



# IDAHO FREEDOM FOUNDATION

To Whom It May Concern:

The following summary pertains to guidance issued by the United States Department of the Treasury on **September 2, 2020**, regarding permissible uses of CARES Act funds, specifically whether such funds may be expended in keeping with Gov. Brad Little's Public Safety Grant Initiative.

In March of this year, Congress passed the CARES Act in an attempt to alleviate the economic fallout of COVID-19. Idaho received \$1.25 billion in federal dollars as a result. Governor Little has since earmarked roughly \$200 million of those funds "to cover local public safety personnel salaries, giving cities and counties the opportunity to pass those savings on to property taxpayers."<sup>1</sup>

Under Little's plan, if a locality certifies on its property tax levy that it will freeze property tax collections for fiscal year 2021 at this year's level of collection, it will receive a one-time disbursement of CARES Act funds. These funds will be equal to the total payroll costs of all local fire, police, and EMS services. Further, localities would not be able to reserve forgone taxes, but would still be permitted to reflect the value of new construction on tax collections.<sup>2</sup>

To summarize: Since the State of Idaho would be covering local emergency workers' payroll costs, localities would no longer have to collect those funds from taxpayers. Those savings could then be passed directly to Idahoans in the form of property tax relief.

Governor Little announced this plan June 8.<sup>3</sup> However, in early July, several county prosecutors signed onto a letter to Governor Little questioning the legality of his plan under the CARES Act. Since that time, some counties and cities have been reluctant to participate in the plan.

Their concern? If they take CARES Act funds under Gov. Little's plan and forgo property tax increases, they might one day suddenly be required to remit those funds, after forgoing allowable property tax increases.

Guidance issued by the U.S. Treasury on September 2, 2020 addresses those concerns.

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<sup>1</sup><https://gov.idaho.gov/pressrelease/idaho-leverages-federal-relief-funds-to-cover-public-safety-costs-gives-local-governments-opportunity-to-transfer-up-to-200-million-in-savings-to-property-taxpayers/>

<sup>2</sup><https://gov.idaho.gov/pressrelease/up-to-200-million-approved-for-new-program-to-support-public-safety-pass-savings-onto-property-taxpayers/>

<sup>3</sup><https://gov.idaho.gov/pressrelease/idaho-leverages-federal-relief-funds-to-cover-public-safety-costs-gives-local-governments-opportunity-to-transfer-up-to-200-million-in-savings-to-property-taxpayers/>

Two specific concerns are that the governor’s plan is not in keeping with permissible uses for CARES Act funds, and further, that his plan would constitute “revenue replacement,” as prohibited by the U.S. Treasury guidelines.

Updated Treasury guidance states, “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.”<sup>4</sup> The guidance then proceeds to clarify that, “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.”<sup>5</sup>

In other words, Treasury guidance expressly permits the use of CARES Act funds to cover payroll costs for public health and public safety employees, in keeping with Governor Little’s initiative.

Do such payments nevertheless constitute “revenue replacement” for “impacted property owners with the payment of their property taxes,”<sup>6</sup> as prohibited by Treasury guidelines? In short, no.

While such payments *are* prohibited, under the Governor’s plan, CARES Act funds would specifically *not* be replacing any revenue. Rather, when funds are distributed to localities for permissible CARES Act uses — here, emergency service payroll costs — localities would then simply *forgo* collections from taxpayers, in this case, property taxes, rather than replacing collections or using them to “fill shortfalls.”<sup>7</sup>

Yet another reason some localities gave for not taking CARES Act funds was that the *conditioning* of funds set forth in Little’s plan go against Treasury guidance for disbursement. Specifically, allegations have been made that the transfer of CARES Act funds by the State to cities and counties to cover emergency services payrolls, but only as long as localities do not raise property taxes, is an impermissible restriction on dipping such funds.

However, in response to whether or not a state may “impose restrictions on transfers of funds to local governments,”<sup>8</sup> Treasury guidance states “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.”<sup>9</sup>

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<sup>4</sup> <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked-Questions.pdf>, Question 2, Page 1.

<sup>5</sup> <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked-Questions.pdf>, Question 2, Page 1.

<sup>6</sup> <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked-Questions.pdf>, Question 26, Page 5.

<sup>7</sup> <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>, Page 1

<sup>8</sup> <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked-Questions.pdf>, Question 34, Page 7.

<sup>9</sup> <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked-Questions.pdf>, Question 34, Page 7.

Therefore, compliance with Treasury guidance necessitates understanding the requirements of section 601(d).

Newly updated guidance states, “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.”<sup>10</sup>

Breaking that down further, in keeping with 601(d) requirements as to what constitutes “necessary expenditures,” Treasury guidance states, “*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” (emphasis added).<sup>11</sup>

Accordingly, Treasury guidance allows CARES Act funds to be used for “necessary expenditures,” which are costs left to the “determination” of local governments.

There has also been a great deal of trepidation that 601(d), as stated above, requires funds be used to “cover previously unbudgeted costs...incurred due to the COVID-19 public health emergency during the covered period.” The thought was that this requirement of 601(d) might disallow using CARES Act funds in the manner prescribed by the Governor, due to the workings of current budgetary timeframes.

However, as stated in the “Whereas” section of Governor Little’s executive order 2020-15, issued August 6, 2020, the U.S. Treasury has been quoted in numerous outlets that the presumption of the existence of COVID-19 efforts will exist “whether or not the payroll costs were accounted for in the budget most recently approved as of March 27, 2020.”<sup>12</sup>

That thinking has been confirmed by newly issued Treasury guidance entitled “Use of Funds to Cover Payroll and Benefits of Public Employees.”<sup>13</sup>

This newly issued guidance states, “government[s] 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 30, 2020” (emphasis added).<sup>14</sup>

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<sup>10</sup><https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>, Page 2.

<sup>11</sup> <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked-Questions.pdf>, Question 1, Page 1.

<sup>12</sup> <https://gov.idaho.gov/wp-content/uploads/sites/74/2020/08/eo-2020-15.pdf>, “Whereas” 6, Page 1.

<sup>13</sup><https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>, Page 5.

<sup>14</sup><https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>, Page 6.

The CARES Act was passed to provide “fast and direct economic assistance for American workers and families.”<sup>15</sup> The Governor’s Public Safety Grant Initiative does this by safeguarding emergency worker payroll costs, which also benefits taxpayers with decreased property taxes.

To date, no other state has set forth a plan under the CARES Act quite like Governor Little’s plan. It’s understandable, therefore, that such a plan would be — and even should be — met with a healthy dose of skepticism and investigation.

Given newly updated Treasury guidance, however, there should be little concern over either the legality of Little’s plan or the intent of Treasury to allow for broad latitude with regard to state CARES Act expenditures.



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<sup>15</sup><https://home.treasury.gov/policy-issues/cares>