



4800 Ashford Dunwoody Road
 Dunwoody, Georgia 30338
 dunwoodyga.gov | 678.382.6700

To: Mayor and Council
 City of Dunwoody

From: J. Jay Vinicki
 Assistant City Manager

Thru: Eric Linton
 City Manager

Date: 10 August 2020

Subject: CARES Act Intergovernmental Agreement Approval and Initial Budgets

Background

This agenda item is to approve an intergovernmental agreement between DeKalb County and the cities within its boundaries and to approve the appropriation of CARES Act funding

The distribution is based off an agreement that carves out part of the overall county funding for countywide efforts, but leaves \$32.6 million to the cities distributed on a per capita basis. Dunwoody's allotment would be \$5,597,957. All spending must comply with the provisions of House Resolution 748.

The details of the eligible expense accompany this item, but in summary, they include:

- Medical expenses, such as testing;
- Public health expenses, such as protective equipment.
- Payroll expenses, such as hazard pay;
- Facilitation of compliance with public health measures, such as food delivery to vulnerable populations;
- Economic support, such as small business grants; and
- Other costs necessary for the function of government.



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CARES Category Program	Request	Note
Category 1: Medical Expenses	\$ -	NA
Category 2: Public Health	\$ 633,369	PPE and related safety efforts.
Category 3: Payroll Expense	\$ 500,000	COVID related pay and compensation.
Category 4: Actions	\$ 616,500	Vulnerable population food programs and various IT improvements.
Category 5: Economic Support	\$1,000,000	Economic grant relief programs.
Category 6: Other	\$2,848,088	Contingency.
Subtotal	\$5,597,957	

Subject to further change by Mayor and Council during the year, staff recommends setting up a CARES Act fund in compliance with guidelines established by the U.S. Department of Treasury along with projects of the following amounts:

CARES Category Program	Request	Note
Category 1: Medical Expenses	\$ -	Handled by countywide carve-out for Public Health.
Category 2: Public Health	\$ 5,000	Communication: Education efforts.
	\$ 25,000	Facilities: Improvements to lobby, reception, and court entrance area.
	\$ 4,800	Facilities: Non-police PPE supplies.
	\$ 150,000	Facilities: HVAC overhaul; permanent office changes.
	\$ 4,800	Facilities: Smaller public distribution PPE, plus extra cleaner in building.
	\$ 19,500	Facilities: Added disinfecting cleaning, weekly, including Courtroom.
	\$ 100,000	Finance: Upgrade software for remote se.
	\$ 100,000	Court: Establish virtual court.
	\$ 13,600	Parks: Additional disinfecting supplies.
	\$ 82,133	Parks: Additional cleaning.
	\$ 50,000	Parks: Changes to park facilities.
	\$ 49,000	Police: Full face respirators.
	\$ 13,700	Police: PPE supplies.
	\$ 15,836	Police: Previous PPE purchases.
Category 3: Payroll Expense	\$ 500,000	Citywide: Hazard pay and FMLA/COVID related expenses.
Category 4: Actions	\$ 50,000	Parks: Park monitoring programs.
	\$ 300,000	Vulnerable population grants, such as food and daily cost assistance.
	\$ 231,500	IT: \$100K laptop and small equipment upgrades for connectivity; \$90K desktop conversation; \$5K GIS remote laptop; \$31K council chamber remote upgrade; \$1K network redundancy; \$2K Tyler server change; \$2.5K entryway monitor;
	\$ 35,000	Previous IT purchases.
Category 5: Economic Support	\$1,000,000	Economic Grant Program
Category 6: Other	\$2,848,088	Contingency.
Total	\$5,597,957	

While the categories above will be for appropriation purposes and approval of the intergovernmental agreement, the projected detail is shown below for the benefit of discussion. Appropriating at the higher level will allow for flexibility in day-to-day implementation. Staff will

Lynn Deutsch Mayor
Eric Linton, ICMA-CM City Manager
Sharon Lowery, CMC City Clerk

Pam Tallmadge City Council Post 1
Jim Riticher City Council Post 2
Tom Lambert City Council Post 3

Stacey Harris City Council Post 4
Joe Seconder City Council Post 5
John Heneghan City Council Post 6

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report spending to the Mayor and Council on a regular basis. Movement between the large categories will require Mayor and Council approval.

Recommended Action

Approval of the intergovernmental agreement with DeKalb County and approval of the resolution of appropriations of CARES Act funding as attached. As an editorial note, the most current draft of the intergovernmental agreement is being posted with the agenda and there may be proposed modifications introduced at the Mayor and Council meeting.

CC: Linda Nabers

Lynn Deutsch Mayor
Eric Linton, ICMA-CM City Manager
Sharon Lowery, CMC City Clerk

Pam Tallmadge City Council Post 1
Jim Riticher City Council Post 2
Tom Lambert City Council Post 3

Stacey Harris City Council Post 4
Joe Seconder City Council Post 5
John Heneghan City Council Post 6

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**STATE OF GEORGIA
CITY OF DUNWOODY**

RESOLUTION 2020-XX-XX

A RESOLUTION AMENDING THE BUDGET FOR THE FISCAL YEAR 2020 FOR EACH FUND OF THE CITY OF DUNWOODY, GEORGIA, PURSUANT TO ARTICLE V, SECTION 5 OF THE CHARTER OF THE CITY, BEGINNING JANUARY 1, 2020, AND ENDING DECEMBER 31, 2020, APPROPRIATING THE AMOUNTS SHOWN IN EACH BUDGET AS EXPENDITURES, ADOPTING THE ITEM OF ANTICIPATED FUNDING SOURCES, PROHIBITING EXPENDITURES TO EXCEED APPROPRIATIONS, AND PROHIBITING EXPENDITURES FROM EXCEEDING ACTUAL FUNDING SOURCES

WHEREAS, a proposed amended budget for each of the various funds of the City has been presented to the Mayor and City Council; and

WHEREAS, the Mayor and City Council have reviewed the proposed amendment; and

WHEREAS, each of the funds has a balanced budget, such that anticipated funding sources equal or exceed proposed expenditures; and

WHEREAS, This Budget Amendment and the Budget Message pursuant to Section 5.03(a) of the City Charter have been filed in the office of the City Clerk and open for public inspection; and

WHEREAS, the Mayor and City Council intend to amend the annual budget for the Fiscal Year 2020.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Dunwoody, pursuant to their authority, as follows:

Section 1. That the City of Dunwoody, Georgia hereby amends the budget for the Fiscal Year 2020 and creates a new fund called **CARES Act** with the following projects, said budget being described below;

Revenues	Grant Funding	\$5,597,957
Expenses	Public Health	\$633,369
	Payroll Expenses	\$500,000
	Public Health Measures	\$616,500
	Economic Support	\$1,000,000
	Contingency	\$2,848,088

Section 2. That any increase or decrease in appropriations or revenue of any fund or for any department or project; the establishment of new capital projects other than those exceptions provided for herein, shall require approval of the City Council; and

**STATE OF GEORGIA
CITY OF DUNWOODY**

RESOLUTION 2020-XX-XX

Section 3. That the City Manager and his/her designee may promulgate all necessary internal rules, regulations, and policies to ensure that this Budget Resolution is followed.

SO RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DUNWOODY, GEORGIA this the 10th Day of August 2020.

Approved:

Lynn Deutsch, Mayor

Attest:

Sharon Lowery, City Clerk
Seal

Approved as to Form and Content

City Attorney

July 31, 2020

**INTERGOVERNMENTAL AGREEMENT FOR THE DISTRIBUTION AND USE
OF PROCEEDS FROM THE CORONAVIRUS RELIEF FUND**

THIS AGREEMENT is made and entered into this ___ day of ~~July~~ August, 2020, by and between DeKalb County, a political subdivision of the State of Georgia (hereinafter the “County”), and the City of Avondale Estates, the City of Brookhaven, the City of Chamblee, the City of Clarkston, the City of Decatur, the City of Doraville, the City of Dunwoody, the City of Lithonia, the City of Pine Lake, the City of Stonecrest, the City of Stone Mountain, and the City of Tucker, municipal corporations of the State of Georgia (hereinafter collectively the “Municipalities” and, individually, as the context requires, “Municipality”). This Agreement does not include the City of Atlanta, ~~the~~ portion of the City of Atlanta which is located in DeKalb County, ~~which because the City of Atlanta~~ received payment through the Coronavirus Relief Fund (“CRF”) directly from the United States Treasury.

WITNESSETH:

WHEREAS, the parties to this Agreement consist of the County and the Municipalities; and

WHEREAS, the County and the Municipalities seek to administer and distribute services and CRF proceeds in a collaborative manner to comprehensively combat the public health crises and economic impact of the coronavirus pandemic within the County’s geographic area; and

WHEREAS, on April 24, 2020, the County received \$125,341,475 in CRF proceeds, which proceeds were based on the population of both incorporated and unincorporated areas of DeKalb County (except the City of Atlanta); and

WHEREAS, the CARES Act, H.R. 748, 116th Cong. § 5001 (2020) (the “Act”), authorizes local government recipients of CRF proceeds to transfer a portion of said proceeds to political subdivisions that lie within its geographical area, including cities, for necessary expenditures incurred due to the public health emergency, so long as said expenditures meet the criteria of the Act; and

WHEREAS, the County and the Municipalities have reviewed the Act and agreed upon a method to distribute CRF proceeds ~~so that payments to the Municipalities in a manner that accounts for annexations and new cities created after the most recent decennial census;~~ and

WHEREAS, the County and the Municipalities are authorized to enter into this Agreement pursuant to the Act and related guidance published by the Treasury Department; and

WHEREAS, the County and the Municipalities are authorized to enter into this Agreement by Georgia law, specifically including Article IX, Section III, Paragraph I of the Constitution of the State of Georgia.

NOW, THEREFORE, in consideration of the mutual promises and understandings made in this Agreement, and for other good and valuable consideration, the County and the Municipalities consent and agree as follows:

Section 1. Representations and Mutual Covenants

- (A) The County makes the following representations and warranties which may be specifically relied upon by all parties as a basis for entering this Agreement:
 - (i) The governing authority of the County is duly authorized to execute, deliver and perform this Agreement; and
 - (ii) This Agreement is a valid, binding, and enforceable obligation of the County; and
 - (iii) The County is retaining services from the Municipalities to administer and distribute ~~CFR-CRF~~ proceeds to ensure a collaborative and comprehensive approach to combating the public health emergency and resulting economic impact;
 - (iv) The County and Municipalities intend to collaborate in making the necessary expenditures incurred due to the public health emergency and other criteria for use of CRF as described in the Act, without duplicating efforts.

- (B) Each of the Municipalities, on its own behalf, makes the following representations and warranties, which may be specifically relied upon by all parties as a basis for entering this Agreement:
 - (i) The governing authority of the Municipality is duly authorized to execute, deliver and perform this Agreement;
 - ~~(ii) This Agreement is a valid, binding, and enforceable obligation of the Municipality;~~
 - ~~(ii)~~
 - ~~(iii)~~
 - ~~(iii)~~ Each Municipality’s projects funded by CRF proceeds ~~are identified on the Municipality’s corresponding list of projects in Attachment A, which is attached hereto and incorporated herein by this reference and are necessary expenditures incurred due to the public health emergency, were not accounted for in the budget most recently approved as of March 27, 2020 for the Municipality, and were incurred during the period that begins on March 1, 2020 and ends on December 30, 2020, and meets the other criteria for use of CRF as described in the Act~~ shall comply with the ~~;~~ requirements of the Act, as interpreted and clarifications issued by the United States Treasury Department’s July 8, 2020 Frequently Asked Questions, found at <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked-Questions.pdf>, and with the CRF Guidance for State, Territorial, Local, and Tribal Governments, dated June 30, 2020, found at <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance->

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for-State-Territorial-Local-and-Tribal-Governments.pdf, and any subsequent guidance issued by the Treasury Department.

- (iv) Each Municipality certifies compliance with these eligible expenses the Act as interpreted and clarified by the Treasury Department by executing this Agreement;
 - (v) Each Municipality shall administer and distribute CRF proceeds ~~to complete the above-referenced projects~~ to complete the Municipality's portion of the County's collaborative and comprehensive approach to combating the public health emergency and resulting economic impact; and
- (C) It is the intention of the County and Municipalities to comply in all applicable respects with the Act.
- (D) The County and the Municipalities agree to maintain thorough and accurate records concerning their respective receipt and expenditure of CRF proceeds. Each Municipality agrees to maintain an accounting system integrated with adequate internal fiscal and management controls to capture and report ~~CFR-CRF~~ Funds data with accuracy, providing full accountability for revenues, expenditures, assets and liabilities. This system shall provide reasonable assurance that the Municipality is managing federal and state financial assistance programs in compliance with all applicable laws and regulations.

Commented [BD1]: This carryover language from the SPLOST IGA really isn't applicable. There are no "projects."

Section 2. Term

All CRF proceeds distributed to the Municipalities from the County must be expended by December 30, 2020 or a later date that is authorized by the Act and/or guidance issued by the Treasury Department. ~~Any CRF proceeds that are not expended by that date shall be immediately returned to the County.~~

Section 3. Effective Date and Term of this Agreement

This Agreement shall commence upon the date of its execution and shall terminate upon the later of December 30, 2020 ~~or an alternative date that is authorized by the Act.~~

Commented [BD2]: This doesn't make sense. The Act isn't going to tell the County and the Cities when the term of their agreement should end. To the extent we really need a term, I suggest we just make it December 31, 2021, which should provide more than sufficient time for all the moneys to be expended pursuant to the time frames required by the Act, as interpreted by the Treasury Department.

Section 4. County CRF; Separate Accounts; No Commingling

- (A) Each Municipality shall create a special fund to be designated as the "municipality name" Coronavirus Relief Fund. Each municipality shall select a bank with an office or branch physically located within DeKalb County which shall act as a depository and custodian of the CRF proceeds received by each Municipality upon such terms and conditions as may be acceptable to the Municipality.
- (B) All CRF proceeds shall be maintained by each Municipality in the separate accounts or funds established pursuant to this Section. CRF proceeds shall not be commingled with other funds of the Municipalities and shall be used exclusively for the purposes detailed in this Agreement. No funds other than CRF proceeds

Commented [BD3]: Need clarification from Law Department. The terms "funds" and "accounts" are used interchangeably and confusingly, but they are different accounting concepts.

and accrued interest shall be placed in such funds or accounts.

Section 5. Procedure for Disbursement of CRF Proceeds

- (A) Within ten (10) days of the effective date of this Agreement, the County shall disburse to the Municipalities ~~The portion of the CRF proceeds received by the County that will be distributed to the Municipalities~~ in the following agreed amounts shall be distributed to the Municipalities pursuant to the percentages of the overall amount received by the County as set forth below:

DRAFT

CARES Act Coronavirus Relief Fund - Allocation by City		
Recipient	Allocation \$	Pct of City Share
Avondale Estates	354,891	1.09%
Brookhaven	6,300,934	19.32%
Chamblee	3,437,420	10.54%
Clarkston	1,433,288	4.39%
Decatur	2,914,440	8.93%
Doraville	1,164,256	3.57%
Dunwoody	5,597,957	17.16%
Lithonia	264,382	0.81%
Pine Lake	85,519	0.26%
Stonecrest	6,227,098	19.09%
Stone Mountain	712,391	2.18%
Tucker	4,127,920	12.65%

- (B) Upon receipt by a Municipality of CRF proceeds, each Municipality shall immediately deposit said proceeds ~~in a separate fund established by each government entity~~ in accordance with Section 4 of this Agreement. The monies in each fund shall be held and applied in accordance with the Act, which includes oversight, auditing, and reporting, each Municipalities' respective expenses.

Section 6. Audits and Records Retention

- (A) The County and each Municipality receiving CRF proceeds shall be responsible for the cost of their respective audits. All records and expenditures are subject to, and each Municipality agrees to comply with, monitoring, examinations, demand for documents, and/or audits conducted by any and all federal ~~or County~~ officials and auditors, including but not limited to, the U.S. Department of the Treasury Inspector General, ~~the County~~, or ~~their~~its duly authorized representatives or designees. Each Municipality shall maintain adequate records that enable federal ~~and County~~ officials and auditors to ensure proper accounting for all costs and performances related to this Agreement.

Municipalities that expend \$750,000.00 or more of federal funds during their fiscal year are required to submit an organization-wide financial and compliance audit report. The audit must be performed in accordance with the Government Accountability Office's Government Auditing Standards, which may be accessed online at <http://www.gao.gov/govaud/ybk01.htm>, and in accordance with 2 C.F.R. §200.514 Scope of Audit. Audit reports are currently due to the Federal Audit Clearinghouse no later than nine months after the end of the recipient's fiscal year. In addition, each such Municipality must submit the audit report to the County.

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~~If required to submit an audit report under the requirements of 2 C.F.R. § 200(f), Municipalities shall provide the County with written documentation showing that it has complied with the single audit requirements. Each Municipality shall immediately notify the County in writing at any time that it is required to conduct a single audit and provide documentation within a reasonable time period showing compliance with the single audit requirement.~~

If any audit, monitoring, investigations, review of awards or other compliance review reveals any discrepancies, inadequacies or deficiencies which are necessary to correct in order to maintain compliance with this Agreement, applicable laws, regulations, or the Municipality's obligations hereunder, each Municipality agrees to comply with all applicable State and Federal audit requirements, including proposing and submitting to the ~~County~~ State a corrective action plan to correct such discrepancies or inadequacies within thirty (30) calendar days after the Municipality's receipt of the findings. ~~The Municipality's corrective action plan is subject to the approval by the County.~~

Each Municipality understands and agrees that the Municipalities must make every effort to address and resolve all outstanding issues, findings or actions identified by federal ~~or County~~ officials and auditors through the corrective action plan or any other corrective plan. ~~Failure to address these findings promptly and adequately may result in other related requirements being imposed or other sanctions and penalties.~~ Each Municipality agrees to complete any corrective action ~~approved by the County~~ within the time period specified by the ~~County~~ State ~~and to the satisfaction of the County~~, at the sole cost of the Municipality. Each Municipality shall provide to the County ~~periodic status reports, upon reasonable request, information~~ regarding the Municipality's resolution of any audit, corrective action plan, or other compliance activity for which the Municipality is responsible that relates to the CRF proceeds.

- (B) Each Municipality shall maintain appropriate audit trails to provide accountability for all expenditures of grant funds, reporting measures, and funds received from the County under this Agreement. Audit trails maintained by the Municipalities will, at a minimum, identify the supporting documentation prepared by the Municipality to permit an audit of its accounting systems and payment verification with respect to the expenditure of any funds awarded under this grant agreement.

Each Municipality must maintain fiscal records and supporting documentation for all expenditures resulting from this grant agreement pursuant to 2 C.F.R. § 200.333 and state law. Each Municipality must retain these records and any supporting documentation for a minimum of seven (7) years ~~from the later of the completion of this project's public objective after final payment is made using CRF funds;~~ submission of the final expenditure report; or any litigation, dispute or audit related to the CRF proceeds. Records related to real property and equipment acquired with ~~CFR-CRF~~ funds must be retained for seven (7) years after final disposition. ~~The County may direct the Municipality to retain documents for longer periods of time or~~

~~to transfer certain records to the County or federal custody when it is determined that the records possess long term retention value in accordance with retention schedules approved by the County or the federal government.~~

Section 7. Repayment of Misused Funds

If the Federal Government, United States Treasury Department, and/or State of Georgia requires the repayment by the County of any of the CRF proceeds due to a violation of the Act by a Municipality, ~~said Municipality acknowledges and hereby expressly grants the authority to the DeKalb County Tax Commissioner to unilaterally deduct the amount to be repaid from the ad valorem tax proceeds to be distributed to the Municipality, and is directed to forward that amount as directed by the County, at the County's sole discretion, directly to the Federal Government, United States Treasury Department, State of Georgia, or the County as full payment for the misused CRF proceeds.~~ said Municipality shall immediately refund such sums as directed to either the County or to the United States Treasury, as directed by the applicable auditing agency.

Section 8. Notices

All notices, consents, waivers, directions, requests or other instruments or communications provided for under this Agreement shall be deemed properly given when delivered personally or sent by registered or certified United States mail, postage prepaid to the following addresses. The parties agree to give each other non-binding duplicate email notice. Future changes in address shall be effective upon written notice being given by the Municipality to the County Executive Assistant or by the County to the City Manager via certified first class U.S. mail, return receipt requested.

DeKalb County:

Chief Executive Officer
Executive Assistant
DeKalb County, Georgia
1300 Commerce Drive
Decatur, Georgia 30030

With a copy to:

County Attorney
DeKalb County, Georgia
1300 Commerce Drive
Decatur, Georgia 30030

City of Brookhaven:

Mr. Christian Sigman
City Manager
4362 Peachtree Road
Brookhaven, GA 30319

City of Avondale Estates:

~~Mr. Clai Brown~~ Patrick Bryant
City Manager
21 N. Avondale Plz.
Avondale Estates, GA 30002-13

With a copy to:

Robert E. Wilson, Esq.
Wilson, Morton & Downs LLC
125 Clairmont Avenue, Ste. 420
Decatur, GA 30030

City of Chamblee:

Jon Walker
City Manager
5468 Peachtree Road
Chamblee, GA 30341-2398

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With copy to:

Chris Balch
Balch Law Group
~~1270 Carolina St., Suite D120-315~~830 Glenwood Ave., SE
Williams, P.A.
~~Suite 510-220~~
Atlanta, GA 3031607
Road, Suite 220

With copy to:

Joe L. Fowler
Fowler, Hein, Cheatwood &
~~2970 Clairmont Road, Suite 220~~
Atlanta GA 303292970 Clairmont
Atlanta, GA 30329

City of Clarkston:

~~Keith Barker~~Robin Gomez
Arnold
City Manager
1055 Rowland Street
Clarkston, GA 30021-1711

City of Decatur:

~~Peggy Merriss~~Andrea
City Manager
509 N. McDonough Street
Decatur, GA 30030

With copy to:

Stephen G. Quinn
Wilson, Morton & Downs LLC
125 Clairmont Ave., Ste. 420
Decatur, GA 30030

With copy to:

Bryan Downs
Wilson, Morton & Downs LLC
125 Clairemont Ave., Ste. 420
Decatur, GA 30030

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City of Doraville:

Christopher Eldridge ~~Regina Williams-Gates~~

~~Interim~~ City Manager _____

3725 Park Avenue

Ashford Dunwoody Road

Doraville, GA 30340-1197

With copy to:

Cecil C. McLendon, Esq.

3725 Park Avenue

2504800 Ashford Dunwoody Road

Doraville, GA 30340

City of Lithonia:

LaThaydra Sands ~~Cheryl Foster~~

Caldwell

City Administrator

6920 Main Street

Lithonia, GA 30058

With copy to:

Winston A. Denmark, Esq.

Fincher Denmark LLC

LLC

~~8024 Fair Oaks Court~~ 100 Hartsfield Center Parkway

~~Jonesboro~~ Suite 400

~~Atlanta, GA 30236~~ 354

City of Dunwoody:

Eric Linton

City Manager

41 Perimeter Ctr. East, Suite 2504800

Dunwoody, GA 30346

With copy to:

Cecil McLendon, Esq.

~~41 Perimeter Center East, Suite~~

Dunwoody, GA 30346

City of Pine Lake:

Valerie

City Manager

462 Clubhouse Drive

Pine Lake, Georgia 30072

With copy to:

~~Laurel E. Henderson~~ Susan Moore

~~2367 N. Decatur Rd~~ Sumner Meeker

Decatur, GA 30030

14 East Broad Street

Newnan, GA 30263

City of Stone Mountain:

Ms. ChaQuias Miller Thornton

City Manager

875 Main Street

Stone Mountain, GA 30083

With copy to:

~~Joe L. Fowler~~ Jeffrey M. Strickland _____

~~Denmark, Esq. Thompson Kurrie, Jr.~~

~~Fowler, Hein, Cheatwood~~ Jarrard & Davis, L.P.

~~Fincher Denmark LLC~~ Coleman Talley LLP

~~222 Webb Street~~ & Williams, P.A.

Parkway

Suite 400 ~~3475 Lenox Road, NE, Suite 400~~

City of Stonecrest:

Michael C. Harris Plez Joyner

Deputy City Manager

3120 Stonecrest Blvd.

Stonecrest, GA 30038

With copy to:

Winston A.

100 Hartsfield Center

~~Cumming, GA 30040~~ ~~2970 Clairmont Road, Suite 220~~
~~Atlanta, GA 30354~~ ~~Atlanta, GA 30326~~
~~Atlanta, GA 30329~~

City of Tucker:

Tami Hanlin
City Manager
~~4119 Adrian Street~~ 1975 Lakeside Pkwy
Suite 350
Tucker, GA 30084

With copy to:

Brian Anderson
Anderson Legal Counsel
~~4119 Adrian Street~~
~~Tucker, GA 30084~~ 1975 Lakeside Pkwy
Suite 350
Tucker, GA 30084

Section 9. Entire Agreement

This Agreement, including any attachments or exhibits, constitutes all of the understandings and agreements existing between the County and the Municipalities with respect to the distribution and use of the proceeds from the CRF. Furthermore, this Agreement supersedes all prior agreements, negotiations and communications of whatever type, whether written or oral, between the parties hereto with respect to distribution and use of said CRF. No representation oral or written not incorporated in this Agreement shall be binding upon the County or the Municipalities.

Section 10. Amendments

This Agreement shall not be amended or modified except by agreement in writing executed by the County and the Municipalities.

Section 11. Severability, Non-Waiver, Applicable Law, and Enforceability

If a court of competent jurisdiction renders any provision of this Agreement (or portion of a provision) to be invalid or otherwise unenforceable, that provision or portion of the provision will be severed and the remainder of this Agreement will continue in full force and effect as if the invalid provision or portion of the provision were not part of this Agreement. No action taken pursuant to this Agreement should be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained in this Agreement and will not operate or be construed as a waiver of any subsequent breach, whether of a similar or dissimilar nature. This Agreement is governed by the laws of the State of Georgia without regard to conflicts of law principles thereof. Should any provision of this Agreement require judicial interpretation, it is agreed that the arbitrator or court interpreting or construing the same shall not apply a presumption

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that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation hereof.

Section 12. Compliance with Law

During the term of this Agreement, the County and each Municipality shall comply with all State and Federal law applicable to the use of the CRF proceeds, specifically including the Act.

Section 13. Defense and Hold Harmless

Each Municipality shall be responsible from the execution date or from the time of receipt of its share of the CRF ~~Proceeds~~proceeds, whichever shall be the earlier, for all injury or damage of any kind resulting from receipt or use of its share of the CRF ~~Proceeds~~proceeds. To the extent allowed by law, the Municipality shall defend and save harmless the County, its elected officials, officers, employees, agents and servants, hereinafter collectively referred to in this Section as “the County Officials,” from and against all claims or actions based upon or arising out of any damage or injury (including without limitation any injury or death to persons and any damage to property) caused by or sustained in connection with the performance of this Agreement by the Municipality or by conditions created thereby or arising out of or any way connected with receipt or use of its share of the CRF ~~Proceeds~~proceeds under this Agreement, as well as all expenses incidental to the defense of any such claims, litigation, and actions. ~~Furthermore, the Municipality shall assume and pay for, without cost to the County Officials, the defense of any and all claims, litigation, and actions suffered through any act or omission of the Municipality, or any Subcontractor, or anyone directly or indirectly employed by or under the supervision of any of them.~~ Notwithstanding any language or provision in this Agreement, the Municipality shall not be required to indemnify or defend any County Official against claims, actions, or expenses based upon or arising out of the County Officials’ sole negligence. As between the County Officials and the Municipality as the other party, the Municipality shall assume responsibility and liability for any damage, loss, or injury, including death, of any kind or nature whatever to person or property, resulting from any kind of claim made by Municipality’s employees, agents, vendors, Suppliers or Subcontractors caused by or resulting from the Municipality’s receipt and use of its share of the CRF proceeds under this Agreement, or caused by or resulting from any error, omission, or the negligent or intentional act of the Municipality, its vendors, Suppliers, or Subcontractors, or any of their officers, agents, servants, or employees. To the extent allowed by law, the Municipality shall defend and hold harmless the County Officials from and against any and all claims, loss, damage, charge, or expense to which they or any of them may be put or subjected by reason of any such damage, loss, or injury. The Municipality expressly agrees to provide a full and complete defense against any claims brought or actions filed against the County Officials, where such claim or action involves, in whole or in part, the Municipality’s receipt and use of its share of the CRF proceeds, whether such claims or actions are rightfully or wrongfully brought or filed. ~~The County has the sole discretion to choose the counsel who will provide the defense.~~ No provision of this Agreement and nothing herein shall be construed as creating any individual or personal liability on the part of any elected official, officer, employee, agent or servant of the County, nor shall the Agreement be

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construed as giving any rights or benefits hereunder to anyone other than the parties to this Agreement. The parties' obligations pursuant to this Section shall survive any termination or expiration of this Agreement. In the event any Municipality undertakes any duty to defend the County under this Agreement, or if a Court or Arbitrator orders any Municipality to undertake defense of any such claim, such Municipality shall have the sole right and option to select and retain counsel to defend such claim or allegation and any counsel selected or chosen by the County, with the exception of the County Law Department, shall have no right or ability to look to such Municipality for payment of fees or expenses related to any litigation, claim, or other obligation.

The duties and obligations of the Municipalities under this Section shall only apply to the extent such duties and obligations are allowed by law. Nothing contained in this Agreement shall be construed to be a waiver of a Municipality's sovereign immunity or any individual's qualified, good faith or official immunities. Ratification of this Agreement by a majority of a Municipality's City Council shall authorize its Mayor to execute this Agreement on behalf of such Municipality.

Section 14. Dispute Resolution

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

- (A) Claims shall be heard by a single arbitrator, unless the claim amount exceeds \$500,000, in which case the dispute shall be heard by a panel of three arbitrators. Where the claim is to be heard by single arbitrator, the arbitrator shall be selected pursuant to the list process provided for in the Commercial Arbitration Rules unless the parties to the arbitration are able to select an arbitrator independently by mutual agreement. The arbitrator shall be a lawyer with at least 10 years of active practice in commercial law and/or local government law. Where the claim is to be heard by a panel of three arbitrators, selection shall occur as follows. Within 15 days after the commencement of arbitration, the Municipality or Municipalities party to the arbitration shall select one person to act as arbitrator and the County shall select one person to act as an arbitrator. The two selected arbitrators shall then select a third arbitrator within ten days of their appointment. If the arbitrators selected by the parties are unable or fail to agree upon the third arbitrator, the third arbitrator shall be selected by the American Arbitration Association. This third arbitrator shall be a former judge in the State or Superior Courts of Georgia or a former federal district judge.
- (B) The arbitration shall be governed by the laws of the State of Georgia, including the Rules of Evidence.
- (C) The standard provisions of the Commercial Rules shall apply.

July 31, 2020

- (D) Arbitrators will have the authority to allocate the costs of the arbitration process among the parties, but will only have the authority to allocate attorneys' fees if a particular law permits them to do so, specifically including O.C.G.A. § 9-15-14.
- (E) The award of the arbitrators shall be accompanied by a written opinion that includes express findings of fact and conclusions of law.

Section 15. No Consent to Breach

No consent or waiver, express or implied, by any party to this Agreement, to any breach of any covenant, condition or duty of another party shall be construed as a consent to or waiver of any future breach of the same.

Section 16. Counterparts

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

July 31, 2020

IN WITNESS WHEREOF, the County and the Municipalities acting through their duly authorized agents have caused this Agreement to be signed, sealed and delivered for final execution by the County on the date indicated herein.

DEKALB COUNTY, GEORGIA

_____(SEAL)
MICHAEL L. THURMOND
Chief Executive Officer

ATTEST:

BARBARA SANDERS-NORWOOD, CCC
Clerk to the Board of Commissioners
and Chief Executive Officer

APPROVED AS TO SUBSTANCE:

**APPROVED AS TO FORM AND
LEGAL VALIDITY:**

ZACHARY L. WILLIAMS
Chief Operating Officer

VIVIANE H. ERNSTES
County Attorney

July 31, 2020

**CITY OF AVONDALE ESTATES,
GEORGIA**

Attest:

_____(SEAL)

Mayor

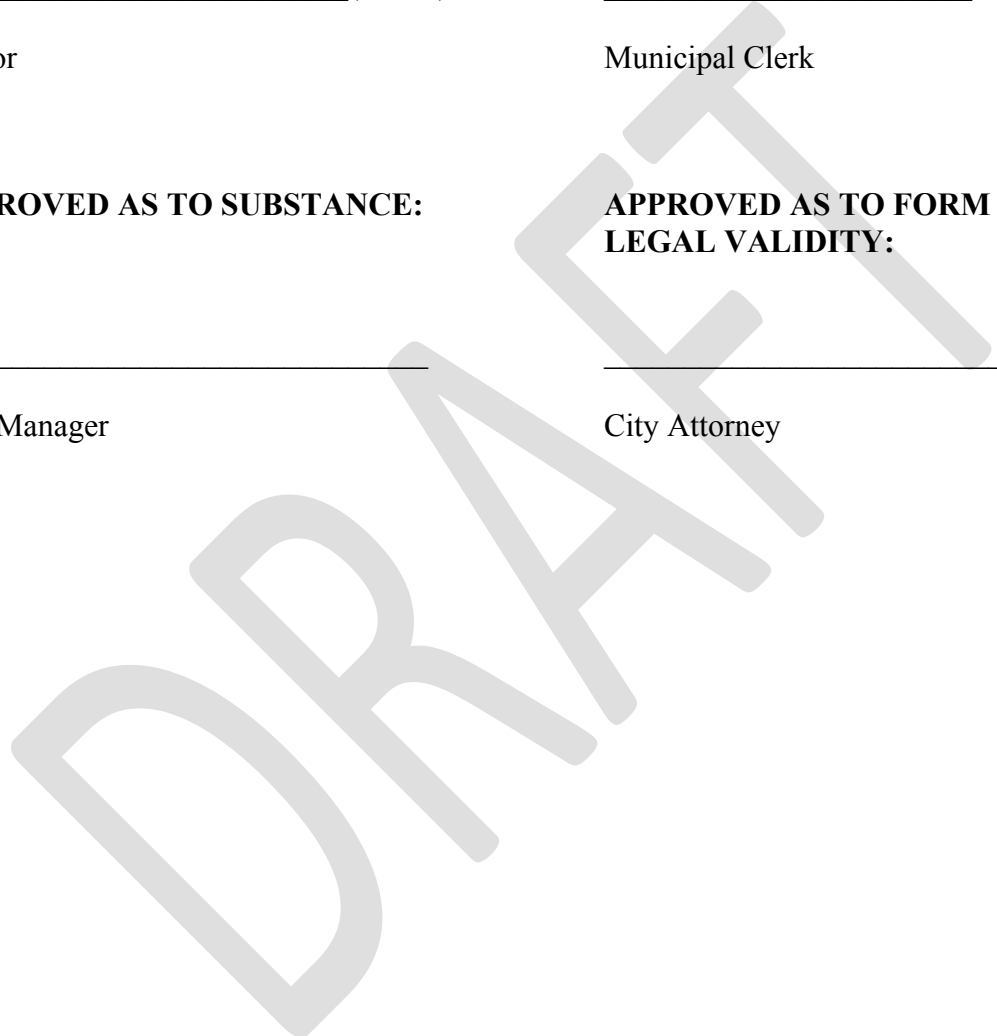
Municipal Clerk

APPROVED AS TO SUBSTANCE:

**APPROVED AS TO FORM AND
LEGAL VALIDITY:**

City Manager

City Attorney



July 31, 2020

CITY OF BROOKHAVEN, GEORGIA

Attest:

_____ (SEAL)

Mayor

Municipal Clerk

APPROVED AS TO SUBSTANCE:

**APPROVED AS TO FORM:
~~AND LEGAL VALIDITY:~~**

City Manager

City Attorney

DRAFT

July 31, 2020

CITY OF CHAMBLEE, GEORGIA

Attest:

_____ (SEAL)

Mayor

Municipal Clerk

APPROVED AS TO SUBSTANCE:

**APPROVED AS TO FORM
AND LEGAL VALIDITY:**

City Manager

City Attorney

DRAFT

July 31, 2020

CITY OF CLARKSTON, GEORGIA

Attest:

_____(SEAL)

Mayor

Municipal Clerk

APPROVED AS TO SUBSTANCE:

**APPROVED AS TO FORM
AND LEGAL VALIDITY:**

City Manager

City Attorney

DRAFT

July 31, 2020

CITY OF DECATUR, GEORGIA

Attest:

_____(SEAL)

Mayor

Municipal Clerk

APPROVED AS TO SUBSTANCE:

**APPROVED AS TO FORM
AND LEGAL VALIDITY:**

City Manager

City Attorney

DRAFT

July 31, 2020

CITY OF DORAVILLE, GEORGIA

Attest:

_____ (SEAL)

Mayor

Municipal Clerk

APPROVED AS TO SUBSTANCE:

**APPROVED AS TO FORM
AND LEGAL VALIDITY:**

City Manager

City Attorney

DRAFT

July 31, 2020

CITY OF DUNWOODY, GEORGIA

Attest:

_____(SEAL)

Mayor

Municipal Clerk

APPROVED AS TO SUBSTANCE:

**APPROVED AS TO FORM
AND LEGAL VALIDITY:**

City Manager

City Attorney

DRAFT

July 31, 2020

CITY OF LITHONIA, GEORGIA

Attest:

_____(SEAL)

Mayor

Municipal Clerk

APPROVED AS TO SUBSTANCE:

**APPROVED AS TO FORM
AND LEGAL VALIDITY:**

City Manager

City Attorney

DRAFT

July 31, 2020

CITY OF PINE LAKE, GEORGIA

Attest:

_____ (SEAL)

Mayor

Municipal Clerk

APPROVED AS TO SUBSTANCE:

**APPROVED AS TO FORM
AND LEGAL VALIDITY:**

City Manager

City Attorney

DRAFT

July 31, 2020

**CITY OF STONE MOUNTAIN,
GEORGIA**

Attest:

_____ (SEAL)

Mayor

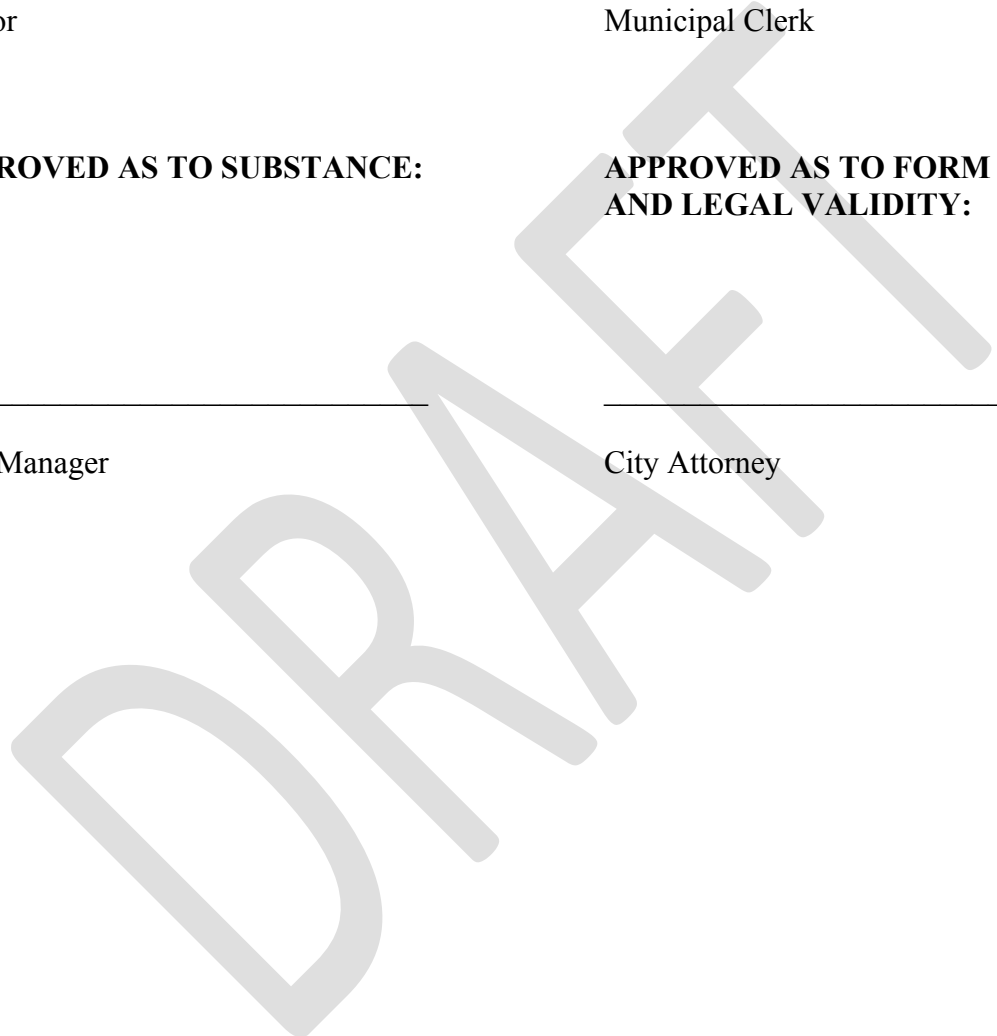
Municipal Clerk

APPROVED AS TO SUBSTANCE:

**APPROVED AS TO FORM
AND LEGAL VALIDITY:**

City Manager

City Attorney



CITY OF STONECREST, GEORGIA

Attest:

_____ (SEAL)

Mayor

Municipal Clerk

APPROVED AS TO SUBSTANCE:

**APPROVED AS TO FORM
AND LEGAL VALIDITY:**

City Manager

City Attorney

CITY OF TUCKER, GEORGIA

Attest:

_____(SEAL)

Mayor

Municipal Clerk

APPROVED AS TO SUBSTANCE:

**APPROVED AS TO FORM
AND LEGAL VALIDITY:**

City Manager

City Attorney

Coronavirus Relief Fund
Guidance for State, Territorial, Local, and Tribal Governments
Updated June 30, 2020¹

The purpose of this document is to provide guidance to recipients of the funding available under section 601(a) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). The CARES Act established the Coronavirus Relief Fund (the “Fund”) and appropriated \$150 billion to the Fund. Under the CARES Act, the Fund is to be used to make payments for specified uses to States and certain local governments; the District of Columbia and U.S. Territories (consisting of 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 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, 2020.²

The guidance that follows sets forth the Department of the Treasury’s interpretation of these limitations on the permissible use of Fund payments.

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

¹ This version updates the guidance provided under “Costs incurred during the period that begins on March 1, 2020, and ends on December 30, 2020”.

² See Section 601(d) of the Social Security Act, as added by section 5001 of the CARES Act.

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.

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

Eligible expenditures include, but are not limited to, payment for:

1. Medical expenses such as:
 - COVID-19-related expenses of public hospitals, clinics, and similar facilities.
 - Expenses of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs.
 - Costs of providing COVID-19 testing, including serological testing.
 - Emergency medical response expenses, including emergency medical transportation, related to COVID-19.
 - Expenses for establishing and operating public telemedicine capabilities for COVID-19-related treatment.
2. Public health expenses such as:
 - Expenses for communication and enforcement by State, territorial, local, and Tribal governments of public health orders related to COVID-19.
 - Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment, for medical personnel, police officers, social workers, child protection services, and child welfare officers, direct service providers for older adults and individuals with disabilities in community settings, and other public health or safety workers in connection with the COVID-19 public health emergency.
 - Expenses for disinfection of public areas and other facilities, *e.g.*, nursing homes, in response to the COVID-19 public health emergency.
 - Expenses for technical assistance to local authorities or other entities on mitigation of COVID-19-related threats to public health and safety.
 - Expenses for public safety measures undertaken in response to COVID-19.
 - Expenses for quarantining individuals.
3. Payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency.
4. Expenses of actions to facilitate compliance with COVID-19-related public health measures, such as:
 - Expenses for food delivery to residents, including, for example, senior citizens and other vulnerable populations, to enable compliance with COVID-19 public health precautions.
 - Expenses to facilitate distance learning, including technological improvements, in connection with school closings to enable compliance with COVID-19 precautions.
 - Expenses to improve telework capabilities for public employees to enable compliance with COVID-19 public health precautions.

- Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions.
 - COVID-19-related expenses of maintaining state prisons and county jails, including as relates to sanitation and improvement of social distancing measures, to enable compliance with COVID-19 public health precautions.
 - Expenses for care for homeless populations provided to mitigate COVID-19 effects and enable compliance with COVID-19 public health precautions.
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.
 - Expenditures related to a State, territorial, local, or Tribal government payroll support program.
 - Unemployment insurance costs related to the COVID-19 public health emergency if such costs will not be reimbursed by the federal government pursuant to the CARES Act or otherwise.
 6. Any other COVID-19-related expenses reasonably necessary to the function of government that satisfy the Fund's eligibility criteria.

Nonexclusive examples of ineligible expenditures³

The following is a list of examples of costs that would *not* be eligible expenditures of payments from the Fund.

1. Expenses for the State share of Medicaid.⁴
2. Damages covered by insurance.
3. Payroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency.
4. 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.
5. Reimbursement to donors for donated items or services.
6. Workforce bonuses other than hazard pay or overtime.
7. Severance pay.
8. Legal settlements.

³ In addition, pursuant to section 5001(b) of the CARES Act, payments from the Fund may not be expended for an elective abortion or on research in which a human embryo is destroyed, discarded, or knowingly subjected to risk of injury or death. The prohibition on payment for abortions does not apply to an abortion if the pregnancy is the result of an act of rape or incest; or in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed. Furthermore, no government which receives payments from the Fund may discriminate against a health care entity on the basis that the entity does not provide, pay for, provide coverage of, or refer for abortions.

⁴ See 42 C.F.R. § 433.51 and 45 C.F.R. § 75.306.

**Coronavirus Relief Fund
Frequently Asked Questions
Updated as of July 8, 2020**

The following answers to frequently asked questions supplement Treasury’s Coronavirus Relief Fund (“Fund”) Guidance for State, Territorial, Local, and Tribal Governments, dated April 22, 2020, (“Guidance”).¹ Amounts paid from the Fund are subject to the restrictions outlined in the Guidance and set forth in section 601(d) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”).

Eligible Expenditures

Are governments required to submit proposed expenditures to Treasury for approval?

No. Governments are responsible for making determinations as to what expenditures are necessary due to the public health emergency with respect to COVID-19 and do not need to submit any proposed expenditures to Treasury.

The Guidance says that funding can be used to meet payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency. How does a government determine whether payroll expenses for a given employee satisfy the “substantially dedicated” condition?

The Fund is designed to provide ready funding to address unforeseen financial needs and risks created by the COVID-19 public health emergency. For this reason, and as a matter of administrative convenience in light of the emergency nature of this program, 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, unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise.

The Guidance says that a cost was not accounted for in the most recently approved budget if the cost is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation. What would qualify as a “substantially different use” for purposes of the Fund eligibility?

Costs incurred for a “substantially different use” include, but are not necessarily limited to, costs of personnel and services that were budgeted for in the most recently approved budget but which, due entirely to the COVID-19 public health emergency, have been diverted to substantially different functions. This would include, for example, the costs of redeploying corrections facility staff to enable compliance with COVID-19 public health precautions through work such as enhanced sanitation or enforcing social distancing measures; the costs of redeploying police to support management and enforcement of stay-at-home orders; or the costs of diverting educational support staff or faculty to develop online learning capabilities, such as through providing information technology support that is not part of the staff or faculty’s ordinary responsibilities.

Note that a public function does not become a “substantially different use” merely because it is provided from a different location or through a different manner. For example, although developing online instruction capabilities may be a substantially different use of funds, online instruction itself is not a substantially different use of public funds than classroom instruction.

¹ The Guidance is available at <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>.

May a State receiving a payment transfer funds to a local government?

Yes, provided that the transfer qualifies as a necessary expenditure incurred due to the public health emergency and meets the other criteria of section 601(d) of the Social Security Act. Such funds would be subject to recoupment by the Treasury Department if they have not been used in a manner consistent with section 601(d) of the Social Security Act.

May a unit of local government receiving a Fund payment transfer funds to another unit of government?

Yes. For example, a county may transfer funds to a city, town, or school district within the county and a county or city may transfer funds to its State, provided that the transfer qualifies as a necessary expenditure incurred due to the public health emergency and meets the other criteria of section 601(d) of the Social Security Act outlined in the Guidance. For example, a transfer from a county to a constituent city would not be permissible if the funds were intended to be used simply to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify as an eligible expenditure.

Is a Fund payment recipient required to transfer funds to a smaller, constituent unit of government within its borders?

No. For example, a county recipient is not required to transfer funds to smaller cities within the county's borders.

Are recipients required to use other federal funds or seek reimbursement under other federal programs before using Fund payments to satisfy eligible expenses?

No. Recipients may use Fund payments for any expenses eligible under section 601(d) of the Social Security Act outlined in the Guidance. Fund payments are not required to be used as the source of funding of last resort. However, as noted below, recipients may not use payments from the Fund to cover expenditures for which they will receive reimbursement.

Are there prohibitions on combining a transaction supported with Fund payments with other CARES Act funding or COVID-19 relief Federal funding?

Recipients will need to consider the applicable restrictions and limitations of such other sources of funding. In addition, 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, are not eligible uses of Fund payments.

Are States permitted to use Fund payments to support state unemployment insurance funds generally?

To the extent that the costs incurred by a state unemployment insurance fund are incurred due to the COVID-19 public health emergency, a State may use Fund payments to make payments to its respective state unemployment insurance fund, separate and apart from such State's obligation to the unemployment insurance fund as an employer. This will permit States to use Fund payments to prevent expenses related to the public health emergency from causing their state unemployment insurance funds to become insolvent.

Are recipients permitted to use Fund payments to pay for unemployment insurance costs incurred by the recipient as an employer?

Yes, Fund payments may be used for unemployment insurance costs incurred by the recipient as an employer (for example, as a reimbursing employer) related to the COVID-19 public health emergency if such costs will not be reimbursed by the federal government pursuant to the CARES Act or otherwise.

The Guidance states that the Fund may support a “broad range of uses” including payroll expenses for several classes of employees whose services are “substantially dedicated to mitigating or responding to the COVID-19 public health emergency.” What are some examples of types of covered employees?

The Guidance provides examples of broad classes of employees whose payroll expenses would be eligible expenses under the Fund. These classes of employees include public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency. Payroll and benefit costs associated with public employees who could have been furloughed or otherwise laid off but who were instead repurposed to perform previously unbudgeted functions substantially dedicated to mitigating or responding to the COVID-19 public health emergency are also covered. Other eligible expenditures include payroll and benefit costs of educational support staff or faculty responsible for developing online learning capabilities necessary to continue educational instruction in response to COVID-19-related school closures. Please see the Guidance for a discussion of what is meant by an expense that was not accounted for in the budget most recently approved as of March 27, 2020.

In some cases, first responders and critical health care workers that contract COVID-19 are eligible for workers’ compensation coverage. Is the cost of this expanded workers compensation coverage eligible?

Increased workers compensation cost to the government due to the COVID-19 public health emergency incurred during the period beginning March 1, 2020, and ending December 30, 2020, is an eligible expense.

If a recipient would have decommissioned equipment or not renewed a lease on particular office space or equipment but decides to continue to use the equipment or to renew the lease in order to respond to the public health emergency, are the costs associated with continuing to operate the equipment or the ongoing lease payments eligible expenses?

Yes. To the extent the expenses were previously unbudgeted and are otherwise consistent with section 601(d) of the Social Security Act outlined in the Guidance, such expenses would be eligible.

May recipients provide stipends to employees for eligible expenses (for example, a stipend to employees to improve telework capabilities) rather than require employees to incur the eligible cost and submit for reimbursement?

Expenditures paid for with payments from the Fund must be limited to those that are necessary due to the public health emergency. As such, unless the government were to determine that providing assistance in the form of a stipend is an administrative necessity, the government should provide such assistance on a reimbursement basis to ensure as much as possible that funds are used to cover only eligible expenses.

May Fund payments be used for COVID-19 public health emergency recovery planning?

Yes. Expenses associated with conducting a recovery planning project or operating a recovery coordination office would be eligible, if the expenses otherwise meet the criteria set forth in section 601(d) of the Social Security Act outlined in the Guidance.

Are expenses associated with contact tracing eligible?

Yes, expenses associated with contract tracing are eligible.

To what extent may a government use Fund payments to support the operations of private hospitals?

Governments may use Fund payments to support public or private hospitals to the extent that the costs are necessary expenditures incurred due to the COVID-19 public health emergency, but the form such assistance would take may differ. In particular, financial assistance to private hospitals could take the form of a grant or a short-term loan.

May payments from the Fund be used to assist individuals with enrolling in a government benefit program for those who have been laid off due to COVID-19 and thereby lost health insurance?

Yes. To the extent that the relevant government official determines that these expenses are necessary and they meet the other requirements set forth in section 601(d) of the Social Security Act outlined in the Guidance, these expenses are eligible.

May recipients use Fund payments to facilitate livestock depopulation incurred by producers due to supply chain disruptions?

Yes, to the extent these efforts are deemed necessary for public health reasons or as a form of economic support as a result of the COVID-19 health emergency.

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 create a “payroll support program” for public employees?

Use of payments from the Fund to cover payroll or benefits expenses of public employees are limited to those employees whose work duties are substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

May recipients use Fund payments to cover employment and training programs for employees that have been furloughed due to the public health emergency?

Yes, this would be an eligible expense if the government determined that the costs of such employment and training programs would be necessary due to the public health emergency.

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.

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.

May Fund payments be used to assist impacted property owners with the payment of their property taxes?

Fund payments may not be used for government revenue replacement, including the provision of assistance to meet tax obligations.

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.

Could Fund payments be used for capital improvement projects that broadly provide potential economic development in a community?

In general, no. If capital improvement projects are not necessary expenditures incurred due to the COVID-19 public health emergency, then Fund payments may not be used for such projects.

However, Fund payments may be used for the expenses of, for example, establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity or improve mitigation measures, including related construction costs.

The Guidance includes workforce bonuses as an example of ineligible expenses but provides that hazard pay would be eligible if otherwise determined to be a necessary expense. Is there a specific definition of “hazard pay”?

Hazard pay means additional pay for performing hazardous duty or work involving physical hardship, in each case that is related to COVID-19.

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.

May counties pre-pay with CARES Act funds for expenses such as a one or two-year facility lease, such as to house staff hired in response to COVID-19?

A government should not make prepayments on contracts using payments from the Fund to the extent that doing so would not be consistent with its ordinary course policies and procedures.

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.

Should States receiving a payment transfer funds to local governments that did not receive payments directly from Treasury?

Yes, provided that the transferred funds are used by the local government for eligible expenditures under the statute. To facilitate prompt distribution of Title V funds, the CARES Act authorized Treasury to make direct payments to local governments with populations in excess of 500,000, in amounts equal to 45% of the local government's per capita share of the statewide allocation. This statutory structure was based on a recognition that it is more administratively feasible to rely on States, rather than the federal government, to manage the transfer of funds to smaller local governments. Consistent with the needs of all local governments for funding to address the public health emergency, States should transfer funds to local governments with populations of 500,000 or less, using as a benchmark the per capita allocation formula that governs payments to larger local governments. This approach will ensure equitable treatment among local governments of all sizes.

For example, a State received the minimum \$1.25 billion allocation and had one county with a population over 500,000 that received \$250 million directly. The State should distribute 45 percent of the \$1 billion it received, or \$450 million, to local governments within the State with a population of 500,000 or less.

May a State impose restrictions on transfers of funds to local governments?

Yes, to the extent that the restrictions facilitate the State's compliance with the requirements set forth in section 601(d) of the Social Security Act outlined in the Guidance and other applicable requirements such as the Single Audit Act, discussed below. Other restrictions are not permissible.

If a recipient must issue tax anticipation notes (TANs) to make up for tax due date deferrals or revenue shortfalls, are the expenses associated with the issuance eligible uses of Fund payments?

If a government determines that the issuance of TANs is necessary due to the COVID-19 public health emergency, the government may expend payments from the Fund on the interest expense payable on TANs by the borrower and unbudgeted administrative and transactional costs, such as necessary payments to advisors and underwriters, associated with the issuance of the TANs.

May recipients use Fund payments to expand rural broadband capacity to assist with distance learning and telework?

Such expenditures would only be permissible if they are necessary for the public health emergency. The cost of projects that would not be expected to increase capacity to a significant extent until the need for distance learning and telework have passed due to this public health emergency would not be necessary due to the public health emergency and thus would not be eligible uses of Fund payments.

Are costs associated with increased solid waste capacity an eligible use of payments from the Fund?

Yes, costs to address increase in solid waste as a result of the public health emergency, such as relates to the disposal of used personal protective equipment, would be an eligible expenditure.

May payments from the Fund be used to cover across-the-board hazard pay for employees working during a state of emergency?

No. The Guidance says that funding may be used to meet payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency. Hazard pay is a form of payroll expense and is subject to this limitation, so Fund payments may only be used to cover hazard pay for such individuals.

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.

May Fund payments be used for expenditures necessary to prepare for a future COVID-19 outbreak?

Fund payments may be used only for expenditures necessary to address the current COVID-19 public health emergency. For example, a State may spend Fund payments to create a reserve of personal protective equipment or develop increased intensive care unit capacity to support regions in its jurisdiction not yet affected, but likely to be impacted by the current COVID-19 pandemic.

May funds be used to satisfy non-federal matching requirements under the Stafford Act?

Yes, payments from the Fund may be used to meet the non-federal matching requirements for Stafford Act assistance to the extent such matching requirements entail COVID-19-related costs that otherwise satisfy the Fund's eligibility criteria and the Stafford Act. Regardless of the use of Fund payments for such purposes, FEMA funding is still dependent on FEMA's determination of eligibility under the Stafford Act.

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.

May recipients use Fund payments to remarket the recipient's convention facilities and tourism industry?

Yes, if the costs of such remarketing satisfy the requirements of the CARES Act. Expenses incurred to publicize the resumption of activities and steps taken to ensure a safe experience may be needed due to

the public health emergency. Expenses related to developing a long-term plan to reposition a recipient's convention and tourism industry and infrastructure would not be incurred due to the public health emergency and therefore may not be covered using payments from the Fund.

May a State provide assistance to farmers and meat processors to expand capacity, such to cover overtime for USDA meat inspectors?

If a State determines that expanding meat processing capacity, including by paying overtime to USDA meat inspectors, is a necessary expense incurred due to the public health emergency, such as if increased capacity is necessary to allow farmers and processors to donate meat to food banks, then such expenses are eligible expenses, provided that the expenses satisfy the other requirements set forth in section 601(d) of the Social Security Act outlined in the Guidance.

The guidance provides that funding may be used to meet payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency. May Fund payments be used to cover such an employee's entire payroll cost or just the portion of time spent on mitigating or responding to the COVID-19 public health emergency?

As a matter of administrative convenience, the entire payroll cost of an employee whose time is substantially dedicated to mitigating or responding to the COVID-19 public health emergency is eligible, provided that such payroll costs are incurred by December 30, 2020. An employer may also track time spent by employees related to COVID-19 and apply Fund payments on that basis but would need to do so consistently within the relevant agency or department.

May Fund payments be used to cover increased administrative leave costs of public employees who could not telework in the event of a stay at home order or a case of COVID-19 in the workplace?

The statute 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. As stated in the Guidance, 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. If the cost of an employee was allocated to administrative leave to a greater extent than was expected, the cost of such administrative leave may be covered using payments from the Fund.

Questions Related to Administration of Fund Payments

Do governments have to return unspent funds to Treasury?

Yes. Section 601(f)(2) of the Social Security Act, as added by section 5001(a) of the CARES Act, provides for recoupment by the Department of the Treasury of 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.

What records must be kept by governments receiving payment?

A government 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.

May recipients deposit Fund payments into interest bearing accounts?

Yes, provided that if recipients separately invest amounts received from the Fund, they must use the interest earned or other proceeds of these investments only to cover expenditures incurred in accordance with section 601(d) of the Social Security Act and the Guidance on eligible expenses. If a government deposits Fund payments in a government's general account, it may use those funds to meet immediate cash management needs provided that the full amount of the payment is used to cover necessary expenditures. Fund payments are not subject to the Cash Management Improvement Act of 1990, as amended.

May governments retain assets purchased with payments from the Fund?

Yes, if the purchase of the asset was consistent with the limitations on the eligible use of funds provided by section 601(d) of the Social Security Act.

What rules apply to the proceeds of disposition or sale of assets acquired using payments from the Fund?

If such assets are disposed of prior to December 30, 2020, the proceeds would be subject to the restrictions on the eligible use of payments from the Fund provided by section 601(d) of the Social Security Act.

Are Fund payments to State, territorial, local, and tribal governments considered grants?

No. Fund payments made by Treasury to State, territorial, local, and Tribal governments are not considered to be grants but are "other financial assistance" under 2 C.F.R. § 200.40.

Are Fund payments considered federal financial assistance for purposes of the Single Audit Act?

Yes, Fund payments are considered to be federal financial assistance subject to the Single Audit Act (31 U.S.C. §§ 7501-7507) and the related provisions of the Uniform Guidance, 2 C.F.R. § 200.303 regarding internal controls, §§ 200.330 through 200.332 regarding subrecipient monitoring and management, and subpart F regarding audit requirements.

Are Fund payments subject to other requirements of the Uniform Guidance?

Fund payments are subject to the following requirements in the Uniform Guidance (2 C.F.R. Part 200): 2 C.F.R. § 200.303 regarding internal controls, 2 C.F.R. §§ 200.330 through 200.332 regarding subrecipient monitoring and management, and subpart F regarding audit requirements.

Is there a Catalog of Federal Domestic Assistance (CFDA) number assigned to the Fund?

Yes. The CFDA number assigned to the Fund is 21.019.

If a State transfers Fund payments to its political subdivisions, would the transferred funds count toward the subrecipients' total funding received from the federal government for purposes of the Single Audit Act?

Yes. The Fund payments to subrecipients would count toward the threshold of the Single Audit Act and 2 C.F.R. part 200, subpart F re: audit requirements. Subrecipients are subject to a single audit or program-

specific audit pursuant to 2 C.F.R. § 200.501(a) when the subrecipients spend \$750,000 or more in federal awards during their fiscal year.

Are recipients permitted to use payments from the Fund to cover the expenses of an audit conducted under the Single Audit Act?

Yes, such expenses would be eligible expenditures, subject to the limitations set forth in 2 C.F.R. § 200.425.

If a government has transferred funds to another entity, from which entity would the Treasury Department seek to recoup the funds if they have not been used in a manner consistent with section 601(d) of the Social Security Act?

The Treasury Department would seek to recoup the funds from the government that received the payment directly from the Treasury Department. State, territorial, local, and Tribal governments receiving funds from Treasury should ensure that funds transferred to other entities, whether pursuant to a grant program or otherwise, are used in accordance with section 601(d) of the Social Security Act as implemented in the Guidance.