

Questions on Subtitle M—Coronavirus State and Local Fiscal Recovery Funds; Sec. 9901(a).

1. Sec. 602(b)(2)(B)(ii) identifies that \$19 billion is to be allocated by the Treasury Secretary (hereafter, the Secretary) to Tribal governments in a manner determined by the Secretary.
 - a. How will the Secretary allocate the \$19 billion equitably across Tribal governments?
 - b. Will the “manner determined” by the Secretary for allocating funds across Tribal governments be done in consultation with the Secretary of the Interior and Indian Tribes, as was done in the CARES Act, and in consultation with the Senate Committee on Indian Affairs on both sides of the aisle?

2. Sec. 602(b)(4) contains “pro rata adjustment authority” to the Secretary of the Treasury (hereafter, Secretary) to ensure that all funds in the Coronavirus State Fiscal Recovery Funds (CSFRF) are allocated to governments of territories, Tribes, states, and the District of Columbia. Sec. 602(e) contains “recoupment” authority for the Secretary, in contrast to the taxpayer protections in the bipartisan CARES Act, which provided recoupment authority to the Inspector General of the Department of the Treasury. The CARES Act appropriated and allocated \$150 billion of taxpayer resources in the Coronavirus Relief Fund (CRF) for states, localities, Tribes, territories, and the District of Columbia, initially for use until December 30, 2020. Subsequent to enactment of the CARES Act, CRF resources may be used until the end of calendar year 2021. That means that Treasury’s IG may exercise recoupment authority with respect to the CRF until the end of 2021.
 - a. How will the Secretary’s recoupment and pro rata adjustment authorities with respect to the CSFRF interplay with Treasury IG’s recoupment authority with respect to the CRF?
 - b. If, for example, Treasury’s IG hypothetically recoups various amounts of CRF funds from various states throughout this year, will the Secretary then make pro rata adjustments to amounts of CSFRF resources throughout this year and inject the corresponding uncertainty into CSFRF resources available for states to use?

3. Sec. 602(b)(6)(C) identifies that the Secretary shall pay CSFRF funds to the District of Columbia not later than 15 days after enactment of the act, with the latter having occurred on March 12. What will the Sec. 602(b)(6)(C) payment be, and please identify that amount to us not later than 15 days after the enactment of the act.

4. Section 602(c)(1) notes that funds can be used until December 31, 2024. Can a state cover allowable expenses that occurred *prior to* the passage of the act? For example, if the state covered veteran’s home expenses on February 15, 2021, can the Fund be used to retroactively reimburse these allowable COVID-19 expenses? The term ‘covered period’ seems to only apply to the timeframe for which state tax changes occur, not when allowable expenses may have been incurred.

5. Sec. 602(c)(1) sets out what seem to be unconstrained allowable uses of CSFRF resources for states, Tribes, territories, and the District of Columbia. Secs. 602(c)(1)(A) through 602(c)(1)(C) allow resources to be used for a wide range of conceptual expenditure

categories, and each is tied explicitly to the existence of the COVID-19 public health emergency. Sec. 602(c)(1)(D) allows resources to be used, largely unconstrained, to make “necessary” investments in water, sewer, or broadband infrastructure.

- a. Is it correct that CSFRF resources shall not be used for purposes set out in 602(c)(1)(A)-(C) when the January 31, 2020 Public Health Emergency Declaration is not renewed?
6. Sec. 602(c)(1)(A) allows CSFRF resources to be used “to respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) or its negative economic impacts...” What will the Secretary deem to be “negative economic impacts,” what will not be deemed to be such impacts, and how will negative economic impacts be measured? What are the limiting principles, if any, that separate economic impacts into positive and negative? (Similar questions apply to Sec. 603(c)(1)(A) for Coronavirus Local Fiscal Recovery Funds [CLFRF]).
 7. Sec. 602(c)(1)(A) notes that funds can be used to “respond to a public health emergency...” Can a state continue to cover the payroll expenses of public health and public safety personnel under the provision that allows coverage of expenses to respond to the public health emergency? Previous Treasury guidance under the CARES Act created a presumption as an administrative convenience to state and local governments that such personnel were substantially dedicated to mitigating and responding to the pandemic. (Similar question applies to Sec. 603(c)(1)(A)).
 8. Sec. 602(c)(1)(B) allows CSFRF resources to be used “to respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers” in an amount up to \$25,000 per such worker, “that are performing essential work, or by providing grants to eligible employers that have eligible workers who perform essential work.” (Similar questions apply to Sec. 603(c)(1)(B)).
 - a. “Eligible workers” are defined, in Sec. 602(g)(2) to be “workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as each Governor of a State or territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents...”
 - i. What will be the definition of “essential critical infrastructure sectors?”
 - ii. What will be the definition of “essential work” during the COVID-19 public health emergency?
 - iii. Using occupations within the 23 major occupational groups found in the Bureau of Labor Statistics (BLS) 2018 Standard Occupational Classifications (SOC) major groups, Codes 11-0000 through 55-0000 (or any BLS update to the 2018 SOC), what occupations, from those found in the SOC, will be deemed to be allowable for categorization of being “essential” workers, and which workers may not be deemed to be essential by the Secretary?
 9. Sec. 602(c)(1)(C) allows CSFRF resources to be used “for the provision of government services to the extent of the reduction in revenue of such State, territory, or Tribal government due to the COVID-19 public health emergency relative to revenues collected in

the most recent full fiscal year...prior to the emergency.” (Similar questions apply to Sec. 603(c)(1)(C)).

- a. How will the Secretary identify causal links between the emergency and revenue reduction and separate out revenue effects of other, non-emergency, factors; will statistical analyses be used to identify causality, or will uses allowed by 602(c)(1)(C) be determined merely by discretion of the Secretary without oversight?
- b. Does “the reduction in revenue” refer to general revenue of a government, or individual revenue components such as excise taxes, sales taxes, property taxes, estate taxes, and income taxes? If so, how will the Secretary confront the identification issue identified in (i).

10. Sec. 602(c)(1)(D) allows CSFRF resources to be used “to make necessary investment in water, sewer, or broadband infrastructure.” Please identify how investments will be determined to be “necessary” or not. (Similar question applies to Sec. 603(c)(1)(D)).

11. Sec. 602(c)(1)(D) notes that funds under this section can be used to make “necessary investments in water, sewer, or broadband infrastructure.” Is there a requirement that water, sewer or broadband infrastructure projects must be **completed by** December 31, 2024, or may projects be underway by that date? For a rural state, major broadband investments will take some time to connect unserved areas, and any requirement that projects must be completed by a certain date may deter states from considering the most needed investments. (Similar question applies to Sec. 603(c)(1)(D)).

12. Sec. 602(c)(2) identifies two restrictions on uses of CSFRF resources:

- a. Sec. 602(c)(2)(A) says that no such resources shall be used “to either directly or indirectly offset a reduction in the net tax revenue of such State or territory resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise) or delays the imposition of any tax or tax increase.”
 - i. How will Treasury measure net tax revenue reductions caused by changes in regulation or administrative interpretations or delay in imposing a tax or delay in imposing a tax increase?
 - ii. Will Treasury withhold or recoup funds from a government of a state, territory, or Tribe if that government decides it is in the best interest of its citizens to waive any tax payment associated with receipt of unemployment compensation, as the American Rescue Plan Act allows for at the federal level?
 - iii. Will Treasury withhold or recoup funds from a government if that government decides it is in the best interest of its citizens to delay tax receipts because of a delay in federal tax filing dates?
 - iv. Will Treasury withhold or recoup funds from a government if that government decides it is in the best interest of its citizens to provide tax relief for low-income communities?
 - v. Will Treasury attempt to influence decision making with respect to the level of public employment of a state, territory, or Tribe by withholding or recouping of threatening to withhold or recoup CSFRF funds should a

government not meet employment levels deemed by Treasury to be desirable to administration officials?

- vi. What is the administration's public policy goal in having Sec. 602(c)(2)(A) in its American Rescue Plan?
 - vii. Sec. 602(c)(2)(A) notes that funds cannot be used in this section to "either directly or indirectly offset a reduction." How will Treasury define "indirectly" offsetting a tax reduction? For example, if a state had previously planned an income tax reduction prior to passage of the act, will the state be limited in any way from covering allowable expenses (e.g., broadband infrastructure, public safety payroll costs, etc.) from the Fund?
- b. Sec. 602(c)(2)(B) says that no such resources may be used "for deposit into any pension fund."
- i. Given that state budgetary resources are fungible, how can Treasury determine whether funds flowing from the CSFRF into general budgetary resources of a state, territorial, or Tribal government does not flow into pension funds?
 - ii. For clarity, the restriction in 602(c)(2)(B) does still allow the government of a state, territorial, or Tribal government to fund other post-employment benefits (OPEBs) for government workers, correct?
13. Sec. 602(d)(1) identifies that a state or territory, to receive CSFRF resources, shall provide the Secretary with a certification that the relevant government "requires" the resources to carry out the activities specified in allowable uses of funds. Where will Treasury, in the interest of transparency, make public the certifications that are received?
14. Sec. 602(d)(2) identifies that any state, territory, or Tribal government receiving CSFRF resources shall provide periodic reports to the Secretary "providing a detailed accounting of—(A) the uses of funds by such State, territory, or Tribal government, including in the case of a State or a territory, all modifications to the State's or territory's tax revenue sources during the covered period; and (B) such other information as the Secretary may require..."
- a. What constitute "modifications" of tax revenue sources and what factors do not in invasive part (A)?
 - b. What "other information" will the Secretary require, and why?
 - c. Will information supplied by Puerto Rico under (A) be shared with the Financial Oversight and Management Board for Puerto Rico?
 - d. Will information supplied under (A) and (B) be made available to the public, to the Senate Finance Committee, to the House Committee on Ways and Means, and Treasury's IG? If so, how will the information be made available, with what periodicity, and where will it be made publicly available?
15. Sec. 602(e) identifies recoupment of CSFRF resources by the Secretary if the Secretary has somehow deemed that a government has provided tax relief to its citizens.
- a. How will "the amount of the applicable reduction to net tax revenue attributable to such violation [provision of tax relief]" be measured for each possible type of

violation (e.g., change in law, regulation, or administrative interpretation of a tax provision; delay in imposition of any tax or tax increase) be measured?

16. Sec. 603(b)(2) discuss amounts to be allocated. Under (b)(2)(B), the Secretary pays each State “an amount” which bears the same proportion to such reserved amount as the total population of all areas. How will you determine the amount and will it be made public to review? The same question applies to 603(b)(2)(C)(i).
17. How will certifications allowed in Sec. 603(b)(2)(C)(ii)(I) be made public and also available to the Senate Finance Committee?
18. How will written plans allowed in Sec. 603(b)(2)(C)(ii)(II)(aa)(AA) be made public and also available to the Senate Finance Committee?
19. Sec. 603(b)(2)(C)(iv) notes that excess amounts shall be returned to the Secretary. Is there a specific fund excess amounts will be returned to? Do you intend to use the excess amounts for other programs established under Treasury?
20. How will periodic reports to the Secretary in 603(d) be made public and also available to the Senate Finance Committee.
21. Please explain the reasoning on how the District of Columbia could be considered a single county that is a unit of general local government?
22. Sec. 4018 of the CARES Act created the Special Inspector General for Pandemic Recovery (SIGPR). According to Sec. 4018(c)(1), SIGPR’s role is to “conduct, supervise, and coordinate audits and investigations of the making, purchase, management, and sale of loans, loan guarantees and other investments made by the Secretary of the Treasury **under any program established by the Secretary of this Act, and the management by the Secretary of any program established under this Act.** (emphasis added)” The American Rescue Plan of 2021 failed to include any continued appropriation or funding of SIGPR.
 - a. Can you guarantee that SIGPR will receive funding of \$25 million in order to carry out his duties as established by the CARES Act?
 - b. Can you guarantee that SIGPR will have the full backing of the Treasury to carry out proper oversight over any program established and managed by the Secretary – even if the program is continued through new legislation?