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November 5, 2020

Alderwoman Chantia Lewis
Common Council
City Hall, Room 205

Re: Request for Legal Opinion on Proposed CARES Act Funding
Resolution

Dear Alderwoman Lewis:

On November 3, 2020, you requested a formal opinion from the City Attorney's Office regarding a draft resolution that would direct funding from the Coronavirus Aid, Relief, and Economic Security (CARES) Act into four proposed programs. We are happy to respond.

Specifically, you asked whether your draft resolution directing the City of Milwaukee Department of Administration (DOA) – Community Development Grants Administration (CDGA) to use Community Development Block Grant – CARES Act funding for the following proposed programs is legally appropriate:

1. Development of a small business start-up fund to assist start-up businesses to become COVID-19 compliant by purchasing personal protective equipment, safety barriers and shields, and other mitigating measures;
2. A stipend for parents, guardians, and caregivers to assist with educational expenses with proof of the child's enrollment and attendance;
3. A stipend for senior citizens to obtain access to internet service with proof of no internet service; and
4. Quarantine pay for workers whose employers do not offer quarantine pay.

In a legal opinion dated May 19, 2020, this office generally addressed permissible uses of the Coronavirus Relief Fund (CRF) pursuant to the CARES Act. That opinion has been attached for your reference.

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.

42 U.S.C. § 801(d). Because the CARES Act affords significant discretion to state, local, and tribal governments to spend CRF money as they deem appropriate, this opinion will only address the four proposed programs.

First, you asked about the development of a small business start-up fund to assist start-up businesses in becoming COVID-19 compliant by purchasing personal protective equipment, safety barriers and shields, and other mitigating measures.

The CRF Guidance provides that the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures are eligible expenditures.¹ Governments have discretion to determine what payments are necessary. While the Guidance focuses on existing small businesses that have already experienced an interruption in their operations, assisting new businesses in becoming COVID-19 compliant would also be a permissible use of CRF funds. Such payments can be viewed as necessary expenditures incurred due to the COVID-19 public health emergency to improve mitigation measures. It should be noted, however, that performance or delivery under this proposed program must occur during the covered period. Thus, a start-up fund for new small businesses would be a permissible use of CRF funds only if the applicable costs are incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

Next, you asked if CRF expenditures can be used to provide a stipend for parents, guardians, and/or caregivers to assist with educational expenses upon proof of a child's enrollment and attendance in a Milwaukee Public School or private K-12 school.

Similarly, you asked if CRF expenditures can be used to provide a stipend for senior citizens to obtain access to internet service and/or devices to communicate with family, doctors, and/or caregivers from home, decreasing their exposure risk.

The CARES Act specifies that expenditures using CRF 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

¹ <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked-Questions.pdf>

officials responsible for spending Fund payments.”² On this basis, each proposed stipend program would be a permissible use of CRF funds, as previously unbudgeted costs of necessary expenditures incurred due to the COVID-19 public health emergency.

Lastly, you asked if CRF expenditures can be used to provide “quarantine pay” for workers whose employers do not offer paid time off for employees who are required to quarantine due to a positive COVID-19 test or contact. It is important to note that relief to employees directly impacted by COVID-19 is provided by the Families First Coronavirus Response Act (FFCRA), which requires certain employers to provide their employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19.

Generally, the FFCRA provides that employers with fewer than 500 employees must provide the following benefits to all employees:

Two weeks (up to 80 hours) of paid sick leave at the employee’s regular rate of pay where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or

Two weeks (up to 80 hours) of paid sick leave at two-thirds the employee’s regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19.³

Pub. L. No. 116-127. Because relief to employees who must be absent from work due to COVID-19 has been specifically contemplated by the FFCRA, the use of CRF expenditures for this same purpose would be inappropriate. Unemployment insurance costs related to the COVID-19 public health emergency are permissible only if such costs will not be reimbursed by the federal government pursuant to the CARES Act or otherwise.⁴

CONCLUSION

In sum, the CARES Act provides that a State, local, or tribal government may use payments from the CRF to cover previously unbudgeted costs of necessary expenditures incurred due to the COVID-19 public health emergency during the covered period.⁵ As expenses of

² <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>

³ <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave#>

⁴ <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>

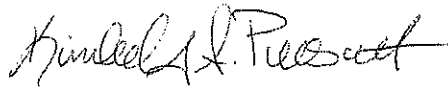
⁵ *Id.*

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actions taken to facilitate compliance with COVID-19-related public health measures the first three proposed programs are permissible, as long as the required criteria are met. However, the final proposed program would not be an appropriate use of CRF payments because an alternative reimbursement process has already been created, pursuant to the Families First Coronavirus Response Act.

Very truly yours,


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City Attorney


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Assistant City Attorney

c: Mayor Tom Barrett
Budget Director Dennis Yaccarino

[enclosure]

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