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Briefing on CARES Act Funding

Office's Interpretations

Office of Representative Jeramey Anderson

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Mississippi State Legislature House of Representatives

May 8, 2020

MEMORANDUM FOR CITY, COUNTY, SCHOOL AND HOSPITAL SENIOR OFFICIALS

FROM: Rep. Jeramey Anderson
Mississippi's 110th House District

Handwritten signature of Jeramey Anderson in blue ink.

SUBJECT: Update on CARES Act funding, interpretations and call for funding ideas

I would like to start by thanking each of you for your tireless effort to fight and slow the spread of COVID19. Your leadership is invaluable and much appreciated. As you may be aware, the Legislature has reconvened this week to address the effects COVID19 has had on our small businesses. We hope to pass a small business relief package next week that will immediately be available to our small business owners.

This is just the start of many COVID19 relief efforts from the State. The CARES Act passed by Congress sent \$1.25 billion to the State of Mississippi and the majority of those funds are at the control of the Mississippi Legislature. There has been a lot of conversation and debate around what the CARES Act funds can be used for. This document was created to serve as a guide that provides you with my office's interpretation of the relief guidelines. The interpretations in this document will be used as a guide for me when taking floor votes and promoting proposals.

This week there were multiple think tanks formed in the House to address a wide variety of areas for relief, such as local governments, county governments, small businesses, education, and election security. Today my office began hosting a series of conference calls with various focus groups in my district regarding the aforementioned areas of interest. I am also interested in hearing from you if you have any ideas that you believe should be included in our proposal. Many chairmen are requesting ideas in writing; my office is requesting the same to ensure accuracy. The House is in recess until Tuesday, May 12, 2020 and the think tanks will continue meeting at that time.

Please submit all ideas to Kenneth Holloway at kholloway@jerameyformississippi.com by close of business Monday, May 11, 2020.

Coronavirus Relief Fund
Guidance for State, Territorial, Local, and Tribal Governments
April 22, 2020

As described in the Coronavirus Relief Fund Guidelines our office has developed our interpretation of what these funds can be used for according to the guidelines set forth by Congress. As Representative Anderson considers proposed initiatives and/or when considering his vote on the CARES Act expenditures, this document will give you a better understanding of how our office interprets the guidelines for authorized expenditures.

“The purpose of this document is to provide guidance to recipients of the funding available under section 601(a) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). The CARES Act established the Coronavirus Relief Fund (the “Fund”) and appropriated \$150 billion to the Fund. Under the CARES Act, the Fund is to be used to make payments for specified uses to States and certain local governments; the District of Columbia and U.S. Territories (consisting of the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands); and Tribal governments.”

We are aware that Congress passed a relief measure in the amount of \$150 billion, with the intention to help States and certain local governments deal with the effects of COVID 19. Congress has specified certain criteria for the use of these funds. As general knowledge, the State of Mississippi has received \$1.25 billion in COVID19 aid from the federal government, which is a portion of the \$150 billion passed by Congress.

Additional general knowledge, on May 1, 2020, the Mississippi Legislature convened to transfer the \$1.25 billion dollars into an account controlled by the Legislature. The Governor of the State felt he had the authority to solely control the \$1.25 billion received by the State. The Legislature disagreed and immediately responded by voting to transfer these funds. However, the whole \$1.25 billion was NOT transferred. The Legislature only transferred \$1.15 billion and left \$100 million at the discretion of the Governor to use in case an immediate expenditure needed to be made. The Legislature is now back in session to appropriate the \$1.15 billion remaining in its control to areas and initiatives that need additional funding. As of May 8, 2020 the Legislature has agreed to make small businesses a priority for the first vote concerning the CARES Act expenditures.

The CARES Act provides that payments from the Fund may only be used to cover costs that —

1. are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19);

We interpret this to mean that the Legislature shall have the authority to appropriate CARES Act funds only for the purpose of relief tied directly to COVID19. It is further our interpretation that these funds may NOT be used for general economic or beautification projects.

2. were 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

It is our understanding that no CARES Act funds can be used to cover any items that were previously expected or anticipated in the current budget. We believe that this simply means that if the state, county or municipality previously budgeted for such purpose these funds cannot be expended for such purpose.

However, we infer that these funds can be used to cover items previously budgeted but due to COVID19 the budgeted amount was insufficient to properly meet the needs required to respond to the pandemic.

3. were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020

It is our understanding that no CARES Act funds can be used for any purpose that occurred before March 1, 2020 and cannot be expended for any purpose after December 30, 2020. It is our understanding that these funds must be spent on an authorized expenditure by December 30, 2020 unless extended by the United States Congress.

The guidance that follows sets forth the Department of the Treasury’s interpretation of these limitations on the permissible use of Fund payments.

These guidelines are as interpreted by the Department of Treasury.

Necessary expenditures incurred due to the public health emergency

The requirement that expenditures be incurred “due to” the public health emergency means that expenditures must be used for actions taken to respond to the public health emergency. These may include expenditures incurred to allow the State, territorial, local, or Tribal government to respond directly to the emergency, such as by addressing medical or public health needs, as well as expenditures incurred to respond to second-order effects of the emergency, such as by providing economic support to those suffering from employment or business interruptions due to COVID-19-related business closures.

Definition:

Second Order Effect refers to the idea that every action has a consequence, and each consequence has a subsequent consequence.

We believe this to mean that expenditures can be used with the intention to not only address the main effects of COVID19 but the effects thereafter. For example, closing some business and limiting others helped reduce the spread of the disease but it also caused economic hardship. Hospitals canceled elective surgery to reduce the risk of exposure to otherwise healthy people. But that has led to furloughs for personnel who would have performed those surgeries and closed off a major revenue stream for hospitals. The response of the medical community has saved many lives but it has also depleted supplies of personal protective equipment for them, EMTs and other first responders. First responders have also incurred added expenses while enforcing “safe in place orders.” But it appears it also may have decreased crime in some areas.

Funds may not be used to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify under the statute. Although a broad range of uses is allowed, revenue replacement is not a permissible use of Fund payments.

We intercept this to mean that loss in economic activity, revenue from tax collections and other similar means are not permissible and our office will not propose any initiative or vote in favor of any measure that is aimed at the usage of CARES Act monies for any such purpose described above.

The statute also specifies that expenditures using Fund payments must be “necessary.” The Department of the Treasury understands this term broadly to mean that the expenditure is reasonably necessary for its intended use in the reasonable judgment of the government officials responsible for spending Fund payments.

Loss in economic activity, revenue from tax collections and other similar means are not permissible and our office will not propose any initiative or vote in favor any measure that is aimed at the usage of CARES Act monies for any such purpose described above.

Costs not accounted for in the budget most recently approved as of March 27, 2020

The CARES Act also requires that payments be used only to cover costs that were not accounted for in the budget most recently approved as of March 27, 2020. A cost meets this requirement if either (a) the cost cannot lawfully be funded using a line item, allotment, or allocation within that budget or (b) the cost is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation.

We understand this to mean CARES funds can only be used to cover new costs that were not accounted for in the most recent budget approved up to March 27, 2020. The requirements to be considered such a cost are: 1. The cost cannot lawfully be funded using a line item, allotment, or allocation within that budget. 2. The cost is for a use that is different from any expected fund use.

The “most recently approved” budget refers to the enacted budget for the relevant fiscal period for the particular government, without taking into account subsequent supplemental appropriations enacted or other budgetary adjustments made by that government in response to the COVID-19 public health emergency. A cost is not considered to have been accounted for in a budget merely because it could be met using a budgetary stabilization fund, rainy day fund, or similar reserve account.

We understand this to mean the budget without amendments to include adjustments made in response to the COVID-19 pandemic. A cost is not considered accounted for just because the monies are available in a different pot (i.e. rainy day funds).

Costs incurred during the period that begins on March 1, 2020, and ends on December 30, 2020

A cost is “incurred” when the responsible unit of government has expended funds to cover the cost.

We understand this to mean a cost is not considered incurred until the appropriate unit of the government has allocated the funds to cover those costs.

Nonexclusive examples of eligible expenditures

Eligible expenditures include, but are not limited to, payment for:

These are examples of what some expenditures are or could be. It is our understanding that this list is not an all-encompassing list and funds can be used outside of the line items listed below so long as they adhere to the guidelines of the overall CARES Act expenditure limitations.

1. Medical expenses such as:

- COVID-19-related expenses of public hospitals, clinics, and similar facilities.
We believe this to be self-explanatory, however if clarification is needed please reach out to our office.
- Expenses of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs.
We believe this to be self-explanatory, however if clarity is needed please reach out to our office.
- Costs of providing COVID-19 testing, including serological testing.
Our office interprets this to include expanding testing capabilities.
- Emergency medical response expenses, including emergency medical transportation, related to COVID-19.
We believe this to be self-explanatory, however if clarity is needed please reach out to our office.

- Expenses for establishing and operating public telemedicine capabilities for COVID-19-related treatment.
 - **We believe this to be self-explanatory, however if clarity is needed please reach out to our office.**
2. Public health expenses such as:
- Expenses for communication and enforcement by State, territorial, local, and Tribal governments of public health orders related to COVID-19.

We believe this to be self-explanatory, however if clarity is needed please reach out to our office. We interpret this to include executive orders as well.
 - Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment, for medical personnel, police officers, social workers, child protection services, and child welfare officers, direct service providers for older adults and individuals with disabilities in community settings, and other public health or safety workers in connection with the COVID-19 public health emergency.

It is our understanding that expenses related to PPE's for the above personnel do qualify as an approved expenditure and are eligible for CARES Act funding. Several municipalities, counties and other governmental entities had not expected to expend such funds.
 - Expenses for disinfection of public areas and other facilities, e.g., nursing homes, in response to the COVID-19 public health emergency.

We believe this to be self-explanatory, however if clarity is needed please reach out to our office.
 - Expenses for technical assistance to local authorities or other entities on mitigation of COVID-19-related threats to public health and safety.

It is our understanding that this could cover things like staff public health trainings related to COVID19 to help reduce public health threats. We also believe this to cover COVID19 specific trainings for first responders.
 - Expenses for public safety measures undertaken in response to COVID-19.

We interpret this to mean that expenditures like additional law enforcement and expanded health procedures for government buildings and facilities are all qualified expenditures under the CARES Act. We further believe that this could cover monitors for social distancing measures including beach monitoring.
 - Expenses for quarantining individuals.

We believe this to be self-explanatory, however if clarity is needed please reach out to our office.

3. Payroll 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.

We understand this to include payroll for law enforcement, firefighters, ambulance crew members, social workers, doctors, nurses, lab technicians, psychologists, and employees whose services are heavily dedicated to responding to the COVID-19 emergency.

4. Expenses of actions to facilitate compliance with COVID-19-related public health measures, such as:

- Expenses for food delivery to residents, including, for example, senior citizens and other vulnerable populations, to enable compliance with COVID-19 public health precautions.

We believe this to be self-explanatory, however if clarity is needed please reach out to our office.

- Expenses to facilitate distance learning, including technological improvements, in connection with school closings to enable compliance with COVID-19 precautions.

Our interpretation of this to mean that expenses aimed at assisting students in distant learning would qualify. We are aware that several school districts saw a gap in distant learning primarily in our lower income communities. It is our understanding that districts can request CARES Act funds to help improve or recover funds spent on hot spots which helped many students throughout the community complete their education during COVID 19.

- Expenses to improve telework capabilities for public employees to enable compliance with COVID-19 public health precautions.

We interpret this to cover expenditures used to help employees who are able to work from home such as networking, device purchases, connectivity expansions and hot spots.

- Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions.

We interpret this to cover paid sick and paid family and medical leave to public employees who have been in contact with the virus or are quarantined with an immediate family member who has tested positive for COVID-19.

- COVID-19-related expenses of maintaining state prisons and county jails, including as relates to sanitation and improvement of social distancing measures, to enable compliance with COVID-19 public health precautions.

We believe this to be self-explanatory, however if clarity is needed please reach out to our office.

- Expenses for care for homeless populations provided to mitigate COVID-19 effects and enable compliance with COVID-19 public health precautions.

We believe that this allows for government entities who saw a need particularly in the homeless population such as but are not limited to shelter usage, expanded testing and PPE supply.

5. Expenses associated with the provision of economic support in connection with the COVID-19 public health emergency, such as:

- Expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures.

We believe this allows for payments to small business owners to reimburse operational costs to businesses that could not operate as usual due to closures caused by COVID-19.

- Expenditures related to a State, territorial, local, or Tribal government payroll support program.

Based on the research our office has conducted, we conclude that this allows the fund to be spent on payroll support in a very limited manner. The support must be tied to employees whose work is primarily dedicated to mitigating and responding to the health crisis.

- Unemployment insurance costs related to the COVID-19 public health emergency if such costs will not be reimbursed by the federal government pursuant to the CARES Act or otherwise.

We believe this to be self-explanatory, however if clarity is needed please reach out to our office.

6. Any other COVID-19-related expenses reasonably necessary to the function of government that satisfy the Fund's eligibility criteria.

Nonexclusive examples of ineligible expenditures

The following is a list of examples of costs that would not be eligible expenditures of payments from the Fund.

Our office does NOT see this as an all-inclusive list as it is our belief that many ineligible expenditures are not listed. However, we believe that the list below provides a general idea of what "types" of expenditures are ineligible for CARES Act Funding. We conclude that many of the expenditures listed below are consistent with our interpretations.

1. Expenses for the State share of Medicaid.
2. Damages covered by insurance.
3. Payroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

4. Expenses that have been or will be reimbursed under any federal program, such as the reimbursement by the federal government pursuant to the CARES Act of contributions by States to State unemployment funds.
5. Reimbursement to donors for donated items or services.
6. Workforce bonuses other than hazard pay or overtime.
7. Severance pay.
8. Legal settlements.

**Coronavirus Relief Fund
Frequently Asked Questions
Updated as of May 4, 2020**

The following answers to frequently asked questions supplement Treasury’s Coronavirus Relief Fund (“Fund”) Guidance for State, Territorial, Local, and Tribal Governments, dated April 22, 2020, (“Guidance”). 1 Amounts paid from the Fund are subject to the restrictions outlined in the Guidance and set forth in section 601(d) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”).

Eligible Expenditures

Are governments required to submit proposed expenditures to Treasury for approval?

No. Governments are responsible for making determinations as to what expenditures are necessary due to the public health emergency with respect to COVID-19 and do not need to submit any proposed expenditures to Treasury.

The Guidance says that funding can be used to meet payroll 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. How does a government determine whether payroll expenses for a given employee satisfy the “substantially dedicated” condition?

The Fund is designed to provide ready funding to address unforeseen financial needs and risks created by the COVID-19 public health emergency. For this reason, and as a matter of administrative convenience in light of the emergency nature of this program, 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.

The Guidance says that a cost was not accounted for in the most recently approved budget if the cost is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation. What would qualify as a “substantially different use” for purposes of the Fund eligibility?

Costs incurred for a “substantially different use” include, but are not necessarily limited to, costs of personnel and services that were budgeted for in the most recently approved budget but which, due entirely to the COVID-19 public health emergency, have been diverted to substantially different functions. This would include, for example, the costs of redeploying corrections facility staff to enable compliance with COVID-19 public health precautions through work such as enhanced sanitation or enforcing social distancing measures; the costs of redeploying police to support management and enforcement of stay-at-home orders; or the costs of diverting educational support staff or faculty to develop online learning capabilities, such as through

providing information technology support that is not part of the staff or faculty's ordinary responsibilities.

Note that a public function does not become a “substantially different use” merely because it is provided from a different location or through a different manner. For example, although developing online instruction capabilities may be a substantially different use of funds, online instruction itself is not a substantially different use of public funds than classroom instruction.

May a State receiving a payment transfer funds to a local government?

Yes, provided that the transfer qualifies as a necessary expenditure incurred due to the public health emergency and meets the other criteria of section 601(d) of the Social Security Act. Such funds would be subject to recoupment by the Treasury Department if they have not been used in a manner consistent with section 601(d) of the Social Security Act.

May a unit of local government receiving a Fund payment transfer funds to another unit of government?

Yes. For example, a county may transfer funds to a city, town, or school district within the county and a county or city may transfer funds to its State, provided that the transfer qualifies as a necessary expenditure incurred due to the public health emergency and meets the other criteria of section 601(d) of the Social Security Act outlined in the Guidance. For example, a transfer from a county to a constituent city would not be permissible if the funds were intended to be used simply to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify as an eligible expenditure.

Is a Fund payment recipient required to transfer funds to a smaller, constituent unit of government within its borders?

No. For example, a county recipient is not required to transfer funds to smaller cities within the county's borders.

Are recipients required to use other federal funds or seek reimbursement under other federal programs before using Fund payments to satisfy eligible expenses?

No. Recipients may use Fund payments for any expenses eligible under section 601(d) of the Social Security Act outlined in the Guidance. Fund payments are not required to be used as the source of funding of last resort. However, as noted below, recipients may not use payments from the Fund to cover expenditures for which they will receive reimbursement.

Are there prohibitions on combining a transaction supported with Fund payments with other CARES Act funding or COVID-19 relief Federal funding?

Recipients will need to consider the applicable restrictions and limitations of such other sources of funding. In addition, expenses that have been or will be reimbursed under any federal

program, such as the reimbursement by the federal government pursuant to the CARES Act of contributions by States to State unemployment funds, are not eligible uses of Fund payments.

The Guidance states that the Fund may support a “broad range of uses” including payroll expenses for several classes of employees whose services are “substantially dedicated to mitigating or responding to the COVID-19 public health emergency.” What are some examples of types of covered employees?

The Guidance provides examples of broad classes of employees whose payroll expenses would be eligible expenses under the Fund. These classes of employees include 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. Payroll and benefit costs associated with public employees who could have been furloughed or otherwise laid off but who were instead repurposed to perform previously unbudgeted functions substantially dedicated to mitigating or responding to the COVID-19 public health emergency are also covered. Other eligible expenditures include payroll and benefit costs of educational support staff or faculty responsible for developing online learning capabilities necessary to continue educational instruction in response to COVID-19-related school closures. Please see the Guidance for a discussion of what is meant by an expense that was not accounted for in the budget most recently approved as of March 27, 2020.

In some cases, first responders and critical health care workers that contract COVID-19 are eligible for workers’ compensation coverage. Is the cost of this expanded workers compensation coverage eligible?

Increased workers compensation cost to the government due to the COVID-19 public health emergency incurred during the period beginning March 1, 2020, and ending December 30, 2020, is an eligible expense.

May recipients provide stipends to employees for eligible expenses (for example, a stipend to employees to improve telework capabilities) rather than require employees to incur the eligible cost and submit for reimbursement?

Expenditures paid for with payments from the Fund must be limited to those that are necessary due to the public health emergency. As such, unless the government were to determine that providing assistance in the form of a stipend is an administrative necessity, the government should provide such assistance on a reimbursement basis to ensure as much as possible that funds are used to cover only eligible expenses.

May Fund payments be used for COVID-19 public health emergency recovery planning?

Yes. Expenses associated with conducting a recovery planning project or operating a recovery coordination office would be eligible, if the expenses otherwise meet the criteria set forth in section 601(d) of the Social Security Act outlined in the Guidance.

Are expenses associated with contact tracing eligible?

Yes, expenses associated with contract tracing are eligible.

To what extent may a government use Fund payments to support the operations of private hospitals?

Governments may use Fund payments to support public or private hospitals to the extent that the costs are necessary expenditures incurred due to the COVID-19 public health emergency, but the form such assistance would take may differ. In particular, financial assistance to private hospitals could take the form of a grant or a short-term loan.

May payments from the Fund be used to assist individuals with enrolling in a government benefit program for those who have been laid off due to COVID-19 and thereby lost health insurance?

Yes. To the extent that the relevant government official determines that these expenses are necessary and they meet the other requirements set forth in section 601(d) of the Social Security Act outlined in the Guidance, these expenses are eligible.

Would providing a consumer grant program to prevent eviction and assist in preventing homelessness be considered an eligible expense?

Yes, assuming that the recipient considers the grants to be a necessary expense incurred due to the COVID-19 public health emergency and the grants meet the other requirements for the use of Fund payments under section 601(d) of the Social Security Act outlined in the Guidance. As a general matter, providing assistance to recipients to enable them to meet property tax requirements would not be an eligible use of funds, but exceptions may be made in the case of assistance designed to prevent foreclosures.

May recipients create a “payroll support program” for public employees?

Use of payments from the Fund to cover payroll or benefits expenses of public employees are limited to those employees whose work duties are substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

May recipients use Fund payments to cover employment and training programs for employees that have been furloughed due to the public health emergency?

Yes, this would be an eligible expense if the government determined that the costs of such employment and training programs would be necessary due to the public health emergency.

May recipients use Fund payments to provide emergency financial assistance to individuals and families directly impacted by a loss of income due to the COVID-19 public health emergency?

Yes, if a government determines such assistance to be a necessary expenditure. Such assistance could include, for example, a program to assist individuals with payment of overdue rent or mortgage payments to avoid eviction or foreclosure or unforeseen financial costs for funerals and other emergency individual needs. Such assistance should be structured in a manner to ensure as much as possible, within the realm of what is administratively feasible, that such assistance is necessary.

The Guidance provides that eligible expenditures may include expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures. What is meant by a “small business,” and is the Guidance intended to refer only to expenditures to cover administrative expenses of such a grant program?

Governments have discretion to determine what payments are necessary. A program that is aimed at assisting small businesses with the costs of business interruption caused by required closures should be tailored to assist those businesses in need of such assistance. The amount of a grant to a small business to reimburse the costs of business interruption caused by required closures would also be an eligible expenditure under section 601(d) of the Social Security Act, as outlined in the Guidance.

The Guidance provides that expenses associated with the provision of economic support in connection with the public health emergency, such as expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures, would constitute eligible expenditures of Fund payments. Would such expenditures be eligible in the absence of a stay-at-home order?

Fund payments may be used for economic support in the absence of a stay-at-home order if such expenditures are determined by the government to be necessary. This may include, for example, a grant program to benefit small businesses that close voluntarily to promote social distancing measures or that are affected by decreased customer demand as a result of the COVID-19 public health emergency.

May Fund payments be used to assist impacted property owners with the payment of their property taxes?

Fund payments may not be used for government revenue replacement, including the provision of assistance to meet tax obligations.

May Fund payments be used to replace foregone utility fees? If not, can Fund payments be used as a direct subsidy payment to all utility account holders?

Fund payments may not be used for government revenue replacement, including the replacement of unpaid utility fees. Fund payments may be used for subsidy payments to electricity account holders to the extent that the subsidy payments are deemed by the recipient to be necessary expenditures incurred due to the COVID-19 public health emergency and meet the other criteria of section 601(d) of the Social Security Act outlined in the Guidance. For example, if determined to be a necessary expenditure, a government could provide grants to individuals facing economic hardship to allow them to pay their utility fees and thereby continue to receive essential services.

Could Fund payments be used for capital improvement projects that broadly provide potential economic development in a community?

In general, no. If capital improvement projects are not necessary expenditures incurred due to the COVID-19 public health emergency, then Fund payments may not be used for such projects.

However, Fund payments may be used for the expenses of, for example, establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity or improve mitigation measures, including related construction costs.

The Guidance includes workforce bonuses as an example of ineligible expenses but provides that hazard pay would be eligible if otherwise determined to be a necessary expense. Is there a specific definition of “hazard pay”?

Hazard pay means additional pay for performing hazardous duty or work involving physical hardship, in each case that is related to COVID-19.

The Guidance provides that ineligible expenditures include “[p]ayroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency.” Is this intended to relate only to public employees?

Yes. This particular nonexclusive example of an ineligible expenditure relates to public employees. A recipient would not be permitted to pay for payroll or benefit expenses of private employees and any financial assistance (such as grants or short-term loans) to private employers are not subject to the restriction that the private employers’ employees must be substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

May counties pre-pay with CARES Act funds for expenses such as a one or two-year facility lease, such as to house staff hired in response to COVID-19?

A government should not make prepayments on contracts using payments from the Fund to the extent that doing so would not be consistent with its ordinary course policies and procedures.

Questions Related to Administration of Fund Payments

Do governments have to return unspent funds to Treasury?

Yes. Section 601(f)(2) of the Social Security Act, as added by section 5001(a) of the CARES Act, provides for recoupment by the Department of the Treasury of amounts received from the Fund that have not been used in a manner consistent with section 601(d) of the Social Security Act. If a government has not used funds it has received to cover costs that were incurred by December 30, 2020, as required by the statute, those funds must be returned to the Department of the Treasury.

What records must be kept by governments receiving payment?

A government should keep records sufficient to demonstrate that the amount of Fund payments to the government has been used in accordance with section 601(d) of the Social Security Act.

May recipients deposit Fund payments into interest bearing accounts?

Yes, provided that if recipients separately invest amounts received from the Fund, they must use the interest earned or other proceeds of these investments only to cover expenditures incurred in accordance with section 601(d) of the Social Security Act and the Guidance on eligible expenses. If a government deposits Fund payments in a government's general account, it may use those funds to meet immediate cash management needs provided that the full amount of the payment is used to cover necessary expenditures. Fund payments are not subject to the Cash Management Improvement Act of 1990, as amended.

May governments retain assets purchased with payments from the Fund?

Yes, if the purchase of the asset was consistent with the limitations on the eligible use of funds provided by section 601(d) of the Social Security Act.

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