

CORONAVIRUS RELIEF FUND

PAYROLL EXPENSE ELIGIBILITY POLICY BRIEF

Version 1.2 09/10/2020

DESCRIPTION

This Memo documents the eligibility of the Coronavirus Relief Fund (CRF) funds being expended by the Recipient for the unexpected costs that are necessary to provide and manage services due to COVID-19. The CRF was established in section 5001 of the CARES Act, which makes CRF funding available under section 601(a) of the Social Security Act. The Recipient was provided a CRF distribution directly by the U.S. Treasury (Treasury) and empowered to utilize funding for costs that are associated with preparing for, responding to, or mitigating against the COVID-19 public health emergency. This Memo outlines considerations and standards in the use of CRF proceeds for the activities and purposes listed in herein.

BACKGROUND

Expenditures reimbursed with Treasury's CRF funds must comply with all federal requirements set forth in section 601(d) of the Social Security Act, as added by Section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Expenditures must be incurred in the period beginning March 1, 2020 and ending December 30, 2020 and must be recorded and documented using the generally accepted accounting principles and the provisions of Title 2 CFR Part 200 – Uniform Administrative Requirements, sections 2 C.F.R. § 200.303 regarding internal controls, 2 C.F.R. § 200.330 through 200.332 regarding subrecipient monitoring and management, and Subpart F regarding audit requirements.

The CARES Act, which funds the Coronavirus Relief Fund, requires that payments to cities, counties, states, territories, or Tribal governments only be used to cover expenses that:

1. are necessary expenditures incurred due to the public health emergency due to COVID-19.
2. were not accounted for in the state or local government budget approved as of March 27, 2020; and
3. were incurred between March 1, 2020 and December 30, 2020.

Treasury has provided Guidance¹ that outlines the overarching purpose and guidelines for the use of the CRF allocation, as well as Frequently Asked Questions (FAQ)² that provide

¹ <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>

² <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked-Questions.pdf>

guidance and clarification to specific questions. These documents are updated by Treasury routinely as the assistance period progresses.

PAYROLL ASSISTANCE FOR PUBLIC EMPLOYEES

Any payroll expense, including wages, benefits, hazard and/or overtime pay that meets the eligibility criteria as outlined in this Memo is an allowed reimbursable expense. Treasury has taken a broad approach to payroll assistance related to public employees. This Memo describes the criteria in a tiering or waterfall approach to assist in the determination of eligibility for allowable payroll expenses.

KEY TERMS

Substantially dedicated: all staff that are dedicated to responding to the public health emergency at least 51% of their time. As an administrative accommodation, Treasury determined that State, local, or tribal 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. There are special requirements for hazard and overtime pay. Treasury has not developed a precise definition of what “substantially dedicated” means given that there is not a precise way to define this term across different employment types. The recipient should maintain documentation of the “substantially dedicated” conclusion with respect to its employees.

Full amount: the total of all payroll and benefit costs for personnel substantially dedicated to COVID-19 response, mitigation, or prevention, such as public health or public safety workers. There are special requirements for hazard and overtime pay.

Partial (portion) amount: the portion of payroll and benefits for personnel that work less than 51% of the time on COVID-19 activities. There are special requirements for hazard and overtime pay.

Pay period: The time interval chosen by the recipient. When the reimbursement is conducted for each pay cycle, then a pay cycle is the pay period. When the reimbursement is conducted on a monthly/quarterly or any other basis, that basis is the pay period.

Benefits: CRF eligible benefits include, but are not limited to, the costs of all types of leave (vacation, family-related, sick/medical, 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) for personnel performing COVID-19 related tasks. If the staff person is substantially dedicated to COVID-19, the full amount of the

benefits is CRF eligible. If the staff person is not substantially dedicated to COVID-19 activities, the portion of their benefits equal to the portion of their time dedicated to COVID-19 activities is CRF eligible.

Hazard pay: the amount of payroll costs directly associated with the COVID-19 public health emergency and only when performing hazardous duty or work involving physical hardship that is related to COVID-19. Hazard pay for normal duties is not eligible for reimbursement under CRF.

Overtime pay: the amount of payroll costs directly associated with the COVID-19 public health emergency and exceeding regular pay criteria. Overtime pay for non-COVID-19 related activities is not eligible for reimbursement with CRF funds.

Substantially different use: Treasury allows CRF funds to be used to cover costs, including personnel, services, or supplies that were accounted for in the budget most recently approved as of March 27, 2020 but have been redeployed or repurposed for COVID-19 related purposes and are a substantially different use from the expected use of funds in such a line item, allotment, or allocation.

APPLICABILITY RELATED TO LOCAL IMPACTS

Recipients are not obligated to reimburse all eligible costs with CRF. For example, in a community with a relatively low number of positive COVID-19 cases, the Recipient may elect not to reimburse eligible staff costs with CRF. Instead, the Recipient may elect to use the CRF funds to provide financial support to residents impacted by COVID-19, increase capacity of non-profits serving those who have been laid off or are experiencing employment interruptions due to COVID-19, or to reimbursing costs necessary to modify delivery of services, or provide assistance to businesses for safe reopening or operating.

PAYROLL EXPENSE ELIGIBILITY TIERING

Payroll expense eligibility tiering provides a ranking of level of compliance documentation required lowest to highest and the amount of payroll costs allowable for reimbursement by category from most to least. The guidance for each category outlines the types of documentation needed to substantiate the covered amount.

CRF Payroll Assistance eligibility tiering guidance for public employees is outlined in six groupings as follows:

Full Amount: Substantially Dedicated to mitigating or responding to the COVID-19 public health emergency

1. Public health and public safety employees presumed substantially dedicated by Treasury for specific job classes as an administrative convenience.
2. Health care, human services, and similar employees substantially dedicated. May also include Staff Replacement of persons now dedicated to COVID-19 as well as employees that could have been furloughed but were reassigned and substantially dedicated to COVID-19 work (referenced in item 4 and item 5 below).

Partial Amount: Not Substantially Dedicated but some time is dedicated to mitigating or responding to the COVID-19 public health emergency

3. Not Substantially dedicated: All staff less than 51% dedicated to COVID-19 work

Full or Partial Amount: Case by case review needed

4. Staff replacement: replacing staff now assigned to COVID-19 work that may or may not be substantially dedicated
5. Could have been furloughed but were reassigned to COVID-19 work that may or may be not substantially dedicated.
6. Hazard and overtime pay for COVID-19 related work only

Within each of the tiers the recipient should determine their level of participation for that tier and be consistent with the method of determining the allowable amount of reimbursement. The recipient may choose a portion of a tier, and not reimburse for all tiers that are eligible. The recipient must apply the same approach within an agency, department, or division, but may elect alternate approaches for others. For example, a recipient may determine that payroll expense of all staffs that are substantially dedicated are reimbursed, but any staffs that do not meet the substantially dedicated definition are not.

1. Public Health and Public Safety Employees Substantially Dedicated to COVID-19

Eligibility: Full amount (100%) of payroll expense for specific job classes

Required Documentation:

- a. Clear job descriptions or classifications that align with the jobs listed in the Treasury Guidance³
- b. Payroll Report documenting the amount paid for each eligible individual during the period for which their payroll expenses are claimed

The Treasury has determined the work being performed by specific job classes of public health and/or public safety employees is for a substantially different purpose or use than was accounted for in the most recently approved budget as of March 27, 2020. All payroll and benefit costs for such employees would be eligible for reimbursement using payments from the CRF for the period that begins on March 1, 2020 and ends on December 30, 2020. The specific job classes are as follows:

Public safety employees: police officers, sheriffs and deputy sheriffs, firefighters, emergency medical responders, correctional and detention officers, and those who directly support such employees such as dispatchers and supervisory personnel.

Public health employees: employees involved in providing medical and other health services to patients and supervisory personnel, including medical staff assigned to schools, prisons, and other such institutions, and other support services essential for patient care (e.g., laboratory technicians) as well as employees of public health departments directly engaged in matters related to public health and related supervisory personnel.

To reduce the administrative burden, Treasury presumes all Public Employees in these specific job classes are substantially dedicated to responding to or mitigating the effects of COVID-19.

³ <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>

2. Health Care, Human Services and Similar Employees Substantially Dedicated to COVID-19

51% or more of the person's time is spent on COVID-19 related activities (See hazard/overtime pay requirements below)

Eligibility: Full amount (100%) of payroll expenses of specific employees

Required Documentation:

- a. For each employee and per pay period, clear, distinct job descriptions that align with the jobs listed in the Treasury Guidance, as well as analysis demonstrating at least 51% of the employee's time was dedicated to COVID-19 related activities (e.g. demonstrating that the employee meets the substantially different use requirement because they are substantially dedicated to COVID-19 work)
- b. Payroll Report documenting the amount paid for the individuals during the period for which their payroll expenses are claimed

Health care, human services and similar public employees who are not addressed in the Public Health and Public Safety job classes listed in the Guidance may be substantially dedicated to responding to or mitigating the effects of COVID-19 *IF* for 51% or more of their time they are performing COVID-19 related activities. This is demonstrated by the number of hours worked on COVID-19 related activities divided by the total of all hours worked in the pay period⁴ (COVID-19 hours / all hours). If the result is 51% or greater, 100% of payroll is eligible for that reimbursement by CRF funds.

⁴ Note that the "pay period" is defined by the recipient. If the reimbursement is conducted for each pay cycle, then a pay cycle is the pay period. If the reimbursement is conducted on a monthly, quarterly or any other basis, that basis is the pay period.

3. Not Substantially Dedicated to COVID-19

Less than 51% of a person's time is dedicated to mitigating or responding to the COVID-19 public health emergency (See hazard/overtime pay requirements below)

Eligibility: Partial amount of direct payroll costs of actual hours dedicated to COVID-19 work.

Required Documentation:

- a. For each employee and per pay period, an analysis demonstrating the portion of time dedicated to COVID-19 related activities and documents the duties related to COVID-19
- b. Payroll Report documenting the amount paid for each eligible individual during the period for which their payroll expenses are claimed

Payroll expenses for public employees who are not addressed in the categories listed in the Guidance and who are not substantially dedicated to responding to or mitigating the effects of COVID-19 as demonstrated by the percentage of their work for COVID-19 related activities may be eligible for reimbursement for the portion of payroll costs dedicated to responding to or mitigating the effects of COVID-19.

4. Staff Replacement: Payroll costs for replacing staff that was transferred to a COVID-19 role.

Eligibility: Full or partial amounts for routine roles charged to CRF at same (i.e.100%) rate as the staff they are temporarily replacing

Required Documentation:

- a. Clear, concise relationship of the staff member(s) assigned to fill the gap associated with the staff member(s) redirected to COVID-19 related activities; ratio of COVID-19 related activities of the staff member re-assigned is applied to the staff member fulfilling the gap.
- b. Payroll Report documenting the amount paid for the individuals during the period for which their payroll expenses are claimed

Public employees performing tasks not addressed in the categories listed in the Guidance, and who are not substantially dedicated to responding to or mitigating the effects of COVID-19 as demonstrated by total COVID-19 related activity hours divided by overall total hours worked, but were assigned work or hired to fulfill that gap of staff that was transferred to a COVID-19 related roles are reimbursable by covering the gap created by the public health emergency. Note that the rate of reimbursement should not exceed the costs of the staff that was reassigned to COVID-19 tasks.

5. Could have been furloughed or otherwise laid off are reallocated to COVID-19 related work

Eligibility: Partial or Full Amounts of direct payroll, hazard, and/or overtime pay for COVID-19 related hours. Note: the “substantially dedicated” (51% of time is COVID-19 related) rule applies for reimbursement of Full Amount.

Required Documentation:

- a. For each employee per pay period, an analysis demonstrating the portion of time dedicated to COVID-19 related activities
- b. Payroll Report documenting the amount paid for the individuals during the period for which their payroll expenses are claimed

Payroll costs for public employees who are temporarily assigned to responding to or mitigating the effects of COVID-19 that would otherwise have been furloughed or laid off are eligible for expense reimbursement, as long as the costs are demonstrated by meeting one of the above categories.

Examples:

- A). Although Staff A would have been furloughed, they are working full time at a testing site and 100% of their hours worked are COVID-19 related. 100% of the payroll cost are eligible for reimbursement.
- B). Staff B would have been furloughed but is working testing sites for 40% of their time and back filling routine responsibilities of people dedicated to COVID-19 tasks for the remaining 60%. 100% of Staff B’s payroll costs are eligible for reimbursement.
- C). Staff C would have been furloughed and is working election sites, with hazard pay due to the close encounters with the public. Only the payroll costs for hazard pay is eligible for reimbursement, as the base time duties are not COVID-19 related.
- D). Staff D would have been furloughed and is working the Unemployment Office’s call center, assisting with the surge of unemployment related calls due to COVID-19. 100% of Staff D’s hours worked are eligible for reimbursement.
- E). Staff E would have been furloughed and is working in the Parks and Recreation Services, mowing lawns at the City’s park. None of Staff E’s payroll costs are eligible for reimbursement, as none of Staff E’s hours are related to COVID-19 activities.

6. Hazard and or Overtime pay for COVID-19 Work, any department

Eligibility: limited costs, only when specifically related to COVID-19

Required Documentation: For each employee per pay period, an analysis demonstrating the portion the subject's time dedicated to COVID-19 related activity. Recipient must have a defined COVID-19 hazard pay policy defining hazard pay and a method of distinguishing hazard pay from routine payroll, including a definition of staff being substantially dedicated to COVID-19 related work.

Recipient's documentation must also clearly distinguish overtime pay from routine payroll and support the additional pay as substantially dedicated to COVID-19 related work.

Eligible Payroll reimbursements may include certain hazard and/or overtime pay, but do not include workforce bonuses. Hazard pay may be covered using the CRF if the hazardous duty or work involving physical hardship is related to COVID-19. This means that, whereas payroll and benefits of an employee who is substantially dedicated to mitigating or responding to the COVID-19 public health emergency may generally be covered in full using payments from the Fund, hazard pay may only be covered to the extent it is related to COVID-19.

For example, a Recipient may use payments from the CRF to cover hazard pay for a police officer coming in close contact with members of the public while enforcing public health or public safety orders. However, across-the-board hazard pay for all members of a police department regardless of their duties would not be eligible for reimbursement with payments from the Fund.

Relatedly, both hazard and overtime pay for employees that are *not* substantially dedicated may only be covered using the CRF if the hazard and/or overtime pay is for COVID-19-related duties. As discussed above, governmental entities may allocate payroll and benefits of such employees with respect to time worked on COVID-19-related matters. Depending on the tiering category for the individual or job class the amount of covered payroll expense is either the full or partial amount.

Witt O'Brien's is currently supporting State and local governments across the United States optimize use of federal assistance, offering an experienced voice and force multiplier to help deliver timely and impactful COVID-19 programs and initiatives.

Contact us at covidhelp@wittobriens.com