

South Dakota Local Government COVID Recovery Fund

Frequently Asked Questions

(Updated September 8, 2020)

The following answers to frequently asked questions (“FAQs”) are designed to offer guidance for South Dakota cities and counties interested in seeking reimbursement from the State of South Dakota’s Local Government COVID Recovery Fund (“CRF”). Within state government, the Bureau of Finance and Management has been given authority to manage the South Dakota CRF. The guidance concerning these funds at the federal level evolves on regular basis, and as additional guidance from the U.S. Treasury Department becomes available, the Bureau of Finance and Management will update these FAQs to reflect any additions to the list of eligible expenses or other requirements.

1) How is South Dakota’s CRF funded?

South Dakota’s CRF is funded through a federal appropriation in section 601(d) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). As such, South Dakota’s use of the funds is subject to the restrictions in the CARES Act and any additional guidance issued by the U.S. Department of Treasury.

2) Why can’t cities and counties receive funding directly from the federal government?

Under the CARES Act, South Dakota received a single allocation from the federal government for all of South Dakota’s Coronavirus Disease 2019 (“COVID-19”) response. South Dakota’s cities and counties do not meet federal requirements to receive funds directly.

3) What requirements did South Dakota take on in order to receive funding?

Prior to receiving funds, South Dakota was required to certify that CARES Act funds would only be used to cover costs that: (a) are necessary expenditures incurred due to the public health emergency with respect to COVID-19; (b) were not accounted for in the budget most recently approved as of March 27, 2020, for the State of South Dakota; and (c) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

Any funds used for expenditures not meeting these requirements, as well as any unused funds, are subject to repayment in full to the U.S. Treasury Department.

4) What expenses are eligible for reimbursement from South Dakota’s CRF?

So long as the expense: 1) was not accounted for in the city’s or county’s budget most recently approved as of March 27, 2020; and 2) was incurred between March 1, 2020 and December 30, 2020, the following may be submitted to the State for potential reimbursement from the CRF:

- Purchases of personal protective equipment (“PPE”);

- Purchases of cleaning supplies used for disinfecting city or county facilities or equipment;
- Purchases of equipment used to maintain cleanliness or to sanitize items (e.g., air purifiers, sterilizers, or disinfectant devices);
- Payroll costs (i.e., salary and benefits) for public health and public safety employees;
- Costs incurred by the city or county on behalf of an individual testing positive for COVID-19 in order to ensure his or her isolation (e.g., hotel rooms, meals, security);
- Costs incurred by the city or county at public hospitals, clinics, or similar facilities, including expenses for establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including construction costs;
- Costs incurred by the city or county for COVID-19 testing, including serological testing;
- Costs incurred by the city or county for emergency medical response, including emergency medical transportation, related to COVID-19;
- Purchases of equipment made to establish and operate public telemedicine capabilities for COVID-19-related treatment;
- Purchases of equipment made to support remote work by city or county employees;
- Costs incurred to prepare city or county facilities for employees' return to work or to allow the public to access such facilities while complying with recommended social distancing and other COVID-19 response protocols;
- Purchases of PPE, equipment, or supplies to create a reserve for response to COVID-19 cases within a city or county, even if there have not yet been COVID-19 cases in the jurisdiction.

5) What if U.S. Treasury Department guidance lists an expenditure as eligible, but it's not included in the list above?

To the extent the Bureau of Finance and Management's guidance does not include an expense that appears to be authorized in U.S. Treasury guidance, a city or county should consult with the State's technical assistance provider (listed below) before making the expenditure to ensure it can be documented as a COVID-19 related eligible expense. Any guidance provided by the U.S. Treasury Department reflects the standards it intends to apply to the State of South Dakota as a direct recipient of federal funds. Although the State may, in its discretion, allocate CRF funds to cities and counties on a sub-recipient basis, the State remains directly responsible to the U.S. Treasury Department for possible repayment if the federal government later determined the expenditure is ineligible. Therefore, the Bureau of Finance and Management will need to work with the city or county, via the State's technical assistance provider, to ensure the expenditure meets eligibility requirements. U.S. Treasury Department guidance allows state government to take on statewide responsibility for expenditures, such as a small business grant program, on behalf of cities and counties in order to ensure efficient and appropriate use of CARES Act funds and to avoid duplication of benefits. When state government assumes such statewide responsibility, a city or county may not receive reimbursement for expenditures for the same purpose.

6) What if a city or county expenditure is not listed above or mentioned in U.S. Treasury Department guidance?

If an expense is not included on the list above or mentioned in U.S. Treasury Department guidance, cities and counties should presume it is not eligible. If a city or county questions whether an expense may still be eligible, it should work with the State's technical assistance provider (listed below) to seek additional guidance before submitting a reimbursement request.

7) What are “public health” and “public safety” employees for purposes of requesting reimbursement of payroll expenses?

U.S. Treasury clarified its position on the types of employees presumed to be substantially dedicated to mitigating or responding to the COVID-19 public health emergency in September 2, 2020 guidance provided to the Bureau of Finance and Management. The guidance below replaces earlier State guidance on this Question #7 in its entirety:

The following categories of city- or county-employed public health personnel are eligible for reimbursement:

- Medical staff assigned to schools, prisons, and other such institutions;
- Support services personnel essential for patient care;
- Public health department employees directly engaged in matters related to public health;
- related supervisory personnel);

The following categories of city- or county-employed public safety personnel are eligible for reimbursement:

- Police officers;
- Sheriffs and deputy sheriffs;
- Firefighters;
- Emergency medical responders, such as ambulance personnel and emergency medical technicians;
- Correctional and detention officers;
- Personnel who directly support the employees above (e.g., dispatchers) and supervisory personnel

Under U.S. Treasury Department guidance, as clarified by its September 2, 2020 update, a city or county may presume the employees listed above are substantially dedicated to mitigating or responding to COVID-19. However, to the extent the payroll expenses of any of the personnel above are already reimbursed using other federal grant funds, that portion of the city's or county's payroll expense is not eligible for reimbursement from the CRF. In addition, CRF reimbursement cannot be claimed for city or county payroll expenses if the city's or county's portion of the payroll expense is made as a match for other federal grant funding. There is no requirement a city or county claim reimbursement from the CRF for any of the personnel listed above, but if it does, the city or county must ensure the claimed payroll expense is: 1) not already covered by a different federal grant; or 2) will not be used to match another federal grant used for a portion of the same payroll expense.

Cities or counties that contract with a third party to provide any of the above-listed functions, whether the contract is with a private business or another unit of government, may receive reimbursement for the expense. However, the reimbursement will be limited to the portion of the contract attributable to the payroll cost of the service the city or county receives.

8) How should cities and counties treat the time of jail or correctional personnel – including medical personnel and correctional officers – for purposes of requesting reimbursement of payroll expense?

U.S. Treasury's clarified its position on the treatment of jail or correctional personnel in September 2, 2020 guidance and now permits the reimbursement of payroll expenses for jail and correctional personnel based on a presumption they are substantially dedicated to mitigating or responding to the COVID-19 public health emergency. Payroll expenses for these types of employees should now be claimed in the same manner, and on the same basis, as payroll expenses for all other public health and public safety employees described in Question #7 above.

In accordance with the new U.S. Treasury guidance, the previous State guidance on this question (appearing below as strikethrough for reference) is withdrawn:

~~Jail personnel, including corrections officers and medical personnel working in a jail or offsite as part of a diversion or community care program, are not automatically eligible for full reimbursement of payroll expense through the CRF. Cities and counties should instead use the following guidance when requesting reimbursement:~~

- ~~• If there are no COVID-19 cases at the work location and the employee was not engaged in COVID-19 preparatory or response work, then the employee's payroll expense is not eligible for reimbursement;~~
- ~~• If there are no COVID-19 cases at the work location, but the employee engaged in clearly documentable COVID-19 preparatory or response work, then the employee's actual time spent on such work is eligible for reimbursement;~~
- ~~• If the employee responds to a suspected COVID-19 case at the work location, but the case is later shown to be negative for COVID-19, the employee's time spent responding is eligible for reimbursement. Cities and counties may provide a reasonable estimate of the employee's time spent responding in lieu of his or her actual time in order to retain the employee's focus on responding to the potential case, rather than recordkeeping;~~
- ~~• If the employee responds to a confirmed COVID-19 case at the work location, then 100 percent of the employee's time is eligible for reimbursement, beginning with the initial response and extending until either the case is no longer active or the case is transferred to another location for treatment.~~

9) May a city or county request reimbursement for lost revenue attributable to the COVID-19 pandemic?

No, the expenditures must be made directly by the city or county for the purposes listed above. The U.S. Treasury Department has clearly indicated CARES Act funds may not be used to replace lost revenue, such as sales tax, due to COVID-19.

10) May a city or county request reimbursement on behalf of a third-party, such as a non-profit organization or a business?

No, the expenditures must be made directly by the city or county for an eligible purpose in order to receive reimbursement from the CRF. In addition, a city or county may not agree to pay the COVID-19 related expenses of a third party in anticipation of pursuing reimbursement from the CRF or otherwise assign its ability to claim reimbursement from the CRF without first contacting the State's technical assistance provider (listed below) to ensure it can be documented as a COVID-19 related eligible expense.

11) What does a city or county need to do to receive funds?

Cities or counties interested in receiving CRF funds must do the following: 1) pass a resolution by the jurisdiction's governing body authorizing execution of a contract with the State; 2) execute a Reimbursement Agreement with the State outlining the city's or county's legal obligations relating to any funds provided; and 3) submit a reimbursement request and supporting documentation to the State through an online portal.

The State's required resolution language and contract are available for review at: <https://bfm.sd.gov/covid/crf/>.

12) What happens if a city or county receives funds for an expense that is later determined to be ineligible under federal law?

Even though a city or county receives CRF funds under the Reimbursement Agreement, a city or county will still have to reimburse such amounts to the State should a determination later be made that the reimbursement was not permissible. Cities and counties are required to indemnify the State for any ineligible items.

13) What happens if a city or county makes application for expenses that are not allowable?

Any reimbursement request that is disallowed will be retained for future reference and may be reviewed by auditors and oversight authorities. Pursuant to the Reimbursement Agreement and to ensure transparency, all required supporting documentation for reimbursement requests is a public record and may be posted online by the State.

14) Who can help with technical assistance for a city's or county's questions?

The Bureau of Finance and Management has contracted with the state's six regional planning districts to provide technical support to their member cities and counties at no additional cost to those members. The planning districts have long partnered with many state agencies to implement a variety of state and federal programs. Each district has experience and personnel that cities and counties can draw upon for assistance when seeking reimbursement. A list of

planning district contacts is available at:
<https://bfm.sd.gov/covid/crf/PlanningDistrictContacts.pdf>

15) Will there be legislative oversight?

Expenditures under the CARES Act may be reviewed by the South Dakota Legislature’s Joint Committee on Appropriations and may be subject to review by both the Government Operations and Audit Committee and the Department of Legislative Audit. Any city or county submitting a request for reimbursement should be prepared for Legislative review/scrutiny of all reimbursements. Such state-level review would be in addition to any future oversight the U.S. Treasury Department or Congress may conduct in the future.

16) How are public health and public safety payroll expenses eligible if those payroll expenses were already included in the city’s or county’s budget as of March 27, 2020?

This is an exception to the general rule that an expense is not eligible if already in the budget as of March 27, 2020. The U.S. Treasury Department’s guidance allows a payroll cost to be reimbursed using CARES Act funds, even if previously budgeted, as long as the cost “is for a substantially different use” from what was expected when the city or county set its budget prior to or on March 27, 2020. The Treasury Department has further clarified that cities and counties may presume that payroll costs for public health and public safety employees are payments for services “substantially dedicated to mitigating or responding” to COVID-19, which would generally be a substantially different use from that a city or county previously approved in the budget. U.S. Treasury reaffirmed and further clarified this exception as it relates to public health and public safety employees on September 2, 2020.

17) How does a fire department or fire protection district not under a city’s or county’s budget access CRF funds for payroll expenses?

The U.S. Treasury Department’s guidance permits a city or county to pass a portion of its allocation to another unit of government, such as a fire protection district, within its geographic territory. Interested entities should work with the cities and/or counties they serve to determine whether any portion of the jurisdictions’ CRF allocation is available. Allocations made available in this manner are required to be used solely for expenses related to payroll. Cities and counties must contact the State’s technical assistance provider to ensure their plans are appropriately documented and conform to all applicable federal sub-recipient compliance requirements before they are eligible to request this type of reimbursement from the State.

18) What if a city or county incurs payroll costs for an employee due to legally required sick or personal leave, such as the leave provisions in the Families First Coronavirus Response Act (“FFCRA”)?

If a city or county incurs a payroll cost due to a legal requirement for paid sick or personal leave related to COVID-19 (e.g., an employee is experiencing symptoms of COVID-19 and is seeking

diagnosis; an employee is caring for a family member in quarantine), they can request reimbursement from the State's CRF.

19) How can a city or county use these funds to cost share with FEMA disaster funding?

For COVID-19, FEMA Public Assistance ("PA") funding is authorized at 75% federal cost share. Generally, other federal agency funding cannot be used to meet the FEMA non-federal share requirement. For COVID-19, there are two exceptions: the U.S. Treasury Department's CARES Act Coronavirus Relief Fund and the Department of Housing and Urban Development's Community Disaster Block Grant (CDBG-CV) can be used to meet the PA non-federal share. Cost share requirements vary from agency-to-agency and program-to-program; however, many of the programs funded by the CARES Act and the other supplemental appropriations do not require a non-federal share.

20) May a city or county request reimbursement from the CRF to cover the payroll costs of COVID-19-related administrative leave granted to employees?

Yes. This is a specific U.S. Treasury Department exception to the general requirement that reimbursed costs must not have been accounted for in the budget as of March 27, 2020. To be eligible for reimbursement, the administrative leave granted to the employee must have been: 1) the result of a COVID-19-related personnel decision; and 2) in excess of what the city or county would normally have anticipated and budgeted for in its fiscal year. For example, payroll expenses incurred because an otherwise healthy employee was told not to report due to a COVID-19-related county or city office closure and could not work from home would be eligible for reimbursement. However, if an employee was furloughed or granted only unpaid administrative leave, there is no expense eligible for reimbursement and the employee may not be paid retroactively in order to claim reimbursement. Additionally, if the city or county ordinarily budgets a set payroll amount for employee administrative leave, it must exhaust that amount first before claiming reimbursement from the CRF.

21) A city/county is planning for COVID-19-related facility upgrades and improvements that are not listed in Question 4 above. It believes they are necessary for the protection of staff or to allow the public to access city/county facilities safely. Is there any more guidance on what types of projects would be eligible?

Facility upgrades present special challenges for the use of the State's CRF because of the long-term nature of most projects, particularly large changes to building structures or systems. Under U.S. Treasury Department guidance, CRF funds must only be used for necessary expenditures incurred due to the current COVID-19 public health emergency. In determining whether a proposed upgrade is necessary and reasonable, cities and counties should focus on core requirements in the event of office closure. Facility upgrades are eligible for reimbursement from the State's CRF if they can meet the following criteria: 1) the upgrade ensures a core government function (i.e., police, fire, 911, or ambulance) remains functional; 2) the government function cannot be conducted in any other manner during an office closure or work-from-home scenario; and 3) the upgrade protects the city's or county's ability to perform the function by

reducing the threat of compromised staff due to exposure to or infection by COVID-19 in the facility.

For all other types of proposed facility upgrades, the city or county should presume it is not a necessary expenditure and therefore not eligible for reimbursement from the State's CRF. Cities or counties nevertheless wishing to pursue reimbursement must show they have first investigated technology upgrades to enable remote work and interaction with the public. Before a facility upgrade will be approved for reimbursement, a city or county must show 1) the work performed by a facility's staff cannot be addressed through the use of any reasonable technology; and 2) the facility cannot or should not be shut down in order to decrease COVID-19 exposure risk.

22) May a city/county migrate many services, such as building permits or zoning complaints, to an online platform in order to reduce public traffic at county offices in order to protect staff?

To the extent a city or county can show the expenditure supports a service that: 1) it reasonably expects to be subject to the same level of public demand even during an increase in COVID-19 cases, office closure, or work-from-home scenario; 2) demonstrates the level of demand justifies the level of proposed investment; and 3) is important to the ongoing operation of government, then investments in online platforms or technology may be considered necessary and are reimbursable.

23) Is a city or county generally able to receive reimbursement for payroll expenses associated with jail personnel under new U.S. Treasury guidance?

Yes. Please see the amended answers to Questions #7 and #8 above for changes to the State's previous guidance relating to jail personnel.

24) May a city or county that previously did not claim payroll expenses for jail personnel now claim reimbursement for those costs as outlined in Questions #7 and #8, even if incurred prior to U.S. Treasury's September 2, 2020 guidance update?

Yes. Provided the payroll expenses are incurred during the period between March 1-December 30, 2020 and meet all other requirements for reimbursement, a city or county may submit an expanded reimbursement request retroactively. However, if a city or county already received reimbursement for specific jail-related payroll expenses on the basis of the State's previous guidance in response to Question #8, the city or county must reduce its new payroll expense reimbursement claim accordingly.