



MEMORANDUM
DEPARTMENT OF FINANCE
Office of the Chief Financial Officer

TO: Volusia County Municipal Finance Directors **DATE:** October 12, 2020

FROM: Ryan Ossowski, CPA
Chief Financial Officer

CC: George Recktenwald, County Manager
Suzanne Konchan, Deputy County Manager

SUBJECT: Updated Coronavirus Relief Fund Guidance and FAQ

Overview

Previously, I provided, and updated, a guidance memo to all municipal finance directors that documented County Finance determinations made regarding the use of Coronavirus Relief Funds provided by the CARES Act.

The Department of Treasury ("Treasury") has updated their guidance on the use of Coronavirus Relief Funds, specifically providing four additional pages of Supplemental Guidance on Use of Funds to Cover Payroll and Benefits of Public Employees ("Supplemental Guidance").

Subsequently, the Office of Inspector General ("OIG") of the Treasury provided a revised Frequently Asked Question ("FAQ") document, which was revised to be in agreement with the Treasury's Supplemental Guidance. The Treasury OIG FAQ is especially noteworthy, because the Treasury OIG is responsible by law for monitoring and oversight of the receipt, disbursement, and use of Coronavirus Relief Fund ("CRF") payments. Treasury OIG was also assigned authority to recover funds in the event that it is determined a recipient of a CRF payment failed to comply with requirements of the CRF.

General Eligibility Rules

As a reminder, as enacted in the CARES Act, expenditures of the Coronavirus Relief Fund must be:

1. necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
2. not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or government; and
3. incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

Changes to Eligible Expenditures

Due to the issuance of the Supplemental Guidance, and the subsequent update to the Treasury OIG FAQ document, there is an important change in expenditure eligibility for wages and benefits. The Treasury's Supplemental Guidance greatly clarifies the previous Treasury documents with respect to presumption of public safety and public health personnel being eligible expenditures of the fund.

With the issuance of the Supplemental Guidance, and subsequent Treasury OIG FAQs, the following conclusions can be drawn regarding use of CRF funds for public safety and public health wages and benefits:

1. Treasury considers the "non-budgeted" requirement to be met if a cost is for a substantially different use from any expected use of funds in the budget.
2. Treasury considers payroll and benefits expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency to be within the category of substantially different uses. [Therefore, they are considered unbudgeted per above #1].
3. The full amount of payroll and benefits expenses of substantially dedicated employees may be covered using payments from the Fund.
4. Governments can use the Department of Treasury's administrative accommodation to presume that public health and public safety employees meet the substantially dedicated test, unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise.
5. Treasury OIG will allow the use of Treasury's administrative accommodation presumption during its audits of the CRF.
6. Treasury OIG will not require analysis of the presumption, nor documentation of the negative assurance of the chief executive of the government.

Therefore, by providing the administrative accommodation and additional guidance, Treasury will allow recipients and sub-recipients (such as municipalities) to charge the salaries and benefits of all public safety personnel during the period of March 1, 2020 to December 30, 2020 to the Coronavirus Relief Fund.

More importantly, the Treasury OIG will also allow the use of the Treasury-provided administrative accommodation.

Conclusion

Therefore, County Finance will now allow subrecipient municipalities to include expenditures in connection to the Treasury administrative accommodation. Any subrecipient municipality that wishes to utilize CRF amounts for public safety and public health employees utilizing the Treasury presumption, should submit a budget amendment (or original budget, if you have not completed your agreement) to County Finance as soon as possible.

However, please note the following:

1. The update above only applies to regular wages, overtime, and benefits for public safety and public health employees.

2. All previous examples of eligible expenditures in the categories of COVID-19 testing, personal protective supplies, personal protective equipment, building sanitation improvement, regular wages for human services or similar employees, overtime for human services or similar employees, Families First Coronavirus Response Act, telework improvements and social distancing measures still apply.
3. All expenditures included in any previously approved budget remain approved, although, if you would like to amend your budget in light of revised guidance, you may do so.

Exhibits

Exhibit A – Excerpts from Treasury Supplemental Guidance

Exhibit B – Excerpts from Treasury OIG FAQ

Exhibit A – Excerpts from Treasury Supplemental Guidance

1. “With respect to personnel expenses, though the Fund was not intended to be used to cover government payroll expenses generally, the Fund was intended to provide assistance to address increased expenses, such as the expense of hiring new personnel as needed to assist with the government’s response to the public health emergency **and to allow recipients facing budget pressures not to have to lay off or furlough employees who would be needed to assist with that purpose.**” [Emphasis added]
2. “... Treasury considers the requirement that payments from the Fund be used only to cover costs that were not accounted for in the budget most recently approved as of March 27, 2020, to be met if ... or (b) the cost is for a **substantially different use** from any expected use of funds in such a line item, allotment, or allocation.” [Emphasis added]
3. “**Within this category of substantially different uses**, as stated in the Guidance above, Treasury has included payroll and benefits expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency. The **full amount of payroll and benefits** expenses of substantially dedicated employees may be covered using payments from the Fund.” [Emphasis added]
4. “In recognition of the particular importance of public health and public safety workers to State, local, and tribal government responses to the public health emergency, Treasury has provided, as an administrative accommodation, that a State, local, or tribal government **may presume that public health and public safety employees meet the substantially dedicated test**, unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise. **This means that, if this presumption applies, work performed by such employees is considered to be a substantially different use than accounted for in the most recently approved budget as of March 27, 2020.** All costs of such employees may be covered using payments from the Fund for services provided during the period that begins on March 1, 2020, and ends on December 30, 2020.” [Emphasis and highlight added]

Exhibit B – Excerpts from Treasury OIG FAQ

63. According to Treasury's FAQs, for administrative convenience, a State can presume that all payroll costs for public health and public safety employees are payments for services substantially dedicated to mitigating or responding to the COVID-19 public health emergency and, thus, can be covered by CRF. Will Treasury OIG or the PRAC ever question the applicability of this presumption in the audit context? If so, under what circumstances?

During its reviews and audits, Treasury OIG will allow the use of the administrative accommodation made in accordance Treasury's FAQs. See responses to related questions 70, 71, and 72. [Question references corrected]

70. To what level of documentation will a government be held to support the reimbursement of public health and safety payroll that was "presumed" to be substantially dedicated to mitigating the emergency?

The recipient of CRF payments must maintain and make available to Treasury OIG upon request, all documents and financial records sufficient to establish compliance with subsection 601(d) of the Social Security Act, as amended (42 U.S.C. 801(d)). ... **These document requirements apply to supporting payroll reimbursement amounts using CRF proceeds and not to support the presumption that public health and safety payroll is substantially dedicated to mitigating the emergency.** [Emphasis added]

a. Will a government have to demonstrate/substantiate that a public health or public safety employee's function/duties were in fact substantially dedicated to mitigating the emergency?

No, the government will not have to demonstrate/substantiate that a public health or public safety employee's function/duties were substantially dedicated to mitigating the emergency but must maintain records and documentation supporting payroll amounts reimbursed using CRF proceeds. As indicated in Treasury's Guidance, as an administrative accommodation, governments may presume that public health and public safety employees meet the substantially dedicated test, unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise. Treasury's FAQs add that entire payroll cost of an employee whose time is substantially dedicated to mitigating or responding to the COVID-19 public health emergency is eligible, provided that such payroll costs are incurred by December 30, 2020.

Exhibit B – Excerpts from Treasury OIG FAQ (continued)

b. For payroll that was accounted for in the FY2020 budget but was then "presumed" to be substantially dedicated to mitigating the emergency, will the government have to demonstrate/substantiate that a public health or public safety employee's function was a substantially different use?

No, the government will not have to demonstrate/substantiate that a budgeted public health or public safety employee's function was a substantially different use. As stated in Treasury's Guidance, within the category of substantially different uses, Treasury has included payroll and benefits expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID19 public health emergency. The Treasury OIG does require the government to maintain budgetary records to support the fiscal years 2019 and 2020 budgets.

71. Is the government required to perform any analysis or maintain documentation of the "substantially dedicated" conclusion for payroll expenses of public safety, public health, health care, and human service employees?

No, the government is not required to perform an analysis or maintain documentation of the substantially dedicated conclusion for payroll expenses of public safety, public health, health care, and human service employees. As indicated in Treasury's Guidance, as an administrative accommodation, governments may presume that public health and public safety employees meet the substantially dedicated test, unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise. Please refer to response to question 70. [Question reference corrected]

72. Treasury's FAQs indicate a "State, territorial, local, or Tribal government may presume that payroll costs for public health and public safety employees are payments for services substantially dedicated to mitigating or responding to the COVID-19 public health emergency, unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise."

a. What level of documentation needs to be maintained to indicate the chief executive did not determine "specific circumstances indicate otherwise?"

No documentation of the negative assurance of the chief executive (or equivalent) is required.

b. Is the absence of documentation indicating "specific circumstances indicate otherwise" sufficient, or does an affirmative decision need to be documented?

See previous responses.