



BOARD OF COUNTY COMMISSIONERS
200 WEST BROADWAY ST.
MISSOULA, MT 59802-4292

PHONE: (406) 258-4877
FAX: (406) 721-4043

BCC 2020-112
July 21, 2020

State of Montana CARES Act fund distribution to Counties

Representative Marler,

Missoula County continues to provide information to the State of Montana in hopes of receiving a distribution from the \$1.25 billion in CARES Act funds received by the State. Missoula County submitted its first request using the State provided excel spreadsheet on June 12, 2020, seven days after the State announced the program and made the reimbursement request spreadsheets available. As of today July 16, 2020 Missoula, County has not received a CARES act fund distribution. There are two issues preventing the swift distribution of CARES Act funds to Montana counties. They are the restrictions placed on the eligibility of County reimbursements beyond what is called for in the US Treasury Department guidance and the process employed by the State.

The State of Montana has placed restrictions on the reimbursement of expenses deemed eligible for CARES Act funds. They include:

- 1) In the first CARES Act reimbursement request to the State for Public Safety payroll and benefit expenses through May 31, 2020 for 911 personnel, that were not part of the Emergency Operations Center (EOC) were included. We were told to expect these expenses to be denied. We will continue to submit those expenses in the second submission for expenses through June 30, 2020 without any official confirmation they will be paid.
- 2) Payroll and benefit expenses for Detention Center Deputies through May 31, 2020 were denied in the first reimbursement request. We will continue to submit the associated payroll and benefit costs in the second reimbursement request for expenses through June 30, 2020.
- 3) Hazard pay for any eligible class of employee who spends over two thirds of their time on services substantially dedicated to mitigating or responding to the COVID-19 public health emergency was denied.
- 4) Benefit expense associated with the payroll expense for classes of employees deemed eligible in the Treasury guidance for reimbursement of hours worked responding to the COVID-19 public health emergency were denied in the County's first reimbursement request, however the State as asked us to resubmit the benefit expenses in the second reimbursement request covering the period through June 30, 2020 but the State indicated that they may not cover these expenses beyond that date.

- 5) Missoula Aging Services (a component unit of the County) was denied a reimbursement request for costs associated with bringing meals to our most vulnerable senior citizens in their homes. These expenditures are directly related to an increase in services due to COVID-19.
- 6) The County was denied the reimbursement request for meals for the Health Department workers spending long hours working the phones monitoring contact tracing as well as staffing drive through testing centers.
- 7) The County elections department uses many temporary workers during an election and these workers are generally elderly and as a result part of that most vulnerable population. This combined with our efforts to maintain social distancing the County Commissioners decided to include prepaid envelopes with the ballots mailed to homes. The County was told we could only submit for those costs associated with the primary election, and not the fall election. The costs associated with printing pre-paid postage ballot envelopes for the fall election were not allowed for inclusion in a reimbursement request for CARES Act funds. The County was asked to submit a separate reimbursement request for the primary election costs. The County was reimbursed through a separate fund managed by the Montana Department of Administration.

The following are excerpts from the Treasury Department's guidance for the disbursement of CARES Act funds which seem to directly contradict the State of Montana's determination of what is eligible.

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 30, 2020.***

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

Payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency. Hazard pay is a form of payroll expense and is subject to this limitation, so Fund payments may only be used to cover hazard pay for such individuals.

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 food delivery to residents, including, for example, senior citizens and other vulnerable populations, to enable compliance with COVID-19 public health precautions.

Expenses associated with contract tracing are eligible

Costs of providing COVID-19 testing, including serological testing

Expenditures incurred “due to” the public health emergency means that expenditures must be used for actions taken to respond to the public health emergency. 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. 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

The process the State has chosen to employ is time consuming, duplicative, is not required and in some cases is in direct conflict to the guidance provided by the Treasury Department. The State distributed formatted excel spreadsheets for CARES Act reimbursement to local governments on June 5, 2020. In that spreadsheet reimbursements allowed under Treasury guidance were excluded, other exclusions were communicated via telephone in follow up conversations.

The timeline for the first submission provided the County with only a week to complete identification of eligible costs, aggregate them onto the spreadsheet and provide copies of all the invoices, timesheets and other items that documented costs. We were able to meet the deadline with all our costs except the unbudgeted expenses the IT department incurred because of COVID-19. Missoula County submitted an exceptionally large file of PDF's that detailed to the penny of all the requested reimbursements. We were told that the PDF's needed to be indexed on a separate spreadsheet so that the State could easily identify which documented expense went to a specific category.

The State then asked for written narratives for every expenditure they had a question on such as the Health Department meals. The most recent request is that they now want an expense report generated by our own accounting system so that they can verify that each expenditure for which we have provided invoices, timesheets, etc. was actually paid for. Our accounting system does not generate reports that match the categories of the State reimbursement spreadsheet. So, we began the process by identifying the eligible costs, extracting them from our accounting system and placing them and the backup into the State's desired categories. Now we are being asked to take what we submitted put them back into their original line items and identify them for the State so they will have proof that the expense occurred. We must ask ourselves “is this really necessary?” Do they think that Missoula County would go to the trouble of falsifying invoices to get CARES Act funds, so now they feel compelled to verify the expense using our accounting system?

Treasury in their guidance provided examples that stated:

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.

If the State is not required to provide any evidence of expenses to the Treasury, why is the County being put through time consuming, duplicative exercises for the reimbursement of our COVID-19 expenses.

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 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.

The only qualification the County must meet is that we must ensure that the necessary expenditure incurred is due to the public health emergency and meets the other criteria of section 601(d) of the Social Security Act.

If the County does not comply with section 601(d) of the Social Security Act, then the funds would be subject to recoupment by the Treasury Department.

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 are not permissible.**

The last piece of Treasury guidance speaks to almost every issue the County has detailed in this document. The State may place restrictions on the transfer of CARES Act reimbursements but only to extent that it facilitates compliance with section 601(d) of the Social Security Act. Missoula County would argue that the volumes of information being requested is well beyond insuring compliance with section 601(d).

Lastly the portion of the previous guidance highlighted in yellow clearly states any other COVID-19 expenses that Treasury guidance allows for which the State decides it will not transfer CARES Act funds **are not permissible**. The expense restrictions that fall into this category for Missoula County are identified on the first page of this document.

Sincerely,

BOARD OF COUNTY COMMISSIONERS

Josh Slotnick, Chair

David Strohmaier, Commissioner

Juanita Vero, Commissioner

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