



Montana Legislative Services Division

Legal Services Office

PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

To: Local Government Interim Committee
From: Julie Johnson, Staff Attorney
Re: Overview of CARES Act and Coronavirus Relief Fund
Date: April 30, 2020

On March 27, 2020, Congress passed the "Coronavirus Aid, Relief, and Economic Security Act" or the "[CARES Act](#)". This approximately 880-page bill offers a wide range of economic relief related to the ongoing pandemic. Funding from this \$2 trillion relief package includes:

- \$150 billion Coronavirus Relief Fund for state, local and tribal governments, including a \$1.25 billion minimum state payment
- \$1,200 economic incentive payment to many Americans and \$500 for a dependent child
- \$500 billion lending fund for businesses, cities and states
- \$30 billion for an Education Stabilization Fund for states, school districts, and institutions of higher education
- \$45 billion for the Disaster Relief Fund for the immediate needs of state, local, tribal and territorial
- \$1.4 billion for deployments of the National Guard
- \$4.3 billion, through the Centers for Disease Control and Prevention
- Expands and funds unemployment insurance from three to four months and provides temporary unemployment compensation of \$600 per week, which is in addition regular state and federal UI benefits.
- \$25 billion for transit systems to be distributed through existing formulas including the Urbanized Area Formula Grants, Formula Grants for Rural Areas, State of Good Repair Formula Grants and Growing and High-Density States Formula Grants using fiscal year 2020 apportionment formulas
- \$400 million in election security grants to prevent, prepare for, and respond to coronavirus in the 2020 federal election cycle
- Extends the deadline for full implementation of Real ID by states from Oct. 1, 2020, to Oct. 1, 2021

Coronavirus Relief Fund (CRF) Provisions

Section 5001 of the CARES Act (on page 598 of the bill) amends section 601 of the Social Security Act and appropriates \$150 billion of funding to states, tribal governments and to certain qualifying units of local government. The amount paid to a state is based on its population and the minimum payment to a state is \$1.25 billion. Montana is one of several states that has received the minimum payment. The Act also provides for direct payments to units of local governments if its population exceeds 500,000 residents. However, Montana does not have a qualifying unit of local government, and therefore, the entirety of the \$1.25 billion has been disbursed to the state.

The Act also provides for \$8 billion in payments to tribal governments. It appears the Secretary of the Treasury, in conjunction with the Secretary of the Department of the Interior the amount a tribal government will receive based on increased expenditures of the tribal government.

Section 601(d) of the Social Security Act, as amended by sec. 5001 in the CARES Act, governs the use of CRF funds and provides as follows:

A State, Tribal government, and unit of local government shall use the funds provided under a payment made under this section to cover only those costs of the State, Tribal government, or unit of local government 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 the date of enactment of this section for the State or government; and

(3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 3 2020.

Therefore, CRF funds received by the State of Montana under Section 601 of the CARES Act may only be used for necessary expenditures incurred due to the public health emergency. The funds cannot be used in place of funds that were appropriated by the Legislature in the 2019 Session. Finally, the funds must be used for expenses incurred between March 1, 2020, and the end of the calendar year.

Importantly, it is later determined that a state has failed to comply with 601(d), an amount equal to the amount of funds used in violation will be booked as a debt of the state owed to the federal government. Section 601(f)(2).

On April 22, 2020, the Department of Treasury issued [guidance](#) related to the use of CRF funds. The guidance clearly prohibits the use of the funds to replace revenue for a state or local government. However, it does allow funds to be used for the "provision of grants to small businesses to reimburse the costs of business interruption caused by required closures." Treasury has also released [Frequently Asked Questions](#) in which it allows a state to transfer CRF to a local government as long as 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. However, "[s]uch funds would be subject to recoupment by the Treasury Inspector General if they have not been used in a manner consistent with section 601(d) of the Social Security Act." Finally, the FAQ sheet clarifies that the state may transfer CRF funds to a local government unspent funds must be returned.

It is likely that more guidance related to the use of CRF funds will be issued in the coming weeks that may address how states are to work with local governments in the distribution of CRF funds.