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

The U.S. Department of the Treasury (Treasury) recently updated its frequently asked questions (FAQ) related to the CARES Act. Treasury published the Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments (Guidance) originally on April 22, 2020, and updated the Guidance on September 2, 2020, for recipients of direct payments from the $150 billion Coronavirus Relief Fund (Fund). The Guidance sets forth Treasury's interpretations on the permissible use of payments from the Fund (Fund Payments). Treasury published the FAQ concerning the Fund to supplement the Guidance on May 4, 2020, and has updated it several times through October 19, 2020. The FAQ provides additional guidance regarding eligible expenditures and the administration of Fund Payments.

The Act was signed into law by President Trump on March 27, 2020. The Act established the Fund, through which 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. According to a recent survey of 42 states and territories published by the National Governor's Association, nearly 90% of the Fund Payments have been allocated and approximately 62% of the Fund Payments have already been obligated. The survey respondents indicated that they are on target to spend all of the Fund Payments by the CARES Act deadline of December 30, 2020.

The CARES Act only permits direct payments from the Fund to cover those 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, 2020 (the date the CARES Act was enacted) for the government entity; and 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:

- **Safe reopening of schools** – Fund Payments may be used to cover costs with providing distance learning or for in-person learning. As an administrative convenience, Treasury will presume that expenses of up to $500 per elementary and secondary student are eligible expenses and schools do not need to document the specific use of funds up to that amount. The FAQ provides examples of permissible costs and illustrations of the $500 expense presumption.
- **Public health infrastructure** – Fund Payments may be used to upgrade public health

infrastructure, such as providing access to running water to help reduce further spread of the virus. Upgrades must be incurred by December 30, 2020.

- **Public university student refunds** – If the responsible government official determines that expenses incurred to refund higher education expenses (such as tuition, meal plans, and activities fees) to students are necessary and are incurred due to the public health emergency, then such expenses are eligible uses of the Fund Payments. Fund Payments may not be used for expenses that have been or will be reimbursed by another federal program (including the Higher Education Emergency Relief Fund administered by the Department of Education).
- **PPP or EIDL Loan** – A unit of government may use the Fund Payments to give a grant to a small business that has also received a Small Business Administration (SBA) Payment Protection Program (PPP) loan or an Economic Injury Disaster Loan (EIDL). However, the receipt of such loans would need to be taken into account when assessing whether the business' need for further assistance from Fund Payments. If the grant from Fund Payments is provided to assist with particular expenditures, the business must not have used the PPP loan or EIDL for those expenditures.
- **Types of employees whose payroll may be covered by 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. Since local governments with populations of 500,000 or less were not eligible for direct payments from the Fund, states should transfer a portion of the Fund Payments they received to such local governments. The FAQ recommends using the per capita allocation formula in the CARES Act, under which a state should distribute 45% of the Fund Payments it received to local governments within the state with a population of 500,000 or less. States may impose restrictions on transfers of funds to local governments to the extent such restrictions facilitate the state's compliance with the requirements in section 601(d) of the Social Security Act. Restrictions that do not directly concern the use of funds, such as restrictions on reopening, are not permissible.
- **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. However, a government could provide grants to electricity account holders facing economic hardship to allow them to pay their utility fees and continue to receive essential services, if the government determined this to be a necessary expenditure.
- **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. If Fund Payments are not used in a manner consistent with the Guidance and/or section 601(d) of the Social Security Act, Treasury

would seek to recoup the funds from the government that received the Fund Payment from Treasury. Accordingly, governments that transfer a portion of their Fund Payments should ensure that the recipient government uses the Fund Payments appropriately.

- **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.
- **Retention and disposition of assets purchased with Fund Payments** – Governments may retain assets purchased with Fund Payments if the purchase was consistent with the Guidance and section 601(d) of the Social Security Act. If the assets are disposed of before December 30, 2020, the proceeds are subject to the restrictions on the eligible use of Fund Payments.
- **Audits** – Fund Payments may be used to cover the expenses of an audit conducted under the Single Audit Act, subject to the limitations in the Uniform Guidance. Fund Payments are considered "other financial assistance" under the Uniform Guidance (2 C.F.R. Part 200) rather than grants. The Catalog of Federal Domestic Assistance (CFDA) number for the Fund is 21.019, pending completion of registration.

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by the Public Finance Group

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