

CARES Act Coronavirus Relief Fund Compliance: Enter the OIG

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On July 2, 2020, the U.S. Department of Treasury Office of Inspector General (OIG) issued a memorandum providing a glimpse into how it will monitor the receipt, disbursement, and use of financial assistance from the Coronavirus Relief Fund or CRF. Congress provided \$150 billion for the CRF through the CARES Act to provide much needed funding to state, local, and tribal governments, the District of Columbia, and U.S. territories navigating the impact of the COVID-19 outbreak. Treasury made direct CRF payments to governmental entities with populations over 500,000 with the expectation that those recipients would transfer funding to local units of government that did not meet the 500,000 population threshold. The funds may be used for expenses necessary to address the COVID-19 pandemic, including, e.g., testing and contact tracing; support for public and private hospitals; economic support to individuals and small businesses; support for distance learning; and improving telework capabilities. Now, roughly 90 days following the deadline for recipients to submit the certifications required to receive the funds, OIG has issued additional guidance on reporting and record retention requirements. As discussed below, OIG will require recipients to submit their first interim report by the end of this week—July 17, 2020.

Like many of the other resources implemented through the CARES Act, payments under the \$150 billion Treasury CRF, sometimes referred to as State CARES Act Funds, were distributed on a rapid-fire basis with little initial guidance as to how the recipients were to use the funds. States and eligible local governments were required to complete a certification by April 17 and received the funds almost immediately thereafter. Initial compliance guidance focused on three requirements: Payments from the CRF may only be used to cover costs that—

1. Are necessary expenditures incurred due to the public health emergency with respect to COVID-19;
2. Were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the state or government; and
3. Were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

Treasury has since issued guidance that construes these requirements to allow a wide variety of funding uses and projects. The Department issued the first detailed guidance on April 22 and soon followed with a Frequently Asked Questions or **FAQ** document that it has updated four times. Many states and local governments also have their own websites, guidance documents, and FAQs. Some have developed small business grant programs, with elaborate application processes and compliance protocols. Others seem to be holding the funds closer, with a focus instead on internal expenses like payroll, support for education, and public health and safety efforts.

These funds are a much-needed resource and Treasury's guidance so far has indicated a fair amount of flexibility and deference to the entity spending the money as to what is a necessary expense and how to administer CRF-funded projects. For example, Treasury has confirmed that recipients need not seek pre-approval for spending and offers wide latitude for expenses as long as the recipient determines that the expense is **necessary due to the public health emergency**. Treasury has also confirmed that CRF funds may be used for the non-federal share of FEMA Public Assistance Program grants and that CRF payments

don't have to be used as the source of funding of last resort – further adding to the beneficial use of these funds.

However, as with any government program, the devil is in the details. **It is absolutely critical that direct recipients are careful in their use and distribution of these funds.** Treasury has confirmed that, in the event it deems a use improper, it will seek to recoup the funds from the government that received the payment directly from the Treasury Department. Treasury therefore explicitly instructs these recipients to ensure that funds transferred to other entities, whether pursuant to a grant program or otherwise, are used in accordance with all applicable requirements.

On July 2, the OIG issued a memo to all CRF recipients, for the first time addressing – and confirming – its intent to monitor and oversee these funds. The OIG expressly states in the opening paragraph that it has authority to recover funding if it determines a recipient failed to comply with the applicable requirements. The memo imposes reporting requirements and confirms that recipients must retain records – all pointing to an audit process much like we have seen following other large federal disasters. And, again, all of the responsibility will fall on the direct recipient.

Treasury CRF Reporting Requirements and Timelines

- **Recipient Reporting.** Each direct recipient will be responsible for reporting of all costs incurred during the eligible time period of March 1 – December 30, 2020. Notably, the OIG is placing this responsibility on the direct recipient, not on any subrecipient(s) that may receive the funds. This means that direct recipients will need to develop and manage a reporting process that reliably captures data on costs incurred by any subrecipients so that they may comply with the OIG's requirements.
- **Initial Interim Report.** The initial reporting period will cover March 1 – June 30, 2020, with the report due no later than **July 17, 2020**. Recipients must submit the initial interim report to the OIG via email at CARES@oig.treas.gov and include the information below, and the total of the amounts listed below must equal the total of all costs incurred during this period. OIG **includes a spreadsheet** to help organize the necessary information:
 - Amount transferred to other governments;
 - Amount spent on payroll for public health and safety employees;
 - Amount spent on budgeted personnel and services diverted to a substantially different use;
 - Amount spent to improve telework capabilities of public employees;
 - Amount spent on medical expenses;
 - Amount spent on public health expenses;
 - Amount spent to facilitate distance learning;
 - Amount spent providing economic support;
 - Amount spent on expenses associated with the issuance of tax anticipation notes; and
 - Amount spent on items not listed above.
- **GrantSolutions Portal.** Future reporting will be submitted using a GrantSolutions portal to be established by the OIG. OIG requires that all direct recipients submit the names of individuals who should have access to this portal by **July 17, 2020**. The portal is expected to be operational September 1, 2020.
- **Content for Future Quarterly Reports.** Data which direct recipients must report includes, but is not limited to, the following:
 - The total amount of payments from the CRF received from Treasury;
 - The amount of funds received that were expended or obligated for each project or activity;
 - A detailed list of all projects or activities for which funds were expended or obligated, including:

- the name of the project or activity;
 - a description of the project or activity; and
- Detailed information on:
 - any loans issued;
 - contracts and grants awarded;
 - transfers made to other government entities; and
 - direct payments made by the recipient that are greater than \$50,000.
- **Future Quarterly Reporting Deadlines.** After the initial September 21, 2020 quarterly report, reports will be due 10 days after the end of each calendar quarter, as follows:
 - **September 21, 2020** – Detailed quarterly report due for the period March 1 – June 30, 2020.
 - **October 13, 2020** – Detailed quarterly report due for the period of July 1 – September 30, 2020; and
 - **January 11, 2021** – Detailed quarterly report due for the period of October 1 – December 30, 2020 (note that costs must be incurred by December 30, 2020).

Record Retention Requirements

The OIG also confirms in its memo that recipients of CRF payments must maintain and make available to the Treasury OIG upon request all documents and financial records sufficient to establish compliance with eligibility requirements applicable to these funds. The OIG includes a long list of records that may be implicated by the retention requirement and mandates that these records shall be maintained for a period of **five years after final payment is made using CRF monies**. The OIG further confirms that these requirements are applicable to all direct recipients and their grantees and subgrantees, contractors, and other levels of government that receive transfers of CRF funds.

If you have any questions, please contact one of the authors or any member of Baker Donelson's [Disaster Recovery Team](#). Also, visit the [Coronavirus \(COVID-19\): Navigating the Path Ahead](#) information page on our website.