



October 29, 2020

VIA EMAIL

The Honorable Donovan M. Dela Cruz, Chair
The Honorable Jarrett Keohokalole
The Honorable Michelle Kidani
The Honorable Donna Mercado Kim
The Honorable Sharon Moriwaki
The Honorable Kurt Fevella
Senate Special Committee on COVID-19
Hawai'i State Capitol
415 South Beretania Street
Honolulu, Hawai'i 96813

Re: *Limited Scope Review of the State's Oversight of Moneys Received Through the Coronavirus Relief Fund, Report No. 20-14*

Dear Senators:

Please find attached a copy of Report No. 20-14, *Limited Scope Review of the State's Oversight of Moneys Received Through the Coronavirus Relief Fund*.

The report is accessible through our website at:
<http://files.hawaii.gov/auditor/Reports/2020/20-14.pdf>.

This report and others we have issued in response to the COVID-19 pandemic may be accessed at: <https://auditor.hawaii.gov/covid19-related-reports/>.

If you have questions about the report, please contact me.

Very truly yours,

Leslie H. Kondo
State Auditor

LHK:emo

Attachments

ec/attach: Senators
Representatives
Carol Taniguchi, Senate Chief Clerk
Brian Takeshita, House Chief Clerk



PHOTO: ISTOCK.COM

COVID-19 SPECIAL PROJECTS

Limited Scope Review of the State’s Oversight of Moneys Received Through the Coronavirus Relief Fund

Introduction

At the Senate Special Committee on COVID-19’s request, we initiated this limited scope review of the oversight of \$862.8 million the State of Hawai‘i received through the Coronavirus Relief Fund (CRF). The fund was established by the Coronavirus Aid, Relief, and Economic Security (CARES) Act to provide direct assistance to state, local, and tribal governments to address costs associated with the current public health emergency. Our review includes those funds the State distributed to the counties of Hawai‘i, Maui, and Kaua‘i as well as to subrecipient organizations that are implementing state and county programs using CRF moneys.

We are providing this review to inform the Committee of possible areas of concern related to the State’s tracking of CRF moneys and compliance with certain federal requirements, the most significant of which is that the State is relying almost exclusively on each state department and county to ensure that their use complies with federal requirements. However, with the December 30, 2020 deadline to expend the CRF moneys quickly approaching, we did not ask each

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subrecipient – i.e., each state department and county – for the respective policies, procedures, and controls regarding their use and oversight of the CRF moneys. We determined that we would not be able to identify concerns, and possibly offer recommendations, about each entity's policies, procedures, and controls in sufficient time for those entities to address those issues.

We are available to provide additional assistance to the Committee in this area, at the Committee's request.

Background

Hawai'i received \$1.25 billion through the CRF, with \$862.8 million distributed to the State and \$387.2 million awarded directly to the City and County of Honolulu.¹ In April, the Legislature appropriated \$226.8 million of the State's portion, sending \$80 million to the County of Hawai'i, \$66.6 million to the County of Maui, and \$28.7 million to the County of Kaua'i for their respective COVID-19 responses.² It also appropriated \$40 million to the Department of Defense, \$9.5 million to the Department of Labor and Industrial Relations, and \$2 million to the Department of Human Services for their respective COVID-related efforts. The remaining \$636 million was deposited into the State's Emergency and Budget Reserve Fund.

When it reconvened in June, the Legislature passed S.B. No. 126, S.D. 1, H.D. 1, C.D. 1, which amended the state executive budget to, among other things, appropriate the CARES Act moneys that had been deposited into the State's Emergency and Budget Reserve Fund to address additional needs created by the COVID-19 pandemic.³ For each appropriation of CRF moneys, the bill, which became Act 9 (Session Laws of Hawai'i 2020), reads: "On December 28, 2020, any unexpended funds shall be transferred to the unemployment compensation trust fund established under section 383-121, Hawai'i Revised Statutes."

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¹ Local governments with populations of 500,000 or more were permitted to apply directly to the Treasury for a specified share of their state's funding. The City and County of Honolulu made such a request and was allocated moneys separate from the State's; therefore, we did not review Honolulu's oversight of its CRF award. The other counties do not have the populations to qualify for a separate allotment.

² Act 8, Session Laws of Hawai'i 2020.

³ The Emergency and Budget Reserve Fund is a special fund for emergency and "rainy day" purposes.

State CRF Allocations Under Act 8 and Act 9

Act 8	Counties	Purpose	Appropriation
	County of Hawai'i	County of Hawai'i	\$80,009,671
	County of Maui	County of Maui	66,598,757
	County of Kaua'i	County of Kaua'i	28,715,551
			\$175,323,979

Act 8	Department	Purpose	Appropriation
	Department of Defense	COVID-19 Response	\$40,000,000
	Department of Labor and Industrial Relations	Pandemic Unemployment Assistance Program	1,360,000
		IT Systems and Staffing	8,154,000
	Department of Human Services	IT and Other Systems	2,000,000
			\$51,514,000

Act 9	Department	Purpose	Appropriation
	Department of Business, Economic Development and Tourism (Hawai'i Housing Finance and Development Corporation)	Housing Relief & Resiliency Program	\$100,000,000
		Retraining and Workforce Development Programs	10,000,000
	Department of Business, Economic Development and Tourism	Innovation Grants to Create a Supply Chain of Cleaning Supplies and PPE	10,000,000
		Fishing Industry Support	3,000,000
	Department of Human Services	Childcare Facility Subsidy	15,000,000
	Department of Defense	Purchase & Distribution of PPE	61,000,000
	Department of Transportation	Airport Screening & Health Assurance Security Initiatives	70,000,000
		Food Distribution	5,000,000
	Department of Labor and Industrial Relations	Support for 2020 Graduates of Public High Schools	1,000,000
		Unemployment Insurance Assistance	-
	Office of the Governor	Governor's Discretionary Fund	39,986,000
			\$314,986,000

	Counties	175,323,979
	Act 8	51,514,000
	Act 9	314,986,000
		\$541,823,979

In his objections to S.B. 126 (Act 9) the Governor noted the reduction to the Hawai'i Housing Finance and Development Corporation for the housing relief and resiliency program of \$100 million to \$50 million; however, the item was not adjusted in the bill, unlike the other adjustments stricken or reduced.



← Reduced by \$26M

← Reduced by \$5M

← Reduced by \$39M

← Reduced by \$20M

← Reduced by \$1M

← Reduced by \$230M

\$321,000,000

Amount of vetoed appropriations

Amount Allocated from the \$321 Million in Appropriations Vetoed by the Governor

Department	Purpose	Allocation
Department of Health	COVID-19 testing supplies and equipment	35,000,000
	Contact tracing expansion	34,993,325
Department of Public Safety	Quarantine chambers and isolations containers	3,750,000
	Inmate testing; cleaning & disinfection; medical staff	5,100,000
Department of Human Services	Scalable information and communications technology	4,650,000
University of Hawai'i	COVID-19 related expenditures	20,130,000
Department of Health	Additional medical staff services	14,000,000
Hawai'i Health Systems Corporation	PPE supplies and equipment	891,908
Department of Business, Economic Development and Tourism	Hawai'i Restaurant Card Program	66,600,000
Judiciary	PPE supplies and equipment; technology equipment	789,859
		185,905,092
		321,000,000 ← Amount of vetoed appropriations
		(185,905,092)
		135,094,908 ← Remaining unallocated amount

Source: Office of the Auditor

the Hawai'i Restaurant Card Program. The Governor also announced that he intends to use any unspent funds to repay a U.S. Department of Labor loan the State used to pay unemployment benefits.⁴

The table on page 3 summarizes the Legislature's appropriation of the \$862.8 million in CRF moneys received by the State and the appropriations vetoed and reduced by the Governor. To the extent that we have been able to track the \$321 million that the Governor line-item vetoed, we have included that information in the table above.

State relies on subrecipients of federal funds to monitor themselves

The Department of Budget and Finance (B&F) is tasked with ensuring that effective cash management is employed for the CRF moneys as

⁴ In his September 30 News Release, the Governor announced "[a]ny funds unspent at year's end will be placed in the state's unemployment insurance trust fund and used to help repay a \$1 billion loan that was secured to pay unemployment benefits to local residents."

well as assisting the Office of Federal Awards Management in meeting CRF reporting requirements. In addition, the Governor designated B&F's Deputy Director as the "Authorized State Official" for the federal award, charging him with coordinating department-level actions and providing support to the departments using CRF funds.

When we initiated this review, we assumed B&F had developed policies, procedures, and controls specific to the State's use of the CRF moneys, and we expected to analyze those documents for purposes of our review. However, B&F's Deputy Director informed us that B&F is not involved in overseeing the expenditure of CRF moneys.⁵ Instead, he relies on state and county departments and agencies, as well as other private subrecipient organizations, to ensure the federal funds are used appropriately and expended on time. He assumes each department and county has procedures and controls in place, as required, but B&F has not reviewed any of the subrecipients' relevant documents.⁶

B&F's Deputy Director provided us with a copy of Executive Memorandum No. 20-06 (EM No. 20-06), which describes the State's management of its CRF moneys and the process for departments to request use of those moneys. That process requires directors to attest that "[the] request qualifies as an allowable use of the CRF" and that "[the department] will comply with the CARES Act reporting requirements."

He also provided us with the *Coronavirus Relief Fund Hawai'i State-County Handbook* (Hawai'i State-County Handbook), which provides the terms and conditions applicable to the payments to the counties of Hawai'i, Maui, and Kaua'i from the moneys the State received through the CRF. Among other things, the county mayors are required to "certify" that they will only use the CRF moneys for costs allowed under the CARES Act and that their county "shall be liable for any costs disallowed pursuant to financial or compliance audits of funds received."

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⁵ As the Authorized State Official, the B&F Deputy Director reviews and recommends to the Governor approval of department proposals for use of CRF moneys and coordinates the establishment of accounts and the transfer of the moneys to the departments.

⁶ B&F issued Finance Memorandum No. 20-03 (FM No. 20-03) dated January 31, 2020, revising pre-pandemic procedures for departments to request appropriations of federal funds. That guidance requires department heads to ensure that their departments have written plans that describe how the federal funds will be used. It also directs department heads to have policies, practices, and procedures that will, among other things, "[a]void waste, fraud, and abuse" and "[e]nsure that costs charged to federal programs are allowable costs, in accordance with applicable laws, regulations, agreements and contracts." However, annual audits of the State and individual department's compliance with federal award requirements routinely include findings identifying non-compliance issues.

Encumbering vs. Spending

IN ACCORDANCE WITH guidance issued by Treasury, a cost is considered “incurred” when the State has “expended funds to cover the costs,” which means when the goods or other property are received or when services are performed by employees, contractors, subrecipients, and other payees – not when the invoice is actually paid. It is not enough to encumber the funds to pay for goods or services received after December 30. Moneys not used to cover expenditures incurred by December 30 must be returned to the federal government.

The distribution of those documents – EM No. 20-06 and the Hawai‘i State-County Handbook – seem to be the extent of the State’s efforts to minimize the risk that it will have to repay or return any of the federal funds. We have strong reservations about delegating such oversight to the departments and counties themselves. They have received substantial sums of money, much of which is paying for new programs that have to be up and running in a short amount of time, and putting controls in place to ensure that the funds are spent appropriately by December 30 may not be a priority.

We – and B&F – have not confirmed that departments and counties have documented procedures and controls in place that are specific to new programs funded with CRF moneys. In our opinion, the State, through B&F, should be actively monitoring and overseeing the departments’ and counties’ use of the CRF moneys. Documented procedures and controls are essential to that monitoring and oversight. There simply is too much potential liability to the State – i.e., the State cannot afford to repay or return any of the moneys it was awarded under the CRF – to rely on blind faith. As the recipient of the award, the State is responsible for repaying or returning moneys to the U.S. Department of the Treasury (Treasury) if subrecipients do not comply with the law’s requirements, one of which is that the funds be incurred by December 30.

Inconsistent monitoring and tracking of the CRF moneys raise concerns about the State’s ability to distribute the funds in a proper and timely manner

At a September 30, 2020 news conference, the Governor announced that the State had “set aside” 98 percent of the \$862.8 million of CRF moneys it had received from Treasury in April. He explained that CRF moneys must be spent by December 30, 2020; however, any funds unspent at year’s end will be placed in the State’s unemployment compensation trust fund and used to help repay a \$1 billion loan that was secured to pay unemployment benefits to local residents.⁷ “The State will not leave any of the federal funding unused as these funds provide a crucial lifeline to our residents and businesses,” said the Governor. “We are going to use every penny.”

In our review of CRF funds reports, we found significant discrepancies in the State’s accounting of moneys allocated, encumbered, and, most importantly, expended. This inconsistent monitoring and tracking of CRF moneys raise concerns about the State’s ability to distribute the funds in a proper and timely manner. The moneys the State received through the CRF must be expended by the end of the year, not just set

⁷ The State took out a line of credit with the U.S. Department of Labor when its unemployment fund ran out of money early in the summer.

Many of the CRF-funded programs will be audited.

THE CRF MONEYS are subject to the White House Office of Management and Budget's *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance), which means the State, as the award recipient, as well as the departments, counties, and nonprofit organizations that receive distributions of the State's CRF moneys (collectively, "subrecipients") must comply with the Uniform Guidance. Among other things, the Uniform Guidance requires the State and subrecipients to "[e]stablish and maintain effective internal control over the federal award that provides reasonable assurance that the non-federal entity is managing the federal award in compliance with federal statutes, regulations, and the terms and conditions of the federal award." The Uniform Guidance also requires recipients of federal funds to evaluate the subrecipient's risk of noncompliance and to ensure that the funds are used for authorized purposes, in compliance with federal

requirements and the terms and conditions of the award. From discussion with the B&F Deputy Director, we question whether the State is complying with certain of the Uniform Guidance requirements in its use and distribution of the federal funds.

Treasury has advised that payments the State received from the CRF are subject to the Single Audit Act, 31 U.S.C. sections 7501-7507, which generally requires government agencies (and nonprofit organizations) spending in excess of \$750,000 of federal moneys in a fiscal year to have a Single Audit performed. A Single Audit reviews how an entity has managed a grant and assesses the entity's compliance with rules associated with the federal award.¹

¹ Single Audits are performed by independent auditors who follow guidance issued by the Office of Management and Budget called the *Uniform Guidance and the Compliance Supplement*.

aside, with leftovers being used for other purposes. Any money not used to cover expenditures incurred by December 30 must be returned to the federal government.

Inconsistent data leads to questions about spending

The Governor also spoke about the need to get the CRF moneys into the community quickly and to ensure transparency. He explained that the Hawaii Data Collaborative, a local nonprofit, is monitoring and tracking federal funds awarded to the State with assistance from B&F. His presentation that day featured information provided by the collaborative, and the Governor's office directed interested parties to both organizations' websites. We visited both and found significant differences between the information provided by the Governor and the data reported by B&F.

First, to support the claim of funds set aside, or allocated, the Governor's Office included "Coronavirus Relief Fund – Allocated Funds," a chart listing 22 state departments and programs that were

allocated a total of \$845.3 million (or 98 percent) of the State’s \$862.8 million of CRF moneys. (See below.) However, according to B&F’s September 2020 report on the State’s allocations and expenditures of CRF moneys, \$726.7 million (84 percent) has been allocated.

B&F also reported that the State and the counties of Hawai‘i, Maui, and Kaua‘i, combined, have spent \$195.8 million and encumbered another \$283 million, which adds up to \$478.8 million. Of the \$862.8 million received by the State, \$384 million (or 45 percent) has not been spent or encumbered, as of September 30.

Meanwhile, according to the Hawaii Data Collaborative “Tracking Federal Funds” webpage, as of October 23, 2020, of the \$862.8 million CRF moneys received by the State, \$160.2 million has been expended and \$258.2 million encumbered, which adds up to \$418.4 million, representing just 48 percent of the State’s CRF moneys. In accordance with the amounts reported by the Hawaii Data Collaborative, in total, the State has not expended or encumbered \$444.4 million (or 52 percent) of the CRF moneys that must be spent by December 30.

Coronavirus Relief Fund — Allocated Funds

As of September 30, 2020

Airport Screening and Health Assurance Security Initiatives	\$ 85,000,000	Education - UH health and safety initiatives	\$ 20,000,000
Business plan restructuring support	\$ 20,000,000	Fishing industry support	\$ 3,000,000
Business support to create local supply chain	\$ 10,000,000	Food distribution	\$ 5,000,000
Childcare facilities subsidy	\$ 15,000,000	Hawaii Restaurant Card	\$ 75,000,000
Dept. of Defense pandemic response and expenses	\$ 126,000,000	Housing relief and resiliency program	\$ 100,000,000
Dept. of Health pandemic response and expenses	\$ 86,862,383	Legislative health and safety upgrades	\$ 5,000,000
Dept. of Human Services social services support	\$ 9,200,000	Pandemic response - Hawaii	\$ 80,009,671
Dept. of Public Safety pandemic expenses	\$ 12,007,486	Pandemic response - Kauai	\$ 28,715,551
Economic resiliency grant program	\$ 10,000,000	Pandemic response - Maui	\$ 66,598,757
Education - DOE distance learning equipment	\$ 31,000,000	Retraining and workforce development	\$ 10,000,000
		State facilities health and safety expenses	\$ 14,485,122
		Unemployment claims and system support	\$ 32,414,000
		Total	\$ 845,292,970

Source: September 30, 2020 Governor's Update on Coronavirus Relief Funds

Total amount allocated

So has the State expended or encumbered \$478.8 million as B&F reports or is it \$418.4 million as the Hawaii Data Collaborative claims? And is the remaining balance of CRF funds, which have not been encumbered or expended, \$384 million? Or is it \$444.4 million?

“Real-time” expenditure reporting: a missed opportunity for oversight

Since the requirements for allowable expenditures under the CARES Act are quite generous, the Administrator of the Office of Federal Awards Management believes the risk that CRF moneys will be used inappropriately is low. However, he does believe that there is greater risk the funds will not be expended on time or, as the December 30 deadline approaches, organizations will spend those moneys without the requisite scrutiny to ensure compliance or without a clear purpose, in other words, spend-for-the-sake-of-spending. To minimize that risk, the Administrator believes nonprofit organizations that have been engaged to implement programs using CRF moneys should be required to report “real-time” expenditure data. The Administrator believes that daily, real-time expenditure reporting will allow departments to hold subrecipients accountable for their program implementation or redirect moneys to other programs to prevent funds being expended for less impactful purposes as the spending deadline nears.

The Chief Integrity Advisor at the Department of the Attorney General offered a different approach, which she described as a “continuous audit.” She proposed a process using an algorithm that would “flag” questionable expenditures of CRF moneys. According to the Advisor, such a system would be similar to the processes credit card companies use to identify questionable charges. She said that Rutgers University could build the algorithm in about two weeks.

However, developing and implementing such a system would require a fair amount of expertise and coordination. For instance, developers would need to be provided with the specific criteria, i.e., the types of expenditures that should be flagged. Assembling such criteria would likely require a relatively thorough understanding of the CARES Act. And, once questionable expenditures are flagged, someone familiar with CARES Act requirements would be needed to review those questionable expenditures to determine whether they are allowable or not.

While the algorithm system proposed by the Advisor may significantly reduce the risk that CRF moneys are being used inappropriately, we acknowledge that the development of such a system may not have been possible given the short window of time that the federal funds need to be expended.

Overseeing the Oversight

THE TREASURY OFFICE of Inspector General is responsible for monitoring and oversight of the receipt, disbursement, and use of CRF payments. It will do so by evaluating the results of the State’s Single Audit as part of its desk reviews and any audits it initiates. In the event that a recipient of a CRF award fails to comply with requirements, the inspector general has the authority to recover the award moneys.

However, the unavailability of such an automated solution should not have precluded B&F from requiring participating organizations to submit real-time expenditure data and for the department to review that information. In our opinion, the concerns expressed by the Office of Federal Awards Management Administrator are significant. Considering the limited time and substantial amounts of money appropriated to implement programs, the significant number of applicants for many of those programs, and the urgency to spend the funds before December 30, it is imperative that the State actively monitor the use of CRF moneys. Doing so will enable the State to redirect moneys if it appears a program is not able to spend funds responsibly or on time.

Will the Housing Relief and Resiliency Program make payments on time?

The Housing Relief and Resiliency Program (also referred to as the Rent Relief and Housing Assistance Program) provides assistance for Hawai'i renters who have lost income because of unemployment or a reduction in work hours due to the COVID-19 pandemic and are at risk of eviction. Payments are made directly to landlords (up to \$1,500 for Maui, Kaua'i and Hawai'i Island households, and up to \$2,000 for O'ahu households). Rent payments can be made in lump-sum amounts for up to three months at a time.

We note that various reports on the Housing Relief and Resiliency Program's spending leave conflicting impressions of the progress of the program's efforts. For instance, according to B&F, as of September 30, the Housing Relief and Resiliency Program was allocated \$100 million, with \$40.2 million expended and \$59.6 million encumbered, leaving a balance of only \$266,486 or less than 0.3 percent of the total allocation. However, the Hawaii Data Collaborative lists the two nonprofits that administer the program as having spent \$1.6 million and \$2.9 million, respectively, for a total of \$4.5 million as of October 23. Meanwhile, on October 23, the Rent Relief and Housing Assistance program's website listed nearly \$7 million in payments made.

However, on October 26, 2020, Hawai'i News Now reported that the Housing Relief and Resiliency Program had only distributed \$8.5 million, with another \$6.19 million in payments pending. According to the news report, almost 20,000 residents had applied for assistance, with few receiving checks.

The Hawai'i Housing Finance and Development Corporation, the state agency that oversees the program, represented to the Senate Special Committee on COVID-19 that only 2 percent of program funds have been disbursed, which, based on the allocation of \$100 million, is \$2 million. The corporation claimed that the delay was because more

than half of the 20,000 applications it had received at the time contained incomplete or inaccurate information. The program has stopped accepting new applications, noting on its website that the nonprofits distributing the payments have “reached their current processing capacity.”

While we recognize the considerable scope and complexity of the program, we note that the Housing Relief and Resiliency Program will end on December 28, 2020. With less than two months left, it may be very difficult for the State and its partners to distribute the remaining funds in time. As with other social relief efforts, this financial assistance should be provided when it is needed most, not just by a year’s-end deadline.

However, we are also concerned that the pressures of a backlog of applications and a looming deadline will result in a rush to get money out the door without proper scrutiny and review. This last-minute, “spend-for-the-sake-of-spending” mentality that the Administrator of the States’ Office of Federal Awards Management warned about, as discussed earlier, possibly poses the biggest single risk to the Housing Relief and Resiliency Program and CRF spending in general.

The potential crisis also illustrates the necessity of real-time expenditure reporting, which would provide a centralized and authoritative source of information integral in not only ensuring that funds are spent properly and on time but also in providing a singular accounting of the progress programs are making toward their spending goals.

We also reiterate that the Housing Relief and Resiliency Program, like many CRF programs, is subject to a Single Audit and a review by Treasury, which has the authority to recover misspent award moneys. As the recipient of CRF moneys, it is the State that is ultimately responsible for ensuring that the funds are spent properly and on time. And if subrecipients do not comply with the CRF requirements, it will be the State that will have to repay or return moneys to Treasury.

