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UPDATED: Treasury Publishes FAQs – Coronavirus Relief Fund Payments for State, Local, and Tribal Governments - Ballard Spahr

The CARES Act was signed into law by President Trump on March 27, 2020. The CARES Act established a $150 billion Coronavirus Relief Fund (Fund), through which the U.S. Department of Treasury (Treasury) will make direct payments to each state, eligible units of local government, the District of Columbia, U.S. Territories (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 direct payments can be used this year to help with state and local government expenses incurred in connection with the COVID-19 pandemic. Eligible state, territorial, local and tribal governments were required to apply for direct payments from the Fund by April 17, 2020.

Treasury published the Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments on April 22, 2020 (Guidance) for recipients of direct payments from the Fund. The Guidance sets forth the Treasury's interpretations on the permissible use of Fund payments. Treasury published answers to frequently asked questions concerning the Fund to supplement the Guidance on May 4, 2020 (FAQ). The FAQ provides additional guidance regarding eligible expenditures and the administration of Fund payments.

The CARES Act only permits direct payments from the Fund to cover those costs that (i) are necessary expenditures incurred due to the public health emergency with respect to COVID-19; (ii) were not accounted for in the budget most recently approved as of March 27, 2020 (the date the CARES Act was enacted) for the government entity; and (iii) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020. The Guidance offers Treasury's interpretation of these limits and provides nonexclusive lists of examples of both eligible and ineligible expenditures. The FAQ clarifies that governments are responsible for determining what expenses are necessary and will not need to submit expenditures for Treasury's approval. The FAQ also provides answers to specific questions relating to Treasury's lists of eligible and ineligible expenditures in the Guidance.

Treasury provided additional guidance on the following topics, among others, in the FAQ:

- Types of employees whose payroll may be covered by moneys received from the Fund (Fund Payments) – 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.
- Transfers of Fund Payments to other government units – states receiving payments may transfer funds to a local government if it qualifies as a necessary expenditure incurred due to a public health emergency and meets other statutory requirements.
- Ability to use Fund Payments in conjunction with other CARES Act funding or federal funding for COVID-19 relief – expenses that have been or will be reimbursed under any federal program (including reimbursement pursuant to the CARES Act of contributions by states to state

unemployment funds), are not eligible uses of Fund payments.

- Use of Fund Payments to support unemployment insurance funds and costs – States may use Fund Payments to support unemployment insurance funds separate and apart from the State's obligation to the unemployment insurance fund as an employer to the extent costs incurred by the unemployment insurance fund are incurred due to COVID-19, and may also use Fund Payments for unemployment insurance costs incurred by the State as an employer if such costs will not be reimbursed by the federal government otherwise under another program.
- Inability of governments to use Fund Payments for government revenue replacement or capital improvement projects – Fund Payments may not be used for government revenue replacement, including meeting tax obligations or paying unpaid utility fees, or for capital improvement projects if they are not necessary expenditures incurred due to COVID-19.
- Return of unspent Fund Payments to Treasury – recipients must return to Treasury unspent Fund Payments or amounts received from the Fund that have not been used in a manner consistent with the Guidance and section 601(d) of the Social Security Act.
- Deposit of Fund Payments in interest bearing accounts – permitted as long as the recipient uses the interest earned or other proceeds of the investment only to cover expenditures incurred in accordance with the Guidance and section 601(d) of the Social Security Act.

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