STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
Tony Evers, Governor
Kathy Blumenfeld, Secretary
Paul Hammer, Deputy Secretary

VIA EMAIL

January 23, 2024

State Senator Eric Wimberger
Co-chair, Joint Legislative Audit Committee
104 South, State Capitol
P.O. Box 7882
Madison, WI 53707-7882

State Representative Robert Wittke
Co-chair, Joint Legislative Audit Committee
18 West, State Capitol
P.O. Box 8953
Madison, Wisconsin 53708-8953

RE: Recording of Interest Earnings

Dear Co-Chairs Wimberger and Wittke:

I am writing to supplement the Department of Administration's (DOA) ongoing dialog with the Joint Legislative Audit Committee (Committee) and the Legislative Audit Bureau (LAB) regarding the recording of interest earned on Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) funds received from the federal government.

In my January 12 letter to the Committee, I described both DOA's concern that the U.S. Department of Treasury (Treasury) intends to exercise oversight on the use of the interest earnings and DOA's ongoing efforts to obtain clarification from Treasury on that issue after learning the Legislative Audit Bureau's position in December. Given the importance of resolving this matter, DOA's legal analysis has continued since that letter and, thus far, confirms DOA's position. To facilitate a productive discussion at the Committee's upcoming hearing, I will explain DOA's position in light of that additional analysis.

Section 20.505(1)(mb), Wis. Stats., dictates what funds must be recorded in DOA's federal aid appropriation. The statute provides:

> There is appropriated to the department of administration for the following programs: . . . *Federal aid.* All moneys received from the federal

> government not otherwise appropriated under this section, as authorized by the governor under s. 16.54, to carry out the purposes for which received.

In Report 23-26, LAB asserts that interest earned on CSLFRF funds does not meet the requirements of s. 20.505(1)(mb) because "the CSLFRF funding was not received from the federal government and there are no program restrictions on its use." (Report at 14.) DOA believes federal and state law supports a contrary position.

First, the interest earnings were "received from the federal government" because, as a matter of law, those interest earnings were originally the property of the federal government and could only be used by the state after receiving permission from the federal government. Federal law exclusively controls whether states may retain interest earned on federal grant award funds. The federal Cash Management Improvement Act (CMIA), 31 U.S.C. § 6503(c)(1), requires states to pay the federal government interest earned on funds advanced to them. The CMIA requires Treasury to issue regulations implementing the statute and permits Treasury to waive the interest payment requirement where it would be "inconsistent with program purposes." The Treasury regulations implementing the CMIA's interest earnings provisions are at 31 C.F.R. Part 205. The regulations provide: "State interest liability accrues from the day Federal funds are credited to a State account to the day the State pays out the Federal funds for Federal assistance program purposes." 31 C.F.R. § 205.15(a).

Taken together, the CMIA and the Treasury regulation make clear that it is the federal government, not the state, that has sole control over whether and how states may use interest earned on advances of federal funds. In this case, Treasury decided to waive the interest remittance requirement of 31 C.F.R. Part 205, but the state had no right to use those funds until that waiver occurred, after which those funds were, as a legal matter, "received" by the state from the federal government.

Second, DOA has been unable to identify the basis for LAB's assumption that the federal government must place some form of "program restrictions" on the state's use of interest earnings for them to be recorded in DOA's federal aid appropriation. The phrase "program restrictions" does not appear in s. 20.505(1)(mb). Instead, the statute uses the phrase "to carry out the purposes for which received," which is plainly a limitation on DOA's *use* of those funds, and not a precondition to the funds being recorded in the federal aid appropriation. For example, LAB appears to assume that Treasury's purpose is to allow states to use the earned interest in whatever manner the states deem most helpful to their residents. While that might be a very broad purpose, it is still a purpose, and DOA would be required to use the funds consistent with that purpose. Nothing in the plain language of s. 20.505(1)(mb) suggests the federal government must provide some narrower form of "purpose."

DOA's reading of the "purpose" portion of s. 20.505(1)(mb) is consistent with the structure and plain meaning of other DOA appropriation statutes. For example, s. 20.505(1)(n) dictates which funds must be recorded in DOA's "Federal aid; local assistance" appropriation. It states: "All moneys received from the federal government for local assistance related to s. 16.27, as authorized by the governor under s. 16.54, *for the purposes of providing local assistance*." (Emphasis added.) Hypothetically, if DOA were to

use funds in this appropriation to provide support for small businesses instead of local assistance, LAB would likely contend that DOA violated the statute because it misused the federal funds, but it would not argue that the federal funds should have been placed in a different appropriation. DOA does not see a legal basis for a different result here.

I hope this information is helpful to your consideration of this issue. I look forward to discussing this matter further with the Committee at Wednesday's hearing.

Sincerely,

Kathy Blumenfeld
Secretary