of Coronavirus Relief Fund

On April 13, the Treasury Department updated its website to share a [payment registration process](#); the [maximum allocations](#) to each state and U.S. territory, based on U.S. Census Bureau data for the most recent year for which data is available; and the [local government types](#) eligible to receive the funds, including counties, municipalities, towns, townships, villages, parishes, boroughs, or other units of government below the state level with a population greater than 500,000.

On April 23, the Treasury Department added [guidance specific to tribal governments](#), noting that decisions on the allocation of the \$8 billion reserved for tribal governments are being made in consultation with Indian Tribes (and that Alaska Native regional and village corporations as defined in or established pursuant to the Alaska Native Claims Settlement Act are entities eligible to receive payments from the Coronavirus Relief Fund). On May 5, the Treasury Department shared [allocations to tribal governments](#). The Treasury Department will distribute 60% of the \$8 billion based on population and 40% based on employment and expenditure data of tribes and tribally-owned entities. The data for the population-based allocation will be derived from the information used by the Department of Housing and Urban Development for the Indian Housing Block Grant Program and result in a minimum payment of at \$100,000. The Treasury will seek additional information from tribal governments for the employment- and expenditure-based allocation and determine weighting of these two factors after reviewing the data.

Notably, states and localities were required to submit their payment registration information in the Treasury Portal by 11:59 p.m. ET on Friday, April 17. Payments were to be made to states and localities by April 26.

Uses of the Coronavirus Relief Fund

The Treasury Department's website was further updated on April 22 and May 4 to include [guidance](#) and [FAQs](#). The guidance and FAQs expand on how the Treasury Department is interpreting the CARES Act conditions for the Coronavirus Relief Fund; they include examples of eligible and ineligible expenditures to illustrate the principles in the guidance. In general, the Treasury Department's interpretation is fairly broad and flexible; however certain provisions as well as unanswered questions regarding retrospective review and future oversight actions could still generate concerns for recipients.

The guidance and FAQs outline the following:

- ***Necessary expenditures incurred due to the public health emergency may be broadly defined.*** The Treasury Department interprets “necessary” expenditures incurred “due to” the public health emergency fairly broadly. The guidance indicates and the FAQs reinforce the “necessary” standard rests on the reasonable judgment of the responsible state, local,

or tribal government official. The guidance also indicates that “due to” the public health emergency includes first order, direct responses (e.g., spending to address medical or public health needs of the emergency) as well as second order effects of the emergency (e.g., spending to provide economic support for individuals and businesses that have suffered impacts from COVID-19).

- **Government revenue replacement is not an allowable use of the funds.** The Treasury Department guidance notes it is not permissible to use these funds to fill shortfalls unrelated to the public health emergency or for government “revenue replacement.” The updated FAQs discuss several illustrative uses that would constitute government revenue replacement and be impermissible—including the provision of assistance to property owners to meet tax obligations and the replacement of unpaid utility fees. However, the FAQs draw the distinction that subsidy payments to utility account holders facing economic hardship to help them pay utility fees *could* be a permissible expenditure, as could a consumer grant program to help prevent evictions. Governors and mayors nationwide have requested authority to use Coronavirus Relief Funds to help replace shrinking revenue. While the Treasury Department’s guidance is increasingly clear that this is not permissible, a bipartisan group of Senators introduced [legislation](#) to permit revenue replacement; it is unclear whether this bill will make it into the next COVID-19 stimulus package.
- **Costs not accounted for in the budget most recently approved as of March 27.** The Treasury Department interprets the “most recently approved budget” as the enacted budget for the relevant fiscal period for the unit of government, without taking into account supplemental appropriations or budget adjustments made by the government in response to COVID-19. The guidance also addresses rainy day funds and other reserve accounts, noting that a cost would not be considered “accounted for” (and thus ineligible for reimbursement by the Coronavirus Relief Fund) if it could be met using those funds. The Treasury Department considers costs to be allowable if: the cost cannot lawfully be funded using a line item, allotment, or allocation within that budget, **or** if the cost is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation.

While the second prong of this interpretation will be helpful to states and localities that have redeployed previously budgeted staff to be entirely focused on responding to the pandemic, the interpretation also could pose particular challenges for eligible governments if they already have re-programmed existing budget items to meet immediate COVID-19 mitigation and response needs and now seek to replace those funds through the Coronavirus Relief Fund.

- **Costs incurred during the period that begins on March 1 and ends on December 30.** The Treasury Department considers a cost to be “incurred” when the unit of government expends funds to cover the cost. This distinction will be important in considering which

prior costs will be reimbursed. The guidance also provides illustrative (but “inexhaustive”) examples of expenditures eligible and ineligible for reimbursement from the Coronavirus Relief Fund.

Elaborating upon these standards, the Treasury guidance and updated FAQs provide a range of specific examples to guide states and localities use of the funds:

- Among **eligible expenditures**, the Treasury Department includes medical and public health expenses—including actions to comply with COVID-19 public health measures such as expenses to facilitate distance learning, improve telework for public employees, and care for homeless populations. The Treasury Department also includes payroll expenses for a variety of health, human services, and public safety employees substantially dedicated to mitigating or responding to COVID-19, economic support to impacted individuals and businesses, and “any other COVID-19-related expenses reasonably necessary to the function of government that satisfy the Fund’s eligibility criteria.” The FAQs largely reiterate the examples from the guidance but include some new examples, providing confirmation that governments are permitted to use the Coronavirus Relief Fund for recovery planning, contact tracing, and to support public or private hospitals for necessary expenditures incurred due to COVID-19 (and that support could take the form of a grant or short-term loan to providers). The FAQs also note that state may use Fund payments to make payments to its state unemployment insurance fund to help prevent the fund from becoming insolvent due to high demand from the public health emergency (but funds may not be used to replace a state’s regular obligation to pay into its unemployment insurance fund as an employer). The guidance and FAQs reinforce the key determination by the state or local government that the expenditure be necessary due to the public health emergency.
- Among **ineligible expenditures**, the Treasury Department includes the state share of Medicaid, payroll or benefits for employees whose work duties are not substantially dedicated to mitigating or responding to COVID-19, workforce bonuses other than hazard pay or overtime, and 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.” The FAQs provide limited clarification. The FAQs note that Coronavirus Relief Fund payments are not required to be used as the funding of last resort; however, they also note that expenses that have been or will be reimbursed under any federal program are considered ineligible expenses. It is still unclear the level of analysis a state or local government will need to conduct to assure compliance.

Key Questions Remaining on the Coronavirus Relief Fund

The Treasury Department guidance to-date provides additional details about the disbursement and eligible uses of the Coronavirus Relief Fund, but key questions still remain:

- The guidance indicates that states have state discretion in determining “necessary” expenditures and affirms states’/localities’ flexibility to include in that consideration expenditures to address second order effects of COVID-19 and the FAQs indicate that governments will not need to submit proposed expenditures for pre-approval, however what degree and level of scrutiny of post-reimbursement review and validation will the “necessary” expenditure standard be subject to, and by whom?
- The guidance states that items 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 ineligible expenditures. Will the Treasury Department issue additional clarification about how an eligible government should implement this analysis, particularly to the extent that the availability and level of other reimbursement (e.g., FEMA funding) may currently be uncertain?
- How should states collect data and relevant information from providers on their use of other non-Coronavirus Relief Fund funding (e.g., direct funding from the Provider Relief Fund) to avoid duplication of funds? The guidance and FAQs to-date provide limited guidance on governmental recordkeeping and reporting obligations, simply noting that governments 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.” What reporting requirements will be imposed on states for the use of funding from the Coronavirus Relief Fund? How will the Inspector General of the Treasury Department be involved in conducting oversight of state/local use of funds?

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