

MINUTES
(Subject to Approval by the Committee)
Finance-Appropriations Working Group
Tuesday, August 11, 2020
1:00 P.M.
EW42
Boise, Idaho

CoChair Youngblood called the meeting to order at 1:00 p.m.; a verbal roll call was taken by the committee secretary.

Members attending in person: CoChairs Senator Steve Bair and Representative Rick Youngblood; Members attending by videoconference: Senator Dan Johnson, Representative Wendy Horman, Senator Abby Lee, Representative Neil Anderson, Senator Jeff Agenbroad, Representative Paul Amador, Senator Van Burtenshaw, Senator Carl Crabtree, Representative Clark Kauffman, Senator Scott Grow, Representative Britt Raybould, Representative Scott Syme, Senator Jim Woodward, Representative Caroline Nilsson Troy, Senator Mark Nye, and Representative Sally Toone. Members excused: Senator Janie Ward-Engelking, and Representative Melissa Wintrow. Legislative Services (LSO) staff present: Jennifer Kish, Lindsey Youtz, and Soren Jacobsen

Other Attendees: Paul Headlee, LSO Budget & Policy; Alex Adams, Division of Financial Management; Carrie Maulin, House of Representatives; Jared Tatro, LSO Budget & Policy; Amber Christofferson, Division of Financial Management.

CoChair Bair and CoChair Youngblood welcomed the committee, thanked LSO staff for their assistance, and provided guidelines for conducting the meeting.

Note: Presentations, handouts, and other materials provided or referenced by the presenters are posted to the [Idaho Legislature website](#); and copies of those are also on file at the Legislative Services Office in the State Capitol.

Review of the Non-Cognizable Funds Process

CoChair Youngblood introduced Paul Headlee, Division Manager of the Budget and Policy Office for LSO, as the first of two presenters for the meeting. Mr. Paul Headlee introduced his four [presentation](#) topics which covers:

- Adjustments to Fixed Budgets
- The Non-Cognizable Statute /Process
- Non-Cognizable Expenditures
- Recent CARES Act Non-Cognizable Funds

He explained that [Idaho Code §67-3516](#) allows certain limited exceptions that are authorized in statute to Idaho's fixed budget restrictions. Non-cognizable funding is one of those six exceptions. Mr. Headlee explained that §67-3516(2) defines a three-part test to allow for spending of non-cognizable funding. The attorney general further clarified these through legal guidance in 1992 with a definition of non-state funds listed as the availability of non-state funds, which was not known at time of appropriations, and which requires a two-part approval process. He further detailed the two-part approval process as residing with the Division of Financial Management and the Idaho Board of Examiners as detailed in [letter](#) from July 30, 2013. Mr. Headlee walked the committee through the steps of the Non-Cognizable Funds Process using a flowchart.

Representative Amador asked about the application of the non-cognizable process to higher education institutions. Mr. Headlee confirmed that it does. Representative Horman asked for clarification about the approval process. Mr. Headlee clarified that the administrator of the Division

of Statewide Accounting within the Controllars Office and the Board of Examiners were the approval authorities for these types of funds.

Mr. Headlee reviewed the amount of non-cognizable expenditures approved and by function area from 2008-2019. He noted that the average amount of non-cognizable funding per year is \$40 million with the exception of 2009 and 2016 which are outliers, and that this funding is not always completely spent. He then presented the dollar amounts of non-cognizable approvals, revisions, encumbrances, and expenditures for fiscal year 2020 specifically as they relate the monies received as part of the CARES Act. He noted that a large amount of the fiscal year 2020 funds were reverted but would be reauthorized as non-cognizable funding to apply to fiscal year 2021. He further explained the delegated approval process and reported that Idaho had received \$1.25 billion in the Coronavirus Relief Fund (CRF).

Mr. Headlee reported that to date the allocations were as follows:

- State Level, \$658 million
- Local/Tribal, \$282 million
- Small Business Economic Support, \$310 million

Mr. Headlee reported that there was also funding available at the state, local, and tribal level through other divisions of the CARES Act which included:

- \$125 million from the US Department of Education
- \$102 million from US Health & Human Services
- \$105 million from US Department of Transportation
- And additional funding from various federal agencies including the Department of Labor, Housing and Urban Development, the Justice Department, and USDA

Representative Syme asked for clarification on the three-part approval process. Mr. Headlee explained that any funds falling outside of those specific definitions listed on his were ineligible for approval as non-cognizable funding. Representative Horman asked for confirmation regarding whether these types of fund were contingent upon declared emergencies. Mr. Headlee confirmed that funds are not tied or defined by whether an emergency is declared either at the state or federal level. Alex Adams, administrator of the Division of Financial also confirmed that a declaration of emergency has no bearing of designation or approval of non-cognizable funds.

Senator Agenbroad pointed out that there are two organizations involved in the approval process and asked what the communication and relationship was between them regarding how appropriations are approved. Mr. Headlee clarified that approvals from both groups are needed as opposed to being either-or. Senator Agenbroad asked for specifics regarding the Board of Examiners and their designee in this process. Mr. Adams explained that the designee, which is the Division of Purchasing, is more often used with the exception of the initial approval of total funding received from the CARES Act, which was voted on and approved by the whole Board of Examiners. Representative Amador asked delegation authority within the statute. Mr. Headlee responded that the Board of Examiners can develop their own internal rules and processes as long as they are consistent with law as written in [§67-2024](#). Representative Amador asked whether anyone was aware of what other processes or systems other states were using to distribute or allocate this funding and whether there was a dollar limit or threshold requirement for legislative approval. Mr. Headlee replied that he wasn't aware of anything, but that research could be done to answer that question.

Senator Lee remarked that she appreciated the differentiation of non-cognizable funding from supplemental funds. She asked whether in previous years where non-cognizable funds were approved during the interim, was there any disagreement by legislature when they returned to session, with how they were disbursed or used. Mr. Headlee remarked that funds are only available as non-cognizable funds for one year and that the legislature has the discretion to change that

appropriation if the legislature returned to session and the funds were approved for multiple fiscal years. He didn't not recall any specific previous occurrences. Senator Lee asked what discussions regarding such funding was anticipated for the upcoming January session. Mr. Headlee responded that CARES Act funding was only available to be spent through December 30, 2020 unless the federal government extended that deadline or provided additional funding. Representative Horman asked if knowing that Congress was working on potential future stimulus money, if that would make the funding recognizable. She asked for clarification on the definition of recognizable. Mr. Headlee replied that he believes the key part of the definition is "at the time the appropriation is made". Representative Horman remarked that she would like further research and evaluation done regarding the Board of Examiners' role in accordance with the law as it's currently written.

CoChair Youngblood reported that he and Representative Kauffman attended the Council of State Governments West Conference. He shared that the CARES Act funding was the main topic of discussion and that states varied widely in their approach to funding distribution rules and processes.

The Non-Cognizable Process and the CARES Act

CoChair Youngblood introduced Alex Adams, Administrator of Division of Financial Management (DFM), as the second presenter. Mr. Adams reported that his [presentation](#) would cover DFM's approval process regarding the non-cognizable funds received through the CARES Act and the Coronavirus Relief Fund, as well as some practical considerations. He explained that the CARES Act was signed into law on March 27, 2020. It provided more than \$2 trillion in relief to individuals, businesses, state, local, tribal, and federal agencies, and industry sectors impacted by COVID-19. He mentioned that there were also dozens of passthrough programs to non-state entities, such as Idaho Housing and Finance Association. He presented the previous process guidance as designed by Wayne Hammond in 2011. He noted the tightening of the approval process, with multiple check and balances, and that this system was not one that was streamlined to reduce requirements.

He defined the process steps as:

- Initial step differs for passthrough funds (grant request form) vs. Coronavirus Relief Fund allocation (CFAC request and approval)
- If approved, the agency may enter the non-cognizable batch into STARS or the statewide accounting system for DFM's review and release and Statewide Accounting's final release
- Spending is reported in Transparent Idaho
- Agency reflects non-cognizable funds in its JFAC budget submission

Mr. Adams noted the difference between approval of non-cognizable passthrough funds used for grants versus those allocated from the Coronavirus Relief Fund (CFA). He then walked the committee through the approval process regarding the forms on the DFM website with screenshots using a Department of Transportation grant as an example. He emphasized that passthrough grants will have oversight through state agencies, DFM, and the Division of Statewide Accounting. He also noted the grant requirement for exit strategies. One nuance of the CARES Act funding that Mr. Adams noted, was that this funding would cross fiscal years, which potentially resulted in double counting. He emphasized that this is why data collected will artificially show larger totals in funding and allocations. He said that the additional work and red tape to revert funds and designate funds as non-cognizable a second time was necessary for transparency. He noted that all non-cognizable funds would have to follow the respective guidance from the federal level as well. He reported that each of the funding allocations would be shown on the agencies' reports to the Joint Finance-Appropriations Committee (JFAC) and that updates would also be available at request of committee members.

Mr. Adams concluded his presentation by addressing practical considerations regarding the CARES Act and CRF funds. He reported that the biggest of these were the unknowns surrounding the virus itself and timing issues related to the distribution of funds as well as the federal guidance for

their use. He predicted that some of the key upcoming changes may be shifting funding to local governments and not requiring funds to be spent by the given deadline, but instead obligated.

He reported some of these important dates:

- CARES Act signed March 27
- CRF funds received April 17
- Treasury issued Guidance and FAQs April 22
- Treasury updated Guidance and/or FAQs on May 4, May 28, June 24, July 2, July 8, July 31
- More guidance anticipated this week
- Senate HEALS Act introduced on July 27 – changes use of CRF

He noted that as Idaho did not have any city governments of qualifying size that could apply for state CARES Act funds on their own, it was left to the state's discretion. He reported Idaho was one of 29 states that made funding available to local governments; of this, \$94 million was allocated to county, local, and tribal governments. Mr. Adams noted that for oversight and reporting purposes, the state is considered the steward and responsible party for the Idaho allocation of those federal funds. He said that in trying to anticipate needs related to the Coronavirus, state agencies were asked to estimate additional funding needs from March 1 through December 30, which were mainly underestimated. He concluded that as the situation evolves, there needs to be an ability to react quickly as needs evolve.

CoChair Bair thanked Mr. Adams for his detailed explanation of the approval process. He also asked if, after the initial \$1.25 billion was allocated to the state, whether the Board of Examiners met to approve the eligibility as non-cognizable funds of the entire amount. Mr. Adams confirmed that was correct. CoChair Bair clarified that then the entire Board of Examiners had not met subsequently regarding decisions about the disbursement of that funding or if those decisions were made by DFM and the State Controllers Office. Mr. Adams replied that that was correct. CoChair Bair asked why the Board of Examiners didn't meet regularly to discuss smaller funding requests and approvals. Mr. Adams replied that that was a question that should be directed to the Board of Examiners as he wasn't able to speak for them. He continued that he was aware of timing issues, but that the Board did meet once a month. CoChair Bair said he appreciated the transparency in DFM's approval process but expressed concern about decisions being made by non-elected officials. Mr. Adams referred the committee to the Board of Examiners for additional response. CoChair Youngblood recognized Paul Headlee as indicating that he could add further information. Mr. Headlee referred to a letter, [Protocol for Transfers under IC § 67-3511](#), from the State Controller to the Board of Examiners in 2013 that described the reasons for authority designation in the current process as efficiencies that allowed needs to be addressed more rapidly. CoChair Bair asked what day the state received the federal funding into its accounts. Mr. Adams replied April 17 was when the state received the first half of the allocation and that the balance was received on April 20. CoChair Bair asked at what point the legislature could have convened within the multiple dates it was given federal guidance for funding use. Mr. Adams responded that he didn't know. He emphasized that there were practical considerations for bringing the entire body to Boise with social distancing restrictions. He noted that guidance continues to come in, and that they do not always know and cannot predict which issues it will apply to. CoChair Bair commented that the way in which the guidance has been issued could have meant that the legislature would be called back into session six or more times if they were to attempt to appropriate that funding.

Representative Anderson asked about the 2013 letter and the designation of authority to Office of Statewide Accounting. Mr. Adams read the relevant passages from the letter referring to the procedure approved by the Board of Examiners in 1994 and confirmed the approval authority of the Office of Statewide Accounting. He reiterated that prior to the submission of funding applications, work is done with the requester to ensure appropriate requests. Representative Anderson noted that

the appropriation of funds can be related to policy decisions and expressed concern about allocation and approval decisions being made by an individual in the Statewide Accounting Office. Mr. Adams responded that approval is based solely on whether the request meets the statutory requirements for non-cognizable funding. He responded that DFM is vetting funding requests and that he is not aware of any difference of opinion happening previously between the State Controllers Office and DFM regarding these requests. Representative Anderson remarked that he sees the role of allocating funds in JFAC as being closely related to making policy decisions. Mr. Adams responded that the Coronavirus Relief Act Committee vets the allocation requests to address policy issues relating to them and referred to the Governor's Executive Order 2020 regarding funding allocation priorities as the guidance they use in the approval process. Representative Anderson asked if leftover funds are anticipated to be leftover that would need to be addressed by JFAC during the upcoming regular legislative session. Mr. Adams responded that the current funds must be used by December 301 so funding would only be leftover if additional federal funds were allocated and a different deadline given. Representative Anderson asked what happened to funds that were not approved or spent by the designated deadline. Mr. Adams replied that these funds would be reverted to the federal government. Representative Anderson commented that regarding the potential Idaho contribution to continuing additional unemployment benefits, he was concerned that the federal government's portion of the contribution would come from borrowed money that it didn't currently have. Mr. Adams noted that they were analyzing the details regarding where the state's portion of the continued enhanced unemployment benefits would come from.

Representative Horman asked when JFAC committee members are notified about requests during non-cognizable funding request and approval process and how the details are given to staff. Mr. Adams responded that DFM and the State Controllers Office were the entities in charge of the process. He explained that he and Paul Headlee's office communicate and send updates regularly or as requested. Representative Horman clarified that regular notification of funding requests and approvals is not built into the non-cognizable funding process and is only upon request. Mr. Adams confirmed that according to statute, that is correct. He reiterated that he maintains regular communication with Legislative Services staff.

Senator Grow asked how the general public, local governments, and others were being made aware of the availability of funds and how fairness is ensured and favoritism is avoided when the allocations are decided upon. Mr. Adams said that regarding the Coronavirus Relief Fund Act, they used open public meetings, public conference calls, posting public agendas, taking public comments and proposals and posting all materials online afterwards. He explained the CFAC Committee that vets proposals includes members of JFAC, Tribal members, representatives from the cities and counties, and representatives from state agencies.

Senator Agenbroad asked if there is funding that can be addressed by the legislature and they disagree with the allocation decisions made by the State Controllers Office or the Board of Examiners, if there was a process for JFAC to change those decisions. Mr. Adams responded that the current funding is set to expire on December 30, but if that changed or if there were passthrough grants pending, that JFAC would have the same authority to make decisions as they do on other funding bills.

Public Testimony

There were no participants signed up to testify regarding non-cognizable funding.

Committee Discussion and Adjournment

CoChair Youngblood thanked Mr. Adams for the thoroughness of his presentation and the committee members for their questions. He explained that he is a participant on the CFAC Committee and emphasized that the current federal funding must be expended and projects completed by December 30 or it is returned to the federal government. CoChair Youngblood remarked on the importance Representative Horman's comments about timing and notification of legislators and legislative staff

in non-cognizable funding requests process. Representative Horman responded that being made aware of requests and approvals as soon as possible is important and useful going forward with budget and research work that is often done outside of the regular session. She noted that this is a consideration that may need to be addressed and a statute that is reviewed during the upcoming regular session. CoChair Youngblood thanked the committee and the presenters.

There being no additional business, the meeting adjourned at 2:55 p.m.