

Frequently Asked Questions Regarding the Coronavirus Relief Fund for Municipalities in Potter County

This list of Frequently Asked Questions and Answers is based on our current interpretation of the statutory provisions and federal guidance relating to the Coronavirus Relief Fund as of May 13, 2020. 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 answers. The following FAQ should not be extrapolated to address 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”) became law on March 27, 2020 and established a Coronavirus Relief Fund to aid states and local governments. Potter County received money directly from the U.S. Treasury that it is distributing to municipalities within Potter County for certain permissible expenses related to COVID-19.

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. Can we use Coronavirus Relief Fund money for whatever budgetary needs may arise?

No. Coronavirus Relief Fund money must be spent in compliance with the conditions set by the CARES Act. 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.

The Guidance issued by the U.S. Treasury specifically states that Coronavirus Relief Fund money cannot be spent to fill shortfalls in 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.

3. 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 requirement of the CARES Act, the funds in question must actually be spent, on a cash basis, during the designated time period that ends on December 30, 2020. It is not sufficient that a contract be in place for an expenditure by December 30, 2020. If the money is not actually spent by December 30, 2020, it must be repaid to the U.S. Treasury.

4. 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.**

5. What are some examples of cost that are “substantially different” from the expected use of the Funds 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).

6. 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.”

7. 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 some additional guidance that was updated on May 4, 2020, 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, Potter County has a fair amount of discretion in determining what is reasonably necessary to respond to the COVID-19 emergency.

8. 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?

Yes. 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.

9. 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?

Yes. 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 under procedures that will be outlined in future guidance.

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.

10. If we apply for Coronavirus Relief Fund money through Potter County, will federal 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. Potter County will be making decisions relating to the approval or denial of requests for Coronavirus Relief Fund money by municipalities in Potter County.

11. Can we apply for Coronavirus Relief Fund money through the Commonwealth of Pennsylvania instead of applying through Potter County?

At this time it is not expected that the Commonwealth of Pennsylvania will make any additional Coronavirus Relief Fund money that it received available to municipalities in Potter

County. Municipalities within Potter County must apply for Coronavirus Relief Funds through Potter County.

12. What happens to unspent Coronavirus Relief Fund money?

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

13. 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 Potter 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.

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 May 13, 2020. 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 extrapolated to address other facts or situations not addressed in this list.

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 COVID19 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 money must actually be spent 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 COVID19 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. This section of the U.S. Treasury's guidance is open to interpretation, but under the law and guidance as they currently exist should not be interpreted so broadly as to mean 100% of such payroll costs will 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.

- For example, 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 31, 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 related 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.
- 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 Potter 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: 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.