
Wisconsin Legislative Council

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Director



TO: SENATOR ERIC WIMBERGER AND REPRESENTATIVE ROBERT WITTKE, CO-CHAIRS,
JOINT LEGISLATIVE AUDIT COMMITTEE

FROM: Melissa Schmidt, Principal Attorney

RE: Interest Earnings on Advanced Coronavirus State and Local Fiscal Recovery Funds Payments

DATE: January 22, 2024

You have asked how the interest earnings on \$3 billion in advanced federal Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) payments must be treated under state law. Specifically, you have asked whether these interest earnings must be treated as general purpose revenues (GPR) and thus deposited into the general fund, pursuant to [s. 20.906 \(1\), Stats.](#), or whether these interest earnings may be recorded in the Department of Administration's (DOA's) federal aid program revenue (PR-F) appropriation, established under [s. 20.505 \(1\) \(mb\), Stats.](#)

Between May 2021 and June 2022, Wisconsin received \$3 billion in federal CSLFRF moneys. The state received \$1.5 billion in May 2021, \$1.3 billion in May 2022, and \$205.8 million in June 2022. All of these payments were distributed in advance of their planned expenditure and were deposited into the state investment fund.¹ As of November 30, 2023, the state had earned a total of \$97.2 million in interest earnings since the CSLFRF moneys were first advanced by the federal government. DOA recorded these interest earnings in the department's PR-F appropriation established under s. 20.505 (1) (mb), Stats., and is continuing to do so. [Legislative Audit Bureau (LAB), [State of Wisconsin FY 2022-23 Financial Statements](#), Audit Report 23-26 (Dec. 2023), 13-14, 32-33.²]

In the absence of any federal requirement for how the interest earnings on CSLFRF payments must be spent, and because this interest is not funding "received from the federal government" as provided under s. 20.505 (1) (mb), Stats., the interest must be recorded as GPR and deposited into the general fund, pursuant to s. 20.906 (1), Stats.

FEDERAL REGULATIONS APPLICABLE TO INTEREST EARNINGS ON ADVANCED CSLFRF PAYMENTS

Since the beginning of the CSLFRF program, the U.S. Department of Treasury (Treasury) has consistently advised that recipients, including states, may place these advance payments into an

¹ The state investment fund is the "state's short term pool to invest excess cash balances, until such time as it is needed for expenditure." [LAB, Audit Report 23-26, 13.] More information about the state investment fund is available on the State of Wisconsin Investment Board's website at: <https://www.swib.state.wi.us/state-investment-fund/>.

² More information related to this audit report is available on LAB's website at: <https://legis.wisconsin.gov/LAB/2023/eSummary23-26>.

interest-bearing account. The Treasury has also consistently advised that federal law does not limit the use of any interest earned for eligible uses applicable to the CSLFRF payments. This section provides an overview of this guidance.

Authorizing Legislation

On March 11, 2021, the federal [American Rescue Plan Act](#) (ARPA) was signed into law. Included in ARPA was the creation of both the Coronavirus state fiscal recovery fund and the Coronavirus local fiscal recovery fund.³ [42 U.S.C. ss. 802 and 803.] Together, these two funds comprise the CSLFRF program. Pursuant to ARPA, the Treasury conducts the monitoring and oversight of the receipt, disbursement, and use of the CSLFRF funds. [42 U.S.C. s. 801 (f) (1) (2021).]

Very generally, ARPA appropriated CSLFRF to cover costs incurred by states, tribal governments, and territories and local governments by December 31, 2024. The funds are “intended to provide support to State, territorial, local, and Tribal governments in responding to the economic and public health impacts of COVID-19 and in their efforts to contain impacts on their communities.”⁴

Among the many requirements, ARPA required the Treasury to split payments made to local governments into two tranches (installments). ARPA also authorized the Treasury to withhold up to 50 percent of the payment allocated to each state and territory for a period of up to 12 months from the date the money was originally allocated. [42 U.S.C. ss. 802 (b) (6) (A) (ii) and 803 (b) (7) (2021).]

Treasury Regulations and Guidance

On May 17, 2021, a few months after ARPA was signed into law, the Treasury published its [2021 interim final rule](#). This interim rule described both the eligible and ineligible uses of CSLFRF and other program requirements.⁵ The 2021 interim rule specifically provided that the CSLFRF program did not require interest earnings on CSLFRF to be paid back to the Treasury as normally required under federal law. Rather, the Treasury stated in the 2021 interim rule that the CSLFRF program was exempt from this requirement, which is found in the federal Cash Management Improvement Act (CMIA). Very generally, CMIA, states and federal agencies are required to minimize the time elapsing between the transfer of federal funds; one way CMIA accomplishes this is by prohibiting states from retaining any interest that accrues on federal assistance payments before the state expends it.⁶ [31 C.F.R. ss. 205.11 and 205.15.] However, in footnote 176 of the 2021 interim rule, the Treasury exempted CSLFRF from this CMIA requirement, stating:

With respect to Federal financial assistance more generally, States are subject to the requirements of the [CMIA], under which Federal funds are drawn upon **only on an as needed basis and States are required to remit interest on unused balances to Treasury**. Given the statutory

³ More information about the CSLFRF program and its history is available on the Treasury’s website at: <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>.

⁴ Treasury, [Compliance and Reporting Guidance: CSLFRF](#) (Dec 14, 2023). A complete listing of the authorized uses are codified in 42 U.S.C. ss. 802 (c) (1) and 803 (c) (1) (2021).

⁵ Examples of the types of expenditures for which CSLFRF may be used pursuant to this 2021 interim rule were provided in the Treasury’s explainer document, available at: <https://home.treasury.gov/system/files/136/IFR-Explainer.pdf>.

⁶ For more information about CMIA, see the Treasury, Bureau of the Fiscal Service, available at: <https://fiscal.treasury.gov/cmia/resources-cmia-statute.html>.

requirement for Treasury to make payments to States within a certain period, **these requirements of the CMIA and Treasury's implementing regulations at 31 CFR part 205 will not apply to payments from [CSLFRF]**. Providing funding in two tranches to the majority of States reflects, to the maximum extent permitted by section 602 of the Act, the general principles of Federal cash management and stewardship of Federal funding, yet will be much less restrictive than the usual requirements to which States are subject.

[CSLFRF 2021 Interim Rule, 86 Fed. Reg. 2678, [26812](#) (May 17, 2021) (to be codified at 31 C.F.R. Part 35) (emphasis added).]

On January 27, 2022, the Treasury published its [2022 final rule](#), which went into effect on April 1, 2022. The 2022 final rule retained this exemption, which had the effect of continuing to allow states to retain interest earnings on advanced CSLFRF payments.⁷ In an answer to frequently asked questions, the Treasury stated the following:

10.1. Are recipients required to remit interest earned on [CSLFRF] payments made by Treasury?

No. [CSLFRF] payments made by Treasury to states, territories, and the District of Columbia are not subject to the requirement of the [CMIA] and Treasury's implementing regulations at 31 CFR Part 205 to remit interest to Treasury. [CSLFRF] payments made by Treasury to local governments and Tribes are not subject to the [CMIA requirements] to maintain [CSLFRF] award funds in an interest-bearing account and remit interest earned above \$500 on such payments to Treasury. Moreover, interest earned on [CSLFRF] award funds is not subject to program restrictions....

[\[2022 CSLFRF Final Rule: Frequently Asked Questions\]](#), (updated Nov. 2023), 46.]

At the end of 2022, additional flexibility was given to recipients of CSLFRF payments through the enactment of the federal [Consolidated Appropriations Act of 2023](#).⁸ Very generally, this act added flexibility to allow recipients to use CSLFRF moneys to respond to natural disasters, build critical infrastructure, and support community development.⁹ The Consolidated Appropriations Act of 2023 did not change the ability for states to retain interest earned on advanced CSLFRF payments and use these interest earnings for purposes other than CSLFRF eligible uses. The Treasury published new guidance under its 2023 interim final rule, which is presently still in effect and also does not affect the Treasury's previous regulation and guidance on interest earnings from advanced CSLFRF payments.¹⁰

Furthermore, in the most recent CSLFRF Compliance and Reporting Guide, prepared by the Treasury to provide guidance on how to comply with both the 2022 final rule and 2023 interim final rule, the

⁷ CSLFRF 2022 Final Rule, 87 Fed. Reg. 4338, [4432](#) (Jan. 27, 2022) (to be codified at 31 C.F.R. Part 35).

⁸ Consolidated Appropriations Act of 2023, P.L. 117-328, Division LL, 42 U.S.C. ss. 801-803.

⁹ Treasury, [CSLFRF: Overview of the 2023 Interim Final Rule](#) (Aug. 2023), p. 2.

¹⁰ [CSLFRF 2023 Interim Rule](#), 88 Fed. Reg. 64986 (Sep. 20, 2023).

Treasury reiterated that CSLFRF moneys are neither subject to CMIA nor the Treasury's implementing regulations, stating:

[CSLFRF] payments made to recipients are not subject to the requirements of the [CMIA] and Treasury's implementing regulations at 31 CFR Part 205 or 2 CFR 200.305(b)(8)-(9).

As such, recipients can place funds in interest-bearing accounts, do not need to remit interest to Treasury, and are not limited to using that interest for eligible uses under the [CSLFRF] award.

[Treasury, CSLFRF Compliance and Reporting Guidance, 10 (emphasis added).]

STATE LAW APPLICABLE TO INTEREST EARNINGS ON ADVANCED CSLFRF PAYMENTS

As previously mentioned, the CSLFRF payments received by the state were distributed in advance of their expenditure and were deposited into the state investment fund and then placed in the PR-F appropriation 20.505 (1) (mb), Stats.¹¹ The section below provides an overview of state law applicable the treatment of interest earnings on advanced CSLFRF payments.

Definitions

There are at least three state definitions related to appropriations and budget management that are relevant to understanding how state law treats interest earnings on advanced CSLFRF payments. These definitions include: (1) GPR; (2) program revenues; and (3) federal revenues.¹²

What constitutes GPR in Wisconsin is more than just general taxes; it also includes miscellaneous receipts and revenues that are collected by state agencies. GPR is also available for appropriation by the Legislature. The statutes provide that GPR consists of the following:

[G]eneral taxes, miscellaneous receipts and revenues collected by state agencies which are paid into a specific fund, lose their identity, and are then available for appropriation by the legislature.

[\[s. 20.001 \(2\) \(a\), Stats.\]](#)

The statutes specify that "program revenues" (PR) consist of the following:

[R]evenues which are paid into the general fund and are credited by law to an appropriation to finance a specified program or state agency. In this chapter, "program revenues" refers to program revenues in the general fund.... They shall be deposited pursuant to s. 20.906.

[\[s. 20.001 \(2\) \(b\), Stats.\]](#)

¹¹ LAB, [State of Wisconsin FY 2022-23 Financial Statements](#), Audit Report 23-26 (Dec. 2023), 13.

¹² See also: Legislative Fiscal Bureau, [State Budget Process](#), Informational Paper 78 (Jan. 2023), 33-34.

Lastly, moneys received from the federal government are categorized as “federal revenues.” Types of revenue, if from the federal government, are labeled with the addition of “-F” (e.g., PR-F). Federal revenues are defined to mean the following:

[M]oneys received from the federal government.... Federal revenues may be deposited as either program revenues (PR) in the general fund, or as segregated revenues (SEG) in a segregated fund....

[[s. 20.001 \(2\) \(e\), Stats.](#)]

Requirement for Moneys with No Specified Purposes

Very generally, state law directs where moneys collected or received by the state must be placed. Unless there is a law providing otherwise, GPR is credited to the general fund. Specifically, s. 20.906 (1), Stats., requires the following:

Unless otherwise provided by law, all moneys collected or received by any state agency for or in behalf of the state or which are required by law to be turned into the state treasury shall be deposited in or transmitted to the state treasury at least once a week and also at other times as required by the governor or the secretary of administration and shall be accompanied by a statement in such form as the secretary of administration may prescribe showing the amount of such collection and from whom and for what purpose or on what account the same was received. All moneys paid into the treasury **shall be credited to the general purpose revenues of the general fund unless otherwise specifically provided by law.** [Emphasis added.]

DISCUSSION

As previously mentioned, the CSLFRF payments received by the state were distributed in advance of their expenditure and were deposited into the state investment fund and then placed in the PR-F appropriation under s. 20.505 (1) (mb), Stats. DOA also recorded the interest earned from these moneys in this same appropriation and continues to do so. [LAB, Audit Report 23-26, 14, 32-33.] However, these moneys are not federal funds received by the state. Rather, they are interest earned on the principal amount of the federal advanced CSLFRF payments.¹³

As discussed above, the federal government has permitted states to earn interest on CSLFRF payments and has not placed any requirements on states as to how these moneys must be spent. However, all moneys received or earned by the state must be recorded and deposited as provided under state law. Under state law, the appropriation that DOA reported as applicable for the CSLFRF payments is s. 20.505 (1) (mb), Stats. This appropriation is a PR-F appropriation, created specifically for 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.” [s. 20.505 (1) (mb), Stats.] This appropriation does not appear to contemplate the inclusion the interest earnings on the advanced

¹³ In this context, the general dictionary definition of “interest” means “money that you earn from keeping your money in an account in a bank or other financial organization.” [Cambridge Dictionary, (January 19, 2023), available at: <https://dictionary.cambridge.org/us/dictionary/english/interest>.]

CSLFRF payments. These earnings are not “from the federal government.” There is also no program restriction on the interest, thus there appears to be no specified “purposes for which it is received.”

When there is no provision specifically providing for the appropriation of GPR, including miscellaneous receipts like interest earnings on advanced CSLFRF payments, the state law provides that moneys must be deposited into the general fund, lose their identity, and are then eligible for the Legislature to appropriate. [ss. 20.001 (2) (a) and 20.906 (1), Stats.]

Please let me know if I can provide any further assistance.

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