



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 14, 2022

The Honorable Brandon Creighton
Chair, Committee on Higher Education
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Opinion No. KP-0405

Re: Proper method for distribution of Coronavirus Relief Funds in a jurisdiction with a population under 500,000, but within a county with a population over 500,000 (RQ-0431-KP)

Dear Senator Creighton:

You ask about Montgomery County's redistribution of certain federal funds it received under the Coronavirus Aid, Relief, and Economic Security ("CARES") Act.¹

In March 2020, Congress passed the CARES Act to respond to the economic hardships caused by the COVID-19 pandemic. *See* CARES Act, Pub. L. No. 116-136, 134 Stat. 281 (2020) (to be codified in various titles of the U.S.C.). As part of the CARES Act, Congress created the Coronavirus Relief Fund (the "CRF" or "Fund"). *See generally* 42 U.S.C. § 801. From the Fund, Congress appropriated \$150 billion to states, territories and tribal governments, and certain local governments to fund necessary, but unbudgeted, expenditures the governments incurred due to the public health emergency. *Id.* § 801(a)(1) (appropriating \$150 billion), (d)(1)–(3) (listing three factors limiting use of funds for the period March 1, 2020, to December 30, 2020); *see also* Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, Tit. X, § 1001, 134 Stat. 1182 (2021) (amending section 801(d)(3) to extend the period to December 31, 2021).

The CRF contains several methodologies for distributing the \$150 billion. After reserving specific amounts for U.S. territories and tribal governments, it allocates \$139 billion for direct payments to the 50 states based on population with no state receiving less than \$1.25 billion. *See* 42 U.S.C. §§ 801(a)(2)(A)–(B) (reserving \$3 billion to territories and \$8 billion to tribal governments), 801(c)(1)–(2)(A) (providing for minimum payment to the states based on population). From the \$139 billion amount, the Fund authorizes direct payments from the U.S.

¹Letter from Honorable Brandon Creighton, Chair, Senate Comm. on Higher Educ., to Honorable Ken Paxton, Tex. Att'y Gen. at 1 (July 20, 2021), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2021/pdf/RQ0431KP.pdf> ("Request Letter").

Treasury to larger units of local governments. *Id.* § 801(b)(2). It defines “unit of local government” as counties and cities with populations in excess of 500,000. *Id.* § 801(g)(2) (defining unit of local government to mean “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”). A direct allocation from the U.S. Treasury to a unit of local government reduces the allocation for the state in which the local government is located by an amount equal to 45% of the unit of local government’s per capita share of the state’s allocation.² *Id.* § 801(c)(5); *see also id.* § 801(e) (requiring a unit of local government to certify that its proposed use of the funds is consistent with the limitations in section 801(d)).

You tell us the State of Texas established a state funding methodology of \$55 per capita for the jurisdictions below the 500,000 population threshold.³ *See* Request Letter at 1. You also tell us that “[o]f the twelve counties that received direct CRF funding . . . , all except for one followed the state’s \$55 per capita methodology for distributing funds to the local governments within their jurisdiction.” *Id.* You explain that Montgomery County distributed funding to local governments within its jurisdiction under its own parameters and “not the methodology established by the Treasury or the State.” *Id.* As a result, those local governments “did not receive their equitable share of CRF funding and were also ineligible from receiving the state’s allocation directed for jurisdictions with under a 500,000 population.” *Id.* You ask about the correct distribution requirement as between the Treasury, state, or county, and about how a jurisdiction with a population under 500,000, but within a county with a population over 500,000 should receive their allotted equitable share of CRF funds.⁴ *Id.*

Other than its limitation on the types of authorized expenses, the CRF does not tell a unit of local government receiving a direct payment how to use the funds. *See generally* 42 U.S.C. § 801(a)–(g). No language in the CRF statute requires a unit of local government to redistribute its received funds to the local governments within its borders. *See id.* Similarly, no language imposes a methodology on a unit of local government to redistribute funds to the local governments within its borders. *See id.* The U.S. Treasury encouraged states to transfer funds to those local governments that did not receive a direct payment and to use the same 45% per capita allocation to “ensure equitable treatment among local governments of all sizes.” Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments, 86 Fed. Reg. 4182-01, 4187, 4190 (Jan. 15, 2021) (frequently asked questions Nos. A. 4, 33). Yet, the U.S.

²Texas received \$11.24 billion and allocated 45 percent of that total—approximately \$5.06 billion—to local governments. Of that \$5.06 billion, six cities and 12 counties, as eligible units of local government, received direct payments from the Fund totaling \$3.2 billion, leaving approximately \$1.85 billion for Texas to make available to cities and counties below the requisite population. *See* Letter from Honorable Greg Abbott, Gov., State of Tex., to Cnty. & City Leaders at 1 (May 11, 2020) (“Abbott Letter”), https://gov.texas.gov/uploads/files/press/Counties_Cities_CRF_Final.pdf (on file with the Op. Comm.).

³*See id.* at 2 (“The first allocation from the \$1.85 in local funds will be made available to these cities and counties on a \$55 per capita allotment.”); *see also generally* Tex. Dep’t of Emergency Mgmt., *Coronavirus Relief Fund*, <https://tdem.texas.gov/crf/>.

⁴In 2021, Congress passed the American Rescue Plan Act of 2021 (“ARPA-21”), which continues and modifies certain benefits under the CARES Act. *See* ARPA-21, Pub. L. No. 117-2, Tit. IX, Subtit. M, § 9901, 135 Stat. 4 (2021). As you ask only about distribution of the \$150 billion under the CRF, we limit this opinion to that distribution and do not address any additional appropriations made by APRA-21. *See* Request Letter at 1.

Department of Treasury has consistently advised that a direct fund recipient is “not required to transfer funds to smaller cities within the county’s borders.” *Id.* at 4188 (frequently asked questions No. A. 6); *see also id.* 4182 (noting the guidance is unchanged from the frequently asked questions document dated October 19, 2020); 42 U.S.C. § 1302(a) (authorizing the U.S. Treasury Secretary to adopt rules “necessary to the efficient administration of the functions with which [he] is charged”). Accordingly, as no statute requires Montgomery County to redistribute CRF funds to other jurisdictions within its jurisdiction, we cannot conclude that the methodology it used is contrary to law.

S U M M A R Y

In the 2020 Coronavirus Relief Fund (“CRF”), the U.S. Congress appropriated \$150 billion to assist states, territories and tribal governments, and certain local governments to fund necessary but unbudgeted expenditures the governments incurred because of the COVID-19 public health emergency. Texas cities and counties with populations exceeding 500,000 were eligible for a direct payment of CRF funds from the U.S. Treasury. The CRF did not expressly require a direct recipient to redistribute its CRF funds to local governments within its jurisdiction and did not establish a methodology by which to redistribute its CRF funds. Accordingly, we cannot conclude a particular direct recipient’s redistribution methodology is contrary to law.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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