

Clerk of the Board
Florence H. Evans



Board of Supervisors
Phil Serna, District 1
Patrick Kennedy, District 2
Rich Desmond, District 3
Sue Frost, District 4
Don Nottoli, District 5

County of Sacramento

April 28, 2022

The Honorable Michael Bowman, Presiding Judge
Sacramento County Superior Court
720 Ninth Street
Sacramento, CA 95814

Re: Sacramento County Board of Supervisors Response to the February 14, 2022, Grand Jury Report Titled "Sacramento County Board of Supervisors Abandons Responsibility for COVID-19 CARES Act Spending"

Dear Judge Bowman:

The Board of Supervisors, meeting on April 27, 2022, by unanimous vote (5:0) approved the Sacramento County's response to the February 14, 2022, Grand Jury Report titled "Sacramento County Board of Supervisors Abandons Responsibility for COVID-19 CARES Act Spending". Enclosed is a copy of the approved response.

Please contact me if you have any questions at (916) 874-8150.

Respectfully,

A handwritten signature in cursive script that reads "Florence Evans".

Florence Evans, Clerk
Board of Supervisors

FE: js

cc: Ginger Durham, Jury Commissioner
Erendira Tapia-Bouthillier, Grand Jury Coordinator
Amanda Thomas, Chief Fiscal Officer, Office of Budget and Debt Management

Enclosure: Approved Response to February 14, 2022, Grand Jury Report

APR 27 2022

Alorence Davis
Clerk of the Board

**COUNTY OF SACRAMENTO
CALIFORNIA**

2

For the Agenda of:
April 27, 2022
Timed: 6:00 pm

To: Board of Supervisors

Through: Ann Edwards, County Executive

From: Amanda Thomas, Chief Fiscal Officer, Office of Budget and Debt Management

Subject: Response to the February 14, 2022 Grand Jury Report Titled, Sacramento County Board Of Supervisors Abandons Responsibility For COVID-19 CARES Act Spending

District(s): All

RECOMMENDED ACTION

1. Adopt this report as Sacramento County's response to the February 14, 2022 Grand Jury Report titled, Sacramento County Board of Supervisors Abandons Responsibility for COVID-19 CARES Act Spending.
2. Direct the Clerk of the Board to forward a certified copy of the Board letter to the Presiding Judge of the Sacramento County Superior Court no later than May 14, 2022.

BACKGROUND

The Grand Jury reviews and investigates the performance of county, city, and local governing entities. Investigations of governmental entities can be initiated by the grand jury itself or suggested by citizens. A public report usually follows an investigation with findings and recommendations that must be publicly addressed by the recipients as prescribed in Penal Code Sections 933 and 933.05. Responses are then directed to the Presiding Judge of the Superior Court.

Responses to findings and recommendations must follow a specific format, outlined in Penal Code section 933.05, as provided below.

...as to each grand jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.*
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.*

...as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

The Penal Code also outlines the extent to which either agencies or governing bodies must respond to findings and recommendations:

...the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body (933(c)).

...if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the board of supervisors shall respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department (933.05(c)).

The Grand Jury Report titled, Sacramento County Board of Supervisors Abandons Responsibility for COVID-19 CARES Act Spending (Attachment 1) was issued on February 14, 2022. The report examines the oversight, distribution and use of Coronavirus Aid, Relief and Economic Security (CARES) Act funding received by both the County and City of Sacramento and briefly touches on response and mitigation efforts regarding COVID-19. The report includes fourteen findings and 5 recommendations related to the information in the report along with a list of individuals and agencies required or invited to respond.

Supervisor Nottoli, as the Chair of the Board of Supervisors, and the Sheriff were included in the list of elected county officials required to respond within 60-days; however, County Counsel determined that Supervisor Nottoli does not have legal authority to respond to the Grand Jury report on behalf of the Board and the report would be presented to the Board of Supervisors for a response within the required 90-day timeframe for governing bodies. The Sheriff's response, which is required to be provided to the Grand Jury within a 60-day timeframe, is included as Attachment 2. The Grand Jury report also invites responses from the remaining Supervisors, the County Executive, and various other agency administrators. No timeframe was provided for these responses. Invitees are not required to respond.

Proposed responses to Findings 1-11 are included in Attachment 3 and proposed responses to all the Recommendations are included in Attachment 4. No responses have been provided for Findings 12, 13, and 14 because they pertain to the City of Sacramento. As previously provided under Penal Code section 933(c), "the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body". Findings 12-14 address COVID-19 funding, outreach, planning, and oversight in the City of Sacramento, over which the Board has no authority.

The Board of Supervisors is requested to review the proposed responses in Attachments 3 and 4 and make any desired revisions. Any revisions to the responses will be brought back to the Board for review and approval at a subsequent meeting. Responses to the Findings and Recommendations must be sent to the Presiding Judge of the Superior Court by May 14, 2022.

FINANCIAL ANALYSIS

Departments that contributed to this report absorbed related staff costs within their respective budgets.

Attachments:

- Attachment 1: February 14, 2022 Grand Jury Report titled, Sacramento County Board of Supervisors Abandons Responsibility for COVID-19 CARES Act Spending
- Attachment 2: Sheriff's Response to the Grand Jury Report
- Attachment 3: Board of Supervisors Response to Grand Jury Findings
Exhibit A – Federal Coronavirus Relief Fund Program
Guidance
- Attachment 4: Board of Supervisors Response to Grand Jury
Recommendations

SACRAMENTO COUNTY BOARD OF SUPERVISORS ABANDONS RESPONSIBILITY FOR COVID-19 CARES ACT SPENDING



SUMMARY

The Sacramento County Grand Jury conducted an extensive examination of the use and distribution of more than \$270 million in federal Coronavirus Aid, Relief and Economic Security (CARES) Act funding received by both the County and City of Sacramento. The Grand Jury uncovered that the County and City took very different approaches to their use of CARES Act dollars. More importantly, and in the midst of a countywide emergency, the County of Sacramento made questionable and opaque maneuvers that skirted the intent of the CARES Act, to the benefit of County coffers and with scant regard for the needs of its citizens.

The CARES Act was enacted in March 2020. It was directed to cover extraordinary and necessary pandemic related expenditures incurred by state and local government agencies. Receipt of CARES Act funding was determined by population, which meant that while Sacramento County was eligible to receive \$181 million in CARES Act dollars, the City of Sacramento was the only other local governmental entity located in Sacramento County with a large enough population to qualify for its own CARES Act funding. The City received \$89.6 million from the CARES Act.

A fundamental CARES Act requirement was that funding utilized by government agencies had to be allocated for pandemic specific activities, and could not be applied toward already budgeted items. The Grand Jury found that the City of Sacramento distributed nearly its entire \$89.6 million CARES Act allocation to community agencies and businesses to help alleviate Coronavirus Disease 2019 (COVID-19) impacts.

In stark contrast, the Grand Jury investigation revealed that the County of Sacramento conducted no outreach, and made no CARES Act funding plan to support countywide COVID-19 relief activities. Instead, the County Chief Executive directed, and the Board of Supervisors approved, allocation of \$104 million of its \$181 million in CARES Act funding directly to the Sheriff's Office, transferring the same amount of Sheriff's Office funding back into the County's General Fund. While the CARES Act permitted its funding to support public safety, the County's maneuver was inconsistent with the widely publicized intent that CARES Act funds be directed to meet the community's challenges triggered by the COVID-19 pandemic.

The Grand Jury's comprehensive review of the County's budgeting process uncovered a failure to operate with transparency. The result of this failure undermined public confidence in government during a countywide emergency. The County Board of Supervisors failed to engage in governance and oversight at a critical moment.

The County Chief Executive had argued that the fund transfer to the Sheriff was entirely legal and made in anticipation of a pandemic-induced county revenue shortfall. However, neither the County Executive nor the Board presented any statutory or regulatory language, or a legal opinion, that would verify this assertion. At a minimum, the County Board of Supervisors, as elected representatives, had an obligation to timely notify its constituents of the fund allocation and transfer.

The Sacramento Grand Jury recommends that the Board of Supervisors appoint an independent panel to conduct an audit of the allocation and use of CARES Act funds and determine whether County actions were, in fact, in compliance with federal CARES Act requirements.

BACKGROUND

Sacramento County received \$181 million in CARES Act funds. These funds were directed by Congress to cover extraordinary and necessary expenditures related to local, state/US Territory, or tribal government COVID-19 response activities. CARES Act funds were not allowed to be used to replace already budgeted activities. Further, these COVID-19 related expenditures were required to be incurred between March 1 and December 30, 2020.

Due to the pandemic crisis, the County estimated in April 2020 that it would receive approximately \$170 million less in revenue than expected for fiscal year¹ (FY) 2019-2020 and FY 2020-2021. On April 21, 2020, the Board of Supervisors authorized the County Executive, or his designee, to apply for, accept, and draw down all available loans, grants and other funding that might be available to the County to respond to the COVID-19 public health emergency.

The Board of Supervisors did not request, nor did it receive reports on the receipt, allocation or use of CARES Act funds until over three months later. On August 11, 2020, the County Executive reported to the Board that putting \$104 million of the \$181 million in CARES Act funds into the Sheriff's Office budget for existing County public safety employee salaries and benefits, as well as other existing service costs, was allowed by the Act. He provided further justification by explaining that moving already allocated General Fund dollars out of the

¹ The Sacramento County's Fiscal Year runs from July 1 through June 30 of the following calendar year

Sheriff's budget back into the County General Fund would 1) help offset the anticipated \$170 million County revenue shortfall brought about by the COVID-19 pandemic, and 2) preserve those General Fund dollars that had no expiration date by putting CARES Act monies into use by the Sheriff, to be spent by the December 30, 2020 CARES Act deadline.

A citizen complaint about the County's conduct in its disposition of its CARES Act funds was submitted to the 2019-2020 Sacramento County Grand Jury. Due to the limited time remaining in the Jury's term, the complaint was forwarded to the 2021-2022 Grand Jury, which approved an investigation on March 18, 2021.

METHODOLOGY

During its investigation, the grand jury conducted interviews and reviewed numerous documents, websites, and recordings including, but not limited to:

- Sacramento County Public Health Orders
- Sacramento City and County Public Health website
- Planning documents related to the COVID-19 and the CARES Act from the City and County
- Reports from City and County agencies related to COVID-19 status and responses
- Directives from the Sacramento County Board of Supervisors
- Directives from the Sacramento City Council
- Sacramento County Board of Supervisors meeting agenda packets, action summaries, and videos
- Sacramento City Council Agendas and Minutes
- Communications related to COVID-19 funding from both the County and City
- Announcements, agendas, and information from community workshops
- City and County Budget documents
- City and County documents related to reporting on COVID-19 response
- Citizen Complaint#19.20.48
- Federal CARES Act of 2020
- Department of the Treasury - Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments
- Department of the Treasury - 31 CFR Part 35 RIN 1505-AC77, Coronavirus State and Local Fiscal Recovery Funds
- Budgetary and other documentation from the Sacramento County Sheriff's Department
- Interviews of several County officials
- California Health and Safety Code Sections 101040, 101085, 120175, and 120220

DISCUSSION

To stem the economic fallout from the COVID-19 pandemic, Congress passed and the president signed the CARES Act of 2020 in March 2020. The CARES Act provided a total of \$150 billion in relief funding to states, local government and US Territories and tribal governments. These funds were directed to be used for COVID-19 related expenditures incurred between March 1

and December 30, 2020. CARES Act funds were prohibited from use for already budgeted expenditures. Sacramento County received \$181 million in CARES Act funding.

On April 21, 2020, in preparation for receipt of CARES Act funds, the Board of Supervisors passed a resolution which authorized:

The County Executive, or his designee, to apply for, accept, and draw down loans, advances, grants or other funding that may be available to the County to respond to the COVID-19 public health emergency and that the County Executive determines it is in the best interests of the county to accept; and

That the Board grants the County Executive, or his designee, retroactive authority to apply for and accept funds due to the nature of the emergency and the changing guidance from the federal and state government regarding application criteria and timelines.

Despite the ongoing public health emergency and a 2020 summer surge, the Board showed little interest in the allocation and utilization of the CARES Act funds received by the County. In fact, the Board waited more than three months to receive a CARES Act revenue and expenditure report from the County Executive. It was August 11, 2020, when the County Executive finally provided an outline identifying “key goals” explaining how CARES Act eligible expenditures were approved by him:

1. Address critical public health needs to contain the spread of COVID-19;
2. Avoid potentially massive budget cuts to critical County programs, including public health, mental health, alcohol and drug, public safety, child protective services, homeless services, parks and other programs; and
3. Fully comply with federal law and guidance on the use of CARES Act funds, such as the prohibition on backfilling revenue losses, the requirement that the use of funds be subject to the Single Audit Act, the prohibition on using CARES Act funds to match other federal funds and the general requirement that the funds be used to cover COVID-19 related expenses.

The County Executive reported structuring use of the \$181 million of CARES Act funding over a two-year period, \$147.97 million for FY 2019-2020, and \$33.1 million in FY 2020-21.

Table 1 on the following page shows County expenditures for FY 2019-2020 listed in the reporting categories as required by the federal government:

Table 1: Sacramento County Spending

<u>Category of Spending for FY2019-2020</u>	<u>Amount</u>
Transferred to other governments	\$0.00
Payroll for public health and safety employees	\$132,857,301.43
Budgeted personnel and services diverted to a substantially different use	\$4,465,562.87
Improvements to telework capabilities of public employees	\$67,701.36
Medical expenses	\$4,056,586.22
Public health expenses	\$217,623.57
Distance learning	\$0.00
Economic support	\$7,127.00
Expenses associated with the issuance of tax anticipation notes	\$0.00
All items not listed above	\$6,296,050.20
Total	\$147,967,952.65

*Source: August 11, 2020 County Executive Report to Sacramento County Board of Supervisors;
 “Status of Coronavirus Relief Fund Revenue Received by Sacramento County”*

The Sacramento County Grand Jury, during its investigation, took specific note of the actual reported spending of \$132.86 million for “payroll for public health and safety employees.” The Sheriff’s Department received \$104.2 million (78%) of that \$132.86 million. On its face, this CARES Act allocation to the Sheriff to fund “public safety” payroll was permitted under federal guidelines. But the Grand Jury found that these CARES Act funded “public safety” employees simply continued performing the same duties as they had prior to the start of the COVID-19 pandemic. The CARES Act prohibited use of its funds for already budgeted staffing activities.

Further, the Grand Jury found a notable disconnect between the Sheriff’s receipt of a majority of the County’s CARES Act funds for public safety purposes, and the Sheriff’s flat refusal to publicly enforce the Governor and County’s Public Health stay-at-home and masking orders issued to prevent the community spread of COVID-19.

During this August 11th Board meeting, the County Executive and Chief Financial Officer (CFO) explained the Sheriff’s disproportionate allocation by stating that while other County departments could have used the CARES Act money, the County Executive and CFO were concerned that spending the entire CARES Act allocation could not be accomplished by the initial federal deadline of December 30, 2020. Unspent funds would then revert back to the federal government.

The County Executive and CEO asserted that since there was no deadline on use of County General Fund dollars, switching the Sheriff’s County General Fund allocation with CARES Act funds would guarantee that the entire \$181 million of CARES Act funding (\$147.97 million FY 2019-2020/\$33.1 million FY 2020-2021) would be retained by the County.

Switching County General Fund dollars with CARES Act funds may have provided the County with flexibility to maximize all the available federal and state funds that carry spending deadlines. However, the Grand Jury found that this maneuver had adverse consequences to the local community at a critical time in County history.

Most important to County residents, the lack of governance and oversight by the Board of Supervisors allowed the County Executive to violate the first goal of the County’s stated criteria for use of CARES Act funds: to “address critical public health needs to contain the spread of COVID-19.” While the entire County was immersed in the largest public emergency in memory, the Board of Supervisors failed to oversee the activities of the County Executive, and to provide regular, comprehensive public discussion of County emergency activities and use of CARES Act funding.

As shown in Figures 1 and 2, the City of Sacramento and the City Council, acted in marked contrast with the County. The City made its first CARES Act funding decision using a Request for Proposal (RFP) process to allocate \$1 million in discretionary General Fund money mostly to the city’s smaller businesses, including restaurants. The City Council also made an early decision to distribute a significant amount of its \$89.6 million in CARES Act funding to the city community, retaining a small amount for internal City operations. The City’s allocation of CARES Act funding is presented in Figure 3.

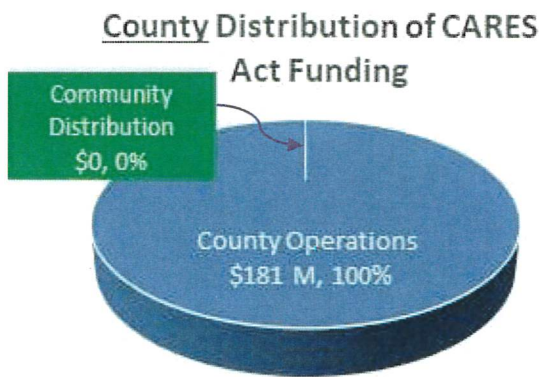


Figure 1

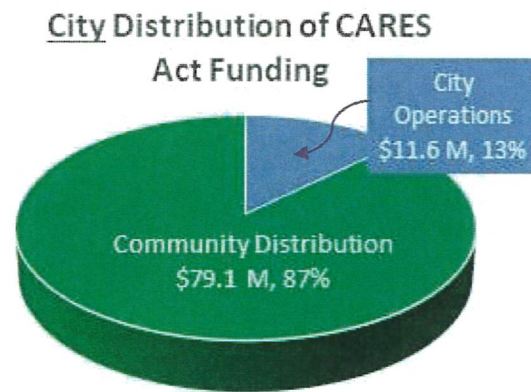


Figure 2

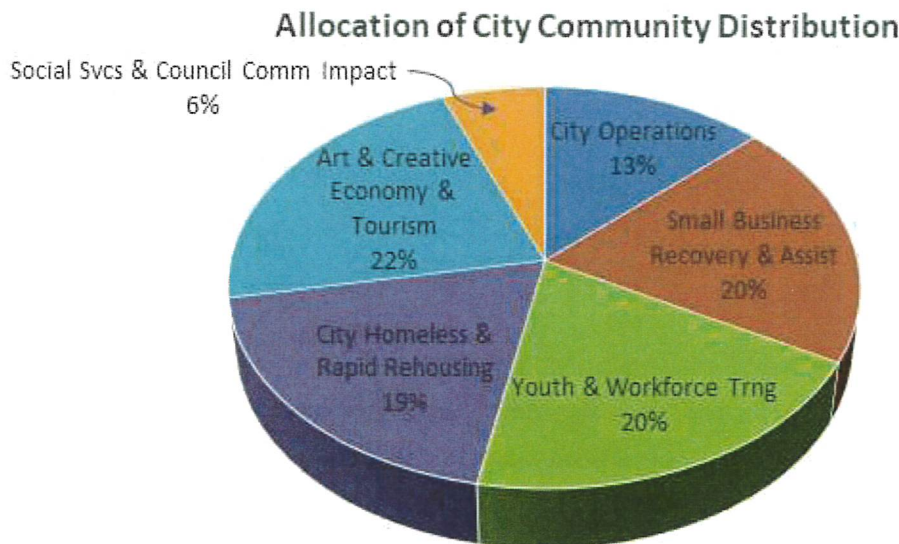


Figure 3

For its part, the County Executive did name an advisory committee of County agency heads to receive CARES Act funding requests from County departments and recommend allocation proposals to the County Executive for final action. However, scant information was provided regarding the request and approval process. No reports of funding requests or approvals were made to the Board between April 21, 2020 and August 11, 2020. As further evidence of its fractured response to the pandemic, the County Executive provided little guidance within County government regarding COVID-19 response and mitigation, resulting in an ad hoc set of County department COVID-19 related actions. The County Executive was placed on administrative leave and subsequently resigned his position effective February 2021.

FINDINGS

- F1.** The Sacramento County Board of Supervisors abdicated its responsibility to determine community needs and to provide oversight in the development and implementation of the County COVID-19 response.
- F2.** The Sacramento County Board of Supervisors used the vast majority of the CARES Act funding it received to augment the county budget and support county operations while providing minimal support to the Sacramento County Health Department or other County agencies to address community needs resulting from the COVID-19 pandemic, neglecting its public support responsibility.
- F3.** The vast majority of the Sacramento County CARES Act dollars were used to fund County operations. No funds were distributed to the cities within the County to assist their effort to directly address the COVID-19 pandemic.
- F4.** Each department within the Sacramento County Administration had to create its own action plan to address the COVID-19 pandemic because there was no overarching County Plan nor was specific direction provided from the County Executive regarding these action plans.

- F5.** The Sheriff's Department final FY 2019-2020 budget was not increased due to the use of CARES Act funding of \$104.2 million. At year-end closing, Sacramento County provided the Sheriff's Department with \$104.2 million of CARES Act funds, and removed an equivalent amount of General Funds from the Sheriff's Department. The Sheriff used these CARES Act funds for standard non-COVID-19 operations. The Grand Jury was unable to determine if the switching of funds was in compliance with federal CARES Act requirements.
- F6.** Sacramento County's allocation of the majority of CARES Act funds to the Sheriff's Department achieved several benefits. It ensured there was no loss of CARES Act funds, provided the County with greater financial flexibility in funding services, and addressed the COVID-19 emergency. The Grand Jury was unable to determine if the switching of funds was in compliance with federal CARES Act requirements.
- F7.** The County Executive's decision to allocate 70% of Sacramento County's FY2019/2020 CARES Act expenditures to the Sheriff's Department ignored many of the critical public health needs to contain the spread of COVID-19. The Grand Jury was unable to determine if this action was in compliance with federal CARES Act requirements.
- F8.** While the Sheriff's Department conducted COVID-19 mitigation efforts within detention facilities, it expressly chose not to enforce the Governor's active emergency orders related to minimizing the spread of COVID-19 among the general public. The Grand Jury was unable to determine if the lack of enforcement of the Governor's emergency orders while using CARES Act funding was in compliance with federal CARES Act requirements.
- F9.** The CARES Act prohibited use of its funds for already budgeted staffing activities. But these CARES Act funded "public safety" employees simply continued to perform their same duties as they had prior to the start of the COVID-19 pandemic. The Grand Jury was unable to determine if this action was in compliance with federal CARES Act requirements.
- F10.** The Board of Supervisors, the County Executive, and the Sheriff's Department were not transparent in the use of the CARES Act funds. There was no written notice provided in the Board meeting agenda nor explanation within the Board Packet meeting materials regarding the replacement of allocated Sheriff's Department General Funds with CARES Act funds.
- F11.** The lack of governance and oversight by the Board of Supervisors allowed the County Executive to violate the first goal of the County's stated criteria for use of CARES Act funds.
- F12.** The City of Sacramento used a significant majority of its federal CARES Act funding to mitigate the impact of the COVID-19 pandemic on the local community.
- F13.** The City of Sacramento actively solicited community input on the allocation of CARES Act funding from local community.

- F14.** The Sacramento City Council actively engaged in the planning and oversight of CARES Act funding and determined five categories of funding included in the City’s “COVID-19 Response: CARES Act Investments.”

RECOMMENDATIONS

- R1.** The Board of Supervisors should appoint an independent panel by June 2022 to conduct an audit to determine whether County actions were, in fact, in compliance with federal CARES Act requirements.
- R2.** The Sacramento Board of Supervisors, the County Executive, and the Sheriff’s Department should each adopt a transparent and properly noticed budget allocation and approval process to be used upon receipt by the County for all funding sources, including surplus dollars. This process should include adequate notice, extensive engagement with county residents, and utilize detailed public notices, media briefings, stakeholder workshops and appropriate social media outreach. This recommendation should be in place by December 2022.
- R3.** The County Board of Supervisors should engage in an active process to identify and address community needs and develop a plan to deliver appropriate funding and services to the community outside of County operations. A policy should be developed and approved to ensure community input in the use of supplemental emergency funding by December 2022.
- R4.** A policy should be developed by the County Board of Supervisors directing the County Executive to provide clear and specific direction and oversight to county operations to ensure that the Board’s plans and strategic directions in response to community emergencies are properly carried out. This policy should be developed and approved by December 2022.
- R5.** A policy should be developed by County Board of Supervisors to require that the County Executive provide monthly updates on the use of special funding. This policy should be developed and approved by December 2022.

REQUIRED RESPONSES

Pursuant to Penal Code sections 933 and 933.05, the grand jury requests responses as follows:

From the following elected county officials within 60 days:

- Don Nottoli, Chair
Sacramento County Board of Supervisors
700 H Street, Suite 2450
Sacramento, CA 95814
- Scott Jones, County Sheriff
Sacramento County Sheriff’s Department

4500 Orange Grove Avenue
Sacramento, CA 95841

Mail or deliver a hard copy response to:

- Hon. Michael Bowman
Presiding Judge
Sacramento County Superior Court
720 9th St.
Sacramento, CA 95814

Please email a copy of this response to:

- Ginger Durham
Jury Commissioner
DurhamG@saccourt.ca.gov

Erendira Tapia-Bouthillier
Grand Jury
TapiaE@saccourt.ca.gov

INVITED RESPONSES

- Rich Desmond, Vice Chair
Sacramento County Board of Supervisors
700 H Street, Suite 2450
Sacramento, CA 95814
- Phil Serna, Supervisor
Sacramento County Board of Supervisors
700 H Street, Suite 2450
Sacramento, CA 95814
- Patrick Kennedy, Supervisor
Sacramento County Board of Supervisors
700 H Street, Suite 2450
Sacramento, CA 95814
- Sue Frost, Supervisor
Sacramento County Board of Supervisors
700 H Street, Suite 2450
Sacramento, CA 95814
- Ann Edwards, County Executive

Sacramento County
700 H Street, Room 7650
Sacramento, CA 95814

- Darrell Steinberg, Mayor
City of Sacramento
915 I St., 5th Floor
Sacramento, CA 95814
- Howard Chan, City Manager
City of Sacramento
915 I Street
Sacramento, CA 95814
- Porsche Middleton, Mayor
City of Citrus Heights
6237 Fountain Square Dr.
Citrus Heights, CA 95621
- Christopher W. Boyd, City Manager
City of Citrus Heights
6360 Fountain Square Drive
Citrus Heights, CA 95621
- Bobbie Singh-Allen, Mayor
City of Elk Grove
8401 Laguna Palms Way
Elk Grove, CA 95758
- Jason Behrmann, City Manager
City of Elk Grove
8401 Laguna Palms Way
Elk Grove, CA 95758
- Kerri Howell, Mayor
City of Folsom
50 Natoma St.
Folsom, CA 95630
- Elaine Andersen, City Manager
City of Folsom
50 Natoma St.
Folsom, CA 95630
- Shawn Farmer, Mayor
City of Galt

380 Civic Drive
Galt, CA 95632

- Lorenzo Hines Jr., City Manager
City of Galt
380 Civic Drive
Galt, CA 95632
- Eric Pene, Mayor
City of Isleton
P.O. Box 716
Isleton, CA 95641
- Charles Bergson, City Manager
City of Isleton
P.O. Box 716
Isleton, CA 95641
- Garrett Gatewood, Mayor
City of Rancho Cordova
2729 Prospect Park Drive
Rancho Cordova CA 95670
- Cyrus Abhar, City Manager
City of Rancho Cordova
2729 Prospect Park Drive
Rancho Cordova CA 95670

Mail or deliver a hard copy response to:

Hon. Michael Bowman Presiding Judge
Sacramento County Superior Court
720 9th St.
Sacramento. CA 95814

Please email a copy of this response to:

- Ginger Durham
Jury Commissioner
DurhamG@saccourt.ca.gov
- Erendira Tapia-Bouthillier
Grand Jury
TapiaE@saccourt.ca.gov

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.



SACRAMENTO COUNTY SHERIFF'S OFFICE

Scott R. Jones
Sheriff

April 14, 2022

Hon. Michael Bowman
 Presiding Judge
 Sacramento County Superior Court
 720 9th Street
 Sacramento, CA 95814

Re: Sacramento County Grand Jury Report: Sacramento County Board of Supervisors
 Abandons Responsibility for COVID-19 CARES Act Spending

Dear Judge Bowman:

Pursuant to Penal Code Sections 933 and 933.05, the following specific response is respectfully submitted to you regarding the 2021-2022 Grand Jury's Findings and Recommendations on the report titled: Sacramento County Board of Supervisors Abandons Responsibility for COVID-19 CARES Act Spending. Sheriff's Office personnel compiled the information contained in this document. Should you have any questions related to its content, please contact me and I will provide you with the most appropriate staff to answer your question.

INTRODUCTION

The 2021-2022 Sacramento County Grand Jury conducted an extensive examination into the use and distribution of Coronavirus Aid, Relief and Economic Security (CARES) Act funding received by Sacramento County and used between March 1 and December 30, 2020. The investigation revealed the County Executive Officer reported to the Sacramento County Board of Supervisors on August 11, 2020 that putting \$104 million of CARES Act funds into the Sheriff's Office budget for public safety employee salaries, benefits and other existing service costs and removing an equal amount of General Fund money from the Sheriff's Office budget, for other purposes, was allowed by the CARES Act.

The Grand Jury made three findings and one recommendation which specifically referenced actions by the Sacramento Sheriff's Office.

RESPONSE

Finding 5. The Sheriff's Office final FY 2019-2020 budget was not increased due to the use of CARES Act funding of \$104.2 million. At year-end closing, Sacramento

Hon. Michael Bowman
April 14, 2022
Page 2

County provided the Sheriff's Office with \$104.2 million of CARES Act Funds, and removed an equivalent amount of General Funds from the Sheriff's Office. The Sheriff used these CARES Act Funds for standard non-COVID-19 operations. The Grand Jury was unable to determine if the switching of funds was in compliance with federal CARES Act requirements.

Response to Finding 5. Disagree partially with finding

The CARES Act funds were used by the Sheriff's Office to pay for previously budgeted and approved items that were originally funded through Sacramento County General Funds. However, the statement, "The Sheriff used these CARES Act Funds for standard non-COVID-19 operations" is not accurate. As essential workers during the pandemic, a tremendous amount of personnel resources were devoted to developing and implementing COVID-19 protocols and procedures throughout our agency. With that said, the Sheriff's Office budget did not increase due to the County's decision to use CARES Act Funds for the Sheriff's Office rather than General Funds.

Finding 8. While the Sheriff's Office conducted COVID-19 mitigation efforts within detention facilities, it expressly chose not to enforce the Governor's active emergency orders related to minimizing the spread of COVID-19 among the general public. The Grand Jury was unable to determine if the lack of enforcement of the Governor's emergency orders while using CARES Act funding was in compliance with federal CARES Act requirements.

Response to Finding 8. Partially agree with finding

The Sheriff's Office implemented numerous COVID-19 mitigation strategies within the detention facilities and continues to adhere to related State Public Health Orders and the Centers for Disease Control and Prevention's guidance to minimize the spread of COVID-19. All staff are/were required to adhere to various County and State orders, including patrol officers that were required to work throughout the pandemic as essential.

As for public enforcement, from the inception of the pandemic the Sheriff adopted a role of education rather than enforcement, confident that criminal enforcement from peace officers would neither be necessary nor appropriate in most instances. The Sheriff worked with all other law enforcement agencies in the County during the pandemic, however, to adopt consistent enforcement mechanisms should they be required, but the Sheriff never saw the need to activate any criminal enforcement within the unincorporated County for the various changing mandates that were promulgated by the Governor, appointed health officials, various bureaucrats and others.

Finding 10. The Board of Supervisors, the County Executive and the Sheriff's Office were not transparent in the use of CARES Act Funds. There was no written notice provided in the Board meeting agenda nor explanation within the Board Packet meeting materials

Hon. Michael Bowman
April 14, 2022
Page 3

regarding the replacement of allocated Sheriff's Office General Funds with CARES Act Funds.

Response to Finding 10. Disagree partially with finding

There was no lack of transparency on the part of the Sheriff's Office for the use of CARES Act Funds. As previously stated in the response to Finding 5, The CARES Act funds were used by the Sheriff's Office to pay for previously budgeted and approved items that were originally funded through Sacramento County General Funds.

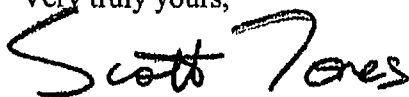
The Board of Supervisors elected to replace Sheriff's Office General Funds with CARES Act Funds, and furthermore all CARES Act funding went directly to Sacramento County for dissemination—NOT directly to the Sheriff's Office. Therefore, the Sheriff's Office must defer to the leadership of Sacramento County to determine the justification and propriety for the use of all CARES Act Funds.

Recommendation 2. The Board of Supervisors, the County Executive and the Sheriff's Office should each adopt a transparent and properly noticed budget allocation and approval process to be used upon receipt by the County for all funding sources, including surplus dollars. This process should include adequate notice, extensive engagement with county residents and utilize detailed public notices, media briefings, stakeholder workshops and appropriate social media outreach. This recommendation should be in place by December 2022.

Response to Recommendation 2.

The Board of Supervisors is responsible for making budget allocations for the Sheriff's Office including approval of expenditure categories and approval of all revenue. The Sheriff's Office budget is part of the overall Sacramento County Budget overseen by the Board of Supervisors. The Board is solely responsible for the budget process, budget publication, and budget timelines. Public budget meetings and distribution of the Sheriff's budget is done at the direction of the Board of Supervisors. Any changes to this process would need to be done at the Board of Supervisors level.

Very truly yours,



SCOTT R. JONES, SHERIFF

Copy: Sacramento County Clerk-Recorder's Office
Sacramento County Grand Jury

RESPONSES TO FINDINGS

- F1. The Sacramento County Board of Supervisors abdicated its responsibility to determine community needs and to provide oversight in the development and implementation of the County COVID-19 response.**

Board of Supervisors Response:

The Board of Supervisors disagrees wholly with this finding. Given the significance of the pandemic and the urgent need for a response that was not delayed due to administrative processes, the Board adopted resolutions to authorize County staff to respond to the emergency and accept COVID-19 related funding. In response to the emergency nature of the COVID-19 response, on March 10, 2020, the Board adopted Resolutions 2020-0159 and 2020-0160 ratifying the Proclamation of a Local Public Health Emergency dated March 5, 2020 and ratifying the Proclamation of a State of Local Emergency dated March 5, 2020. On April 1, 2020, the Board adopted Resolution 2020-0223, which authorized the Directors of Human Assistance and Health Services to accept federal, state, Sacramento Steps Forward and City of Sacramento Funding for the purpose of addressing the COVID-19 public health crisis in Sacramento County and approved the Sacramento COVID-19 Homelessness Response Plan. On April 21, 2020 the Board adopted resolution 2020-0257, authorizing the County Executive to apply for, accept and draw down Federal or State funding related to the COVID-19 emergency. Consistent with that authorization, procedures were established for County departments to apply for program-specific and centrally-administered funds, including Coronavirus Relief Funds (CRF), based on department-identified needs. Additionally, the Board received regular updates from the Director of Health Services and Public Health Officer on the County's COVID-19 response. Given the immediacy of the pandemic and the requirement to fully spend Coronavirus Relief Funds (CRF) by the deadline of December 30, 2020, these actions led to a more immediate response and allowed the Board to remain engaged on the status of the County's COVID-19 response.

- F2. The Sacramento County Board of Supervisors used the vast majority of the CARES Act funding it received to augment the county budget and support county operations while providing minimal support to the Sacramento County Health Department or other County agencies to address community needs resulting**

from the COVID-19 pandemic, neglecting its public support responsibility.

Board of Supervisors Response:

The Board of Supervisors disagrees wholly with this finding. The County health department and other County agencies are part of the County and included in the County's budget, so providing additional funding to those departments effectively requires augmenting the County's budget. CRF funding was provided to various departments, including the Department of Health Services (DHS), the Department of Child Family and Adult Services and others, to cover new or enhanced programs in response to the pandemic.

CRF funding was also provided to public health and safety departments, including Sheriff, Probation, and DHS, to cover the cost of existing health and safety employees that, according to the CRF Guidance and Frequently Asked Questions issued by the Treasury Department, were presumed to be substantially dedicated to responding to the pandemic and therefore eligible for CRF funding. (The final Coronavirus Relief Fund Guidance as published in the Federal Register on January 15, 2021 is included for reference as Exhibit A.) At the time, the County projected a significant reduction in discretionary and Semi-discretionary revenue for Fiscal Years 2019-20 and 2020-21 due to the immediate disruption to economic activity. The County understood that using CRF revenue to fund these salary and benefit costs would, effectively, help mitigate the impact of potential revenue reductions and allow the County to avoid major reductions in health, public safety, human services and other programs that provide critical services to County residents. Making program reductions of this magnitude to critical safety net services during the COVID emergency would have had a devastating impact on the most vulnerable County residents.

CRF funding was also provided to public health and safety departments to cover the cost of existing health and safety employees presumed to meet the substantially dedicated test in order to avoid having to return those funds to Treasury by the original expenditure deadline of December 30, 2020. This had the effect of freeing up other resources which were then used after that date to fund specific Public Health and other COVID-19 related programs.

Of the \$206 million in CRF received from both the Federal and State government, a total of \$72.2 million was provided to DHS. Additionally, DHS has received \$110.7 million in other COVID-19 related grant

funding, bringing the total resources allocated to DHS for pandemic response to \$182.9 million.

- F3. The vast majority of the Sacramento County CARES Act dollars were used to fund County operations. No funds were distributed to the cities within the County to assist their effort to directly address the COVID-19 pandemic.**

Board of Supervisors Response:

The Board of Supervisors agrees with this finding. The County and all cities within Sacramento County received CRF funding either directly from the federal government or as a pass through from the state; however the County is the only jurisdiction within Sacramento County that has a designated public health responsibility and is the lead agency for COVID-19 response countywide, including for all cities within the County. CRF funding provided to the County was allocated by the United States Department of the Treasury to state and local jurisdictions with populations that exceed 500,000, consistent with Federal law. Additionally, the State of California received \$1,289,065,000 in CRF funding through the CARES Act and allocated \$500,000,000 to cities within the state. Cities within Sacramento County received the following CRF allocations proportionate to their population:

Federal and/or State CRF Allocation to Cities	
Citrus Heights	\$ 1,084,214
Elk Grove	\$ 2,174,997
Folsom	\$ 1,007,649
Galt	\$ 319,161
Isleton	\$ 50,000
Rancho Cordova	\$ 967,781
Sacramento	\$ 89,623,427
Total CRF to Cities	\$ 95,227,229

F4. Each department within the Sacramento County Administration had to create its own action plan to address the COVID-19 pandemic because there was no overarching County Plan nor was specific direction provided from the County Executive regarding these action plans.

Board of Supervisors Response:

The Board of Supervisors disagrees wholly with the finding that there was no overarching County Plan to address the COVID-19 pandemic nor specific direction to departments. The County Administration and County Executive maintained and implemented emergency plans, communicated frequently about County COVID-19 policies and guidelines, and responded to changing guidance and regulations.

The complex dynamics of COVID-19 and the frequency of change pertaining to public health and guidance from regulatory agencies required the County of Sacramento to be extremely nimble in the provision of safety and other related plans to its departments. These agencies included the Centers for Disease Control and Prevention (CDC), California Department of Public Health (CDPH), the State of California, Orders from the Governor, and Cal/OSHA. In addition to constantly providing department directives on how to execute and implement plans customized to individual departments, the County also relied on existing Emergency Management guidelines.

One of the core responsibilities of Emergency Management, part of County Administration, is to prepare plans and guidance for emergency and disaster situations. Sacramento County has adhered to professional standards in the development of plans, training, and exercises available both as a community resource for disasters and as a plan for managing risk experienced during disaster. The County remains compliant with plans required by the state and federal emergency response systems. The County Board of Supervisors had adopted the County Emergency Operation Plan and Operational Area Plan. These plans and other annexes are filed appropriately with the California Governor's Office of Emergency Services and published to the Office of Emergency Services webpage. These plans remain in effect.

Prior to the 2019 Coronavirus Pandemic, Sacramento County had a number of plans in place for response to various disasters, and components of disaster. Those plans include:

- Emergency Operations Plan (2017)
- EOC Position Binders and Job Duty Sheets

- Executive Disaster Playbook
- Sacramento County Operational Area Plan (2019)
- Continuity of Operations Plan (2017)
- Donations Management Plan (2015)
- Integrated Preparedness Plan (2020)
- Joint Information System Plan (2019)
- Mass Care and Shelter Plan (2012) Updated 2021
- Sheltering the Medically Fragile Annex (2012)
- Sacramento County Hospital Evacuation Coordination Plan (2009)
- Evacuation Plan (updated 2021)
- Logistics Annex (new 2021)
- Mass Care & Shelter Plan (updated 2021 to include non-congregate sheltering due to pandemic).

Using the plans outlined above, Public Health Department Operation Center activated on January 15, 2020, to assess the threat to Sacramento County and to implement planning actions.

On March 4, 2020, the Governor of California proclaimed a State of Emergency because of the threat of COVID-19. On March 19, 2020, the State issued a Stay At Home Order and identified critical infrastructure workers that were exempted from staying at home to maintain continuity of operations. Government facilities were one of the 16 Critical Infrastructure Sectors. Services to the community continued in our 40 departments during this emergency despite impact to operations and staffing.

In accordance with county code, and written plans and strategies, the Emergency Operations Center opened on March 16, 2020, to provide additional coordination with state, local agencies, special districts and county departments. The Emergency Operations Center developed 31 EOC Action Plans (EAP) for specific time intervals to focus efforts around priority goals and objectives outlining the overarching county response and support to Public Health.

The documents listed above represent the significant investment in County plans that were in place prior to and during the proclamation of local emergency and local health emergency due to the 2019 Coronavirus Pandemic. Further, plans such as the Continuity of Operations Plan (COOP) have individual department-level annexes that address unique department needs. These plans were broadly announced and implemented at the start of the pandemic with the opening and operation of the Emergency Operations Center. Additionally, leveraging available federal funding through the Emergency Management

Performance Grant – Supplemental (EMPG-S), the office was able to update the COOP base plan and a number of department plans in December 2020 allowing departments to engage with the plan contents and make any needed adjustments that they experienced in the course of the response to the pandemic.

These overarching plans allowed departments to move forward with their specific areas of expertise. Forty departments provided essential community services as varied as public health, social services, garbage collection, food safety inspection, road maintenance, animal care, homeless initiatives, coroner services, public defender, to name a few. All of their operations were impacted by the pandemic.

The COVID-19 pandemic was unprecedented and required extensive response and research. During the beginning of the pandemic, little information was known about COVID-19 and the scientific research was evolving. The guidance from Federal, State, and local public health agencies was dynamic and fluid. Between March 5, 2020, and December 31, 2020, the County Administration issued more than 50 communications to departments and employees regarding COVID-19 response, including the COVID-19 Prevention Program policy and guidelines. Location-specific assessments and procedures for COVID-19 prevention were recommended by CDPH since April of 2020 and are a Cal/OSHA requirement as of November 30, 2020. Each department was required to have worksite-specific plans based on County policy and guidelines for COVID-19 prevention. As guidance and regulations changed quickly, departments had to pivot to meet changing requirements provided to them by County Administration.

The County has countywide plans, policies, and guidance to address the COVID-19 pandemic and guide departments in their response. Further, the County continues to adhere to state and federal planning guidance and mandates, updating plans as needed. Thus, we respectfully disagree with this finding.

- F5. The Sheriff's Department final FY 2019-2020 budget was not increased due to the use of CARES Act funding of \$104.2 million. At year-end closing, Sacramento County provided the Sheriff's Department with \$104.2 million of CARES Act funds, and removed an equivalent amount of General Funds from the Sheriff's Department. The Sheriff used these CARES Act funds for standard non-COVID-19 operations. The Grand Jury was unable**

to determine if the switching of funds was in compliance with federal CARES Act requirements.

Sheriff's Response:

The Sheriff sent his response to the presiding judge in a separate correspondence per Penal Code section 933.05(c) and 933(c). The response has been included as part of the Board's report as Attachment 2.

Board of Supervisors Response:

The Board of Supervisors disagrees partially with this finding. The Board agrees that the Sheriff's Department budget was not increased due to the use of CRF funding and that funding eligible public safety payroll and benefits expenditures in the Sheriff's department meant that these expenditures were not required to be funded with other General Fund revenue. The Board disagrees that the Sheriff's Department was engaged in standard non-COVID-19 operations. Over the course of the pandemic, the Sheriff's Department has been available to the public 24/7 and was required to adjust operations due to the COVID-19 public health emergency in order to continue providing public safety services to the community. Adjustments included creating plans to adjust department operations, implementing enhanced cleaning protocols to protect staff and inmates, developing quarantine floors in County jails, and adjusting schedules to reduce in-person contact. All CRF funds were spent in compliance with federal requirements. Per page 4187 of the Coronavirus Relief Fund program guidance, the United States Department of the Treasury clarifies:

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.

- F6. Sacramento County's allocation of the majority of CARES Act funds to the Sheriff's Department achieved several benefits. It**

ensured there was no loss of CARES Act funds, provided the County with greater financial flexibility in funding services, and addressed the COVID-19 emergency. The Grand Jury was unable to determine if the switching of funds was in compliance with federal CARES Act requirements.

Board of Supervisors Response:

The Board of Supervisors disagrees partially with this finding. The Board of Supervisors agrees that funding eligible expenditures in the Sheriff's Department achieved several benefits, including ensuring there was no loss of CRF funds, providing the County with greater financial flexibility in funding County services during a period of economic uncertainty, and allowing the County to respond to the COVID-19 emergency utilizing funding that was not limited in its use, nor expenditure period. We disagree that it is unclear if applying CRF in this way was in compliance with federal CARES Act requirements. All CRF funds were spent in compliance with federal requirements. All County use of federal funds are audited on an annual basis. Per page 4187 of the Coronavirus Relief Fund program guidance, the United States Department of the Treasury clarifies:

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.

Additionally, federal awards and expenditures are subject to the Single Audit Act, with these programs subject to an audit performed by the County's external auditors. For both FY 2019-20 and FY 2020-21, the CRF program was tested as a major program resulting in no findings.

- F7. The County Executive's decision to allocate 70% of Sacramento County's FY2019/2020 CARES Act expenditures to the Sheriff's Department ignored many of the critical public health needs to contain the spread of COVID-19. The Grand Jury was unable to**

determine if this action was in compliance with federal CARES Act requirements.

Board of Supervisors Response:

The Board of Supervisors disagrees wholly with this finding. All CRF funds were spent in compliance with federal requirements. All CRF requests submitted by Health Services related to the COVID-19 public health response were prioritized for funding consideration and all requests utilizing CRF, or other available sources, were funded. Of the \$206 million in CRF received from both the Federal and State government, a total of \$72.2 million was allocated to Health Services, including Public Health, in addition to \$110.7 million in COVID-19 related grant funding provided directly to Health Services.

- F8. While the Sheriff's Department conducted COVID-19 mitigation efforts within detention facilities, it expressly chose not to enforce the Governor's active emergency orders related to minimizing the spread of COVID-19 among the general public. The Grand Jury was unable to determine if the lack of enforcement of the Governor's emergency orders while using CARES Act funding was in compliance with federal CARES Act requirements.**

Sheriff's Response:

The Sheriff sent his response to the presiding judge in a separate correspondence per Penal Code section 933.05(c) and 933(c). The response has been included as part of the Board's report as Attachment 2.

Board of Supervisors Response:

The Board of Supervisors can only comment on matters under its control, or for departments headed by an elected officer, budgetary or personnel matters over which the Board has some decision making authority, per penal code sections 933(c), and 933.05(c), respectively. The Board of Supervisors does not have control over the Sheriff's operational activities or decisions and cannot speak on behalf of the Sheriff's Department; however, the Public Safety and Justice Agency and the Deputy County Executive will be working with the Sheriff on

criminal justice issues. There will be increased collaboration between all the criminal justice agencies.

- F9. The CARES Act prohibited use of its funds for already budgeted staffing activities. But these CARES Act funded "public safety" employees simply continued to perform their same duties as they had prior to the start of the COVID-19 pandemic. The Grand Jury was unable to determine if this action was in compliance with federal CARES Act requirements.**

Board of Supervisors Response:

The Board of Supervisors disagrees wholly with this finding. All CRF funds were spent in compliance with federal requirements. Per page 4185 of the Coronavirus Relief Fund program guidance, the United States Department of the Treasury clarifies:

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 31, 2021.

- F10. The Board of Supervisors, the County Executive, and the Sheriff's Department were not transparent in the use of the CARES Act funds. There was no written notice provided in the Board meeting agenda nor explanation within the Board Packet meeting materials regarding the replacement of allocated Sheriff's Department General Funds with CARES Act funds.**

Sheriff's Response:

The Sheriff sent his response to the presiding judge in a separate correspondence per Penal Code section 933.05(c) and 933(c). The

response has been included as part of the Board's report as Attachment 2.

Board of Supervisors Response:

The Board of Supervisors disagrees wholly with this finding. All actions requiring Board approval went to the Board. A status update on the use of CRF revenue was provided to the Board on August 11, 2020. Additionally, when it was determined that CRF funding allocated to the Department of Health Services would not be fully spent by the December 30, 2020 expenditure deadline, an item was placed on the December 16, 2020 Board meeting agenda. The Board received a presentation outlining the amount of unspent CRF funding and approved a plan to recognize \$49.6 million in CRF revenue toward eligible costs, including payroll for public safety employees, in order to free up an equal amount of General Fund resources to allow Health Services and other departments to continue responding to the COVID-19 public health emergency. This action occurred prior to December 27, 2020 when the federal government extended the CRF expenditure deadline to December 31, 2021, via the COVID-19 Economic Relief Bill.

F11. The lack of governance and oversight by the Board of Supervisors allowed the County Executive to violate the first goal of the County's stated criteria for use of CARES Act funds.

Board of Supervisors Response:

The Board of Supervisors disagrees wholly with this finding. All CRF funds were spent in compliance with federal requirements and in a way that resulted in maximum flexibility to provide the needed funding beyond the original December 30, 2020 CRF expenditure deadline in order to achieve the first goal of addressing critical public health needs to contain the spread of COVID-19.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317-5751 or Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at Kerry.Dennis@irs.gov.

SUPPLEMENTARY INFORMATION: *Title:* Sales of Business Property.

OMB Number: 1545-0184.

Form Number: Form 4797.

Abstract: Form 4797 is used by taxpayers to report sales, exchanges, or involuntary conversions of assets used in a trade or business. It is also used to compute ordinary income from recapture and the recapture of prior year losses under section 1231 of the Internal Revenue Code.

Current Actions: There is no change in the paperwork burden previously approved by OMB. The forms are being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, and farms.

Estimated Number of Respondents: 325,000.

Estimated Time per Response: 50 hours, 38 minutes.

Estimated Total Annual Burden Hours: 16,454,750.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the

quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 12, 2021.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2021-00841 Filed 1-14-21; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments

AGENCY: Department of the Treasury.

ACTION: Coronavirus Relief Fund program guidance.

SUMMARY: The Department of the Treasury (Treasury) is re-publishing in final form the guidance it previously made available on its website regarding the Coronavirus Relief Fund for States, tribal governments, and certain eligible local governments.

FOR FURTHER INFORMATION CONTACT: Stephen T. Milligan, Deputy Assistant General Counsel (Banking & Finance), 202-622-4051.

SUPPLEMENTARY INFORMATION: Section 601 of the Social Security Act, as added by section 5001(a) of Division A of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") established the Coronavirus Relief Fund (the "Fund") and appropriated \$150 billion for payments by Treasury to States, tribal governments, and certain local governments.

The Secretary of the Treasury has adopted this guidance for recipients of payments from the Fund pursuant to his authority under the Social Security Act to adopt rules and regulations as may be necessary to the efficient administration of the functions with which he is charged under the Social Security Act. 42 U.S.C. 1302(a). This guidance primarily concerns the use of payments from the Fund set forth in section 601(d) of the Social Security Act. Treasury's Office of Inspector General (OIG) will use this guidance in its audits of recipients' use of funds. Section 601(f)(2) of the Social Security Act provides that if the Treasury OIG determines that a recipient of payments from the Fund has failed to comply with the use of funds provisions of section

601(d), the amount equal to the amount of funds used in violation of such subsection shall be booked as a debt of such entity owed to the federal government.

The guidance published below is unchanged from the last version of the guidance dated September 2, 2020,¹ and the frequently asked questions document dated October 19, 2020,² each of which was published on Treasury's website, except for the following changes. The introduction of the guidance and frequently asked questions have been modified to reflect this publication in the **Federal Register**; the guidance and frequently asked questions have been revised throughout to reflect that the end date of the period during which eligible expenses may be incurred has been extended to December 31, 2021;³ footnote 2 of the guidance has been revised to reflect additional restrictions imposed by section 5001(b) of Division A of the CARES Act; FAQ A.59 has been updated to correct the cross-reference to Treasury OIG's FAQs; and the application of FAQ B.6 has been clarified. Treasury is also adding to the guidance instructions regarding the return to Treasury of unused Coronavirus Relief Fund payments.

Administrative Procedure Act

The Administrative Procedure Act (APA) provides that the notice, public comment, and delayed effective date requirements of 5 U.S.C. 553 do not apply "to the extent that there is involved . . . a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts." 5 U.S.C. 553(a). The rule involves a matter relating to public property, loans, grants, benefits, or contracts and is therefore exempt under the terms of the APA.

¹ As noted previously on Treasury's website, on June 30, 2020, the guidance provided under "Costs incurred during the period that begins on March 1, 2020, and ends on December 30, 2020" was updated. On September 2, 2020, the "Supplemental Guidance on Use of Funds to Cover Payroll and Benefits of Public Employees" and "Supplemental Guidance on Use of Funds to Cover Administrative Costs" sections were added.

² As noted previously on Treasury's website, on August 10, 2020, the frequently asked questions were revised to add Questions A.49-52. On September 2, 2020, Questions A.53-56 were added and Questions A.34 and A.38 were revised. On October 19, 2020, Questions A.57-59 and B.13 were added and Questions A.42, 49, and 53 were revised.

³ Section 1001 of Division N of the Consolidated Appropriations Act, 2021 amended section 601(d)(3) of the Social Security Act by extending the end of the covered period for Coronavirus Relief Fund expenditures from December 30, 2020 to December 31, 2021.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act does not apply to a rulemaking when a general notice of proposed rulemaking is not required.

Paperwork Reduction Act

The final rule contains no requirements subject to the Paperwork Reduction Act.

Authority and Issuance

42 U.S.C. 1302(a).

Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments

The purpose of this document is to provide guidance to recipients of the funding available under section 601(a) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). The CARES Act established the Coronavirus Relief Fund (the "Fund") and appropriated \$150 billion to the Fund. Under the CARES Act, the Fund is to be used to make payments for specified uses to States and certain local governments; the District of Columbia and U.S. Territories (consisting of the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands); and Tribal governments.

The CARES Act provides that payments from the Fund 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 31, 2021.¹

The guidance that follows sets forth the Department of the Treasury's interpretation of these limitations on the permissible use of Fund payments.

Necessary Expenditures Incurred Due to the Public Health Emergency

The requirement that expenditures be incurred "due to" the public health emergency means that expenditures must be used for actions taken to respond to the public health emergency.

¹ See Section 601(d) of the Social Security Act, as added by section 5001 of the CARES Act and as amended by section 1001 of Division N of the Consolidated Appropriations Act, 2021.

These may include expenditures incurred to allow the State, territorial, local, or Tribal government to respond directly to the emergency, such as by addressing medical or public health needs, as well as expenditures incurred to respond to second-order effects of the emergency, such as by providing economic support to those suffering from employment or business interruptions due to COVID-19-related business closures. Funds may not be used to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify under the statute. Although a broad range of uses is allowed, revenue replacement is not a permissible use of Fund payments.

The statute also specifies that expenditures using Fund payments must be "necessary." The Department of the Treasury understands this term broadly to mean that the expenditure is reasonably necessary for its intended use in the reasonable judgment of the government officials responsible for spending Fund payments.

Costs Not Accounted for in the Budget Most Recently Approved as of March 27, 2020

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.

Costs Incurred During the Period That Begins on March 1, 2020, and Ends on December 31, 2021

Finally, the CARES Act provides that payments from the Fund may only be used to cover costs that were incurred during the period that begins on March 1, 2020, and ends on December 31, 2021 (the "covered period"). Putting this requirement together with the other provisions discussed above, section

601(d) may be summarized as providing that a State, local, or tribal government may use payments from the Fund only to cover previously unbudgeted costs of necessary expenditures incurred due to the COVID-19 public health emergency during the covered period.

Initial guidance released on April 22, 2020, provided that the cost of an expenditure is incurred when the recipient has expended funds to cover the cost. Upon further consideration and informed by an understanding of State, local, and tribal government practices, 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). For instance, in the case of a lease of equipment or other property, irrespective of when payment occurs, the cost of a lease payment shall be considered to have been incurred for the period of the lease that is within the covered period but not otherwise. Furthermore, in all cases it must be necessary that performance or delivery take place during the covered period. Thus the cost of a good or service received during the covered period will not be considered eligible under section 601(d) if there is no need for receipt until after the covered period has expired.

Goods delivered in the covered period need not be used during the covered period in all cases. For example, the cost of a good that must be delivered in December in order to be available for use in January could be covered using payments from the Fund. Additionally, the cost of goods purchased in bulk and delivered during the covered period may be covered using payments from the Fund if a portion of the goods is ordered for use in the covered period, the bulk purchase is consistent with the recipient's usual procurement policies and practices, and it is impractical to track and record when the items were used. A recipient may use payments from the Fund to purchase a durable good that is to be used during the current period and in subsequent periods if the acquisition in the covered period was necessary due to the public health emergency.

Given that it is not always possible to estimate with precision when a good or service will be needed, the touchstone in assessing the determination of need for a good or service during the covered period will be reasonableness at the time delivery or performance was sought, e.g., the time of entry into a procurement contract specifying a time

for delivery. Similarly, in recognition of the likelihood of supply chain disruptions and increased demand for certain goods and services during the COVID-19 public health emergency, if a recipient enters into a contract requiring the delivery of goods or performance of services by December 31, 2021, the failure of a vendor to complete delivery or services by December 31, 2021, will not affect the ability of the recipient to use payments from the Fund to cover the cost of such goods or services if the delay is due to circumstances beyond the recipient's control.

This guidance applies in a like manner to costs of subrecipients. Thus, a grant or loan, for example, provided by a recipient using payments from the Fund must be used by the subrecipient only to purchase (or reimburse a purchase of) goods or services for which receipt both is needed within the covered period and occurs within the covered period. The direct recipient of payments from the Fund is ultimately responsible for compliance with this limitation on use of payments from the Fund.

Nonexclusive Examples of Eligible Expenditures

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

1. Medical expenses such as:
 - COVID-19-related expenses of public hospitals, clinics, and similar facilities.
 - Expenses of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs.
 - Costs of providing COVID-19 testing, including serological testing.
 - Emergency medical response expenses, including emergency medical transportation, related to COVID-19.
 - Expenses for establishing and operating public telemedicine capabilities for COVID-19-related treatment.
2. Public health expenses such as:
 - Expenses for communication and enforcement by State, territorial, local, and Tribal governments of public health orders related to COVID-19.
 - Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment, for medical personnel, police officers, social workers, child protection services, and child welfare officers, direct service providers for older adults and individuals with disabilities in community settings, and other public health or safety workers in connection

with the COVID-19 public health emergency.

- Expenses for disinfection of public areas and other facilities, *e.g.*, nursing homes, in response to the COVID-19 public health emergency.
 - Expenses for technical assistance to local authorities or other entities on mitigation of COVID-19-related threats to public health and safety.
 - Expenses for public safety measures undertaken in response to COVID-19.
 - Expenses for quarantining individuals.
3. 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.
 4. Expenses of actions to facilitate compliance with COVID-19-related public health measures, such as:
 - Expenses for food delivery to residents, including, for example, senior citizens and other vulnerable populations, to enable compliance with COVID-19 public health precautions.
 - Expenses to facilitate distance learning, including technological improvements, in connection with school closings to enable compliance with COVID-19 precautions.
 - Expenses to improve telework capabilities for public employees to enable compliance with COVID-19 public health precautions.
 - Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions.
 - COVID-19-related expenses of maintaining state prisons and county jails, including as relates to sanitation and improvement of social distancing measures, to enable compliance with COVID-19 public health precautions.
 - Expenses for care for homeless populations provided to mitigate COVID-19 effects and enable compliance with COVID-19 public health precautions.
 5. 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.

6. Any other COVID-19-related expenses reasonably necessary to the function of government that satisfy the Fund's eligibility criteria.

Nonexclusive Examples of Ineligible Expenditures²

The following is a list of examples of costs that would not be eligible expenditures of payments from the Fund.

1. Expenses for the State share of Medicaid.³
2. Damages covered by insurance.
3. Payroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

² In addition, pursuant to section 5001(b) of Division A of the CARES Act, payments from the Fund are subject to the requirements contained in the Further Appropriations Act of 2020 (Pub. L. 116-94) for funds for programs authorized under section 330 through 340 of the Public Health Service Act (42 U.S.C. 254 through 256). Section 5001(b) thereby applies to payments from the Fund the general restrictions on the Department of Health and Human Services' appropriations. Of particular relevance for the Fund, payments may not be expended for an abortion, for health benefits coverage—meaning a package of services covered by a managed health care provider or organization pursuant to a contract or other arrangement—that includes coverage of abortion, for the creation of a human embryo or embryos for research purposes, or for research in which a human embryo is destroyed, discarded, or knowingly subjected to risk of injury or death greater than that allowed for research on fetuses in utero under 45 CFR 46.204(b) and 42 U.S.C. 289g(b)). The prohibition on payment for abortions and health benefits coverage that includes coverage of abortion does not apply to an abortion if the pregnancy is the result of an act of rape or incest; or in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed. These provisions do not prohibit the expenditure by a State, locality, entity, or private person of State, local, or private funds (other than a State's or locality's contribution of Medicaid matching funds). These provisions do not restrict the ability of a managed care provider from offering abortion coverage or the ability of a State or locality to contract separately with such a provider for such coverage with State funds (other than a State's or locality's contribution of Medicaid matching funds). Furthermore, no government which receives payments from the Fund may discriminate against a health care entity on the basis that the entity does not provide, pay for, provide coverage of, or refer for abortions. Except with respect to certain law enforcement and adjudication activities, no funds may be used to maintain or establish a computer network unless such network blocks the viewing, downloading, and exchanging of pornography. No payments from the Fund may be provided to the Association of Community Organizations for Reform Now (ACORN) or any of its affiliates, subsidiaries, allied organizations, or successors. For the full text of these requirements, see Title V of Public Law 116-94 (133 Stat. 2605 *et seq.*), available at <https://www.congress.gov/116/plaws/publ94/PLAW-116publ94.pdf>.

³ See 42 CFR 433.51 and 45 CFR 75.306.

4. 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.

5. Reimbursement to donors for donated items or services.

6. Workforce bonuses other than hazard pay or overtime.

7. Severance pay.

8. Legal settlements.

Supplemental Guidance on Use of Funds To Cover Payroll and Benefits of Public Employees

As discussed in the Guidance above, the CARES Act provides that payments from the Fund must be used only to cover costs that were not accounted for in the budget most recently approved as of March 27, 2020. As reflected in the Guidance and FAQs, Treasury has not interpreted this provision to limit eligible costs to those that are incremental increases above amounts previously budgeted. Rather, Treasury has interpreted this provision to exclude items that were already covered for their original use (or a substantially similar use). This guidance reflects the intent behind the Fund, which was not to provide general fiscal assistance to state governments but rather to assist them with COVID-19-related necessary expenditures. With respect to personnel expenses, though the Fund was not intended to be used to cover government payroll expenses generally, the Fund was intended to provide assistance to address increased expenses, such as the expense of hiring new personnel as needed to assist with the government's response to the public health emergency and to allow recipients facing budget pressures not to have to lay off or furlough employees who would be needed to assist with that purpose.

Substantially Different Use

As stated in the Guidance above, Treasury considers the requirement that payments from the Fund be used only to cover costs that were not accounted for in the budget most recently approved as of March 27, 2020, to be met 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.

Treasury has provided examples as to what would constitute a substantially different use. Treasury provided (in FAQ A.3) that costs incurred for a substantially different use would

include, for example, the costs of redeploying 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.

Substantially Dedicated

Within this category of substantially different uses, as stated in the Guidance above, 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 *full amount* of payroll and benefits expenses of substantially dedicated employees may be covered using payments from the Fund. 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 relevant unit of government should maintain documentation of the "substantially dedicated" conclusion with respect to its employees.

If an employee is not substantially dedicated to mitigating or responding to the COVID-19 public health emergency, his or her payroll and benefits expenses may not be covered *in full* with payments from the Fund. A *portion* of such expenses may be able to be covered, however, as discussed below.

Public Health and Public Safety

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 31, 2021.

In response to questions regarding which employees are within the scope of this accommodation, Treasury is supplementing this guidance to clarify

that public safety employees would include police officers (including state 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 would include 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.

Not Substantially Dedicated

As provided in FAQ A.47, a State, local, or tribal government may also track time spent by employees related to COVID-19 and apply Fund payments on that basis but would need to do so consistently within the relevant agency or department. This means, for example, that a government could cover payroll expenses allocated on an hourly basis to employees' time dedicated to mitigating or responding to the COVID-19 public health emergency. This result provides equitable treatment to governments that, for example, instead of having a few employees who are substantially dedicated to the public health emergency, have many employees who have a minority of their time dedicated to the public health emergency.

Covered Benefits

Payroll and benefits of a substantially dedicated employee may be covered using payments from the Fund to the extent incurred between March 1 and December 31, 2021.

Payroll includes certain hazard pay and overtime, but not workforce bonuses. As discussed in FAQ A.29, hazard pay may be covered using payments from the Fund if it is provided for performing hazardous duty or work involving physical hardship that in each case 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 specifically may only be covered to the extent it is related to COVID-19. 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. This position reflects the statutory intent discussed above: the Fund was intended to be used to help governments address the public health emergency both by providing funds for incremental expenses (such as hazard pay related to COVID-19) and to allow governments not to have to furlough or lay off employees needed to address the public health emergency but was not intended to provide across-the-board budget support (as would be the case if hazard pay regardless of its relation to COVID-19 or workforce bonuses were permitted to be covered using payments from the Fund).

Relatedly, both hazard pay and overtime pay for employees that are not substantially dedicated may only be covered using the Fund if the hazard pay and overtime pay is for COVID-19-related duties. As discussed above, governments may allocate payroll and benefits of such employees with respect to time worked on COVID-19-related matters.

Covered benefits include, but are not limited to, 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).

Supplemental Guidance on Use of Funds To Cover Administrative Costs

General

Payments from the Fund are not administered as part of a traditional grant program and the provisions of the Uniform Guidance, 2 CFR part 200, that

are applicable to indirect costs do not apply. Recipients may not apply their indirect costs rates to payments received from the Fund.

Recipients may, if they meet the conditions specified in the guidance for tracking time consistently across a department, use payments from the Fund to cover the portion of payroll and benefits of employees corresponding to time spent on administrative work necessary due to the COVID-19 public health emergency. (In other words, such costs would be eligible direct costs of the recipient). This includes, but is not limited to, costs related to disbursing payments from the Fund and managing new grant programs established using payments from the Fund.

As with any other costs to be covered using payments from the Fund, any such administrative costs must be incurred by December 31, 2021, with an exception for certain compliance costs as discussed below. Furthermore, as discussed in the Guidance above, as with any other cost, an administrative cost that has been or will be reimbursed under any federal program may not be covered with the Fund. For example, if an administrative cost is already being covered as a direct or indirect cost pursuant to another federal grant, the Fund may not be used to cover that cost.

Compliance Costs Related to the Fund

As previously stated in FAQ B.11, recipients are permitted to use payments from the Fund to cover the expenses of an audit conducted under the Single Audit Act, subject to the limitations set forth in 2 CFR 200.425. Pursuant to that provision of the Uniform Guidance, recipients and subrecipients subject to the Single Audit Act may use payments from the Fund to cover a reasonably proportionate share of the costs of audits attributable to the Fund.

To the extent a cost is incurred by December 31, 2021, for an eligible use consistent with section 601 of the Social

Security Act and Treasury’s guidance, a necessary administrative compliance expense that relates to such underlying cost may be incurred after December 31, 2021. Such an expense would include, for example, expenses incurred to comply with the Single Audit Act and reporting and recordkeeping requirements imposed by the Office of Inspector General. A recipient with such necessary administrative expenses, such as an ongoing audit continuing past December 31, 2021, that relates to Fund expenditures incurred during the covered period, must report to the Treasury Office of Inspector General by the quarter ending September 2022 an estimate of the amount of such necessary administrative expenses.

Instructions for State, Territorial, Local, and Tribal Governments To Return Unused Coronavirus Relief Fund Payments to the Department of the Treasury

Any remaining amount of payments from the Fund not used for eligible expenses incurred during the covered period must be returned to Treasury in one of three ways, set forth below.

Please note that these instructions are for Fund recipients to return the balance of unused Fund payments to Treasury. If the Treasury Office of Inspector General determines that a Fund recipient has failed to comply with the use restrictions set forth in section 601(d) of the Social Security Act, the Fund recipient should follow the instructions provided by the Treasury Office of Inspector General for satisfaction of the related debt rather than following these instructions.

1. *Fedwire receipts*—Treasury can accept Fedwire payments for the return of funds to Treasury.

Please provide the following instructions to your Financial Institution for the remittance of Fedwire payments to the *Department of the Treasury*.

FEDWIRE INSTRUCTIONS

Fedwire field tag	Fedwire field name	Required information
{1510}	Type/Subtype	1000
{2000}	Amount	(enter payment amount)
{3400}	Receiver ABA routing number*	021030004
{3400}	Receiver ABA short name	TREAS NYC
{3600}	Business Function Code	CTR
{4200}	Beneficiary Identifier (account number)	820010001000
{4200}	Beneficiary Name	DEPARTMENT OF THE TREASURY
{5000}	Originator	(enter the name of the originator of the payment)
{6000}	Originator to Beneficiary Information—Line 1	(enter information to identify the purpose of the payment)
{6000}	Originator to Beneficiary Information—Line 2	(enter information to identify the purpose of the payment)
{6000}	Originator to Beneficiary Information—Line 3	(enter information to identify the purpose of the payment)

FEDWIRE INSTRUCTIONS—Continued

Fedwire field tag	Fedwire field name	Required information
{6000}	Originator to Beneficiary Information—Line 4	(enter information to identify the purpose of the payment)

*The financial institution address for Treasury's routing number is 33 Liberty Street, New York, NY 10045.

2. ACH receipts —Treasury can accept ACH payment for the return of funds to Treasury. Please provide the following instructions to your Financial Institution for the remittance of Automated Clearing House (ACH) credits to the *Department of the Treasury*.

ACH CREDIT INSTRUCTIONS

NACHA record type code	NACHA field	NACHA data element name	Required information
5	3	Company Name	(enter the name of the payor)
5	6	Standard Entry Class Code	CCD
5	9	Effective Entry Date	(enter intended settlement date)
6	2	Transaction Code*	22
6	3 & 4	Receiving DFI Identification (ABA routing #)	051036706
6	5	DFI Account Number	820010001000
6	6	Amount	(enter payment amount)
6	8	Receiving Company Name	Department of the Treasury

*ACH debits are not permitted to this ABA routing number. All debits received will be automatically returned.

3. Check receipts (not preferred)—Checks may be sent to one of the following addresses (depending on the method of delivery).

U.S. MAIL/PARCEL DELIVERY ADDRESS

U.S. Mail address—processing	Parcel delivery address—processing
Fiscal Accounting Program, Admin & Training Group. Avery Street A3–G, Bureau of the Fiscal Service, P.O. Box 1328, Parkersburg, WV 26106–1328.	Fiscal Accounting Program, Admin & Training Group. Avery Street A3–G, Fiscal Service Warehouse & Operations Center Dock 1, 257 Bosley Industrial Park Drive, Parkersburg WV 26106.

2. 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.

3. 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.

4. May a State receiving a payment transfer funds to a local government?

Yes, 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

Frequently Asked Questions

The following answers to frequently asked questions supplement Treasury’s Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments.

A. Eligible Expenditures

1. Are governments required to submit proposed expenditures to Treasury for approval?

No. Governments are responsible for making determinations as to what expenditures are necessary due to the public health emergency with respect to COVID–19 and do not need to submit any proposed expenditures to Treasury.

Act. Such funds would be subject to recoupment by the Treasury Department if they have not been used in a manner consistent with section 601(d) of the Social Security Act.

5. 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.

6. Is a Fund payment recipient required to transfer funds to a smaller, constituent unit of government within its borders?

No. For example, a county recipient is not required to transfer funds to smaller cities within the county's borders.

7. 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.

8. 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.

9. Are States permitted to use Fund payments to support state unemployment insurance funds generally?

To the extent that the costs incurred by a state unemployment insurance fund are incurred due to the COVID-19 public health emergency, a State may use Fund payments to make payments to its respective state unemployment insurance fund, separate and apart from such State's obligation to the unemployment insurance fund as an employer. This will permit States to use Fund payments to prevent expenses related to the public health emergency from causing their state unemployment insurance funds to become insolvent.

10. Are recipients permitted to use Fund payments to pay for unemployment insurance costs incurred by the recipient as an employer?

Yes, Fund payments may be used for unemployment insurance costs incurred by the recipient as an employer (for example, as a reimbursing employer) 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.

11. The Guidance states that the Fund may support a "broad range of uses" including payroll expenses for several classes of employees whose services are "substantially dedicated to mitigating or responding to the COVID-19 public health emergency." What are some examples of types of covered employees?

The Guidance provides examples of broad classes of employees whose payroll expenses would be eligible expenses under the Fund. These classes of employees include 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. Payroll and benefit costs associated with public employees who could have been furloughed or otherwise laid off but who were instead repurposed to perform previously unbudgeted functions substantially dedicated to mitigating or responding to the COVID-19 public health emergency are also covered. Other eligible expenditures include payroll and benefit costs of educational support staff or faculty responsible for developing online learning capabilities necessary to continue educational instruction in response to COVID-19-related school closures. Please see the Guidance for a discussion of what is

meant by an expense that was not accounted for in the budget most recently approved as of March 27, 2020.

12. In some cases, first responders and critical health care workers that contract COVID-19 are eligible for workers' compensation coverage. Is the cost of this expanded workers compensation coverage eligible?

Increased workers compensation cost to the government due to the COVID-19 public health emergency incurred during the period beginning March 1, 2020, and ending December 31, 2021, is an eligible expense.

13. If a recipient would have decommissioned equipment or not renewed a lease on particular office space or equipment but decides to continue to use the equipment or to renew the lease in order to respond to the public health emergency, are the costs associated with continuing to operate the equipment or the ongoing lease payments eligible expenses?

Yes. To the extent the expenses were previously unbudgeted and are otherwise consistent with section 601(d) of the Social Security Act outlined in the Guidance, such expenses would be eligible.

14. May recipients provide stipends to employees for eligible expenses (for example, a stipend to employees to improve telework capabilities) rather than require employees to incur the eligible cost and submit for reimbursement?

Expenditures paid for with payments from the Fund must be limited to those that are necessary due to the public health emergency. As such, unless the government were to determine that providing assistance in the form of a stipend is an administrative necessity, the government should provide such assistance on a reimbursement basis to ensure as much as possible that funds are used to cover only eligible expenses.

15. May Fund payments be used for COVID-19 public health emergency recovery planning?

Yes. Expenses associated with conducting a recovery planning project or operating a recovery coordination office would be eligible, if the expenses otherwise meet the criteria set forth in section 601(d) of the Social Security Act outlined in the Guidance.

16. Are expenses associated with contact tracing eligible?

Yes, expenses associated with contact tracing are eligible.

17. To what extent may a government use Fund payments to support the operations of private hospitals?

Governments may use Fund payments to support public or private hospitals to the extent that the costs are necessary expenditures incurred due to the COVID-19 public health emergency, but the form such assistance would take may differ. In particular, financial assistance to private hospitals could take the form of a grant or a short-term loan.

18. May payments from the Fund be used to assist individuals with enrolling in a government benefit program for those who have been laid off due to COVID-19 and thereby lost health insurance?

Yes. To the extent that the relevant government official determines that these expenses are necessary and they meet the other requirements set forth in section 601(d) of the Social Security Act outlined in the Guidance, these expenses are eligible.

19. May recipients use Fund payments to facilitate livestock depopulation incurred by producers due to supply chain disruptions?

Yes, to the extent these efforts are deemed necessary for public health reasons or as a form of economic support as a result of the COVID-19 health emergency.

20. 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.

21. 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.

22. *May recipients use Fund payments to cover employment and training programs for employees that have been furloughed due to the public health emergency?*

Yes, this would be an eligible expense if the government determined that the costs of such employment and training programs would be necessary due to the public health emergency.

23. *May recipients use Fund payments to provide emergency financial assistance to individuals and families directly impacted by a loss of income due to the COVID-19 public health emergency?*

Yes, if a government determines such assistance to be a necessary expenditure. Such assistance could include, for example, a program to assist individuals with payment of overdue rent or mortgage payments to avoid eviction or foreclosure or unforeseen financial costs for funerals and other emergency individual needs. Such assistance should be structured in a manner to ensure as much as possible, within the realm of what is administratively feasible, that such assistance is necessary.

24. 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.

25. 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.

26. May Fund payments be used to assist impacted property owners with the payment of their property taxes?

Fund payments may not be used for government revenue replacement, including the provision of assistance to meet tax obligations.

27. *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.

28. *Could Fund payments be used for capital improvement projects that broadly provide potential economic development in a community?*

In general, no. If capital improvement projects are not necessary expenditures incurred due to the COVID-19 public health emergency, then Fund payments may not be used for such projects.

However, Fund payments may be used for the expenses of, for example, establishing temporary public medical facilities and other measures to increase

COVID-19 treatment capacity or improve mitigation measures, including related construction costs.

29. 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.

30. 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 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.

31. *May counties pre-pay with CARES Act funds for expenses such as a one or two-year facility lease, such as to house staff hired in response to COVID-19?*

A government should not make prepayments on contracts using payments from the Fund to the extent that doing so would not be consistent with its ordinary course policies and procedures.

32. *Must a stay-at-home order or other public health mandate be in effect in order for a government to provide assistance to small businesses using payments from the Fund?*

No. The Guidance provides, as an example of an eligible use of payments from the Fund, expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures. Such assistance may be provided using amounts received from the Fund in the absence of a requirement to close businesses if the relevant government determines that such expenditures are necessary in response to the public health emergency.

33. Should States receiving a payment transfer funds to local governments that did not receive payments directly from Treasury?

Yes, provided that the transferred funds are used by the local government for eligible expenditures under the statute. To facilitate prompt distribution of Title V funds, the CARES Act authorized Treasury to make direct payments to local governments with populations in excess of 500,000, in amounts equal to 45% of the local government's per capita share of the statewide allocation. This statutory structure was based on a recognition that it is more administratively feasible to rely on States, rather than the federal government, to manage the transfer of funds to smaller local governments. Consistent with the needs of all local governments for funding to address the public health emergency, States should transfer funds to local governments with populations of 500,000 or less, using as a benchmark the per capita allocation formula that governs payments to larger local governments. This approach will ensure equitable treatment among local governments of all sizes.

For example, a State received the minimum \$1.25 billion allocation and had one county with a population over 500,000 that received \$250 million directly. The State should distribute 45 percent of the \$1 billion it received, or \$450 million, to local governments within the State with a population of 500,000 or less.

34. May a State impose restrictions on transfers of funds to local governments?

Yes, to the extent that the restrictions facilitate the State's compliance with the requirements set forth in section 601(d) of the Social Security Act outlined in the Guidance and other applicable requirements such as the Single Audit Act, discussed below. Other restrictions, such as restrictions on reopening that do not directly concern the use of funds, are not permissible.

35. If a recipient must issue tax anticipation notes (TANs) to make up for tax due date deferrals or revenue shortfalls, are the expenses associated with the issuance eligible uses of Fund payments?

If a government determines that the issuance of TANs is necessary due to the COVID-19 public health emergency, the government may expend payments from the Fund on the interest expense payable on TANs by the borrower and unbudgeted administrative and transactional costs, such as necessary

payments to advisors and underwriters, associated with the issuance of the TANs.

36. 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.

37. 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.

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

No. Hazard pay means additional pay for performing hazardous duty or work involving physical hardship, in each case that is related to COVID-19. Payments from the fund may only be used to cover such hazard pay.

39. May Fund payments be used for expenditures related to the administration of Fund payments by a State, territorial, local, or Tribal government?

Yes, if the administrative expenses represent an increase over previously budgeted amounts and are limited to what is necessary. For example, a State may expend Fund payments on necessary administrative expenses incurred with respect to a new grant program established to disburse amounts received from the Fund.

40. May recipients use Fund payments to provide loans?

Yes, if the loans otherwise qualify as eligible expenditures under section 601(d) of the Social Security Act as implemented by the Guidance. Any amounts repaid by the borrower before December 31, 2021, 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 31, 2021, must be returned to Treasury upon receipt by the unit of government lending the funds.

41. May Fund payments be used for expenditures necessary to prepare for a future COVID-19 outbreak?

Fund payments may be used only for expenditures necessary to address the current COVID-19 public health emergency. For example, a State may spend Fund payments to create a reserve of personal protective equipment or develop increased intensive care unit capacity to support regions in its jurisdiction not yet affected, but likely to be impacted by the current COVID-19 pandemic.

42. May funds be used to satisfy non-federal matching requirements under the Stafford Act?

Yes, payments from the Fund may be used to meet the non-federal matching requirements for Stafford Act assistance, including FEMA's Emergency Management Performance Grant (EMPG) and EMPG Supplemental programs, to the extent such matching requirements entail COVID-19-related costs that otherwise satisfy the Fund's eligibility criteria and the Stafford Act. Regardless of the use of Fund payments for such purposes, FEMA funding is still dependent on FEMA's determination of eligibility under the Stafford Act.

43. Must a State, local, or tribal government require applications to be submitted by businesses or individuals before providing assistance using payments from the Fund?

Governments have discretion to determine how to tailor assistance programs they establish in response to the COVID-19 public health emergency. However, such a program should be structured in such a manner as will ensure that such assistance is determined to be necessary in response to the COVID-19 public health emergency and otherwise satisfies the requirements of the CARES Act and other applicable law. For example, a per capita payment to residents of a particular jurisdiction without an assessment of individual need would not be an appropriate use of payments from the Fund.

44. May Fund payments be provided to non-profits for distribution to individuals in need of financial assistance, such as rent relief?

Yes, non-profits may be used to distribute assistance. Regardless of how the assistance is structured, the

financial assistance provided would have to be related to COVID-19.

45. May recipients use Fund payments to remarket the recipient's convention facilities and tourism industry?

Yes, if the costs of such remarketing satisfy the requirements of the CARES Act. Expenses incurred to publicize the resumption of activities and steps taken to ensure a safe experience may be needed due to the public health emergency. Expenses related to developing a long-term plan to reposition a recipient's convention and tourism industry and infrastructure would not be incurred due to the public health emergency and therefore may not be covered using payments from the Fund.

46. May a State provide assistance to farmers and meat processors to expand capacity, such to cover overtime for USDA meat inspectors?

If a State determines that expanding meat processing capacity, including by paying overtime to USDA meat inspectors, is a necessary expense incurred due to the public health emergency, such as if increased capacity is necessary to allow farmers and processors to donate meat to food banks, then such expenses are eligible expenses, provided that the expenses satisfy the other requirements set forth in section 601(d) of the Social Security Act outlined in the Guidance.

47. The guidance provides 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. May Fund payments be used to cover such an employee's entire payroll cost or just the portion of time spent on mitigating or responding to the COVID-19 public health emergency?

As a matter of administrative convenience, the 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 31, 2021. An employer may also track time spent by employees related to COVID-19 and apply Fund payments on that basis but would need to do so consistently within the relevant agency or department.

48. May Fund payments be used to cover increased administrative leave costs of public employees who could not telework in the event of a stay at home order or a case of COVID-19 in the workplace?

The statute 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. As stated in the Guidance, 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. If the cost of an employee was allocated to administrative leave to a greater extent than was expected, the cost of such administrative leave may be covered using payments from the Fund.

49. Are States permitted to use Coronavirus Relief Fund payments to satisfy non-federal matching requirements under the Stafford Act, including "lost wages assistance" authorized by the Presidential Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019 (August 8, 2020)?

Yes. As previous guidance has stated, 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. 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. If a State makes a payment to an individual under the "lost wages assistance" program and later determines that such individual was ineligible for the program, the ineligibility determination has the following consequences:

- The State incurs an obligation to FEMA in the amount of the payment to the ineligible individual. A State's obligation to FEMA for making an improper payment to an individual under the "lost wages assistance" program is not incurred due to the public health emergency and, therefore, payments made pursuant to this obligation would not be an eligible use of the Fund.
- The "lost wages assistance" payment to the ineligible individual would be deemed to be an ineligible

expense for purposes of the Fund, and any amount charged to the Fund (*e.g.*, to satisfy the initial non-federal matching requirement) would be subject to recoupment.

50. 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 31, 2021 (the “covered period”), will be considered to be incurred during the covered period if (i) the full amount of the loan is advanced to the borrower within the covered period and (ii) the proceeds of the loan are used by the borrower to cover expenses incurred during the covered period. In addition, 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.

51. 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)?

Please see the answer provided by the Internal Revenue Service (IRS) available at <https://www.irs.gov/newsroom/cares-act-coronavirus-relief-fund-frequently-asked-questions>.

52. 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?

Please see the answer provided by the IRS available at <https://www.irs.gov/newsroom/cares-act-coronavirus-relief-fund-frequently-asked-questions>.

53. May Fund recipients incur expenses associated with the safe reopening of schools?

Yes, payments from the Fund may be used to cover costs associated with providing distance learning (*e.g.*, the cost of laptops to provide to students) or for in-person learning (*e.g.*, the cost of acquiring personal protective equipment for students attending schools in-person or other costs associated with meeting Centers for Disease Control guidelines).

Treasury recognizes that schools are generally incurring an array of COVID-19-related expenses to either provide distance learning or to re-open. To this end, as an administrative convenience, Treasury will presume that expenses of up to \$500 per elementary and secondary school student are eligible expenditures, such that schools do not need to document the specific use of funds up to that amount.

If a Fund recipient avails itself of the presumption in accordance with the previous paragraph with respect to a school, the recipient may not also cover the costs of additional re-opening aid to that school other than those associated with the following, in each case for the purpose of addressing COVID-19:

- Expanding broadband capacity;
- hiring new teachers;
- developing an online curriculum;
- acquiring computers and similar digital devices;
- acquiring and installing additional ventilation or other air filtering equipment;
- incurring additional transportation costs; or
- incurring additional costs of providing meals.

Across all levels of government, the presumption is limited to \$500 per student, *e.g.*, if a school is funded by a state and a local government, the presumption claimed by each recipient must add up to no more than \$500. Furthermore, if a Fund recipient uses the presumption with respect to a school, any other Fund recipients providing aid to that school may not use the Fund to cover the costs of additional aid to schools other than with respect to the specific costs listed above.

The following examples help illustrate how the presumption may or may not be used:

Example 1: State A may transfer Fund payments to each school district in the State totaling \$500 per student. State A does not need to document the specific use of the Fund payments by the school districts within the State.

Example 2: Suppose State A from example 1 transferred Fund payments to the school districts in the State in the

amount of \$500 per elementary and secondary school student. In addition, because State A is availing itself of the \$500 per elementary and secondary school student presumption, State A also may use Fund payments to expand broadband capacity and to hire new teachers, but it may not use Fund payments to acquire additional furniture.

54. May Fund recipients upgrade critical public health infrastructure, such as providing access to running water for individuals and families in rural and tribal areas to allow them to maintain proper hygiene and defend themselves against the virus?

Yes, fund recipients may use payments from the Fund to upgrade public health infrastructure, such as providing individuals and families access to running water to help reduce the further spread of the virus. As required by the CARES Act, expenses associated with such upgrades must be incurred by December 31, 2021. Please see Treasury’s Guidance as updated on June 30 regarding when a cost is considered to be incurred for purposes of the requirement that expenses be incurred within the covered period.

55. How does a government address the requirement that the allowable expenditures are not accounted for in the budget most recently approved as of March 27, 2020, once the government enters its new budget year on July 1, 2020 (for governments with June 30 fiscal year ends) or October 1, 2020 (for governments with September 30 year ends)?

As provided in the Guidance, 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.

Furthermore, the budget most recently approved as of March 27, 2020, provides the spending baseline against which expenditures should be compared for purposes of determining whether they may be covered using payments from the Fund. This spending baseline will carry forward to a subsequent budget year if a Fund recipient enters a different budget year between March 27, 2020 and December 31, 2021. The

spending baseline may be carried forward without adjustment for inflation.

56. Does the National Environmental Policy Act, 42 U.S.C. 4321 et seq, (NEPA) apply to projects supported by payments from the Fund?

NEPA does not apply to Treasury's administration of the Fund. Projects supported with payments from the Fund may still be subject to NEPA review if they are also funded by other federal financial assistance programs

57. Public universities have incurred expenses associated with providing refunds to students for education-related expenses, including tuition, room and board, meal plans, and other fees (such as activities fees). Are these types of public university student refunds eligible uses of Fund payments?

If the responsible government official determines that expenses incurred to refund eligible higher education expenses are necessary and would be incurred due to the public health emergency, then such expenses would be eligible as long as the expenses satisfy the other criteria set forth in section 601(d) of the Social Security Act. Eligible higher education expenses may include, in the reasonable judgment of the responsible government official, refunds to students for tuition, room and board, meal plan, and other fees (such as activities fees). Fund payments may not be used for expenses that have been or will be reimbursed by another federal program (including, for example, the Higher Education Emergency Relief Fund administered by the Department of Education).

58. May payments from the Fund be used for real property acquisition and improvements and to purchase equipment to address the COVID-19 public health emergency?

The expenses of acquiring or improving real property and of acquiring equipment (e.g., vehicles) may be covered with payments from the Fund in certain cases. For example, Treasury's initial guidance referenced coverage of the costs of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs, as an eligible use of funds. Any such use must be consistent with the requirements of section 601(d) of the Social Security Act as added by the CARES Act.

As with all uses of payments from the Fund, the use of payments to acquire or improve property is limited to that which is necessary due to the COVID-

19 public health emergency. In the context of acquisitions of real estate and acquisitions of equipment, this means that the acquisition itself must be necessary. In particular, a government must (i) determine that it is not able to meet the need arising from the public health emergency in a cost-effective manner by leasing property or equipment or by improving property already owned and (ii) maintain documentation to support this determination. Likewise, an improvement, such as the installation of modifications to permit social distancing, would need to be determined to be necessary to address the COVID-19 public health emergency.

Previous guidance regarding the requirement that payments from the Fund may only be used to cover costs that were incurred during the period that begins on March 1, 2020, and ends on December 31, 2021 focused on the acquisition of goods and services and leases of real property and equipment, but the same principles apply to acquisitions and improvements of real property and acquisitions of equipment. Such acquisitions and improvements must be completed and the acquired or improved property or acquisition of equipment be put to use in service of the COVID-19-related use for which it was acquired or improved by December 30. Finally, as with all costs covered with payments from the Fund, such costs must not have been previously accounted for in the budget most recently approved as of March 27, 2020.

59. If a small business received a Small Business Administration (SBA) Payment Protection Program (PPP) or Economic Injury Disaster Loan (EIDL) grant or loan due to COVID-19, may the small business also receive a grant from a unit of government using payments from the Fund?

Receiving a PPP or EIDL grant or loan for COVID-19 would not necessarily make a small business ineligible to receive a grant from Fund payments made to a recipient. As discussed in previous Treasury guidance on use of the Fund, a recipient's small business assistance program should be tailored to assist those businesses in need of such assistance. In assessing the business' need for assistance, the recipient would need to take into account the business' receipt of the PPP or EIDL loan or grant. If the business has received a loan from the SBA that may be forgiven, the recipient should assume for purposes of determining the business' need that the loan will be forgiven. In determining the business' eligibility for the grant, the

recipient should not rely on self-certifications provided to the SBA.

If the grant is being provided to the small business to assist with particular expenditures, the business must not have already used the PPP or EIDL loan or grant for those expenditures. The assistance provided from the Fund would need to satisfy all of the other requirements set forth in section 601(d) of the Social Security Act as discussed in Treasury's guidance and FAQs, and the business would need to comply with all applicable requirements of the PPP or EIDL program.

Treasury's Office of Inspector General has provided the following guidance in its FAQ no. 75 on reporting and recordkeeping that would apply to the recipient:

The prime recipient is responsible for determining the level and detail of documentation needed from the sub-recipient of small business assistance to satisfy [the requirements of section 601(d) of the Social Security Act], however, there would need to be some proof that the small business was impacted by the public health emergency and was thus eligible for the CRF funds.

In the above OIG FAQ, "sub-recipient" refers to the beneficiary of the assistance, *i.e.*, the small business.

B. Questions Related to Administration of Fund Payments

1. Do governments have to return unspent funds to Treasury?

Yes. Section 601(f)(2) of the Social Security Act, as added by section 5001(a) of the CARES Act, provides for recoupment by the Department of the Treasury of amounts received from the Fund that have not been used in a manner consistent with section 601(d) of the Social Security Act. If a government has not used funds it has received to cover costs that were incurred by December 31, 2021, as required by the statute, those funds must be returned to the Department of the Treasury.

2. What records must be kept by governments receiving payment?

A government should keep records sufficient to demonstrate that the amount of Fund payments to the government has been used in accordance with section 601(d) of the Social Security Act.

3. May recipients deposit Fund payments into interest bearing accounts?

Yes, provided that if recipients separately invest amounts received from

the Fund, they must use the interest earned or other proceeds of these investments only to cover expenditures incurred in accordance with section 601(d) of the Social Security Act and the Guidance on eligible expenses. If a government deposits Fund payments in a government's general account, it may use those funds to meet immediate cash management needs provided that the full amount of the payment is used to cover necessary expenditures. Fund payments are not subject to the Cash Management Improvement Act of 1990, as amended.

4. 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.

5. 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 31, 2021, 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.

6. Are Fund payments to State, territorial, local, and tribal governments subject to the provisions of the Uniform Guidance applicable to grant agreements?

No. Fund payments made by Treasury to State, territorial, local, and Tribal governments do not entail grant agreements and thus the provisions of the Uniform Guidance (2 CFR part 200) applicable to grant agreements do not apply. The payments constitute "other financial assistance" under 2 CFR 200.40.

7. Are Fund payments considered federal financial assistance for purposes of the Single Audit Act?

Yes, Fund payments are considered to be federal financial assistance subject to the Single Audit Act (31 U.S.C. 7501–7507) and the related provisions of the Uniform Guidance, 2 CFR 200.303 regarding internal controls, §§ 200.330 through 200.332 regarding subrecipient monitoring and management, and subpart F regarding audit requirements.

8. Are Fund payments subject to other requirements of the Uniform Guidance?

Fund payments are subject to the following requirements in the Uniform Guidance (2 CFR part 200): 2 CFR 200.303 regarding internal controls, 2 CFR 200.330 through 200.332 regarding

subrecipient monitoring and management, and subpart F regarding audit requirements.

9. Is there a Catalog of Federal Domestic Assistance (CFDA) number assigned to the Fund?

Yes. The CFDA number assigned to the Fund is 21.019.

10. If a State transfers Fund payments to its political subdivisions, would the transferred funds count toward the subrecipients' total funding received from the federal government for purposes of the Single Audit Act?

Yes. The Fund payments to subrecipients would count toward the threshold of the Single Audit Act and 2 CFR part 200, subpart F re: audit requirements. Subrecipients are subject to a single audit or program-specific audit pursuant to 2 CFR 200.501(a) when the subrecipients spend \$750,000 or more in federal awards during their fiscal year.

11. Are recipients permitted to use payments from the Fund to cover the expenses of an audit conducted under the Single Audit Act?

Yes, such expenses would be eligible expenditures, subject to the limitations set forth in 2 CFR 200.425.

12. If a government has transferred funds to another entity, from which entity would the Treasury Department seek to recoup the funds if they have not been used in a manner consistent with section 601(d) of the Social Security Act?

The Treasury Department would seek to recoup the funds from the government that received the payment directly from the Treasury Department. State, territorial, local, and Tribal governments receiving funds from Treasury should ensure that funds transferred to other entities, whether pursuant to a grant program or otherwise, are used in accordance with section 601(d) of the Social Security Act as implemented in the Guidance.

13. What are the differences between a subrecipient and a beneficiary under the Fund for purposes of the Single Audit Act and 2 CFR part 200, subpart F regarding audit requirements?

The Single Audit Act and 2 CFR part 200, subpart F regarding audit requirements apply to any non-federal entity, as defined in 2 CFR 200.69, that receives payments from the Fund in the amount of \$750,000 or more. Non-federal entities include subrecipients 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, subrecipients 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 CFR part 200, subpart F regarding audit requirements do not apply to beneficiaries.

Please see Treasury Office of Inspector General FAQs at <https://www.treasury.gov/about/organizational-structure/ig/Audit%20Reports%20and%20Testimonies/OIG-CA-20-028.pdf> regarding reporting in the GrantSolutions portal.

Dated: January 11, 2021.

Alexandra H. Gaiser,
Executive Secretary.

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BILLING CODE 4810-25-P

DEPARTMENT OF VETERANS AFFAIRS

Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board, Amended Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Federal Advisory Committee Act, 5 U.S.C. App.2, that a meeting of the Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board (JBL/CS SMRB) will be held Thursday, January 21, 2021, via WebEx. The meeting will begin at 3:00 p.m. and end at 5:00 p.m. Eastern daylight time. The meeting will have an open session from 3:00 p.m. until 3:30 p.m. and a closed session from 3:30 p.m. until 5:00 p.m.

The purpose of the open session is to meet with the JBL/CS Service Directors to discuss the overall policies and process for scientific review, as well as disseminate information among the Board members regarding the VA research priorities.

The purpose of the closed session is to provide recommendations on the scientific quality, budget, safety and mission relevance of investigator-initiated research applications submitted for VA merit review evaluation. Applications submitted for review include various medical specialties within the general areas of biomedical, behavioral and clinical science research. The JBL/CS SMRB meeting will be closed to the public for

RESPONSES TO RECOMMENDATIONS

- R1. The Board of Supervisors should appoint an independent panel by June 2022 to conduct an audit to determine whether County actions were, in fact, in compliance with federal CARES Act requirements.**

Board of Supervisors Response:

The recommendation will not be implemented because it is not warranted or is not reasonable. All County actions related to the Coronavirus Relief Fund (CRF) were in compliance with federal requirements. Additionally, the County is subject to the Single Audit Act relating to its federal awards and expenditures. The CRF program was audited as a major program by the County's external auditors for both FY 2019-20 and FY 2020-21 with no findings reported.

- R2. The Sacramento Board of Supervisors, the County Executive, and the Sheriff's Department should each adopt a transparent and properly noticed budget allocation and approval process to be used upon receipt by the County for all funding sources, including surplus dollars. This process should include adequate notice, extensive engagement with county residents, and utilize detailed public notices, media briefings, stakeholder workshops and appropriate social media outreach. This recommendation should be in place by December 2022.**

Sheriff's Response:

The Sheriff sent his response to the presiding judge in a separate correspondence per Penal Code section 933.05(c) and 933(c). The response has been included as part of the Board's report as Attachment 2.

Board of Supervisors Response:

The recommendation has been implemented. On June 10, 2021, the Board of Supervisors approved a Community Engagement Plan for the FY 2022-23 budget in order to increase public engagement in and understanding of the County's budget, as well as to develop priorities for the County's budget that are based on public input. As part of this plan:

- A "Budget in Brief" 8-page high-level summary of the County's budget is available on the County's website. This easy to understand document includes charts showing where the County's funding comes from and where it goes and includes operating budget summaries for each major functional area.
- A "Budget Explorer Tool" is also available on the County's website that allows users to drill down into the County's budget to see budget unit and expenditure type detail in a graphical format.
- Two virtual public budget workshops publicized via social media were held on October 27, 2021 in order to provide information about the County's budget and budget process as well as an opportunity for the public to ask questions and provide input.

Another key element of the Community Engagement Plan was hiring a professional public opinion firm to conduct a scientific public opinion survey to determine residents' priorities for the County's budget. In order to inform the development of survey questions, County staff engaged in efforts over the summer of 2021 to understand potential priorities to test in the poll of County residents. County departments conducted outreach with the County's Advisory Boards and Commissions, on which almost 600 people serve.

Results of the public opinion survey of County residents were presented to the Board on December 8, 2021, and the Board adopted budget priorities that include funding for new or enhanced programs in the priority focus areas identified by County residents.

In addition to general budget outreach and engagement, the County also engaged in community outreach efforts specific to the use of the County's allocation of American Rescue Plan Act State and Local Fiscal Recovery Funds (ARPA). This outreach included an online community needs survey conducted in June 2021. Over 1,500 residents, business and community organizations provided feedback on community needs that have developed as a result of the COVID-19 pandemic. The feedback was aggregated and provided to the Board of Supervisors at its July 27, 2021 meeting, and the Board approved priorities to plan the use of ARPA funds. ARPA funding allocations and specific project approvals are subject to Board action at public meetings, which are noticed according to the Brown Act. Both the survey and a virtual community presentation about ARPA and the survey were publicized via news release and social media. Additionally, the County has a dedicated ARPA website that provides updated information about the County's use of ARPA funds.

- R3. The County Board of Supervisors should engage in an active process to identify and address community needs and develop a plan to deliver appropriate funding and services to the community outside of County operations. A policy should be developed and approved to ensure community input in the use of supplemental emergency funding by December 2022.**

Board of Supervisors Response:

The recommendation will not be implemented because it is not warranted or is not reasonable. The County Board of Supervisors approved a Community Engagement Plan for the FY 2022-23 County Budget and the County continues to engage in active processes to identify and address community needs, as described above, and to ensure that County operations are in support of those needs. Additionally, community input has been and will continue to be key to the County's ARPA funding decisions. Given that these specific actions and processes are already in place, development and approval of a policy does not appear to be warranted.

- R4. A policy should be developed by the County Board of Supervisors directing the County Executive to provide clear and specific direction and oversight to county operations to ensure that the Board's plans and strategic directions in response to community emergencies are properly carried out. This policy should be developed and approved by December 2022.**

Board of Supervisors Response:

The recommendation will not be implemented because it is not warranted or is not reasonable.

A policy is not warranted to ensure that the response to community emergencies are properly carried out as this is already established under numerous federal, state and local laws including: the Stafford Act, Presidential Policy Directive 5 and 8 (PPD 5, PPD8), the California Emergency Services Act, California Health and Safety Code and local County Codes. The Sacramento County Director of Emergency Services has sufficient delegation of authority established under Sacramento County codes 2.46.010 – 2.46.170 to control and direct the effort of the emergency organization. The existing delegations of authority are necessary to carryout emergency responsibilities in an expedient and

efficient manner, ensuring coordination with jurisdictions within the operational area as well as the state. Under these delegated authorities and consistent with requirements under the California Emergency Services Act, all proclamations, orders, and regulations were properly ratified by the Board of Supervisors during the COVID-19 Pandemic.

County code 2.46.090 establishes the requirement of an Emergency Plan, "the provisions of the plan shall be mandatory upon the agencies of County government, its employees, and registered volunteer emergency workers, who shall diligently apply their efforts toward the development of the most effective emergency program within their means." As also stated in this code section, the Emergency Plan "shall be presented to the Board of Supervisors and shall become effective upon acceptance of the amendments by resolution of the Board." A current, adopted plan was in effect at the time the Coronavirus Pandemic began, and continues to be in effect.

Public agency cooperation is specified in code 2.46.150 requiring "all public and private agencies within the County, and all officers and employees of such agencies, shall cooperate with the Board of Supervisors, Director and the Deputy Director in rendering all public assistance in carrying out the provisions of this chapter."

The County has sufficient delegations of authority and is responsive to the various federal, state and local laws that govern actions in emergency response. A separate policy would serve to dilute and confuse the intentions of the delegations of authority. Further, the County had federally and state required plans in place that were adopted by the Board of Supervisors, filed with the California Governor's Office of Emergency Services and publically accessible on the county's website. These plans and delegations continue to remain in effect. Thus, we respectfully disagree with this recommendation.

- R5. A policy should be developed by County Board of Supervisors to require that the County Executive provide monthly updates on the use of special funding. This policy should be developed and approved by December 2022.**

Board of Supervisors Response:

The recommendation will not be implemented because it is not warranted or is not reasonable. All ARPA funding allocations and specific

project, contract, and budget approvals are subject to Board action at public meetings. Additionally, the Board has directed staff to provide quarterly updates related to the use of ARPA funding, consistent with the reporting requirements to the federal government for the use of these funds, and ARPA recommendations and associated updates will be provided to the Board on a more frequent basis as necessary.