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COVID-19: Child Care and Development Block Grant (CCDBG) Supplemental Appropriations in the CARES Act

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SUMMARY

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On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law (P.L. 116-136). The CARES Act includes $3.5 billion in supplemental appropriations for the Child Care and Development Block Grant (CCDBG). These funds are to be used to "prevent, prepare for, and respond to coronavirus."

The CCDBG Act (42 U.S.C. §§9858 et seq.) is the main federal law supporting child care programs for low-income working families. The CCDBG is administered by the U.S. Department of Health and Human Services (HHS). HHS allocates CCDBG funds to states, territories, and tribes according to a statutory formula. State, territory, and tribal lead agencies submit CCDBG plans to HHS every three years describing how their child care programs will operate. CCDBG funds are used to subsidize the cost of child care for eligible children of low-income working parents. Funds are also used to support activities to improve the quality of child care and for certain other activities.

The $3.5 billion in supplemental CCDBG funds are provided *in addition to* FY2020 annual appropriations of $5.8 billion (P.L. 116-94). The additional $3.5 billion represents a 60% increase in total appropriations to the CCDBG in FY2020.

The CARES Act funds may be used under existing CCDBG Act authorities. In addition, the CARES Act includes a number of provisions that clarify allowable uses and, in some cases, waive certain underlying requirements of the CCDBG Act. For instance, the CARES Act specifies that the funds

- may be used to provide continued payments and assistance to child care providers in cases of decreased enrollment or closures related to coronavirus, and to ensure they are able to remain open or reopen;
- may be used to continue to pay staff salaries and wages of child care providers (CCDBG lead agencies are encouraged to place conditions on payments to child care providers aimed at ensuring that a portion of the funds they receive go toward costs of salaries and wages);
- may be used to provide child care assistance to health care sector employees, emergency responders, sanitation workers, and other workers deemed essential during the response to the coronavirus, without regard to typical CCDBG income eligibility requirements (federal law generally limits eligibility to those whose family income does not exceed 85% of state median income, though most states set income limits below this federal threshold);
- shall be available to eligible child care providers under the CCDBG Act (even if they were not receiving CCDBG funds previously) for the purposes of cleaning and sanitation, and other activities necessary to maintain or resume program operation;
- are exempt from the minimum spending requirements for quality activities and direct services;
- may be used for allowable obligations incurred prior to enactment of the CARES Act;
- may be used for purposes provided in the CARES Act before the lead agency submits any applicable CCDBG plan amendments to HHS (under regulations, lead agencies generally must submit state plan amendments within 60 days of policy change);
- shall be used to supplement, not supplant, state, territory, and tribal general revenue funds for child care assistance for low-income families; and
- are to remain available for obligation *by HHS* through the end of FY2021 and may remain available for obligation *by CCDBG lead agencies* through the end of FY2022.

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Introduction

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law (P.L. 116-136). The CARES Act includes $3.5 billion in supplemental appropriations for the Child Care and Development Block Grant (CCDBG). This report provides an overview of the CCDBG provisions in the CARES Act. Among other things, these provisions address allowable uses and flexibilities of the supplemental funds. The report also includes allocations for the additional $3.5 billion in CCDBG appropriations.

The CCDBG Act (42 U.S.C. §§9858 et seq.) is the main federal law supporting child care programs for low-income working families. The CCDBG is administered by the U.S. Department of Health and Human Services (HHS). HHS allocates CCDBG funds to states, territories, and tribes according to a statutory formula. In addition, certain funds may be reserved for other activities, such as technical assistance and research. State, territory, and tribal lead agencies submit CCDBG plans to HHS every three years describing how their child care programs will operate. CCDBG funds are used to subsidize the cost of child care for eligible children of low-income working parents. Funds are also used to support activities to improve the quality of child care and for certain other costs.

CCDBG Provisions in the CARES Act

The CARES Act appropriates $3.5 billion in FY2020 emergency supplemental funds to the CCDBG.[1] The funds are to be used to "prevent, prepare for, and respond to coronavirus."[2] The CARES Act funds are provided *in addition to* FY2020 annual appropriations of $5.8 billion (see P.L. 116-94). The additional $3.5 billion represents a 60% increase in total appropriations to the CCDBG in FY2020. The additional funds are to remain available for obligation by HHS through September 30, 2021 (i.e., the end of FY2021). The CARES Act includes a number of provisions that clarify allowable uses and, in some cases, waive certain underlying requirements of the CCDBG Act.[3] Below is a brief discussion of key provisions.[4]

Continued Assistance to Child Care Providers

Under the CCDBG Act, lead agencies subsidize the cost of child care for eligible children. Lead agencies commonly provide subsidy payments directly to child care providers.[5] In some cases,

[1] The funds were also designated as being an emergency requirement pursuant to Section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

[2] Division B of the CARES Act, which contains the CCDBG supplemental appropriation, defines the term *coronavirus* in Section 23005 to mean SARS-CoV-2, the virus that causes Coronavirus Disease 2019 (COVID-2019), or another coronavirus with pandemic potential.

[3] The HHS Office of Child Care has released a number of guidance documents on child care and coronavirus; see https://www.acf.hhs.gov/occ/resource/occ-covid-19-resources.

[4] Note that these provisions apply only to CCDBG funds appropriated in the CARES Act, unless otherwise specified.

[5] In some cases, lead agencies may send the payments to parents, who are then responsible for making the payments to providers. For more information on payment practices, see relevant discussion in Victoria Tran, Kelly Dwyer, and Sarah Minton, *The CCDF Policies Database Book of Tables: Key Cross-State Variation in CCDF Policies as of October 1, 2018*, HHS, Administration for Children and Families (ACF), Office of Planning, Research, and Evaluation (OPRE), OPRE Report #2019-117, November 2019, pp. 227-242, https://ccdf.urban.org/sites/default/files/CrossStateVariationCCDFPolicies2018%20%28final%2011%2021%202019%29.pdf.

lead agencies may provide additional CCDBG funds to eligible providers for other purposes, such as supporting professional development or helping build the supply of quality child care.

The CARES Act specifies that CCDBG funds appropriated in the act may be used to provide continued payments and assistance to child care providers

- in cases of decreased enrollment or closures related to coronavirus, and
- to ensure that providers are able to remain open or reopen as appropriate and applicable.

The CCDBG Act generally encourages (but does not require) lead agencies to make payments to child care providers based on enrollment rather than attendance.[6] Specifically, the law states that lead agencies should "to the extent practicable" delink provider reimbursements from an eligible child's occasional absences due to holidays or unforeseen circumstances such as illness. This provision of the law is intended to support the fixed costs incurred by providers.

Eligible Child Care Providers

The CARES Act specifies that CCDBG funds appropriated in the act shall be available to *eligible child care providers* under the CCDBG Act for the purposes of cleaning and sanitation, and other activities necessary to maintain or resume the operation of programs. The act clarifies that this provision applies to eligible child care providers even if those providers were not receiving CCDBG assistance prior to the public health emergency resulting from coronavirus.

Under the CCDBG Act, *eligible child care providers* generally must

- be licensed, regulated, or registered by the state (though states may exempt certain providers from this requirement); and
- meet certain minimum health and safety standards.

An exception to these requirements is made in cases of child care providers caring only for relatives.[7] However, such providers must comply with requirements applicable to relative caregivers.

Continued Pay for Child Care Staff

The CARES Act encourages states, territories, and tribes to place conditions on payments to child care providers aimed at ensuring providers use a portion of the funds to continue to pay staff salaries and wages. Payment of salaries and wages is not explicitly addressed in the CCDBG Act, though presumably it is typical for some share of CCDBG provider payments to support these expenses. According to national estimates from the Bureau of Labor Statistics (BLS), the mean

[6] As of the start of FY2019, a majority of states and territories had policies in place to allow at least some types of providers to be paid for days when children are absent. (The policies often varied based on the type of provider.) For more information, see Victoria Tran, Kelly Dwyer, and Sarah Minton, *The CCDF Policies Database Book of Tables: Key Cross-State Variation in CCDF Policies as of October 1, 2018*, HHS, ACF, OPRE, OPRE Report #2019-117, November 2019, pp. 227-242, https://ccdf.urban.org/sites/default/files/CrossStateVariationCCDFPolicies2018%20%28final%2011%2021%202019%29.pdf.

[7] Under the CCDBG Act and regulations, this refers to cases in which an eligible child is (by marriage, blood, or court decree) the provider's grandchild, great grandchild, sibling (if the provider lives in a separate residence), niece, or nephew.

hourly wage for child care workers was $12.27 in May 2019.[8] BLS estimated the mean annual wage for child care workers at $25,510 nationally.[9]

Support for Essential Workers

The CARES Act specifies that states, territories, and tribes are authorized to use CCDBG funds appropriated in the act to provide child care assistance to

- health care sector employees,
- emergency responders,
- sanitation workers, and
- other workers deemed essential during the response to coronavirus by public officials.

Further, the act specifies that such workers may receive CCDBG assistance without regard to the typical income eligibility requirements under the CCDBG Act.

The CCDBG Act generally stipulates that eligible children must

- be under age 13 (children may be older in limited circumstances[10]);
- reside with a parent who is working or attending job training (unless the child is receiving or needs to receive protective services);
- have family income no greater than 85% of state median income (SMI), or lower depending on state policy; and
- have no more than $1 million in family assets.[11]

While the CARES Act waives income requirements for essential workers as noted above, it does not waive other eligibility requirements (e.g., those related to the child's age or the parent's work status).

State Plan Amendments

The CARES Act requires HHS to remind states that CCDBG state plans do not need to be amended prior to using "existing authorities in the CCDBG Act for the purposes provided" in the CARES Act. Typically, if a state intends to make a substantial change to policies laid out in its CCDBG plan (e.g., a change in eligibility rules, provider payment rates, family copayments), the state would submit a state plan amendment to HHS for approval. Under regulations, a plan

[8] May 2019 Occupational Employment and Wages data from the Bureau of Labor Statistics (BLS). These data are based on BLS Standard Occupational Classification (SOC) 39-9011, "Childcare Workers." BLS includes in this classification individuals who attend to children at schools, businesses, private households, and childcare institutions. BLS excludes from this classification those who were classified as "Preschool Teachers, Except Special Education" (25-2011) and "Teacher Assistants" (25-9041). For more information, see https://www.bls.gov/oes/current/oes399011.htm.

[9] Ibid.

[10] In limited cases, older children may be served. Regulations codified at 45 C.F.R. 98.20(a)(1)(ii) give state, territory, and tribal CCDBG lead agencies the option to serve children who are under the age of 19 and physically or mentally incapable of caring for themselves or are under court supervision.

[11] Under federal regulations, lead agencies may waive, on a case-by-case basis, the income eligibility and asset test requirements for children who are receiving (or need to receive) protective services and for foster children. See 45 C.F.R. 98.20(a)(3)(ii).

amendment must be submitted within 60 days of the effective date of the requirement (i.e., the state may execute the policy change before submitting the amendment).[12] HHS has 90 days to approve or deny a plan amendment.

In the current circumstances, there are several reasons states might want to amend their plans. For instance, the CARES Act authorizes HHS to provide child care assistance to essential workers regardless of income. This is a substantial change, as federal law and state policies generally condition eligibility on family income.[13]

Spending Flexibilities and Other Technical Provisions

The CARES Act effectively waives or adjusts certain requirements related to the obligation and expenditure of the CCDBG funds appropriated in the act.

Quality Spending

The CCDBG Act generally requires lead agencies to spend at least 9% of their FY2020 allotments on quality activities, plus an additional 3% on activities to improve the quality of care for infants and toddlers.[14] All told, these quality set-asides are intended to account for at least 12% of spending from FY2020 allotments. The CARES Act effectively waives these quality spending minimums for funds provided in the act, offering lead agencies greater flexibility in how funds may be spent.

Direct Spending

The CCDBG Act includes requirements related to minimum spending on direct services. (The term *direct services* generally refers to child care assistance provided to families and is often, but not always, provided in the form of a voucher.) For instance, after lead agencies set aside funds to meet minimum quality spending requirements and for spending on administrative costs (capped at 5% for states and territories[15]), they must use at least 70% of remaining CCDBG funds for direct services.[16] The CARES Act effectively waives direct spending requirements in the CCDBG Act, again offering lead agencies greater flexibility in how funds may be spent.

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[12] See 45 CFR 98.18(b).

[13] Federal law limits eligibility to those whose family income does not exceed 85% of the state median. In the absence of this CARES Act provision, states would likely have needed to submit a waiver to HHS requesting (under authorities in Section 658I(c) of the CCDBG Act) to serve children of essential workers who do not meet statutory income limits. Federal regulations at 45 C.F.R. 98.20(a)(3)(ii)(A) allow states themselves to waive income eligibility requirements on a case-by-case basis for children who are receiving or are in need of protective services. States have broad discretion in how they define the term *protective services*, but unless a state's definition captures the needs of essential workers during an emergency period, a state plan would likely need to be amended to reflect any changes to state policy driven by the CARES Act or the current pandemic more generally.

[14] Regulations at 45 C.F.R. 98.83 apply different minimum quality spending requirements to tribal lead agencies. For FY2020, all tribal lead agencies, regardless of allocation size, are expected to spend 8% of the CCDBG funds received on a per-child basis (i.e., excluding funds provided as a base grant) on general quality activities. An additional 3% of per-child funds are expected to be spent on quality activities for infants and toddlers, but this latter requirement only applies to tribes receiving medium or large allocations (i.e., tribes receiving small allocations are excluded from the infant/toddler quality spending requirement).

[15] Regulations at 45 C.F.R. 98.83 cap spending on administrative costs at 15% for tribal lead agencies.

[16] Federal regulations and the preamble to a final rule issued in 2016 clarify that the 70% direct services spending requirement does not apply to tribes receiving small allocations, but does apply to tribes receiving medium or large allocations. See regulations at 45 C.F.R. 98.83. See also 81 *Federal Register* 67544.

Supplement, Not Supplant

The CARES Act specifies that funds provided via the CCDBG are to be used to *supplement, not supplant*, state, territory, and tribal general revenue funding for child care assistance for low-income families (i.e., the funds provided under the act should not be used to replace existing state, territory, or tribal spending on such activities). CCDBG provisions in annual appropriations acts typically include similar provisions.[17]

Past guidance from HHS suggests that this requirement would likely be considered satisfied if a state, territory, or tribe does not make any administrative or legislative changes to reduce general revenue spending after the enactment of a new CCDBG appropriation.[18] An action occurring after this date could potentially be considered a violation of the non-supplantation requirement, unless the lead agency demonstrates that the reduction was not due to increased federal CCDBG funds.

Use of Funds for Prior Obligations

The CARES Act specifies that the CCDBG funds it appropriates may be made available to restore amounts, either directly or through reimbursement, for obligations incurred prior to enactment. These amounts may only be restored with CARES Act funds if they were used to prevent, prepare for, and respond to coronavirus.

Obligation Deadline for Lead Agencies (or Other Recipients)

The CARES Act states that payments made by HHS may be obligated by the state, territory, tribe, or other recipient in the current fiscal year or the succeeding two fiscal years. Effectively, this means that lead agencies have through FY2022 to obligate funds they receive under the CARES Act. The CCDBG Act typically gives states or other recipients two fiscal years, rather than three, to obligate funds.

Allocation of CCDBG Funds

CCDBG funds are generally allocated according to a formula set in statute.[19] Under the CCDBG Act formula, HHS is to reserve up to 0.5% for territories and not less than 2% for tribes and tribal organizations.[20] The formula also includes set-asides for technical assistance (up to 0.5%); research, demonstrations, and evaluation (0.5%); and a national toll-free hotline and website (up

[17] The provisions in annual appropriations acts usually specify that funds are to supplement, not supplant, *state* general revenue spending. While the annual appropriations acts do not explicitly mention territories or tribes, HHS guidance has clarified that this requirement applies to territories and tribes. See, for instance, Information Memorandum CCDF-ACF-IM-2018-03, issued in August 2018, https://www.acf.hhs.gov/sites/default/files/occ/ccdf_acf_im_2018_03.pdf.

[18] Information Memorandum CCDF-ACF-IM-2018-03, August 2018, https://www.acf.hhs.gov/sites/default/files/occ/ccdf_acf_im_2018_03.pdf.

[19] The statutory formula was not waived by provisions in the CARES Act, though it has been waived in other cases, including for funds appropriated in an FY2019 supplemental appropriations act (P.L. 116-20). The FY2019 supplemental directed HHS to distribute CCDBG funds to eligible states, territories, and tribes based on assessed need, notwithstanding the statutory allocation formula in the CCDBG Act.

[20] Under the statutory formula, Puerto Rico is treated as a state, not a territory. The 0.5% reservation for territories goes to American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands. Under the formula, HHS may only reserve more than 2% for tribes if (1) total CCDBG appropriations in that year are greater than total CCDBG appropriations in FY2014 and (2) the amount allotted to states in that year is not less than the amount allotted to states in FY2014. Note that annual appropriations acts since FY2018 have each specified a dollar amount to be reserved for tribes that is *in addition to* the funds HHS reserves under the not-less-than-2% reservation authority.

to $1.5 million). After all reservations have been made, the remaining funds go to states.[21] Funds are allocated to states according to a formula based on their share of children under age five, their share of children receiving free- or reduced-price lunches, and state per capita income.

Table 1 presents FY2020 CCDBG allocations released by HHS. The table includes allocations from FY2020 annual appropriations (P.L. 116-94), as well as the CARES Act (P.L. 116-136).

Table 1. FY2020 CCDBG Allocations for Annual and Supplemental Appropriations

(Amounts in dollars)

Recipient	FY2020 Annual Appropriations	FY2020 Supplemental Appropriations	FY2020 Estimated Total (Annual + Supplemental)
Alabama	103,937,293	64,957,270	168,894,563
Alaska	10,383,130	6,489,103	16,872,233
Arizona	140,817,006	88,005,835	228,822,841
Arkansas	66,344,273	41,462,912	107,807,185
California	560,532,134	350,313,504	910,845,638
Colorado	67,936,315	42,457,884	110,394,199
Connecticut	37,609,214	23,504,479	61,113,693
Delaware	15,613,270	9,757,763	25,371,033
District of Columbia	9,601,162	6,000,400	15,601,562
Florida	357,787,786	223,605,188	581,392,974
Georgia	231,275,589	144,539,371	375,814,960
Hawaii	19,185,280	11,990,147	31,175,427
Idaho	33,078,412	20,672,881	53,751,293
Illinois	189,482,509	118,420,119	307,902,628
Indiana	126,121,997	78,821,955	204,943,952
Iowa	51,041,330	31,899,093	82,940,423
Kansas	49,237,105	30,771,514	80,008,619
Kentucky	108,392,164	67,741,412	176,133,576
Louisiana	108,135,754	67,581,166	175,716,920
Maine	17,526,508	10,953,470	28,479,978
Maryland	73,319,016	45,821,890	119,140,906
Massachusetts	73,122,302	45,698,950	118,821,252
Michigan	161,446,920	100,898,829	262,345,749
Minnesota	77,038,059	48,146,164	125,184,223
Mississippi	75,414,325	47,131,386	122,545,711

[21] For purposes of allocations, the District of Columbia and Puerto Rico are treated as states.

Recipient	FY2020 Annual Appropriations	FY2020 Supplemental Appropriations	FY2020 Estimated Total (Annual + Supplemental)
Missouri	106,474,159	66,542,726	173,016,885
Montana	16,183,100	10,113,887	26,296,987
Nebraska	32,125,068	20,077,074	52,202,142
Nevada	52,684,637	32,926,105	85,610,742
New Hampshire	11,199,438	6,999,268	18,198,706
New Jersey	100,898,303	63,058,005	163,956,308
New Mexico	47,110,962	29,442,748	76,553,710
New York	261,832,246	163,636,242	425,468,488
North Carolina	189,027,857	118,135,976	307,163,833
North Dakota	9,661,175	6,037,905	15,699,080
Ohio	187,915,171	117,440,585	305,355,756
Oklahoma	80,014,382	50,006,265	130,020,647
Oregon	61,756,006	38,595,401	100,351,407
Pennsylvania	170,245,470	106,397,624	276,643,094
Rhode Island	13,066,079	8,165,854	21,231,933
South Carolina	101,832,407	63,641,788	165,474,195
South Dakota	14,433,916	9,020,707	23,454,623
Tennessee	131,823,595	82,385,260	214,208,855
Texas	594,693,775	371,663,374	966,357,149
Utah	64,667,482	40,414,976	105,082,458
Vermont	7,056,489	4,410,066	11,466,555
Virginia	113,285,225	70,799,409	184,084,634
Washington	93,856,483	58,657,107	152,513,590
West Virginia	37,060,663	23,161,653	60,222,316
Wisconsin	82,628,488	51,639,992	134,268,480
Wyoming	6,666,231	4,166,167	10,832,398
Subtotal, States	**5,352,577,660**	**3,345,178,849**	**8,697,756,509**
American Samoa	7,417,133	4,455,881	11,873,014
Guam	10,687,582	6,420,621	17,108,203
N. Mariana Islands	5,415,595	3,253,447	8,669,042
Puerto Rico	49,537,340	30,959,151	80,496,491
U.S. Virgin Islands	5,609,690	3,370,051	8,979,741
Subtotal, Territories[a]	**78,667,340**	**48,459,151**	**127,126,491**
Tribes[b]	334,995,000	96,250,000	431,245,000
Technical Assistance[c]	29,130,000	—	29,130,000

Research and Evaluation[d]	29,130,000	—	29,130,000
Hotline and Website[e]	1,500,000	0	1,500,000
Remainder[f]	—	10,112,000	10,112,000
Totals	**5,826,000,000**	**3,500,000,000**	**9,326,000,000**

Source: FY2020 annual allotments are drawn from the table on pp. 96-97 of the FY2021 congressional justification for the HHS Administration for Children and Families (ACF), which is available at https://www.acf.hhs.gov/sites/default/files/olab/fy_2021_congressional_justification.pdf. The CARES Act allocations are from the ACF Office of Child Care website at https://www.acf.hhs.gov/occ/resource/occ-covid-19-resources (retrieved on April 20, 2020).

Notes: The FY2020 allotments were estimated by HHS based on amounts appropriated in an FY2020 omnibus appropriations act (P.L. 116-94) and the FY2020 supplemental allotments were estimated by HHS based on amounts appropriated in the CARES Act (P.L. 116-136).

a. Under the statutory formula, territories shall receive up to 0.5% of the total appropriation. The FY2020 annual and supplemental allocations reserve the full 0.5% for territories. Note that while Puerto Rico is shown with other territories in this table, it is treated as a state (not a territory) for purposes of the allocation formula.

b. Under the statutory allocation formula, tribes shall receive not less than 2% of the total appropriation. The FY2020 annual allocations indicate that HHS reserved a total of 5.75% for tribes and tribal organizations (2.75% was reserved based on HHS discretion; remaining funds were reserved under a provision in the FY2020 omnibus appropriations act). The FY2020 supplemental allocations indicate that HHS reserved 2.75% for tribes, the same share of funds HHS has reserved under the statutory formula since FY2016 (not counting additional amounts reserved for tribes in annual appropriations acts since FY2018).

c. Under the statutory formula, HHS shall reserve up to 0.5% for technical assistance and dissemination activities. The FY2020 annual allocations reserve the full 0.5% for technical assistance. The FY2020 supplemental allocations released by HHS do not specify how much will go toward technical assistance.

d. Under the statutory formula, HHS may reserve 0.5% for research, demonstrations, evaluation, and related activities. The FY2020 annual allocations reserve the full 0.5% for these activities. The FY2020 supplemental allocations released by HHS do not specify how much (if any) of the funds will go toward these activities.

e. Under the statutory formula, HHS shall reserve up to $1,500,000 for a national toll-free hotline and website. The FY2020 annual allocations indicate that HHS reserved the full amount, suggesting that this statutory set-aside was likely satisfied with funds reserved from FY2020 annual appropriations. The FY2020 supplemental allocations do not specify an amount for these activities.

f. To date, the FY2020 supplemental estimates posted to the ACF website only specify the amounts to be allocated to states, territories, and tribes. Remaining funds available for allocation are shown here. It is not yet known how these funds will be allocated, though they may be used for activities such as technical assistance or for research, demonstration, evaluation, or related activities. In addition, the CARES Act specifies that funds could be used for federal administrative expenses.

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