



September 10, 2020

The Honorable Richard K. Delmar
Deputy Inspector General
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Deputy Inspector General Delmar,

The undersigned associations representing state and local governments, and their elected officials, have embraced the fact that our national emergency response to the coronavirus pandemic requires strong coordination and partnership at the federal, state and local levels. We are writing to express our concern that recent changes to the regulatory and oversight process for the Coronavirus Relief Fund (CRF) by different offices within the U.S. Treasury, including your own, creates greater confusion over eligible expenditures state and local governments can make to prevent the worst possible health and economic outcomes related to COVID-19 as intended by the CARES Act.

In lieu of formal regulation, the U.S. Department of Treasury chose to publish informal rolling guidance that is periodically updated in the form of a Frequently Asked Question (FAQ) document to address questions or matters regarding the CRF authorized under the Coronavirus Aid, Relief and Economic Security (CARES) Act. Although the piecemeal process has been challenging for states and localities, we believe this choice represents a good faith effort by the U.S. Treasury to make CRF dollars available to states and localities as quickly as possible; and to clarify numerous issues not accounted for in the authorizing legislation.

However, the U.S. Treasury Office of Inspector General's (OIG) August 28 memorandum, OIG-CA-20-028, outlining new reporting and record retention requirements for the CRF, calls into question how long state and local governments can expect federal support to last.

State and local officials responsible for managing and executing activities supported by the Coronavirus Relief Fund have relied on the guidance provided in question number two on the Coronavirus Relief Fund Frequently Asked Questions Updated as of August 10, 2020. In this August 10 document, The Treasury Department's FAQ says:

"The Guidance says that funding can be used to meet payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency. How does a government determine whether payroll expenses for a given employee satisfy the "substantially dedicated" condition?"

The Fund is designed to provide ready funding to address unforeseen financial needs and risks created by the COVID-19 public health emergency. For this reason, and as a matter of administrative convenience in light of the emergency nature of this program, a State, territorial, local, or Tribal government may presume that payroll costs for public health and public safety employees are payments for services substantially dedicated to mitigating or responding to the COVID-19 public health emergency, unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise."

The underlined guidance above is clear that state and local recipients of CRF funds 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. With no other additional guidance provided, and the need to quickly allocate CRF dollars to cope with the detrimental impacts of COVID-19, states and localities collected and maintained records that complied with the Treasury August 10 FAQ document. By contrast, OIG-CA-20-028, questions 69, 69(a), and 69(b) introduce a possible equivocation on this guidance.

- Specifically, question 69 states the reporting requirements 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 related to addressing the COVID-19 health emergency.
- Question 69(a) from OIG-CA-20-028 states that recipient governments, including cities, will have to demonstrate/substantiate that an employee's function/duties were in fact substantially dedicated to mitigating the emergency.
- Question 69(b) similarly requires recipient governments to demonstrate/substantiate that the duties/functions of an employee substantially dedicated to mitigating the emergency are also a substantially different use.

The new reporting requirements under question 69, and substantiating requirements under questions 69(a) and 69(b), appear to contradict the prior presumption guidance that states and localities have already acted on to make budgeting, payroll, and employment decisions. At the very least, the change mandated by the Office of the Inspector General (OIG) increases regulatory burdens on state and local governments and diminishes confidence in lasting federal support at a time of reduced capacity as a result of unavoidable furloughs necessary to meet balanced budget obligations.

More concerning, however, is that the change makes it more likely that the OIG will claw back expended funds, possibly years later, in a similar fashion to FEMA funds. The financial ramifications will be tremendous while retroactively penalizing the good faith efforts of state and local governments to comply with statutory requirements and rolling guidance released by the U.S. Treasury through August 10. Recipients will be hesitant to pass through monies if the U.S. Treasury permits its administrative rules to change at any time, exposing them to more unanticipated financial liability. This chilling effect will greatly harm small and rural localities in particular as they are completely reliant on the states to pass such funding through and help tide these cities over through this difficult year.

At a minimum, we request that OIG's reporting requirement of 69, 69(a), and 69(b) be prospective from August 28, 2020. This will provide fair warning to prime recipients and subgrantees alike what the rules

are and the standards they must adhere to ensure compliance with Treasury Office of Inspector General auditing requirements under the CARES Act for the CRF. While this is the minimum request, we would prefer that you fully withdraw questions 69, 69(a), and 69(b) from your FAQs and with it the overly burdensome reporting requirements.

We believe the removal of these burdensome reporting requirements would fall in line with the intention of the Department of the Treasury. In fact, the Department of the Treasury released updated guidance on September 2, after the release of the OIG-CA-20-028, that adds a section titled “Supplemental Guidance on Use of Funds to Cover Payroll and Benefits of Public Employees.” This new section further reiterates the presumption 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 and are substantially different use than accounted for in the most recently approved budget as of March 27, 2020. We also request that the Department of the Treasury and the Office of the Inspector General coordinate their guidance so as to avoid further contradiction and confusion for states and localities. Otherwise, the chilling effect noted above will continue to delay the disbursement of these funds to areas of critical need.

Again, in this unprecedented time, it is imperative that every level of government work in harmony to defeat the threat of COVID-19 to public health and economic stability. Policy changes that create discord within the administration’s guiding principle of “federally supported, state managed, and locally executed” are changes the nation cannot afford at a time when our transition away from extraordinary measures are on the line.

Thank you for your continued hard work and leadership during these challenging times. We would welcome the opportunity to discuss this issue further. We are committed to a solution that helps our nation mitigate, respond, and recover from these historic times.

Sincerely,

National Governors Association
National Conference of State Legislatures
National League of Cities
National Association of Counties
International City/County Management Association
The United States Conference of Mayors
The Council of State Governments
Government Finance Officers Association