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October 16, 2020

Via Electronic Transmission

Taco Pope
Nassau County Manager
96135 Nassau Place, Suite 6
Yulee, Florida 32097

Re: Use of CRF Funds to Cover Public Health/Safety Employee Payroll
Expenses

Dear Mr. Pope:

You have asked for advice on whether the County can fund fire and emergency medical services personnel costs incurred during the COVID-19 public health emergency with a portion of the County's Coronavirus Aid, Relief, and Economic Security ("CARES") Act subgrant award through the Florida Division of Emergency Management. Based upon and limited by the guidance outlined below, this question is answered in the affirmative.

The CARES Act provides that payments from the Coronavirus Relief Fund ("CRF") may only be used to cover costs that:

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

The United States Department of Treasury has issued the "Coronavirus Relief Fund Guidance for State, Territorial, Local and Tribal Governments" ("Treasury Guidance"), the purpose of which is to provide guidance to recipients of CRF funding.¹ Treasury Guidance provides that payroll expenses for public employees whose services are "substantially dedicated" to mitigating or responding to the COVID-19 public health

¹ The Treasury Guidance was initially released on April 22, 2020 and has been updated numerous times. In addition to providing guidance as to the interpretation of the three prongs of the CARES Act cited above, Treasury Guidance additionally includes answers to frequently asked questions.

emergency are eligible expenditures under the CARES Act. See Coronavirus Relief Fund Guidance for State, Territorial, Local and Tribal Governments (April 22, 2020).

With respect to the payroll expenses of public health and safety employees specifically, Treasury Guidance establishes that “as an administrative convenience in light of the emergency nature of the program,” there is a presumption that all public health/safety employees are substantially dedicated to mitigating or responding to COVID-19. Treasury Guidance issued on June 24, 2020, provides as follows:

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.”

Pursuant to Treasury Guidance, it further appears that all public health/safety employees that were budgeted in the entity’s most recently approved budget as of March 27, 2020, are now considered to be performing a substantially different function and therefore are now considered “substantially dedicated” to mitigating or responding to COVID, and the payroll expenses of such budgeted employees during the covered period (March 1 - December 30, 2020) may be covered using CRF funds, unless the local government makes an express finding otherwise. Treasury Guidance provides as follows:

In recognition of the particular importance of public health and public safety workers to State, local, and tribal government responses to the public health emergency,

Treasury has provided, as an administrative accommodation, that a State, local, or tribal government may presume that public health and public safety employees meet the substantially dedicated test, unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise. This means that, if this presumption applies, work performed by such employees is considered to be a substantially different use than accounted for in the most recently approved budget as of March 27, 2020. All costs of such employees may be covered using payments from the Fund for services provided during the period that begins on March 1, 2020, and ends on December 30, 2020.

Coronavirus Relief Fund Guidance for State, Territorial, Local and Tribal Governments (Update Dated September 2, 2020).²

Additionally, the following provision from Question 70 of the “Department of Treasury Office of Inspector General Coronavirus Relief Fund Frequently Asked Questions Related to Reporting and Recordkeeping,” dated September 21, 2020, provides further support for the proposition that public health/safety employees that were budgeted as of March 27, 2020, may be presumed to be substantially dedicated to responding to and mitigating COVID-19, and their payroll expenses during the covered period (March 1 through December 30) constitute an eligible expenditure under the CARES Act:

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

² This interpretation was also verbally expressed by representatives of the Department of Treasury on a Webinar with the National Association of Counties (NACO) on October 8, 2020.

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.

Pursuant to Treasury Guidance, public health and safety employees that are eligible for the “substantially dedicated” presumption described above include police and sheriff officers, firefighters, emergency medical responders, correctional and detention officers, and those who directly support such employees such as dispatchers and supervisory personnel. See Coronavirus Relief Fund Guidance for State, Territorial, Local and Tribal Governments (Update Dated September 2, 2020).

Payroll expenses and benefits include the following: the costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (federal and state), workers compensation insurance, and Federal Insurance Contributions Act (FICA) taxes (which includes Social Security and Medicare taxes). See Coronavirus Relief Fund Guidance for State, Territorial, Local and Tribal Governments (Update Dated June 30, 2020).

However, it should be noted that overtime, workforce bonuses, and hazard pay are not eligible expenses “across the board” for all public health/safety employees. Rather, these types of payroll expenses are only eligible in the event they can be tied directly to duties performed by the employee that are specifically related to COVID-19. See below example from Treasury Guidance:

For example, a recipient may use payments from the Fund to cover hazard pay for a police officer coming in close contact with members of the public to enforce public health or public safety orders, but across-the-board hazard pay for all members of a police department regardless of their duties would not be able to be covered with payments from the Fund.

Coronavirus Relief Fund Guidance for State, Territorial, Local and Tribal Governments (Update Dated September 2, 2020).

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Please let me know if you have any additional questions or require additional clarification. While the Treasury Guidance on this issue appears clear, as with any federal grant program, the rules and interpretations from the granting agencies are often changing and such changes could modify the advice provided in this letter.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'HJ Encinosa', written in a cursive style.

Heather J. Encinosa

HJE:sb

cc: Michael S. Mullin, County Attorney
David Jahosky, GSG