

AGENDA ITEM BRIEFING

Commissioners Court – December 29, 2020

AI Number: 78902 (15.H.1)

Information: Requesting authority to reclassify payment of payroll expenses incurred by 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 as necessary and eligible under the CARES Act Relief Fund.

Description of AI: Approval to reclassify payment of payroll expenses incurred by 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

Funding Source: CARES Act Relief Fund

Account No.: 0-1287-441-42-115-096-0-XXX

Requested by: Sergio Cruz, Budget Officer

Department: Budget and Management

Prepared by: Sergio Cruz, Budget Officer

Department: Budget and Management

BACKGROUND:

On March 17, 2020, pursuant to the authority under Texas Government Code Section 418.108, Hidalgo County Judge Richard Cortez issued a Declaration of Local Disaster for Public Health Emergency due to the imminent threat arising from the Coronavirus (COVID-19). On March 22, 2020, in accordance with Texas Government Code Section 418.108(b), the Commissioners Court of Hidalgo County issued an Order of Continuance of Declaration of Local Disaster for Public Health Emergency that affirmed the activation of the Hidalgo County Emergency Management Plan and extends the Declaration of Local Disaster.

COMPLIANCE

Approval to use CRF funds for 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 is made in accordance with the Families First Coronavirus Response Act, The US Treasury Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments and The US Treasury Coronavirus Relief Fund Frequently Asked Questions.

(See attached Memorandum to File)

ADMINISTRATION

Approval of 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 is consistent with the Families First Coronavirus Response Act. The County Judge, County Chief Executive, on behalf of the Commissioners Court hereby finds that all public safety, public health, health care, human services, and similar employees are “substantially dedicated” to COVID-19 response making all payroll costs for those classifications claimable.

AGENDA ITEM CAPTION

1. Discussion, consideration, and action to approve the ratification of necessary CARES Act Relief Fund expenditures, for payroll expenses incurred by 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, to cover cost not accounted for in the current budget and cannot be lawfully funded by line item, allotment or allocation in connection with the ongoing COVID-19 public health emergency; the Court having reviewed the Agenda Item Briefing, herein finds that such expenditure is reasonable and necessary for the intended use.

RECOMMENDATIONS:

The Department of Budget and Management recommends approval of the expense reclassification of payroll expenses incurred by 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 as allowed by the Families First Coronavirus Response Act. Expenditures will be charged to the Coronavirus Aid, Relief, and Economic Security (CARES) Relief Grant Fund available to address the COVID-19 public health emergency.

MEMORANDUM TO FILE

Summary:

The CRF can be used to fully fund existing public safety and public health costs that are a “substantially different use” and for related personnel that are “substantially dedicated” to mitigating or responding to the COVID-19 public health emergency.

Discussion:

There are three criteria that make an expense from the CRF an eligible cost^[1]:

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.

Nos. 1 and 3 are straight-forward, but No. 2 requires analysis of Treasury Guidance and FAQs.

1. The CARES Act 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. The cost becomes eligible as “not accounted for” if one of two scenarios is satisfied^[2]:

- a. The cost cannot lawfully be funded using a line item allotment or allocation within the budget; OR,
- b. The cost is for a “substantially different use” from any expected use of funds in such line item allotment of allocation

The term “substantially different use” is established in the Treasury Guidance as one of two scenarios of how to determine what costs are “not accounted for” in a government’s budget. The term is not defined in the Treasury Guidance, but is later clarified in the Treasury FAQs.

2. The Treasury FAQ states that costs incurred for a “substantially different use” include 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^[3].

a. Treasury’s example of substantially different use includes: “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 FAQ language above appears to keep the definition of “substantially different use” extremely broad and makes use of examples to illustrate potential scenarios of “substantially different use”, including one for custody positions. This establishes that the use of custody positions enforcing some level of compliance with public health precautions are viewed by Treasury as a “substantially different use” and are, therefore costs, “not accounted for” in the most recently approved budget and eligible for CRF reimbursement.

Now that CRF reimbursement of eligible costs has been established, it is necessary to evaluate how to tabulate the costs.

3. The Treasury states that the Chief Executive of the relevant government (County Judge in our case) can presume, as a matter of administrative convenience, that payroll costs for public health and public safety employees are payments for services substantially dedicated to mitigating COVID-19^[4].

The Treasury establishes a presumption that all payroll costs for public health and public safety employees are substantially dedicated to COVID-19. Custody personnel are “public safety” employees and are therefore presumed to be substantially dedicated to mitigating COVID-19.

4. The Treasury Guidance provides that payroll expenses for public safety and public health employees, whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency, are eligible expenses^[5].

Conclusion:

The Treasury Guidance states that public safety and public health personnel costs are eligible expenses addressing CRF Criteria No. 1. The Treasury Guidance and FAQs provide ample clarification that public safety and public health personnel mitigating or responding to the COVID-19 public health emergency efforts are engaging in a “substantially different use” of services and are therefore “not accounted for” in the most recently approved budget addressing CRF Criteria No. 2. And, to determine what eligible costs are claimable, the Treasury has delegated to state and local governments a presumption that all public safety and public health personnel are “substantially dedicated” to COVID-19 response making all payroll costs for those classifications claimable. CRF Criteria No. 3 allows for claiming of these eligible costs effective March 1, 2020. It follows all payroll costs for public safety and public health personnel providing COVID-19 response efforts are fully claimable from March 1, 2020 through December 30, 2020.

[1] [Coronavirus Relief Fund, Guidance for State, Territorial, Local, and Tribal Governments](#), US Treasury, June 30, 2020

[2] *Ibid* at pp. 1-2

[3] [Coronavirus Relief Fund, Frequently Asked Questions](#), US Treasury, August 10, 2020, p. 1

[4] *Ibid*

[5] [Guidance](#), *supra* at p. 3