

Frequently Asked Questions for Municipalities Regarding Pennsylvania Act 24 of 2020 and the CARES Act Coronavirus Relief Fund

This list of Frequently Asked Questions is based on the current statutory provisions and federal and Commonwealth guidance relating to Pennsylvania Act 24 of 2020, the Pennsylvania COVID-19 – County Relief Block Grant Program, and the federal CARES Act Coronavirus Relief Fund as of July 7, 2020. The existing guidance is limited and open to interpretation in many ways. This interpretation is subject to change and future amendments to Act 24 by the Pennsylvania General Assembly, the COVID-19 – County Relief Block Grant Program guidance issued by the Commonwealth, the CARES Act by Congress, or additional related guidance from federal agencies could change some of the following answers. The following FAQ should not be extended to cover other facts or situations not addressed in this FAQ.

1. What specific requirements does the CARES Act place on the use of Coronavirus Relief Fund money?

The Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) was enacted March 27, 2020 and established a Coronavirus Relief Fund to aid states and local governments. The County received money from the Commonwealth of Pennsylvania that it is distributing to municipalities within the County for certain permissible expenses related to the COVID-19 response and other purposes permitted by the CARES Act and Pennsylvania law.

The CARES Act establishes three main requirements for the use of Coronavirus Relief Fund money: (1) expenditures must be “necessary expenditures” incurred due to the COVID-19 public health emergency; (2) expenditures must not have been accounted for in the most recently approved budget as of March 27, 2020; and (3) the money must actually be spent in the period that started on March 1, 2020 and that ends on December 30, 2020.

2. What specific requirements does Pennsylvania Act 24 of 2020 place on the use of Coronavirus Relief Fund money distributed by the Commonwealth through the

Pennsylvania Act 24 of 2020 (“Act 24”) distributes CARES Act Coronavirus Relief Fund money to the 60 Pennsylvania counties that did not receive it directly from the U.S. Treasury due to their population. Act 24 establishes 7 categories of permissible expenditures. Those expenditures include the following:

- (1) Offsetting the cost of the County’s COVID-19 direct response, planning and outreach efforts, including the purchase of Personal Protective Equipment.
- (2) Grant programs to support certain small businesses.
- (3) Grant programs to support certain designated types of entities for costs related to assisting businesses during the COVID-19 disaster emergency.

- (4) Assistance to municipalities in the County for COVID-19 response and planning efforts, including the purchase of Personal Protective Equipment.
- (5) Behavioral health and substance abuse disorder treatment services.
- (6) Nonprofit assistance programs for tax exempt entities covered by Section 501(c)(3) or 501(c)(19) of the Internal Revenue Code of 1986.
- (7) Broadband internet deployment, with priority to unserved or underserved areas.

3. How do Pennsylvania Act 24 of 2020 and the CARES Act Coronavirus Relief Fund provisions relate to each other?

State laws like Act 24 can impose additional requirements, but cannot eliminate the underlying federal CARES Act requirements. The underlying federal CARES Act requirements apply to all expenditures of Coronavirus Relief Fund money. Through Act 24 and the COVID-19 – County Relief Block Grant Program the Commonwealth has imposed some additional restrictions.

4. Are the rules relating to the expenditure of CARES Act Coronavirus Relief Fund money/ Pennsylvania Act 24 of 2020 COVID-19 – County Relief Block Grant Program settled or are they likely to change?

Like many things related to the COVID-19 pandemic, guidance relating to the Coronavirus Relief Fund and Pennsylvania’s related COVID-19 – County Relief Block Grant Program is subject to change. Some of the limited guidance issued by the federal government has already been revised several times. The Commonwealth has not yet issued extensive guidance relating to the COVID-19 – County Relief Block Grant Program but may do so in the future.

5. Can we use Coronavirus Relief Fund money received under the COVID-19 – County Relief Block Grant Program for whatever budgetary needs may arise?

No. Coronavirus Relief Fund money must be spent in compliance with the conditions set by the CARES Act, and Act 24 places additional restrictions on such money that is distributed through the COVID-19 – County Relief Block Grant Program. Guidance issued by the U.S. Department of the Treasury (“U.S. Treasury”) provides assistance in interpreting the requirements of the CARES Act and in filling in some of the gaps where the CARES Act does not provide specific details. Money can only be spent under the conditions outlined in the CARES Act and Act 24.

The Guidance issued by the U.S. Treasury specifically states that Coronavirus Relief Fund money cannot be spent to fill shortfalls in governmental revenues in order to cover expenditures that do not qualify for reimbursement under the Coronavirus Relief Fund provisions of the CARES Act.

In addition, Coronavirus Relief Funds cannot be used to reimburse expenses that have been or will be reimbursed through any other federal program or other sources. Double reimbursement of the same expense is not permitted.

Finally, in addition to meeting the requirements set by the federal CARES Act and related U.S. Treasury guidance, Coronavirus Relief Fund money distributed through the COVID-19 – County Relief Block Grant Program must fall within one of the categories identified in Act 24 and comply with any related statutory provisions and guidance issued by the Commonwealth.

6. Can we set aside Coronavirus Relief Fund/ COVID-19 – County Relief Block Grant Program money for potential expenses in 2020?

No. Such funds must be spent no later than December 30, 2020. In order to ensure that all Act 24/Corona virus Relief Fund money is spent, the County has the discretion to set an earlier deadline for the municipal use of such funds.

7. What does it mean that the money must be spent in the period beginning on March 1, 2020 and ending on December 30, 2020?

In order for an expenditure to meet this CARES Act requirement, the expense must be incurred during the designated time period that began on March 1, 2020 and that ends on December 30, 2020. In an update provided on June 30, 2020, the U.S. Treasury indicated that payment may be made up to 90 days after an expense is incurred, which would permit December 2020 expenditures to be paid as late as 90 days later in March 2021. The U.S. Treasury also made it clear, however, that the goods or services purchased with Coronavirus Relief Fund money must actually be received or provided by December 30, 2020 (subject to a very limited exception that might potentially apply if factors outside of the control of the governmental entity spending the funds delay the receipt of the good or services until after December 30, 2020). As a general rule, municipalities should take steps to ensure goods will be received and services will be provided by the December 30, 2020 deadline. If the money is not actually spent by the applicable deadline, it must be repaid to the U.S. Treasury. The December 30, 2020 deadline must be adhered to and it is recommended that provisions be included in any contracts with providers of good and services indicating that time is of the essence and that meeting applicable deadlines is mandatory.

Your municipality will be required to repay the County for any funds that the County must repay to the Commonwealth or the U.S. Treasury

8. What does it mean that a cost was not accounted for in the most recent budget approved as of March 27, 2020?

Guidance issued by the U.S. Treasury indicates that a cost will be considered to not have been accounted for in the most recent budget approved as of March 27, 2020 if (1) it cannot lawfully be funded using a line item, allotment or allocation within the last budget approved before March 27, 2020 or (2) if a cost “is for substantially different use from any expected use of funds in such a line item, allotment or allocation.”

The most recently approved budget requirement relates to the budget as it was enacted. Subsequent supplemental appropriations or budgetary adjustments that were made in response to the COVID-19 public health emergency are not considered to be part of the last budget that was most recently approved as of March 27, 2020. As a result, expenditures that were made pursuant to a supplemental appropriation or other budgetary adjustment in response to the COVID-19 public health emergency, and that meet the other statutory qualifications, can potentially be covered by Coronavirus Relief Fund money.

9. What are some examples of costs that are “substantially different” from the expected use of funds budgeted in a line item, allotment or allocation in the most recent approved budget as of March 27, 2020?

An example of a cost that the U.S. Treasury has indicated may qualify as a “substantially different” use than what was originally expected at the time the money was originally budgeted is the cost of redeploying employees to do work they normally would not be doing such as enhanced sanitation or enforcing social distancing measures.

Another example provided by the U.S. Treasury of a “substantially different” use of previously budgeted funds is the cost of redeploying police to enforce COVID-19-related stay-at-home orders.

It is important to note that the U.S. Treasury has also indicated that a public function does not become a “substantially different” use just because it is provided from a different location (such as remotely from an employee’s home) or through a different manner (such as a training or educational program offered by telephone or video conferencing instead of through an in-person session in a classroom-like setting).

10. What if a municipality shifts money from a reserve account to pay for a COVID-19-related expense that would otherwise qualify for Coronavirus Relief Fund money?

An expense may be eligible for payment with Coronavirus Relief Fund money if it meets the requirements of the CARES Act even if the expense could have been paid for by using a reserve

account or a similar fund or account. The U.S. Treasury has clarified that a cost would not be considered to be accounted for in a budget merely because it could have been met using “a budget stabilization fund, rainy day fund or similar reserve account.”

11. How is it determined that an expenditure is a “necessary expenditure” incurred due to the COVID-19 public health emergency?

The April 22, 2020 guidance issued by the U.S. Treasury indicates that permissible uses of the Coronavirus Relief Fund include “COVID-19-related expenses reasonably necessary to the function of government that satisfy the Fund’s eligibility criteria.” In subsequent guidance, the U.S. Treasury indicated that it broadly interprets the term “necessary” to mean that “that the expenditure is reasonably necessary for its intended use in the reasonable judgment of the government officials responsible for spending Fund payments.” As a result, although expenditures must always meet three requirements outlined in the CARES Act and must be related to the COVID-19 public health emergency, the County has considerable discretion to determine what is reasonably necessary to respond to the COVID-19 emergency.

12. Some of our employees have taken leave under the Emergency Paid Sick Leave Act and the Emergency Paid Family and Medical Leave Expansion Act provisions of the Families First Coronavirus Response Act. Can Coronavirus Relief Fund money be used to cover the cost of that leave as part of our COVID-19 response?

Yes. Under the currently limited guidance from the Commonwealth, there is a basis for concluding that this is an expenditure related to a municipality’s COVID-19 response that is permitted by Act 24. In addition, the U.S. Treasury has indicated that Coronavirus Relief Fund money can be used to cover the cost of leave taken by governmental employees under the Emergency Paid Sick Leave Act and the Emergency Paid Family and Medical Leave Expansion Act provisions of the Families First Coronavirus Response Act (“FFCRA”). This is significant for governmental employers because they are not eligible for tax credits that private employers can use to offset the cost of such FFCRA leave.

13. Our Municipality uses the “reimbursable method” for unemployment compensation costs and essentially self-insures unemployment compensation benefits by reimbursing the Commonwealth, dollar for dollar, the unemployment compensation benefits charged to our account. Can the CARES Act and the Coronavirus Relief Fund provide any assistance with our unemployment compensation costs?

Under the currently limited guidance from the Commonwealth, there is a basis for concluding that this is an expenditure related to a municipality’s COVID-19 response that is permitted by Act 24.

Potentially 100% of your unemployment costs could be covered through two different parts of the CARES Act. Section 2103 of the CARES Act provides assistance for employers that use the “reimbursable method” or, in other words, are self-insured for unemployment insurance compensation purposes instead of paying unemployment compensation taxes. Typically employers using the reimbursable method repay the Commonwealth for all of the unemployment compensation benefits charged to their account. With COVID-19 pandemic-related layoffs and unemployment compensation claims skyrocketing, this arrangement, while very common, is particularly concerning for such governmental employers that do not pay the annual solvency fee that would permit them to obtain relief from charges. Section 2103 of the CARES Act provides a 50% reimbursement of unemployment compensation benefits paid by employers using the reimbursable method from March 13, 2020 through December 31, 2020. The reimbursements will be paid to the States and then passed on to employers. Pennsylvania addressed these issues at the state level in Act 9 of 2020.

The other 50% of a reimbursable employer’s COVID-19 unemployment costs can potentially be covered by Coronavirus Relief Fund money under Section 5001 of the CARES Act, so long as the money is spent in the period running from March 1, 2020 through December 30, 2020 (which is slightly different than the time period that applies under Section 2103). The U.S. Treasury has indicated that Coronavirus Relief Funds can be used for an employer’s unemployment compensations 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.” Coronavirus Relief Funds cannot be used to reimburse an employer for the 50% of unemployment benefit costs covered by Section 2103 of the CARES Act, but Coronavirus Relief Funds can be used to reimburse an employer for the other 50% of unemployment benefit costs.

14. If we apply for Coronavirus Relief Fund money through the County, will federal or Commonwealth approval of our application be required?

No. The U.S. Treasury has indicated that federal approval of individual Coronavirus Relief Fund money requests is not required. At this time the same is true of the Commonwealth. The County will be making decisions relating to the approval or denial of requests for Coronavirus Relief Fund money by municipalities in the County.

15. What happens to unspent Coronavirus Relief Fund money?

Unspent Coronavirus Relief Fund money must be returned to the U.S. Treasury.

16. What happens if Coronavirus Relief Fund money is spent improperly?

Any Coronavirus Relief Fund money that is not spent properly must be repaid to the U.S. Treasury. The Inspector General of the U.S. Treasury oversees and monitors expenditures of Coronavirus Relief Fund money and can require that funds that were used in violation of the CARES Act be repaid to U.S. Treasury. As a result, if the County disburses money to a municipality and that money is not spent properly, the County will require the municipality to pay the money back to the County.

17. Can Coronavirus Relief Fund money be used to prepare for potential future pandemics?

Coronavirus Relief Fund money must be used on expenditures that are necessary to respond to the current COVID-19 public health emergency between March 1, 2020 and December 30, 2020. Expenditures can be made to prepare for likely future waves or outbreaks of the current COVID-19 public health emergency that occur between now and December 30. A list of Frequently Asked Questions that was most recently updated by Treasury on June 24, 2020 indicates that while “Fund payments may be used only for expenditures necessary to address the current COVID-19 public health emergency” they can be used “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.” However, expenditures that would be used solely to respond to potential future pandemics or outbreaks that occur after December 30, 2020 are not a permissible use of Coronavirus Relief Fund money.

18. Can Coronavirus Relief Fund money be used to make loans to local businesses?

Act 24 permits assistance to be provided to certain small businesses and 501(c)(3) and 501(c)(19) entities and some such entities may receive such funds from the County. A list of Frequently Asked Questions that was most recently updated by the U.S. Treasury on June 24, 2020 indicates that governmental recipients of Coronavirus Relief Fund money can use it, for example, to make loans to local hospitals or other private employers for purposes permitted by the CARES Act and related Treasury guidance. In most cases, however, such loans are not advisable because any loan amounts repaid by December 30, 2020 would have to be re-spent on permissible uses by December 30, 2020 or returned to the U.S. Treasury. Any loan amounts repaid after December 30, 2020 must be repaid to the U.S. Treasury.

19. Does the federal Single Audit Act and Uniform Guidance apply to Coronavirus Relief Fund money?

Yes. Coronavirus Relief 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. Fund payments count toward the threshold of the Single Audit Act and 2 C.F.R. part 200, subpart F re: audit requirements. Recipients would be subject to a single audit or program specific audit pursuant to 2 C.F.R. § 200.501(a) if they spend \$750,000 or more in federal awards during their fiscal year.

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

Yes, payments from the Coronavirus Relief 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.

Examples of Permissible Uses of Coronavirus Relief Fund Money

This list of Examples of Permissible Uses of Coronavirus Relief Fund Money is based on our current interpretation of the statutory provisions and federal guidance relating to the Coronavirus Relief Fund as of July 7, 2020. The Commonwealth has not issued extensive guidance under Act 24. The existing guidance from the U.S. Treasury is helpful in some cases, but is unclear and open to interpretation in many areas. This interpretation is subject to change and future amendments to the CARES Act by Congress or additional related guidance from federal agencies or the Commonwealth of Pennsylvania could change some of the following list. The following list should not be extended to address other facts or situations not addressed in this list.

As indicated previously, the Commonwealth has not issued extensive guidance regarding the proper use of Coronavirus Relief Fund money distributed through the COVID-19 – County Relief Block Grant Program. In light of the statutory language regarding such funds being properly used by the County and municipalities for COVID-19 response and planning efforts, including the purchase of Personal Protective Equipment, it currently appears that the following expenditures permitted under guidance issued by the U.S. Treasury would also qualify as proper expenditure under Act 24 as COVID-19 response activities. This interpretation is based on the guidance currently available and is subject to change as additional guidance is issued by the Commonwealth.

Section A: Examples of Permissible Coronavirus Relief Fund Expenditures

The U.S. Department of the Treasury has indicated that examples of proper Coronavirus Relief Fund expenditures include, but are not limited to, the following:

1. COVID-19 related medical expenses such as:
 - 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 blood sample testing.
 - Emergency medical response expenses, including emergency medical transportation, related to COVID-19.

2. Public health expenses such as:

- Expenses for communicating COVID-19 “stay at home” orders and other COVID-19-related public health orders.
- Expenses for enforcing COVID-19 “stay at home” orders and other COVID-19-related public health orders.
- Expenses to purchase and distribute Personal Protective Equipment (“PPE”), sanitizing products, and other similar medical and protective supplies needed to reduce the risk of COVID-19 exposure for police officers, direct service providers who work with older adults or 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 or facilities such as public or private nursing homes in your community, in response to the COVID-19 public health emergency.
- Expenses for providing technical assistance to other entities related to mitigation of COVID-19-related threats to public health and safety.
- Expenses for public safety measures undertaken in response to COVID-19. Examples include costs of placing barriers or fences to enforce social distancing or closures at public parks or other public facilities or installing Plexiglas shields and hand sanitizer pumps in public facilities.
- Expenses for quarantining individuals.

3. Where the statutory requirements have been met, certain 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.

- Payroll expenses must meet the following CARES Act requirements for the use of Coronavirus Relief Fund money: (1) expenditures must be necessary expenditures incurred due to the COVID-19 public health emergency; (2) expenditures must not have been accounted for in the most recently approved budget as of March 27, 2020; and (3) the

cost must be incurred in the period that started on March 1, 2020 and ends on December 30, 2020.

- Where the requirements of the CARES Act are met, the U.S. Treasury has indicated that Coronavirus Relief Fund money can be used for certain 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 U.S. Treasury has further indicated that if payroll costs are not accounted for in the most recently approved budget as of March 27, 2020 and the other requirements of the CARES Act are met, it can be presumed 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. Under the law and guidance as they currently exist, this should not be interpreted so broadly as to mean such payroll costs will automatically be covered even if the other requirements of the CARES Act are not met. Rather, this guidance should be read in a way that is consistent with the CARES Act requirements.
- If an employer incurs expenses for previously unbudgeted overtime pay or previously unbudgeted hazard pay for public safety employees such as police officers or firefighters from March 1, 2020 through December 30, 2020, it can be presumed that those expenses are related to COVID-19 and those expenses can be covered with Coronavirus Relief Fund money, provided that the other CARES Act requirements outlined above are met.
- The U.S. Treasury has further indicated that “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.”
- The U.S. Treasury has also indicated that where employees are shifted from the ordinary work to “substantially different” work that is substantially dedicated to responding

to COVID-19, the CARES Act's budgetary requirement will be deemed to have been met because the originally budgeted money will be spent in a way that is "substantially different" from the expected use of the budgeted funds.

- The U.S. Treasury has indicated that the costs of redeploying employees to do work they normally would not be doing such as enhanced sanitation or enforcing social distancing measures would be a "substantially different" use of budgeted funds.
- The U.S. Treasury has indicated that the costs of redeploying police to enforce COVID-19-related stay-at-home orders is a "substantially different" use of previously budgeted funds.

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 groups, to enhance compliance with COVID-19 public health precautions.
- Expenses to improve telework capabilities for governmental employees to enable compliance with COVID-19 public health precautions.
- Expenses of providing Families First Coronavirus Response Act benefits under the Emergency Paid Sick Leave Act and the Emergency Paid Family and Medical Leave Expansion Act to governmental employees in order to further compliance with COVID-19 public health recommendations and precautions.
- Expenditures for care for homeless populations made to mitigate COVID-19 effects and enable compliance with COVID-19 public health precautions.

5. Expenses related to providing 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. *[NOTE: Delete this bullet point if the County decides that business interruption grants may not be provided by municipalities but rather will be limited to those provided by the County.]*
- Unemployment compensation costs related to the COVID-19 public health emergency if those costs will not be reimbursed by the federal government through the CARES Act or otherwise.

6. Other COVID-19-related expenses that the County determines are reasonably necessary to the function of government that satisfy the statutory eligibility criteria for the use of Coronavirus Relief Fund money.

Section B: Commonwealth COVID-19 County Relief Block Grant Requirements

The Commonwealth's Department of Community and Economic Development has indicated that pursuant to Act 24, COVID-19 County Relief Block Grant funds shall be used for the following purposes:

- Offsetting cost of direct county COVID-19 response, planning, and outreach efforts.
- Purchase of Personal Protective Equipment (PPE) in response to the COVID-19 pandemic.
- Assistance to the county's municipalities for response and planning efforts, including purchase of PPE.
- To small business grant programs for businesses with fewer than 100 employees, with priority given to those that did not receive funding through the Federal Paycheck Protection Program or the Economic Injury Disaster Loan Program established under the CARES Act.
- To tourism businesses of all sizes, including state and county fairs.
- Grant programs to support costs of assisting businesses during COVID through certain designated entities.
- Behavioral health and substance use disorder treatment services.

- Broadband deployment with priority to unserved or underserved areas.
- Nonprofit assistance programs for 501(c)(3) and 501(c)(19) organizations.

Section C: Examples of Improper Uses of Coronavirus Relief Fund Money

The U.S. Department of the Treasury has indicated that in addition to other expenditures that do not meet the requirements of the CARES Act, improper uses of Coronavirus Relief Fund money include, but are not limited to, the following:

1. Payments for damages that are covered by insurance.
2. Payroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency.
3. Expenses that have been or will be reimbursed under any federal program. This includes, but is not limited to, federal reimbursement for the portion of unemployment costs covered Section 2103 of the CARES Act.
4. Reimbursement to donors for donated items or services.
5. Workforce bonuses, with the possible exception of eligible hazard pay or overtime costs.
6. Severance pay.
7. Legal settlements.