

# Office of the State Controller

## Guidance on Use of Coronavirus Relief Funds for Institutions of Higher Education Payroll Related Costs UPDATED

April 26, 2021

The Colorado Office of the State Controller (OSC) has published the below guidance to address the use of Coronavirus Relief Funds (CRF), as established in section 601 of the Social Security Act pursuant to section 5001(a) of Division A of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), for salaries and other payroll related incurred costs associated with Institutions of Higher Education (IHE) instructional, academic support, and student services staff and faculty salaries.

OSC guidance is based on the United States Department of the Treasury’s Coronavirus Relief Fund Guidance as published in the Federal Register on January 15, 2021<sup>1</sup> (hereinafter “Treasury CRF Guidance”) and the U.S. Treasury Office of Inspector General.<sup>2</sup> Additionally, OSC relies on additional guidelines from the State of Colorado Governor’s Office.<sup>3</sup>

Based on this collective guidance two pathways are present for determining whether CRF can be applied to salary and other payroll related expenses for IHE instructional, academic support, and student services staff and faculty salaries:

Category #1: Payroll related to mitigating or responding to the COVID-19 public health emergency by public safety, public health, health care, human services, and similar employees

Category #2: Payroll as expenditures incurred to respond to second-order effects of the public health emergency

An explanation as to the use of each category to support use of CRF for applicable costs and related supporting federal guidance follows.

<sup>1</sup>Department of the Treasury, “Coronavirus Relief Fund program guidance,” Federal Register Vol. 86, No. 10 (Friday, January 15, 2021): 4184-4194, [https://home.treasury.gov/system/files/136/CRF-Guidance-Federal-Register\\_2021-00827.pdf](https://home.treasury.gov/system/files/136/CRF-Guidance-Federal-Register_2021-00827.pdf) (treasury.gov) (Hereinafter “Treasury CRF Guidance”).

<sup>2</sup>Department of the Treasury, “Coronavirus Relief Fund program guidance,” Federal Register Vol. 86, No. 10 (Friday, January 15, 2021): 4184-4194, [https://home.treasury.gov/system/files/136/CRF-Guidance-Federal-Register\\_2021-00827.pdf](https://home.treasury.gov/system/files/136/CRF-Guidance-Federal-Register_2021-00827.pdf) (treasury.gov) (Hereinafter “Treasury CRF Guidance”).

<sup>3</sup>[CRF Guidance for Higher Education Institutions](#), NOA Higher Education Addendum C - Funds Allocated by EO D 2020 070 Section II.A(8).

### **Category #1: Payroll Related to Mitigating or Responding to the COVID-19 Public Health Emergency**

Pursuant to the U.S. Treasury CRF can be used towards “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.”<sup>4</sup> “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.”<sup>5</sup> Instead, according to the U.S. Treasury “[t]he relevant unit of government should maintain documentation of the ‘substantially dedicated’ conclusion with respect to its employees.”<sup>6</sup> In the specific context of IHEs using CRF, U.S. Treasury states: “[i]f 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.”<sup>7</sup>

Within the above framework established by the U.S. Treasury, OSC interprets the covering of payroll costs for “similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency” to include Higher Education instructional, academic support, and student services staff and faculty. This interpretation is based on several provisions from Treasury CRF Guidance.

First, U.S. Treasury has provided, as an “administrative accommodation,” that a State, local, or tribal government may presume that such employees meet the substantially dedicated test, include “employees involved in providing medical and other health services” to schools.<sup>8</sup> With this presumption applied, work performed by such IHE 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.”<sup>9</sup>

This interpretation is echoed by the US Treasury Office of Inspector General (“U.S. Treasury OIG”) in its statement:

<sup>4</sup>Treasury CRF Guidance at 4184 (emphasis added).

<sup>5</sup>Treasury CRF Guidance, 4185.

<sup>6</sup>Id.

<sup>7</sup>Id at 4193.

<sup>8</sup>Id at 4185 (“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.”) (emphasis added).

<sup>9</sup>Id.

*“...the government is not required to perform an analysis or maintain documentation of the substantially dedicated conclusion for payroll expenses of public safety, public health, health care and human service employees. As indicated in Treasury’s Guidance, as an administrative accommodation, governments may presume that public health and public safety employees meet the substantially dedicated test, unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise...”*<sup>10</sup> Nonetheless, “[n]o documentation of the negative assurance of the chief executive (or equivalent) is required.”<sup>11</sup>

Second, in providing “examples of broad classes of employees whose payroll expenses would be eligible expenses under [CRF], U.S. Treasury includes the following:

*“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.”*<sup>12</sup>

Lastly, in instances when an employee’s full time hours are not held by an administrator to be substantially dedicated to mitigating or responding to the pandemic, Treasury guidance allows for the tracking hourly time spent by employees related to COVID-19 and to apply CRF on that basis, so long as done consistently within the relevant agency or department.<sup>13</sup> OSC interprets this allowance to reinforce the applicability of CRF for payroll costs of any personnel type so long as their services and related time can be shown to be dedicated to pandemic response and mitigation in full as in the case of being substantially dedicated to such or where only specific related service hours are documented.

## **Category #2: Payroll as Expenditures Incurred to Respond to Second-Order Effects of the Public Health Emergency (Economic Support)**

OSC interprets U.S. Treasury guidance on the use of CRF to also support the use of this funding for IHE payroll costs as a function of responding to the pandemic’s economic impacts and related recovery efforts. As a general frame of this interpretation, U.S. Treasury states that CRF coverable costs associated with “mitigating or responding to the COVID-19 public health emergency” specifically include “expenditures incurred to allow the State, territorial, local, or Tribal government to respond to second-order effects of the emergency, such as by providing economic support...”<sup>14</sup>

Included among the examples of costs for which CRF can be used in furtherance of economic support

<sup>10</sup>See, Department of the Treasury, OIG-CA-20-028R, “Department of the Treasury Office of Inspector General Coronavirus Relief Fund Frequently Asked Questions Related to Reporting and Recordkeeping (Revised),” March 2, 2021, FAQ Q #81.

<sup>11</sup>ID, FAQ #82b)

<sup>12</sup>Treasury CRF Guidance, 4188.

<sup>13</sup>Id at 4195

<sup>14</sup>Treasury CRF Guidance, 4183 (emphasis added).

are “[e]xpenditures related to a State, territorial, local, or Tribal government payroll support program.”<sup>15</sup> In particular, U.S. Treasury includes as an example of how payroll support is a function of economic support the following guidance:

*”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.”*<sup>16</sup>

Further support for the use of CRF for IHE payroll as a function of economic support is rooted in U.S. Treasury’s expansive holding that CRF can 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.”<sup>17</sup> Specific supporting examples from U.S. Treasury as to how this discretion can apply in an IHE setting includes costs associated with “faculty to develop online learning capabilities”<sup>18</sup> and “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.”<sup>19</sup>

#### **State of Colorado Governor’s Office CRF Guidance for Institutions of Higher Education**

Within the above U.S. Treasury CRF Guidance framework, and the discretion therein conferred to define what constitutes CRF funded necessary expenditures for economic support, the State of Colorado has additionally defined IHE payroll expenses for instructional, academic support, or student service staff and faculty who were hired prior to March 1, 2020, and who are “substantially dedicated” to responding to the second-order effects of COVID-19, as coverable by CRF on the basis of these positions supporting the maintenance of student enrollment, retention and credential completion.

As conveyed in the State’s relevant guidance, Colorado faces critical workforce shortages, and retaining and completing students is necessary to support the state’s recovery from the current economic downturn. Due to the COVID-19 pandemic, however, increasing enrollment and credential production has become more difficult than it would be in the absence of COVID-19. As such, to continue supporting Colorado’s economy, institutions must adapt and adjust services, including

<sup>15</sup> Id at 4184

<sup>16</sup> Id at 4185 (emphasis added).

<sup>17</sup> Id at 4189.

<sup>18</sup> Id at 4185.

<sup>19</sup> Id at 4188.

academic learning and student support, so that students have what they need to complete their credential and contribute to the state's workforce.

Therefore, instructional, academic support, and student services staff and faculty are considered to meet the definition of "substantially dedicated" to responding to the second-order effects of COVID-19, provided these employees deliver direct services, support and instruction to students, with the goal of credential completion to meet workforce needs and provide economic support to the state.

Within this framework, the following payroll expenses can be covered using CRF:

- 1) Payroll expenses such as maintenance of student employee compensation and employees who "deliver direct services, support and instruction to students, with the goal of credential completion to meet workforce needs and provide economic support to the state" are allowable.<sup>20</sup>
- 2) Payroll expenses for instruction, academic support, and student services staff and faculty who are substantially dedicated to "responding to the second order effects of COVID-19 by supporting the maintenance of student enrollment, retention and credential completion" is an allowable use of CRF funds.<sup>21</sup>
- 3) "CRF expenditures incurred to respond to second-order effects should be documented using distinct accounting code and must include demonstration of direct connection to an allowable use and the performance measures for enrollment and completion in the Notice of Award Addendum."<sup>22</sup>
- 4) The Governor's Office Guidance to part-time or full-time faculty, instructional staff, academic support, or student services staff that "contribute to the academic success of students on line or in-person." These expenses are allowable "if and only if" the recipient of CRF can show the education outcomes on which the funds are based. The outcomes can be compared to what the "estimated level of retention and completion would have been without using these funds for the allowable expenditure."<sup>23</sup>

For more information:

For additional information, OSC issued the Coronavirus Relief Fund CARES Act Payroll Eligibility Guidance providing step-by-step guidance for determining CRF payroll eligibility. It can be accessed at: <https://osc.colorado.gov/grants/osc-guidance-cares-act>

20CRF Guidance for Higher Education Institutions, p.3.

21Id.

22Id at p.1.

23Id at p.3.

