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Breakout Session

Federal Grants Oversight During the Pandemic for States and Local Governments

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AGENDA

Introduction:
State / Local Benefits, Challenges & Requirements

Select State / Local Pandemic Support Programs

Common Audit Findings

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Common Audit Findings

STATE AND LOCAL

- **State:** means a state government, but not political subdivisions of a state, such as municipalities; doesn't include state colleges and universities, except these are included in a statewide single audit.
- **Local:** political subdivisions of a state, such as municipalities, counties, parishes, councils of government, school districts, publicly owned utilities, etc.

STATE GOVERNMENT BENEFITS FOR GRANTS MANAGEMENT

- Established policies and procedures
- Clear separation of duties
- Structures of accountability
- Institutional knowledge retained due to tenured staff
- Significant resources at the disposal of the grants manager (auditors, budget staff, procurement, etc.)
- States follow their own procurement policies
- States are able to do significant subawarding to pass funds to entities with localized knowledge and solutions

STATE GOVERNMENT CHALLENGES FOR GRANTS MANAGEMENT

- Change can be slow
- May be difficult to understand how things get done
- Grants knowledge/skill may vary
- Must navigate political waters
- Gaining administrative momentum may be difficult with administration changes
- Continuity may be missing due to political appointee revolving door
- Must know and adhere to pass-through entity requirements (2 CFR §§ 200.330-332, *rev.* as 200.331-333, *eff.* Nov. 12, 2020 for awards made Aug. 13, 2020 and thereafter)
- Part of budget to directly spend is lost when subawarding

LOCAL GOVERNMENT BENEFITS FOR GRANTS MANAGEMENT

- Can be more nimble than states in implementing change
- May be allowed to use the *de minimis* indirect cost rate
- Less national scrutiny if a subrecipient

LOCAL GOVERNMENT CHALLENGES FOR GRANTS MANAGEMENT

- Fewer resources than state agencies, except larger municipalities
- Fewer grants than a state, so single audit findings may be more glaring than the larger number a state may have
- Political challenges
- Budget Challenges
- Increased stimulus funding may move a local government into the single audit pool

UNIQUE STATE REQUIREMENTS

- 2 C.F.R. § 200.317 - States follow their own procurement rules as well as § 200.322 (Solid Waste Disposal Act) (*rev. to § 200.323*) and § 200.326 (required contract provisions) (*rev. to § 200.327*)
- Public Assistance Cost Allocation Plans (2 C.F.R. pt. 200, Appendix VI)

C. Policy

State public assistance agencies will develop, document and implement, and the Federal Government will review, negotiate, and approve, public assistance cost allocation plans in accordance with Subpart E of 45 CFR Part 95. The plan will include all programs administered by the state public assistance agency. Where a letter of approval or disapproval is transmitted to a state public assistance agency in accordance with Subpart E, the letter will apply to all Federal agencies and programs. The remaining sections of this Appendix (except for the requirement for certification) summarize the provisions of Subpart E of 45 CFR Part 95.

UNIQUE LOCAL GOVERNMENT REQUIREMENT

- 2 C.F.R. § 200.320(c) - Must publicly advertise sealed bid procurements and open bids publicly

STATE AND LOCAL REQUIREMENTS / ALLOWANCES

- 2 C.F.R. § 200.322 - Solid Waste Disposal Act compliance (*rev. to § 200.323*)
- 2 C.F.R. § 200.416 - create a central service cost allocation plan; create an indirect cost rate for each operating agency (in most cases)
- 2 C.F.R. § 200.417 - can charge for services provided by one state/local agency to another; standard indirect cost allowance of 10% of salaries/wages to provide the service can be used in lieu of determining actual indirect costs for the service
- 2 C.F.R. § 200.403(e) - GAAP doesn't have to be followed in all instances

STATE AND LOCAL REQUIREMENTS / ALLOWANCES

2 C.F.R. § 200.430(h)(8)(x)(5) – Salary / Wages Documentation

5) For states, local governments and Indian tribes, substitute processes or systems for allocating salaries and wages to Federal awards may be used in place of or in addition to the records described in paragraph (1) if approved by the cognizant agency for indirect cost. Such systems may include, but are not limited to, random moment sampling, “rolling” time studies, case counts, or other quantifiable measures of work performed.

2 C.F.R. § 200.444 - General costs of government

(a) For states, local governments, and Indian Tribes, the general costs of government are unallowable (except as provided in § 200.474 Travel costs).

Exceptions:

- Costs of prosecutorial activities unless treated as a direct cost to a specific program if authorized by statute or regulation (however, this does not preclude the allowability of other legal activities of the Attorney General as described in § 200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements); and
- (For Indian tribes and Councils of Governments (COGs) (see § 200.64 Local government), up to 50% of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his or her staff can be included in the indirect cost calculation without documentation.

STATE AND LOCAL REQUIREMENTS / ALLOWANCES

2 C.F.R. § 200.470 Taxes (including Value Added Tax)

(a) For states, local governments and Indian tribes:

(1) Taxes that a governmental unit is legally required to pay are allowable, except for self-assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs.

(2) Gasoline taxes, motor vehicle fees, and other taxes that are in effect user fees for benefits provided to the Federal Government are allowable.

(3) This provision does not restrict the authority of the Federal awarding agency to identify taxes where Federal participation is inappropriate. Where the identification of the amount of unallowable taxes would require an inordinate amount of effort, the cognizant agency for indirect costs may accept a reasonable approximation thereof.

STATE AND LOCAL REQUIREMENTS / ALLOWANCES

2 C.F.R. § 200.449 - interest on buildings allowable if incurred after October 1, 1980; interest on land and equipment allowable if incurred after September 1, 1995

2 C.F.R. § 200.504 - biennial single audits allowable if required by constitution or statute

2 C.F.R. pt. 200, Appendix V – State / Local Governmentwide Central Service Cost Allocation Plans

1. Most governmental units provide certain services, such as motor pools, computer centers, purchasing, accounting, etc., to operating agencies on a centralized basis. Since federally-supported awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process. All costs and other data used to distribute the costs included in the plan should be supported by formal accounting and other records that will support the propriety of the costs assigned to Federal awards.

STATE AND LOCAL REQUIREMENTS / ALLOWANCES

2 C.F.R. pt. 200, Appendix VII - States and Local Government and Indian Tribe Indian Tribe Indirect Cost Proposals

A.3. Indirect costs are normally charged to Federal awards by the use of an indirect cost rate. A separate indirect cost rate(s) is usually necessary for each department or agency of the governmental unit claiming indirect costs under Federal awards. Guidelines and illustrations of indirect cost proposals are provided in a brochure published by the Department of Health and Human Services entitled "*A Guide for States and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government.*" A copy of this brochure may be obtained from HHS Cost Allocation Services or at their Web site ~~at~~ <https://rates.psc.gov>. [deleted from UG amendments issued August 13, 2020]

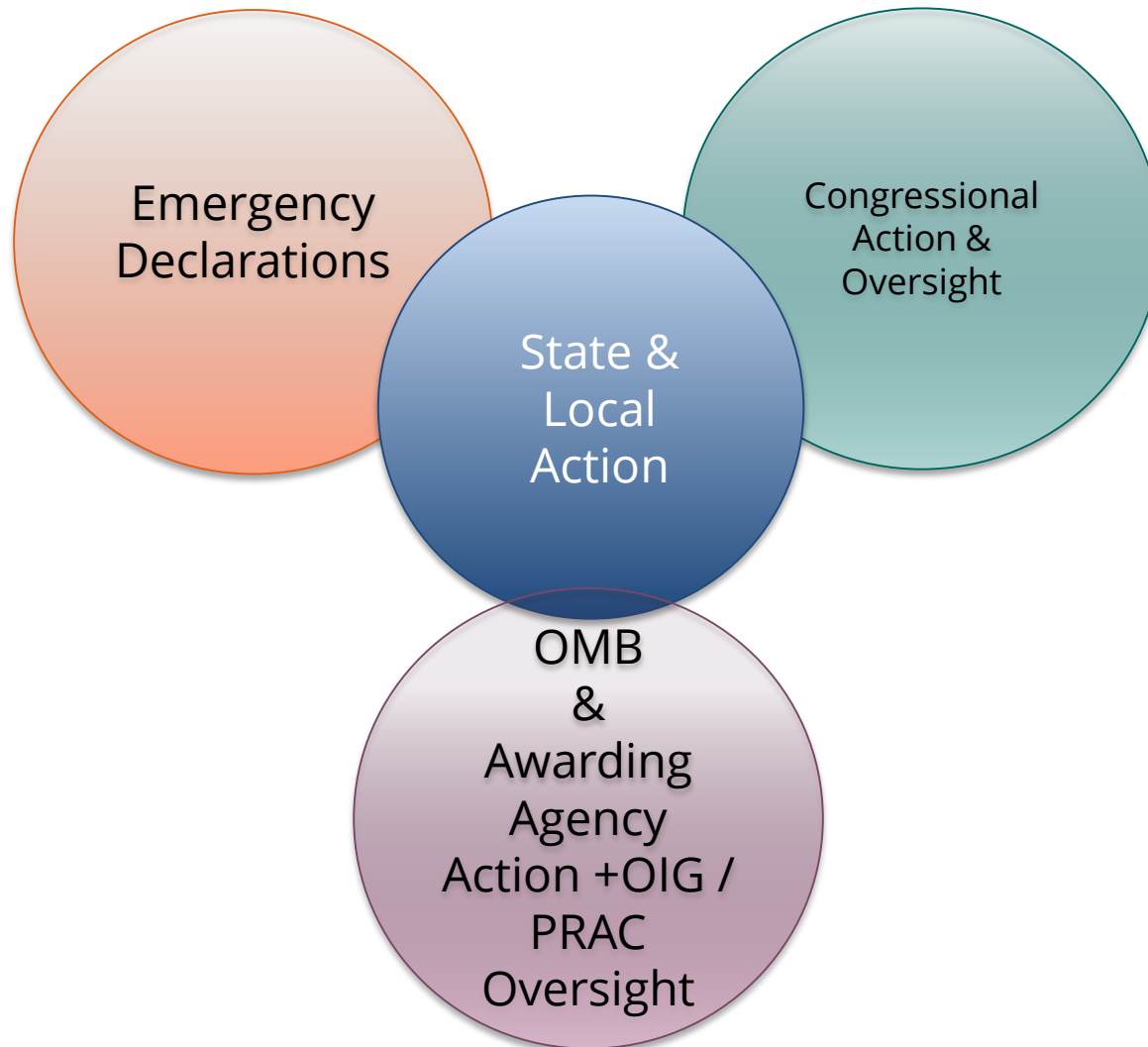
AGENDA

Introduction:
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Common Audit Findings

FEDERAL PANDEMIC SUPPORT SYSTEM



“FEDERAL FINANCIAL ASSISTANCE” DEFINED AT 2 C.F.R. § 200.40*

Federal financial assistance means:

- (a) Assistance that non-Federal entities receive or administer in the form of:
 - (i) Grants;
 - (ii) Cooperative agreements;
 - (iii) Non-cash contributions or donations of property (including donated surplus property);
 - (iv) **Direct appropriations**;
 - (v) Food commodities; and
 - (vi) **Other financial assistance (except assistance listed in paragraph (b) of this section).**
- (b) For § 200.202 and subpart F of this part, Federal financial assistance also includes assistance that non-Federal entities receive or administer in the form of:
 - (i) Loans;
 - (ii) Loan Guarantees;
 - (iii) Interest subsidies; and
 - (iv) Insurance.

(*rev. as § 200.1 Definitions)

“THE DEAL”: FEDERAL GRANTS AND OTHER FORMS OF ASSISTANCE ARE BINDING AGREEMENTS

If you (grantee) engage in *certain activities* during a *certain period of time* we (the U.S. government) will “reimburse” you for *certain costs* incurred in engaging in that activity.

“CERTAIN COSTS”

“ALLOWABILITY” (2 CFR § 200.403)

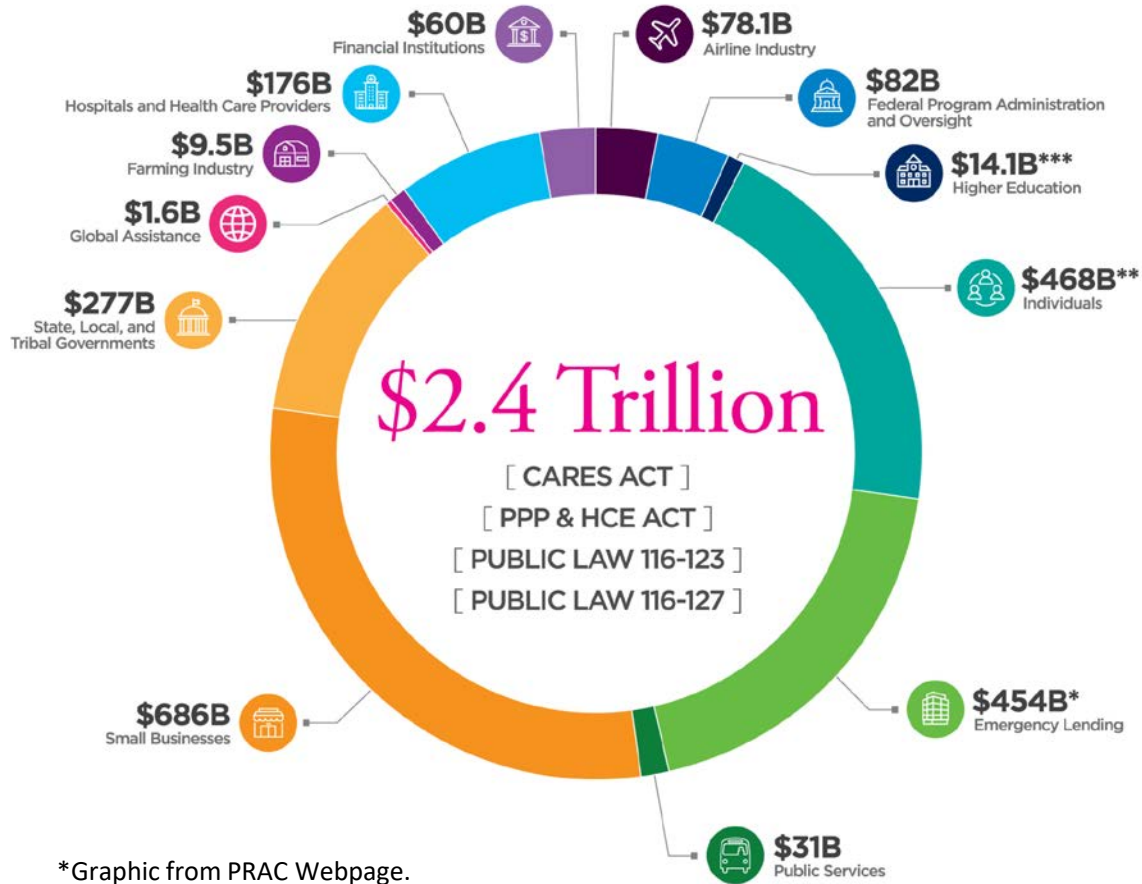
Factors affecting allowability of costs:

- Necessary
- Reasonable
- Allocable
- Conform to limitations of the Cost Principles, including requirements applicable to Selected Items of Cost
- Adequately documented
- Consistent with policies applicable to both federally-funded and non-federally-funded activities
- Consistent treatment in designating as direct or indirect

RECENT CONGRESSIONAL ACTION

- March 6, 2020 – Coronavirus Preparedness and Response Supplemental Appropriations Act, P.L. 116-123
- March 18, 2020 – Families First Coronavirus Response Act (“FFCRA”), P.L. 116-127
- March 27, 2020 – Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), P.L. 116-136
- April 24, 2020 – PPP and Health Care Enhancement Act, P.L. 116-139
- June 5, 2020 – PPP Flexibility Act
- HEROES Act (?)

CORONAVIRUS RESPONSE FRAMEWORK



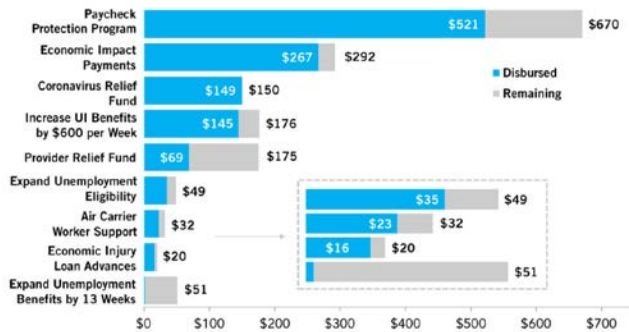
Direct Federal Aid to States for Costs of Pandemic: Coronavirus Relief Fund

DISTRIBUTION OF CARES ACT FUNDS TO STATE GOVERNMENTS AND OTHER PARTICIPANTS



About 75 percent of direct aid from COVID-19 legislation has already been disbursed

AMOUNT DISBURSED AND TOTAL AMOUNT AUTHORIZED (BILLIONS OF DOLLARS)



SOURCES: Various reporting from the Department of the Treasury, Small Business Association, Internal Revenue Service, Department of Health and Human Services, and Committee for a Responsible Federal Budget.
NOTES: Data is of July 2 or the latest available. The amount disbursed for the extension of unemployment benefits by 13 weeks is about \$2 billion.
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<https://www.pgpf.org/blog/2020/07/breaking-down-the-coronavirus-relief-spending-how-much-direct-aid-has-gone-out-the-door-so-far>



ASSISTANCE TO HEALTHCARE PROVIDERS AND GOVERNMENTS

Provider Relief Fund. The \$175 billion [Provider Relief Fund](#), administered by the Department of Health and Human Services (HHS), distributes direct payments to hospitals and other healthcare providers on the front lines of the coronavirus response. The CARES Act authorized \$100 billion to the fund — \$50 billion is allocated proportional to providers' share of revenues (known as general distribution) and another \$50 billion is allocated for targeted distribution to healthcare providers in areas affected the most by the pandemic (known as targeted distribution). The Paycheck Protection Program and Healthcare Enhancement Act, the fourth coronavirus response legislation, allocated an additional \$75 billion to the fund. HHS's distribution timeline indicates that nearly \$70 billion of the total funding has been disbursed thus far. However, the agency announced in June that they will be providing an additional \$20 billion for general distribution, \$15 billion to eligible Medicaid and CHIP providers, \$10 billion to safety net hospitals, and \$10 billion to hospitals in COVID-19 hotspots. The remaining funding has yet to be allocated.

Coronavirus Relief Fund. Such funding consists of \$150 billion in [direct federal aid to governments](#) in states, territories, and tribal areas to cover expenditures incurred due to the COVID-19 pandemic. As of July 2, the Treasury has disbursed \$149 billion of that aid.

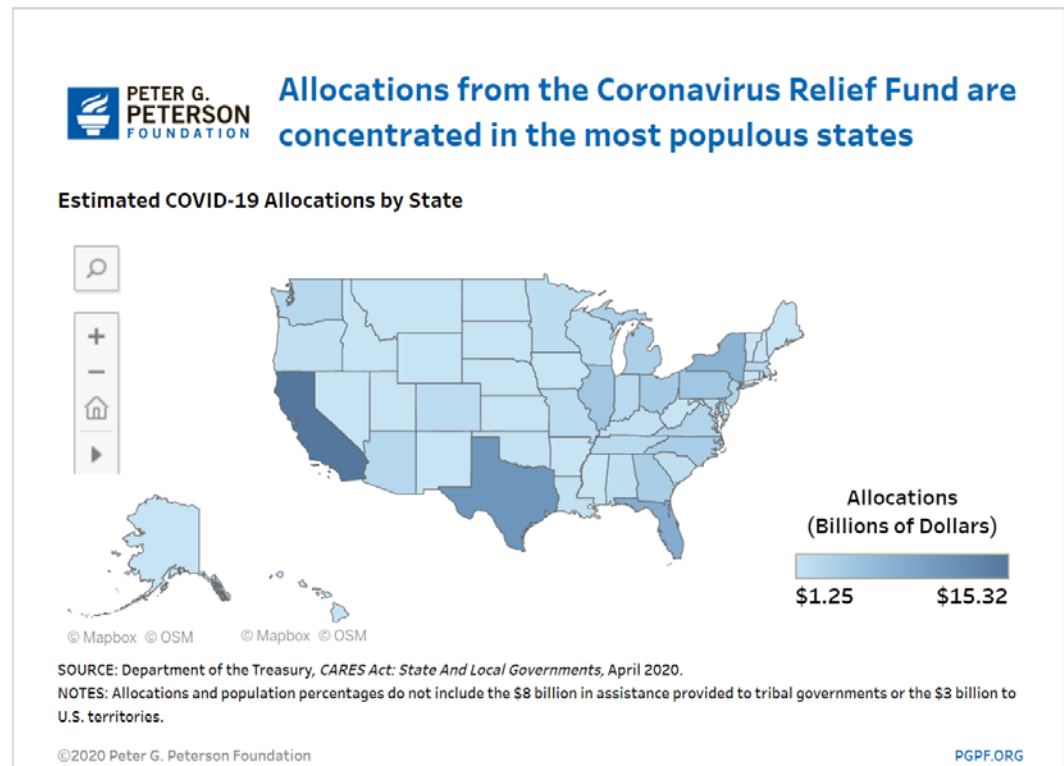
CORONAVIRUS RELIEF FUND: “NOT-A-GRANT” FEDERAL ASSISTANCE FOR STATES

- \$150 billion in direct aid in FY 2020 to:
 - States: \$139 B*
 - Tribal governments: \$8 B
 - Territorial governments: \$3 B

Authority:
Social Security Act,
§ 601 as added by CARES
Act, Title V, § 5001.

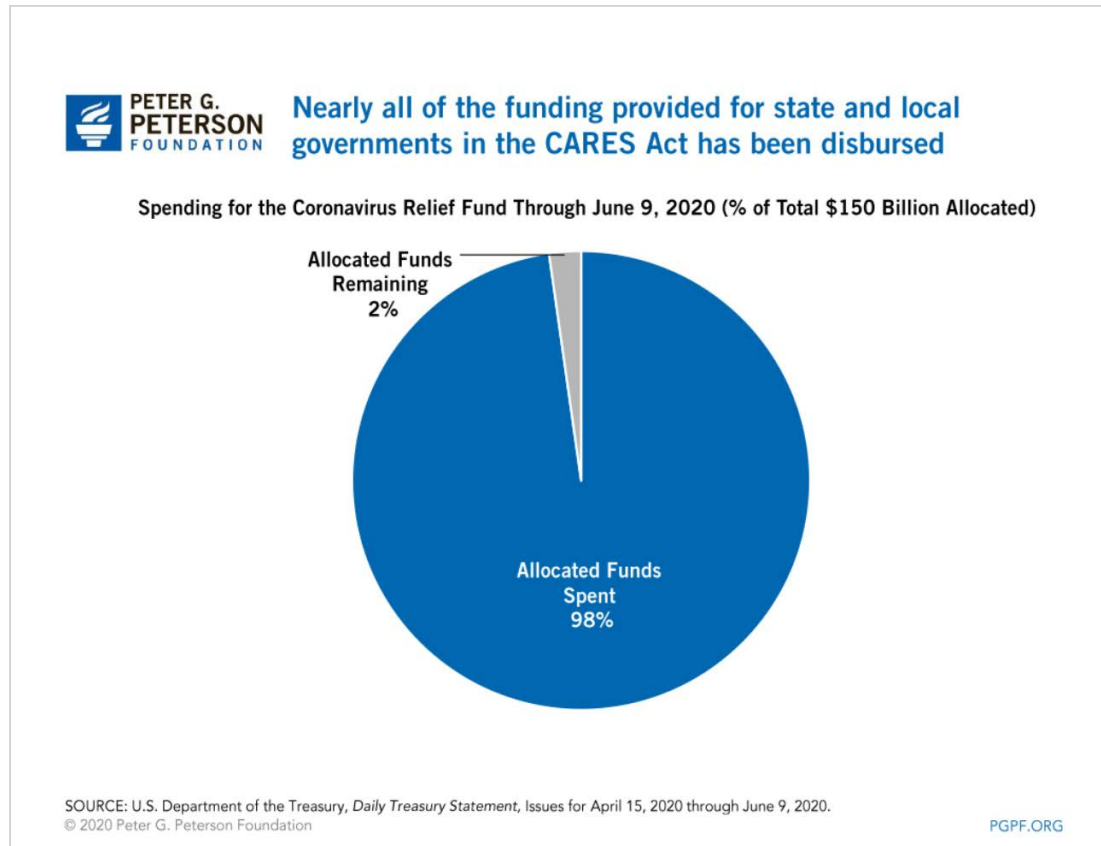
- ❖ Includes direct payments to local governments with populations in excess of 500,000
- ❖ CFDA No. 21-019

- **\$139 billion to the 50 state governments** based on their respective populations measured by the Census Bureau in 2019. Each state will receive a minimum of \$1.25 billion.



CRF DISBURSEMENTS

As of June 9, 2020, the Treasury has disbursed roughly \$147 billion, or about 98 percent, of the total \$150 billion allocated in the Coronavirus Relief Fund.



See <https://www.pgpf.org/blog/2020/06/what-is-the-coronavirus-relief-fund-how-much-is-left-in-it>

USE AND OVERSIGHT OF STATE FUNDING UNDER THE CORONAVIRUS RELIEF FUND

- **Allowable Costs:** “A State...shall use the funds provided...under this section to cover only those costs...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 [local eligible] government [not contemplated in the State budget]; and
 - 3) “were **incurred** during the period that begins on **March 1, 2020 and ends on December 30, 2020.**” SSA § 601(d), as added by CARES Act, § 5001(a).
- **Opt in:** Governor must submit to Treasury Secretary Certification that funds will be used for costs as required per 5001(a). No need to submit proposed expenditures to Treasury for approval.
- **Oversight and recoupment authority:** \$35 million appropriated to Treasury IG for this oversight; PRAC oversight: states are “covered recipients” subject to audit, investigation, subpoena powers.
- Note:
 - Treasury deems CRF funds not “grants” but “other financial assistance” under 2 C.F.R. § 200.40. See U.S. Dept. of the Treasury, CRF FAQs (August 10, 2020 update) at 10, *available at:* <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked-Questions.pdf>.

“CERTAIN PERIOD” AND “UNBUDGETED COSTS” CONDITIONS IN CRF FUNDING

- States may use CRF funds “to cover unbudgeted costs of necessary expenditures **incurred** due to the COVID-19 PHE during the covered period” (Mar. 1 through Dec. 30, 2020).
- “Incurred” means that performance or delivery must occur during the covered period but payment of funds need not be made during that time (but it is expected that payment take place within 90 days of performance or delivery).
- “A cost is not considered to have been accounted for in a budget merely because it could be met using a budgetary stabilization fund, rainy day fund, or similar reserve account.”

See U.S. Dept. of the Treasury, CRF Guidance (June 30, 2020), available at: <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>.

EXAMPLES OF CRF ALLOWABLE COSTS “NOT ACCOUNTED FOR IN THE STATE’S BUDGET”

- Costs incurred for a “substantially different use” than in the State’s budget include, but are not necessarily limited to, costs of personnel and services that were budgeted for in the most recently approved budget but which, due entirely to the COVID-19 public health emergency, **have been diverted to substantially different functions**. This would include, for example:
 - the costs of redeploying corrections facility staff to enable compliance with COVID-19 public health precautions through work such as enhanced sanitation or enforcing social distancing measures;
 - the costs of redeploying police to support management and enforcement of stay-at-home orders; or
 - the costs of diverting educational support staff or faculty to develop online learning capabilities, such as through providing information technology support that is not part of the staff or faculty’s ordinary responsibilities.
 - to make payments to meet non-federal matching requirements under FEMA programs as long as related to mitigating or responding to COVID-19.
 - to pay the costs of public sector employee administrative leave if greater than expected in the State’s budget in effect March 27, 2020 due to COVID-19.

See U.S. Dept. of the Treasury, CRF FAQs (Aug. 10, 2020 update) at 1, 8.

EXAMPLES OF ALLOWABLE USES OF CRF FUNDS 1/4

Eligible expenditures include, but are not limited to, payment for:

1. Medical expenses such as:

- COVID-19-related expenses of public hospitals, clinics, and similar facilities.
- 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 serological testing.
- Emergency medical response expenses, including emergency medical transportation, related to COVID-19.
- Expenses for establishing and operating public telemedicine capabilities for COVID-19- related treatment.

U.S. Dept. of the Treasury, Coronavirus Relief Fund: Guidance for States, Territorial, Local and Tribal Governments (June 30, 2020 update) at 3, *available at*: <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>

EXAMPLES OF ALLOWABLE USES OF CRF FUNDS 2/4

2. Public health expenses such as:

- Expenses for communication and enforcement by State, territorial, local, and Tribal governments of public health orders related to COVID-19.
- Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment, for medical personnel, police officers, social workers, child protection services, and child welfare officers, direct service providers for older adults and 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 and other facilities, e.g., nursing homes, in response to the COVID-19 public health emergency.
- Expenses for technical assistance to local authorities or other entities on mitigation of COVID-19-related threats to public health and safety.
- Expenses for public safety measures undertaken in response to COVID-19.
- Expenses for quarantining individuals.

U.S. Dept. of the Treasury, Coronavirus Relief Fund: Guidance for States, Territorial, Local and Tribal Governments (June 30, 2020 update) at 3, *available at*: <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>

EXAMPLES OF ALLOWABLE USES OF CRF FUNDS 3/4

3. 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.
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 populations, to enable compliance with COVID-19 public health precautions.
 - Expenses to facilitate distance learning, including technological improvements, in connection with school closings to enable compliance with COVID-19 precautions.
 - Expenses to improve telework capabilities for public employees to enable compliance with COVID-19 public health precautions.
 - Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions. • COVID-19-related expenses of maintaining state prisons and county jails, including as relates to sanitation and improvement of social distancing measures, to enable compliance with COVID-19 public health precautions.
 - Expenses for care for homeless populations provided to mitigate COVID-19 effects and enable compliance with COVID-19 public health precautions.

U.S. Dept. of the Treasury, Coronavirus Relief Fund: Guidance for States, Territorial, Local and Tribal Governments (June 30, 2020 update) at 3-4, available at: <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>

EXAMPLES OF ALLOWABLE USES OF CRF FUNDS 4/4

5. Expenses associated with the provision of 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.
- Expenditures related to a State, territorial, local, or Tribal government payroll support program.
- Unemployment insurance 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.

6. Any other COVID-19-related expenses reasonably necessary to the function of government that satisfy the Fund's eligibility criteria.

U.S. Dept. of the Treasury, Coronavirus Relief Fund: Guidance for States, Territorial, Local and Tribal Governments (June 30, 2020 update) at 4, *available at*: <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>

UNALLOWABLE STATE EXPENDITURES UNDER CRF

- To fill shortfalls in government revenue or as government revenue replacement (*e.g.*, assistance to pay past due property taxes or utilities; but may award subsidies for future utility payments or to prevent homelessness due to foreclosure on past due property taxes)
- Workforce bonuses unless for work related to mitigating or responding to COVID-19 (*e.g.*, “hazard pay”)
- Capital improvements unless for COVID-19 efforts
- Prepayments on contracts or leases unless consistent with ordinary P&Ps
- Goods or services for which there is no need for receipt until after the end of the covered period (but may use funds for goods ordered within the covered period that are delivered afterward due to a delay through no fault of the recipient). *See* U.S. Dept. of the Treasury, CRF Guidance (June 30, 2020).

NONEXCLUSIVE EXAMPLES OF INELIGIBLE CRF EXPENDITURES³

The following is a list of examples of costs that would not be eligible expenditures of payments from the Fund.

1. Expenses for the State share of Medicaid.
2. Damages covered by insurance.
3. Payroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency.
4. Expenses that have been or will be reimbursed under any federal program, such as the reimbursement by the federal government pursuant to the CARES Act of contributions by States to State unemployment funds.
5. Reimbursement to donors for donated items or services.
6. Workforce bonuses other than hazard pay or overtime.
7. Severance pay.
8. Legal settlements.

³ In addition, pursuant to section 5001(b) of the CARES Act, payments from the Fund may not be expended for an elective abortion or on research in which a human embryo is destroyed, discarded, or knowingly subjected to risk of injury or death. The prohibition on payment for abortions does not apply to an abortion if the pregnancy is the result of an act of rape or incest; or in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed. Furthermore, no government which receives payments from the Fund may discriminate against a health care entity on the basis that the entity does not provide, pay for, provide coverage of, or refer for abortions. ⁴ See 42 C.F.R. § 433.51 and 45 C.F.R. § 75.306.

U.S. Dept. of the Treasury, Coronavirus Relief Fund: Guidance for States, Territorial, Local and Tribal Governments (June 30, 2020 update) at 4, *available at*: <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>

CRF STATE REPORTING REQUIREMENTS

- **Reporting Requirements**


- **Interim Report** due July 17, 2020 (for March-June 2020 Quarter)
- **Quarterly Reports** filed through HHS GrantSolutions Portal starting Sept. 21, 2020 (for March-June 2020 Quarter) and every ten days after each calendar quarter (July-Sept. 2020 Quarter report due Oct. 13, 2020).
 1. the total amount of payments from the Coronavirus Relief Fund received from Treasury;
 2. the amount of funds received that were expended or obligated for each project or activity;
 3. a detailed list of all projects or activities for which funds were expended or obligated, including:
 - a. the name of the project or activity;
 - b. a description of the project or activity; and
 4. 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.

See U.S. Dept. of the Treasury, Memo. OIG-CA-20-021 Coronavirus Relief Fund Reporting and Document Retention Requirements (July 2, 2020), *available at*:

<https://home.treasury.gov/system/files/136/IG-Coronavirus-Relief-Fund-Recipient-Reporting-Record-Keeping-Requirements.pdf>.

CRF RECORD RETENTION REQUIREMENTS

Records to support compliance with subsection 601(d) may include, but are not limited to, copies of the following:

1. general ledger and subsidiary ledgers used to account for (a) the receipt of Coronavirus Relief Fund payments and (b) the disbursements from such payments to meet eligible expenses related to the public health emergency due to COVID-19;
2. budget records for 2019 and 2020; 
3. payroll, time records, human resource records to support costs incurred for payroll expenses related to addressing the public health emergency due to COVID-19;
4. receipts of purchases made related to addressing the public health emergency due to COVID-19;
5. contracts and subcontracts entered into using Coronavirus Relief Fund payments and all documents related to such contracts;
6. grant agreements and grant subaward agreements entered into using Coronavirus Relief Fund payments and all documents related to such awards;
7. all documentation of reports, audits, and other monitoring of contractors, including subcontractors, and grant recipient and subrecipients;
8. all documentation supporting the performance outcomes of contracts, subcontracts, grant awards, and grant recipient subawards;
9. all internal and external email/electronic communications related to use of Coronavirus Relief Fund payments; and
10. all investigative files and inquiry reports involving Coronavirus Relief Fund payments.

Records shall be maintained for a period of five (5) years after final payment is made using Coronavirus Relief Fund monies. These record retention requirements are applicable to all prime recipients and their grantees and subgrant recipients, contractors, and other levels of government that received transfers of Coronavirus Relief Fund payments from prime recipients.

U.S. Dept. of the Treasury, Memo. OIG-CA-20-021 Coronavirus Relief Fund Reporting and Document Retention Requirements (July 2, 2020) at 4, available at: <https://home.treasury.gov/system/files/136/IG-Coronavirus-Relief-Fund-Recipient-Reporting-Record-Keeping-Requirements.pdf>

COMMON QUESTION: RECORD KEEPING UNDER CRISIS

QUESTION:

**But it's an emergency.
We can't possibly document everything going
on while its going on...**

**Can't we just explain it was exigent
circumstances?**

COMMON QUESTION: RECORD KEEPING UNDER CRISIS

ANSWER: No.

*The palest ink is better than
the best memory.
- Chinese proverb.*

STATES RECEIVE CRF FUNDING SUBJECT TO:

- **Uniform Guidance**
 - 2 C.F.R. § 200.303 Internal controls
 - 2 C.F.R. § 200.330 Subrecipient and contractor determinations (note Treasury holds direct recipients ultimately responsible for funds flowed down to subrecipients)
 - 2 C.F.R. § 200.331 Requirements for pass-through entities
 - 2 C.F.R. § 200.332 Fixed amount subawards
 - 2 C.F.R. subpart F Audit requirements
- **Single Audit Act**, 31 U.S.C. §§ 7501-7507.
- Requirements in **Pub. L. 116-94** for funds for programs authorized under the Public Health Service Act, §§ 330-340, 42 U.S.C. §§ 254-256. *See CARES Act*, § 5001(b).
- **Recoupment**: unspent funds revert to the Treasury; payments for ineligible expenditures must be returned.

See also U.S. Dept. of the Treasury, CRF FAQs (July 8, 2020 update) at 10.

Federal Pandemic Support for K-12 Education

K-12 REOPENING CHALLENGES (COVID-19)

Important considerations for back to school planning (questions not meant to be exhaustive)

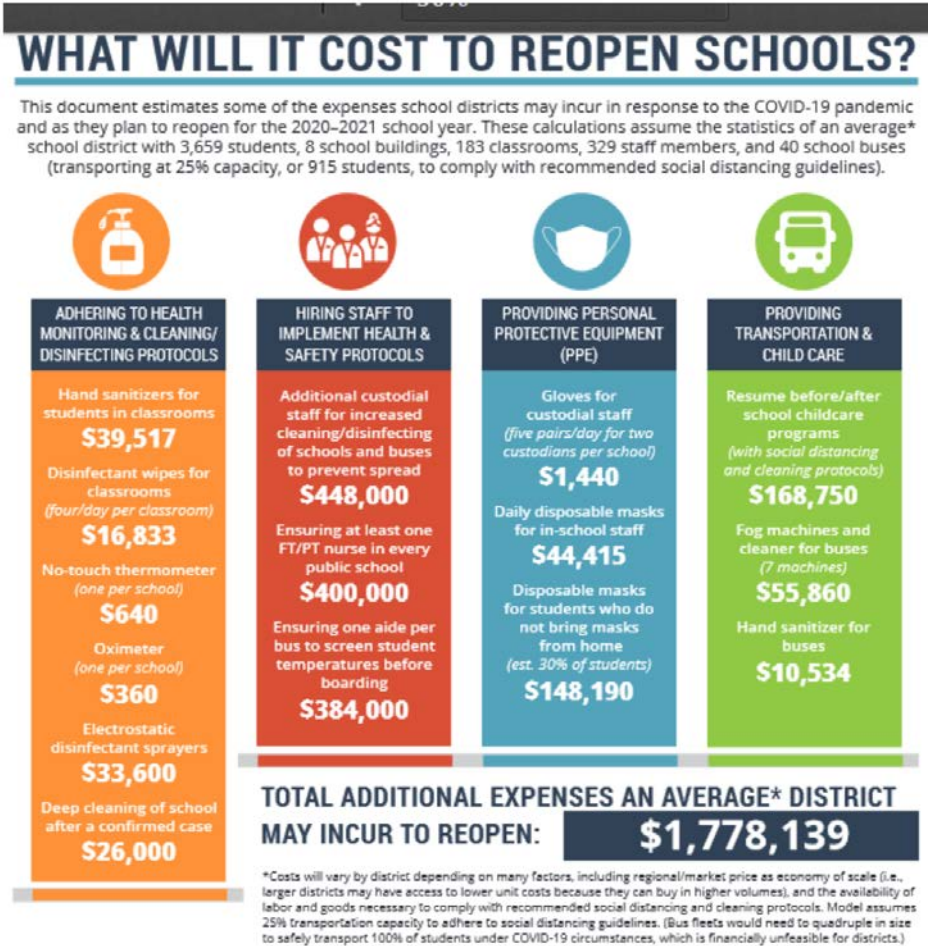
Accelerating learning & supporting student wellness	Academic planning	<ul style="list-style-type: none"> How can we improve upon remote learning from the spring experience? How can we diagnose and accelerate student learning in the fall? How can we best support educators through different models of educational delivery?
	Social-emotional and mental health supports	<ul style="list-style-type: none"> How can we support the social-emotional and mental health of students and educators? How can we provide a safe learning environment for students and educators, whether remote or in-person?
Engaging students & families	Technology considerations	<ul style="list-style-type: none"> How do we make sure we have enough of the right devices for students and educators that support effective teaching and learning? How do we protect data privacy and ensure cybersecurity with heavier technology use? How do we expand/augment network access for schools and students?
	Family engagement & communication	<ul style="list-style-type: none"> What information do families need to know and where/how should we solicit their input? How can we effectively communicate with families about reopen updates / policies and ways to support student learning?
Enabling safe & equitable learning	Physical space	<ul style="list-style-type: none"> How can schools repurpose the existing physical space to adhere to the appropriate social distancing protocols?
	Resource allocation	<ul style="list-style-type: none"> How can states advise LEAs as they manage limited resources while facing increasing expenses to provide education under new or multiple delivery models, and what sources of funding might be available to provide incremental support to schools and districts?

Financial Oversight and Management Board for Puerto Rico, 2020 Commonwealth Certified Fiscal Plan (May 27, 2020) Exh. 54 at 105, <https://drive.google.com/file/d/1ayjLxr74cKpFo4B2sAToSj-OeJOYvFO5/view>

A CURRENT ISSUE: CUT-OFF FUNDING TO SCHOOLS THAT DO NOT REOPEN?

Sixth coronavirus bill:

- H.R. 6800 - Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act at 91: \$60B for State subgrants to local educational agencies (K-12) to prevent, prepare and respond to coronavirus
- U.S. Senate bill in progress



The Washington Post. (July 8, 2020).

12 ALLOWABLE USES OF THE \$13.2 BILLION IN THE PACKAGE'S K-12 RELIEF FUND (1 OF 2)

1. Any activity authorized by the ESEA, IDEA, McKinney-Vento, etc.
2. Coordination of preparedness and response efforts of local educational agencies ... to prevent, prepare for, and respond to coronavirus.
3. Providing principals and others school leaders with the resources necessary.
4. Activities to address the unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth, including how outreach and service delivery.
5. Developing and implementing procedures and systems to improve the preparedness and response efforts of local educational agencies.
6. Training and professional development for staff of the local educational agency on sanitation and minimizing the spread of infectious diseases.

12 ALLOWABLE USES OF THE \$13.2 BILLION IN THE PACKAGE'S K-12 RELIEF FUND (2 OF 2)

7. Purchasing supplies to sanitize and clean the facilities of a local educational agency...
8. Planning for and coordinating during long-term closures, including for how to provide meals to eligible students, how to provide technology for online learning to all students, how to provide guidance for carrying out requirements under IDEA, and how to ensure other educational services can continue to be provided consistent with all Federal, State, and local requirements.
9. Purchasing educational technology (including hardware, software, and connectivity) for students who are served by the local educational agency that aids in regular and substantive educational interaction between students and their classroom instructors, including low-income students and students with disabilities, which may include assistive technology or adaptive equipment.
10. Providing mental health services and supports.
11. Planning and implementing activities related to summer learning and supplemental afterschool programs, including providing classroom instruction or online learning during the summer months and addressing the needs of low-income students, students with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care.
12. Other activities that are necessary to maintain the operation of and continuity of services in local educational agencies and continuing to employ existing staff of the local educational agency.

Stafford Act: Additional State / Local Pandemic Support Programs

**(Emergency Declarations vs. Major
Disaster Declarations)**

STAFFORD ACT EMERGENCY DECLARATIONS

- The President's national emergency declaration authorized FEMA to provide assistance everywhere in the United States.
- These are the steps required to obtain FEMA aid:
 - i. State prepares a Preliminary Damage Assessment jointly with FEMA
 - ii. Governor seeks emergency or disaster declaration from the President
 - iii. If approved, the declaration sets forth:
 - Type of incident
 - Incident period
 - Disaster areas eligible to receive federal assistance
 - Types of federal assistance authorized
 - Designated Federal Coordinating Officer (FCO)
 - Federal cost share ($\geq 75\%$)
 - iv. Sign State-FEMA agreement
 - v. State submits formal application

TYPES OF FEDERAL ASSISTANCE UNDER THE STAFFORD ACT

- FEMA provides three main types of assistance:
 1. Public Assistance (PA),
 2. Individual Assistance (IA) (100% federal cost) and
 3. Hazard Mitigation Assistance
- What assistance FEMA provides depends on the type of declaration the President issues under the Stafford Act:
 1. **Emergency declarations:** only PA Categories A (debris removal) and B (emergency protective measures) are available; and
 2. **Major disaster declarations:** PA Categories A, B and C-G (work required to restore facilities to pre-disaster design capacity and function), Hazard Mitigation Assistance, and Individual Assistance, are available
- COVID-19 Major Disaster Declarations: 51 States and Territories
- May use Coronavirus Relief Funds to meet state/local match

THE NEW YORK STATE MAJOR DISASTER DECLARATION UNDER THE STAFFORD ACT

On March 20, 2020, the President for the first time declared [a major disaster over a public health threat](#), which authorized FEMA to send personnel and resources to support the federal response in **New York** to:

1. help establish COVID-19 testing sites;
2. disinfect public facilities;
3. provide state authorities with medical supplies and devices in high demand such as protective gear (face masks, gloves, surgical gowns), ventilators, and drugs;
4. set up temporary shelters;
5. facilitate additional food and nutrition assistance;
6. deploy hundreds of ambulances and emergency medical service (“EMS”) personnel; and
7. convert space to add hospital capacity in coordination with the U.S. Army Corps of Engineers and other federal agencies.

Numerous state agencies and PNPs have a role in the response, each supported in different ways.

NEW FLEXIBILITY: CDBG-DISASTER RECOVERY FUNDS

Grantees should consult HUD's COVID-19 Notice of Waivers, Alternative Requirements, and Extensions for 2015-2019 Disasters:

1. Flexibility to accommodate delays in funds expenditures due to COVID-19
2. Extends original 6-year project periods by a maximum additional 2 years (must apply by Nov. 22, 2020)
3. Extends deadlines for submission of initial Action Plan, Financial Management and Grant Compliance Certifications for 2018 and 2019 disasters

See 85 Fed. Reg. 50041-50043 (Aug. 17, 2020).

Heightened Risk from Pandemic Support Monitoring, Audits, Enforcement

EXPECT OVERSIGHT INVESTIGATIONS: DOJ & AG

Attorney General William Barr has directed the FBI and other DOJ offices to give priority to investigating consumer fraud, fraudulent testing and treatments, and lending fraud associated with the CARES Act and the COVID-19 pandemic.

State Attorneys General and state legislatures can be expected to monitor and investigate CARES Act funds that are used by state and local governments.

HOW IS DOJ THINKING ABOUT ENFORCEMENT DURING THE PANDEMIC?

- DOJ Prioritizes COVID-19 Wrongdoing - On March 16, the United States Attorney General issued a memorandum to all U.S. Attorneys prioritizing the detection, investigation and prosecution of wrongdoing “related to the current pandemic.”
- “In a time when the government is injecting vast amounts of federal funds into the U.S. economy, vigorous FCA enforcement is more important than ever to ensure that taxpayer dollars are spent as intended.” - Principal Deputy Assistant Attorney General Ethan P. Davis

PANDEMIC RESPONSE ACCOUNTABILITY COMMITTEE

- Created by the CARES Act
- Committee within the Council of the Inspectors General on Integrity and Efficiency (“CIGIE”)
- Oversight of funding under the CARES Act, PPP and Health Care
- Composed currently of 20 IGs
- Currently Developing Strategic Plan
- Useful Resources for Following the Money:
 - Overview: <https://pandemic.oversight.gov/track-the-money>
 - Agency Spending Plans: <https://pandemic.oversight.gov/agencies/plans>

OMB PRAC COORDINATION

- One of the key lessons learned from Recovery Act implementation was the need for the federal government to “speak with one voice.”
- June 17, CIGIE released a new [report](#) that includes input from 37 agency IGs about the top management challenges agencies face in overseeing the CARES Act spending.
- OMB is working with the PRAC and agency IGs to ensure proper reporting and transparency in relief programs under the CARES Act. One purpose of the OMB PRAC coordination process is to promote a whole of government consistency.

EXPECT OVERSIGHT INVESTIGATIONS: GAO

The CARES Act provided funding for the GAO to evaluate the effectiveness and procedures for loans, loan guarantees and other investments under the Act. It is authorized to make site visits of facilities that receive CARES Act money.

The GAO has authority to subpoena the records of the federal government, contractors, and recipients of federal funds.

EXPECT OVERSIGHT INVESTIGATIONS: OIG

IGs have significant authority to audit and investigate their departments and agencies. They have the power to subpoena documents and data. The CARES Act has provided additional funds to some of the IGs to carry out investigations of COVID related programs.

It is expected that the IGs for the Treasury Department, SBA, TIGTA, FDIC, DHS, DOL, HHS, IRS, and DOD will be actively focused on investigations of CARES Act activities.

AGENDA

Introduction:
State / Local Benefits, Challenges & Requirements

Select State / Local Pandemic Support Programs

Common Audit Findings

THINK BACK...ARRA

- Due to the inherent risk with the transparency and accountability requirements over expenditures of ARRA awards, auditors considered all Federal programs with expenditures of ARRA awards to be programs of higher risk during Single Audits
- *“Federal audit finds city schools misspent stimulus, Title I funds” - The report, reviewing grant expenses from 2009 and 2010, was conducted by the Office of the Inspector General for the U.S. Department of Education. It found similar misspending in Prince George's County schools.”*

<https://www.baltimoresun.com/education/bs-md-education-funds-20130522-story.html>

COMMON FINDINGS: ACROSS EDUCATION GRANTEE ARRA AUDITS BY STATES

Highlighting the need for supporting records, ARRA audits found that grantees often could not produce certain adequate source documentation:

- Third-party invoice or receipt to support the expenditure
- Support for payroll costs charged to the grant (extra duty pay agreements, time sheets, stipends etc.)
- The purchase orders issued after the date of invoice
- The subrecipient did not maintain adequate time and effort
- Periodic certification/or activities reports
- Job descriptions on file for staff members paid with grants
- Cost allocation plan demonstrating how a portion of total costs was allocated to the ARRA grant
- Inadequate supporting documentation for the date reported in the quarterly report

SCHOOL AUDITS COMMON

- School districts comprise the largest category of state and local governments in terms of total funding and number of employees.
- As a result, school districts are subject to a great deal of public scrutiny, resulting in detailed and complex compliance and reporting requirements.
- Similarly public universities tend to be subject to more audits of different sources than private schools.

DISASTER RELIEF COMMON AUDIT FINDINGS

(FEMA STAFFORD ACT PROGRAMS)



- Tardy responses to audit team inquiries
- Lack of capacity to effectively manage Public Assistance grant funds
- Lack of knowledge of FEMA requirements for accounting for costs
- Lack of experience planning large disaster recovery projects
- Lack of expertise to initiate and complete, and monitor, supported activities
- Lack of understanding of how to document and track Project Worksheet work
 - No P&Ps or controls to document procurement or disaster costs
 - Lack of proper documentation to support work completed or cost eligibility (no process to submit claim documentation timely)
 - No equipment controls / Ineffective T&E controls (calculation errors, inconsistent payroll vs. time sheet reports)
- Lack of understanding of (and noncompliance with) State's PTE responsibilities:
 - Failure to manage day to day operations of grant and subgrant supported activities / subrecipient refusal to submit closeout documentation
 - Vendor contracts missing mandatory federal T&Cs
 - Failure to monitor subrecipients comply with Federal requirements and achieve performance goals or to detect issues and provide T/TA

How to Mitigate Risk

COMMON STATE / LOCAL AUDIT FINDINGS AND HOW TO MITIGATE RISK

- Allowable Costs / Cost Principles
 - Written cost allocation plan/written procedure to determine cost allowability
 - Train staff on how to use these
 - Be sure you've read the Cost Principles
- Reporting
 - Grants management system
 - Grants management calendar/workplan
- Special Test and Provisions
 - Kickoff meeting to train staff on unique grant requirements
- Activities Allowed and Unallowed
 - Be sure you've read the program-specific T&Cs / regulations

COMMON STATE / LOCAL AUDIT FINDINGS AND HOW TO MITIGATE RISK

- Cash Management
 - Ensure you have a policy to implement 2 C.F.R. § 200.205. A clear process of general ledger accounting
- Equipment and Real Property Management
 - Understand the prior approval rules around equipment purchase
 - Have a written procedure around equipment tracking, use, maintenance, and disposition
- Procurement and Suspension and Debarment
 - Have a written procurement procedure that is compliant with 2 C.F.R. § 200.317-200.326
 - Ensure the mandatory contract provisions are used (2 C.F.R. pt. 200, Appendix II)

COMMON STATE / LOCAL AUDIT FINDINGS AND HOW TO MITIGATE RISK

- Eligibility
 - Know the requirements
 - Create checklists and forms to ensure eligibility checks are done in a thorough and uniform manner
- Subrecipient Monitoring
 - Ensure that you do a risk assessment of each subrecipient
 - Create a monitoring plan and execute on that plan
 - Have a set of clear tools that allow you to focus on the most important problem areas associated with a particular source of funds
- Period of Performance (or availability)
 - Ensure staff understand nuances around incurring vs. paying for costs and when a cost incurred during the period of performance still shouldn't be charged to the grant

RESOURCES

- HHS Departmental Appeals Board, *available at* www.hhs.gov/dab
- Federal Audit Clearinghouse: harvester.census.gov/facweb
- Uniform Guidance (2 C.F.R. pt. 200 / 45 C.F.R. 75), *available at* <http://www.ecfr.gov/>

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