

NACO NATIONAL MEMBERSHIP CALL: U.S. TREASURY ON CORONAVIRUS RELIEF FUND REPORTING

October 9, 2020

U.S. TREASURY OPENING COMMENTS ON PAYROLL COSTS

Substantially Dedicated Employees

- Payroll records include but are not limited to general ledgers, payroll, time and HR records for costs incurred for payroll expenses
- There is a presumption of substantially dedicated for public health and public safety employees. However, the entity/recipient must retain budgetary documentation.
 - Recipients must maintain, make available and provide documentation, if requested, including payroll records from 03/01/2020 -12/30/2020.
- For employees without an administrative presumption, such as administrative/support staff, the recipient must provide documentation showing that the employee was substantially dedicated.
- Payroll costs for all substantially dedicated employees **must be incurred by Dec. 30, 2020**. The entire payroll cost for substantially dedicated employees is deemed eligible if incurred between 03/01/2020 and 12/30/2020.

Substantially Different Use

- For public health and public safety employees, there is an administrative presumption and demonstrating a substantially different use are not required.
- Employees deemed as a substantially different use must maintain records showing what payroll costs were and demonstrate a substantially dedicated use of the employee.

QUESTIONS FROM NACo MEMBERSHIP

Please distinguish obligations for State vs. County in terms of reporting

- The prime recipient is ultimately responsible for reporting into GrantSolutions. This includes quarterly reporting.
- Prime recipients can transfer funds to local governments. Counties can then transfer funds to cities and school districts. All funds, including transferred funds, must be used in response to the public health emergency and compliant with CARES guidelines. For example, a county can transfer funds to schools to help with online learning, but there must be detailed information on any expense over \$50,000 including dates and categories of how funds were used.
 - Transferred funds must meet all criteria of 601(d) of the Social Security Act and must be eligible expenses.
 - Funds deemed ineligible will be subject to revocation.
- The prime recipient will input information provided from the Counties into the GrantSolutions Portal, including detailed information on the use of funds, dates and expenditure categories.
 - If money is transferred, the prime recipient will need dates of expenditures and expenditure categories.

What are the different Catalogue of Federal Domestic Assistance (CFDA) numbers for CARES?

CFDA 21.019 is the only number for CARES

Can you provide Guidance in the event a service provider cannot meet the Dec 30 deadline?

- CRF funds may only be used to cover expenses during covered period.
- It is understood that it is not always possible to know when a good/service will be needed. The OIG will consider the reasonableness of the expense at the time of contract and purchase. For example, a recipient cannot purchase something on 12/29/2020 for delivery on 01/04/2020.
 - Goods delivered/services must be rendered by Dec 30, but if a vendor is delayed due to circumstances beyond the recipient's control, it is acceptable. This delay must be documented. (09/02/2020 Guidance)

If software licenses were purchased for 12 months during the covered period (March 1, 2020 through December 30, 2020), can the county use CARES to purchase the full cost of the license?

- The full cost of the license may be charged to the CRF if it was otherwise an eligible expense, the cost of the license was paid upfront, and it is customary to do so.
- The license must have been needed during the covered period.
- For example, it would make sense to charge the full cost of a license acquired in August 2020 to support distance learning even if the license is good for 12 months. A license that's acquired in mid-December would be suspect. If the license would normally be paid for on a monthly basis, the county should pay for it that way (the county should not restructure the license payments to take advantage of Treasury's guidance on this point). See generally the guidance on when a cost is considered incurred, including regarding purchases of bulk goods.

Food Insecurity

- Purchases must be consistent with the recipient's procurement process and must be used within the incident period 3/1/2020-12/30/2020.
- Goods can be purchased in bulk for use during the covered period, but a recipient cannot stockpile goods for use after 12/30/2020. Refer to Guidance for the definition of "incurred" and for further information.

Can CARES be used to pay 100 percent of salary and benefits Mar 1-Dec 30 for PH/PS that were already budgeted?

- Payroll and benefits can be covered using CARES to the extent they were incurred between 03/01/2020 -12/30/2020.
- Recipients may presume that PH/PS employees are substantially dedicated

Can a County use CARES as a match for a hotel and home purchasing program?

The expenses of acquiring or improving real property and of acquiring equipment (e.g., vehicles) may be covered with payments from the Fund in certain cases. For example, Treasury's initial guidance referenced coverage of the costs of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs, as an eligible use of funds. Any such use must be consistent with the requirements of section 601(d) of the Social Security Act as added by the CARES Act.

As with all uses of payments from the Fund, the use of payments to acquire or improve property is limited to that which is necessary due to the COVID-19 public health emergency. In the context of acquisitions of real estate and acquisitions of equipment, this means that the acquisition itself must be necessary. In particular, a government must determine and must maintain documentation to support this determination that it is not able to meet the need arising from the public health emergency in a cost-effective manner by leasing property or equipment or by improving property already owned. Likewise, an improvement, such as the installation of modifications to permit social distancing, would need to be determined to be necessary to address the COVID-19 public health emergency.

Previous guidance regarding the requirement that payments from the Fund may only be used to cover costs that were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020 (the "covered period") focused on the acquisition of goods and services and leases of real property and equipment, but the same principles apply to acquisitions and improvements of real property and acquisitions of equipment. Such acquisitions and improvements must be completed and the acquired or improved property or acquisition of equipment be put to use in service of the COVID-19-related use for which it was acquired or improved by December 30. Finally, as with all costs covered with payments from the Fund, such costs must not have been previously accounted for in the budget most recently approved as of March 27, 2020.

Would contractors for County and State jails/prisons be eligible through CARES?

The cost for maintaining County and State jails and prisons is an eligible use of funds regardless if they were contracted or not.

In providing economic assistance, can local governments treat a non-profit like a private business where it comes to lost revenue due to COVID impacts, are reimbursements limited to those that would be reimbursable to a government agency? For example, can we provide for lost revenue for a not for profit retail center?

In general, yes, a local government may treat a non-profit like a private business. Might be worth asking a little more what this not-for-profit "retail center" is. Would it be receiving this assistance pursuant to a program available to small businesses and non-profits generally? Assistance is not limited to particular expenditures but should still be tailored to assist those businesses in need of such assistance.

Is it appropriate to use CARES on a marketing campaign to promote consumer spending at local businesses?

The County may advise that the area is open for business, but if gift cards are more than nominal value, then the County must establish the need as with any other assistance.

Is there a safe harbor rate to calculate fringe benefits?

No. Refer to guidance for more information on payroll expenses.

Given we can't duplicate benefits, if a business received assistance in the form of a not-forgivable loan, will the loan proceeds be considered a duplication of benefits? This is an important differentiation that is holding us from providing relief to some of our otherwise eligible businesses.

The main point here is that the receipt of the loan should be taken into consideration when assessing need. If the loan is enough to provide sufficient assistance during the covered period, then a grant or loan using CRF would not be appropriate. The fact that it must be repaid at some point doesn't mean that it shouldn't be considered. But a loan that must be repaid during the covered period at which point the business still needs assistance or a loan that doesn't cover the full extent to which a business needs assistance would not preclude CRF assistance being provided on top of that. Note that we are working on answers to questions about PPP and EIDL. You might also direct them to A.50 (the FAQ drafted to address the question from Jacksonville, Fla.).

In providing economic assistance, can local governments treat a non-profit like a private business where it comes to lost revenue due to COVID impacts, are reimbursements limited to those that would be reimbursable to a government agency? Can we provide grants for lost revenue like we can for for-profit businesses? Can we provide for lost revenue for a not for profit retail center? – Habitat re-sale store. This store has significant retail sales loss, just like a private business; however, we have not provided based on advice to treat not-for profits like governments when providing assistance. Treasury guidance to date does not mention this issue specifically.

See above answer.

Business grants- I know we cannot provide duplication of benefits; however, if a business received assistance in the form of a loan (not forgivable), will the loan proceeds be considered a duplication of benefits. This is an important differentiation that is holding us from providing relief to some of our otherwise eligible businesses.

See above answer.

Is Broadband an eligible expense? If contracted for expansion of broadband prior to Dec 30, what percentage of the contract needs to be complete by Dec 30?

- The intent was that the service was an immediate need and should be in use by Dec 30. If the project is extensive then this would not be allowable.
 - Consider alternatives like wireless hot spots
- The OIG will ask questions such as if there was a cheaper alternative.
- Treasury OIG will follow-up with an official response

We are seeking to obtain clarification and/or additional information from the Treasury with regard to the presumption limit of up to \$500 per elementary and secondary student as discussed in the most recently issued U.S. Treasury's Frequently Asked Question - Section A. Question 53? The clarification we are seeking for is as follows:

- **Does this \$500 limit individually apply to each direct Fund recipient that transferred Fund payments to school districts or apply to all direct Fund recipients that transferred Fund payments as the aggregated total limit?**
 - **Proposed answer:** Across all levels of government, the presumption is limited to \$500 per student, e.g., if a school is funded by a state and a local government, the presumption claimed by each recipient must add up to no more than \$500.

- **If it should apply as the aggregated total limit to all direct Fund recipients, what is the process envisioned to determine which recipient (i.e., State vs. Counties/Cities) has the priority over others to exercise this presumption clause? States and Counties have not been required to coordinate planned expenditures with other entities as of this point.**
 - **Proposed answer:** The question may need to be addressed at the time. Treasury expects Fund recipients to coordinate in advance to avoid this situation occurring.

- **And if it is discovered that one of the direct Fund recipients already provided aid up to \$500 per student and availed itself of the presumption in accordance with this FAQ, can all other direct Fund recipients still provide aid to schools for items other than those on the eligible item list as long as the school and/or direct fund recipients document the specific use of funds?**
 - **Proposed answer:** If a Fund recipient avails itself of the presumption with respect to a school such that the \$500 presumption is exhausted, the only other costs of additional re-opening aid to that school that are eligible are those associated with the enumerated list in FAQ A.53, in each case for the purpose of addressing COVID-19. That is, all other Fund recipients may only cover the costs of additional re-opening aid to that school if those costs are associated with the enumerated list in FAQ A.53.