

Local Programs for Economic Support Under the CARES Act

The League of Oregon Cities (LOC) has compiled these criteria for economic support programs for cities to use in expending their Coronavirus Relief Fund (CRF) monies. Over 30 cities have already created some form of utility subsidy or small business assistance and we expect many more will move ahead with new programs upon receipt of their share of the CRF.

We do not represent that programs meeting these criteria are the only allowed uses of CRF to provide economic support under Treasury guidance but believe they may be helpful nonetheless as a starting point. **The Treasury guidance and FAQ documents provide the best information for cities looking to stand up new programs.** These documents have already been updated numerous times so cities are encouraged to check the above links regularly. Relevant excerpts are attached at the end of this document but neither the summaries below nor the excerpts are a substitute for reading the full guidance and FAQ.

LOC worked with the Department of Administrative Services (DAS) in the development of this document though it is in no way endorsed by DAS. **Cities should work with their city attorney where the Treasury guidance is unclear.**

General Criteria

Any program will have to meet the “big three” criteria from the CARES Act as explained by the guidance:

- being **necessary** due to the COVID-19 pandemic,
- being **unbudgeted** spending as of March 27th, and
- being **expended** between March 1st and December 30th.

The **Treasury guidance further explains these criteria** and notes that backfill of taxes or fees reduced due to the pandemic is not allowed. Cities **must keep records** sufficient to demonstrate that expenditures have met these criteria.

The FAQ also lays out some general program criteria:

- **administrative costs** for eligible programs are allowed if they were unbudgeted,
- **loans** are allowed but repayments must go back to Treasury unless they are rolled into another qualified expense prior to December 30th,
- **applications** for assistance are not required but jurisdictions must ensure recipients have a COVID-19 related need, and
- **non-profits** may be used to distribute assistance (rent or utility relief for example).

Small Business Assistance Criteria

In addition to the above, the guidance and FAQ give some additional detailed on what is allowed for a small business assistance program:

- providing **grants to small businesses** to reimburse for business interruption,
- programs should be tailored to assist those businesses needing assistance due to COVID-19, and



- programs are allowed in the absence of a stay-at-home order if businesses are closed voluntarily or are experiencing reduced demand.

Individual Assistance Criteria

In addition to the general criteria above, the FAQ gives some additional detail on what is allowed for a program to assist individual residents with a COVID-19 related need:

- **grants to individuals** to prevent eviction or otherwise prevent homelessness,
- emergency financial assistance including but not limited to payment of **overdue rent or mortgage payments**, and
- grants to affected individuals to allow them to pay **utility fees** and maintain essential services.

Please note that while utility assistance is an eligible expense, the FAQ also notes “revenue replacement, including the replacement of unpaid utility fees” is not allowed. **Cities are encouraged to be especially careful in structuring utility assistance programs and work with counsel where there are questions** due to this somewhat contradictory language.

Examples LOC believes would not qualify include (1) transferring funds to the city utility to make up for reduced demand due to a large user being offline or (2) transferring funds to the utility to make up for delinquent accounts but continuing to attempt collection of the same debt from the customer (the assistance must benefit the customer, not the city utility).

In developing new utility assistance programs cities are encouraged to take steps to create separation between the city and the utility where possible, through mechanisms like the use of third parties (like a nonprofit) to administer the program or by giving the relief directly to the customer who then pays their bill. LOC is not representing that existing programs that did not use these strategies would be ineligible for reimbursement, but we believe that going forward the **use of third-party administrators in particular will help cities meet the terms of the somewhat contradictory guidance**.

Next Steps

Cities have been on the front line of economic response to the pandemic, but many cities have had little or no ability to help residents until now due to their own fragile finances. We believe cities are best able to get these important resources into the hands of their residents impacted by the pandemic as intended. LOC will continue to be your partner in this endeavor, and you are welcome to reach out with questions at the contact below. Cities may also contact DAS at CoronavirusReliefFund@Oregon.gov. Above all, cities are encouraged to read the Treasury guidance and FAQ documents and work with their city attorney where the guidance is unclear.

LOC Contact

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Addenda

Relevant Excerpts from the Guidance Document, June 30th Version

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.

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. 1 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

Finally, the CARES Act provides that payments from the Fund may only be used to cover costs that were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020 (the “covered period”). Putting this requirement together with the other provisions discussed above, section 601(d)

may be summarized as providing that a State, local, or tribal government may use payments from the Fund only to cover previously unbudgeted costs of necessary expenditures incurred due to the COVID-19 public health emergency during the covered period.

Initial guidance released on April 22, 2020, provided that the cost of an expenditure is incurred when the recipient has expended funds to cover the cost. Upon further consideration and informed by an understanding of State, local, and tribal government practices, Treasury is clarifying that for a cost to be considered to have been incurred, performance or delivery must occur during the covered period but payment of funds need not be made during that time (though it is generally expected that this will take place within 90 days of a cost being incurred). For instance, in the case of a lease of equipment or other property, irrespective of when payment occurs, the cost of a lease payment shall be considered to have been incurred for the period of the lease that is within the covered period, but not otherwise.

Furthermore, in all cases it must be necessary that performance or delivery take place during the covered period. Thus the cost of a good or service received during the covered period will not be considered eligible under section 601(d) if there is no need for receipt until after the covered period has expired.

Goods delivered in the covered period need not be used during the covered period in all cases. For example, the cost of a good that must be delivered in December in order to be available for use in January could be covered using payments from the Fund. Additionally, the cost of goods purchased in bulk and delivered during the covered period may be covered using payments from the Fund if a portion of the goods is ordered for use in the covered period, the bulk purchase is consistent with the recipient's usual procurement policies and practices, and it is impractical to track and record when the items were used. A recipient may use payments from the Fund to purchase a durable good that is to be used during the current period and in subsequent periods if the acquisition in the covered period was necessary due to the public health emergency.

Given that it is not always possible to estimate with precision when a good or service will be needed, the touchstone in assessing the determination of need for a good or service during the covered period will be reasonableness at the time delivery or performance was sought, e.g., the time of entry into a procurement contract specifying a time for delivery. Similarly, in recognition of the likelihood of supply chain disruptions and increased demand for certain goods and services during the COVID-19 public health emergency, if a recipient enters into a contract requiring the delivery of goods or performance of services by December 30, 2020, the failure of a vendor to complete delivery or services by December 30, 2020, will not affect the ability of the recipient to use payments from the Fund to cover the cost of such goods or services if the delay is due to circumstances beyond the recipient's control.

This guidance applies in a like manner to costs of subrecipients. Thus, a grant or loan, for example, provided by a recipient using payments from the Fund must be used by the subrecipient only to purchase (or reimburse a purchase of) goods or services for which receipt both is needed within the covered period and occurs within the covered period. The direct recipient of payments from the Fund is ultimately responsible for compliance with this limitation on use of payments from the Fund.

Nonexclusive examples of eligible expenditures

Nonexclusive examples of eligible expenditures Eligible expenditures include, but are not limited to, payment for: [...]

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.

[Relevant Excerpts from the FAQ Document, July 8th Version – Economic Support Generally](#)

May Fund payments be used for expenditures related to the administration of Fund payments by a State, territorial, local, or Tribal government?

Yes, if the administrative expenses represent an increase over previously budgeted amounts and are limited to what is necessary. For example, a State may expend Fund payments on necessary administrative expenses incurred with respect to a new grant program established to disburse amounts received from the Fund.

May recipients use Fund payments to provide loans?

Yes, if the loans otherwise qualify as eligible expenditures under section 601(d) of the Social Security Act as implemented by the Guidance. Any amounts repaid by the borrower before December 30, 2020, must be either returned to Treasury upon receipt by the unit of government providing the loan or used for another expense that qualifies as an eligible expenditure under section 601(d) of the Social Security Act. Any amounts not repaid by the borrower until after December 30, 2020, must be returned to Treasury upon receipt by the unit of government lending the funds.

Must a State, local, or tribal government require applications to be submitted by businesses or individuals before providing assistance using payments from the Fund?

Governments have discretion to determine how to tailor assistance programs they establish in response to the COVID-19 public health emergency. However, such a program should be structured in such a manner as will ensure that such assistance is determined to be necessary in response to the COVID-19 public health emergency and otherwise satisfies the requirements of the CARES Act and other applicable law. For example, a per capita payment to residents of a particular jurisdiction without an assessment of individual need would not be an appropriate use of payments from the Fund.

May Fund payments be provided to non-profits for distribution to individuals in need of financial assistance, such as rent relief?

Yes, non-profits may be used to distribute assistance. Regardless of how the assistance is structured, the financial assistance provided would have to be related to COVID-19.

[Relevant Excerpts from the FAQ Document, July 8th Version – Small Business Support](#)

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.

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.

Must a stay-at-home order or other public health mandate be in effect in order for a government to provide assistance to small businesses using payments from the Fund?

No. The Guidance provides, as an example of an eligible use of payments from the Fund, expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures. Such assistance may be provided using amounts received from the Fund in the absence of a requirement to close businesses if the relevant government determines that such expenditures are necessary in response to the public health emergency.

[Relevant Excerpts from the FAQ Document, July 8th Version – Support to Individuals](#)

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 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.

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.

Links

<https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>, 6/30/20 Version, Pages 1, 2, 3 and 4

<https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked-Questions.pdf>, June 24, 2020 version, 7/8/20 Version, Pages 4, 5, 6 and 8