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Coronavirus Relief Fund: Treasury Issues Guidance for Tribal Governments

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On April 22, the Department of Treasury (“Treasury”) issued Guidance for State, Territorial, Local, and Tribal Governments on the Coronavirus Relief Fund and Coronavirus Relief Fund Frequently Asked Questions (“FAQ”), providing important information relating to the \$150 billion Coronavirus Relief Fund (the “Fund”) established by the CARES Act. The Guidance followed two virtual consultations held by Treasury and a request for certification from Tribal governments of certain data, including Tribal population, land base, employees, and estimated expenditures.

Under the CARES Act, Treasury is responsible for distributing \$150 billion in payments to states, local governments, territorial governments, and Tribal governments to cover necessary unbudgeted expenditures incurred due to the COVID-19 public health emergency. The Act sets aside \$8 billion of this amount specifically for payments to Tribal governments. The April 22 Guidance and FAQ is the first direction from Treasury regarding its interpretation of the restrictions and permissible uses of the payments.

Treasury’s Guidance makes clear that Fund payments must be used for actions taken in response to the public health emergency. Such expenditures may be for direct response actions, such as addressing medical or public health needs, or “second-order effects,” such as economic support for those suffering from employment or business disruptions due to business closures. While Treasury interprets “necessary expenditures” 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,” it cautions that Fund payments may not be used to fill shortfalls in revenues.

Here’s what Tribes receiving Coronavirus Relief Funds need to know:

What Qualifies as an Eligible Expenditure?

Eligible Expenditures will be based upon costs not accounted for in your “most recently approved” budget (as of March 27, 2020).

- The “most recently approved” budget refers to a particular government’s enacted budget for the relevant fiscal period “without taking into account subsequent supplemental appropriations enacted or other budgetary adjustments made by that government in response to” COVID-19.
- 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 is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation.
- Costs are “incurred” when they are expended by the recipient to cover the costs.

Examples of Eligible Expenditures Provided by Treasury:

- *Medical Expenses.* Including costs for: COVID-19-related expenses of public hospitals and clinics; temporary medical facilities; COVID-19 testing; emergency medical response; and establishing and operating public telemedicine capabilities.
- *Public Health Expenses.* Including costs for: communication and enforcement of public health orders; acquisition and distribution of medical and protective supplies for medical personnel, child welfare and public health and safety workers; disinfection of public areas; technical assistance to local authorities on mitigation of COVID-19-related threats; public safety measures; and expenses for quarantining individuals.
- *Certain Payroll Expenses.* Including payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to COVID-19.

- *Public Health Compliance Expenses.* Including costs for actions to facilitate compliance with COVID-19-related public health measures, such as: food delivery to residents; distance learning, including technological improvements in connection with school closings; telework capabilities for public employees; paid sick and paid family and medical leave to public employees; maintaining state prisons and county jails; and care for homeless populations.
- *Economic Support Expenses.* Including costs associated with providing economic support in connection with the COVID-19 public health emergency, such as: grants to small businesses to reimburse the costs of business interruption caused by required closures; payroll support programs; and unemployment insurance costs related to the COVID-19 public health emergency, if not otherwise reimbursed by the federal government.
- *Other Expenses.* Including any other COVID-19-related expenses reasonably necessary to the function of government that satisfy the Fund's eligibility criteria.

Ineligible Expenditures as Defined by Treasury

These are expenses that would not be eligible expenditures for use of Fund Payments. As noted above, importantly, Fund payments may not be used to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify under the statute.

- *Revenue replacement.*
- *Expenses for 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*

Accounting Requirements for Payments Related to the Coronavirus Relief Fund – including Returning any Unused Funds

- Tribes must keep accounting records sufficient to demonstrate that the amount of Fund payments to the government has been used in accordance with restrictions – although no specific reporting requirement currently exists.
- Tribes may retain assets purchased with the funds so long as the purchase of the asset was consistent with eligibility requirements.
- Tribes are responsible for returning unused funds to the Treasury. As stated in Treasury's FAQ, the Inspector General of the Department of the Treasury may recoup amounts received from the Fund that have not been used in a manner consistent with section 601(d) of the Social Security Act. If a government has not used funds it has received to cover costs that were incurred by December 30, 2020, as required by the statute, those funds must be returned to the Department of the Treasury

When Will Tribes Receive the Coronavirus Relief Funds?

- Treasury has stated that the earliest date that it will distribute funds to Tribal governments is Tuesday, April 28.

Additional Guidance on Treatment of Alaska Native Corporations

- On April 23, Treasury issued additional Guidance on [Treatment of Alaska Native Corporations](#). That guidance states that "[a]fter consultation with the Department of Interior, Treasury has concluded that Alaska Native regional and village corporations as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. § 1601 et seq.] are eligible to receive payments from the Fund in the amounts to be determined by the Secretary of the Treasury."

- According to the guidance, Treasury will “take steps to account for overlaps between Alaskan Native village membership and Alaska Native corporation shareholders or other beneficiaries.” The decision to include Alaska Native corporations as entities eligible for payments under the Fund is the subject of ongoing litigation. *Confederated Tribes of the Chehalis Reservation v. Mnuchin*, No. 1:20-cv-01002 (D.D.C., filed April 17, 2020).

FOR MORE INFORMATION

Our Native Affairs team is closely monitoring Treasury’s distribution of the Coronavirus Relief Funds and working with Tribal clients to ensure appropriate accounting and compliance. Should you or your team have any questions related to the Coronavirus Relief Fund, please reach out to [Maranda Compton](#), [Ed Gehres](#), [Jonathan Simon](#), or [Andrew Vanderjack](#).

Related Documents:

- [Guidance for State, Territorial, Local, and Tribal Governments on the Coronavirus Relief Fund](#)
- [Coronavirus Relief Fund Frequently Asked Questions](#)

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