

**2020 CARES Act Funding
Guidelines/Restrictions on Expenditure
And
Possible Allowable Expenditure Uses**

Issue

Sitka is scheduled to receive \$14,036,874 in CARES Act funding. This funding is Federal support to be passed through the State of Alaska.

Guidelines/Restrictions on Expenditure

The CARES Act provides that funding may only be used to cover costs that—

- (1) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
- (2) are not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act); and
- (3) were incurred during the period that begins on March 1, 2020 and ends on December 30, 2020.

Federal Treasury guidelines stipulate that all CARES Act expenditures must be “necessary.” The Department of the Treasury understands this term broadly to mean that the expenditure is reasonably necessary for its intended use in the reasonable judgment of the government officials responsible for spending Fund payments.

The Inspector General of the Department of the Treasury has a specific responsibility of recouping amounts received from CARES Act funding that have not been used in a manner consistent with the Act. This is in addition to possible audit findings.

Finally, analysis of pronouncements, interpretive guidance, minutes/notes from telephone calls to Federal State officials, and opinions/perspectives offered by government officials and auditors show several consistent predominant themes pertaining to the intended use of CARES Act funds. Local governments need to make a genuine effort to expend funds for their intended uses, as opposed to trying to stretch the meaning and definition of legitimate uses of the fund to cover pre-existing budget deficits, deferred maintenance, or capital projects that have preliminary design but no project funding. The themes are:

- The funds are intended to reimburse local governments for unplanned expenditures required to respond to the COVID-19 pandemic;
- The funds are also intended to assist private sector business and individual citizens who have suffered adverse economic impacts (loss of jobs, loss of business);
- The funds are NOT intended to reimburse or compensate local governments for loss of revenue;
- The funds are NOT a windfall to pay for the pre-existing budget deficits, deferred maintenance, or unfunded capital projects of local governments.
- The Treasury Department has stated that uses of the funds are to be narrowly construed within a limited scope, as opposed to broadly construed within a wide scope.

Examples of Possible Allowable Expenditure Uses

CBS staff has identified 6 broad categories of possible uses of CARES Act funding that appear to be allowable under guidance and guidelines received to date. They are:

1. Expenditures for renovations of municipal buildings and/or procurement of equipment to enhance social distancing, protect against secondary COVID-19 virus transmission, and enhance remote access of Municipal services:
 - a. Create 1-stop customer service center on 1st floor 100 Lincoln Street
 - b. Renovate HVAC systems to add HEPA filters
 - c. Deep clean entire buildings & replace floor coverings
 - d. Install key card access for 2nd floor exit 100 Lincoln Street
 - e. Purchase state-of-the-art IT equipment for better remote meeting capability
 - f. Purchase IT software/equipment for greatly enhanced online access to municipal functions (online sales tax filing, building permit requests, etc.)

2. Expenditures for local education to enhance social distancing, protect against secondary COVID-19 virus transmission, enhance distance learning, and deal with emotional trauma in children:
 - a. Purchase distance learning hardware for each student
 - b. Purchase distance learning software and IT hardware
 - c. Purchase food service equipment to permit dining in each classroom
 - d. Hire a temporary mental health counselor for each school
 - e. Remodel libraries, locker rooms, common areas to accommodate social distancing

3. Expenditures for direct financial assistance to private business and citizens to offset the adverse economic impacts of the COVID-19 pandemic (NOTE: Treasury guidance states that citizens and business must have been experienced an adverse economic impact from the pandemic; across-the-board financial assistance to everyone does not appear to be a legitimate use).
 - a. Direct payments by CBS into utility accounts of impacted citizens/businesses
 - b. Direct payments by CBS into mortgage accounts of impacted citizens/businesses
 - c. Direct stimulus payments to citizens

4. Expenditures for economic assistance to private businesses and citizens to assist in recovery from loss of business or employment resulting from the COVID-19 pandemic;
 - a. Direct business loans that turn into grants
 - b. Direct payments by CBS to pay off bad debts of citizens/businesses that can't repay the debts due to loss of jobs/business
 - c. Purchase of fish from commercial fisherman for free distribution to citizens
 - d. Subsidy payments to private businesses to help them make rent or mortgage payments

5. Expenditures for new programs to identify or protect against COVID-19 virus transmission, or, protect vulnerable populations against COVID-19 virus transmission or poverty-related impacts of the pandemic.
 - a. Create and operate Municipal food pantry or essential food package distribution system
 - b. Create and operate a homeless shelter
 - c. Create and operate a job training/retraining program
 - d. Create and operate a new business incubator

Critical Timelines That Must Be Observed

Treasury guidance states that funds must be expended by December 31, 2020, and unspent funds must be returned. Advance funding of operating costs for projects is specifically not permitted.

Cash basis (i.e., cash out the door) is the expenditure basis we must employ. Thus, having entered into a contract, or having placed a purchase order, which has not completed and for which payment has not been disbursed by December 31, 2020, will not be regarded as a legitimate expenditure.

Essential Caveat

Federal and State guidelines are still evolving regarding what are, and are not, permissible legitimate uses of CARES Act funding. Guidelines may change that further tighten, or ease up, restrictions on what funds can be spent for. Accordingly, some of the proposed allowable expenditures above may turn out to be disallowed or ineligible for expenditure of CARES Act funding.

One key question which has not been answered yet is whether or not the standards set forth for expenditure of Federal funds in 2 CFR Part 200 Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards applies to CARES Act funding. Two different branches of the Federal Government have authority over Cares Act funding: (1) the Treasury Department who has issued guidance and FAQs pertaining to legitimate uses of the funding; and, (2) the Office of Management and Budget, who is responsible for deciding whether or not 2 CFR Part 200 applies and has not made any decision yet. If 2 CFR Part 200 is determined to be applicable by the OMB, expenditure of the CARES Act funding will be subject to much more stringent accounting, procurement, and documentation requirements.

Finally, there is an element of risk associated with the expenditure of CARES Act funding, in that the further away we get from the specific stated permissible examples of uses the Treasury has put out, the more the risk increases that a subsequent spending review by the Federal government or independent auditors will determine that an expenditure was impermissible and subject to recoupment by the Federal Government.