Wisconsin Legislative Council

Anne Sappenfield
Director

TO: SENATOR MARK SPREITZER

FROM: Emily Hicks, Staff Attorney, and Melissa Schmidt, Principal Attorney

RE: Interest Earned on Coronavirus State and Local Fiscal Recovery Funds

DATE: May 28, 2025

You asked how the interest earnings on $3 billion in advanced Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) payments must be treated under state law. Specifically, you asked whether these interest earnings must be treated as general purpose revenue (GPR) that must be deposited in 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) federal aid program revenue (PR-F) appropriation, established under s. 20.505 (1) (mb), Stats.

This is a novel legal question; without a court opinion, it is difficult to say definitively whether these interest earnings may be credited to DOA's PR-F appropriation or whether they must be deposited into the general fund. As described in greater detail below, DOA's PR-F appropriation does not directly contemplate interest earnings on federal funds, which suggests that interest earnings are not funds received from the federal government and must therefore be deposited into the general fund. However, as DOA has argued, these interest earnings became funds received from the federal government when the federal government waived a requirement that interest earnings on federal funds be remitted to the federal government.

BACKGROUND

CSLFRF

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 to the state in advance of their planned expenditure and were deposited into the state investment fund.[1]

The federal Cash Management Improvement Act (CMIA) generally prohibits states from retaining any interest that accrues on federal assistance payments before the state expends the federal funds.

[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." [Legislative Audit Report (LAB), Audit Report 23-26, p. 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/.

However, the U.S. Department of Treasury (Treasury) exempted the CSLFRF program from this CMIA requirement before Wisconsin received any CSLFRF moneys.[2]

In an audit report published in December 2023, the LAB found that, 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. According to the LAB, DOA recorded these interest earnings in the department's PR-F appropriation established under s. 20.505 (1) (mb), Stats., and continues to do so. [LAB, State of Wisconsin FY 2022-23 Financial Statements, Audit Report 23-26 (Dec. 2023), pp. 13-14, 32-33.[3]]

As explained in greater detail in a Legislative Council memorandum dated January 22, 2024, and released publicly with the cosponsorship memorandum for 2025 Senate Bill 280, according to the 2022 Final Rule, the CSLFRF funds are not subject to program restrictions, nor are there federal restrictions on the use of interest earned on CSLFRF funds.[4] As such, the question of whether the interest earnings may remain in DOA's PR-F appropriation is largely one of state law.

State Law

Section 20.505 (1) (mb), Stats., establishes DOA's PR-F appropriation for "all moneys received from the federal government not otherwise appropriated…to carry out the purposes for which received."

Unless state law provides 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

Section 20.505 (1) (mb), Stats., does not explicitly mention interest earnings on advanced federal payments and, therefore, does not address whether interest earnings are moneys received from the federal government for purposes of DOA's PR-F appropriation. It could be argued that if the Legislature intended to capture interest earnings on federal funds in s. 20.505 (1) (mb), Stats., it would have done so explicitly. As noted above, interest earned on federal moneys typically must be returned to the federal government pursuant to the CMIA, so the federal government's treatment of the interest earned on the CSLFRF funds is a novel circumstance. Based upon this circumstance, and the lack of reference

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[2] CSLFRF 2021 Interim Rule, 86 Fed. Reg. 2678, 26812 (May 17, 2021) (to be codified at 31 C.F.R. Part 35) (emphasis added) and 2022 CSLFRF Final Rule: Frequently Asked Questions, (updated Apr. 2025), p. 54.

[3] More information related to this audit report is available on the Legislative Audit Bureau's (LAB) website at: https://legis.wisconsin.gov/lab/by-year/2023-2024/report-23-26-state-of-wisconsin-fy-2022-23-financial-statements/.

[4] 2022 CSLFRF Final Rule: Frequently Asked Questions, (updated Apr. 2025), p. 54.

to interest earnings in the language of s. 20.505 (1) (mb), Stats., these interest earnings arguably should be transferred to the general fund, as the statutes do not specifically provide where these funds must be credited.

However, in a letter to the Joint Legislative Audit Committee cochairs, dated January 23, 2024, DOA argued that "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." According to DOA, the Treasury "decided to waive the interest remittance requirement of [CMIA], 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."

Whether the CSLFRF interest earnings are funds received from the federal government is a novel legal question. Because state law does not explicitly provide where interest earnings on these funds should be credited, it appears that a court could find that the CSLFRF interest earnings must be deposited in the general fund under state law. However, because these funds were received by virtue of federal moneys and would otherwise be returned to the federal government as federal funds, a court could find that the funds were "received from the federal government."

Please let us know if we can provide any further assistance.

EH:MS:jal