



Use of Coronavirus Relief Funds for Utility Customer Assistance Programs

The Coronavirus Aid, Relief, and Economic Security (CARES) Act enacted on March 27, 2020, appropriated \$150 billion for Coronavirus Relief Fund (CRF), which is intended to provide assistance to states and local governments in response to the COVID-19 pandemic. Use of these funds is restricted. However, guidance from the U.S. Department of Treasury indicates CRF can be used to provide subsidy payments to utility customers in need of assistance as a result of the COVID-19 pandemic. This document gives an overview of the issue, provides specific examples of state or community use of CRF funds for this purpose, and includes examples of letters to local lawmakers in support of such use.

Background

The CARES Act appropriated \$150 billion to the CRF, which, in turn, was paid to states, the District of Columbia, U.S. Territories, and eligible units of local government based on population. A unit of local government eligible for receipt of direct payment includes a county, municipality, town, township, village, parish, borough, or other unit of general government below the state level with a population that exceeds 500,000. The amount of payments made to each state was reduced by the aggregate amount of payments that was disbursed to eligible local governments within the state.

The CARES Act provides that CRF can only be used to fund expenses 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 March 27, 2020, (the date of enactment of the CARES Act) by the state or local government; and
3. Were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

The Treasury Department has specifically interpreted the CARES Act to mean that CRF cannot be used to replace governmental revenue losses as a result of the pandemic. So, for example, they could not be used to offset a decline in utility revenues due to a decline in load or due to an increase in customer non-payment. However, Treasury has said CRF could be used to provide “subsidy payments” to utility customers in need of assistance because of the pandemic. Specifically in a “Frequently Asked Questions” (FAQ) document published on May 5 and again on May 28, Treasury stated.

Fund payments may be used for subsidy payments to electricity account holders to the extent that the subsidy payments are deemed by the recipient to be necessary expenditures incurred due to the COVID-19 public health emergency and meet the other criteria of section 601(d) of the Social Security Act outlined in

the Guidance. For example, if determined to be a necessary expenditure, a government could provide grants to individuals facing economic hardship to allow them to pay their utility fees and thereby continue to receive essential services.

This FAQ document and all other CRF-related guidance from Treasury can be found [here](#).

As a result of this guidance, several states and localities have established CRF-funded customer assistance programs. Below are descriptions of such programs established in Jacksonville (Florida), Colorado, and Oregon. It is worth emphasizing that Treasury notes that such payments must be deemed by the recipient to be necessary due to the pandemic. Thus, it is incumbent on any entity wishing to creating such a program to at least provide a mechanism for making such an assertion, if not some means of confirming the accuracy of that assertion.

Public power utilities in Missouri are also seeking to establish such a program, and materials the Missouri Public Utility Alliance has crafted to help in that advocacy are also attached.

Finally, we have heard of some jurisdictions that have established utility customer assistance programs, but are excluding public power utility customers from receiving benefits under a mistaken interpretation of the Treasury FAQ. Specifically, despite Treasury clearly indicating that a grant to utility customer to help pay utility bills would be an appropriate use of CRF funds, these local jurisdictions are arguing that a payment to a public power utility customer would result in a payment to the public power utility and, therefore, replace lost governmental revenues in violation of Treasury prohibition against such replacement. Again, we believe Treasury's guidance could not more clearly be intended to explain how CRF could be used without violating that prohibition, and we hope the examples provided here will provide the resources necessary to push back against this misguided and unfair interpretation of Treasury's guidance.

Examples of CRF Use for Utility Customer Assistance

Jacksonville, Florida

On April 24, Jacksonville Mayor Lenny Curry [announced](#) plans for spending \$160 million in Coronavirus Relief Funds, including a \$40 million program to provide up to 40,000 households a \$1,000 debit card for use in paying mortgage, rent or utility bills. The program was authorized under section 7 of City of Jacksonville [Ordinance 2020-0235-E](#). To qualify for a debit card under the program, an applicant must:

- Be a Duval County resident
- Provide proof of employment on February 29, 2020
- Make less than \$75,000 per household on the date of application
- Have lost at least 25% of their income because of the COVID-19 crisis

The city is now [considering](#) legislation to provide an additional \$200 to up to 10,000 residents for utility bills only. An excerpt from the original ordinance is below.

NOTES: The follow-on ordinance is not yet available, but could be a way to deal with the issue of “leakage” from providing grants to customers, rather than paying customer accounts on their behalf.

(Some local counsel are recommending such an approach as an extra measure to avoid running afoul of the prohibition against using CRF funds for revenue replacement.) Specifically, a debit card that could only be used to pay utility bills could a) be considered a direct grant to the customer rather than revenue replacement for the utility, but b) also ensure that all funds provided were spent on the intended purpose.

State of Colorado

The Colorado State Assembly has taken up and passed [Bill 20-1412](#). This bill allocates \$4.8 million of CRF funds received by the state to Energy Outreach Colorado, a not-for-profit energy assistance organization, which is also responsible for the state's Low Income Home Energy Assistance Program. In turn, Energy Outreach Colorado is directed to "provide direct utility payment assistance to low-income households." Full background on the legislative history of Bill 20-1412 can be found [here](#). Again, as with the Jacksonville program, a household must certify that its need for assistance "results from the public health emergency cause by the COVID-19 pandemic."

NOTES: The program does not allocate funds to households, but to the community action agency (CAA) that currently distributes LIHEAP benefits. The CAA will, in turn, not provide funds to households, but make utility payments for their benefit. Again, this resolves the issue of leakage without running afoul of "revenue replacement" restrictions.

State of Oregon

On June 5, the Oregon State Emergency Board (which operates during the interim when the Legislature is not in session) [established](#) "an Other Funds expenditure limitation of \$15,000,000 for the Housing and Community Services Department, for funding from the Coronavirus Relief Fund received by the Department of Administrative Services and transferred to the Housing and Community Services Department for energy assistance payments to Oregonians with incomes adversely impacted by circumstances due to the COVID-19 pandemic."

Utility Assistance Program Advocacy Materials

Missouri Public Power Utilities

MPPUA is seeking to encourage the state to use CRF for a utility customer assistance program. It has provided its members with a fact sheet to help them in their advocacy for such a program and also sent requests directly to Governor Mike Parson and Treasurer Scott Fitzpatrick. Those documents are attached below.

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COVID Financial Assistance for Utility Customers

Local Government CARES Act Funding

MPUA encourages Missouri municipal utilities to reach out to their county commissioners to discuss using part of the local government money to provide a grant to individuals that cannot pay their utility bill (water, sewer, electric, and gas) due to the COVID-19 pandemic.

The State of Missouri received almost \$2.4 Billion in Coronavirus Aid, Relief, and Economic Security (CARES) Act funding. More than \$520 million of that money went to 114 counties in Missouri, while the two largest counties received funding directly from the U.S. Treasury. The local government money was divided and distributed based on the population of the county.

According to the factsheet published by the federal treasury, “... if determined to be a necessary expenditure, a government could provide grants to individuals facing economic hardship to allow them to pay their utility fees and thereby continue to receive essential services.” (page 5, <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked-Questions.pdf>)

Action Plans for Utility Assistance

A municipal utility is experiencing higher than normal non-payments for water, sewer, or electric bills. The municipal utility determines these non-payments are COVID-19 related and contacts the county to discuss the use of CARES Act local government funding to assist with utility payments. Individuals can be households or businesses that did not receive Paycheck Protection Program (PPP) loans. The money can go directly from the county to the utility if the qualifying individuals are credited on their account. Utility can mean water, sewer, electric, and gas.

Scenario 1: The municipal utility works with the county to develop a grant program using local government CARES Act funds to provide to individuals. If the utility and county decide to develop a grant program, we recommend considering the use of the eligibility requirements for LIHEAP. <https://dss.mo.gov/fsd/energy-assistance/#:~:text=To%20qualify%20for%20LIHEAP%20assistance,accounts%2C%20retirement%20accounts%2C%20or%20investments.>

Scenario 2: The municipal utility works with the county and a community action agency or regional planning commission on providing grants to individuals that are unable to pay utility bills due to the pandemic. The community action agency or regional planning commission should have the administrative procedures in place to identify individuals in need of assistance and to smoothly administer the grant funding. A list of community action agencies can be found here: <https://www.communityaction.org/wp-content/uploads/2019/02/MCAN-Statewide-AgencyInfo.pdf>.

Work with Other Utilities: Co-op and regional water district collaboration opportunity: The funding can be distributed to provide grants to individuals facing hardships to pay their utility bills (not municipal specific). Therefore, this may be a good opportunity to reach out to your colleagues at the co-ops and regional water districts for support in discussions with the county. Write down the municipal utility plans and collaborate to develop a holistic grant program, built to serve those facing an economic hardship in your community.



Serving Municipal Utilities

May 22, 2020

The Honorable Mike Parson
Governor of Missouri
PO Box 720
Jefferson City, Missouri 65101

The Honorable Scott Fitzpatrick
Missouri State Treasurer
PO Box 210
Jefferson City, Missouri 65102

Dear Governor Parson and Treasurer Fitzpatrick:

Missouri's municipal utilities appreciate your leadership during this unprecedented time. As essential employees, we have been working tirelessly to ensure Missourians have the resources necessary to adapt to the circumstances faced by this worldwide COVID-19 pandemic. Water, electric, natural gas, and sewer services are all a part of the basic services needed to fight the SARS-CoV-2 virus. Additionally, our utilities ensure that people stay healthy and connected, while powering our State's economic engine.

Many Missouri families are facing tough choices as they experience losses of income as a result of the pandemic, including whether to delay payments for essential services like utilities. We understand that Missouri's state funding allocation of the federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act) can be used to provide essential service grants for utility bills to individuals facing economic hardship [*Coronavirus Relief Fund (CRF) Guidance for State, Territorial, Local, and Tribal Governments; U.S. Treasury Department (USDT) – April 22, 2020 and Supplemental CRF Frequently Asked Questions; USDT – May 4, 2020*].

We recommend that roughly 7%, or \$103,618,155, of the remaining \$1.5 billion in Missouri CARES Act funding be set aside to assist utility customers in need pay their electric, water, natural gas, and sewer bills. It is estimated that these recommended funds would meet the needs of more than 178,000 Missouri households living at 150% of the federal poverty level. Currently, Missouri has 592,449 households that meet this poverty standard. Not only will the additional CARES funding assist Missourians that need it most, the funding will also assist in the continuity of essential utility services that girder economic development in the State.

Many community utilities have forgone disconnects and late fees for missed utility payments or have made other arrangements to assist customers through this pandemic. Local utility leaders and professionals have worked with their community customers to ensure the safety and security of their most vulnerable populations. However, municipal utilities throughout the state must consider budgetary constraints given the uncertainty that is sure to follow this pandemic.

Our municipal utilities have proven their abilities and strength through this pandemic. Utility leaders have modified work schedules, continuity plans, and customer communications to ensure the safety of their community and employees, all while maintaining the expected level of essential services. On time utility bill payments ensure sustainability of essential and reliable utility services provided by local professionals. Reliable

drinking water, electricity, natural gas, and sewer services are necessary to keep Missouri's economy moving forward. This is a critical priority for communities throughout Missouri.

We would appreciate the opportunity to discuss with you and your staff Missouri's use of the CARES Act funding. Municipal utility leaders statewide are working to ensure Missouri continues to show our strength and resilience during this unique time in history. Please contact me or my staff with any questions that you may have. Again, we greatly appreciate your leadership as we continue to fight this pandemic.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Ewell Lawson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ewell Lawson

Vice President, Government and External Affairs
Chief Operating Officer, MAMU