



KUTAKROCK

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David Karnes Interpreting Eligibility of Coronavirus Relief Funds Expenses

Government Relations of counsel attorney and former U.S. Senator David K. Karnes is actively assisting local units of government regarding what constitute eligible COVID-19-related expenses under Section 601—[Coronavirus Relief Funds](#)—of the CARES Act (“CRF”), and generally how the Act relates to States and other units of government that have received, and may be eligible for, CRF federal funds.

Background

The CRF section is only eight pages among the 880 pages of the CARES Act law but includes emergency appropriation of \$150 billion of direct federal payments to each State and units of local government that have populations of 500,000 or more. These funds have already been distributed. A [memo from the Center on Budget and Policy Priorities](#) summarizes this section of the law and breaks down how much each State and qualifying unit of local government in the U.S. has received.

The unique part of this funding program is that the funds were released in advance to the eligible recipient State or local government unit on the basis of a one-page application to Treasury with the accompanying “certification” of the CEO of the State or unit of local government that they will follow the law as far as eligible disbursements between March 1, 2020 and December 30, 2020. Page 603, line 13 begins the simple three “Uses of Funds” requirements. They are to “only cover 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 (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, 2020.

Eligible Expenditures

The question now being asked by most governmental entities receiving these funds is, “What are eligible expenditures?” The critical challenge for the certifying CEOs is what constitutes COVID-19-eligible expenditures in that the only statutory guidance is that found following this summary. Treasury has issued [some guidance](#) and provided Q&A guidance on their website and in an audio Q&A briefing (Sen. Karnes was one of 50 participants on the call), but many questions remain as to what is eligible.

The nuanced interpretations of Treasury and the hundreds, if not thousands, of different situations that may or may not be COVID-19-related or were (or were not) contemplated as a part of their most recent governmental budget requires careful thought by government before and as it spends these funds. The law also states that Treasury may audit, after the fact, each recipient and require repayment of ineligibly used CRF funds.

Further, no one knows what the COVID-19 situation may look like over the next eight months until December 30, 2020.

Engagement

Based on his past Senate experience and current contacts, and having been a former Treasury employee, Sen. Karnes feels he has a sense of what Congress intended this provision to include and has a good understanding of expenditure eligibility. He has been engaged by several local and regional cities and counties to help them in their negotiations to make eligible expenditure decisions and how a process might work. In some cases where no city or county within a state meets the population requirement of 500,000 or more citizens, Sen. Karnes is helping them make their case to the governor of the state for funds. The governor—as the CEO—must make the allocation decisions for the entire state. Larger states and cities/counties have been allocated funds based on their respective populations.

Congress is now considering a fourth emergency supplemental to add another \$875 billion to these CARES funds to be available to units of local government below 500,000, and additional funds for cities and states to offset lost tax revenue. Again, conditions will be imposed on how such new federal funds can be used.

The following are examples of interpretations Sen. Karnes has recently secured for governmental clients:

1. The City of Omaha (population 470,000) is wholly located within Douglas County (population 60,000). Douglas County received \$166 million of CRF funds and the City received none. What obligation or authorization does the County have to pay for City-incurred COVID-19-related expenses, and thus which CEO will be held accountable to Treasury?
2. The CRF is a cash basis program. CRF funds can be used for securing technology and making COVID-19-related necessary healthcare improvements, etc. However, all funds must be spent for such before December 30, 2020. If any governmental expenses, even based on contracts entered into by the recipient government during the eligible period and are paid even one day after the deadline of December 30, CRF funds cannot be used.

These are just a couple of examples of Treasury interpretations as to how funds can be used, and if not properly understood, could be an unfortunate surprise for the recipient unit of government and its certifying CEO. Treasury will continue to provide guidance over the next eight months and this needs to be, first, known about and accessed, as Sen. Karnes and Kutak Rock have done and will continue to do.

For more information, please contact a member of our [Government Services](#) Group.