



CORONAVIRUS RELIEF FUND

ABSTRACT

Analysis of Questions
Raised by Local
Governments about
Eligible Spending
Purposes

VML Task Force

November 30, 2020

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CARES Act Funding

An Analysis of Questions on Eligible Spending

Introduction:

The information below is VML's analysis of questions raised by localities. These questions were specifically asked by City and Town Managers, local elected officials, local government attorneys, local Finance and Budget Directors, and others all concerned about the spending of federal CARES Act money appropriated to the Coronavirus Relief Fund (CRF) and possible post-spending audits undertaken by either the federal government or the Commonwealth of Virginia. The analysis does not address other provisions of the CARES Act that appropriated additional money for existing federal programs like CDBG, Public Education, FEMA, etc. Information on these appropriations can be found in a recent [presentation](#) (beginning on page 16) made by Secretary of Finance Aubrey Layne, Jr. to the Senate Finance Committee.

The analysis does not constitute a legal opinion but does represent the reasonable judgement of a special VML Task Force and VML policy staff. The analysis itself is based on the guidelines and FAQs issued thus far by the U.S. Department of the Treasury and by actions taken by the Commonwealth. *The Treasury Department's guidelines and other materials can be found [here](#).* (New federal guidance issued November 25 is included in this document as Appendix D.)

As a first step in tracking and documenting the expenditure of federal CARES Act money, VML recommends that member localities review the work done by the City of Falls Church, specifically the Excel spreadsheets dealing with COVID-19 payroll expenses and COVID-19 supply expenses. Other COVID-19 information can be found on the [VML website](#).

If you have questions or comments, or wish to share or post to the Internet, please respond to Neal Menkes at nmenkes@vml.org or to Jessica Ackerman at jackerman@vml.org. This document will be updated as new information becomes available.

In General:

- Expenditure must occur between March 1 and December 30, but invoice payment can occur after the end date but should occur within 90 days of the cost being incurred.
- Costs are incurred if the activity is completed by Dec 30.
- Vendor's failure to deliver by Dec 30 does not automatically prevent use of CRF fund as the reason is beyond the localities control.

- Applies to sub-recipients (i.e. towns and non-profits).

On June 30, the U.S. Treasury Department [updated](#) its previously issued guidance on “Costs incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.”

According to the document, Treasury “is clarifying that *for a cost to be considered to have been incurred, performance or delivery must occur during the covered period but payment of funds need not be made during that time (though it is generally expected that this will take place within 90 days of a cost being incurred)*. The previous guidance declared that a cost is incurred only when the responsible unit of government had expended funds to cover the cost.

Goods delivered in the covered period need not be used during the covered period in all cases. The cost of a good delivered in December in order to be available for use in January could be covered using payment from the Coronavirus Relief Fund.

A vendor’s failure to complete delivery or services entered into a contract before December 30, 2020 will not affect the ability of the local government to use CRF dollars to cover the costs of such goods or services **provided that the delay is due to circumstances beyond the local government’s control.**

This much-needed flexibility does NOT apply to the use of CRF dollars to make up for local revenue shortfalls. That dictate remains in place. A violation could result in loss of state dollars for your locality as Virginia Secretary of Finance Aubrey Layne warned localities in his [May 12, 2020 memorandum](#) to local Chief Executive Officers, Managers, or Administrators. Secretary Layne reiterated this point in his [July 28, 2020 memorandum](#) to localities.

Allocations were sent to states based on population. Each state received 55 percent of its share based on total state population and the remaining 45 percent was based on the local populations of each state’s cities and counties. Fairfax County as the sole locality with a population greater than 500,000 receives funds directly. All other CRF funds were distributed to the states to determine the allocations to localities. Gov. Northam used a per capita methodology for distributing roughly half of the money in the two rounds that can potentially be set aside for localities.

Virginia received approximately \$3.1 billion as its share of the CRF total. This amount does not include the \$200.0 million for Fairfax County.

The CARES Act provides that payments from the CRF only may 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);

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 local governments;
3. were 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.); and
4. are used for the direct costs associated with the response to the COVID-19 pandemic and **cannot be used to make up for revenue shortfalls.**

The questions and analysis are organized into eleven broad categories:

| | | |
|-------------------------|-------------------------|----------------|
| Business Support | Spending Prioritization | Utilities |
| Crossed Funding Streams | Public Buildings | Wages/Benefits |
| Documentation | Technical Assistance | Work from Home |
| Nonprofit Support | Timeline | |

Highlights of the Finance Secretary’s July 28 Memorandum:

- After the second round the state will have distributed 100 percent of the local allocations the Commonwealth received under the CARES Act providing a total of \$1.3 billion for local governments. Allocations will be based on population as was done in the first round of distributions, meaning the second round of allocations for cities and counties will be identical to the first-round amounts.
- To receive the second allocation, localities are required to submit a new certification form and complete an online survey regarding the use of the CRF funds. As soon as these two documents are fully completed and submitted, the Department of Accounts will initiate the transfer of funds to the local Treasurer. Localities may expect to receive the transfer by the state Comptroller within five business days following confirmation of receipt of these completed documents. The due date for both documents is August 10. The Northam Administration specifically wants the survey information prior to the August 18 Special Session.
- All of the same conditions and requirements that existed for the first round of CRF allocations continue for the second round of allocations.
- As in the first round, counties must ensure that an equitable share of the CRF funds it receives are shared with and granted to each town within its jurisdiction.
- The Commonwealth has partnered with Accenture to create a survey to collect data on how each locality has used or plans to use its allocation of CRF funds. The survey instrument, which must be completed online, will be made available later this week by separate communication. This communication will include instructions regarding access to and completion of the survey.

For questions about completion of the survey, please contact Jason Saunders, General Government Coordinator, Department of Planning and Budget, at jason.saunders@dpb.virginia.gov. The survey sent to localities can be accessed [here](#).

BUSINESS SUPPORT

From federally issued guidance:

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

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

Question – Small Business Support:

Does CARES money have to be used toward loans, or can the funds simply be grants?

In general, CARES money can be used as either loans or grants to support small businesses. Under the [Code of Virginia](#), localities can take advantage of the powers of [industrial development and economic development authorities](#) to make these loans or grants. However, not all small business expenses would be eligible. The questions and answers below are from the federal guidance issued May 28, 2020.

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.

Question – Treatment of Small Business Loans and/or Grants as Taxable or Non-Taxable Income:

On August 10, the U.S. Treasury Department issued additional guidance provided by the Internal Revenue Service regarding the tax treatment of CARES Act business loans and grants. The questions and responses immediately below are from the IRS.

If governments use Fund payments as described in the Guidance to establish a grant program to support businesses, would those funds be considered gross income taxable to a business receiving the grant under the Internal Revenue Code (Code)?

Yes. The receipt of a government grant by a business generally is not excluded from the business's gross income under the Code and therefore is taxable.

If governments use Fund payments as described in the Guidance to establish a loan program to support businesses, would those funds be considered gross income taxable to a business receiving the loan under the Code?

Generally, the receipt of loan proceeds is not included in gross income. However, if the government forgives all or a portion of the loan, the amount of the loan that is forgiven is generally included in gross income of the business and is taxable unless an exclusion in section 108 of the Code or other Federal law applies. If an exclusion applies, an equivalent amount of any deductions, basis, losses or other tax attributes may have to be reduced in accordance with the Code or other Federal law.

At what point would costs be considered to be incurred in the case of a grant made by a State, local, or tribal government to cover interest and principal amounts of a loan, such as might be provided as part of a small business assistance program in which the loan is made by a private institution?

A grant made to cover interest and principal costs of a loan, including interest and principal due after the period that begins on March 1, 2020, and ends on December 30, 2020 (the “covered period”), will be

considered to be incurred during the covered period IF the full amount of the loan is advanced to the borrower within the covered period and IF the proceeds of the loan are used by the borrower to cover expenses incurred during the covered period. IF these conditions are met, the amount of the grant will be considered to have been used during the covered period for purposes of the requirement that expenses be incurred within the covered period. Such a grant would be analogous to a loan provided by the Fund recipient itself that incorporates similar loan forgiveness provisions. As with any other assistance provided by a Fund recipient, such a grant would need to be determined by the recipient to be necessary due to the public health emergency.

UTILITIES

Question--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.”**

Question --How can localities and municipal utilities access CARES Act dollars on behalf of customers who are delinquent in their accounts?

In the recently concluded 2020 Special Session of the General Assembly, the legislature approved two budget amendments to address this question ([Item 479.10](#) and [Item 4-14](#)). The first budget amendment appropriates *\$100.0 million of CARES Act money* to the State Corporation Commission (SCC) to establish Direct Utility Assistance to Customers.

The second budget amendment authorizes municipal utilities to apply for utility assistance funds. This amendment also prohibits municipal utilities, as well as utilities regulated by the SCC, from disconnecting utility services for residential customers because of non-payment of bills and fees.

Item 4-14 also provides a process for municipal utilities to opt out from the disconnection moratorium *if* accounts receivable arrearages exceed 1.0 percent of the utility's annual operating revenues.

The SCC and the Northam Administration initiated the application process on November 19. ***The deadline to submit an application to the SCC is November 30.*** This link will take you directly to [seven-question application form](#) on the SCC website.

As part of the application process, the Virginia Department of Accounts and the [Virginia](#)

Department of Housing and Community Development (DHCD) are restricting applications for financial assistance to cities and counties. Towns with municipal utilities, regional authorities, or independent political subdivisions that provide utility services are generally prohibited from receiving the CARES Act financial assistance. These entities must partner with a city or county that agrees to serve as the fiscal agent. Although VML does not have a description for the role of “fiscal agent,” it may be similar, if not identical, to either the role required by the Commonwealth for receipt of the two transfers of CARES Act funds to cities and counties made earlier in the year or to the entities participating in the Virginia Rent and Mortgage Relief Program.

To comply with federal guidance limiting the assistance to customers who have fallen behind in their utility payments after March 1 and whose delinquent payment status is a direct result of COVID-19 through loss of employment or illness, DHCD will require certification by the customers and utility to that effect. The agency is expected shortly to issue specific guidance on this topic. Provisions from an early draft are below:

The awarded municipal utility and the designated city or county fiscal agent will be required to certify to abide by U.S. Treasury guidance and other regulatory matters concerning the use of CRF funds. The intent is for this allocation to pass through the county or city directly to the municipal utility to serve eligible municipal utility customers. The municipal utility as the customer utility relief program operator should develop a sub-agreement with the county or city fiscal agent. The purpose is to assure that the municipal utility will comply with state and federal law. Upon receipt by DHCD of this certification and award letter from the county/city and municipal utility, the Department of Accounts (DOA) will then distribute funds directly to cities and counties, which will serve as the fiscal agent on behalf of their partner municipal utility(ies). DOA will also be the lead state agency working with the city or county and their partnered utility system(s) on monitoring to ensure compliance with the program and federal guidelines. Participating cities and counties may allow municipal utilities and their partners working directly to implement this program to utilize up to 5.0 percent of their allocation for direct administrative costs to support management of relief programs. Municipal utilities must justify and document use of CRF funds by assisting customers who are experiencing economic hardship due to the COVID-19 pandemic. Therefore, such applications will require self-certification by municipal utility customers to be considered eligible for arrearage relief.

Any unspent funds for arrearages accumulated between March 1 and October 31 are to be returned to DOA by close of business on Friday, January 29, 2021. **(This does NOT change or extend the legislatively established December 30 cutoff date for spending. Think of the January date as the deadline to complete administrative requirements.)**

The state also expects that priority be given in the allocation of CARES Act money to accounts that are 60-days in arrears over those that are 30-days.

Question – Lost Penalty and Interest Income:

Can CARES money be used to cover lost penalty and interest income for utilities?

The “no revenue replacement” rule applies to utilities, as well as to state and local governments. This would extend to penalties and lost interest.

However, the federal guidance specifically approves subsidy grants for certain individuals to allow them to pay their utility fees and receive essential services. Although the federal guidance identifies only electricity accounts, VML believes that it is reasonable to assume that the federal guidance would apply to water, wastewater, and broadband services. [Action taken by the Virginia Department of Health](#) to require the City of Petersburg to restore water service to accounts that had been shut off indicates that utilities other than electricity are also essential in fighting COVID-19.

Question – Waste Management Costs:

Can CARES money be used to support increased waste management costs resulting from increased tonnage, increased safety precautions for employees, etc.?

The Federal Guidance recognizes waste management costs as eligible expenses. It also appears

that if a local government designates employees who have certain waste management duties as essential workers or as performing hazardous duty, then CRF money could be used for payroll expenses. Localities should document how the pandemic has affected/increased waste management workload, costs and operations/maintenance. The passages below are from the Federal Guidance.

Are costs associated with increased solid waste capacity an eligible use of payments from the Fund?

Yes, costs to address increase in solid waste as a result of the public health emergency, such as relates to the disposal of used personal protective equipment, would be an eligible expenditure.

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.

May payments from the Fund be used to cover across-the-board hazard pay for employees working during a state of emergency?

No. The Guidance says that funding may 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. Hazard pay is a form of payroll expense and is subject to this limitation, so Fund payments may only be used to cover hazard pay for such individuals.

Question – Broadband Expansion:

May recipients use Fund payments to expand rural broadband capacity to assist with distance learning and telework?

Such expenditures would only be permissible if they are necessary for the public health emergency. The cost of projects that would not be expected to increase capacity to a significant extent until the need for distance learning and telework have passed due to this public health emergency would not be necessary due to the public health emergency and thus would not be eligible uses of Fund payments.

Information on the use of \$30.0 million CRF dollars for broadband.

On October 7, Gov. Northam released his [plans for a \\$30.0 million expansion of broadband using CRF dollars](#). Full program guidance can be found - [here](#).

Evan Feinman who is the director of the initiative recently spoke to the Commonwealth Connect Coalition and offered this guidance.

- Project eligibility is determined by the locality and localities are strongly encouraged to talk with local counsel before submitting a project to ensure the project is compliant with federal rules. Awarded projects do not guarantee that the Commonwealth or the federal government necessarily agree that the projects are compliant with federal rules. Awarded localities must ensure projects fulfill their goals and are completed on time, keeping records with sufficient detail in case of audit.
- As of October 20, the state had received approximately \$13.0 million in requests from 22 projects. Submitted projects that do not receive an award in the initial round will still be under consideration until the funds are exhausted. Once funds are exhausted, the state will notify stakeholders.
- Applicants may submit full VATI applications for CARES Act consideration but may not submit portions of a VATI project. If CARES Act funds are awarded, the project will be removed from VATI consideration.

How long do awards take to transfer to a locality and/or broadband provider?

Awards will be made directly to localities and funds will be transferred by the Department of Accounts, similar to previous CARES Act allocations. If the locality is working with a private sector partner, it will be up to the locality to determine the manner in which those funds are transferred.

If a locality wishes to submit multiple projects, should they combine them or submit them individually?

If they are similar projects and are just geographically different, applicants should combine them. If they are distinct projects, applicants should submit them individually. For specific questions, applicants are encouraged to email Commonwealthconnect@governor.virginia.gov.

Are residential and business connections required or can there be other types of connections?

There is no requirement on what type of connections are made. This program provides a significant amount of leeway in the guidelines to allow a wide array of projects, although applicants should note that number of connections is a scoring factor.

What if awarded projects face delays that make the project extend beyond the December 25, 2020 deadline?

Unless Congress amends the CARES Act provisions, the deadline is firm. Each locality will have to determine whether a project is feasible and weigh the risk/reward if a project extends beyond the Dec 25 deadline.

WAGES/BENEFITS

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.

Question – Eligible Hazardous Pay:

What constitutes hazard pay? What positions qualify for it, and is there a limit to the amount that can be paid per person that would be reimbursable under CARES?

The federal guidance issued in early and late May does not specify a limit to the amount of hazardous pay a person can earn. It does provide a sense of who is eligible. See below.

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 “payroll 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 payments from the Fund be used to cover across-the-board hazard pay for employees working during a state of emergency?

No. The Guidance says that funding may 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. Hazard pay is a form of payroll expense and is subject to this limitation, so Fund payments may only be used to cover hazard pay for such individuals.

Question – Using CRF Dollars to Replace Lost Local Dollars:

Can localities eliminate public health and safety positions in their proposed FY 2021 budgets due to revenue shortages, then re-fill those positions using CARES money after the local governing body passes the budget?

No, if those positions are **not** substantially dedicated to fighting the COVID-19 pandemic. If those positions are substantially dedicated to responding to the health crisis, then payroll expenses for those positions would be eligible for CARES Act funding. Here is what the federal guidance says about *ineligible expenses*:

- Payroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency.
- 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.
- A local government 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.
- 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.
- 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.
- The federal terminology “most recently approved budget” based on a date of

March 27 is confusing. In Virginia, eligible expenses will overlap two separate fiscal years (FY20 and FY21). VML believes it would be prudent to treat FY21 in the same manner as FY20, addressing funding issues that were not otherwise addressed as of March 27. In other words, don't use the CRF money to replace local dollars, do use CRF money for eligible expenditures in FY21 as in FY20, do record expenditures and document as necessary through December 30, and do not expect CRF reimbursements for costs that are paid after December 30 (unless an invoice was received before December 30 and/or the payment is made within 90 days of the eligible cost being incurred).

Question – Deferring Payroll Tax Obligations:

How does the federal August 8th Executive Order allowing the deferral of payroll taxes for qualified workers apply to localities?

According to [guidance issued by the Secretary of the Treasury](#) following the August 8th Presidential Memorandum, employers that are required to withhold and pay the employee share of social security tax under section 3102(a) **may** defer payment of said tax for the pay period beginning September 20, 2020 until between January 1 and March 31, 2021. This temporary suspension of payment would apply to positions earning within a \$4,000 maximum threshold over a biweekly pay period. However, because there are still questions regarding the legality of the order, VML recommends that localities wait to defer payment until after further legal or legislative action at the federal level takes place.

NONPROFITS

Question – Paying for Homeless Facilities:

Can CARES Act funds be used to house the homeless?

Yes. Federal guidance answers the question.

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.

Question – Housing Assistance for Undocumented Immigrants:

If CARES funding is provided to a nonprofit for housing support, does the nonprofit have to limit availability of housing to documented residents/citizens?

The answer is far from clear-cut. Under the 1996 federal Personal Responsibility and Work Opportunity Reconciliation Act, it is illegal to give public funds to undocumented immigrants, establishing comprehensive restrictions on immigrant eligibility for federal public benefits because — according to the act — “It is a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits.”

However, the law does spell out exceptions to the policy, including exceptions for medical assistance under Title XIX of the Social Security Act for care that is necessary for the treatment of an emergency medical condition and public health assistance for immunizations or for testing or treatment of communicable disease symptoms. And Section 1903(v)(3) of the Social Security Act provides that the term “emergency medical condition” means a medical condition manifesting itself with acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:

- placing the patient’s health in serious jeopardy;
- serious impairment to bodily functions; or
- serious dysfunction of any bodily organ or part.

Whether the exception can be leveraged to include housing assistance or to provide housing assistance for the undocumented parents of children who are citizens will have to be sorted out in federal courts unless Congress acts.

To avoid an unfavorable audit, a locality may want to explore using local dollars to pay for housing services for the undocumented and CRF money for citizens and legal residents.

WORK FROM HOME

Question – Local Employees Working from Home:

Can CARES Act funds be used to pay salaries or expenses of local government employees who are assigned to work from home?

The answer is probably not. Let’s review the Federal Guidance. Although the guidance does not provide a direct answer to the question, it does make clear that payroll expenses for public employees are restricted to those whose duties are substantially dedicated to mitigating the COVID-19 pandemic and that across-the-board hazard pay for local employees working during the state of emergency apply to public safety, public health, health care, human services, and similar employees. Work from home local employees are not included.

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.

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 example of an ineligible expenditure relates to public employees.

May payments from the Fund be used to cover across-the-board hazard pay for employees working during a state of emergency?

No. The Guidance says that funding may 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. Hazard pay is a form of payroll expense and is subject to this limitation, so Fund payments may only be used to cover hazard pay for such individuals.

May payments from the Coronavirus Relief Fund cover day and/or educational care providers (either local government staff or private or non-profit contractors) for children or elders for local government personnel other than Public Safety, Human Services, and Public Health employees?

A qualified yes. The broadly stated legislative purpose of the CARES Act is to provide fast and direct economic assistance for American workers and families, small businesses, and preserve jobs for American industries.

In today’s economy, particularly in times of economic distress, the majority of parents now work, regardless the age of their children. Most families work out of necessity because the economic climate dictates that there must be two bread winners to pay the bills. Parents may face the danger of losing a job or missing a promotion because of illness, pregnancy, or taking care of loved ones.

The lack of quality childcare (and by extension adult daycare) are significant impediments for unemployed workers to return to the workplace or seek and accept new employment opportunities. Providing caregiver services comports with the CARES Act by allowing unemployed persons to return to work and by encouraging childcare and other caregiver services to stay in business further strengthening local economies.

The VEC acknowledges this situation regarding the payment of unemployment benefits. In a [June press release](#), the employment commission pointed out that certain circumstances such as health, *childcare or other caregiver responsibilities*, may warrant continued payments of unemployment benefits to a claimant who has refused to return work pending the outcome of an administrative review.

Governor Northam’s recently announced [Rent and Mortgage Relief Program \(RMRP\)](#) also recognizes the lack of childcare (in addition to income restrictions) as one of several situations qualifying applicants for this housing assistance program.

It is not unreasonable to permit the use of CRF dollars for these services regardless if a local government employee is or is not a first responder. However, a locality may want to put into a place a sliding scale fee structure based on financial need to supplement the CRF money.

CROSSED FUNDING STREAMS

Question – CARES Act Money and Third Parties:

Can recipients of SBA, CDBG, etc. funds also receive CARES money?

Yes, but such allocations are not mandated by the federal legislation or guidance. Transfers are permissive and permitted if the requirements of the CARES Act and Federal Guidance are met, meaning the third-party provides services that respond to either the impacts of the public health emergency related to COVID-19 or to the pandemic's economic consequences. Services can include, but would not be limited to, housing for those in need of quarantine or who are without shelter, food drives, grants or loans to small businesses, etc.

The key item to remember is that the locality will still be responsible for any audit finding that shows transferred funds were not spent in accordance with the federal legislation. Localities should make sure that third-party spending is tracked and documented.

Question – Use of CRF Dollars and Other CARES Act Money

Can localities combine CRF dollars with federal supplemental appropriations in the CARES Act for eligible expenditures? Are any localities doing so?

The Federal Guidance issued is far from clear cut. Here are excerpts from the U.S. Treasury Department.

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.

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.

It appears that the federal and state governments do not prohibit combining CRF and federal supplemental appropriations to fund an eligible project or reimburse eligible expenditures provided that the requirements set out above are carried out. Or, CRF money can be spent separately from an existing federal grant for the same purpose. For example, the City of Falls Church uses both CRF dollars and CDBG grants to provide rental and utility assistance.

Question – Use of CRF Dollars as Matching Funds

Can localities use CRF dollars to meet matching requirements for other funding sources, such as FEMA?

Yes, CRF funds may be used toward required matches for other federal funding sources being used to address COVID-related expenses that otherwise meet CRF eligibility requirements. While localities have received verbal guidance to this effect from a variety of sources, the U.S. Department of the Treasury confirmed this in writing in its June 24, 2020 update to its [Frequently Asked Questions document](#).

In its [August 10 guidance](#), the U.S. Treasury provided additional guidance on this topic. Payments from the Fund may be used to meet the non-federal matching requirements for Robert T. Stafford Disaster Relief and Emergency Assistance Act, PL 100-707 assistance to the extent such matching requirements entail COVID- 19-related costs that otherwise satisfy the Fund’s eligibility criteria and the Stafford Act. States are fully permitted to use payments from the Fund to satisfy 100% of their cost share for lost wages assistance recently made available under the Stafford Act.

TECHNICAL ASSISTANCE

Question – Elections:

For local elections in May and June, the Department of Elections (ELECT) distributed PPE to be used in polling places. Will ELECT do the same in November, or will localities need to set aside CARES funds to ensure the safety of voters and poll workers?

As per a June 9th memo, ELECT plans to distribute CARES funding to support COVID-related expenses, as well as PPE, based on the total number of registered voters in each locality. Funds may only be used in connection with the November 2020 federal election and must be encumbered, if not already paid, by [November 30, 2020](#). CARES support may cover expenses such as increased demand for absentee ballots, additional voter outreach, the purchase of safety equipment, and the hiring of temporary staff.

In a follow-up memo dated July 30th, ELECT confirmed that funding should have been released during the first week of August, based on the method by which localities usually receive funds through the state accounting system.

It is important to note, November 3, 2020 will mark the first Election Day in Virginia under the General Assembly’s newly-enacted law that expands voting access to 45 days prior to

any election. The extension of a lease on space to account for early voting *will not* qualify for the use of CARES funds. However, should a locality need to rent additional space to allow for adequate social distancing, buy additional protective shields for poll workers, etc., these *will* be allowable expenses.

To what extent does ELECT anticipate a COVID-related rule overriding local ordinances on party endorsements in local elections?

ELECT does not anticipate any new rules related to local ordinances on party endorsements.

PUBLIC BUILDINGS

Question – Capital Purchases:

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.

What rules apply to the proceeds of disposition or sale of assets acquired using payments from the Fund?

If such assets are disposed of prior to December 30, 2020, the proceeds would be subject to the restrictions on the eligible use of payments from the Fund provided by section 601(d) of the Social Security Act.

TIMELINE

Question – Coronavirus Relief Fund Time Period:

When can CARES Act money be applied to eligible expenses? Can money from the Coronavirus Relief Fund be spent or encumbered after December 30? Can CRF dollars be used to reimburse expenses incurred before March 27, 2020?

Federal Guidance recognizes the eligible cost period as beginning on March 1, 2020 and ending on December 30, 2020. The Commonwealth has already the amounts designated for localities. The distribution was based on population. This means localities can use CRF money to reimburse itself for eligible expenditures. It is incumbent upon local governments to ensure the use of the funds meet the requirements set forth by the federal government.

Recordkeeping should include but not be limited to payroll time records, invoices, and/or

sales receipts. The Commonwealth will hold local governments responsible and accountable for maintaining all necessary documentation to ensure adherence to federal legislation and guidelines.

The use of CRF money by governments is complicated. According to Finance Secretary Aubrey Layne's [May 12 memorandum](#), counties must ensure that an equitable share of the CRF funds it receives are shared with and granted to each town within its town jurisdiction. "Equitable share" is not defined in Secretary Layne's memorandum. It appears that some counties are basing the distribution to its towns on population.

VML recommends that towns work collaboratively with their counties to develop plans for addressing both the pandemic and the re-opening of local economies. To the extent possible, town and county spending plans and priorities should be coordinated.

Question – Maximizing CRF Dollars before the Deadline:

Can a locality partner with another CRF-eligible entity to spend CARES Act allotments before the December 30 deadline?

An argument can be made that Federal Guidance generally supports localities entering in partnerships with other eligible entities to spend CARES Act money. The answer below can be found in [Secretary Layne's May 12 memorandum to local officials](#). _

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."

By extension, it seems reasonable that Locality A can transfer some portion of its CARES Act allocation to Locality B. The critical factors are that a jointly funded project comply with the objectives of the federal legislation and guidance in that payments from the CRF only may 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);
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 local governments;
3. were 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 or received an invoice for the purchase of goods or services during the eligibility period.); and

4. are used for the direct costs associated with the response to the COVID-19 pandemic and cannot be used to make up for revenue shortfalls.

DOCUMENTATION

Question – Reviewing Potential CRF Expenditures:

Is there a best management practice for evaluating or approving proposed CARES Act expenditures?

Neither the federal legislation nor the guidance issued by the U.S. Treasury Department and the Commonwealth of Virginia prescribe or recommend a process for pre-approving projects or expenditures eligible for CARES Act funding. It is the responsibility of local governments to ensure that the use of the money meets the demands and requirements of the federal legislation and guidance.

VML is aware that at least one locality (City of Falls Church) put into action a “Cost Recovery Team” to recommend projects and spending to the City Manager for approval. The team is comprised of agency staff from the Finance and Public Works Departments as well as the City’s Emergency Manager and the City’s Grant Manager. The Grants Manager’s usual focus is transportation funding. By adding this position to the Cost Recovery Team, the City makes use of the Grants Manager’s skills and experience as well as possible transportation projects that could be eligible for CRF dollars. If a budget amendment is required by City Council, then a submission is prepared.

Another issue to keep in mind is *procurement*. The [Virginia Public Procurement Act](#) emphasizes competitive bidding for projects, although there are exceptions such as in emergencies. Nonetheless, it is advisable for localities to work with their legal representatives and procurement officers before opening the CRF spigot. The December 30 cutoff date for spending CARES Act money will induce localities to act quickly to purchase goods and services but be aware that acting hastily could result in a bad audit.

Question -- Reporting and Record Retention Requirements:

What information is the Treasury Department’s Office of the Inspector General requiring to monitor the receipt, disbursement, and use of Coronavirus Relief Fund payments? How will this affect local governments?

The U.S. Treasury issued [July 2 a memorandum for Coronavirus Relief Fund Recipients](#). The document provides the reporting and record retention requirements for the period beginning on March 1, 2020 and ending on December 30, 2020.

The document targets each prime recipient of CRF payments, requiring each prime recipient

to report interim and quarterly data and other recipient data according to the requirements. The Treasury Department is working on development of a portal that is expected to be operational by September 1, 2020 for the quarterly reports. The Interim Reporting is for the period March 1 through June 30 and is due no later than July 17, 2020.

The memorandum defines “prime recipients” as including all 50 States, Units of Local Governments, the District of Columbia, U.S. Territories, and Tribal Governments that **received a direct payment** from Treasury in accordance with Title V of the Coronavirus Aid, Relief, and Economic Security Act. In Virginia, the only local government to receive a direct payment from the U.S. Treasury was Fairfax County. This means for all other Virginia localities (cities, towns and counties), the Commonwealth of Virginia is the direct recipient, whereas localities are sub-recipients for the requirements outlined below.

However, VML recommends that all cities and those towns that received payments from their counties to instruct their finance staff to familiarize themselves with the reporting requirements outlined in the July 2 memorandum. Local governments should begin to prepare the necessary financial information in accordance with the July 2 memorandum as early as possible. Doing so early will *result* in a less time-consuming workload than postponing actions until later.

The U.S. Department of Treasury issued on August 28 [an update on Coronavirus Relief Fund Reporting Requirements](#). [Additional guidance](#) was subsequently issued on September 2 (with new information on the use of CRF money for payroll and benefits) and a [revised Frequently Asked Questions](#) was also issued [September 2](#). (Questions A.53–56 were added, and Questions A.34 and A.38 were revised.)

[New guidance from the U.S. Treasury was issued on October 19](#). The guidance added new information to the FAQs and revised the responses to three current items. The new information addresses questions raised about capital projects dedicated for health care, the re-opening of schools, and audit requirements.

On August 20, the Virginia Department of Accounts issued its own guidance in compliance with the updated federal requirements. The state material also deals with subrecipient monitoring.

Subrecipients of CRF funds **must register with SAM.gov as soon as possible**. Registration in SAM.gov will enable detailed sub-recipient data to be imported into Treasury's GrantSolutions portal to facilitate reporting of CRF information for the Commonwealth. For more instructions, please see the [guidance issued by Treasury on August 31](#).

It is imperative that Subrecipients complete this registration immediately. Once you have registered with SAM.gov, please email ComplianceOversight@doa.virginia.gov and alert the Virginia Department of Accounts to the successful registration.

If the Subrecipient is unable to register in SAM.gov, please work directly with SAM.gov to resolve the issue, as the Department of Accounts (DOA) cannot help with this third-party system registration.

Subrecipients of the Commonwealth will also be responsible for reporting required quarterly information to DOA. In accordance with the guidance received from Treasury. The state will gather the following information from each locality:

1. Transferee/government unit identifying and demographic information (e.g. DUNS number and location)
2. Transfer date, amount, and description
3. Related project(s)
4. Quarterly obligation amount
5. Quarterly expenditure information
6. Expenditure categories:
 - Administrative Expenses
 - Budgeted Personnel and Services Diverted to a Substantially Different Use
 - COVID-19 Testing and Contact Tracing
 - Economic Support (Other than Small Business, Housing, and Food Assistance)
 - Expenses Associated with the Issuance of Tax Anticipation Notes
 - Facilitating Distance Learning
 - Food Programs
 - Housing Support
 - Improve Telework Capabilities of Public Employees
 - Medical Expenses
 - Nursing Home Assistance Payroll for Public Health and Safety Employees
 - Personal Protective Equipment
 - Public Health Expenses
 - Small Business Assistance
 - Unemployment Benefits
 - Workers' Compensation
 - Items Not Listed Above - to include other eligible expenses that are not captured in the available expenditure categories

This information has been requested in an official format via email and will have very short deadlines, in accordance with Treasury's mandated reporting windows. The first quarterly reporting information has recently been requested and will be for the March 1 - June 30, 2020 time frame. Please be prepared to furnish the information in a timely manner to allow for a thorough review at the state level.

Concurrently, the Commonwealth will be conducting subrecipient monitoring of all localities who have received CRF funds and has begun to issue communications and instructions for its plan.

Finally, per the Code of Federal Regulations § 200.501, "A non-federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted..." Please be cognizant of this requirement, and act accordingly. For more details, please refer to the following page: <https://ecfr.io/Title-2/Section-200.501>

If you have any questions, please contact ComplianceOversight@doa.virginia.gov or contact

Amanda Simpson, CFE, Director of Compliance Oversight and Federal Reporting for the Virginia Department of Accounts. Her email address is amanda.simpson@doa.virginia.gov.

The documentation requirements issued by the U.S. Treasury Department to prove the CARES Act eligibility of personnel services costs tied to public health and public safety positions have been revised several times. The Office of the Inspector General for the Treasury Department issued on September 21 yet another set of Frequently Asked Questions. Particular attention should be paid to Question #63 and Questions #70-72. The excerpts below are from the revised September 21 FAQs.

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.

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)). Documents/records include payroll records for the covered period March 1 through December 30, 2020. Records include, but are not limited to (1) general and subsidiary ledgers used to account for the receipt of CRF payments and subsequent disbursements; and (2) payroll, time, and human resource records to support costs incurred for payroll expenses. Please refer to the Treasury OIG memorandum, Coronavirus Relief Fund Reporting and Record Retention Requirements (OIG-20-021; July 2, 2020). 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.

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.

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.

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 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 69.

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."

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.

What's going on with the information requested by the Virginia Department of Accounts for CARES Act compliance?

Early in October the Department of Accounts sent an e-mail to localities about the September 30, 2020 reporting requirements for obligations and expenditures and subsequent requests made by DOA to "split" reporting information from the transfer that localities received in May/June and the second transfer made later by the state.

It was DOA's understanding of the Federal system's reporting format that it included the ability to simply increase the information of the second transfer made in August/September (meaning the amount, obligations and expenditures) and then report quarterly information together for both the first and second transfers. According to DOA, neither the FAQs nor the training on the Federal system indicated a requirement to enter the August/September transfer separately and report separately on the obligations and expenditures.

When DOA gained access to the Federal system on October 5, the agency learned that the transfer information entered for the May/June reporting period was (in part) locked. That means DOA is required to enter obligation and expenditure updates for the May/June transfer separately from the information for the August/September information.

Even though DOA understands that expenses and obligations tied to the May/June transfer did not cease after the June 30 deadline, updates to the initial transfer report must continue to be reported.

Localities will have to submit two separate reporting templates each quarter – one to report on continued expenditures and obligations tied to the first transfer and one to report on actions tied to the second transfer. This will be maintained until all the transfer dollars are fully expended or the approved expenditure timeframe (December 30) expires.

DOA has prepared a reporting template which can be accessed and downloaded from the [VML Coronavirus Resources Page](#).

APPENDIX

Tracking COVID-19 Related Salary Expenses

The U.S. Treasury Department guidance on the CARES Act states 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.” The first and most important element in determining payroll eligibility for meeting CARES Act guidelines is to carefully track and describe employee time actually spent on COVID-related activities. Only then can each activity be examined to determine whether federal guidelines for reimbursement have been met. A timesheet tracking system is needed for this purpose.

The City of Virginia Beach uses a payroll tracking system to monitor time spent on COVID- related activities. Their Public Safety and Human Services Department employees are required to enter into the system their COVID-related activities on a daily basis.

The City of Newport News appears to use an even more comprehensive and flexible Leave and Timesheet System to track COVID-19 related work time spent by its employees some of whom may not be currently recognized under the CARES Act as eligible for hazard pay. All Newport News government employees are required to use the system and input their work data on a daily basis. Newport News uses their time and leave system to tie into and populate the payroll system. It is important to note that their system has the ability to capture explanatory notes to describe the COVID-related work activity time entered. Basically, the hours entered and described by Newport News employees are non- routine, non-regular duties that they expect could be eligible for CARES reimbursement. These are generally actions that staff needed to take to address any level of COVID responses, from the initial steps, to sustained control and containment processes, and recovery to reopening, as well as preparation for a potential next late 2020 pandemic wave. Some common themes are preparation and planning meetings, cleaning/social distancing/containment actions, staffing review and alignment, financial reviews and purchasing actions, vulnerable population actions, business grant development and recovery planning.

Newport News management expects to carefully review all timesheet submissions to determine which will be submitted for final CARES Act reimbursement.

To address the need for detailed COVID-related employee activity monitoring, the city added two lines to their existing timesheet system as seen below:

- 1) COVID-19 time worked

2) Modified Schedule

The modified schedule timeline refers to employees who cannot do their normal work, but were still being paid, due to the COVID-19 crisis. An example would be street construction workers kept home because social distancing guidelines would not allow them to work in their normal size crew, but still being paid.

Example of Employee Weekly Timesheet (daily explanatory notes omitted)

| Work Period, May 25-May 31 | | | | | | | |
|-----------------------------------|---------------|----------------|------------------|-----------------|---------------|-----------------|---------------|
| Day | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday | Sunday |
| Date | May 25 | May 26 | May 27 | May 28 | May 29 | May 30 | May 31 |
| Scheduled Work | | 8 | 8 | 8 | | 3 | |
| Modified Schedule | | | | | | | |
| Training | | | | | | | |
| COVID-19 Time Worked | | 1 | 2 | 2 | | 2 | |
| Paid Personal Leave | | | | | | 4 | |
| Holiday Granted | | 8 | | | | | |
| Total Hours | | 9 | 10 | 10 | | 9 | |
| Notes | | | | | | | |

The following chart details the hours charged to COVID-related activities by employee department category through June 2. Detailed descriptions of these hours worked by employee and date are available in an excel spreadsheet.

COVID-19 Time Worked (Prep/Response)

City of Newport News Employee Hours Charged to COVID-19

Prep/Response Total Hours by Department through 6/2/2020

| <u>Dept Name</u> | <u># Hours</u> |
|-------------------------|-----------------------|
| BUDGET | 233.00 |
| CITY ATTY | 37.00 |
| CITY MGR | 754.00 |
| CLERK CT | 161.75 |
| COM ATTY | 52.00 |
| COM REV | 85.15 |
| COMMUNICATION | 1,872.00 |
| DEVELOPMENT | 2,484.00 |
| ENGINEERING | 644.25 |
| FINANCE | 298.25 |
| FIRE | 3,973.00 |
| GPWDC | 6.00 |
| HUM RES | 446.25 |
| HUM SVC | 4,305.50 |
| INFO TECH | 2,498.90 |
| INT AUDIT | 20.75 |
| JUV SVC | 24.00 |
| LIBRARIES | 1,575.35 |
| PARKS | 3,353.00 |
| PLANNING | 9.00 |
| POLICE | 642.50 |
| PUB WKS | 4,018.75 |
| REGISTRAR | 40.00 |
| RISK MGMT | 3.00 |
| SHERIFF | 1,166.75 |
| TREASURER | 5.25 |
| VEH SVC | 631.75 |
| WATERWORKS | 967.50 |
| Grand Total | 30,308.65 |

APPENDIX B

Actions Taken by the General Assembly During the 2020 Special Session to Appropriate CARES Act Money

Working with Gov. Northam’s advisors, the House and Senate budget conferees developed a spending plan for CARES Act dollars. The table below is from the [House Appropriations Committee](#) and details the actions taken by the General Assembly regarding the CARES Act.

| <u>Allocating Remaining CARES Act Dollars</u> | | |
|---|---|---------------|
| Agency | Description | Amount |
| K-12 | Costs for Re-Opening Schools | \$220,798,208 |
| VEC | Unemployment Assistance | 210,000,000 |
| Higher Ed | PPE, Virtual Education, Cleaning, Telework, Other COVID-19 Costs | 120,000,000 |
| SCC | Establish fund to provide direct utility assistance to customers | 100,000,000 |
| HHR | Hazard pay for personal care attendants (assumes \$1,500 each) | 72,000,000 |
| Statewide | Testing and Contact Tracing | 71,829,059 |
| K-12 | Childcare Provider Stabilization Funds | 60,000,000 |
| HHR | Additional hospital reimbursements for eligible costs | 60,000,000 |
| Statewide | State agencies telework, PPE/sanitizing, DOLI regulation compliance, etc. | 60,000,000 |
| Statewide | PPE Plan | 42,112,285 |
| VDEM | Technical assistance, public education and preparedness | 37,000,000 |
| DHCD | Broadband accessibility | 30,000,000 |
| HHR | Retainer payments for Medicaid Day Support providers in DD Waiver | 25,000,000 |
| Higher Ed | VCU Hospital, UVA Med. Ctr – capital, PPE, testing, education | 20,000,000 |
| K-12/HHR | Child care partnerships for school-age children | 16,600,000 |
| VDH | Point of Care Antigen Testing | 16,010,500 |
| DHCD | Virginia Rent & Mortgage Relief Pgm Supplement | 12,000,000 |
| ELECT | Voter safety-cleaning, PPE, drop boxes, additional pay for election workers | 10,000,000 |
| DOC | PPE, medical observation units, overtime | 7,700,000 |

| | | |
|-------------------|---|------------------------|
| DSS | VA Federation of Food Banks -- \$1.0 M per region | 7,000,000 |
| DSBSD | Small business assistance supplement for Rebuild VA program | 5,000,000 |
| HHR | Carilion serology, DBHDS COVID patients, VDH EO Costs | 4,664,347 |
| Other Educ | State Museums and Higher Education Centers | 4,500,000 |
| DHCD | Emergency housing for homeless – (\$8.8 m. covered March – current) | 3,000,000 |
| | Balance Remaining | 85,510,984 |
| TOTAL | | \$1,215,214,399 |

As part of the budget conference, the House and Senate made significant policy as well as money decisions. [Item 479.10 #2c](#) includes budget language setting out a new time schedule for spending the CARES Act dollars and the consequences if the deadlines are unmet. It is a warning to state agencies and localities that if the money is unspent then the Governor has the authority to move the dollars elsewhere. The paragraph below summarizes the actions.

If, as of December 1, 2020, the Governor determines that any of the amounts previously approved by him and the General Assembly cannot be spent for their stated purposes, he shall have the authority to shift unspent allocations to any other approved purpose. If, as of December 18, 2020, the Governor reports unspent allocations remain, all such amounts shall be transferred to Unemployment Compensation Fund established pursuant to § [60.2-300](#).

APPENDIX C

Frequently Asked Questions Submitted by Local Governments

A. Can CARES Act money be used for tuition reimbursement and/or workforce training for residents who lost their jobs due to COVID-19 or is such use restricted to former employees of local governments?

VML's analysis is that Coronavirus Relief Fund dollars can be used for workforce training to help workers who have lost their jobs related to the pandemic, meaning they fell ill to the virus, or their hours of employment were reduced, or their employer laid them off. VML's analysis is that the use of CRF money is not exclusively restricted for the retraining of persons who lost their jobs with local governments. Because the CARES Act deals with economic recovery in general, it makes sense that training opportunities would also include persons who lost their employment in the private sector as a result of the pandemic. VML thinks it advisable to provide the CRF dollars to a workforce training organization to have these organizations validate an applicant's eligibility.

B. Can CARES Act money be used to purchase a video or audio system for local elected bodies and other local agencies to deal with the public?

VML's analysis is that a video and/or audio system to stream council meetings is an appropriate use. Decisions made by local elected officials must be safely communicated to the public during this health crisis. In addition, conforming with recommended health and safety guidelines is essential for the public while visiting City Hall or the courthouse. The use of this technology will aid in this effort. Also, federal guidance already recognizes the use of technology as an effective means for elementary and secondary education.

C. Can CARES Act money be awarded to non-profit organizations to replace lost revenue?

Non-profit organizations were eligible to participate in the Payroll Protection Program (PPP). However, the CARES Act does not allow revenue replacement for state and local governments and does not explicitly allow this for non-profits. Providing CRF money to replace lost revenues or pay for new programs or the expansion of existing programs that are unrelated to either fighting COVID-19 or to re-open the economy in conformance with state health guidelines must be carefully weighed and approached in a conservative manner. VML recommends reviewing [§15.2-953](#) for additional guidance.

D. Can CARES Act money be used to purchase freezers for COVID-19 vaccines even though such vaccines are not likely to be available until after the December 30 spending deadline?

VML's analysis is that such action would be similar to that of purchasing face masks, personal protection equipment and other equipment to battle the virus even if

the materials will not be fully used before December 30. VML also notes that the Virginia Department of Health is already planning and has submitted documents to the federal government about these planning efforts for a [COVID-19 vaccination campaign](#). It makes sense for local governments to begin a similar effort. It makes sense that such efforts would be in compliance with the use of CARES Act requirements.

E. Can CARES Act funding be used to purchase software subscriptions and/or hardware maintenance contracts for periods that extend beyond December 30?

The answer may depend on your locality's usual procurement practices. If as a matter of routine business your locality purchases maintenance contracts or subscriptions for a multi-year period, there is an argument to be made that the use of CRF money for such purposes conforms with your locality's existing procurement policy and procedures.

F. Can CARES Act money be provided to sectarian organizations?

See the response for "C."

G. Can CARES Act money be used to purchase and distribute gift cards for groceries?

VML's analysis based on actions taken by some localities is that this would be permissible in that it provides an economic benefit to a local business and helps individuals and families to stay healthy. VML recommends that a local government may want to consider using their local Department of Social Services or a non-profit organization rather than a local Economic Development Authority for this purpose.

APPENDIX D

Changes, updates and new information are highlighted in yellow. Pay close attention to questions 29, 48-55, 69, and 84-86.



OFFICE OF
INSPECTOR GENERAL

OIG-CA-20-028

Department of the Treasury Office of Inspector General Coronavirus Relief Fund Frequently Asked Questions Related to Reporting and Recordkeeping (Revised)¹

The Department of the Treasury (Treasury) Office of Inspector General (OIG) is responsible for monitoring and oversight of the receipt, disbursement, and use of Coronavirus Relief Fund (CRF) payments as authorized by Title VI of the Social Security Act, as amended by Title V of Division A of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).² 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 subsection 601(d) of the Social Security Act, as amended, (42 U.S.C. 801(d)). Recipient reporting and record retention requirements are essential for the exercise of these responsibilities, including our conduct of audits and investigations.

Beginning September 1, 2020, the prime recipient of CRF payments was required to report Coronavirus Disease 2019 (COVID-19) related costs incurred from March 1, 2020 to December 30, 2020 in the Grant Solutions portal. This document addresses frequently asked questions (FAQ) from CRF prime recipients regarding their reporting and record keeping requirements and supplements Treasury OIG's memorandums *Coronavirus Relief Fund Recipient Reporting and Record Retention Requirements* (OIG-CA-20-021; July 2, 2020)³ and *Coronavirus Relief Fund Reporting Requirements Update* (OIG-CA-20-025; July 31, 2020).⁴

A. Prime Recipients

1. Who is a prime recipient?

A prime recipient is an entity that received a CRF payment directly from Treasury in accordance with the CARES Act, including:

- All 50 States,

¹ These FAQs have been updated to (1) include beneficiaries throughout the document for reporting into the Grant Solutions portal; (2) clarify FAQ 57 on how corrections or modifications to prior quarter data should be made; (3) add new FAQs 29, 48-55, 69, 84-86; and (4) make minor adjustments to other FAQs.

² P. L. 116 136 (March 27, 2020)

³ <https://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/OIG-CA-20-021.pdf>

⁴ <https://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/OIG-CA-20-025.pdf>

- Units of local governments with populations over 500,000 that submitted required certifications to Treasury,
- The District of Columbia,
- U.S. Territories, and
- Tribal Governments

2. *Who is a sub-recipient or a beneficiary?*

Treasury has provided guidance on the applicability of Single Audit and 2 C.F.R. Part 200, Subpart F in response to question B.13 of its *Coronavirus Relief Fund Frequently Asked Questions* (FAQs).⁵ According to Treasury’s FAQ, “the Single Audit Act and 2 C.F.R. Part 200, Subpart F regarding audit requirements apply to any non-federal entity, as defined in 2 C.F.R. 200.69, that receives payments from the Fund in the amount of \$750,000 or more. Non-federal entities include sub- recipients of payments from the Fund, including recipients of transfers from a State, territory, local government, or tribal government that received a payment directly from Treasury. However, sub-recipients would not include individuals and organizations (e.g., businesses, non-profits, or educational institutions) that are beneficiaries of an assistance program established using payments from the Fund.

The Single Audit Act and 2 C.F.R. Part 200, Subpart F regarding audit requirements do not apply to beneficiaries.”

While the Treasury definition above is used for Single Audit Act purposes, Treasury OIG requires that the prime recipient report on both a beneficiary and a sub-recipient in the GrantSolutions portal. Since there is no separate category to capture a beneficiary’s data in the portal, the prime recipient must report on the beneficiary in the sub-recipient data fields. As such, for GrantSolutions reporting, a sub- recipient/beneficiary is any entity to which a prime recipient issues a contract, grant, loan, direct payment, or transfer to another government entity of \$50,000 or more.

3. ***The definition of a sub-recipient/beneficiary provided by Treasury OIG is different than the definition of a sub-recipient in the Office of Management and Budget’s (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal, 2 CFR Part 200 (Uniform Guidance). Which definition is a prime recipient expected to comply with?***

The prime recipient must comply with both OMB’s Uniform Guidance definition as it relates to the Single Audit Act and Treasury OIG’s definition as it relates to reporting requirements for the GrantSolutions portal. See question 2 above.

⁵ [https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked- Questions.pdf](https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked-Questions.pdf)

4. *Who is responsible for reporting in the GrantSolutions portal, the prime or sub-recipient/beneficiary?*

Only the prime recipient is required to report COVID-19 related costs in the GrantSolutions portal.

5. *If the prime recipient distributes funds to an agency or department within the prime recipient's government, is the agency or department considered the prime recipient or a sub-recipient when funds obligated are \$50,000 or more?*

The agency or department is considered part of the prime recipient as they are all part of the same legal entity that received a direct CRF payment from Treasury. Obligations and expenditures that the agency or department incurs with the CRF proceeds must be collected by and reported in the GrantSolutions portal by the prime recipient as if they were obligated or expended by the prime recipient.

6. *If the prime recipient obligates funds to an entity that provides a public service on behalf of the prime recipient but the prime recipient is not financially accountable, is the entity considered the prime recipient or a sub-recipient/beneficiary when funds obligated are \$50,000 or more (e.g., discreetly presented component unit, quasi agency, etc.)?*

The entity is considered a sub-recipient/beneficiary of the prime recipient when funds obligated are \$50,000 or more. The prime recipient must report funds obligated to a sub-recipient/beneficiary as obligations of the prime recipient. The prime recipient must report the related expenditures of the sub-recipient/beneficiary, including associated projects and expenditure categories, in the GrantSolutions portal. If the prime recipient obligated less than \$50,000 to the sub-recipient/beneficiary, the prime recipient must report its obligations and the related expenditures of the sub-recipient/beneficiary in aggregate in the GrantSolutions portal.

7. *If a prime recipient enters into multiple obligations with an entity, each obligation being less than \$50,000 with no agreement (i.e., contract, grant, or loan), but the total obligations to the entity exceed \$50,000, is the entity considered a sub-recipient/beneficiary?*

The entity is considered a sub-recipient/beneficiary; however, since the obligations are below \$50,000, the prime recipient must report the multiple obligations to the entity and related expenditures in the aggregate section of the GrantSolutions portal.

8. If a unit of local government received funds as both a prime recipient and as a sub-recipient/beneficiary does it have to track and report obligations and expenditures separately?

Yes. For purposes of reporting in the GrantSolutions portal, the unit of local government is the prime recipient and must report obligations and expenditures related to the funds received directly from Treasury. As a sub-recipient/beneficiary of funds, obligations and expenditures related to the funds received from another prime recipient must be reported by the prime recipient in the GrantSolutions portal. It is recommended that the unit of local government, as a sub-recipient/beneficiary, report obligations and expenditure information to the prime recipient for its reporting purposes.

9. If a third party is hired to review and approve sub-recipient/beneficiary reimbursement requests and supporting documentation, can the prime recipient place reliance on the reviews performed by the third party or is the prime recipient still required to review and approve 100 percent of all costs?

It is up to the prime recipient as to how much it relies on third-party review of reimbursement requests. However, the prime recipient is responsible for maintaining documentation to support the use of CRF proceeds. Per Treasury's *Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments*, the direct (or prime) recipient is ultimately responsible for compliance with the limitation on the use of payments from the CRF.⁶

B. System for Award Management (SAM.gov) Registration

10. Treasury OIG's memorandum, Coronavirus Relief Fund Reporting Requirements Update, states that "each prime recipient should ensure that any current or potential sub-recipients are registered in SAM.gov." Are all sub-recipients/beneficiaries required to register in SAM.gov?

No, all sub-recipients/beneficiaries are not required to register in SAM.gov. This statement is a recommendation to help reduce the reporting burden on the prime recipient when entering sub-recipient details in the GrantSolutions portal. SAM.gov registration allows sub-recipient/beneficiary identifying and demographic details to be automatically populated in the portal after the prime recipient inputs a valid Data Universal Numbering System (DUNS) number assigned to the sub-recipient/beneficiary.⁷

⁶ <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>

⁷ A DUNS number is a unique nine-character number used to identify an organization.

11. What are the identifying and demographic data elements that automatically populate in the GrantSolutions portal if a sub-recipient/beneficiary is registered in SAM.gov with a valid DUNS number?

The following identifying and demographic data elements will automatically populate in the GrantSolutions portal if a sub-recipient/beneficiary is registered in SAM.gov with a valid DUNS number:

- Legal Name
- Address Line 1
- Address Line 2, if applicable
- Address Line 3, if applicable
- City Name
- State Code
- Zip+4
- Congressional District
- Country Name
- Country Code
- Organization Type

12. If a sub-recipient/beneficiary does not have a DUNS number, can another unique identification number be used in the GrantSolutions portal to automatically populate sub-recipient/beneficiary details (e.g. Federal Employment Identification Number, Federal Tax Identification Number, etc.)?

No. The DUNS number is the only unique identification number that the GrantSolutions portal can associate with a SAM.gov registration in order to automatically populate sub-recipient/beneficiary details.

13. Where does a prime recipient direct a sub-recipient/beneficiary to obtain a DUNS number?

If a sub-recipient/beneficiary does not already have a DUNS number, it can call 1- 866-705-5711 or access <http://fedgov.dnb.com/webform> to get a DUNS number assigned for free.

14. Where does a prime recipient direct a sub-recipient/beneficiary to register in SAM.gov?

Refer the sub-recipient/beneficiary to <https://sam.gov>.

15. What if a sub-recipient/beneficiary is not registered in SAM.gov?

For each sub-recipient/beneficiary that is not registered in SAM.gov, the prime recipient will be responsible for manually entering the following data elements in the GrantSolutions portal:

- Legal Name
- Address Line 1
- Address Line 2, if applicable
- Address Line 3, if applicable
- City Name
- State Code
- Zip Code
- Country Name (selection menu)
- Organization Type (selection menu)

16. If a sub-recipient/beneficiary is registered in SAM.gov, is it required to report any information on a quarterly basis in SAM.gov?

No. There are no reporting requirements for a sub-recipient/beneficiary to report Coronavirus Relief Fund information in SAM.gov; the prime recipient is required to report in the GrantSolutions portal on behalf of the sub-recipient/beneficiary.

17. Is an entity that a prime recipient obligates a contract, grant, loan, direct payment, or transfer to another government entity of less than \$50,000 recommended to register in SAM.gov?

No. Detailed information of an entity that the prime recipient obligates less than \$50,000 to will not be reported in the GrantSolutions portal. The obligations and related expenditure(s) to entities that the prime recipient obligates less than \$50,000 to will be reported in the aggregate.

18. Is an individual to which a prime recipient obligates a contract, grant, loan, or direct payment required to register in SAM.gov?

No. Detailed information of an individual that the prime recipient obligates any amount to will not be reported in the GrantSolutions portal; the obligations and related expenditure(s) to individuals will be reported in the aggregate.

c. Terminology

19. What is an obligation?

For purposes of reporting in the GrantSolutions portal, an obligation is a commitment to pay a third party with CRF proceeds based on a contract, grant, loan, or other arrangement.

20. *What is an expenditure?*

For purposes of reporting in the Grant Solutions portal, an expenditure is the amount that has been incurred as a liability of the entity (the service has been rendered or the good has been delivered to the entity). As outlined in *Treasury's Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments*, performance or delivery must occur between March 1 and December 30, 2020 in order for the cost to be considered incurred; payment of funds need not be made during that time (though it is generally expected that payment will take place within 90 days of a cost being incurred).

21. *What is a project?*

A project is a grouping of related activities that together are intended to achieve a specific goal (e.g. building a temporary medical facility, offering an economic support program for small businesses, offering a housing support program, etc.)

22. *What is a contract?*

A contract is an obligation to an entity associated with an agreement to acquire goods or services.

23. *What is a grant?*

A grant is an obligation to an entity that is associated with a grant agreement. A grant agreement is a legal instrument of financial assistance between the prime recipient and entity that is used to enter into a relationship to carry out a public purpose and does not include an agreement to acquire goods or services or provide a loan.

24. *What is the primary place of performance for a contract or a grant?*

The primary place of performance is the address where the predominant performance of the contract or grant will be accomplished.

25. *What is the period of performance start date and end date for a contract or a grant?*

The period of performance start date is the date on which efforts begin or the contract or grant is otherwise effective. The period of performance end date is the date on which all effort is completed or the contract or grant is otherwise ended.

26. What is a transfer to another government entity?

A transfer to another government entity is a disbursement or payment to a government entity that is legally distinct from the prime recipient. See the list of government entities in Question 27 below.

27. For transfers to another government entity, what type of entity is considered another government entity?

The following organization types are considered another government entity:

- State government
- County government
- City/Township Government
- Special District Government
- US Territory or Possession
- Indian/Native American Tribal Government (Federally Recognized)
- Indian/Native American Tribal Designated Organization

28. What is a direct payment?

A direct payment is a disbursement (with or without an existing obligation) to an entity that is not associated with a contract, grant, loan, or transfer to another government entity. If the direct payment is associated with an obligation, then the obligation and expenditure should be reported. If the direct payment does not involve a previous obligation, the direct payment will be recorded when the expenditure is incurred.

29. Are there definitions of the various expenditure categories?

The various expenditure categories were derived from discussion of examples of eligible uses of funds in Treasury's Guidance and FAQs. The prime recipient should refer to Treasury's Guidance and FAQs to determine which expenditure category best fits the expenditure reported in GrantSolutions.

D. Reporting

30. If a prime recipient received CARES Act funding from different Federal agencies, are all costs incurred related to CARES funding to be reported in the GrantSolutions portal, regardless of the funding source?

No. The GrantSolutions portal is only for the reporting of costs incurred related to CRF proceeds received from Treasury. Financial assistance that a prime recipient may have received from other sources are not to be reported in this portal.

31. Will CRF proceeds be subject to Federal Funding Accountability and Transparency Act (FFATA) reporting requirements? If so, what general information are recipients expected to report?

No, FFATA reporting is not required.

32. Are prime recipients required to report on an accrual or cash basis?

The prime recipient should report on an accrual basis, unless the prime recipient's practice is traditionally to report on a cash basis for all its financial reporting.

33. Are the reporting requirements different for lump sum payments versus payments made on a reimbursable basis?

No. Reporting of obligations and expenditures related to lump sum payments and reimbursed payments are the same.

34. How should a reimbursable payment to a sub-recipient/beneficiary be reported?

The primerecipient should first report the total expected obligation to the sub-recipient/beneficiary. As reimbursements are made to the sub-recipient/beneficiary, the prime recipient should report the reimbursements as expenditures by expenditure category.

35. How should a lump sum payment to a sub-recipient/beneficiary be reported?

The primerecipient must report the total obligation for the lump sum payment to the sub-recipient/beneficiary. As the sub-recipient/beneficiary uses the funds it received, the prime recipient is responsible for collecting and reporting on the uses as expenditures to the obligation by expenditure category.

36. What level of sub-recipient/beneficiary data will prime recipients be required to report?

The prime recipient is required to report on the first sub-recipient/beneficiary level only. For example: The prime recipient enters into a grant with Entity A to provide assistance to small businesses. For reporting purposes, the prime recipient must report the details of the grant with Entity A as an obligation. As Entity A provides assistance to small businesses, the primerecipient must report the assistance provided as expenditures to the obligation. However, details on the identity of the small businesses that received funding are not required.

37. *Is every obligation and expenditure required to be associated with a project?*

No. We understand that not all uses of funds will be associated with a project. If an obligation or expenditure is not associated with a project, in the Grant Solutions portal, the recipient would select “No Associated Project”.

38. *How did Treasury OIG determine the \$50,000 reporting threshold?*

Sec. 15011 of the CARES Act states that any entity that receives large covered funds (or funds more than \$150,000) is considered a covered recipient. All prime recipients of CRF proceeds are covered recipients as no prime recipient received payment less than \$150,000. Sec. 15011 further requires that each covered recipient (in this case, prime recipient) should submit a report that contains, among other items, detailed information on subcontracts or subgrants awarded by the covered recipient allowing for aggregate reporting on awards below \$50,000.

39. *Is the \$50,000 threshold on a project basis?*

No. The \$50,000 threshold dictates the specific sub-recipient/beneficiary that must be identified by the prime recipient on a detailed basis rather than in an aggregate total for related obligations and expenditures, regardless of any projects.

40. *What is the reporting structure?*

The reporting structure is as follows:

- A. Projects
- B. Obligations of \$50,000 or more and related expenditures
 - a. Contracts of \$50,000 or more
 - i. Obligations (individually reported) and links to projects, if applicable
 - ii. Related expenditures (individually reported) and link to projects, if applicable
 - b. Grants of \$50,000 or more
 - i. Obligations (individually reported) and link to projects, if applicable
 - ii. Related expenditures (individually reported) and link to projects, if applicable
 - c. Loans of \$50,000 or more
 - i. Obligations (individually reported) and link to projects, if applicable
 - ii. Related expenditures (individually reported) and link to projects, if applicable
 - d. Transfers to other government entities of \$50,000 or more
 - i. Obligations (individually reported) and link to projects, if applicable

- ii. Related expenditures (individually reported) and link to projects, if applicable
- e. Direct Payments of \$50,000 or more
 - i. Obligations (individually reported) and link to projects, if applicable
 - ii. Related expenditures (individually reported) and link to projects, if applicable
- C. Aggregate obligations and expenditures of contracts, grants, loans, direct payments, and transfers to other government entities below \$50,000 (reported in total by obligation type)
- D. Aggregate obligations and expenditures to individuals, regardless of the amount (reported in total)

41. *If a prime recipient obligates funds to another government entity in the form of a grant, are the obligated funds to be reported as a transfer to another government entity or as a grant?*

If a grant agreement in place, the obligation should be reported as a grant.

42. *Treasury OIG’s reporting timeline indicates six reporting cycles with three cycles for reporting periods of January 1, 2021 through September 30, 2021. If costs related to CRF proceeds must be incurred by December 30, 2020, why are there reporting cycles after December 30, 2020?*

Treasury’s *Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments* addresses the concept of incurred costs. Specifically, “for a cost to be considered to have been incurred, performance of services or delivery of goods must occur during the covered period (March 1, 2020 through December 30, 2020) but payment of funds need not be made during that time (though it is generally expected that this will take place within 90 days of a cost being incurred).” As a result, we determined to allow reporting through September 30, 2021 to ensure that the prime recipient has sufficient time to capture and report all expenditures incurred that were covered with CRF, including loan repayments, the related obligations of which must have occurred, and been reported, during the covered period. In addition, any final close out reconciliations and adjustments should occur during the time period before September 30, 2021.

43. *Are forgivable loans to be reported as a grant or loan?*

The forgivable portion of a loan should be reported as a grant. If the forgiving of the loan is conditional, then the loan must originally be reported as a loan for the total amount. At the time that the conditions are met, the portion of the loan that is forgivable, must be removed from the applicable loan section of the Grant Solutions portal and reported as a grant at that time.

To remove the forgivable portion of a loan that is for \$50,000 or more, the prime recipient should edit the loan to report a negative current quarter obligation to reduce the total loan obligation and reduce the loan amount by the forgivable portion. These amounts must agree. If this causes the loan's value to drop below \$50,000, the loan should be deleted from the "Loans \geq \$50,000" section and reported in the "Aggregate of Loans Issued $<$ \$50,000" section, along with related payments.

To remove the forgivable portion of a loan reported in the "Aggregate of Loans Issued $<$ \$50,000" section, in which there were no other aggregate loan obligations for the reporting period, the prime recipient should report a negative "Current Quarter Obligation" to reduce the total aggregate loan obligations by the forgivable portion. If there were other aggregate loan obligations for the reporting period, the prime recipient should report a "Current Quarter Obligation" that is reduced by the forgivable portion.

To add the forgivable portion of the loan as a grant that is for \$50,000 or more, the prime recipient should add a new grant to the "Grants \geq \$50,000" section and report the forgivable portion as the "Amount of Award" and as the "Current Quarter Obligation" along with other required information. These amounts must agree. If the forgivable portion of loan is less than \$50,000, the prime recipient should report the forgivable portion in the "Aggregate of Grants $<$ \$50,000" section.

44. *For each reporting period, should a prime recipient report all costs that are eligible to be covered with CRF proceeds or only report costs for which the prime recipient has made a final determination to cover with CRF proceeds?*

The prime recipient should only report eligible costs for which obligations have been made with CRF payments or specific determinations have been made related to using CRF funds.

45. *Do the expenditure categories apply to aggregate reporting?*

No. The only information collected during aggregate reporting is obligations (in total) and expenditures (in total) by obligation type (contract, grant, loan, transfer to another government entity, and direct payments) for obligations and expenditures below \$50,000 and for payments to individuals, regardless of amount.

46. *For aggregate reporting of obligations to individuals, what information is required to be reported about the individuals?*

None. The only information collected during aggregate reporting are obligations (in total) and expenditures (in total).

47. Where can a prime recipient access training materials or archived training sessions to assist with reporting?

Training materials, including a training webinar and GrantSolutions user guide, are available on Treasury OIG’s website ([CARES Act](#)).

48. How should payroll costs be reported?

Payroll costs to individuals, and any other payments to individuals, regardless of the amount, should be reported in the Aggregate Direct Payments to Individuals section of the GrantSolutions portal.

49. Treasury’s FAQs state that payments from the Fund may be used to meet the non-federal matching requirements for Stafford Act assistance to the extent such matching requirements entail COVID-19-related costs that otherwise satisfy the Fund’s eligibility criteria and the Stafford Act. For a COVID-19 related cost that Department of Homeland Security’s Federal Emergency Management Agency (FEMA) has determined is eligible under the Stafford Act, how should the non-federal cost share portion covered with CRF proceeds be reported?

The obligation type (i.e. contract, grant, loan, direct payment) and the dollar amount of the CRF portion, used to cover a prime recipient’s non-federal cost share, will determine how this information should be reported in GrantSolutions. For example, if the non-federal cost share for a contract is funded by CRF proceeds of \$50,000 or more, the prime recipient should report the contractor as a sub-recipient/beneficiary in the GrantSolutions portal and enter the contract with an amount equal to the prime recipient’s non-federal cost share covered with CRF proceeds. The expenditures associated with the contract should be entered only for the non-federal cost share portion in the GrantSolutions portal. If the non-federal cost share amount of the contract covered with CRF proceeds is less than \$50,000, the prime recipient should report the non-federal cost share in aggregate for related obligations and expenditures. Refer to Section C above for additional guidance regarding the various obligation types (i.e. contract, grant, loan, direct payment).

50. Treasury’s FAQs state that prime recipients may deposit CRF payments into separate interest bearing accounts. How should interest earned and expended be reported?

The GrantSolutions portal does not collect data on interest earned and expended with CRF proceeds. The prime recipient is responsible for tracking interest earned and expended separately. In accordance with Treasury’s FAQs, if a recipient separately invests CRF proceeds in an interest bearing account, the prime recipient must use the interest earned “only to cover expenditures incurred in accordance with section 601(d) of the Social Security Act (42 U.S.C. 801(d)) and the Guidance

on eligible expenses.” The prime recipient is required to report information on interest earned and expended directly to the Treasury OIG upon request and in accordance with response to question 84.

51. For loans that the prime recipient issues to borrowers, how should the borrower’s payment of loan interest to the prime recipient be reported?

The GrantSolutions portal does not collect data on payments of loan interest from borrowers. The prime recipient is responsible for tracking payments of loan interest and subsequent uses of interest separately. In accordance with Treasury’s FAQs, “any amounts repaid by the borrower before December 30, 2020, must be either returned to Treasury upon receipt by the unit of government providing the loan or used for another expense that qualifies as an eligible expenditure under section 601(d) of the Social Security Act. Any amounts not repaid by the borrower until after December 30, 2020, must be returned to Treasury upon receipt by the unit of government lending the funds.” The prime recipient is required to report information on borrowers’ payments of loan interest directly to the Treasury OIG upon request and in accordance with response to question 85.

52. If a prime recipient reports a contract in GrantSolutions that is subsequently modified to either increase the contract amount or reduce the contract amount, how should this be reported?

Contract modifications should be reported for the quarter in which the contract modification is executed. For contracts of \$50,000 or more, the prime recipient should (1) enter a new “Current Quarter Obligation” to adjust the obligation amount upward or downward by using a positive or negative obligation value and (2) adjust the “Contract Amount” to the new obligation amount. The “Contract Amount and “Cumulative Obligation Amount” must agree. If the modification drops the contract value below \$50,000, then the contract should be deleted from the “Contracts >=\$50,000” section and reported in the “Aggregate of Contracts Awarded <\$50,000” section along with related expenditures.

To modify contracts reported in the aggregate, in which there were no other aggregate contract obligations for the reporting period, the prime recipients should report an upward or downward “Current Quarter Obligation” by using a positive or negative value. For contracts that were reported in the aggregate, in which there were other aggregate contract obligations for the reporting period, the prime recipient should report a “Current Quarter Obligation” that is adjusted upward or downward to report the modification.

53. If a prime recipient enters into multiple obligations with an entity, some obligations being more than \$50,000 and some obligations being less than \$50,000, how should the obligations be reported?

The prime recipient should first identify the entity in the portal as a sub-recipient/beneficiary. Each obligation to the entity of \$50,000 or more should then be reported individually by obligation type (e.g. contract, grant, loan, direct payment) in the respective \geq \$50,000 obligation section of the GrantSolutions portal. Obligations to the entity of less than \$50,000 should be reported in the aggregate by the applicable obligation type.

54. If a prime recipient originally reported an obligation in the aggregate and in a subsequent reporting period, the obligation amount is increased to \$50,000 or above, how should the obligation be reported?

First, the obligation and any related expenditures should be reduced from the specific aggregate obligation and expenditure amounts. To record the obligation by type (i.e. contract, grant, loan, direct payment), the prime recipient should add the sub-recipient/beneficiary in the GrantSolutions portal (if not already included). Once the sub-recipient/beneficiary has been identified and/or added, the obligation should be reported by applicable obligation type \geq \$50,000, along with the related expenditures.

55. When Treasury OIG approves a prime recipient's quarterly Financial Progress Report submission in the GrantSolutions portal, does this mean Treasury OIG agrees that information is true, complete, and accurate?

No, the Treasury OIG's approval of a quarterly Financial Progress Report submission is a confirmation that the submission has been completed and the data meets specific data entry validation checks. It is the responsibility of a prime recipient's authorized official to certify that the information provided in the quarterly Financial Progress Report is "true, complete, and accurate, and the information is provided for the purposes and intent set forth in the CARES Act, Public Law 116-136."

E. Reporting Corrections

56. If a prime recipient submitted information in its interim report of costs incurred as of June 30, 2020 and some information has changed, can we correct this information in the portal?

Yes. Keep in mind that for purposes of meeting the interim reporting requirement, reporting estimated costs incurred was allowed. For the first quarterly reporting period (March 1, 2020 through June 30, 2020) beginning September 1, 2020, the prime recipient must report actual obligations and expenditures in the

GrantSolutions portal. The amounts reported in the GrantSolutions portal and certified will be considered the official reporting.

57. *If an error is identified or an addition/modification needs to be made, is there an ability to amend the previous submitted data?*

Yes, if a primerecipient determines corrections or additions are necessary, the current GrantSolutions submission may be recalled, corrected, and resubmitted within the first 10 days after the quarter end. In addition, if a Treasury OIG reviewer determines corrections or additions are necessary, feedback will be provided and the submission will be returned to the prime recipient for correction and resubmission.

If an error is identified or a modification needs to be made after a report is already approved by the Treasury OIG, the prime recipient will need to make the modification or correction in the next quarterly reporting cycle. To correct or modify a prior period's data reported in the portal sections for amounts of \$50,000 or more, the prime recipient should add a current quarter obligation or expenditure in the applicable obligation type section (e.g. contract, grant, loan, direct payment) and report a positive or negative amount to adjust the amount accordingly. To correct or modify a prior period's data in an aggregate reporting section of less than \$50,000, the prime recipient should adjust a current quarter obligation or expenditure in the applicable obligation type section (e.g. contract, grant, loan, direct payment) by the correction or modification amount needed. The prime recipient is ultimately responsible for certifying that the quarterly submissions (with corrections/modifications) are true, complete, and accurate in the GrantSolutions portal.

The prime recipient will have until September 21, 2021 (Reporting Cycle 6) to make any corrections or modifications to data in the GrantSolutions portal. Refer to question 86 for modifications related to CRF reporting after the covered period of March 1 through December 30, 2020.

58. *For forgivable loans originally reported as a grant, in a subsequent reporting period, if the recipient has not met the terms of forgiveness, should this obligation be changed to a loan in subsequent reporting period?*

The forgivable loan should have originally reported as a loan in total until the conditions for loan forgiveness are met. See response to question 42.

59. *Is there a process to modify the prime recipient's nonfederal cost share reported in a prior quarter that has significantly changed due to the reimbursement from the FEMA public assistance programs?*

Yes, if a prime recipient determines corrections or additions to a quarterly submission are necessary and the quarterly submission has already been approved by Treasury OIG, changes to a previous quarterly submission may be made in the subsequent reporting submission. The prime recipient will not be able to re-open the previous quarter, but instead will make necessary adjustments in the open quarter. See response to question 57 on how to correct or modify a prior quarter's data and the deadline for making corrections and modifications and response to question 49 on reporting the prime recipient's nonfederal cost share. The prime recipient is ultimately responsible for certifying that the quarterly submissions (with corrections/modifications) are true, complete, and accurate in the GrantSolutions portal.

60. *If a prime recipient reports a cost allocated to the CRF in one reporting cycle, but subsequently determines to allocate that cost to a different funding source, can the prime recipient remove the obligations and related expenditures from its CRF reporting submission?*

Yes, if a prime recipient determines corrections or additions to a quarterly submission are necessary and the quarterly submission has already been approved by Treasury OIG, changes to a previous quarterly submission may be made in the subsequent reporting submission. The prime recipient will not be able to re-open the previous quarter, but instead will make necessary adjustments in the open quarter. See response to question 57 on how to correct or modify a prior quarter's data and the deadline for making corrections and modifications. The prime recipient is ultimately responsible for certifying that the quarterly submissions (with corrections/modifications) are true, complete, and accurate in the GrantSolutions portal.

Keep in mind, if a prime recipient has not used funds it has received to cover costs that incurred between March 1, 2020 and December 30, 2020, as required by the statute, those funds must be returned to the Treasury.

61. *Do we need a budget set up for FEMA Cares Act monies received or just to track and report monies used?*

The prime recipient is required to report obligations and expenditures of CRF proceeds. It is at the discretion of the prime recipient to determine a budget setup related to CRF payments.

F. Reporting Deadline

62. *Can the CRF reporting submission deadline be modified to 30 days, as opposed to 10 days, after the quarter end?*

We do not have the authority to change the quarterly recipient reporting deadline. Section 15011 of the CARES Act requires CRF reporting within 10 days after the end of each calendar quarter. Prime recipients' GrantSolutions data will be reported to the Pandemic Response and Accountability Committee (PRAC) for display on its website.

63. *Can a prime recipient request extensions in filing its quarterly reports?*

Yes, requests to extend the quarterly reporting deadline should be sent to Treasury OIG at CARES@oig.treas.gov for extension approval/disapproval. These decisions will be made on a case-by-case basis and with consideration given to extenuating circumstances.

64. *If a prime recipient does not close its records by 10 days after the reporting period ends, how should these costs be reported?*

Record closing times vary and may not align with the GrantSolutions reporting deadlines. If a prime recipient is not able to report within 10 days after the reporting period ends, the prime recipient is responsible for submitting the missing data in the GrantSolutions portal as part of the next quarter's reporting cycle.

G. GrantSolutions Portal

65. *Is the portal still on schedule for becoming available on September 1, 2020?*

Yes for most users. An upload feature will be available for select very high volume prime recipients. The upload feature will be available in December 2020 and timing of the schedule for those users has been communicated.

66. *If a prime recipient's designated users already have accounts with GrantSolutions, does the prime recipient still need to submit each user's name, title, email address, and phone number to Treasury OIG?*

Yes.

67. *Can portal access be granted to users if they share the same email address?*

No. In order to grant portal access, each user must have a unique email address; users cannot have the same email address.

68. Can a prime recipient designate more than two preparers?

No. The GrantSolutions portal can only sustain up to three users per prime recipient: two preparers and one authorizing official.

69. How can a prime recipient replace a designated user?

In order to replace a designated user, the prime recipient must email help@grantsolutions.gov to request a “Treasury OIG & PRAC Financial Status Report – Prime Recipient” user account request form. The form must be completed for both the new user and the user being replaced. For the user being replaced, the Request Type “Closure of Existing Account” should be selected on the request form. Once both forms have been completed, the prime recipient should email them to CARES@oig.treas.gov with explanation of the requested replacement.

70. Can the authorizing official also be one of the preparers?

No. The authorizing official cannot be both a designee/preparer and an authorizing official.

71. What is the best way to import data from a large number of sub-recipients/beneficiaries?

Only the prime recipient is required to report CRF related obligations and expenditures in the GrantSolutions portal. We are currently working with GrantSolutions regarding a data upload feature that will be available for certain prime recipients with the most sub-recipient/beneficiary activity. The upload feature will be available beginning December 2020. See question 65.

72. Will the portal provide a cumulated view of obligations and expenditures a prime recipient has reported?

Yes.

H. Record Retention/Audit

73. 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 80, 81, and 82.

74. How far down will the audit cascade?

The CARES Act provides that Treasury OIG is responsible for monitoring and oversight of the receipt, disbursement, and use of CRF payments. As such, all CRF payments received by the prime recipient are subject to audit. In this regard, an audit will be at the prime recipient level and may involve reviewing the prime's sub-recipients/beneficiaries. In the event that it is determined the prime recipient failed to comply with requirements of subsection 601(d) of the Social Security Act, as amended, (42 U.S.C. 801(d)), those funds will be recouped by Treasury OIG.

75. If providing small business assistance, do we have to receive actual documentation of the expense or business interruption? If we provide thousands of grants to small businesses and are audited, what would need to be provided to satisfy an audit?

The prime 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)). Records include, but are not limited to, general ledger and subsidiary ledgers used to account for (a) the receipt of CRF payments and (b) the disbursements from such payments to meet eligible expenses (e.g., expenses for suppliers to address the public health emergency due to COVID-19 or operational expenses in the case of a grant providing economic support). The prime recipient is responsible for determining the level and detail of documentation needed from the sub-recipient/beneficiary of small business assistance to satisfy these requirements; however, there would need to be some documentation to demonstrate that the small business was impacted by the public health emergency and was thus eligible for the CRF funds.

76. Is there an audit plan at this point? For example, will there be interim audits, or only after Dec 30 or final reporting? Also, do you have criteria upon which you will decide which awards to audit?

Treasury OIG will perform monitoring of the prime recipient's receipt, disbursements, and uses of CRF payments and has developed procedures for this purpose. There are procedures for monitoring, reviewing, and approving the prime recipient's quarterly Grant Solutions submissions. Treasury OIG will also conduct desk reviews, for which other procedures have been developed, to further evaluate the prime recipient's documentation supporting the reported uses of CRF proceeds, as well as, results of other audits (i.e. Single Audit), among other things. The desk review may result in a site visit to the prime recipient for a more in-depth review. Based on results of the quarterly monitoring, desk reviews, site reviews, and our risk assessments, Treasury OIG will determine the need for a more in-depth audit. In addition to ongoing monitoring, Treasury OIG will initiate audits as deemed

necessary based on other referrals and ongoing risk assessments of the prime recipients.

77. Will Treasury OIG audit the sub-recipient/beneficiary as part of its prime recipient audit?

Treasury OIG may audit the sub-recipient/beneficiary as part of its audit of the prime recipient.

78. What cost principles will Treasury OIG be applying to determine allowability of costs during audit if Subpart E of 2 CFR 200 is not applicable to this funding?

The CARES Act and the Treasury guidance and FAQs will be used as criteria for allowability of costs. According to Treasury's FAQs, provisions of the Uniform Guidance, 2 C.F.R. sec. 200.303 regarding internal controls, 2 C.F.R. sec. 200.330 through 200.332 regarding sub-recipient monitoring and management, and subpart F regarding audit requirements are applicable to CRF payments. Subpart E is not applicable. Although a beneficiary is considered a sub-recipient for purposes of reporting in the Grant Solutions portal, the provisions of the Uniform Guidance above are not applicable to the beneficiary.

79. How does the CRF audit relate to Single Audit?

Treasury OIG has jurisdiction to perform audits of all expenditures of CRF funds (of any dollar amount). CRF payments are considered to be Federal financial assistance subject to the Single Audit Act (31 U.S.C. sec. 7501-7507). The related provisions of the Uniform Guidance, 2 C.F.R. sec. 200.303 regarding internal controls, sec. 200.330 through 200.332 regarding sub-recipient monitoring and management, and subpart F regarding audit requirements provides detailed information. The results of a prime recipient's Single Audit will be evaluated as part of the Treasury OIG's desk reviews and any audits initiated.

80. 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)). Documents/records include payroll records for the covered period March 1 through December 30, 2020. Records include, but are not limited to (1) general and subsidiary ledgers used to account for the receipt of CRF payments and subsequent disbursements; and (2) payroll, time, and human resource records to support costs incurred for payroll expenses. Please refer to the Treasury OIG memorandum,

CoronavirusReliefFundReportingandRecordRetentionRequirements(OIG-20-021; July 2, 2020). 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.

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.

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 COVID-19 public health emergency. The Treasury OIG does require the government to maintain budgetary records to support the fiscal years 2019 and 2020 budgets.

81. 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 80.

82. 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.

83. Are CRF funds required to be accounted for in a separate fund of the government? At least one state thinks it should be.

These are individual management decisions, however, the documentation required above should be easily understandable by the auditors.

84. If a recipient separately invests CRF proceeds in an interest bearing account, will earned interest on these proceeds be part of an audit of the prime recipient? If so, what level of documentation will be required?

Yes. The prime recipient is responsible for tracking interest earned on CRF proceeds and expended outside the Grant Solutions portal, which does not capture this information. The prime recipient must maintain records (i.e. bank statements, general ledger) to sufficiently support the receipt and uses of interest for COVID-19 related expenditures to cover eligible expenses incurred by December 30, 2020. The prime recipient is required to report interest earned and expended along with supporting records upon request from the Treasury OIG. In accordance with Treasury’s FAQs, the prime recipient must use the interest earned or other proceeds these investments earn only to cover expenditures incurred in accordance with

section 601(d) of the Social Security Act (42 U.S.C. 801(d)) and the Guidance on eligible expenses.

85. Will interest received from borrowers on loans made with CRF proceeds be subject to audit by Treasury OIG? If so, what level of documentation will be required?

Yes. The prime recipient is responsible for tracking interest paid by borrowers of loans using CRF proceeds and subsequent uses. Grant Solutions portal does not capture this information. The prime recipients must maintain records (i.e. bank statements, loan agreements, general ledger) to sufficiently support the receipt and uses of interest. The prime recipient is required to report interest received and expended along with supporting records upon request from the Treasury OIG.

Recoupment

86. If Treasury OIG determines that a prime recipient has failed to comply with 601(d) of the Social Security Act, it has the authority to recoup the amount of funds used in violation of the subsection. Is there an appeal process for prime recipients if Treasury OIG makes such a determination?

Yes. There are opportunities for a prime recipient to appeal a determination of noncompliance by the Treasury OIG, both before and after the covered period ends on December 30, 2020.

a. Before December 30, 2020

If the Treasury OIG makes a determination, before December 30, 2020, that a certain amount of CRF proceeds were not used in accordance with 601(d) of the Social Security Act (42 U.S.C. 801(d)), the prime recipient would need to either recover such funds and redeploy them for COVID-19 related expenditures or demonstrate that other eligible expenses incurred during the covered period of March 1 through December 30, 2020 would qualify as allowable. The Treasury OIG's determination will be based on audit, investigation, or other review that will be documented and reported to the prime recipient. As part of the reporting process, the prime recipient will have an opportunity to comment and/or dispute the Treasury OIG's determination. The Treasury OIG will consider the prime recipient's feedback and any additional information provided in making its final determination on the use of CRF proceeds. Once Treasury OIG makes a final determination, it will request a written response from the prime recipient to include the corrective action(s) to remedy the noncompliance.

b. After December 30, 2020

If the Treasury OIG makes a determination, after December 30, 2020, that a certain amount of CRF proceeds were not used in

accordance with 601(d) of the Social Security Act (42 U.S.C. 801(d)), the Treasury OIG may (1) seek recoupment of funds, or (2) allow the prime recipient to demonstrate that other eligible expenses incurred during the covered period of March 1 through December 30, 2020, would qualify as allowable. The Treasury OIG's determination will be based on audit, investigation, or other review that will be documented and reported to the prime recipient. As part of the reporting process, the prime recipient will have an opportunity to comment and/or dispute a determination. For example, in the case of an audit, the prime recipient will be provided a draft audit report for discussion purposes and to comment and give views that will be considered in the Treasury OIG's final determination on uses of CRF proceeds. Part of this consideration will include whether the prime recipient had other COVID-19 related eligible expenditures during the covered period that are supported through documentation. Treasury OIG will also request an official written response from the prime recipient that will be incorporated into the final issued audit report. If there is a determination to recoup funds, Treasury OIG will attempt to collect those funds through Treasury's Bureau of the Fiscal Service (Fiscal Service)–Centralized Receivable Service. A prime recipient will have an opportunity to enter into a repayment agreement. Fiscal Service will follow its normal debt collection practices.