



CORONAVIRUS RELIEF FUND

ABSTRACT

Analysis of Questions Raised by Local Governments
about Eligible Spending Purposes

VML Task Force

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CARES Act Funding

An Analysis of Questions on Eligible Spending

Introduction:

The information below is VML's analysis of questions raised by localities. These questions were specifically asked by City and Town Managers, local elected officials, local government attorneys, local Finance and Budget Directors, and others all concerned about the spending of federal CARES Act money appropriated to the Coronavirus Relief Fund (CRF) and possible post-spending audits undertaken by either the federal government or the Commonwealth of Virginia. The analysis does not address other provisions of the CARES Act that appropriated additional money for existing federal programs like CDBG, Public Education, FEMA, etc. *Information on these appropriations can be found in a recent [presentation](#) (beginning on page 16) made by Secretary of Finance Aubrey Layne, Jr. to the Senate Finance Committee.*

The analysis does not constitute a legal opinion but does represent the reasonable judgement of a special VML Task Force and VML policy staff. The analysis itself is based on the guidelines and FAQs issued thus far by the U.S. Department of the Treasury and by actions taken by the Commonwealth. *The Treasury Department's guidelines and other materials can be found [here](#).*

As a first-step in tracking and documenting the expenditure of federal CARES Act money, VML recommends that member localities review the work done by the [City of Falls Church](#), specifically the Excel spreadsheets dealing with COVID-19 payroll expenses and COVID-19 supply expenses. Other COVID-19 information can be found on the [VML website](#).

If you have questions or comments, or wish to share or post to the Internet, please respond to Neal Menkes at nmenkes@vml.org or to Jessica Ackerman at jackerman@vml.org. This document will be updated as new information becomes available.

In General:

There are two rules that are hard and fast regarding the use of CARES Act money. The *first rule* is that **“a cost is incurred when the responsible unit of government has expended funds to cover the cost.”** Signing a contract for goods or services that extends beyond the December 30 eligibility period means the contractual obligations due after the cutoff date cannot be paid from CARES Act funds. Think of this rule as cash accounting and not accrual or modified accrual accounting.

The *second rule* is that CARES Act funds **cannot be used to make up for local revenue shortfalls**. To do so could result in the loss of state dollars for your locality. Virginia Secretary

of Finance Aubrey Layne warned localities of this rule in his [May 12, 2020 memorandum](#) to local Chief Executive Officers, Managers, or Administrators.

Allocations were sent to states based on population. Each state received 55 percent of its share based on total state population and the remaining 45 percent was based on the local populations of each state’s cities and counties. Fairfax County as the sole locality with a population greater than 500,000 receives funds directly. All other CRF funds were distributed to the states to determine the allocations to localities. Gov. Northam used a per capita methodology for distributing roughly half of the money that can potentially be set aside for localities.

Virginia received approximately \$3.1 billion as its share of the CRF total. This amount does not include the \$200.0 million for Fairfax County.

The CARES Act provides that payments from the CRF only may 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 local governments;
3. were incurred during the period that begins on March 1, 2020 and ends on December 30, 2020. (A cost is incurred when the responsible unit of government has expended funds to cover the cost.); and
4. are used for the direct costs associated with the response to the COVID-19 pandemic and **cannot be used to make up for revenue shortfalls.**

The questions and analysis are organized into eleven broad categories:

Business Support	Spending Prioritization	Utilities
Crossed Funding Streams	Public Buildings	Wages/Benefits
Documentation	Technical Assistance	Work from Home
Nonprofit Support	Timeline	

BUSINESS SUPPORT

From federally issued guidance:

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

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.”

Question – Small Business Support: Does CARES money have to be used toward loans, or can the funds simply be grants?

In general, CARES money can be used as either loans or grants to support small businesses. However, not all small business expenses would be eligible. The questions and answers below are from the most recent federal guidance issued May 28, 2020.

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.

UTILITIES

“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.”

Question – Lost Penalty and Interest Income: Can CARES money be used to cover lost penalty and interest income for utilities?

The no revenue replacement rule applies to utilities as well as to state and local governments. This would extend to penalties and lost interest.

However, the federal guidance specifically approves subsidy grants for certain individuals to allow them to pay their utility fees and receive essential services. Although the federal guidance identifies only electricity accounts, VML believes that it is reasonable to assume that the federal guidance would apply to water, wastewater, and broadband services. [Action taken by the Virginia Department of Health](#) to require the City of Petersburg to restore water service to accounts that had been shut off indicates that utilities other than electricity are also essential in fighting COVID-19.

Question – Waste Management Costs: Can CARES money be used to support increased waste management costs resulting from increased tonnage, increased safety precautions for employees, etc.?

The Federal Guidance recognizes waste management costs as eligible expenses. It also appears that if a local government designates employees who have certain waste management duties as essential workers or as performing hazardous duty, then CRF money could be used for payroll expenses. Localities should document how the pandemic has affected/increased waste management workload, costs and operations/maintenance. The passages below are from the Federal Guidance.

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.

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.

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.

WAGES/BENEFITS

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.

Question – Eligible Hazardous Pay: What constitutes hazard pay? What positions qualify for it, and is there a limit to the amount that can be paid per person that would be reimbursable under CARES?

The federal guidance issued in early and late May does not specify a limit to the amount of hazardous pay a person can earn. It does provide a sense of who is eligible. See below.

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 “payroll 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 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.

Question – Using CRF Dollars to Replace Lost Local Dollars: Can localities eliminate public health and safety positions in their proposed FY 2021 budgets due to revenue shortages, then re-fill those positions using CARES money after the local governing body passes the budget?

No, if those positions are not substantially dedicated to fighting the COVID-19 pandemic. If those positions are substantially dedicated to responding to the health crisis, then payroll expenses for those positions would be eligible for CARES Act funding. Here is what the federal guidance says about *ineligible expenses*:

- Payroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency.
- 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.
- A local government 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.
- The CARES Act also requires that payments be used only to cover costs that were not accounted for in the budget most recently approved as of March 27, 2020. A cost meets this requirement if either (a) the cost cannot lawfully be

funded using a line item, allotment, or allocation within that budget *or* (b) the cost 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.
- *The federal terminology “most recently approved budget” based on a date of March 27 is confusing. In Virginia, eligible expenses will overlap two separate fiscal years (FY20 and FY21). VML believes it would be prudent to treat FY21 in the same manner as FY20. In other words, don’t use the CRF money to replace local dollars, do use CRF money for eligible expenditures in FY21 as in FY20, do record expenditures and document as necessary through December 30, and do not expect CRF reimbursements for costs that are paid after December 30.*

NONPROFITS

Question – Paying for Homeless Facilities: Can CARES Act funds be used to house the homeless?

Yes. Federal guidance answers the question.

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.

Question – Housing Assistance for Undocumented Immigrants: If CARES funding is provided to a nonprofit for housing support, does the nonprofit have to limit availability of housing to documented residents/citizens?

The answer is far from clear-cut. Under the 1996 federal Personal Responsibility and Work Opportunity Reconciliation Act, it is [illegal to give public funds to undocumented immigrants](#), establishing comprehensive restrictions on immigrant eligibility for federal public benefits

because — according to the act — “It is a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits.”

However, the law does spell out [exceptions to the policy](#), including exceptions for medical assistance under Title XIX of the Social Security Act for care that is necessary for the treatment of an emergency medical condition and public health assistance for immunizations or for testing or treatment of communicable disease symptoms. And Section 1903(v)(3) of the Social Security Act provides that the term “emergency medical condition” means a medical condition manifesting itself with acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in —

- placing the patient’s health in serious jeopardy;
- serious impairment to bodily functions; or
- serious dysfunction of any bodily organ or part.

Whether the exception can be leveraged to include housing assistance or to provide housing assistance for the undocumented parents of children who are citizens will have to be [sorted out in federal courts](#) unless Congress acts.

To avoid an unfavorable audit, a locality may want to explore using local dollars to pay for housing services for the undocumented and CRF money for citizens and legal residents.

WORK FROM HOME

Question – Local Employees Working from Home: Can CARES Act funds be used to pay salaries or expenses of local government employees who are assigned to work from home?

The answer is probably not. Let’s review the Federal Guidance. Although the guidance does not provide a direct answer to the question, it does make clear that payroll expenses for public employees are restricted to those whose duties are substantially dedicated to mitigating the COVID-19 pandemic and that across-the-board hazard pay for local employees working during the state of emergency apply to public safety, public health, health care, human services, and similar employees. Work from home local employees are not included.

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.

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 example of an ineligible expenditure relates to public employees.

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.

CROSSED FUNDING STREAMS

Question – CARES Act Money and Third-Parties: Can recipients of SBA, CDBG, etc. funds also receive CARES money?

Yes, but such allocations are not mandated by the federal legislation or guidance. Transfers are permissive and permitted if the requirements of the CARES Act and Federal Guidance are met, meaning the third-party provides services that respond to either the impacts of the public health emergency related to COVID-19 or to the pandemic's economic consequences. Services can include, but would not be limited to, housing for those in need of quarantine or who are without shelter, food drives, grants or loans to small businesses, etc.

The key item to remember is that the locality will still be responsible for any audit finding that shows transferred funds were not spent in accordance with the federal legislation. Localities should make sure that third-party spending is tracked and documented.

ATTACHMENT

Tracking COVID-19 Related Salary Expenses

The U.S. Treasury Department guidance on the CARES Act states 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.” The first and most important element in determining payroll eligibility for meeting CARES Act guidelines is to carefully track and describe employee time actually spent on COVID-related activities. Only then can each activity be examined to determine whether federal guidelines for reimbursement have been met. A timesheet tracking system is needed for this purpose.

The City of Virginia Beach uses a payroll tracking system to monitor time spent on COVID-related activities. Their Public Safety and Human Services Department employees are required to enter into the system their COVID-related activities on a daily basis.

The City of Newport News appears to use an even more comprehensive and flexible Leave and Timesheet System to track COVID-19 related work time spent by its employees some of whom may not be currently recognized under the CARES Act as eligible for hazard pay. All Newport News government employees are required to use the system and input their work data on a daily basis. Newport News uses their time and leave system to tie into and populate the payroll system. It is important to note that their system has the ability to capture explanatory notes to describe the COVID-related work activity time entered. Basically, the hours entered and described by Newport News employees are non-routine, non-regular duties that they expect could be eligible for CARES reimbursement. These are generally actions that staff needed to take to address any level of COVID responses, from the initial steps, to sustained control and containment processes, and recovery to reopening, as well as preparation for a potential next late 2020 pandemic wave. Some common themes are preparation and planning meetings, cleaning/social distancing/containment actions, staffing review and alignment, financial reviews and purchasing actions, vulnerable population actions, business grant development and recovery planning. Newport News management expects to carefully review all timesheet submissions to determine which will be submitted for final CARES Act reimbursement.

To address the need for detailed COVID-related employee activity monitoring, the city added two lines to their existing timesheet system as seen below:

- 1) COVID-19 time worked
- 2) Modified Schedule

The modified schedule timeline refers to employees who cannot do their normal work, but were still being paid, due to the COVID-19 crisis. An example would be street construction workers kept home because social distancing guidelines would not allow them to work in their normal size crew, but still being paid.

Example of Employee Weekly Timesheet (daily explanatory notes omitted)

Work Period May 25th thru May 31st							
Day of Week	Mon	Tue	Wed	Thu	Fri	Sat	Sun
Date	25-May	26-May	27-May	28-May	29-May	30-May	31-May
Scheduled Work		8	8	8	3		
Modified Schedule							
Training							
Covid-19 Time Worked		1	2	2	2		
Paid Personal Leave					4		
Holiday Granted	8						
Total Hours	8	9	10	10	9	0	0
Notes							

The following chart details the hours charged to COVID-related activities by employee department category through June 2. Detailed descriptions of these hours worked by employee and date are available in an excel spreadsheet.

COVID-19 Time Worked (Prep/Response)

City of Newport News Employee Hours Charged to COVID-19 Prep/Response

Total Hours by Department through 6/2/2020

<u>Dept Name</u>	<u># Hours</u>
BUDGET	233.00
CITY ATTY	37.00
CITY MGR	754.00
CLERK CT	161.75
COM ATTY	52.00
COM REV	85.15
COMMUNICATION	1,872.00
DEVELOPMENT	2,484.00
ENGINEERING	644.25
FINANCE	298.25
FIRE	3,973.00
GPWDC	6.00
HUM RES	446.25
HUM SVC	4,305.50
INFO TECH	2,498.90
INT AUDIT	20.75
JUV SVC	24.00
LIBRARIES	1,575.35
PARKS	3,353.00
PLANNING	9.00
POLICE	642.50
PUB WKS	4,018.75
REGISTRAR	40.00
RISK MGMT	3.00
SHERIFF	1,166.75
TREASURER	5.25
VEH SVC	631.75
WATERWORKS	967.50
Grand Total	30,308.65