



# 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](mailto:nmenkes@vml.org) or to Jessica Ackerman at [jackerman@vml.org](mailto:jackerman@vml.org). This document will be updated as new information becomes available.

### ***In General:***

- Expenditure must occur between March 1 and December 30 but invoice payment can occur after the end date but should occur within 90 days of the cost being incurred
- Costs are incurred if the activity is completed by Dec 30
- Vendor's failure to deliver by Dec 30 does not automatically prevent use of CRF fund as the reason is beyond the localities control

- Applies to sub-recipients (i.e. towns and non-profits)

On June 30, the U.S. Treasury Department [updated](#) its previously issued guidance on “Costs incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.”

According to the document, 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)*. The previous guidance declared that a cost is incurred only when the responsible unit of government had expended funds to cover the cost.

Goods delivered in the covered period need not be used during the covered period in all cases. The cost of a good delivered in December in order to be available for use in January could be covered using payment from the Coronavirus Relief Fund.

A vendor’s failure to complete delivery or services entered into a contract before December 30, 2020 will not affect the ability of the local government to use CRF dollars to cover the costs of such goods or services provided that the delay is due to circumstances beyond the local government’s control.

This much-needed flexibility does NOT apply to the use of CRF dollars to make up for local revenue shortfalls. That dictate remains in place. A violation could result in loss of state dollars for your locality as Virginia Secretary of Finance Aubrey Layne warned localities in his [May 12, 2020 memorandum](#) to local Chief Executive Officers, Managers, or Administrators. Secretary Layne reiterated this point in his [July 28, 2020 memorandum](#) to localities.

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 in the two rounds 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	

#### **Highlights of the Finance Secretary's July 28 Memorandum:**

- After the second round the state will have distributed 100 percent of the local allocations the Commonwealth received under the CARES Act providing a total of \$1.3 billion for local governments. Allocations will be based on population as was done in the first round of distributions, meaning the second round of allocations for cities and counties will be identical to the first-round amounts.
- To receive the second allocation, localities are required to submit a new certification form and complete an online survey regarding the use of the CRF funds. As soon as these two documents are fully completed and submitted, the Department of Accounts will initiate the transfer of funds to the local Treasurer. Localities may expect to receive the transfer by the state Comptroller within five business days following confirmation of receipt of these completed documents. The due date for both documents is August 10. The Northam Administration specifically wants the survey information prior to the August 18 Special Session.
- All of the same conditions and requirements that existed for the first round of CRF allocations continue for the second round of allocations.
- As in the first round, counties must ensure that an equitable share of the CRF funds it receives are shared with and granted to each town within its jurisdiction.
- The Commonwealth has partnered with Accenture to create a survey to collect data on how each locality has used or plans to use its allocation of CRF funds. The survey instrument, which must be completed online, will be made available later this week by separate communication. This communication will include instructions regarding access to and completion of the survey. For questions about completion of the survey, please contact Jason Saunders, General

Government Coordinator, Department of Planning and Budget, at [jason.saunders@dpb.virginia.gov](mailto:jason.saunders@dpb.virginia.gov). The survey sent to localities can be accessed [here](#).

## ***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. Under the [Code of Virginia](#), localities can take advantage of the powers of [industrial development and economic development authorities](#) to make these loans or grants. However, not all small business expenses would be eligible. The questions and answers below are from the 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.

### ***Question – Treatment of Small Business Loans and/or Grants as Taxable or Non-Taxable Income:***

On August 10, the U.S. Treasury Department issued additional guidance provided by the Internal Revenue Service regarding the tax treatment of CARES Act business loans and grants. The questions and responses immediately below are from the IRS.

***If governments use Fund payments as described in the Guidance to establish a grant program to support businesses, would those funds be considered gross income taxable to a business receiving the grant under the Internal Revenue Code (Code)?***

Yes. The receipt of a government grant by a business generally is not excluded from the business's gross income under the Code and therefore is taxable.

***If governments use Fund payments as described in the Guidance to establish a loan program to support businesses, would those funds be considered gross income taxable to a business receiving the loan under the Code?***

Generally, the receipt of loan proceeds is not included in gross income. However, if the government forgives all or a portion of the loan, the amount of the loan that is forgiven is generally included in gross income of the business and is taxable unless an exclusion in section 108 of the Code or other Federal law applies. If an exclusion applies, an equivalent amount of any deductions, basis, losses or other tax attributes may have to be reduced in accordance with the Code or other Federal law.

***At what point would costs be considered to be incurred in the case of a grant made by a State, local, or tribal government to cover interest and principal amounts of a loan, such as might be provided as part of a small business assistance program in which the loan is made by a private institution?***

A grant made to cover interest and principal costs of a loan, including interest and principal due after the period that begins on March 1, 2020, and ends on December 30, 2020 (the “covered period”), will be considered to be incurred during the covered period IF the full amount of the loan is advanced to the borrower within the covered period and IF the proceeds of the loan are used by the borrower to cover expenses incurred during the covered period. IF these conditions are met, the amount of the grant will be considered to have been used during the covered period for purposes of the requirement that expenses be incurred within the covered period. Such a grant would be analogous to a loan provided by the Fund recipient itself that incorporates similar loan forgiveness provisions. As with any other assistance provided by a Fund recipient, such a grant would need to be determined by the recipient to be necessary due to the 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.

***Question – Broadband Expansion:***

**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.

***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, addressing funding issues that were not otherwise addressed as of March 27. 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 (unless an invoice was received before December 30 and/or the payment is made within 90 days of the eligible cost being incurred).

### ***Question – Deferring Payroll Tax Obligations:***

**How does the federal August 8<sup>th</sup> Executive Order allowing the deferral of payroll taxes for qualified workers apply to localities?**

According to guidance issued by the Secretary of the Treasury following the August 8<sup>th</sup> Presidential Memorandum, employers that are required to withhold and pay the employee share of social security tax under section 3102(a) **may** defer payment of said tax for the pay period beginning September 20, 2020 until between January 1 and March 31, 2021. This temporary suspension of payment would apply to positions earning within a \$4,000 maximum threshold over a biweekly pay period. However, because there are still questions regarding the legality of the order, VML recommends that localities wait to defer payment until after further legal or legislative action at the federal level takes place.

## ***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.

**May payments from the Coronavirus Relief Fund cover day and/or educational care providers (either local government staff or private or non-profit contractors) for children or elders for local government personnel other than Public Safety, Human Services, and Public Health employees?**

A qualified yes. The broadly stated legislative purpose of the CARES Act is to provide fast and direct economic assistance for American workers and families, small businesses, and preserve jobs for American industries.

In today's economy, particularly in times of economic distress, the majority of parents now work, regardless the age of their children. Most families work out of necessity because the economic climate

dictates that there must be two bread winners to pay the bills. Parents may face the danger of losing a job or missing a promotion because of illness, pregnancy, or taking care of loved ones.

The lack of quality childcare (and by extension adult daycare) are significant impediments for unemployed workers to return to the workplace or seek and accept new employment opportunities. Providing caregiver services comports with the CARES Act by allowing unemployed persons to return to work and by encouraging childcare and other caregiver services to stay in business further strengthening local economies.

The VEC acknowledges this situation regarding the payment of unemployment benefits. In a [June press release](#), the employment commission pointed out that certain circumstances such as health, *childcare or other caregiver responsibilities*, may warrant continued payments of unemployment benefits to a claimant who has refused to return to work pending the outcome of an administrative review.

Governor Northam's recently announced [Rent and Mortgage Relief Program \(RMRP\)](#) also recognizes the lack of childcare (in addition to income restrictions) as one of several situations qualifying applicants for this housing assistance program.

It is not unreasonable to permit the use of CRF dollars for these services regardless if a local government employee is or is not a first responder. However, a locality may want to put into place a sliding scale fee structure based on financial need to supplement the CRF money.

## ***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.

### ***Question – Use of CRF Dollars and Other CARES Act Money***

#### **Can localities combine CRF dollars with federal supplemental appropriations in the CARES Act for eligible expenditures? Are any localities doing so?**

The Federal Guidance issued is far from clear cut. Here are excerpts from the U.S. Treasury Department.

**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 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.

It appears that the federal and state governments do not prohibit combining CRF and federal supplemental appropriations to fund an eligible project or reimburse eligible expenditures provided that the requirements set out above are carried out. Or, CRF money can be spent separately from an existing federal grant for the same purpose. For example, the City of Falls Church uses both CRF dollars and CDBG grants to provide rental and utility assistance.

### ***Question – Use of CRF Dollars as Matching Funds***

#### **Can localities use CRF dollars to meet matching requirements for other funding sources, such as FEMA?**

Yes, CRF funds may be used toward required matches for other federal funding sources being used to address COVID-related expenses that otherwise meet CRF eligibility requirements. While localities have received verbal guidance to this effect from a variety of sources, the U.S. Department of the Treasury confirmed this in writing in its June 24, 2020 update to its [Frequently Asked Questions document](#).

In its [August 10 guidance](#), the U.S. Treasury provided additional guidance on this topic. Payments from the Fund may be used to meet the non-federal matching requirements for Robert T. Stafford Disaster Relief and Emergency Assistance Act, PL 100-707 assistance to the extent such matching requirements entail COVID- 19-related costs that otherwise satisfy the Fund's eligibility criteria and the Stafford Act. States are fully permitted to use payments from the Fund to satisfy 100% of their cost share for lost wages assistance recently made available under the Stafford Act.

## ***TECHNICAL ASSISTANCE***

### ***Question – Elections:***

**For local elections in May and June, the Department of Elections (ELECT) distributed PPE to be used in polling places. Will ELECT do the same in November, or will localities need to set aside CARES funds to ensure the safety of voters and poll workers?**

As per a June 9th memo, ELECT plans to distribute CARES funding to support COVID-related

expenses, as well as PPE, based on the total number of registered voters in each locality. Funds may only be used in connection with the November 2020 federal election and must be encumbered, if not already paid, by November 30, 2020. CARES support may cover expenses such as increased demand for absentee ballots, additional voter outreach, the purchase of safety equipment, and the hiring of temporary staff.

In a follow-up memo dated July 30<sup>th</sup>, ELECT confirmed that funding should have been released during the first week of August, based on the method by which localities usually receive funds through the state accounting system.

It is important to note, November 3, 2020 will mark the first Election Day in Virginia under the General Assembly's newly-enacted law that expands voting access to 45 days prior to any election. The extension of a lease on space to account for early voting *will not* qualify for the use of CARES funds. However, should a locality need to rent additional space to allow for adequate social distancing, buy additional protective shields for poll workers, etc., these *will* be allowable expenses.

**To what extent does ELECT anticipate a COVID-related rule overriding local ordinances on party endorsements in local elections?**

ELECT does not anticipate any new rules related to local ordinances on party endorsements. PUBLIC BUILDINGS

***Question – Capital Purchases:***

**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.

***TIMELINE***

***Question – Coronavirus Relief Fund Time Period:***

**When can CARES Act money be applied to eligible expenses? Can money from the Coronavirus Relief Fund be spent or encumbered after December 30? Can CRF dollars be used to reimburse expenses incurred before March 27, 2020?**

Federal Guidance recognizes the eligible cost period as beginning on March 1, 2020 and ending on December 30, 2020. The Commonwealth has already the amounts designated for localities. The



distribution was based on population. This means localities can use CRF money to reimburse itself for eligible expenditures. It is incumbent upon local governments to ensure the use of the funds meet the requirements set forth by the federal government.

Recordkeeping should include but not be limited to payroll time records, invoices, and/or sales receipts. The Commonwealth will hold local governments responsible and accountable for maintaining all necessary documentation to ensure adherence to federal legislation and guidelines.

The use of CRF money by governments is complicated. According to Finance Secretary Aubrey Layne's [May 12 memorandum](#), counties must ensure that an equitable share of the CRF funds it receives are shared with and granted to each town within its town jurisdiction. "Equitable share" is not defined in Secretary Layne's memorandum. It appears that some counties are basing the distribution to its towns on population.

VML recommends that towns work collaboratively with their counties to develop plans for addressing both the pandemic and the re-opening of local economies. To the extent possible, town and county spending plans and priorities should be coordinated.

### ***Question – Maximizing CRF Dollars before the Deadline:***

**Can a locality partner with another CRF-eligible entity to spend CARES Act allotments before the December 30 deadline?**

An argument can be made that Federal Guidance generally supports localities entering in partnerships with other eligible entities to spend CARES Act money. The answer below can be found in [Secretary Layne's May 12 memorandum to local officials](#). \_

**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."

By extension, it seems reasonable that Locality A can transfer some portion of its CARES Act allocation to Locality B. The critical factors are that a jointly funded project comply with the objectives of the federal legislation and guidance in 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 or received an invoice for the purchase of goods or services during the eligibility period.); 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.

## ***DOCUMENTATION***

### ***Question – Reviewing Potential CRF Expenditures:***

**Is there a best management practice for evaluating or approving proposed CARES Act expenditures?**

Neither the federal legislation nor the guidance issued by the U.S. Treasury Department and the Commonwealth of Virginia prescribe or recommend a process for pre-approving projects or expenditures eligible for CARES Act funding. It is the responsibility of local governments to ensure that the use of the money meets the demands and requirements of the federal legislation and guidance.

VML is aware that at least one locality (City of Falls Church) put into action a “Cost Recovery Team” to recommend projects and spending to the City Manager for approval. The team is comprised of agency staff from the Finance and Public Works Departments as well as the City’s Emergency Manager and the City’s Grant Manager. The Grants Manager’s usual focus is transportation funding. By adding this position to the Cost Recovery Team, the City makes use of the Grants Manager’s skills and experience as well as possible transportation projects that could be eligible for CRF dollars. If a budget amendment is required by City Council, then a submission is prepared.

Another issue to keep in mind is *procurement*. The [Virginia Public Procurement Act](#) emphasizes competitive bidding for projects, although there are exceptions such as in emergencies. Nonetheless, it is advisable for localities to work with their legal representatives and procurement officers before opening the CRF spigot. The December 30 cutoff date for spending CARES Act money will induce localities to act quickly to purchase goods and services but be aware that acting hastily could result in a bad audit.

### ***Question -- Reporting and Record Retention Requirements:***

**What information is the Treasury Department’s Office of the Inspector General requiring to monitor the receipt, disbursement, and use of Coronavirus Relief Fund payments? How will this affect local governments?**

The U.S. Treasury issued [July 2 a memorandum for Coronavirus Relief Fund Recipients](#). The document

provides the reporting and record retention requirements for the period beginning on March 1, 2020 and ending on December 30, 2020.

The document targets each prime recipient of CRF payments, requiring each prime recipient to report interim and quarterly data and other recipient data according to the requirements. The Treasury Department is working on development of a portal that is expected to be operational by September 1, 2020 for the quarterly reports. The Interim Reporting is for the period March 1 through June 30 and is due no later than July 17, 2020.

The memorandum defines “prime recipients” as including all 50 States, Units of Local Governments, the District of Columbia, U.S. Territories, and Tribal Governments that **received a direct payment** from Treasury in accordance with Title V of the Coronavirus Aid, Relief, and Economic Security Act. In Virginia, the only local government to receive a direct payment from the U.S. Treasury was Fairfax County. This means for all other Virginia localities (cities, towns and counties), the Commonwealth of Virginia is the direct recipient, whereas localities are sub-recipients for the requirements outlined below.

However, VML recommends that all cities and those towns that received payments from their counties to instruct their finance staff to familiarize themselves with the reporting requirements outlined in the July 2 memorandum. Local governments should begin to prepare the necessary financial information in accordance with the July 2 memorandum as early as possible. Doing so early will *result* in a less time- consuming workload than postponing actions until later.

The U.S. Department of Treasury issued on August 28 [an update on Coronavirus Relief Fund Reporting Requirements](#). [Additional guidance](#) was subsequently issued on September 2 (with new information on the use of CRF money for payroll and benefits) and a [revised Frequently Asked Questions](#) was also issued [September 2](#). (Questions A.53–56 were added, and Questions A.34 and A.38 were revised.)

On August 20, the Virginia Department of Accounts issued its own guidance in compliance with the updated federal requirements. The state material also deals with subrecipient monitoring.

Subrecipients of CRF funds **must register with SAM.gov as soon as possible**. Registration in SAM.gov will enable detailed sub-recipient data to be imported into Treasury's GrantSolutions portal to facilitate reporting of CRF information for the Commonwealth. For more instructions, please see the [guidance issued by Treasury on August 31](#).

It is imperative that Subrecipients complete this registration immediately. Once you have registered with SAM.gov, please email [ComplianceOversight@doa.virginia.gov](mailto:ComplianceOversight@doa.virginia.gov) and alert the Virginia Department of Accounts to the successful registration.

If the Subrecipient is unable to register in SAM.gov, please work directly with SAM.gov to resolve the issue, as the Department of Accounts (DOA) cannot help with this third-party system registration.

Subrecipients of the Commonwealth will also be responsible for reporting required quarterly information to DOA. In accordance with the guidance received from Treasury. The state will gather the following information from each locality:

1. Transferee/government unit identifying and demographic information (e.g. DUNS number and

- location)
2. Transfer date, amount, and description
  3. Related project(s)
  4. Quarterly obligation amount
  5. Quarterly expenditure information
  6. Expenditure categories:
    - Administrative Expenses
    - Budgeted Personnel and Services Diverted to a Substantially Different Use
    - COVID-19 Testing and Contact Tracing
    - Economic Support (Other than Small Business, Housing, and Food Assistance)
    - Expenses Associated with the Issuance of Tax Anticipation Notes
    - Facilitating Distance Learning
    - Food Programs
    - Housing Support
    - Improve Telework Capabilities of Public Employees
    - Medical Expenses
    - Nursing Home Assistance Payroll for Public Health and Safety Employees
    - Personal Protective Equipment
    - Public Health Expenses
    - Small Business Assistance
    - Unemployment Benefits
    - Workers' Compensation
    - Items Not Listed Above - to include other eligible expenses that are not captured in the available expenditure categories

This information has been requested in an official format via email and will have very short deadlines, in accordance with Treasury's mandated reporting windows. The first quarterly reporting information has recently been requested and will be for the March 1 - June 30, 2020 time frame. Please be prepared to furnish the information in a timely manner to allow for a thorough review at the state level.

Concurrently, the Commonwealth will be conducting subrecipient monitoring of all localities who have received CRF funds, and has begun to issue communications and instructions for its plan.

Finally, per the Code of Federal Regulations § 200.501, "A non-federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted..." Please be cognizant of this requirement, and act accordingly. For more details, please refer to the following page: <https://ecfr.io/Title-2/Section-200.501>

If you have any questions, please contact [ComplianceOversight@doa.virginia.gov](mailto:ComplianceOversight@doa.virginia.gov) or contact Amanda Simpson, CFE, Director of Compliance Oversight and Federal Reporting for the Virginia Department of Accounts. Her email address is [amanda.simpson@doa.virginia.gov](mailto:amanda.simpson@doa.virginia.gov).

*The documentation requirements issued by the U.S. Treasury Department to prove the CARES Act eligibility of personnel services costs tied to public health and public safety positions have been revised several times. The Office of the Inspector General for the Treasury Department issued on September 21 yet another set of [Frequently Asked Questions](#). Particular attention should be paid to Question #63 and Questions #70-72. The excerpts below are from the revised September 21 FAQs.*

*According to Treasury's FAQs, for administrative convenience, a State can presume that all 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 and, thus, can be covered by CRF. Will Treasury OIG or the PRAC ever question the applicability of this presumption in the audit context? If so, under what circumstances?*

*During its reviews and audits, Treasury OIG will allow the use of the administrative accommodation made in accordance Treasury's FAQs.*

*To what level of documentation will a government be held to support the reimbursement of public health and safety payroll that was "presumed" to be substantially dedicated to mitigating the emergency?*

*The recipient of CRF payments must maintain and make available to Treasury OIG upon request, all documents and financial records sufficient to establish compliance with subsection 601(d) of the Social Security Act, as amended (42 U.S.C. 801(d)). Documents/records include payroll records for the covered period March 1 through December 30, 2020. Records include, but are not limited to (1) general and subsidiary ledgers used to account for the receipt of CRF payments and subsequent disbursements; and (2) payroll, time, and human resource records to support costs incurred for payroll expenses. Please refer to the Treasury OIG memorandum, Coronavirus Relief Fund Reporting and Record Retention Requirements (OIG-20-021; July 2, 2020). These document requirements apply to supporting payroll reimbursement amounts using CRF proceeds and not to support the presumption that public health and safety payroll is substantially dedicated to mitigating the emergency.*

*Will a government have to demonstrate/substantiate that a public health or public safety employee's function/duties were in fact substantially dedicated to mitigating the emergency?*

*No, the government will not have to demonstrate/substantiate that a public health or public safety employee's function/duties were substantially dedicated to mitigating the emergency but must maintain records and documentation supporting payroll amounts reimbursed using CRF proceeds. As indicated in Treasury's Guidance, as an administrative accommodation, governments may presume that public health and public safety employees meet the substantially dedicated test, unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise. Treasury's FAQs add that 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.*

*For payroll that was accounted for in the FY2020 budget but was then "presumed" to be substantially dedicated to mitigating the emergency, will the government have to demonstrate/substantiate that a public health or public safety employee's function was a substantially different use?*

*No, the government will not have to demonstrate/substantiate that a budgeted public health or public safety employee's function was a substantially different use. As stated in Treasury's Guidance, within the category of substantially different uses, Treasury has included payroll and benefits expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID19 public health emergency. The Treasury OIG does require the government to maintain budgetary records to support the fiscal years 2019 and 2020 budgets.*

*Is the government required to perform any analysis or maintain documentation of the “substantially dedicated” conclusion for payroll expenses of public safety, public health, health care, and human service employees?*

*No, the government is not required to perform an analysis or maintain documentation of the substantially dedicated conclusion for payroll expenses of public safety, public health, health care, and human service employees. As indicated in Treasury’s Guidance, as an administrative accommodation, governments may presume that public health and public safety employees meet the substantially dedicated test, unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise. Please refer to response to question 69.*

*Treasury’s FAQs indicate 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.”*

*What level of documentation needs to be maintained to indicate the chief executive did not determine “specific circumstances indicate otherwise?”*

*No documentation of the negative assurance of the chief executive (or equivalent) is required.*

## APPENDIX

### ***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-Ma	26-Ma	27-Ma	28-Ma	29-Ma	30-Ma	31-May
Scheduled Work		8	8	8	8		
Modified Schedule							
Training							
Covid-19 Time Worked		1	2	2	2		
Paid Personal Leave						4	
Holiday Granted		3					
<b>Total Hours</b>	8	9	10	10	9		
<b>Notes</b>							



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**

<b><u>Dept Name</u></b>	<b><u># Hours</u></b>
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
<b>Grand Total</b>	<b>30,308.65</b>