American Rescue Plan (ARP) Guidance

July 12, 2021

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Alamance County staff have collected this American Rescue Plan (ARP) guidance from the U.S. Treasury, UNC School of Government (UNCSOG), North Carolina Association of County Commissioners (NCACC), and National Association of Counties (NACo) for the Board of Commissioners and the public's viewing. This document will be updated as guidance is released.

Bryan Hagood

UNC School of Government (UNCSOG)

American Rescue Plan Act of 2021: Funding Updates for NC Local Governments

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This entry was posted on May 13th, 2021 and is filed under Budeting & Appropriations, Finance & Tax.

AMENDED May 14, 2021: Note that the post has been updated to provide more information on why a local government's governing board must vote to accept the federal grant. There also have been a number of upload glitches, but this should reflect the final version. I apologize for any inconvenience.

As detailed in a previous **post**, the federal American Rescue Plan Act of 2021 (ARP) includes substantial aid for state and local governments. *See* Part 8, Subtitle M—Coronavirus State and Local Fiscal Recovery Funds of H.R. 1319 American Rescue Plan Act of 2021. This post includes some important updates about the funding process and expenditure parameters. (Note that many entities refer to these provisions as the Coronavirus State and Local Fiscal Recovery Funds, CSFRF, CLFRF, or Fiscal Recovery Funds. For consistency with my previous post, I refer to them as ARP Funds. All of these references are to the same federal grant funds.)

Process for Receiving ARP Funds

The process for receiving ARP funds varies based on type and size the of local government. Counties and Metropolitan Municipalities (municipalities with over 50K population) will receive their distributions directly from the federal government. They are authorized to apply now for their first tranche (1/2 of the allocation). That application is available **here**.

All other municipalities (referred to as non-entitlement local governments) will receive their distribution from the State within the next few months. The NC Pandemic Recovery Office (NCPRO) has provided pre-contract guidance for the non-entitlement local governments **here**.

Note that for all local governments, the unit's governing board must accept the grant funds (either from the federal government directly or from the state). The state law that allows a local government to accept the ARP grant funds, **G.S. 160A-17.1,** states that

the governing body of any city or county is hereby authorized to make contracts for and to accept grants-in-aid and loans from the federal and State governments and their agencies for constructing, expanding, maintaining, and operating any project or facility, or performing any function, which such city or county may be authorized by general law or local act to provide or perform.

As discussed by my colleague Frayda Bluestein **here,** when a statute expressly directs the governing board to undertake an action, only the board may take that action. The board need not adopt a formal resolution, but it must vote to authorize the receipt of the funds and then delegate authority to the manager, mayor, or another employee or official to execute any necessary agreements on behalf of the board. Additionally, the governing board will need to amend the applicable budget ordinance or grant project ordinance to both recognize the grant proceeds and authorize their expenditure, by department, function, or project. The board also may not delegate its authority to amend the budget/grant ordinance to recognize the grant revenue.

The federal law specifies that the funds will remain available through December 31, 2024. (According to US Treasury guidance, ARP funds must be obligated by this date.) Although there are certainly many continuing pressing financial needs due to the pandemic, this deadline allows sufficient time for local government officials to carefully consider how best to appropriate the monies for maximum short- and long-term benefit to their communities. In anticipation of the funds, many local government officials are convening internal and external stakeholders and devising processes for local appropriation decisions. Any unallocated ARP funds will comprise restricted fund balance until they are budgeted by the unit's governing board. (As stated below, local officials are well advised to wait to spend any proceeds until we receive final guidance from the applicable federal and state agencies on compliance requirements.)

Allowable Expenditures of ARP Funds

As of May 10, 2021, we have additional guidance from the federal government on how ARP funds may be spent. Specifically, the US Treasury has published the **Interim Final Rule to implement the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan Act (Interim Final Rule).** (Due to a waiver of the

normal 60-day delayed effective period, the Interim Final Rule is effective immediately.)
A **memo** and **FAQ document** from the US Treasury helpfully summarize the substance of the Interim Final Rule. The Interim Final Rule suggests that local governments will have wide-berth in determining how best to spend the ARP funds to address pandemic-related issues. Under the ARP, allowable funding comprises four main expenditure categories, although the Interim Final Rule breaks the first category into two categories. As stated in the Interim Final Rule, the categories are:

1. Support public health expenditures, by funding COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff;
2. Address negative economic impacts caused by the public health emergency, including economic harms to workers, households, small businesses, impacted industries, and the public sector;
3. Replace lost public sector revenue, using this funding to provide government services to the extent of the reduction in revenue experienced due to the pandemic;
4. Provide premium pay for essential workers, offering additional support to those who have borne and will bear the greatest health risks because of their service in critical infrastructure sectors; and,
5. Invest in water, sewer, and broadband infrastructure, making necessary investments to improve access to clean drinking water, support vital wastewater and stormwater infrastructure, and to expand access to broadband internet.

Much of what is in the Interim Final Rule merely fleshes out what we already knew about these categories. It provides helpful examples of allowable programs, projects and services. These examples are not exclusive. The Interim Final Rule also provides guidelines to help local officials evaluate other potential expenditures. As such, local officials should review the **Interim Final Rule** in detail. Below are some highlights based on questions I've received from local officials since my last **post**.

Water and Wastewater Infrastructure. The Interim Final Rule aligns eligible uses of ARP monies for water and wastewater infrastructure with the wide range of projects that would be eligible to receive financial assistance through the Environmental Protection Agency's Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF). To illustrate that breadth of authority, the Interim Final Rule states that "water infrastructure projects may include building or upgrading facilities and transmission, distribution, and storage systems, including the replacement of lead service lines." ARP monies also may be used to consolidate or establish drinking water systems. Eligible wastewater projects include "constructing publicly-owned treatment infrastructure, managing and treating stormwater or subsurface drainage water, facilitating water reuse, and securing publicly-owned treatment works." *See* Interim Final Rule, pages 66-67.

Significantly, “wastewater” is defined to include stormwater and subsurface drainage. That opens up a multitude of potential local government infrastructure projects. Finally, ARP monies may be used for “cybersecurity needs to protect water and sewer infrastructure…” *Id.*

The ARP requires that the grant funds be used for “necessary” water and wastewater infrastructure investments. According to the Interim Final Rule, “necessary” investments “are designed to provide an adequate minimum level of service and are unlikely to be made using private sources of funds. Necessary investments include projects that are required to maintain a level of service that, at least, meets applicable health-based standards, taking into account resilience to climate change … and that are unlikely to be met with private sources of funds.” *See* Interim Final Rule, page 62.

Further, the US Treasury encourages local governments to ensure that water and sewer projects “use strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions, not only to promote effective and efficient delivery of high-quality infrastructure projects but also to support the economic recovery through strong employment opportunities for workers.” *Id.* The Interim Final Rule indicates that Treasury will provide further guidance on reporting instructions that will include information on workforce plans and practices to ensure public transparency that projects funded with ARP monies are using such practices that promote on-time and on-budget delivery.

Salaries and Benefits for Pandemic-Related Employees. Another frequent question from local officials relates to using ARP funds to cover certain local government employees’ salaries and benefits. The Interim Final Rule makes clear that ARP monies may be used to fund full payroll and benefit expenses for local government public health, healthcare, human services, public safety, and similar employees, to the extent that they work on the COVID-19 response.

A local government may consider “public health and safety employees to be entirely devoted to mitigating or responding to the COVID-19 public health emergency, and therefore fully covered, if the employee, or his or her operating unit or division, is primarily dedicated to responding to the COVID-19 public health emergency. Recipients may consider other presumptions for assessing the extent to which an employee, division, or operating unit is engaged in activities that respond to the COVID-19 public health emergency, provided that the recipient reassesses periodically and maintains records to support its assessment, such as payroll records, attestations from supervisors or staff, or regular work product or correspondence demonstrating work on the COVID-19 response. Recipients need not routinely track staff hours.” *See* Interim Final Rule, pages 20-21.

Covered benefits include “costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement

(pensions, 401(k)), unemployment benefit plans (federal and state), workers compensation insurance, and Federal Insurance Contributions Act (FICA) taxes (which includes Social Security and Medicare taxes)." *See* Interim Final Rule, page 20, footnote 46.

Comparison to Coronavirus Relief Fund (CRF) Eligible Uses. Some local government officials have asked whether eligible uses of the ARP Funds are the same as allowable uses of the CRF monies. The short answer is that there are many additional eligible uses for ARP funds. According to the Interim Final Rule, "eligible uses listed under this section build and expand upon permissible expenditures under the CRF, while recognizing the differences between the ARPA and CARES Act, and recognizing that the response to the COVID-19 public health emergency has changed and will continue to change over time." *See* Interim Final Rule, page 17. There are some CRF uses that are not appropriate for ARP funds. For example, the standard for covering the salaries and benefits of local government public health and safety personnel has changed (see above), and ARP Funds may not be used to issue debt, including short-term debt (see below). A local government should rely on the ARP Interim Final Rule to determine allowable expenses, instead of CRF guidance.

Rebuilding Public Sector Capacity. According to the Interim Final Rule, ARP funds may be used to rebuild public sector capacity by rehiring local government staff, up to pre-pandemic levels. *See* Interim Final Rule, pages 35-36. Funds also may be used to build internal capacity to implement economic relief programs, such as investments in data analysis, targeted outreach, technology infrastructure, and impact evaluations. *See* Interim Final Rule, page 34.

Addressing Disproportionate Public Health and Economic Impacts on Low Income Communities. The Interim Final Rule allows ARP funds to be used to fund special programs to address the disproportionate public health and economic impacts of the crisis on the hardest-hit communities, populations, and households, specifically targeting services within a Qualified Census Tract (low-income area), to families living in a Qualified Census Tract, or to other populations, households, or geographic areas disproportionately impacted by the pandemic. *See* Interim Final Rule, pages 21-23 and 38-41. That means that there is authority to spend ARP monies on a broader range or projects, programs, and services that directly serve low income citizens or to others who have been disproportionately impacted by COVID-19, consistent with state law authority, of course.

These additional eligible uses include:

Addressing health disparities and the social determinants of health, including: community health workers, public benefits navigators, remediation of lead paint or other lead hazards, and community violence intervention programs;

Building stronger neighborhoods and communities, including: supportive housing and other services for individuals experiencing homelessness, development of affordable housing, and housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity;

Addressing educational disparities exacerbated by COVID-19, including: early learning services, increasing resources for high-poverty school districts, educational services like tutoring or afterschool programs, and supports for students' social, emotional, and mental health needs; and

Promoting healthy childhood environments, including: child care, home visiting programs for families with young children, and enhanced services for child welfare-involved families and foster youth.

Replacing Lost Local Government Revenue. The Interim Final Rule clarifies that ARP funds may be used to replace lost local government revenues due to the pandemic, according to a specified formula. The impetus is to use ARP funds to "avoid costs to government services and, thus, enable [local governments] to continue to provide valuable services and ensure that fiscal austerity measures do not hamper the broader economic recovery." *See* Interim Final Rule, page 53.

To calculate the amount of lost revenue that may be replaced with ARP funds, the Interim Final Rule first provides a definition of "general revenues," *see* Interim Final Rule, pages 54-57, which attempts to capture "revenues collected by a [local government] and generated from its underlying economy…." A local government should look closely at this definition, but it roughly correlates to the unit's general fund revenues, with some adjustments. General revenues are calculated on a unit-wide basis, not by individual revenue source. They include revenues from property, sales, and other taxes, current charges, and miscellaneous general revenues. They exclude refunds, debt proceeds, agency or private trusts, and revenue generated by utilities. General revenues also include intergovernmental transfers between state and local governments, but exclude intergovernmental transfers from the Federal government, including CRF and ARP funds (even if these funds are passed through the State).

To calculate the "loss" in revenue due to the pandemic, the local government will take its actual "general revenues" (as defined in the Interim Final Rule) from the "last full fiscal year prior to" the pandemic (FY2018-2019), and then apply a growth adjustment of "either 4.1 percent per year or the [local government's] average annual revenue growth over the three full fiscal years prior to the COVID-19 public health emergency, whichever is higher." This calculation will be done for four points in time — December 31, 2020; December 31, 2021; December 31, 2022; and December 31, 2023. *See* Interim Final Rule pages 56-60. For ease of calculation, the Interim Final Rule allows a local government to attribute all decline in general revenues during this period to the pandemic.

The “lost revenue” ARP funds may be used “for the provision of government services.” According to the Interim Final Rule, “government services can include, but are not limited to, maintenance or pay-go funded building of infrastructure, including roads; modernization of cybersecurity, including hardware, software, and protection of critical infrastructure; health services; environmental remediation; school or educational services; and the provision of police, fire, and other public safety services.” *See* Interim Final Rule, page 60. However, these “lost revenue” monies may not be used for debt issuance or debt service, legal settlements or judgements, or to make deposits to rainy day funds or other financial reserves. *Id.*

Disallowed Expenditures. The Interim Final Rule clarifies that ARP funds more generally may not be used for debt issuance or debt service, legal settlements or judgements, deposits to rainy day funds or other financial reserves, or general infrastructure spending outside of necessary water, sewer, and broadband investments, and special infrastructure projects that are necessary to deal with pandemic-specific issues. *See* Interim Final Rule, pages 42-43. Although the “lost revenue” ARP monies may be used for general government infrastructure projects, other ARP monies may not. ARP monies also may not be used as “non-Federal match for other Federal programs whose statute or regulations bar the use of Federal funds to meet matching requirements.” *See* Interim Final Rule, pages 96-97.

Clarification on Transferring ARP Monies to Other Entities. The ARP states that a recipient local government “may transfer funds to a private nonprofit organization (as that term is defined in paragraph (17) of section 401 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360(17)), a public benefit corporation involved in the transportation of passengers or cargo, or a special-purpose unit of State or local government.” *See* Sec. 603(c)(3). The Interim Final Rule clarifies that this is a non-exclusive list. *See* Interim Final Rule page 105-106. A local government may contract with other government or private entities and transfer ARP funds pursuant to those contractual arrangements, consistent with state law authority. The original recipient local government remains responsible for monitoring, overseeing, and reporting on the subrecipient’s use of the funds to ensure compliance with statutory and regulatory requirements.

Compliance Requirements. The Interim Final Rule makes clear that ARP monies are subject to “pre-existing limitations provided in other Federal statutes and regulations….” *See* Interim Final Rule, page 96. And ARP funds are subject to the “provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200) (the Uniform Guidance), including the cost principles and restrictions on general provisions for selected items of cost.” *See* Interim Final Rule, page 97.

Further, the Interim Final Guidance sets out the broad outlines of the reporting requirements. *See* Interim Final Rule, pages 110-112. US Treasury guidance and instructions on

reporting requirements are forthcoming. Local governments also likely will receive guidance from the NC Department of State Treasurer and, at least for non-entitlement municipalities, from NCPRO. It is critical that local governments fully understand and comply with all of the compliance requirements.

Note, again, that these are just a select few highlights. The Interim Final Rule provides much more information on the specifics of funding allowances. I will post a more comprehensive overview of the Interim Final Rule based on additional local government questions.

State Law Authority

As a reminder, local governments must spend their ARP monies consistent with these federal requirements AND in accordance with state law authority. North Carolina's state law authority does not currently allow local governments to expend their ARP funds for all the purposes allowed under federal law. Local government officials must ensure that any proposed expenditure fits within the allowable categories under the federal law AND is explicitly authorized by state law. So it is not sufficient to simply follow the spending guidance in the Interim Final Rule, a local government must also act within the parameters of state law authority when implementing any programs, services, projects, or activities, funded with ARP monies. A previous **blog post** walks through the state law authority (or lack of authority) as it relates to each of the ARP funding allowable expenditure categories.

Still Waiting on Further Reporting/Compliance Guidance

Finally, it cannot be emphasized enough that we are still awaiting guidance on a myriad of compliance issues. Local government officials are well advised to wait to appropriate any ARP funds until they are apprised of all the contracting, accounting, reporting, documentation, and other applicable federal and state compliance requirements. I will update this post as that information becomes available.

Coates' Canons: NC LOCAL GOVERNMENT LAW

American Rescue Plan Act of 2021: Local Government Authority to Expend their Allocations

About the author

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This entry was posted on April 5th, 2021 and is filed under Budeting & Appropriations, County Finance, Finance & Tax, Municipal Finance.

UPDATED May 13, 2021: The US Treasury issued its Interim Final Rule on allowable ARP fund expenditures. A link to that guidance and discussion of some of the highlights are available here.

UPDATED May 11, 2021: Counties and entitlement municipalities (over 50K population) may now apply for ARP funds here. For non-entitlement municipalities (all other municipalities), NC PRO provides pre-contracting guidance here.

Updated: April 25, 2021: The federal government has put out pre-award guidance for local governments. It is available here.

On March 11, 2021, the federal American Rescue Plan Act of 2021 (ARP) became law. There is still a lot to be deciphered in this $1.9 trillion stimulus package; the third such major relief act since the onset of the COVID-19 pandemic. We do know that the law includes substantial aid for state and local governments. With respect to local governments, some monies will be distributed directly to them (specifically, allocations to counties and municipalities with populations over 50,000). Other monies will be allocated to the State for distribution to qualifying local governments (all other municipalities). *See* Part 8, Subtitle M—Coronavirus State and Local Fiscal Recovery Funds of H.R. 1319 American Rescue Plan Act of 2021. The monies will be distributed in tranches, with the first

payment made within 60 days' of the law's enactment. The second tranche will be distributed a year after the first. The monies may be used for costs incurred by December 31, 2024.

Aside from their expected allocation amount, local government officials want to know the purposes for which the monies may be spent and whether or not the grant of funds from the federal government is sufficient to provide North Carolina local governments expenditure authority. This blog post addresses these two issues. As a caveat, this post is based on interpretations of the federal law and current state law. There may be different interpretations promulgated by the agencies charged with implementing the aid to local governments and there may be changes to state law to facilitate the receipt and expenditure of funds by local governments. I will update this post as more information becomes available, particularly guidance on reporting and accountability measures.

Note also that this post only deals with monies allocated directly to local governments by the ARP. The General Assembly may appropriate additional monies from the State's ARP allocation to local governments, and to certain special districts and public authorities, and will set the expenditure parameters for those funds. And the ARP provides funding for many other programs, services, activities, and projects, that will directly aid a local government's citizens, utility customers, community groups, businesses, nonprofits, and other government entities. (For a brief overview of key provisions of the ARP, see this National Conference of State Legislatures' **summary**.) Local government officials will want to understand how all of this targeted relief will impact their communities as they make their own appropriation decisions.

Turning back to the purpose of this post, let's look at local government authority to spend ARP allocations for the specified purposes.

General Authority to Spend ARP Funds

In North Carolina, local governments must have statutory authority to undertake any activity, including the receipt and expenditure of federal grant/aid monies. The fact that the federal government is providing monies either directly or indirectly to NC local governments does not, alone, give those local governments authority to spend that money. We have to look to state law for that authority–specifically **G.S. 160A-17.1,** which allows

the governing body of any city or county … to make contracts for and to accept grants-in-aid and loans from the federal and State governments and their agencies for constructing, expanding, maintaining, and operating any project or facility, or performing any function, which such city or county may be authorized by general law or local act to provide or perform.

Thus, a local government has specific authority to accept ARP funds, but must spend the monies consistent with federal requirements and within the contours of state law authority. Note, also, that once grant proceeds are received by a local government, they are public funds and subject to the same budgeting, fiscal management, expenditure control, and accounting rules as all other local government monies, according to the **Local Government Budget and Fiscal Control Act, G.S. Ch. 159, Art. 3.**

ARP Expenditure Parameters for Local Government Allocations

That leads to the second issue. What does ARP authorize local governments to spend the stimulus monies on and do local governments have state law authority to spend the monies for these purposes?

According to new Sect. 603(c) of 42 USC 801 (Coronavirus Local Fiscal Recovery Fund), monies received by any of the qualifying local government entities (whether directly from the federal government or from the State as a pass-through) may be used for the following four categories of expenditures. Under each purpose stated in the federal law (which is in bold italics), I detail whether, and to what extent, state law authority currently exists for a local government to spend monies for this purpose.

To respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality.

This provision encompasses a broad array of potential local government expenditures. There are myriad ways that counties and municipalities might provide assistance to community members and organizations to mitigate the negative economic impacts of COVID-19. As detailed above, though, a local government must have state law authority to undertake any specific program, service, activity, or project (collectively, programs). A local government may use this money to fund existing or new local government programs, to make grants to nonprofits or other community organizations, and to provide aid to small businesses.

Local government programs. A local government has broad authority to undertake programs that benefit its citizens. It will be difficult to catalogue all of the possible state statutes that authorize such programs. They may range from public health and social services programs, to community and economic development programs, to social, cultural, and recreational programs.

Under **G.S. 160D-1311,** for example, a local government has wide-ranging authority to provide "programs concerned with employment, economic development, crime prevention, child care,

health, drug abuse, education, and welfare needs of persons of low and moderate income." A local government may use some (or all) of its ARP monies to fund current or new programs related to the negative economic impact of COVID-19 on its low- or moderate-income citizens. And these programs could be structured to provide services, supplies, infrastructure, or even direct monetary aid to qualifying citizens.

Similarly broad is the authority under **G.S. 160A-497**, which allows a county or municipality to "undertake programs for the assistance and care of its senior citizens [defined as those who are at least 60 years of age] including but not limited to programs for in-home services, food service, counseling, recreation and transportation…." A local government may use its ARP monies to support its senior citizens dealing with pandemic-related issues.

These are, of course, just two examples. There are many other sources of state law authority that allow a local government to use ARP monies to fund its own programs that will aid its community members in responding to COVID-19 and mitigating its financial impact. And the only expenditure limitation under the federal law is no ARP monies may be used to fund pensions.

Grants to nonprofits. What about providing grants or donations to private entities, such as nonprofits, chambers of commerce, or other organizations that are serving the community during the pandemic? This is a little more complicated. The ARP specifically authorizes a local government to transfer any of these monies to a private nonprofit organization (as defined by 42 USC 11360(17)) or a public benefit corporation involved in the transportation of passengers or cargo.

However, unless pursuant to a specific, statutorily authorized program, a local government may not simply grant, appropriate, or donate monies to nonprofit entities, even if it only uses ARP dollars. Under current law,* though, a local government may contract with a private individual or entity to carry out an activity/program/project that the local government has statutory authority to undertake. *See* **G.S. 160A-20.1** (municipalities); **G.S. 153A-449** (counties).

In other words, if a municipality or county has statutory authority to finance a particular program, then it may contract with a private entity to perform that program. But a municipality or county may not appropriate public monies to a private entity, including a non-profit, if the monies ultimately will be spent on a program that the government could not fund directly.

Further, a local government that contracts with a nonprofit for a particular purpose has an obligation to ensure that the nonprofit carries out the public purpose that it was contractually obligated to undertake. There are a number of ways that a local government may go about monitoring the expenditures of public funds by a nonprofit—and the methods likely will vary depending on the size of the unit and the types of expenditures at issue. The North Carolina

Supreme Court has provided some guidance to local governments on this issue—sanctioning a particular oversight method in *Dennis v. Raleigh*, 253 N.C. 400 (1960). That case involved a challenge to an appropriation of funds by the City of Raleigh to a local chamber of commerce, to be spent on advertising the city. The chamber of commerce engaged in a variety of activities, some of which were unlikely to be considered public purposes. Thus, the city sought to ensure that the public funds it appropriated to the chamber of commerce were spent appropriately. The city put in place three separate "controls." First, the appropriation to the chamber of commerce was specific—it stated that the monies were to be used "exclusively for . . . advertising the advantages of the City of Raleigh in an effort to secure the location of new industry." Second, the city council reserved the right to approve each specific piece of advertising. Third, the chamber of commerce had to account for the funds at the end of the fiscal year. On the basis of the control exercised by the city over the expenditure of the public funds, the court upheld the appropriation.

The first and third "controls" placed on the chamber of commerce by the City of Raleigh in *Dennis* likely are particularly instructive. These controls parallel the appropriation and annual audit requirements placed by the **Local Government Budget and Fiscal Control Act** on moneys spent directly by a municipality or county. At a minimum, a local government should provide clear guidelines and directives to the private entity as to how and for what purposes public monies may be spent, and the unit should require some sort of accounting from the private entity that it fully performed its contract obligations. See this **previous post** **for** more information on the performance accounting options.

**Note that it is possible that the General Assembly will give local governments authority to make these grants directly to nonprofits. At least one bill has been introduced that would allow the City of Durham to provide such grants —H268. (As of this writing the bill has not been enacted by the General Assembly.)*

Aid to small businesses. With respect to providing aid to small businesses, my colleague, Tyler Mulligan, has summarized a local government's state law authority to provide that type of assistance here and here. (Note that at least one of those blog posts was written to address issues related to the first federal stimulus bill, known as the CARES Act. Although the ARP is a different federal law, the state law considerations are the same.)

To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the [qualifying local government] that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work. Eligible workers are "those workers needed to maintain continuity of operations of essential critical infrastructure sectors" and additional sectors that a local government's manager, administrator, or mayor designates as critical to protect the health

and well-being of the local government's residents. Premium pay is defined as "an amount of up to $13 per hour that is paid to an eligible worker, in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID-19 public health emergency." The total amount of premium pay per worker may not exceed $25,000.

Under current law, local governments have broad statutory authority to provide for employee compensation and fringe benefits (see **G.S. 160A-162** for municipalities and **G.S. 153A-92** for counties). This state law authority is sufficient to allow local governments to use ARP funds to award premium pay to essential workers, consistent with federal law. Local government officials will need to work with their attorney to determine who qualifies and how to implement the premium pay, consistent with other employment laws and the local unit's personnel policies. Counties, in particular, need to be careful in how premium pay is structured because of statutory prohibitions on reducing the compensation of certain employees, including sheriff office employees and register of deed employees. County commissioners also do not have direct control over the compensation of certain county employees, including election office employees (other than the director of elections).

The ARP also allows a local government to give grants to private sector employers to provide premium pay to their essential workers. However, there is no clear state statutory authority for a local government to do this. It is possible, that a local government could establish a hazard pay program for low- or moderate- income workers (as per above), but that would not allow grants to eligible employers for all of their essential employees. Similarly, if a nonprofit or small business contracts with a local government to perform a specific function (as per above), it's possible that the private entity could use some of its payment from the local government to provide premium pay to its essential employees. But I am not aware of a current state statute that would allow a local government to grant monies to private entities solely for the purpose of providing premium pay to essential workers.

For the provision of government services to the extent of the reduction in revenue of such [qualifying local government] due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year of the [local government] prior to the emergency.

This provision allows a local government to use the stimulus funds to replace lost revenue due to the pandemic. A local government will need to document the loss by comparison to the 2018-2019 fiscal year (which was the most recent full fiscal year prior to the COVID-19 pandemic). These replacement revenues may replenish a local government's fund balance or be appropriated for other purposes by the local government's governing board. As mentioned above, the monies must be used to cover costs incurred by December 31, 2024. A local government should fully understand

the reporting and accountability requirements before using ARP monies to replace lost revenue; more guidance on this issue from the federal and state agencies should be forthcoming.

To make necessary investments in water, sewer, or broadband infrastructure.

Many local governments provide water and sewer services. There is existing statutory authority to allow these governments to spend ARP monies on necessary water and sewer infrastructure projects. *See***G.S. 153A-276** for counties and **G.S. 160A-313** for municipalities. The monies may not be used to cover operating expenses (although the revenue replacement provision in number (3) allows a local government to cover lost water and sewer revenues due to the pandemic). Pending further direction from the federal or state government, it will be up to the local government's governing board to determine what infrastructure investments are necessary.

The state law authority for broadband is much more limited. Currently, counties do not have authority to construct or fund broadband infrastructure, except as needed for county operations. Pursuant to G.S. 153A-459 (enacted by SL 2019-111), a county may

provide grants to unaffiliated qualified private providers of high-speed Internet access service, as that term is defined in G.S. 160A-340(4), for the purpose of expanding service in unserved areas for economic development in the county. The grants shall be awarded on a technology neutral basis, shall be open to qualified applicants, and may require matching funds by the private provider. A county shall seek and consider requests for proposal from qualified private providers within the county prior to awarding a broadband grant and shall use reasonable means to ensure that potential applicants are made aware of the grant, including, at a minimum, compliance with the notice procedures set forth in G.S. 160A-340.6(c). The county shall use only unrestricted general fund revenue for the grants. For the purposes of this section, a qualified private provider is a private provider of high-speed Internet access service in the State prior to the issuance of the grant proposal. Nothing in this section authorizes a county to provide high-speed Internet broadband service.

Counties may only use "unrestricted general fund revenue" to make these grants, though. That does not include ARP monies because these funds are restricted.

Municipalities have authority to fund broadband (and construct broadband infrastructure) as a public enterprise, see *BellSouth Telecommunications, Inc. v. City of Laurinburg*, 606 S.E.2d 721 (2005), but the General Assembly severely curtailed that authority several years ago. A municipality must be able to satisfy all of the process and substantive requirements in **G.S. Ch. 160A, Art. 16A** in order to construct broadband infrastructure other than for municipal government purposes, even

dark fiber that it then leases or sells to private entities to provide broadband services. (See **this post** for more details.)

Outside of developing it for its own purposes, a local government likely will not be able to use ARP monies to construct broadband infrastructure more broadly absent additional legislative authority.

Sharing Allocations with Other Local Government Entities

A local government may wish to partner with another local government entity to use ARP funds to carry out one or more of the allowed purposes. The ARP specifically authorizes a local government to transfer any of its allocation to a "special-purpose unit of State or local government." A special-purpose unit of State or local government likely encompasses all of the special districts and public authorities that are subject to the Local Government Budget and Fiscal Control Act. (See this **blog post** for a list of those entities).

Under state law, there also is broad authority for a local government to enter into an interlocal agreement with another government entity to accomplish a public purpose that the local government has statutory authority to undertake. *See* **G.S. Ch. 160A, Art. 20.**

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American Rescue Plan: Local Government Funding for Affordable Housing Development

About the author

Tyler Mulligan

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This entry was posted on June 1st, 2021 and is filed under Affordable Housing & Minimum Housing Codes, Development Finance, Development Finance.

The federal American Rescue Plan Act of 2021 (ARP) established Coronavirus State and Local Fiscal Recovery Funds ("FRF"), which will be distributed to state and local governments for the purpose of responding "to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19) or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality" (Part 8, Subtitle M of ARP). The amounts to be distributed are substantial. The U.S. Department of Treasury ("Treasury") lists the county-by-county distributions here and the allocations for "entitlement" cities here.

The Interim Final Rule, promulgated by Treasury and codified at Part 35 of Subtitle A of Title 31 of the Code of Federal Regulations, recognizes "a broad range of eligible uses" for FRF, and offers local governments "flexibility to determine how best to use payments." Although the rule is still "interim" and therefore leaves some details to be finalized, public officials are beginning to plan how they will utilize the infusion of funding. This post is designed to inform those initial planning discussions at the local level, and it will be updated when/if the "interim final rule" is revised.

There are many possible uses of FRF, ranging from premium pay for essential workers, to water, sewer, and broadband infrastructure. One particular category of potential FRF-eligible activities has generated a good deal of interest and questions from public officials: 31 C.F.R. 35.6(b)(12)(ii)(B) authorizes FRF to be used for "[d]evelopment of affordable housing to increase supply of affordable and high-quality living units." The federal definition of "affordable" housing is that a household spends no more than 30% of gross income on housing costs, which for renters includes utilities, and for owners includes mortgage, utilities, HOA dues, property taxes, and insurance.

The mere fact that the federal government approves a particular use of FRF does not mean a North Carolina local government possesses legal authority to engage in that activity. As my colleague Kara Millonzi explains in an earlier post, all local government activities must also comply with state law requirements. This post first reviews the extent to which Treasury guidelines allow FRF to be used for affordable housing development, and then it explains how North Carolina law applies.

The federal rules: affordable housing development as an eligible use of FRF

What is the general test for eligible uses of FRF? In general, for a program, service, or other assistance to be eligible for FRF, it must "respond to the public health emergency or its negative economic impacts." 31 CFR 35.6(b). The Treasury guidance offers a two prong test to determine whether this threshold is met:

1. In responding to negative economic impacts, a local government "should first consider whether an economic harm exists and whether this harm was caused or made worse by the COVID-19 public health emergency." Interim Final Rule, p. 27. The Treasury guidance is replete with citations to studies indicating that low-income households and households facing housing insecurity (among other conditions) were harmed by the pandemic to a greater degree than other populations. Interim Final Rule, p. 22, 25, 26. Accordingly, programs that benefit low-income households meet this prong of the eligibility test.
2. "Responses must be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses." Interim Final Rule, p. 28. Within those constraints, local governments are granted "broad latitude" to determine "whether and how" to use FRF. *Id*. As already mentioned, development of affordable housing for low income persons is specifically listed as a reasonable response.

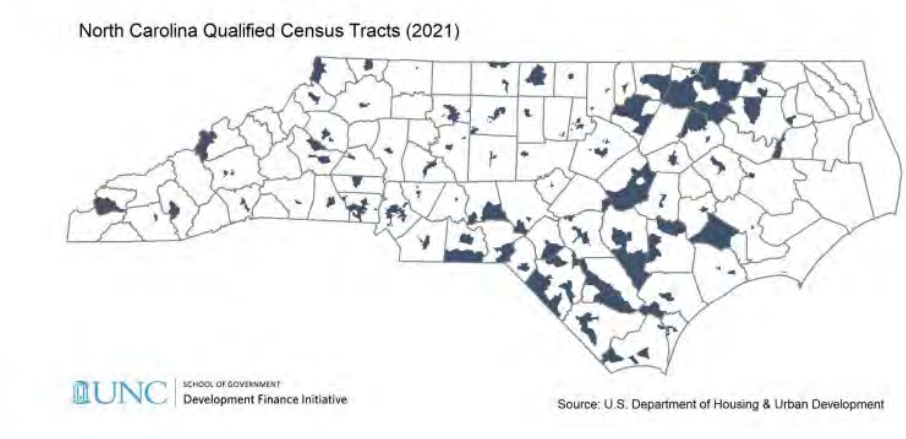
What sort of affordable housing activities can be supported with FRF?

- *Increasing supply of affordable and high-quality units*. Among the "non-exclusive list" of eligible uses of FRF are programs that address "housing insecurity, lack of affordable housing, or homelessness," including *but not limited to* "[d]evelopment of affordable housing to increase the supply of affordable and high-quality living units." 31 CFR 35.6(b)(12)(ii). Thus, new development of high-quality affordable housing is clearly an eligible use of FRF. It logically follows that *redevelopment* or *renovation* of housing is also an eligible use of FRF when it *increases the supply* of affordable and high-quality units.
- *Emergency home repairs for eligible households*. The guidance specifically authorizes "emergency assistance" for "home repairs, weatherization, or other needs," regardless of housing quality, so long as the assistance benefits qualifying households. Interim Final Rule, p. 29. This means that low quality housing can be repaired using FRF so long as it benefits low-income households who require the "emergency assistance." Such "emergency assistance" for necessary repairs is an activity separate and apart from "development" of high-quality affordable housing.
- *What isn't covered?* It remains unclear whether FRF can be used for development or non-emergency renovation that produces *low-quality* housing (such as poorly constructed or inefficient housing). Treasury guidance contains no definition of "high-quality living units." It bears repeating that Treasury guidance grants "broad latitude" to local governments in designing FRF programs and services. When a local government isn't sure whether its activity is explicitly approved in the guidance (for example, it isn't sure that the housing will be "high-quality," or the housing will not be permanently "affordable"), it should prepare a special justification for engaging in the activity.

Who must benefit? The affordable housing must benefit *"disproportionately impacted populations and communities."* 31 CFR 35.6(b)(12). This means the affordable housing must meet one of the "automatic" eligibility criteria, or it must serve an eligible population as locally determined.

- Automatic *geographic* eligibility (31 CFR 35.6(b)(12)) for any of the following:
  - The affordable housing is located in a qualified census tract (QCT), which is a distressed census tract designated by the U.S. Department of Housing and Urban Development (HUD). QCTs are further described below.
  - The affordable housing is provided to households and populations who live in a QCT.
- Automatic *household* eligibility (Interim Final Rule, p. 29; 35 CFR 35.6(b)(8)) for any of the following:
  - The affordable housing is provided to households that experienced unemployment during the public health emergency.
  - The affordable housing is provided to households that experienced increased food or housing insecurity during the public health emergency.
  - The affordable housing is provided to households that are low- or moderate-income.
- Locally Determined Eligibility (Interim Final Rule, p. 20): Locally-defined populations or geographic areas may be served so long as local officials can "support their determination that the pandemic resulted in disproportionate public health or economic outcomes" for the "specific populations, households, or geographic areas to be served."

What are QCTs? QCTs are census tracts designated by the U.S. Department of Housing and Urban Development (HUD) as meeting certain distress indicators. An interactive map of QCTs can be found on the HUD website here. North Carolina QCTs are shown in the map below.



North Carolina Qualified Census Tracts (QCTs)

What key findings and determinations should local governments make to support use of FRF for development of affordable housing?

1. Whether an economic harm exists and whether it was made worse by COVID-19. Make findings regarding one of the following:
   - Automatic geographic eligibility,
   - Automatic household eligibility, OR
   - Locally determined eligibility (must provide additional support for rationale)
2. How the FRF expenditure for development of housing is related and reasonably proportional to the extent and type of harm experienced. Include findings regarding one of the following:
   - Describe activity already approved in FRF guidance:
     1. emergency home repairs and weatherization for eligible households
     2. development of affordable housing to increase the supply of affordable and high-quality living units
   - OR describe activity not listed in Treasury guidance and provide the required additional justification. For example, additional justification would be required to use FRF for non-emergency repair or renovation that does not "increase the supply" of *both* "affordable and high-quality living units" (because the resulting housing is not affordable and/or not high quality).

State law: How North Carolina local governments may employ FRF for affordable housing development

While it is true that Treasury guidance grants "broad latitude" to local governments and "flexibility to determine how best to use payments," this does not mean that local governments are free to employ FRF in any manner authorized by the federal government. All local government activities must also comply with state law requirements. When federal and state laws conflict with each other, local governments are required to follow the most restrictive rule. The remainder of this post explains how North Carolina local governments can engage in FRF-eligible affordable housing repair, renovation, or development in compliance with constitutional requirements and state statutes.

Complying with the North Carolina Constitution

Article 1, Section 32 of the North Carolina Constitution prohibits governments from making gifts to private persons or entities "but in consideration of [in exchange for] public services" (see Frayda Bluestein's blog post discussing this provision). In other words, a local government must receive valuable public service in return for any cash it pays to someone. Further, the state constitution permits local governments to expend funds "for public purposes only." Every expenditure must therefore serve a constitutional public purpose, and the North Carolina Supreme Court is the ultimate arbiter of what does or does not serve a public purpose. If an expenditure serves a public purpose, then it satisfies the constitution's gift clause as well.

In the context of FRF, direct aid to the poor, disaster aid, and provision of affordable housing all serve a permissible public purpose. Each is described in turn.

Aid to "the poor" (or low-income households)

The North Carolina Constitution declares that it is "one of the first duties of a civilized and a Christian state" to aid "the poor, the unfortunate, and the orphan." In other words, it is always constitutionally permissible to provide direct aid to individuals in need, whether during an emergency or not. For example, the North Carolina Supreme Court has authorized loans for education for those "of slender means," *State Education Assistance Authority v. Bank of Statesville*, 276 N.C. 576 (1970); and loans for veterans to purchase homes, *Hinton v. Lacy*, 193 N.C. 496 (1927). This principle, that aid to the poor (or low income) is permissible, holds true regardless of whether there is an immediate emergency. FRF activities that benefit low-income persons would therefore be consistent with the state constitution.

Disaster aid "properly tailored to address the immediate emergency"

In the context of disaster aid, the North Carolina Attorney General, in a formal opinion authored in 1999, examined whether the state constitution allowed the General Assembly to provide disaster aid to individuals (including higher income individuals and businesses who suffered substantial damage) and opined that it was permissible. The Attorney General noted the state constitution's language regarding the state's "first duty" to aid the "poor" and the "unfortunate," and concluded that aid to individuals in need can serve a public purpose under the North Carolina Constitution, provided the program is *properly tailored to address the immediate emergency*. The example provided in the opinion said that aid should be limited

to those persons who "suffered substantial damage as a consequence of the disaster" and "who have not otherwise been fully compensated for that damage."

The Attorney General opinion seems to align with FRF eligibility, which requires a local government to determine that an economic harm exists and "was made worse by COVID-19," and which requires any response to be "related and reasonably proportional to the extent and type of harm experienced." In the context of a worldwide pandemic, FRF is designed to address the "substantial damage" (using the Attorney General's words) that was experienced in the form of unemployment and food and housing insecurity. Treasury guidance assumes that substantial (uncompensated) damage occurred to low-income persons and those living in QCTs, and it provides citations to research in support of its assumption.

Affordable housing when "private enterprise is unable to meet the need"

With respect to affordable housing, the North Carolina Supreme Court long ago determined that providing affordable housing to persons of low income serves a constitutional public purpose. *Wells v. Hous. Auth. of City of Wilmington*, 213 N.C. 744, 197 S.E. 693, 696 (1938). Housing assistance for persons of "moderate incomes" also serves a public purpose when the legislature is "acting with the same public purpose in mind" as when assisting persons of low income; *In re Denial of Approval to Issue $30,000,000.00 of Single Family Hous. Bonds & $30,000,000.00 of Multi-Family Hous. Bonds for Persons of Moderate Income*, 307 N.C. 52, 60-61, 296 S.E.2d 281, 286 (1982). Note, however, the constitutionality of affordable housing activities is conditioned on the *necessity* of the activities—that is, the activities serve a public purpose "*only* when the planning, construction, and financing of decent residential housing is not otherwise available" because "private enterprise is unable to meet the need." *Id* at 59-61; *Martin v. North Carolina Housing Corp.*, 277 N.C. 29, 50, 175 S.E.2d 665, 677 (1970).

Complying with North Carolina statutory authority

As a general rule, the state constitution provides that a local government must be granted statutory authority to engage in any activity. In addition, where an authorizing statute exists, it must be applied by a local government in a constitutional manner. For example, even if the General Assembly were to enact an overly broad statute that purports to go beyond the limits of the state constitution, local governments should apply the statute in a way that remains within the bounds of the constitution. "We have repeatedly held that as between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the act. Even to avoid a serious doubt the rule is the same." *In re Dairy Farms*, 289 N.C. 456, 465, 223 S.E.2d 323, 328-29 (1976) (citation and internal quotation marks omitted).

Specific North Carolina statutes related to FRF-eligible housing activities are described below.

Emergency assistance for home repairs or weatherization

Emergency home repair and weatherization programs for low income persons are not a new concept. Federal funding, such as Community Development Block Grants (CDBG), has been used for that purpose for decades. G.S. 160D-1311(a)(2) authorizes local governments to establish "community development programs," including "rehabilitation of private buildings principally for the benefit of low- and moderate-income persons" and providing for the "welfare needs of persons of low and moderate income." There are two important points to note: (1) recipients of this aid must meet an income test, and (2) the reference to "community development programs" refers to federal programs, such as CDBG, which provide funding for activities that benefit low-income and moderate-income persons. FRF is not, as a technical matter, a community development program, but it operates similarly when used for the benefit of low income persons.

G.S. 160D-1311 therefore provides ample authority to use FRF for emergency home repair or weatherization for persons of low and moderate income. G.S. 157-3 defines persons of low income as those earning 60% of area median income (AMI) or below. Moderate income has a more flexible definition in state law, but is generally understood to mean 60%-80% AMI because households up to 80% AMI are the focus of other federal programs (such as CDBG). Note that the state definition of low income (60% AMI or below) is different from the federal definition of low income (80% AMI or below).

Local government authority to develop or rehabilitate affordable housing

There are several statutory regimes which authorize local governments to engage in development of affordable housing.

Housing authority powers

G.S. 160D-1311(b) authorizes a municipal or county governing board to exercise directly those powers granted to housing authorities in G.S. Chapter 157. A housing authority possesses broad powers to develop and rehabilitate affordable housing *for persons of low and moderate income (as defined under state law)*. To summarize:

- *Support publicly owned affordable housing*. Housing authority powers enable local governments and housing authorities to construct, own, and operate housing for low income persons. Housing projects must have rents set "at the lowest possible rates consistent with … providing decent, safe, and sanitary dwelling accommodations" and the housing project cannot be constructed or operated to "provide revenues for other activities." G.S. 157-29.
- *Support for privately owned affordable housing*. Direct financial support to a private housing project is authorized, subject to constraints. For any "multi-family rental housing project" receiving support, at least 20% of the units must be restricted for the "exclusive use" of low income persons (60% AMI or below). In addition, the restrictions must be in place for "at least fifteen years." G.S. 157-3, 157-9.4. Accountability is required to ensure all subsidy amounts are traceable to direct financial benefit for low income residents, not private owners, in order to satisfy constitutional prohibitions against making gifts to private entities and to meet statutory requirements that ensure public subsidy does not "provide revenues for other activities." Thus, any financial support provided to a housing project should not exceed the total rent reduction or down payment assistance provided to low income residents over the life of the project.
- *Conveyance of property to private providers of affordable housing*. The requirements for conveyance of property to private providers of affordable housing are outlined in a blog post on the topic here. Some principles to keep in mind:
  - *Private sale authorized*. Local governments typically must convey property through a competitive bidding process to ensure open and transparent opportunity for buyers. However, in order to ensure property is used for affordable housing for low income persons, a local government may forgo the competitive process and opt for private sale instead. G.S. 157-9. Private sale enables the government to choose a buyer who promises to use the property for affordable housing, and the government may subject the property to covenants or deed restrictions to secure the promise.

- *Sale price in a private sale*. The sale price set by a properly conducted bid process is deemed to be fair market value by the courts—even when that price is very low. When property is sold by private sale, however, there is no bidding process upon which to rely, so the fair market value should be determined by an appraisal in order to comply with constitutional provisions prohibiting making gifts of public property. *See also* G.S. 160D-1312(4). Placing mandatory affordability restrictions on property will undoubtedly reduce its fair market value because the property cannot earn as much income as other similar properties. A reduction in appraised value (and sale price) attributable to reduced income potential is not a subsidy to the buyer; rather, the appraiser simply "prices in" the affordability restrictions and determines an adjusted fair value for the property (for an example of the operation of G.S. 105-277.16, see a blog post on the effect of the income approach on appraisal of affordable housing).
- *Subsidy or discount on sale price*. As just explained, local governments must receive fair market value when selling property. Local governments are not permitted to make donations of property, even to charitable entities (see my colleague Frayda Bluestein's blog post on this topic here). As noted already, however, it is constitutionally permissible for local governments to provide welfare to low income persons as a "first duty" to aid the "poor." If a subsidy is provided to an intermediary organization (*e.g.,* through a discount on the sale price), that subsidy should be traceable to direct financial benefit received by low income residents. A discount on price below the appraised value, for example, should not exceed the direct subsidy provided to low income residents over the life of the project.

Development of affordable housing without relying on housing authority powers

G.S. 160D-1316 empowers local governments to construct affordable housing, acquire property for development of housing, and convey that property for later development and use as affordable housing, under essentially the same parameters as a housing authority. However, unlike the housing authority powers, this statute does not authorize a local government to operate housing, nor to subsidize a private developer or operator of affordable housing. To engage in those activities, a local government would need to rely on housing authority powers as described above.

Lease of land for development of affordable housing

G.S. 160A-278 authorizes a local government to lease land to any firm for the construction of affordable housing for persons of low and moderate income. Such land obviously returns to public ownership at the conclusion of the lease.

Conveyance of property to a nonprofit for development of affordable housing

G.S. 160A-279 authorizes a local government to convey property by private sale to a nonprofit of its choice. Whenever a local government is authorized to appropriate funds to a not-for-profit entity carrying out a public purpose, the local government is also permitted to convey property "by private sale" to that entity "in lieu of or in addition to the appropriation of funds." As noted earlier, private sale means that the local government may choose its buyer rather than undergoing a competitive bidding process. The local government must attach "covenants or conditions" to the conveyance to ensure that (1) the property will be "put to a public use by the recipient entity" and (2) that the property reverts back to government ownership when no longer so used, as explained in Frayda Bluestein's blog post here.

Low and moderate income homeownership

Support for homeownership opportunities for low and moderate income persons is a separate category. Down payment assistance and direct sale to low income persons with subsidized sale prices is permitted when exercising housing authority powers (G.S. Chapter 157 pursuant to G.S. 160D-1311). Moderate income persons (typically 60-80% AMI) may also be aided with low interest loans when the local government is "acting with the same public purpose in mind" as with low income persons. *In re Denial of Approval to Issue $30,000,000.00 of Single Family Hous. Bonds & $30,000,000.00 of Multi-Family Hous. Bonds for Persons of Moderate Income*, 307 N.C. 52 (1982).

There is separate authority in G.S. 160D-1316(4) for conveying residential property directly to persons of low and moderate income (as defined by state law) using private sale procedures.

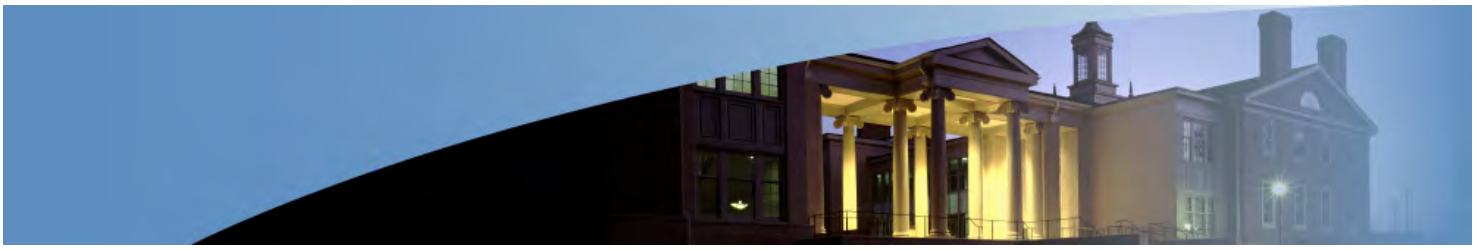
Need help? Assistance with strategic planning and affordable housing activities

As North Carolina public officials know well from their experience with federal disaster recovery funding, the sudden infusion of federal dollars from a program like FRF can strain the capacity of local government elected officials and staff. Trying to plan and implement new activities using unprecedented levels of federal funding is no easy task. Perhaps in anticipation of this concern, Treasury explicitly authorizes FRF to be used "to improve efficacy of programs addressing negative economic impacts [of COVID-19], including through use of data analysis, targeted consumer outreach, improvements to data or technology infrastructure, and impact evaluations." *See also* 31 C.F.R. 35.6(b)(10).

It is hoped that this "efficacy" funding will provide local governments with the resources they need to engage in strategic planning (with partners such as the Center for Public Leadership and Governance at the School of Government).

With respect to affordable housing development, it is advisable for local governments to collect and analyze housing data in order to inform local decision-making. A good start involves evaluating community housing needs, analyzing housing infrastructure, and anticipating future housing supply based on an understanding of the private market's capacity to produce housing. It also requires communicating with public and private stakeholders, identifying suitable development sites, conducting market analysis, and creating housing development programs that are financially feasible and grounded in market realities. Given the uniqueness of this moment, most local governments probably don't possess the staff capacity and skillsets to conduct the necessary analysis and implement the selected strategies for such a large amount of funding. Consider enlisting the help of regional councils of government (COGs), which have experience with managing federal grants, and seek assistance from public-minded development experts such as the Development Finance Initiative (DFI) at the School of Government.

Armed with housing data and market analysis, an understanding of the community's needs, and feasible development plans grounded in market realities, local government leaders will be prepared to employ FRF to maximum effect.



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Budgeting for American Rescue Plan Act Funds

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This entry was posted on June 16th, 2021 and is filed under American Rescue Plan Act (ARPA) Funding, Budeting & Appropriations, Finance & Tax.

UPDATED June 18, 2021 to provide additional information on investment proceeds of ARP Funds, based on a June 17 update from US Treasury.

As detailed **here** and **here**, the federal **American Rescue Plan Act** (ARP) provides significant funding for NC local governments. (These funds are also referred to as Coronavirus State and Local Fiscal Recovery Funds, CSLFRF, CLFRF, or Fiscal Recovery Funds.) Many counties and municipalities over 50K population (metropolitan municipalities) have already received their first tranche of funds directly from the federal government, which comprises one-half of their total allocation. (For counties and metropolitan municipalities who have not yet applied, you may do so **here**.) All other municipalities, referred to as nonentitlement units of local government or NEUs, should receive their first distribution from the state within the next month or so, which also will comprise one-half of their total allocation. The NC Pandemic Recovery Office (NCPRO) has **important guidance** for local governments, including a checklist of items to complete in anticipation of receiving the ARP funds. They also are compiling and addressing frequently asked questions **here**. The US Treasury has addressed NEU distribution FAQs **here.**

Local government officials have many questions about when they'll receive their funds and how much, for what purposes may they spend the monies, and what contracting, reporting, auditing, and other compliance requirements apply. Unfortunately, we do not yet have all the answers from the federal government. The good news is that local officials do not have to rush to spend the funds. According to the US Treasury's **Interim Final Rule** interpreting the ARP, local governments have until December 31, 2024, to obligate the ARP monies and until December 31, 2026, to expend all the funds. As an immediate matter, though, local officials need to know how to accept the funds, what to do with the cash, and how to budget the monies under state law. Those are the topics of this post.

Accepting ARP Funds

In addition to following the applicable federal or state processes for receiving the ARP funds, a local governing board must vote to accept the funds. *See* **G.S. 160A-17.1**. A board may not delegate the authority to accept the funds to the manager, mayor, or another official or employee. The board need not adopt a formal resolution, but it must vote to authorize the receipt of the funds and then delegate the responsibility to execute any necessary agreements on behalf of the board to the manager, mayor, or another employee or official. If the local government has already received the funds without a board vote, the board should vote to ratify the acceptance at its next regular meeting.

What if the governing board is not ready to make specific appropriation decisions yet, may it still accept the ARP funds? A governing board is not legally required to wait to accept ARP monies until it determines how to spend the funds. A local government should make sure that it has an accounting structure in place to be able to comply with all the reporting requirements, but it need not finalize expenditure decisions to accept the monies. (If a governing board chooses to wait, it should be mindful of any deadlines for accepting the ARP funds.)

Cash Management of ARP Funds

Once a local government receives the ARP monies, they must be deposited in one or more bank accounts in the unit's official depositor(ies). The finance officer may open a separate bank account for ARP funds, but that is not legally required. Instead, the finance officer may co-mingle the ARP funds with its other revenues in an existing bank account. The finance officer must be able to separately track the ARP monies as an accounting matter, though. And the ARP funds should not be combined with CARES Act (aka CRF) monies or other grant funds for accounting purposes. In short, the cash may be co-mingled, but there must be separate accounting. And a local government should consult the preliminary reporting requirements in the **Interim Final Rule (pages 110-112)** to help inform proper accounting and documentation. (More compliance details will be coming soon.)

The finance officer may invest the ARP funds according to the investment authority in **G.S. 159-30**. According to the **US Treasury's revised Coronavirus State and Local Fiscal Recovery Funds Frequently Asked Questions, as of June 17, 2021**, local governments are not required to remit interest earned on ARP monies to the US Treasury. (Normally, a grantee must remit interest over $500 per year on grant funds to the federal government.) The payments are not subject to the requirement of the Cash Management Improvement Act. They also are not subject to the requirement of 2 CFR 200.305(b)(8)-(9) to maintain balances in an interest-bearing account and remit payments to Treasury. Local governments may retain the interest earnings to use for administrative expenses or any other purpose authorized by state law. The investment earnings are not subject to the ARP expenditure restrictions. See **US Treasury Compliance and Reporting Guidance**.

Budgeting ARP Funds

Once the local government accepts the funds, does the board need to immediately budget the ARP monies? The legal answer to this question is no. If the board accepts the funds but takes no budgetary action, the ARP funds are restricted fund balance (for legal purposes) until budgeted by the board. Having said that, a local government will be well-served by setting up a budget structure for these funds even before it makes specific appropriation decisions. Adopting a budget structure early on may help the local government better manage the ARP monies and comply with reporting requirements. And, of course, no ARP monies may be obligated or expended until they are properly budgeted by the board.

There are two budgeting options for ARP funds—annual budget ordinance or grant project ordinance.

Annual Budget Ordinance

The first budgeting option is the Annual Budget Ordinance. If a local government uses the annual budget ordinance, the board may appropriate all, or a portion of, its ARP funds to the appropriate department, function, or project in a special revenue fund and/or an applicable enterprise fund. The board could initially appropriate all the monies to a place-holder department and prohibit the budget officer from obligating/expending any of the funds until the board amends the budget ordinance to make more specific budget appropriations. If the board intends to obligate ARP monies by July 1, 2021, then it must amend the FY 2020-21 budget ordinance to make the specific appropriations. Otherwise, the board should make the appropriations for the next year in its FY 2021-22 budget ordinance.

It is possible that a local government will be spending ARP funds over the next five years. The annual budget ordinance is effective only for a single fiscal year, from July 1 through June 30. A governing board will need to make appropriation decisions each year, even on continuing projects and programs. Any appropriated but unspent ARP monies at the end of a fiscal year must be reappropriated by the board in the following year's annual budget ordinance. The board may not authorize transfers of budget appropriations automatically from one fiscal year to the next, even if the monies are encumbered. Unappropriated ARP monies remain restricted fund balance. (Note that a local government may not purposely use ARP monies for financial reserves, but it may temporarily hold the money in fund balance pending specific appropriation decisions.)

Grant Project Ordinance

The second option is a Grant Project Ordinance, which is a special budgeting tool for multi-year grant projects. A governing board may establish a grant project ordinance for any "project financed in whole or in part by revenues received from the federal and/or State government for operating or capital purposes…." **G.S. 159-13.2**. The benefit of a grant project ordinance is that it is effective for the life of the grant, which in the case of the ARP may run until December 31, 2026. Using a grant project ordinance also may help a governing board focus its appropriation decisions on the specific expenditure items authorized by the ARP, because these monies will not be mixed in with general fund appropriations. Finally, because the ARP does not allow ARP monies to be used to fund rainy day funds or other financial reserves, the grant project ordinance structure may allow the government to depict its specific expenditure plans more easily, without losing any budget flexibility.

The structure for a grant project ordinance is straight-forward. The governing board adopts an ordinance specifying the "project" to be funded, at least in part, by the grant revenues. It then identifies both the estimated grant and non-grant revenues for the life of the project and authorizes their appropriation

for the project.

Grants typically are more limited in scope, often involving a single program or capital undertaking. ARP funds are different in that they may be used to fund a wide variety of local government projects, programs, services, and other activities. The term "project" in the statute should be interpreted to encompass all the potential expenditure items for which a local government may use ARP funds. It will be up to the governing board how best to delineate these various activities in the grant project ordinance.

A board does not need to finalize all of its appropriation decisions before adopting the grant project ordinance, though. Initially, the board could simply (1) identify the general project parameters, as set forth in the ARP and in accordance with state law authority; (2) estimate at least the first tranche of ARP funds (or the total estimated allocation) and estimate any other revenues that will be used to fund the "project;" and (3) make a general appropriation to cover the entire "project." Alternatively, the board could make initial appropriations by ARP expenditure category. Either way, the board may amend the grant project ordinance at any time to add (or delete) specific activities, move monies among expenditure items, or appropriate monies from the grant project ordinance to the general fund or an enterprise fund in the annual budget ordinance. And the board could prohibit the budget officer from obligating any ARP monies until the board makes more specific appropriations in the grant project ordinance.

Once the grant project ordinance is adopted, it must be included in the official minutes of the meeting in which it was adopted. Further, each fiscal year, the budget officer provides information to the board during the annual budget process about the expected expenditures for grant project funds during the upcoming fiscal year. The governing board may mandate more frequent status reports on a grant project ordinance in its discretion. Board requirements beyond the minimum established by statute should be reflected in the grant project ordinance. And the board should also direct the unit's finance officer to maintain an accounting of the "project" sufficient to comply with all grant reporting and documentation requirements.

For accounting purposes, a grant project ordinance is a special revenue fund. *See* **G.S. 159-26(b)(2)**.

Sample Grant Project Ordinance

As an example, suppose a local government, Town of TarHeel, receives a total allocation of $2m in ARP monies, with $1m distributed in July 2021. The following is a sample initial grant project ordinance to budget for these funds. This sample is not the only way to structure a grant project ordinance, but it provides a template for local governments that complies with all the legal requirements. It is worth emphasizing that this is a sample for the initial grant project ordinance. Once a governing board makes its more specific expenditure decisions, it should amend the grant project ordinance to reflect these.

> **Grant Project Ordinance for the Town of TarHeel Coronavirus State and Local Fiscal Recovery Funds**
>
> BE IT ORDAINED by the town council of the Town of TarHeel, North Carolina that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following grant project ordinance is hereby adopted:
>
> **Section 1:** This ordinance is to establish a budget for a project to be funded by the Coronavirus State and Local Fiscal Recovery Funds of H.R. 1319 American Rescue Plan Act of 2021 (CSLRF). The Town of TarHeel has received the first tranche in the amount of $1,000,000 of CSLRF funds. The total allocation is $2,000,000, with the remainder to be distributed to the town within 12 months. These funds may be used for the following categories of expenditures, to the extent authorized by state law.
>
> 1. Support public health expenditures, by funding COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff;
> 2. Address negative economic impacts caused by the public health emergency, including economic harms to workers, households, small businesses, impacted industries, and the public sector;
> 3. Replace lost public sector revenue, using this funding to provide government services to the extent of the reduction in revenue experienced due to the pandemic;
> 4. Provide premium pay for essential workers, offering additional support to those who have borne and will bear the greatest health risks because of their service in critical infrastructure sectors; and,
> 5. Invest in water, sewer, and broadband infrastructure, making necessary investments to improve access to clean drinking water, support vital wastewater and stormwater infrastructure, and to expand access to broadband internet.
>
> **Section 2:** The following amounts are appropriated for the project and authorized for expenditure:
>
> CSLRF Project $2,000,000*
>
> [*Once it determines how it will spend all or a portion of the ARP fuds, the governing board will amend this section to authorize appropriations for specific programs, services, projects, and activities. A board also may appropriate some or all of these funds to an enterprise fund in an annual budget ordinance for a water, wastewater, or stormwater infrastructure project.]
>
> **Section 3:** The following revenues are anticipated to be available to complete the project:
>
> CSLRF Funds $2,000,000
>
> **Section 4:** The Finance Officer is hereby directed to maintain sufficient specific detailed accounting records to satisfy the requirements of the grantor agency and the grant agreements.
>
> **Section 5:** The Finance Officer is hereby directed to report the financial status of the project to the governing board on a [monthly/quarterly]] basis.
>
> **Section 6:** Copies of this grant project ordinance shall be furnished to the Budget Officer, the Finance Officer and to the Clerk to Town Council.
>
> **Section 7:** This grant project ordinance expires on December 31, 2026, or when all the CSLRF funds have been obligated and expended by the town, whichever occurs sooner.
>
> Adopted this ___ day of ____, 20__
>
> /s/_____

Designated Town Council Representative

/s/_____

Clerk to the Town Council

Additional Resources

In addition to the NCPRO and US Treasury resources linked above, local officials should consult the **NC Department of State Treasurer's Blog** for important accounting, reporting, auditing, and other compliance information. And **NC Finance Connect** now has a dedicated discussion forum category for ARP funding, to facilitate discussions, and information and document sharing, among local government officials across the state. If you do not already subscribe to NC Finance Connect, you may create a free account **here**. You may then sign up to receive email notifications of discussions in any of the categories, including the ARP Funding category, by clicking on "Manage E-mail Notifications" under the "Discussion (Listserv)" drop down menu at the top of the NC Finance Connect home page. Finally, here are links to the **NC League of Municipalities'** and **NC Association of County Commissioners'** valuable resource pages on ARP.

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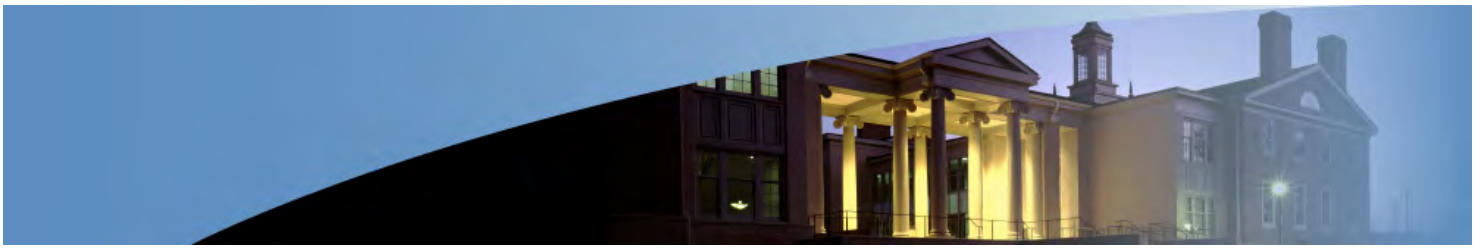

American Rescue Plan Act of 2021 (ARP): Local Government Expenditures of ARP funds for General Government Purposes

About the author

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This entry was posted on June 29th, 2021 and is filed under American Rescue Plan Act (ARPA) Funding, Budeting & Appropriations, Finance & Tax.

As some local governments have received, and many will shortly receive, their first tranche distribution of ARP funds (also referred to as Coronavirus State and Local Fiscal Recovery Funds, Fiscal Recovery Funds, or CLFRF), local officials are trying to understand all their expenditure options. I have received several questions from local officials about the legality of using ARP funds for everything from buying police vehicles, to doing minor construction projects, to acquiring land, to providing general salary bonuses, to spearheading economic development projects, to hiring new employees, to upgrading software systems, to giving a rebate to taxpayers, to installing new playground equipment, and beyond. In short, local government officials want to know whether, and to what extent, ARP funds may be used for general government projects, services, and activities that do not directly relate to the pandemic (collectively general government purposes).

The short answer to this question is that although most of the authorized expenditures for ARP funds relate to addressing the public health and financial impacts of the pandemic, there is authority to spend at least a portion of ARP monies for general government purposes. A detailed analysis, however, finds

that this authority is more limited than it might first appear. A local government may use ARP monies to fund (most) government services, to the extent that the local government experiences a reduction in general revenue during the pandemic, according to a specified formula. Additionally, a local government may spend ARP monies for certain necessary public enterprise infrastructure projects. Finally, there is authority to spend a small portion of ARP monies (and investment proceeds of ARP monies) for general government purposes. More on each below.

ARP Expenditure Authority Overview

As detailed **here,** the US Treasury has adopted an **Interim Final Rule**, interpreting the ARP and fleshing out allowable ARP expenditures by local governments. (US Treasury explains many of the details of the Interim Final Rule in this **FAQ**.) The Interim Final Rule groups allowable expenditure into 5 categories:

1. Support public health expenditures, by funding COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff;
2. Address negative economic impacts caused by the public health emergency, including economic harms to workers, households, small businesses, impacted industries, and the public sector;
3. Replace lost public sector revenue, using this funding to provide government services to the extent of the reduction in revenue experienced due to the pandemic;
4. Provide premium pay for essential workers, offering additional support to those who have borne and will bear the greatest health risks because of their service in critical infrastructure sectors; and
5. Invest in water, sewer, and broadband infrastructure, making necessary investments to improve access to clean drinking water, support vital wastewater and stormwater infrastructure, and to expand access to broadband internet.

Allowable ARP General Government Expenditures

Within these categories are a few potential options to spend ARP funds for general government purposes:

- Lost Revenue General Government Expenditures
- Necessary Water, Wastewater, Stormwater Infrastructure
- Replenish Local Government Staff
- Reimbursements
- Investment Proceeds
- Supplant General Revenue Expenditures for Pandemic Purposes

Before turning to the specifics, though, it is important to note that US Treasury is still refining its guidance on allowable expenditures. Local units should always check the latest guidance and compliance requirements before making specific expenditures decisions. (US Treasury will adopt its Final Rule on allowable expenditures sometime after the July 16, 2021 deadline for receiving comments on the Interim Final Rule.)

Lost Revenue General Government Expenditures

The ARP allows a local government to use ARP monies to fund (most) government services, to the extent that the local government experiences a reduction in general revenue during the pandemic. This category provides the broadest general expenditure authority for local governments, but it is limited to only a certain portion of a unit's ARP funds, as determined by a "lost revenue" formula.

Lost Revenue Formula

The lost revenue formula measures a local government's reduction in general revenue, as defined by the Interim Final Rule, relative to the revenue collected in the most recent full fiscal year prior to the pandemic. It provides an inflationary formula to approximate what the local government's expected general revenue would have been had the pandemic not occurred. There are four parts to calculating lost revenue – (1) determining the base year general revenue; (2) determining actual general revenue at designated points in time; (3) applying an inflationary factor to the base year general revenue at each point in time; (4) comparing actual general revenue to the inflated base general revenue to determine lost revenue. This calculation will be performed four times—for December 31, 2020, December 31, 2021, December 31, 2022, and December 31, 2023. *See* **Interim Final Rule pages 54-59**.The resulting lost revenue, if any, may be expended for most general government purposes, as detailed below.

(1) Base Year General Revenue

The Interim Final Rule provides a definition of "general revenue" to establish a base line. The definition is based on the components reported under "General Revenue from Other Sources," in the Census Bureaus' Annual Survey of State and Local Government Finances, although it varies somewhat. (The **Appendix to US Treasury's FAQs** provides a visualization of the Interim Final Rule's definition of general revenue.) The purpose of the definition is to include revenues generated from a local government's underlying economy to support government services. A local government must use this definition to calculate a base general revenue for the last full fiscal year before the pandemic. For NC local governments, that is FY 2018-2019.

For purposes of this calculation, general revenue INCLUDES the following NC local government revenue sources. The citations and brief explanations for each of these revenue sources are available **here**. (Note that not every local government will have all these revenue sources. Some are available only to municipalities and some only to counties. A local unit's governing board determines its specific revenue mix from the available options.)

- Local Government Taxes
  - Property taxes
  - Service district taxes (special taxing districts)
  - Local sales and use taxes
  - Transportation sales and use taxes
  - Motor vehicle licensing taxes
  - Beer and wine licensing taxes
  - Rental gross receipts taxes

    - Animal taxes
    - Local real estate transfer taxes
    - *Occupancy taxes (?)*
    - *Prepared foods taxes (?)*
- General government fees, charges, payments in lieu
    - Recreation fees
    - Cultural and arts fees
    - Public health fees
    - Cemetery fees
    - Ambulance fees
    - Parking fees
    - Franchise fees
    - Library fees
    - Public record fees
    - Port or marina fees
    - Hospital revenues
    - Register of Deeds fees
    - Museum, auditorium, coliseum, convention center, stadium revenues
    - Other fees for general government programs and services
- Licensing, inspection, permit, and other regulatory fees
- Intergovernmental transfers between the state and local government (except pass-through funds from the federal government)
    - Powell Bill funds
    - Beer and wine taxes
    - Video programming services taxes
    - Solid waste tipping tax
    - 911 charge
    - Electric tax
    - Telecommunications tax
    - Piped natural gas tax
    - Disposal taxes
    - State real estate transfer tax
    - Public School Building Capital Fund distributions
    - Social services funding
    - Public health funding
    - State agency grants to local governments (including only state funds, not federal funds)
    - State direct appropriations for general government purposes
- Judicial system fees
- Some public enterprise revenues
    - Wastewater revenues
    - Airport revenues
    - Off-street parking revenues
    - Solid waste revenues
    - Stormwater revenues
    - Cable television/broadband revenues
- Special assessments and critical infrastructure assessments
- Property rental and sale proceeds
- Donations
- Interest income
- ABC revenue transfers to local government

In calculating general revenue, a local government must sum across all these revenue streams. It does not matter if revenues are reported in separate funds, even enterprise funds, the revenues should be aggregated for purposes of this calculation. It also does not matter if some or all of a revenue source is legally earmarked for a particular purpose. It still counts toward the total if it is included in the above list. (Let me know if you think a potential revenue source is missing from the above list. I want to be sure to capture all possible revenue sources.)

A local government should use audited data if it is available. But if audited data is not available, a local government is not required to obtain audited data if substantially accurate figures can be produced on an unaudited basis. Further, a local government should use its own data sources to calculate general revenue and need not rely on revenue data published by the Census Bureau. (As stated above, the general revenue formula is based on, but not identical to, the "General Revenue from Other Sources," in the Census Bureaus' Annual Survey of State and Local Government Finances.) A local government may provide data on a cash, accrual, or modified accrual basis but must be consistent across calculations.

There are many instances in which a local government levies and/or collects revenue on behalf of another local government. For example, a county levies local sales and use tax but shares a portion of the proceeds with eligible municipalities. Or a county might collect property tax revenue on behalf of a municipality. The Interim Final Rule makes clear that for "purposes of measuring loss in general revenue … and to better allow continued provision of government services, the retention and ability to use the revenue is a more critical factor." Thus, for purposes of this calculation, the entity that receives and expends the revenue should count it toward its total, not the entity that levies and/or collects the revenue. What about a county or municipality that levies and collects a service district tax (special taxing district) and then allocates proceeds to a volunteer fire department or downtown management entity? In these cases, the county or municipality should count the service district tax proceeds in its total. It is not levying the tax on behalf of another local government but contracting with a private entity to provide services. Occupancy taxes present an interesting issue. They are levied by a county or municipality pursuant to local act authority. But most, if not all, of those local acts require the local government to remit the proceeds to a separate local government entity, known as a Tourism Development Authority (TDA). Arguably, then, occupancy tax proceeds (and prepared food tax proceeds) should not be counted as general revenue if they are spent by a TDA and not the county or municipality. In the absence of more definitive guidance from US Treasury, local governments will need to make a judgment call about including occupancy taxes and prepared food taxes in the general revenue calculation.

We do have specific guidance from the Interim Final Rule on revenue sources that definitely MAY NOT be counted as general revenue. The following are not general revenue for purposes of the formula:

- Refunds and other correcting transactions
- Proceeds from the issuance of debt, loans, or the sale of investments
- Agency funds or private trust transactions
- Some public enterprise revenue
  - Water fees, penalties, and other charges, including availability fees, system development fees, tap/connection fees, contractual charges, and bulk sale revenue
  - Electric fees, penalties, and other charges
  - Natural gas fees, penalties, and other charges
  - Transit or bus system fees, penalties, and other charges
- Intergovernmental transfers from the federal government, including federal transfers made via a state to a local government pursuant to a federal grant (including the CARES ACT/CRF and ARP funds)

None of these revenues should be included in a local government's general revenue total. A significant portion of many local government's pandemic-related financial losses stemmed from their water and other utility systems. These losses will not be captured in the lost revenue calculation.

(2.) Calculating Actual Revenues at Designated Points in Time

The second step is to use the same definition to calculate actual general revenue at four designated points in time. The first will be a retroactive calculation —December 31, 2020. The remaining four calculations will occur on the same day in the three successive years (December 31, 2021, December 31, 2022, and December 31, 2023), to measure the ongoing fiscal impacts of the pandemic. For the December 31, 2020 calculation, the revenue should reflect the 12-month period immediately preceding that date (January 1, 2020-December 31, 2020).

(3.) Applying Inflationary Factor

The third step is to apply an inflationary factor (growth adjustment) to the base general revenue amount. A local government may choose to either use 4.1 percent (or 0.041) OR the recipient's average annual revenue growth over the three full fiscal years prior to the COVID-19 public health emergency, whichever is greater. A local government may not use its own pre-pandemic revenue projections in this calculation.

(4). Comparing Inflated Base General Revenues to Actual General Revenues

The final step is to compare the inflated base general revenue at each of the four points in time. If the inflated base revenue is more than the actual revenue as of the designated date, the amount of the difference is the local government's lost revenue. A local government will not know its total lost revenue amount until it completes its final calculation on December 31, 2023.

The **US Treasury FAQ 3.5** provides the following formula that may be used to calculate lost revenue at each of the four designated points in time:

> Max {[Base Year Revenue from FY2018-19 * (1+Growth Adjustment)(n/12)] – Actual General Revenue as of 12-month period before calculation date; 0}
>
> Note that n = number of months that have elapsed between the end of the base year and the calculation date.
>
> *As an example, assume a local government's base year total general revenue for FY2018-19 is $1,000,000, and its actual general revenue for the period of January 1, 2020 to December 31, 2020 is $1,020,000. Next assume that the local government chooses to use the default growth factor of 4.1 percent (0.041). In applying the formula, $1,062,126.13 is the growth inflated revenue for December 31, 2020 ($1,000,000 *$(1.041)^{18/12}$). That exceeds actual revenue, thus the amount of "lost revenue" as of December 31, 2020, is $42,126.13. That is the amount of ARP funds that may be spent for general government purposes based on the first lost revenue calculation. (As stated above, the calculation will be repeated on the same date each year through 2023.)*

The ARP allows a local government to assume that all lost revenue is due to the pandemic. However, it does not allow a local government to factor in (adjust for) actions taken by the local government, such as a change in the property tax rate or other tax or fee amounts, change in the revenue mix, or revaluation adjustments. It also does not allow a local government to count revenue that it received but diverted to pandemic-related expenditures. The lost revenue calculation only provides a measure of the reduction of certain revenue actually received by the local government, as compared to the growth-inflated base year amount.

The Government Finance Officer Association (GFOA) has created an Excel spreadsheet to help local governments calculate their lost revenue amounts. It is **here**. As soon as it receives its 1st tranche distribution of ARP monies, a local government may immediately do its first (of 4) lost revenue calculations, for December 31, 2020.

For reporting purposes, a local government will need to document its calculation of each of the components of the formula. *See* **US Treasury Compliance and Reporting Guidance.**

Allowable Lost Revenues Expenditures

The purpose of this ARP expenditure category is to allow "recipients facing budget shortfalls to use payments from the [ARP funds] to avoid cuts to government services and, thus, enable [local governments] to continue to provide valuable services and ensure that fiscal austerity measures do not hamper the broader economic recovery." **Interim Final Rule, page 53**. The Interim Final Rule does not limit a local government to using its lost revenue ARP monies only to support existing government programs, projects, and services that it otherwise would have cut or scaled back, though. With a few exceptions, a local government has broad authority to expend its lost revenue ARP funds each year for the provision of any government services that are authorized by state law. *See* **Interim Final Rule, page 60.** They include, but are not limited to, maintenance of existing capital or pay-go spending for new capital outlay, including roads and other infrastructure projects. They also include general local government programs and services, including public safety, fire protection, cultural and recreation, public, health, and education. And they include pay-go spending on local government vehicles, equipment, supplies, hardware, software, and other costs involved in the direct provision of public services or aid to citizens.

The lost revenue ARP funds MAY NOT be used to pay interest or principal on outstanding debt, replenish fund balance or other financial reserves, or pay settlements or judgments that would not be considered provision of a government service. The restriction on paying interest or principal on any outstanding debt instrument, includes short-term revenue or tax anticipation notes, or paying fees or issuance costs associated with the issuance of new debt. In addition, the overarching restrictions on all ARP funds apply—namely the prohibition on pension deposits and the prohibition on using funds for non-federal match in other grant programs if barred by regulation or statute.

For reporting purposes, a local government will be required "to submit a description of services provided. This description may be in narrative or in another form, and recipients are encouraged to report based on their existing budget processes and to minimize administrative burden." *See* **US Treasury Compliance and Reporting Guidance**.

Necessary Water, Wastewater, Stormwater Infrastructure

Another ARP allowable expenditure category relates to certain local government capital – specifically necessary water, wastewater, and stormwater infrastructure. (The ARP also includes broadband infrastructure, but because of the current lack of state law authority for this expenditure category, I am excluding it here.) Although typically not considered general government expenditures, this category does provide authority for local governments to make investments in water, sewer, and stormwater utilities that are not directly tied to addressing pandemic-specific issues. But the authority is not unlimited. According to the Interim Final Rule, "[n]ecessary investments include projects that are required to maintain a level of service that, at least, meets applicable health-based standards, taking into account resilience to climate change…." **Interim Final Rule, page 62**.

Accordingly, the Interim Final Rule links the allowable water, sewer, and stormwater projects to those that would be eligible to receive financial assistance through the Environmental Protection Agency's Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF).

> **DWSRF projects** include treatment, transmission, and distribution (including lead service line replacement), source rehabilitation and decontamination, storage, consolidation, and new systems development.
>
> **CWSRF projects** include construction of publicly- owned treatment works, nonpoint source pollution management, national estuary program projects, decentralized wastewater treatment systems, stormwater systems, water conservation, efficiency, and reuse measures, watershed pilot projects, energy efficiency measures for publicly-owned treatment works, water reuse projects, security measures at publicly-owned treatment works, and technical assistance to ensure compliance with the Clean Water Act.

The primary focus of these ARP-eligible projects is to establish or make improvements to existing utility systems to protect public health, improve water quality and address water pollution, remediate failing or inadequate infrastructure, provide service to un- or underserved areas, and facilitate regionalization to ensure financial and structural sustainability.

A local government does not have to apply to the CWSRF or DWSRF programs to receive the ARP funds or for approval of authorized projects. The CWSRF and DWSRF project lists simply provide a guide of lawful expenditures. In fact, the Interim Final Rule makes clear that a local governing board makes the final determination as to whether its infrastructure projects are eligible and align with the federal DWSRF or CWSRF project categories (not the State's project categories or definitions). Note also that the National Environmental Policy Act (NEPA) does not apply to water infrastructure projects just because they are funded with ARP monies.

Although the lists of potential projects are broad, there are some significant limitations. ARP monies MAY NOT be used to cover general operating expenses of these utility systems or to provide reimbursements for lost revenues. ARP monies also generally MAY NOT be used for system expansions to accommodate potential new growth or solely for economic development purposes. And, as stated above, ARP monies MAY NOT be used to issue debt or make debt service payments on these infrastructure projects. They also MAY NOT be used to satisfy any local match requirement on a federal grant if prohibited by that grant. ARP monies MAY NOT be used to fund financial reserves and should not be appropriated to a capital reserve fund. Finally, a local government MUST have state law authority to expend the ARP monies for any specific infrastructure projects. There are some CWSRF/DWSRF projects that may not be authorized for NC local governments.

The ARP monies must be used for eligible project expenses incurred on or after March 3, 2021, but they can be expended for projects that began before that date. For projects that have not yet begun, a local government should focus on those that reasonably can be planned for and contracted by December 31, 2024 and completed by December 31, 2026. ARP funds may cover many pre-project development costs for eligible projects. "For example, the DWSRF allows for planning and evaluations uses, as well as numerous pre-project development costs, including costs associated with obtaining project authorization, planning and design, and project start-up like training and warranty for equipment. Likewise, the CWSRF allows for broad pre-project development, including planning and assessment activities, such as cost and effectiveness analyses, water/energy audits and conservation plans, and capital improvement plans." **US Treasury FAQ 6.12**.

The reporting requirements on these expenditures are complicated and will be the subject of a future post. For current details see **US Treasury Compliance and Reporting Guidance.**

Rehire General Government Staff

A local government may use ARP monies to rehire local government staff, up to pre-pandemic staffing levels. **Interim Final Rule, pages 35-36**. This allows a local government to mitigate the negative impacts of the pandemic on its own workforce. ARP funds may be used to cover payroll, benefits, and other costs associated with hiring the local government staff. The employees need not focus on pandemic-specific activities. If, however, a local government wishes to keep these positions once the ARP monies are fully expended, it will have to use its own resources to support them.

Reimbursement of Government Expenditures

A local government may reimburse itself with ARP monies for any qualifying expenditures that it paid for with general fund or enterprise fund monies from March 3, 2021, through the date(s) that it received its ARP distribution(s). In other words, if a local government expended its own resources to fund an ARP-eligible program or project sometime after March 3, 2021, but before it received the ARP cash, the local government may reimburse the applicable general fund or enterprise fund with ARP monies. The reimbursed monies are not restricted. They may be spent for any public purpose allowed by state law.

Investment Earnings

Once a local government receives the ARP monies, the funds must be deposited in one or more bank accounts in the unit's official depositor(ies). The finance officer may open a separate bank account for ARP funds, but that is not legally required. Instead, the finance officer may co-mingle the ARP funds with its other revenues in an existing bank account. The finance officer must be able to separately track the ARP monies as an accounting matter, though. And the ARP funds should not be combined with CARES Act (aka CRF) monies or other grant funds for accounting purposes.

The finance officer may invest its ARP funds in the same ways that it invests other local government revenues. **G.S. 159-30** details the authorized investment vehicles. According to the **US Treasury's Coronavirus State and Local Fiscal Recovery Funds Frequently Asked Questions**, a local government is not required to remit interest earned on ARP monies to the US Treasury. (Normally, a grantee must remit interest over $500 per year on grant funds to the federal government.) The payments are not subject to the requirement of the Cash Management Improvement Act. They also are not subject to the requirement of 2 CFR 200.305(b)(8)-(9) to maintain balances in an interest-bearing account and remit payments to Treasury.

Under state law, a finance officer must proportionally allocate any investment proceeds from co-mingled funds according to budgeting fund. That means that the proportional share of investment earnings from ARP monies must be allocated back to the special revenue fund or grant project ordinance. However, these investment proceeds are not legally restricted by the grant. *See* **US Treasury Compliance and Reporting Guidance**. They may be used for any public purpose authorized by state law.

Supplant General Revenue Expenditures for Pandemic Purposes

Finally, a local government to use ARP funds for eligible pandemic-specific expenses. That will free up general revenue to be used for traditional local government expenditures.

«

Clarification of Rules for Remote Meetings Under State Level State of Emergency: No More Waiting 24 Hours After Public Hearings!

»

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North Carolina Association of County Commissioners (NCACC)

Federal Coronavirus Relief

CARES Act (March 2020)

- SL 2020-4: Appropriated $150 million of Coronavirus Relief Fund (CRF) to counties; $150 million in reserve
- SL 2020-80: Appropriated $150 million reserve with required $75 million share to municipalities
- NC Pandemic Recovery Office and State Treasurer reporting and auditing; almost all funds disbursed

Consolidated Appropriations Act, 2021 (Dec. 2020)

- $900 billion federal relief package
- Extends CRF expenditure deadline from Dec. 30, 2020 to Dec. 31, 2021; no new funding
- Includes approx. $700 million in Emergency Rental Assistance funding for NC; 18 direct allocation local govts
- Local governments and state working on ERA program details and launching programs

American Rescue Plan

- Signed March 11, 2021
- $1.88 trillion coronavirus relief package
- $350 billion in State and Local Fiscal Recovery Funds
- $2.034 billion directly to NC counties
- NC municipalities will receive $1.3 billion, either directly or via the State
- State of North Carolina ($5.3 billion) and Local Governments will receive almost $9 billion in Fiscal Recovery Funds

Federal Coronavirus Relief

American Rescue Plan Act of 2021

State and Local Fiscal Recovery Fund: County Focus

$65.1 billion allocated to counties according to population; sent directly from U.S. Treasury to counties

Counties will receive half of the allocation within 60 days of enactment, and the 2nd installment one year after the 1st

Eligible uses:

(1) To respond to the public health emergency or its negative economic impacts;
(2) To provide premium pay to eligible employees for essential work ($13/hour);
(3) To address certain revenue reductions;
(4) To make infrastructure investments in water, sewer, or broadband

Restrictions:

- Cannot deposit into pension fund
- States also cannot directly or indirectly offset the reduction of revenues due to tax decrease made after March 3, 2021

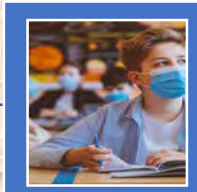
Reporting is required; Funds are available to use until December 31, 2024

Federal Coronavirus Relief

American Rescue Plan (also includes; not complete list)

Public Health, Vaccines, and Testing

- $7.5 billion in CDC vaccine distribution funds
- $3.9 million in block grant funding for MH treatment



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- Higher Education; Child Care; Head Start

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- Extends 15% benefits increase for SNAP (food stamps)
- $4 billion for food assistance; loans for supply chain

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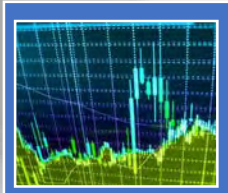


Unemployment Benefits

- $300 supplement through Sept.6, 2021; tax waiver

Small Business Assistance

- $28.6 billion Restaurant Revitalization Fund
- $7 billion to expand PPP eligibility; $15 billion for EIDL grants

Visit www.ncacc.org/arp

Email arpquestions@ncacc.org

Important Information

- State and Local Fiscal Recovery Fund (Congressional Budget Office Estimates)
- American Rescue Plan Act of 2021

Other Relevant Links to ARP Information

- NACo Covid-19 Recovery Clearinghouse
- State and Local Fiscal Recovery Fund Text
- ARP ESSER (Education Funds)
- ARP State and Local Fiscal Recovery Funds Fact Sheet

NORTH CAROLINA
DEPARTMENT OF STATE TREASURER

STATE TREASURER OF NORTH CAROLINA
DALE R. FOLWELL, CPA

STATE AND LOCAL GOVERNMENT FINANCE DIVISION

AMERICAN RESCUE PLAN

LGC GUIDANCE

Sharon Edmundson

Deputy Treasurer, SLGFD

ARPA FUNDS

- Once in a generation opportunity!
- Will be difficult to spend all that money!
- Wow we don’t have to worry about our fund balance!

Summary of ARPA Funding

- State of NC allocated $5.4 billion
- Counties and 26 metropolitan cities allocated $2B and $668M respectively directly from UST
- Non-entitlement units (municipalities) allocated $705M through the State
- Special purpose governments not allocated but may receive funds from the State allocation
- Funds delivered in two tranches, one in 2021, second in 2022

Where should these funds go?

- No need to open a separate bank account **IF** you can track revenues and related expenditures 100% with your accounting system.
- If you can't accomplish with your accounting system, use a separate bank account

What is the initial accounting guidance for these funds?

- Do not comingle/combine ARPA funds with CVR/CARES money!
- Account for funds in a Special Revenue Grant Fund or a Capital Project/Reserve Fund
  - Not advised to put in General Fund; can't be used to build reserves
  - Also will skew operating results in General Fund

Reporting on Financial Statements

- It appears that the guidance states these funds are granted with eligibility requirements
- Any unspent funds at year end will be recorded as a liability (not a deferral)
- Awaiting additional guidance on this topic

Treatment of Investment Earnings

- Waiting for clarification from UST because current information indicates two different treatment of earnings:
  - If commingle funds in a central depository, investment earning are unrestricted
  - If isolate funds in separate account, investment earnings are restricted to the allowed uses of the grant funds
- Further complicated by State law that requires earnings to follow the grant; not clear if that applies to ARPA funds

Audit Requirements for ARPA funds

- No reason to believe funds won't be subject to Yellow Book and/or federal Single Audit requirements
- Remember that thresholds are expenditures not receipts
  - Yellow Book kicks in when combined federal and/or state funded **expenditures** total $100,000 or more
  - Federal Single Audit required when federal **expenditures** total $750,000 or more

Audit Requirements for ARPA funds

- Yellow Book requirements may be problematic for small governments that do not normally fall under Yellow Book standards; auditors are more limited as to non-audit services they can provide for a Yellow Book audit
- Local staff should confer with independent auditors to determine if changes need to be made
- If your audit requirements will expand for 2021 be prepared for your auditor to request a fee increase

Budgeting for ARPA Funds

- ARPA funds **must be appropriated before they are obligated**
- Units that intend to obligate any of these funds on or before June 30, 2021, must amend their 2021 budgets to include the funds.
- Units that do not plan to obligate these funds on or before June 30, 2021, can likely get by without amending their 2021 budgets

Budgeting for ARPA Funds

- May want to consider budgeting funds in a Grant Ordinance, allowed by G.S. 159-13.2,
- Established for a grant that covers both capital and operating funding for the life of the grant
- Can budget in a capital project fund if intend to use for that purpose
- Be careful about putting funds in a capital reserve fund
- All units that are receiving ARPA funds must ensure that the funds are included a budget in the year(s) they will be obligated. Budgets must be in place before the funds are obligated!

How Can We Use ARPA Dollars?

- Easier to say what cannot happen with ARPA dollars
  - Can't use to build reserves
  - Can't use to fund pension liabilities
  - Can't be used to offset a loss in tax revenue as a result of a change in law, regulation, or administrative interpretation

How Can We Use ARPA Dollars?

- **Support public health expenditures** – COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff
- **Address negative economic impacts caused by the public health emergency** - including economic harms to workers, households, small businesses, impacted industries, and the public sector
- **Replace lost public sector revenue** - using this funding to provide government services to the extent of the reduction in revenue experienced due to the pandemic

How Can We Use ARPA Dollars?

- **Provide premium pay for essential workers** - offer additional support to those who have and will bear the greatest health risks because of their service in critical infrastructure sectors
- **Invest in water, sewer, and broadband infrastructure** - making necessary investments to improve access to clean drinking water, support vital wastewater and stormwater infrastructure, and to expand access to broadband internet

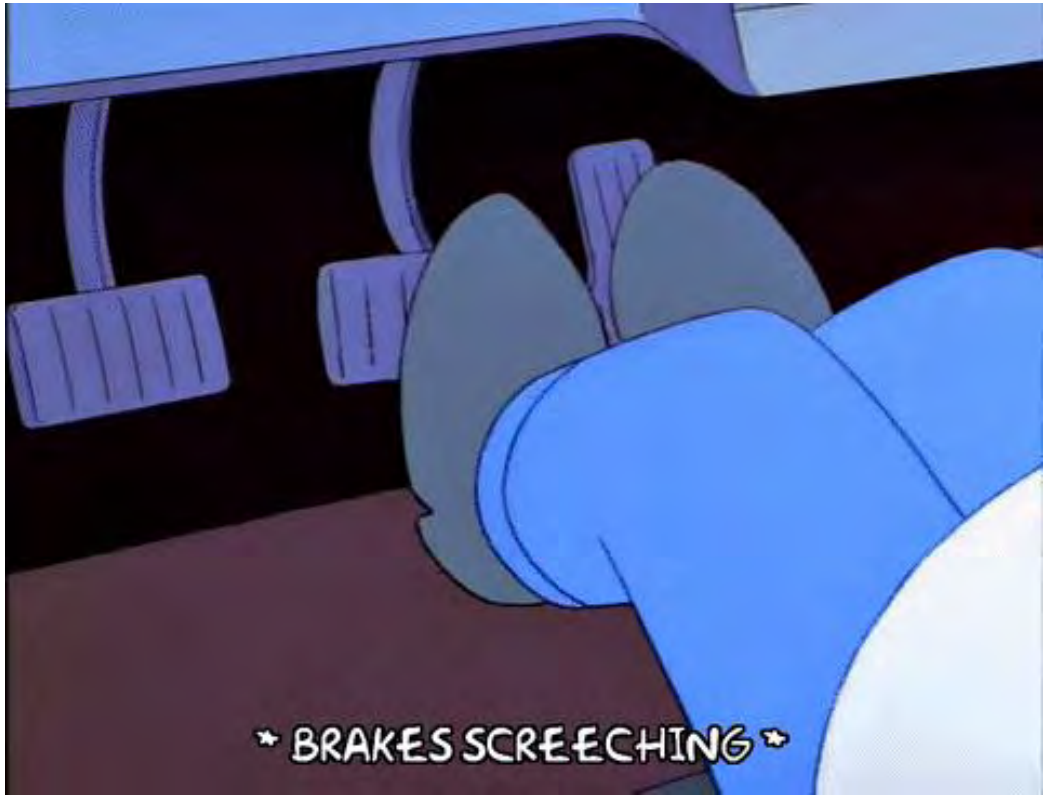
How will the State Spend its ARPA Dollars?

- Governor Cooper has proposed the following:
  - $440m for distressed local utility system infrastructure needs
  - $360m for all public utility system infrastructure needs
  - $1.2B for broadband
  - $160m for lead and asbestos abatement in schools
  - $175m for rural downtown transformation
- General Assembly has not yet released its plans

What should you do?

WAIT

BE PATIENT and THOUGHTFUL



What Should You Do?

- ARPA funds represent an opportunity for substantial change
- Determine the best and highest use
- Leverage State dollars when possible
- Funds must only be obligated by December 31, 2024, and expended by December 31, 2026

RESOURCES

- SLGFD - COVID-19 Resource Page
- NCLM - ARPA site
- NCPRO – NC Pandemic Recovery Office
- NCACC – COVID Resource site
- School of Government – Coates Canons blog
- Regional COG

Contact Information

- Sharon Edmundson
- (919) 814-4289
- (919) 886-0907
- Sharon.Edmundson@nctreasurer.com

SLGFD phone (919) 814-4300

SLGFD@nctreasurer.com

NCPRO

NC Pandemic Recovery Office

American Rescue Plan Act

Regional Information Sessions for Local Governments

June 30, 2021

July 1, 2021

American Rescue Plan Act

Regional Information Sessions for Local Governments

AGENDA

Welcome and Overview of the Session

- Stephanie McGarrah, *Executive Director,* NC Pandemic Recovery Office

Introduction of Governor Roy Cooper

- Lee Lilley, *Governor's Director of NC Pandemic Recovery,* Office of Governor Roy Cooper

Transformational Opportunity of American Rescue Plan Act Funds

- The Honorable Roy Cooper, *Governor of North Carolina*

What does the State plan to do with its funds that will assist local governments?

- Charlie Perusse, *State Budget Director,* Office of State Budget Management
- Kristin Walker, *Deputy Director,* Office of State Budget Management

How can Local Fiscal Recovery Funds be used? How is this different from CARES?

- Lisa Fox, *Program Director,* NC Pandemic Recovery Office
- Kara Millonzi, *Robert W. Bradshaw Jr. Distinguished Professor of Public Law and Government,* School of Government

What are the regional planning opportunities to address broader economic needs?

- Lee Worsley, *Executive Director,* Triangle J Council of Governments and Chair, NC Association of Regional Councils
- Robert Hiett, *Executive Director,* Upper Coastal Plain Council of Governments
- Nathan Ramsey, *Executive Director,* Land of Sky Regional Council

Question and Answer

- Jamilla Hawkins, *Chief of Staff,* NC Pandemic Recovery Office

NCPRO
NC Pandemic Recovery Office

Technical Guidance Session

Moderators:

- Paige Worsham, *Associate General Counsel,* NC Association of County Commissioners (NCACC)
- Chris Nida, *Director of Municipal Research & Strategic Initiatives,* NC League of Municipalities (NCLM)

Overview of Session and Introduction of Panelists

DISCUSSION QUESTIONS

How can ARPA funds be used in the current budget?

- Paige Worsham, *Associate General Counsel,* NCACC
- Chris Nida, *Director of Municipal Research & Strategic Initiatives,* NCLM

How should you set up the fund accounts?
What are other financial considerations for these funds?

- Kara Millonzi, *Robert W. Bradshaw Jr. Distinguished Professor of Public Law and Government,* UNC School of Governr
- Gregory Allison, *Teaching Professor,* UNC School of Government

What federal and state compliance and audit requirements are likely?

- Sharon Edmundson, *Deputy Treasurer,* State and Local Government Finance Division, NC Department of State Treasu

What resources are available if you need help?

- Nate Halubka, *Policy Analyst,* NC Pandemic Recovery Office

Wrap up, Future Sessions and Next Steps

- Stephanie McGarrah, *Executive Director,* NC Pandemic Recovery Office

NCPRO
NC Pandemic Recovery Office

Local Pandemic Recovery Stakeholders

OFFICE OF GOVERNOR ROY COOPER

NCPRO NC Pandemic Recovery Office

NC OSBM OFFICE OF STATE BUDGET AND MANAGEMENT

ASSOCIATION OF REGIONAL COUNCILS OF GOVERNMENTS NC ARCOG

NC DEPARTMENT of COMMERCE RURAL ECONOMIC DEVELOPMENT

North Carolina Metropolitan MAYORS COALITION

HOMETOWN STRONG COMMUNITY FOCUSED PARTNERSHIPS

NORTH CAROLINA Department of Environmental Quality DEQ

NCDIT NORTH CAROLINA DEPARTMENT OF INFORMATION TECHNOLOGY Broadband Infrastructure Office

NORTH CAROLINA DEPARTMENT OF STATE TREASURER

STATE TREASURER OF NORTH CAROLINA DALE R. FOLWELL, CPA

NORTH CAROLINA ASSOCIATION OF COUNTY COMMISSIONERS FOUNDED 1908

NCLM NC LEAGUE OF MUNICIPALITIES

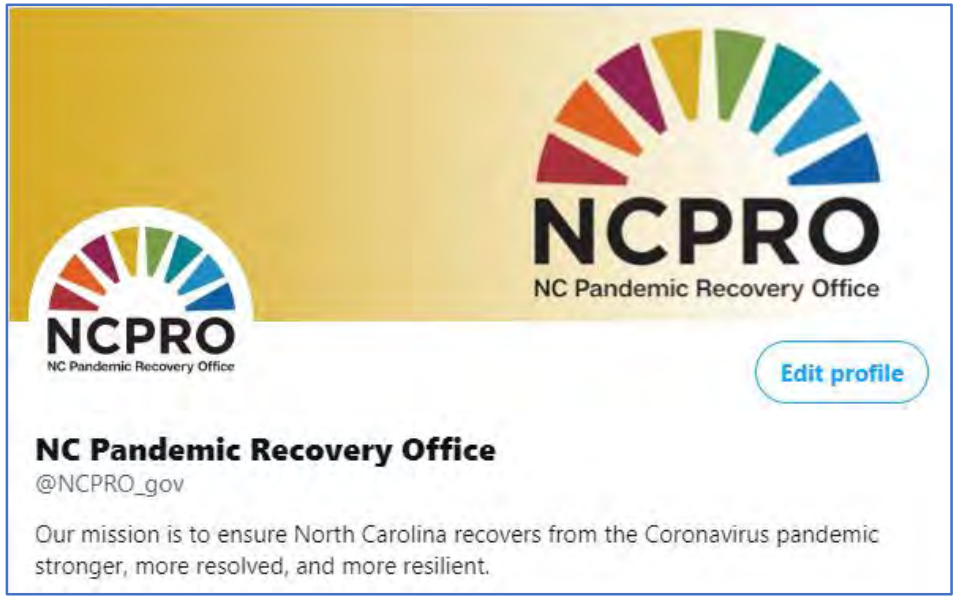
NC RURAL CENTER

UNC SCHOOL OF GOVERNMENT

NCPRO NC Pandemic Recovery Office

Follow Along on Twitter

- We will be live tweeting the session on Twitter
- Follow along with @NCPRO_gov
- Or follow along with #ARPForLocalGovs



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NC Pandemic Recovery Office

Introduction of Governor Roy Cooper

Lee Lilley
Governor's Director of NC Pandemic Recovery Office of Governor Roy Cooper

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Transformational Opportunity of American Rescue Plan Act Funds

Governor Roy Cooper

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NC Pandemic Recovery Office

What does the state plan to do with its funds that will assist local governments?

Charlie Perusse
State Budget Director
Office of State Budget Management

Kristin Walker
Deputy Director
Office of State Budget Management

NCPRO
NC Pandemic Recovery Office

American Rescue Plan Budget Recommendations

American Rescue Plan

$5.7B to State of North Carolina in two programs:

State Fiscal Relief	Critical Capital Projects
$5.44B	$277 M

NC Local Governments:

$2.037B to counties

$668M to metro cities

$705M to non-entitlement units

Funds must be obligated by 12/31/24 and expended by 12/31/26

NC's Recovery in Sight, Needs Remain Great

- Employment rate for low-wage workers down 3.4% and labor participation rate down 2.2% compared to Jan 2020
- 545,000 affordable homes are needed for families of lower income
- 59% of North Carolinians lack access to affordable high-speed internet
- Only 50% of eligible children attend NC Pre-k

A Shared Recovery *for a* Stronger North Carolina

- Assisting Families Hardest Hit
- Upgrading Infrastructure
- Preparing the Workforce
- Promoting Business Development and Innovation
- Positioning Government to Best Serve North Carolinians

Assisting Families and Individuals Hardest Hit

Expanding Affordable Housing: $575M

- $460M to develop and rehabilitate housing units. Matching requirement structure as follows:
  - Tier 1 and Tier 2 Counties: 80/20 state/county match
  - Tier 3 counties: 60/40 state/county match
- $40M to support the Workforce Housing Loan Program to finance loans to construct or rehabilitate affordable rental housing.
  - Funds will be leveraged with federal low-income housing tax credits to assist in financing more than 3,500 housing units.
- $75M in down payment assistance for first-time homebuyers
  - $8K standard assistance
  - $15K enhanced assistance for public school teachers
  - *Will assist 5,000 to 9,000 first-time homebuyers*

Upgrading Infrastructure

Closing the Digital Divide: $1.2B

Goal: NC will become a top-5 state in adoption with rates above 80%, achieve 100% adoption for homes with children, and fully close equity gaps by 2025

- $600M for infrastructure
- $420M to ensure affordability
- $165M for digital literacy and enablement
- $15M for operational support

Upgrading Infrastructure

Water, Sewer, & Stormwater: $800M

- $440M for distressed & at-risk units
  - Distressed or regionalization projects 100% state-funded
  - At-risk units eligible for 75/25 state/county match
  - Potential to assist 65-130 units

- $360M for other critical projects
  - 50/50 state/county match
  - Funding for approx. 30 projects

Upgrading Infrastructure

Rural Downtown Transformation Grants: $175M

- $60M for neighborhood revitalization grants
- $100M in grants to local governments for local transformation projects
  - Grants are expected to bolster local economies of at least 10 rural communities
- $15M to acquire land and demolish old buildings
- Will support more than 100 downtown districts to better attract and retain businesses

Promoting Business Development & Innovation

Economic Sites Development: $50M

- Funds critical infrastructure at Megasites and Green energy sector to attract new businesses to NC with a focus on distressed communities

Strategic Industry Development: $50M

- Direct grants to local governments for infrastructure and workforce programs

Expand Motorsports and Outdoor Event Opportunities: $45M

- Includes $30M ($10M each) for three large speedways; $10M for local tracks; and $5M for Motorsports and Moonshine Trail

Promoting Business Development & Innovation

Restart the Arts, History, Science, Libraries, and Film: $60M

- $45M in recovery grants
- $2.5M each to the Symphony and Museum of Art
- $10M for film industry to build sound stages and sets
- > 1,000 organizations eligible for help

Positioning Government to Best Serve North Carolinians

Local Government Assistance: $65M

- $41M to provide direct assistance to smaller units through the League of Municipalities, County Commissioners Association, & Council of Governments
- $24M to hold the towns of Huntersville and Apex harmless

State-recognized American Indian Tribal Assistance: $18M

- Funding to Tribes will assist approximately 67,000 American Indians and over 1,000 businesses
  - $16M in direct aid to the seven tribes recognized by NC but not the federal government
  - $2M for small business grants and other assistance

Stay in touch!

Phone:
984-236-0600

Website:
www.osbm.nc.gov

Follow us:

@ NC Office of State Budget & Management

@ NCDemographer

NC OSBM
OFFICE OF STATE BUDGET
AND MANAGEMENT

Allowable Uses of Local Fiscal Relief Funds

American Rescue Plan Act: Regional Information Sessions for Local Governments
June 30, 2021 and July 1, 2021

Kara Millonzi
UNC School of Government
Lisa Fox
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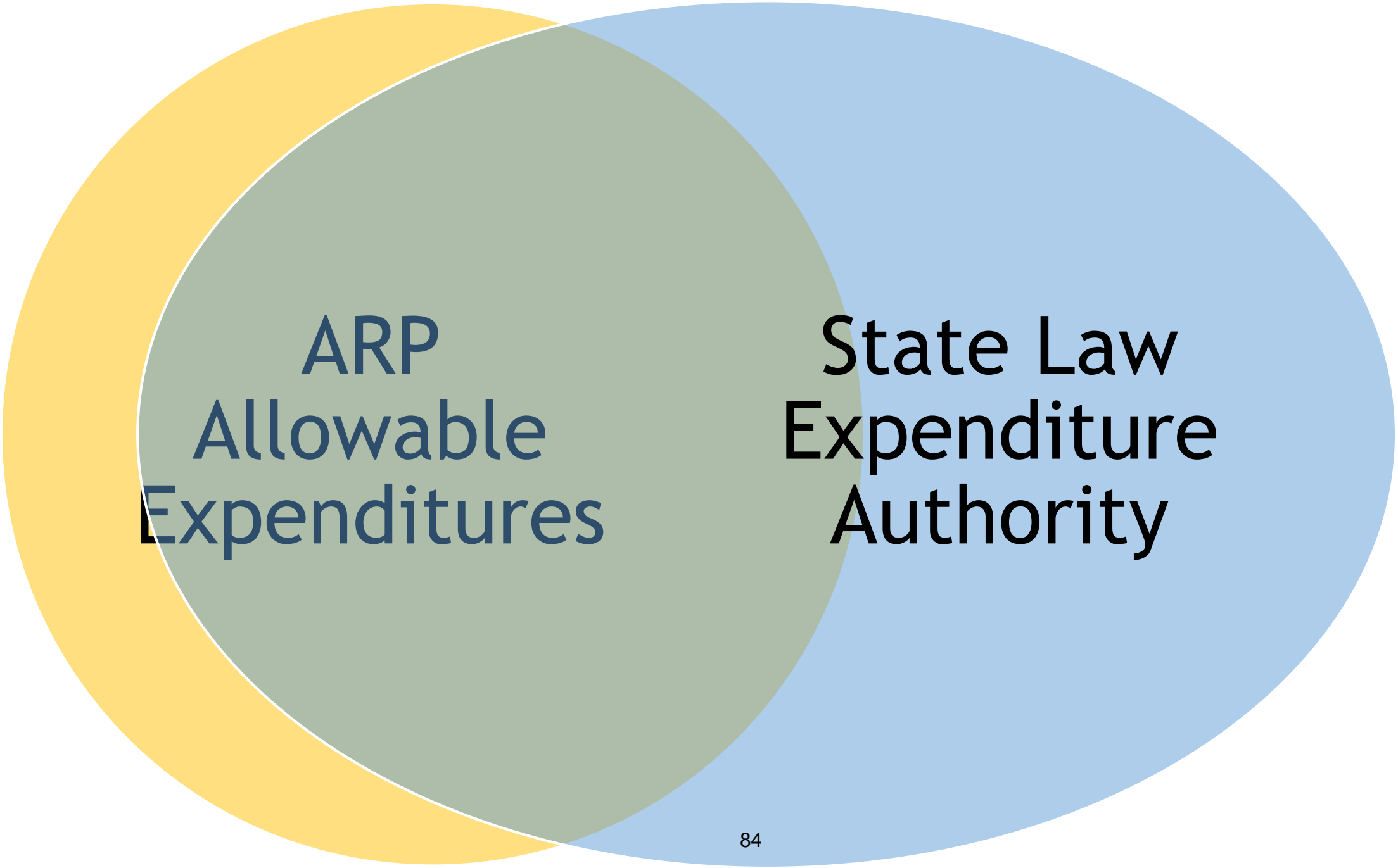
ARP
Allowable
Expenditures
State Law
Expenditure
Authority

Eligible Uses for Local Fiscal Recovery Funds

NCPRO
NC Pandemic Recovery Office

COVID Response & Adaptation

"To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality"

Allowable uses under this category include: public health measures; direct economic assistance to small businesses, households, and nonprofits; behavioral health; and supporting disproportionately impacted populations.

Premium Pay

"To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers"

Allowable uses under this category include premium pay for workers categorized as essential who are performing in-person work and/or work that is directly mitigating the impact of the coronavirus pandemic.

Revenue Loss

"For the provision of government services to the extent of the reduction in revenue due to the COVID-19 public health emergency relative to revenues collected in the most recent fiscal year prior to the emergency"

Allowable use under this category requires using a specific formula, set by the U.S. Treasury, for calculating revenue loss. Such revenue replacement must be used to provide and support "core government services," including modernization of cybersecurity systems.

Infrastructure Investments

"To make necessary investments in water, sewer, or broadband infrastructure"

Allowable uses under this category include: improving drinking water infrastructure, including the replacement of lead service lines; improving wastewater infrastructure; addressing cybersecurity needs to protect water or sewer infrastructure; and expanding broadband internet access to unserved or underserved households and businesses.

Quotes are from the Interim Final Rule: https://www.govinfo.gov/content/pkg/FR-2021-05-17/pdf/2021-10283.pdf
See pages 56-61 for more about revenue loss calculations. Page 75 contains guidance about upload speeds required in broadband projects.

Find more info and future PROtips at https://www.nc.gov/agencies/ncpro

Lee Worsley, Executive Director
Triangle J Council of Governments
Chair of NC Association of Regional Councils

Nathan Ramsey, Executive Director
Land of Sky Regional Council

Robert Hiett, Executive Director
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NC Pandemic Recovery Office

NCLM
NC LEAGUE OF MUNICIPALITIES

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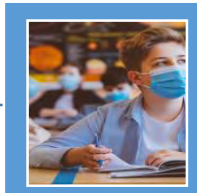

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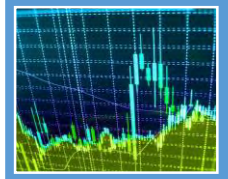

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Small Business Assistance

- $28.6 billion Restaurant Revitalization Fund
- $7 billion to expand PPP eligibility; $15 billion for EIDL grants

Office of Recovery Programs

Treasury Guidance

Interim Final Rule

DEPARTMENT OF THE TREASURY

31 CFR Part 35

RIN 1505-AC77

Coronavirus State and Local Fiscal Recovery Funds

AGENCY: Department of the Treasury.

ACTION: Interim final rule.

SUMMARY: The Secretary of the Treasury (Treasury) is issuing this interim

implement the Coronavirus State Fiscal Recovery Fund and the Coronavirus L

Recovery Fund established under the American Rescue Plan Act.

DATES: *Effective date:* The provisions in this interim final rule are effective

OF PUBLICATION IN THE FEDERAL REGSITER].

Comment date: Comments must be received on or before [INSERT DATE 60

DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Please submit comments electronically through the Federal eR

http://www.regulations.gov. Comments can be mailed to the Office of the Und

Domestic Finance, Department of the Treasury, 1500 Pennsylvania Avenue, N

DC 20220. Because postal mail may be subject to processing delay, it is reco

FAQs

AS OF JUNE 24, 2021

Coronavirus State and Local Fiscal Recovery Funds

Frequently Asked Questions

AS OF JUNE 24, 2021

This document contains answers to frequently asked questions regarding the Coronaviru
and Local Fiscal Recovery Funds (CSFRF / CLFRF, or Fiscal Recovery Funds). Treasu
be updating this document periodically in response to questions received from stakehold
Recipients and stakeholders should consult the Interim Final Rule for additional informa

- For overall information about the program, including information on requesting
please see https://home.treasury.gov/policy-issues/coronavirus/assistance-for-sta
and-tribal-governments
- For general questions about CSFRF / CLFRF, please email SLFRP@treasury.go
- Treasury is seeking comment on all aspects of the Interim Final Rule. Stakehold
encouraged to submit comments electronically through the Federal eRulemaking
(https://www.regulations.gov/document/TREAS-DO-2021-0008-0002) on or bef
16, 2021. Please be advised that comments received will be part of the public re
subject to public disclosure. Do not disclose any information in your comment o
supporting materials that you consider confidential or inappropriate for public di

Questions added 5/27/21: 1.5, 1.6, 2.13, 2.14, 2.15, 3.9, 4.5, 4.6, 10.3, 10.4 (noted with

Questions added 6/8/21: 2.16, 3.10, 3.11, 3.12, 4.7, 6.7, 8.2, 9.4, 9.5, 10.5 (noted with "

Questions added 6/17/21: 6.8, 6.9, 6.10, 6.11 (noted with "[6/17]")

Questions added 6/23/21: 1.7, 2.17, 2.18, 2.19, 2.20, 3.1 (appendix), 3.13, 4.8, 6.12 (not
"[6/23]")

Fact Sheet

FACT SHEET: The Coronavirus State and Local Fiscal Recovery Funds Will Deliver $350 Billion for State, Local, Territorial, and Tribal Governments to Respond to the COVID-19 Emergency and Bring Back Jobs

May 10, 2021

Aid to state, local, territorial, and Tribal governments will help turn the tide on the pandemic, address its economic fallout, and lay the foundation for a strong and equitable recovery

Today, the U.S. Department of the Treasury announced the launch of the Coronavirus State and Local Fiscal Recovery Funds, established by the American Rescue Plan Act of 2021, to provide $350 billion in emergency funding for eligible state, local, territorial, and Tribal governments. Treasury also released details on how these funds can be used to respond to acute pandemic response needs, fill revenue shortfalls among these governments, and support the communities and populations hardest-hit by the COVID-19 crisis. With the launch of the Coronavirus State and Local Fiscal Recovery Funds, eligible jurisdictions will be able to access this funding in the coming days to address these needs.

State, local, territorial, and Tribal governments have been on the frontlines of responding to the immense public health and economic needs created by this crisis – from standing up vaccination sites to supporting small businesses – even as these governments confronted revenue shortfalls during the downturn. As a result, these governments have endured unprecedented strains, forcing many to make untenable choices between laying off educators, firefighters, and other frontline workers or failing to provide other services that communities rely on. Faced with these challenges, state and local governments have cut over 1 million jobs since the beginning of the crisis. The experience of prior economic downturns has shown that budget pressures like these often result in prolonged fiscal austerity that can slow an economic recovery.

To support the immediate pandemic response, bring back jobs, and lay the groundwork for a strong and equitable recovery, the American Rescue Plan Act of 2021 established the Coronavirus State and Local Fiscal Recovery Funds, designed to deliver $350 billion to state, local, territorial, and Tribal governments to bolster their response to the COVID-19 emergency and its economic impacts. Today, Treasury is launching this much-needed relief to:

NORTH CAROLINA ASSOCIATION OF COUNTY COMMISSIONERS FOUNDED 1908

NCLM NC LEAGUE OF MUNICIPALITIES

Office of Recovery Programs

Treasury Guidance: Eligible Uses

Support Public Health Response
Fund COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff

Address Negative Economic Impacts
Respond to economic harms to workers, families, small businesses, impacted industries, and the public sector

Replace Public Sector Revenue Loss
Use funds to provide government services to the extent of the reduction in revenue experienced due to the pandemic

Premium Pay for Essential Workers
Offer additional support to those who have and will bear the greatest health risks because of their service in critical infrastructure sectors

Water and Sewer Infrastructure
Make necessary investments to improve access to clean drinking water and invest in wastewater and stormwater infrastructure

Broadband Infrastructure
Make necessary investments to provide unserved or underserved locations with new or expanded broadband access

U.S. Dept. of the Treasury Quick Reference Guide

Office of Recovery Programs

Treasury Guidance: Examples

Support Public Health Response

- **Services to contain and mitigate the spread of COVID-19,** including vaccination, medical expenses, testing, contact tracing, quarantine costs, capacity enhancements, and many related activities
- **Behavioral healthcare services**, including mental health or substance misuse treatment, crisis intervention, and related services
- **Payroll and covered benefits** for public health, healthcare, human services, and public safety staff to the extent that they work on the COVID-19 response

Address Negative Economic Impacts

- **Deliver assistance to workers and families**, including support for unemployed workers, aid to households, and survivor's benefits for families of COVID-19 victims
- **Support small businesses** with loans, grants, in-kind assistance, and counseling programs
- **Speed the recovery of impacted industries**, including the tourism, travel, and hospitality sectors
- **Rebuild public sector capacity** by rehiring staff, replenishing state unemployment insurance funds, and implementing economic relief programs

Replace Public Sector Revenue Loss

- **Ensure continuity of vital government services** by filling budget shortfalls
- **Revenue loss is calculated** relative to the expected trend, beginning with the last full fiscal year pre-pandemic and adjusted annually for growth
- **Recipients may re-calculate revenue loss** at multiple points during the program, supporting those entities that experience revenue loss with a lag

Premium Pay for Essential Workers

- **Provide premium pay to essential workers**, both directly and through grants to third-party employers
- **Prioritize low- and moderate-income workers**, who face the greatest mismatch between employment-related health risks and compensation
- **Key sectors include** healthcare, grocery and food services, education, childcare, sanitation, and transit
- **Must be fully additive** to a worker's wages

U.S. Dept. of the Treasury Quick Reference Guide

Office of Recovery Programs

Treasury Guidance: Eligible Uses

Water & Sewer Infrastructure

- **Includes improvements to infrastructure**, such as building or upgrading facilities and transmission, distribution, and storage systems
- **Eligible uses aligned to Environmental Protection Agency project categories** for the Clean Water State Revolving Fund and Drinking Water State Revolving Fund

Broadband Infrastructure

- **Focus on households and businesses** without access to broadband and those with connections that do not provide minimally acceptable speeds
- **Fund projects that deliver reliable service** with minimum 100 Mbps download / 100 Mbps upload speeds unless impracticable
- **Complement broadband investments** made through the Capital Projects Fund

Equity-Focused Services

- **Additional flexibility for the hardest-hit communities and families** to address health disparities, invest in housing, address educational disparities, and promote healthy childhood environments
- **Broadly applicable** to Qualified Census Tracts, other disproportionately impacted areas, and when provided by Tribal governments

Ineligible Uses

- **Changes that reduce net tax revenue** must not be offset with American Rescue Plan funds
- **Extraordinary payments into a pension fund** are a prohibited use of this funding
- **Other restrictions apply** to eligible uses

U.S. Dept. of the Treasury Quick Reference Guide

Accepting, Managing, Investing ARPA Funds

Accepting ARPA Funds

- Board must vote in official meeting to accept ARPA Funds and appoint an official or employee to take all required actions to receive monies
- May adopt resolution instead

Sample Resolution for NEU

Sample Resolution for Accepting American Rescue Plan Act funds

The following is a sample resolution adopted by the Town of TarHeel, NC, to accept their allocation of American Rescue Plan Act funds. A governing board does not have to adopt a resolution. It can simply vote in an official meeting to accept the funds, but a resolution may be a helpful tool to accomplish the same result.

Town of TarHeel Resolution for Accepting American Rescue Plan Act funds

WHEREAS, the Town of TarHeel is eligible for funding from the Coronavirus State and Local Fiscal Recovery Funds of H.R. 1319 American Rescue Plan Act of 2021 (CSLRF).

WHEREAS, the North Carolina General Assembly will provide for the distribution of funds to eligible North Carolina municipalities; and

WHEREAS, before receiving a payment, the Town Council is required to formally accept the CSLRF funds;

WHEREAS, revenue received under the CSLRF must only be spent for purposes authorized by the CSLRF, and applicable regulations, and by state law;

WHEREAS, revenue received under the CSLRF must be accounted for in a separate fund and not co-mingled with other revenue for accounting purposes; and

WHEREAS, the Town of TarHeel must comply with all applicable budgeting, accounting, contracting, reporting, and other compliance requirements for CSLRF funds.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of TarHeel that we do hereby accept and request CSLRF funding to be distributed by the State of North Carolina; and

FURTHER RESOLVED that the Town of TarHeel affirms that the CSLRF revenue will only be used for the purposes prescribed in the CSLRF, and in US Treasury guidance in 31 CFR, Part 35, and any applicable regulations, and in accordance with state law; and

FUTHER RESOLVED that the Town of TarHeel will comply with procedures created by the North Carolina General Assembly and the US Treasury Department to receive funds under the act; and

FURTHER RESOLVED that the Town of TarHeel will account for CSLRF in a separate fund and not co-mingle it with other revenues for accounting purposes and will comply with all applicable federal and state budgeting, accounting, contracting, reporting, and other compliance requirements for CSLRF funds; and

FURTHER RESOLVED that the Town Council of the Town of TarHeel designates and directs the [Town Manager/Town Attorney/Mayor/Town Finance Officer] to take all actions necessary on behalf of the town council to receive the CSLRF funds.

Managing ARPA Cash

- MUST deposit in Official Depository
- MAY co-mingle with other local government monies
- DO NOT NEED separate bank account

Investing ARPA Funds

- MAY Co-mingle with other local government funds for investment purposes.
- MAY INVEST ONLY in accordance with G.S. 159-30.
- MUST PROPORTIONATELY ALLOCATE investment proceeds by fund.
- MAY USE investment proceeds from ARPA funds for any public purpose authorized by state law.

Budgeting & Accounting ARPA Funds

Budgeting for ARPA Funds

- ARPA funds **must be appropriated before they are obligated**
- Units that intend to obligate any of these funds on or before June 30, 2021, must amend their 2021 budgets to include the funds.
- Units that do not plan to obligate these funds on or before June 30, 2021, can likely get by without amending their 2021 budgets

Budgeting for ARPA Funds

- May want to consider budgeting funds in a Grant Ordinance, allowed by G.S. 159-13.2
- Established for a grant that covers both capital and operating funding for the life of the grant
- Can budget in a capital project fund if intend to use for that purpose
- Be careful about putting funds in a capital reserve fund
- All units that are receiving ARPA funds must ensure that the funds are included a budget in the year(s) they will be obligated. Budgets must be in place before the funds are obligated!

What is the initial accounting guidance for these funds?

- Recommended options
  - Special Revenue Grant Fund
  - Capital Project Fund
  - Enterprise Fund

- Potential problem areas
  - General Fund (as noted)
  - Capital Reserve Fund (G.S. 159-18 thru 159-22)

Word of warning…

- ARPA funds and CRF/CARES funds CANNOT be commingled!

- HIGHLY recommended that funds not be accounted for in the General Fund
  - Skews true operating results in the fund
  - Hinders trend analysis over the long term
  - Most importantly – gives the appearance that funds were being used to build fund balance reserves

Financial Statement Impacts

Currently the guidance states these funds are granted with eligibility requirements

Any unspent funds at year end will be recorded as a liability (not a deferral)

Awaiting additional guidance on this topic

Audit, Reporting, & Other Compliance

Audit Requirements for ARPA funds

- Federal funds subject to Yellow Book and/or federal Single Audit requirements
- Remember that thresholds are **expenditures** not receipts
  - Yellow Book kicks in when combined federal and/or state funded **expenditures** total $100,000 or more
  - Federal Single Audit required when federal **expenditures** total $750,000 or more

Audit Requirements for ARPA funds

- Yellow Book requirements may be problematic for small governments that do not normally fall under Yellow Book standards; auditors are more limited as to non-audit services they can provide for a Yellow Book audit
- Local staff should confer with independent auditors to determine if changes need to be made
- If your audit requirements will expand for 2022 be prepared for your auditor to request a fee increase

ARPA Funding Information

- Detailed compliance guidance found here:
- https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf
- UST Compliance webpage is here:
- https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds/recipient-compliance-and-reporting-responsibilities
- ARPA FAQs, updated regularly, here:
- https://home.treasury.gov/system/files/136/SLFRPFAQ.pdf

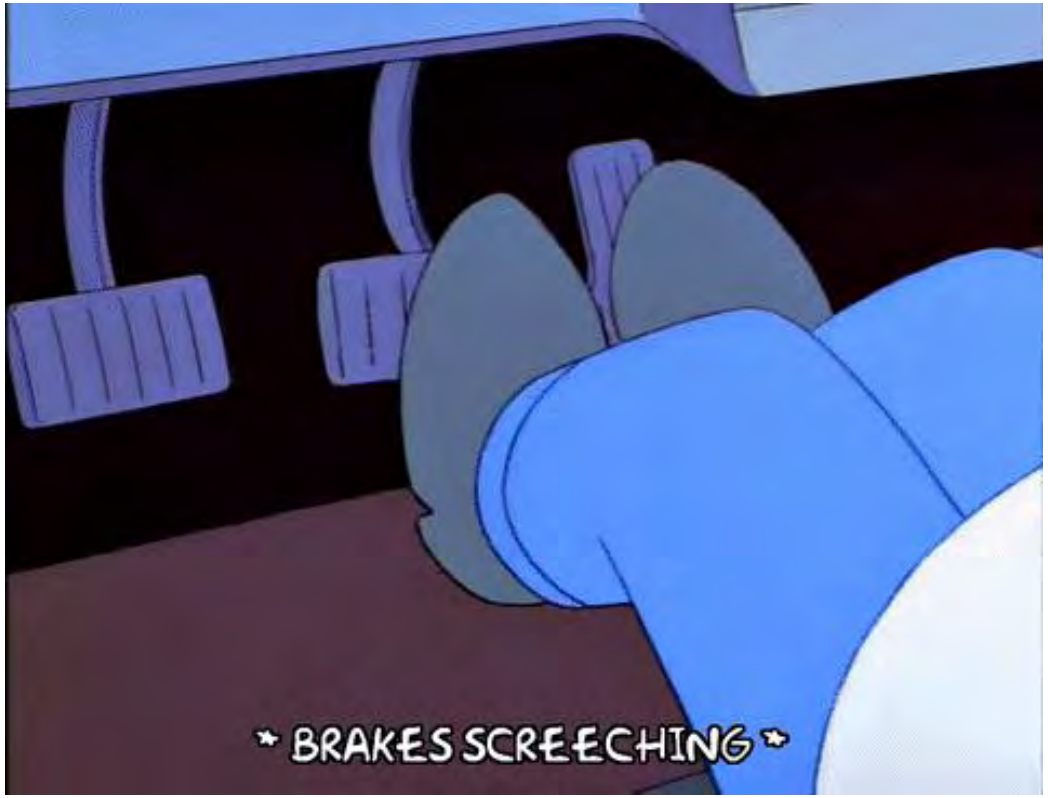
ARPA Funding Reporting

- Counties and Metro Cities
  - Interim one-time report due August 31 for period beginning with award date through July 31, 2021, by expenditure category at a summary level
  - Quarterly reports due (if award greater than $5 million)
    - First due 10/31/21 for period ended September 30, 2021 (start date is award date)
    - Last due July 31, 2026, for period ending June 30, 2026
- NEUs file annual reports due October 31 each year for period ended September 30 of same year, until October 31, 2026, with final report due March 31, 2027, for October 1 – December 31, 2026.

What should you do?

WAIT

BE PATIENT and THOUGHTFUL



RESOURCES

- SLGFD - COVID-19 Resource Page
- NCLM - ARPA site
- NCPRO – NC Pandemic Recovery Office
- NCACC – COVID Resource site
- School of Government – Coates Canons blog
- Regional COG

Resources for NEUs: The 5 Tools at Your Fingertips

Presented by Nate Halubka
Policy Analyst, NCPRO

The partners that are powering these tools

NCPRO has established a local government fiscal relief hub to:

- Meet regularly to discuss key needs
- Work to delegate and reduce duplication of effort
- Work as a team to assist local governments' individual needs
- <u>MOST IMPORTANTLY: We're working continuously to provide uniform guidance and advisement.</u>

NCPRO
NC Pandemic Recovery Office

Tool #1 : NCPRO Email

1. You get access to all NCPRO analysts and staff in one location.
   - We can put you in touch with the analyst that can best address your question.

2. Sending in your questions help our office understand needs and trends across the state.

3. Helps us put you in touch with other tools and other partners if needed.

NCPRO

NC Pandemic Recovery Office

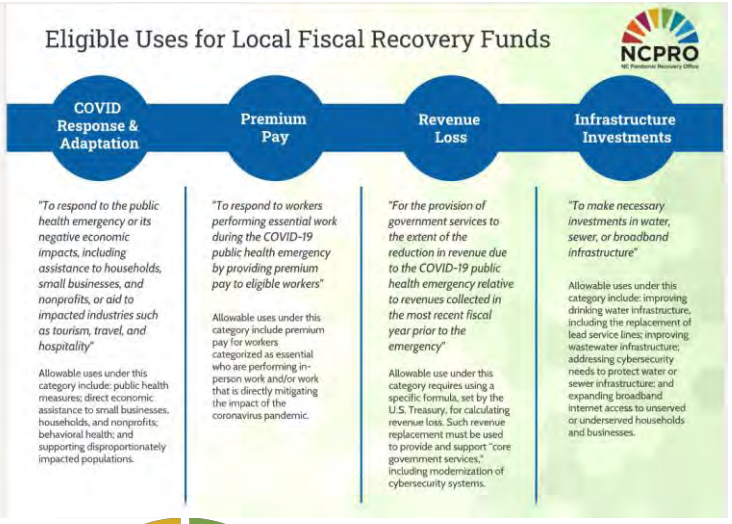
Email us at: NCPRO@osbm.nc.gov

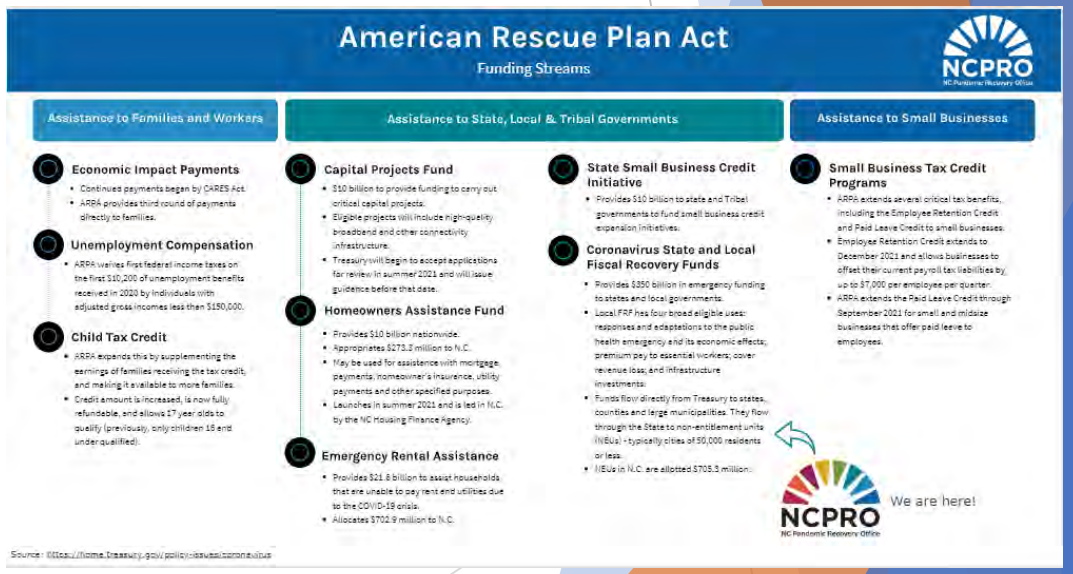
Tool #2: PROtips

1. What NCPRO learned from CRF with Counties (exhaustive manuals are slow)

2. Quick, can be pro-active or reactive and can be updated quickly if UST guidance changes.

3. Added to “library of topics” on the NCPRO website



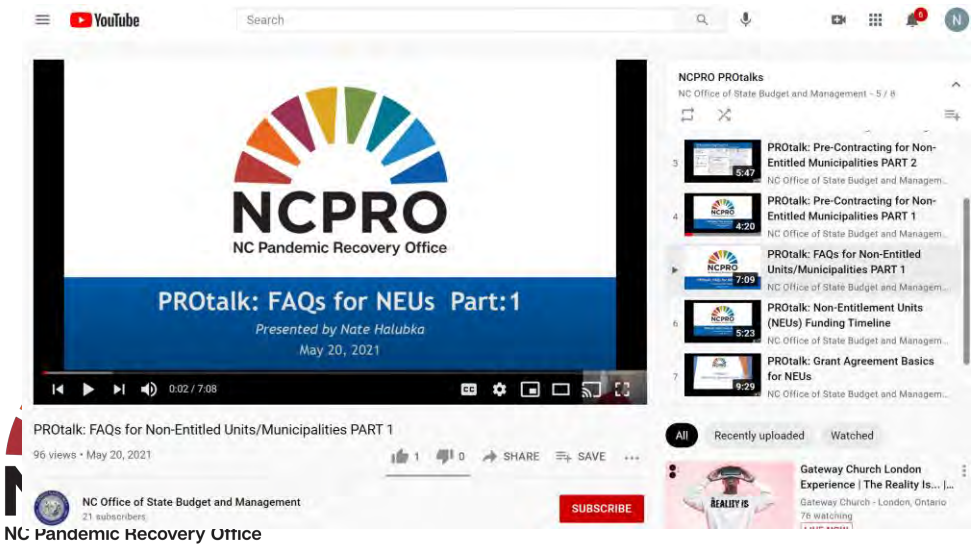


NCPRO
NC Pandemic Recovery Office

Tool #3: PROtalks

1. Modeled after TED talks.
2. Videos are quick and provide a little background to the PROtips and more.
3. If you subscribe to the YouTube channel you get the update as soon new information is available.
   - Can also be found on NCPRO website and posted to @NCPRO_gov on Twitter.
4. In time, we will highlight best practices and the great works the stakeholders and other cutting-edge information.

YouTube Search



NCPRO Website

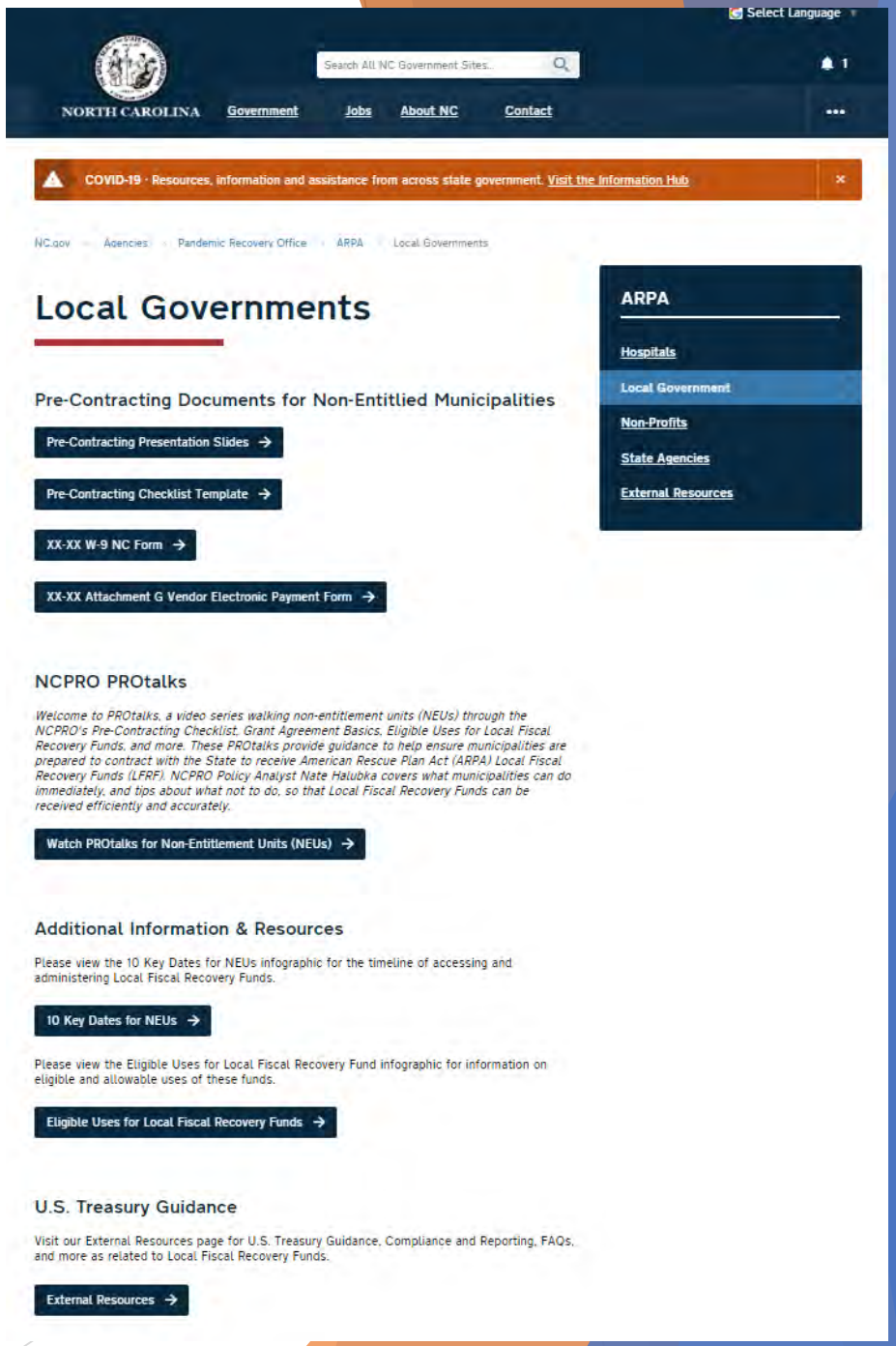
Tool #4: NCPRO Website

1. Access to the growing library of resources.

2. Links to US Treasury Guidance.

3. See where Non-NEU funds are going.
   - This helps set your context and may be opportunities for leverage and key partnerships.

4. Always growing and changing to meet your needs.



NCPRO
NC Pandemic Recovery Office

Tool #5 : On-Site Visits

1. Send an email to the NCPRO email address (NCPRO@osbm.nc.gov).

2. Please provide an in-depth, detailed and specific need that cannot easily be handled remotely.

3. Stakeholders are working as a team of respondents via the local government fiscal relief hub.

4. We'll get some background information prior to the visit.
   - Other expert state resources like Hometown Strong may be able to assist if it's not pandemic related.

NCPRO
NC Pandemic Recovery Office

Input is Critical

1. These tools work best when we all work together to recover from this pandemic.

2. Let us know what topics you see that need to be addressed.

3. Let us know how we can better serve you.

4. Our goal is to be timely, correct and professional.
   - We all love North Carolina. Let's work to recover together!!!

NCPRO

NC Pandemic Recovery Office

Email us at: NCPRO@osbm.nc.gov

Wrap Up, Future Sessions and Next Steps

NCPRO
NC Pandemic Recovery Office

NCPRO

NC Pandemic Recovery Office

Email us at: NCPRO@osbm.nc.gov

Thank You for Participating!

OFFICE OF GOVERNOR ROY COOPER

NCPRO NC Pandemic Recovery Office

NC OSBM OFFICE OF STATE BUDGET AND MANAGEMENT

ASSOCIATION OF REGIONAL COUNCILS OF GOVERNMENTS NC ARCOG

NC DEPARTMENT of COMMERCE RURAL ECONOMIC DEVELOPMENT

North Carolina Metropolitan MAYORS COALITION

HOMETOWN STRONG COMMUNITY FOCUSED PARTNERSHIPS

NORTH CAROLINA Department of Environmental Quality DEQ

NCDIT NORTH CAROLINA DEPARTMENT OF INFORMATION TECHNOLOGY Broadband Infrastructure Office

NORTH CAROLINA DEPARTMENT OF STATE TREASURER

STATE TREASURER OF NORTH CAROLINA DALE R. FOLWELL, CPA

NORTH CAROLINA ASSOCIATION OF COUNTY COMMISSIONERS FOUNDED 1908

NCLM NC LEAGUE OF MUNICIPALITIES

NC RURAL CENTER

UNC SCHOOL OF GOVERNMENT

NCPRO NC Pandemic Recovery Office

U.S. Department of the Treasury

FACT SHEET: The Coronavirus State and Local Fiscal Recovery Funds Will Deliver $350 Billion for State, Local, Territorial, and Tribal Governments to Respond to the COVID-19 Emergency and Bring Back Jobs

May 10, 2021

Aid to state, local, territorial, and Tribal governments will help turn the tide on the pandemic, address its economic fallout, and lay the foundation for a strong and equitable recovery

Today, the U.S. Department of the Treasury announced the launch of the Coronavirus State and Local Fiscal Recovery Funds, established by the American Rescue Plan Act of 2021, to provide $350 billion in emergency funding for eligible state, local, territorial, and Tribal governments. Treasury also released details on how these funds can be used to respond to acute pandemic response needs, fill revenue shortfalls among these governments, and support the communities and populations hardest-hit by the COVID-19 crisis. With the launch of the Coronavirus State and Local Fiscal Recovery Funds, eligible jurisdictions will be able to access this funding in the coming days to address these needs.

State, local, territorial, and Tribal governments have been on the frontlines of responding to the immense public health and economic needs created by this crisis – from standing up vaccination sites to supporting small businesses – even as these governments confronted revenue shortfalls during the downturn. As a result, these governments have endured unprecedented strains, forcing many to make untenable choices between laying off educators, firefighters, and other frontline workers or failing to provide other services that communities rely on. Faced with these challenges, state and local governments have cut over 1 million jobs since the beginning of the crisis. The experience of prior economic downturns has shown that budget pressures like these often result in prolonged fiscal austerity that can slow an economic recovery.

To support the immediate pandemic response, bring back jobs, and lay the groundwork for a strong and equitable recovery, the American Rescue Plan Act of 2021 established the Coronavirus State and Local Fiscal Recovery Funds, designed to deliver $350 billion to state, local, territorial, and Tribal governments to bolster their response to the COVID-19 emergency and its economic impacts. Today, Treasury is launching this much-needed relief to:

- Support urgent COVID-19 response efforts to continue to decrease spread of the virus and bring the pandemic under control;
- Replace lost public sector revenue to strengthen support for vital public services and help retain jobs;
- Support immediate economic stabilization for households and businesses; and,
- Address systemic public health and economic challenges that have contributed to the inequal impact of the pandemic on certain populations.

The Coronavirus State and Local Fiscal Recovery Funds provide substantial flexibility for each jurisdiction to meet local needs—including support for households, small businesses, impacted industries, essential workers, and the communities hardest-hit by the crisis. These funds also deliver resources that recipients can invest in building, maintaining, or upgrading their water, sewer, and broadband infrastructure.

Starting today, eligible state, territorial, metropolitan city, county, and Tribal governments may request Coronavirus State and Local Fiscal Recovery Funds through the Treasury Submission Portal. Concurrent with this program launch, Treasury has published an Interim Final Rule that implements the provisions of this program.

FUNDING AMOUNTS

The American Rescue Plan provides a total of $350 billion in Coronavirus State and Local Fiscal Recovery Funds to help eligible state, local, territorial, and Tribal governments meet their present needs and build the foundation for a strong recovery. Congress has allocated this funding to tens of thousands of jurisdictions. These allocations include:

Type	Amount ($ billions)
States & District of Columbia	$195.3
Counties	$65.1
Metropolitan Cites	$45.6
Tribal Governments	$20.0
Territories	$4.5
Non-Entitlement Units of Local Government	$19.5

Treasury expects to distribute these funds directly to each state, territorial, metropolitan city, county, and Tribal government. Local governments that are classified as non-entitlement units will receive this funding through their applicable state government. Treasury expects to provide further guidance on distributions to non-entitlement units next week.

Local governments should expect to receive funds in two tranches, with 50% provided beginning in May 2021 and the balance delivered 12 months later. States that have experienced a net increase in the unemployment rate of more than 2 percentage points from February 2020 to the latest available data as of the date of certification will receive their full allocation of funds in a single payment; other states will receive funds in two equal tranches. Governments of U.S. territories will receive a single payment. Tribal governments will receive two payments, with the first payment available in May and the second payment, based on employment data, to be delivered in June 2021.

USES OF FUNDING

Coronavirus State and Local Fiscal Recovery Funds provide eligible state, local, territorial, and Tribal governments with a substantial infusion of resources to meet pandemic response needs and rebuild a stronger, more equitable economy as the country recovers. Within the categories of eligible uses, recipients have broad flexibility to decide how best to use this funding to meet the needs of their communities. Recipients may use Coronavirus State and Local Fiscal Recovery Funds to:

- **Support public health expenditures,** by funding COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff;
- **Address negative economic impacts caused by the public health emergency,** including economic harms to workers, households, small businesses, impacted industries, and the public sector;
- **Replace lost public sector revenue**, using this funding to provide government services to the extent of the reduction in revenue experienced due to the pandemic;
- **Provide premium pay for essential workers**, offering additional support to those who have borne and will bear the greatest health risks because of their service in critical infrastructure sectors; and,
- **Invest in water, sewer, and broadband infrastructure**, making necessary investments to improve access to clean drinking water, support vital wastewater and stormwater infrastructure, and to expand access to broadband internet.

Within these overall categories, Treasury's Interim Final Rule provides guidelines and principles for determining the types of programs and services that this funding can support, together with examples of allowable uses that recipients may consider. As described below, Treasury has also designed these provisions to take into consideration the disproportionate impacts of the COVID-19 public health emergency on those hardest-hit by the pandemic.

1. **Supporting the public health response**

Mitigating the impact of COVID-19 continues to require an unprecedented public health response from state, local, territorial, and Tribal governments. Coronavirus State and Local Fiscal Recovery Funds provide resources to meet these needs through the provision of care for those impacted by the virus and through services that address disparities in public health that have been exacerbated by the pandemic. Recipients may use this funding to address a broad range of public health needs across COVID-19 mitigation, medical expenses, behavioral healthcare, and public health resources. Among other services, these funds can help support:

- **Services and programs to contain and mitigate the spread of COVID-19, including:**
  - ✓ Vaccination programs
  - ✓ Medical expenses
  - ✓ Testing
  - ✓ Contact tracing
  - ✓ Isolation or quarantine
  - ✓ PPE purchases
  - ✓ Support for vulnerable populations to access medical or public health services
  - ✓ Public health surveillance (e.g., monitoring for variants)
  - ✓ Enforcement of public health orders
  - ✓ Public communication efforts
  - ✓ Enhancement of healthcare capacity, including alternative care facilities
  - ✓ Support for prevention, mitigation, or other services in congregate living facilities and schools
  - ✓ Enhancement of public health data systems
  - ✓ Capital investments in public facilities to meet pandemic operational needs
  - ✓ Ventilation improvements in key settings like healthcare facilities

- **Services to address behavioral healthcare needs exacerbated by the pandemic, including:**
  - ✓ Mental health treatment
  - ✓ Substance misuse treatment
  - ✓ Other behavioral health services
  - ✓ Hotlines or warmlines
  - ✓ Crisis intervention
  - ✓ Services or outreach to promote access to health and social services

- **Payroll and covered benefits expenses** for public health, healthcare, human services, public safety and similar employees, to the extent that they work on the COVID-19 response. For public health and safety workers, recipients can use these funds to cover the full payroll and covered benefits costs for employees or operating units or divisions primarily dedicated to the COVID-19 response.

2. **Addressing the negative economic impacts caused by the public health emergency**

The COVID-19 public health emergency resulted in significant economic hardship for many Americans. As businesses closed, consumers stayed home, schools shifted to remote education, and travel declined precipitously, over 20 million jobs were lost between February and April 2020. Although many have since returned to work, as of April 2021, the economy remains more than 8 million jobs below its pre-pandemic peak, and more than 3 million workers have dropped out of the labor market altogether since February 2020.

To help alleviate the economic hardships caused by the pandemic, Coronavirus State and Local Fiscal Recovery Funds enable eligible state, local, territorial, and Tribal governments to provide a wide range of assistance to individuals and households, small businesses, and impacted industries, in addition to enabling governments to rehire public sector staff and rebuild capacity. Among these uses include:

- **Delivering assistance to workers and families**, including aid to unemployed workers and job training, as well as aid to households facing food, housing, or other financial insecurity. In addition, these funds can support survivor's benefits for family members of COVID-19 victims.

- **Supporting small businesses,** helping them to address financial challenges caused by the pandemic and to make investments in COVID-19 prevention and mitigation tactics, as well as to provide technical assistance. To achieve these goals, recipients may employ this funding to execute a broad array of loan, grant, in-kind assistance, and counseling programs to enable small businesses to rebound from the downturn.

- **Speeding the recovery of the tourism, travel, and hospitality sectors**, supporting industries that were particularly hard-hit by the COVID-19 emergency and are just now beginning to mend. Similarly impacted sectors within a local area are also eligible for support.

- **Rebuilding public sector capacity,** by rehiring public sector staff and replenishing unemployment insurance (UI) trust funds, in each case up to pre-pandemic levels. Recipients may also use this funding to build their internal capacity to successfully implement economic relief programs, with investments in data analysis, targeted outreach, technology infrastructure, and impact evaluations.

3. **Serving the hardest-hit communities and families**

While the pandemic has affected communities across the country, it has disproportionately impacted low-income families and communities of color and has exacerbated systemic health and economic inequities. Low-income and socially vulnerable communities have experienced the most severe health impacts. For example, counties with high poverty rates also have the highest rates of infections and deaths, with 223 deaths per 100,000 compared to the U.S. average of 175 deaths per 100,000.

Coronavirus State and Local Fiscal Recovery Funds allow for a broad range of uses to address the disproportionate public health and economic impacts of the crisis on the hardest-hit communities, populations, and households. Eligible services include:

- **Addressing health disparities and the social determinants of health,** through funding for community health workers, public benefits navigators, remediation of lead hazards, and community violence intervention programs;
- **Investments in housing and neighborhoods**, such as services to address individuals experiencing homelessness, affordable housing development, housing vouchers, and residential counseling and housing navigation assistance to facilitate moves to neighborhoods with high economic opportunity;
- **Addressing educational disparities** through new or expanded early learning services, providing additional resources to high-poverty school districts, and offering educational services like tutoring or afterschool programs as well as services to address social, emotional, and mental health needs; and,
- **Promoting healthy childhood environments,** including new or expanded high quality childcare, home visiting programs for families with young children, and enhanced services for child welfare-involved families and foster youth.

Governments may use Coronavirus State and Local Fiscal Recovery Funds to support these additional services if they are provided:

- within a Qualified Census Tract (a low-income area as designated by the Department of Housing and Urban Development);
- to families living in Qualified Census Tracts;
- by a Tribal government; or,
- to other populations, households, or geographic areas disproportionately impacted by the pandemic.

4. **Replacing lost public sector revenue**

State, local, territorial, and Tribal governments that are facing budget shortfalls may use Coronavirus State and Local Fiscal Recovery Funds to avoid cuts to government services. With these additional resources, recipients can continue to provide valuable public services and ensure that fiscal austerity measures do not hamper the broader economic recovery.

Many state, local, territorial, and Tribal governments have experienced significant budget shortfalls, which can yield a devastating impact on their respective communities. Faced with budget shortfalls and pandemic-related uncertainty, state and local governments cut staff in all 50 states. These budget shortfalls and staff cuts are particularly problematic at present, as these entities are on the front lines of battling the COVID-19 pandemic and helping citizens weather the economic downturn.

Recipients may use these funds to replace lost revenue. Treasury's Interim Final Rule establishes a methodology that each recipient can use to calculate its reduction in revenue. Specifically, recipients will compute the extent of their reduction in revenue by comparing their actual revenue to an alternative representing what could have been expected to occur in the absence of the pandemic. Analysis of this expected trend begins with the last full fiscal year prior to the public health emergency and projects forward at either (a) the recipient's average annual revenue growth over the three full fiscal years prior to the public health emergency or (b) 4.1%, the national average state and local revenue growth rate from 2015-18 (the latest available data).

For administrative convenience, Treasury's Interim Final Rule allows recipients to presume that any diminution in actual revenue relative to the expected trend is due to the COVID-19 public health emergency. Upon receiving Coronavirus State and Local Fiscal Recovery Funds, recipients may immediately calculate the reduction in revenue that occurred in 2020 and deploy funds to address any shortfall. Recipients will have the opportunity to re-calculate revenue loss at several points through the program, supporting those entities that experience a lagged impact of the crisis on revenues.

Importantly, once a shortfall in revenue is identified, recipients will have broad latitude to use this funding to support government services, up to this amount of lost revenue.

5. **Providing premium pay for essential workers**

Coronavirus State and Local Fiscal Recovery Funds provide resources for eligible state, local, territorial, and Tribal governments to recognize the heroic contributions of essential workers. Since the start of the public health emergency, essential workers have put their physical well-being at risk to meet the daily needs of their communities and to provide care for others.

Many of these essential workers have not received compensation for the heightened risks they have faced and continue to face. Recipients may use this funding to provide premium pay directly, or through grants to private employers, to a broad range of essential workers who must be physically present at their jobs including, among others:

- ✓ Staff at nursing homes, hospitals, and home-care settings
- ✓ Workers at farms, food production facilities, grocery stores, and restaurants
- ✓ Janitors and sanitation workers
- ✓ Public health and safety staff
- ✓ Truck drivers, transit staff, and warehouse workers
- ✓ Childcare workers, educators, and school staff
- ✓ Social service and human services staff

Treasury's Interim Final Rule emphasizes the need for recipients to prioritize premium pay for lower income workers. Premium pay that would increase a worker's total pay above 150% of the greater of the state or county average annual wage requires specific justification for how it responds to the needs of these workers.

In addition, employers are both permitted and encouraged to use Coronavirus State and Local Fiscal Recovery Funds to offer retrospective premium pay, recognizing that many essential workers have not yet received additional compensation for work performed. Staff working for third-party contractors in eligible sectors are also eligible for premium pay.

6. **Investing in water and sewer infrastructure**

Recipients may use Coronavirus State and Local Fiscal Recovery Funds to invest in necessary improvements to their water and sewer infrastructures, including projects that address the impacts of climate change.

Recipients may use this funding to invest in an array of drinking water infrastructure projects, such as building or upgrading facilities and transmission, distribution, and storage systems, including the replacement of lead service lines.

Recipients may also use this funding to invest in wastewater infrastructure projects, including constructing publicly-owned treatment infrastructure, managing and treating stormwater or subsurface drainage water, facilitating water reuse, and securing publicly-owned treatment works.

To help jurisdictions expedite their execution of these essential investments, Treasury's Interim Final Rule aligns types of eligible projects with the wide range of projects that can be supported by the Environmental Protection Agency's Clean Water State Revolving Fund and Drinking Water State Revolving Fund. Recipients retain substantial flexibility to identify those water and sewer infrastructure investments that are of the highest priority for their own communities.

Treasury's Interim Final Rule also encourages recipients to ensure that water, sewer, and broadband projects use strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions.

7. **Investing in broadband infrastructure**

The pandemic has underscored the importance of access to universal, high-speed, reliable, and affordable broadband coverage. Over the past year, millions of Americans relied on the internet to participate in remote school, healthcare, and work.

Yet, by at least one measure, 30 million Americans live in areas where there is no broadband service or where existing services do not deliver minimally acceptable speeds. For millions of other Americans, the high cost of broadband access may place it out of reach. The American Rescue Plan aims to help remedy these shortfalls, providing recipients with flexibility to use Coronavirus State and Local Fiscal Recovery Funds to invest in broadband infrastructure.

Recognizing the acute need in certain communities, Treasury's Interim Final Rule provides that investments in broadband be made in areas that are currently unserved or underserved—in other words, lacking a wireline connection that reliably delivers minimum speeds of 25 Mbps download and 3 Mbps upload. Recipients are also encouraged to prioritize projects that achieve last-mile connections to households and businesses.

Using these funds, recipients generally should build broadband infrastructure with modern technologies in mind, specifically those projects that deliver services offering reliable 100 Mbps download and 100

Mbps upload speeds, unless impracticable due to topography, geography, or financial cost. In addition, recipients are encouraged to pursue fiber optic investments.

In view of the wide disparities in broadband access, assistance to households to support internet access or digital literacy is an eligible use to respond to the public health and negative economic impacts of the pandemic, as detailed above.

8. **Ineligible Uses**

Coronavirus State and Local Fiscal Recovery Funds provide substantial resources to help eligible state, local, territorial, and Tribal governments manage the public health and economic consequences of COVID-19. Recipients have considerable flexibility to use these funds to address the diverse needs of their communities.

To ensure that these funds are used for their intended purposes, the American Rescue Plan Act also specifies two ineligible uses of funds:

- **States and territories may not use this funding to directly or indirectly offset a reduction in net tax revenue due to a change in law from March 3, 2021 through the last day of the fiscal year in which the funds provided have been spent.** The American Rescue Plan ensures that funds needed to provide vital services and support public employees, small businesses, and families struggling to make it through the pandemic are not used to fund reductions in net tax revenue. Treasury's Interim Final Rule implements this requirement. If a state or territory cuts taxes, they must demonstrate how they paid for the tax cuts from sources other than Coronavirus State Fiscal Recovery Funds—by enacting policies to raise other sources of revenue, by cutting spending, or through higher revenue due to economic growth. If the funds provided have been used to offset tax cuts, the amount used for this purpose must be paid back to the Treasury.
- **No recipient may use this funding to make a deposit to a pension fund.** Treasury's Interim Final Rule defines a "deposit" as an extraordinary contribution to a pension fund for the purpose of reducing an accrued, unfunded liability. While pension deposits are prohibited, recipients may use funds for routine payroll contributions for employees whose wages and salaries are an eligible use of funds.

Treasury's Interim Final Rule identifies several other ineligible uses, including funding debt service, legal settlements or judgments, and deposits to rainy day funds or financial reserves. Further, general infrastructure spending is not covered as an eligible use outside of water, sewer, and broadband investments or above the amount allocated under the revenue loss provision. While the program offers broad flexibility to recipients to address local conditions, these restrictions will help ensure that funds are used to augment existing activities and address pressing needs.

Coronavirus State and Local Fiscal Recovery Funds

Frequently Asked Questions

AS OF JUNE 23, 2021

This document contains answers to frequently asked questions regarding the Coronavirus State and Local Fiscal Recovery Funds (CSFRF / CLFRF, or Fiscal Recovery Funds). Treasury will be updating this document periodically in response to questions received from stakeholders. Recipients and stakeholders should consult the Interim Final Rule for additional information.

- For overall information about the program, including information on requesting funding, please see https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments

- For general questions about CSFRF / CLFRF, please email SLFRP@treasury.gov

- Treasury is seeking comment on all aspects of the Interim Final Rule. Stakeholders are encouraged to submit comments electronically through the Federal eRulemaking Portal (https://www.regulations.gov/document/TREAS-DO-2021-0008-0002) on or before July 16, 2021. Please be advised that comments received will be part of the public record and subject to public disclosure. Do not disclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Questions added 5/27/21: 1.5, 1.6, 2.13, 2.14, 2.15, 3.9, 4.5, 4.6, 10.3, 10.4 (noted with "[5/27]")

Questions added 6/8/21: 2.16, 3.10, 3.11, 3.12, 4.7, 6.7, 8.2, 9.4, 9.5, 10.5 (noted with "[6/8]")

Questions added 6/17/21: 6.8, 6.9, 6.10, 6.11 (noted with "[6/17]")

Questions added 6/23/21: 1.7, 2.17, 2.18, 2.19, 2.20, 3.1 (appendix), 3.13, 4.8, 6.12 (noted with "[6/23]")

Answers to frequently asked questions on distribution of funds to non-entitlement units of local government (NEUs) can be found in this FAQ supplement, which is regularly updated.

1. Eligibility and Allocations

1.1. Which governments are eligible for funds?

The following governments are eligible:

- States and the District of Columbia
- Territories
- Tribal governments
- Counties

- Metropolitan cities
- Non-entitlement units, or smaller local governments

1.2. Which governments receive funds directly from Treasury?

Treasury will distribute funds directly to each eligible state, territory, metropolitan city, county, or Tribal government. Smaller local governments that are classified as non-entitlement units will receive funds through their applicable state government.

1.3. Are special-purpose units of government eligible to receive funds?

Special-purpose units of local government will not receive funding allocations; however, a state, territory, local, or Tribal government may transfer funds to a special-purpose unit of government. Special-purpose districts perform specific functions in the community, such as fire, water, sewer or mosquito abatement districts.

1.4. How are funds being allocated to Tribal governments, and how will Tribal governments find out their allocation amounts?

$20 billion of Fiscal Recovery Funds was reserved for Tribal governments. The American Rescue Plan Act specifies that $1 billion will be allocated evenly to all eligible Tribal governments. The remaining $19 billion will be distributed using an allocation methodology based on enrollment and employment.

There will be two payments to Tribal governments. Each Tribal government's first payment will include (i) an amount in respect of the $1 billion allocation that is to be divided equally among eligible Tribal governments and (ii) each Tribal government's pro rata share of the Enrollment Allocation. Tribal governments will be notified of their allocation amount and delivery of payment 4-5 days after completing request for funds in the Treasury Submission Portal. The deadline to make the initial request for funds is June 21, 2021.[1]

In mid-June or shortly after completing the initial request for funds, Tribal governments will receive an email notification to re-enter the Treasury Submission Portal to confirm or amend their 2019 employment numbers that were submitted to the Department of the Treasury for the CARES Act's Coronavirus Relief Fund. The deadline to confirm employment numbers is July 9, 2021. Treasury will calculate each Tribal government's pro rata share of the Employment Allocation for those Tribal governments that confirmed or submitted amended employment numbers. In late-June, Treasury will communicate to Tribal governments the amount of their portion of the Employment Allocation and the anticipated date for the second payment.

1.5. My county is a unit of general local government with population under 50,000. Will my county receive funds directly from Treasury? [5/27]

[1] This document was updated on June 10, 2021 to reflect the extension of the two portal submission deadlines.

Yes. All counties that are units of general local government will receive funds directly from Treasury and should apply via the online portal. The list of county allocations is available here.

1.6. My local government expected to be classified as a non-entitlement unit. Instead, it was classified as a metropolitan city. Why? [5/27]

The American Rescue Plan Act defines, for purposes of the Coronavirus Local Fiscal Recovery Fund (CLFRF), metropolitan cities to include those that are currently metropolitan cities under the Community Development Block Grant (CDBG) program but also those cities that relinquish or defer their status as a metropolitan city for purposes of the CDBG program. This would include, by way of example, cities that are principal cities of their metropolitan statistical area, even if their population is less than 50,000. In other words, a city that is eligible to be a metropolitan city under the CDBG program is eligible as a metropolitan city under the CLFRF, regardless of how that city has elected to participate in the CDBG program.

Unofficial allocation estimates produced by other organizations may have classified certain local governments as non-entitlement units of local government. However, based on the statutory definitions, some of these local governments should have been classified as metropolitan cities.

1.7. In order to receive and use Fiscal Recovery Funds, must a recipient government maintain a declaration of emergency relating to COVID-19? [6/23]

No. Neither the statute establishing the CSFRF/CLFRF nor the Interim Final Rule requires recipients to maintain a local declaration of emergency relating to COVID-19.

2. Eligible Uses – Responding to the Public Health Emergency / Negative Economic Impacts

2.1. What types of COVID-19 response, mitigation, and prevention activities are eligible?

A broad range of services are needed to contain COVID-19 and are eligible uses, including vaccination programs; medical care; testing; contact tracing; support for isolation or quarantine; supports for vulnerable populations to access medical or public health services; public health surveillance (e.g., monitoring case trends, genomic sequencing for variants); enforcement of public health orders; public communication efforts; enhancement to health care capacity, including through alternative care facilities; purchases of personal protective equipment; support for prevention, mitigation, or other services in congregate living facilities (e.g., nursing homes, incarceration settings, homeless shelters, group living facilities) and other key settings like schools; ventilation improvements in congregate settings, health care settings, or other key locations; enhancement of public health data systems; and other public health responses. Capital

investments in public facilities to meet pandemic operational needs are also eligible, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID-19 mitigation tactics.

2.2. If a use of funds was allowable under the Coronavirus Relief Fund (CRF) to respond to the public health emergency, may recipients presume it is also allowable under CSFRF/CLFRF?

Generally, funding uses eligible under CRF as a response to the direct public health impacts of COVID-19 will continue to be eligible under CSFRF/CLFRF, with the following two exceptions: (1) the standard for eligibility of public health and safety payrolls has been updated; and (2) expenses related to the issuance of tax-anticipation notes are not an eligible funding use.

2.3. If a use of funds is not explicitly permitted in the Interim Final Rule as a response to the public health emergency and its negative economic impacts, does that mean it is prohibited?

The Interim Final Rule contains a non-exclusive list of programs or services that may be funded as responding to COVID-19 or the negative economic impacts of the COVID-19 public health emergency, along with considerations for evaluating other potential uses of Fiscal Recovery Funds not explicitly listed. The Interim Final Rule also provides flexibility for recipients to use Fiscal Recovery Funds for programs or services that are not identified on these non-exclusive lists but which meet the objectives of section 602(c)(1)(A) or 603(c)(1)(A) by responding to the COVID-19 public health emergency with respect to COVID-19 or its negative economic impacts.

2.4. May recipients use funds to respond to the public health emergency and its negative economic impacts by replenishing state unemployment funds?

Consistent with the approach taken in the CRF, recipients may make deposits into the state account of the Unemployment Trust Fund up to the level needed to restore the pre-pandemic balances of such account as of January 27, 2020, or to pay back advances received for the payment of benefits between January 27, 2020 and the date when the Interim Final Rule is published in the Federal Register.

2.5. What types of services are eligible as responses to the negative economic impacts of the pandemic?

Eligible uses in this category include assistance to households; small businesses and non-profits; and aid to impacted industries.

Assistance to households includes, but is not limited to: food assistance; rent, mortgage, or utility assistance; counseling and legal aid to prevent eviction or homelessness; cash assistance; emergency assistance for burials, home repairs, weatherization, or other needs; internet access or digital literacy assistance; or job training to address negative

economic or public health impacts experienced due to a worker's occupation or level of training.

Assistance to small business and non-profits includes, but is not limited to:

- loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, for example by supporting payroll and benefits costs, costs to retain employees, mortgage, rent, or utilities costs, and other operating costs;
- Loans, grants, or in-kind assistance to implement COVID-19 prevention or mitigation tactics, such as physical plant changes to enable social distancing, enhanced cleaning efforts, barriers or partitions, or COVID-19 vaccination, testing, or contact tracing programs; and
- Technical assistance, counseling, or other services to assist with business planning needs

2.6. May recipients use funds to respond to the public health emergency and its negative economic impacts by providing direct cash transfers to households?

Yes, provided the recipient considers whether, and the extent to which, the household has experienced a negative economic impact from the pandemic. Additionally, cash transfers must be reasonably proportional to the negative economic impact they are intended to address. Cash transfers grossly in excess of the amount needed to address the negative economic impact identified by the recipient would not be considered to be a response to the COVID-19 public health emergency or its negative impacts. In particular, when considering appropriate size of permissible cash transfers made in response to the COVID-19 public health emergency, state, local, territorial, and Tribal governments may consider and take guidance from the per person amounts previously provided by the federal government in response to the COVID crisis.

2.7. May funds be used to reimburse recipients for costs incurred by state and local governments in responding to the public health emergency and its negative economic impacts prior to passage of the American Rescue Plan?

Use of Fiscal Recovery Funds is generally forward looking. The Interim Final Rule permits funds to be used to cover costs incurred beginning on March 3, 2021.

2.8. May recipients use funds for general economic development or workforce development?

Generally, not. Recipients must demonstrate that funding uses directly address a negative economic impact of the COVID-19 public health emergency, including funds used for economic or workforce development. For example, job training for unemployed workers may be used to address negative economic impacts of the public health emergency and be eligible.

2.9. How can recipients use funds to assist the travel, tourism, and hospitality industries?

Aid provided to tourism, travel, and hospitality industries should respond to the negative economic impacts of the pandemic. For example, a recipient may provide aid to support safe reopening of businesses in the tourism, travel and hospitality industries and to districts that were closed during the COVID-19 public health emergency, as well as aid a planned expansion or upgrade of tourism, travel and hospitality facilities delayed due to the pandemic.

Tribal development districts are considered the commercial centers for tribal hospitality, gaming, tourism and entertainment industries.

2.10. May recipients use funds to assist impacted industries other than travel, tourism, and hospitality?

Yes, provided that recipients consider the extent of the impact in such industries as compared to tourism, travel, and hospitality, the industries enumerated in the statute. For example, nationwide the leisure and hospitality industry has experienced an approximately 17 percent decline in employment and 24 percent decline in revenue, on net, due to the COVID-19 public health emergency. Recipients should also consider whether impacts were due to the COVID-19 pandemic, as opposed to longer-term economic or industrial trends unrelated to the pandemic.

Recipients should maintain records to support their assessment of how businesses or business districts receiving assistance were affected by the negative economic impacts of the pandemic and how the aid provided responds to these impacts.

2.11. How does the Interim Final Rule help address the disparate impact of COVID-19 on certain populations and geographies?

In recognition of the disproportionate impacts of the COVID-19 virus on health and economic outcomes in low-income and Native American communities, the Interim Final Rule identifies a broader range of services and programs that are considered to be in response to the public health emergency when provided in these communities. Specifically, Treasury will presume that certain types of services are eligible uses when provided in a Qualified Census Tract (QCT), to families living in QCTs, or when these services are provided by Tribal governments.

Recipients may also provide these services to other populations, households, or geographic areas disproportionately impacted by the pandemic. In identifying these disproportionately-impacted communities, recipients should be able to support their determination for how the pandemic disproportionately impacted the populations, households, or geographic areas to be served.

Eligible services include:

- Addressing health disparities and the social determinants of health, including: community health workers, public benefits navigators, remediation of lead paint or other lead hazards, and community violence intervention programs;

- Building stronger neighborhoods and communities, including: supportive housing and other services for individuals experiencing homelessness, development of affordable housing, and housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity;

- Addressing educational disparities exacerbated by COVID-19, including: early learning services, increasing resources for high-poverty school districts, educational services like tutoring or afterschool programs, and supports for students' social, emotional, and mental health needs; and

- Promoting healthy childhood environments, including: child care, home visiting programs for families with young children, and enhanced services for child welfare-involved families and foster youth.

2.12. May recipients use funds to pay for vaccine incentive programs (e.g., cash or in-kind transfers, lottery programs, or other incentives for individuals who get vaccinated)?

Yes. Under the Interim Final Rule, recipients may use Coronavirus State and Local Fiscal Recovery Funds to respond to the COVID-19 public health emergency, including expenses related to COVID-19 vaccination programs. See forthcoming 31 CFR 35.6(b)(1)(i). Programs that provide incentives reasonably expected to increase the number of people who choose to get vaccinated, or that motivate people to get vaccinated sooner than they otherwise would have, are an allowable use of funds so long as such costs are reasonably proportional to the expected public health benefit.

2.13. May recipients use funds to pay "back to work incentives" (e.g., cash payments for newly employed workers after a certain period of time on the job)? [5/27]

Yes. Under the Interim Final Rule, recipients may use Coronavirus State and Local Fiscal Recovery Funds to provide assistance to unemployed workers. See forthcoming 31 CFR 35.6(b)(4). This assistance can include job training or other efforts to accelerate rehiring and thus reduce unemployment, such as childcare assistance, assistance with transportation to and from a jobsite or interview, and incentives for newly employed workers.

2.14. The Coronavirus Relief Fund (CRF) included as an eligible use: "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." What has changed in CSFRF/CLFRF, and what type of documentation is required under CSFRF/CLFRF? [5/27]

Many of the expenses authorized under the Coronavirus Relief Fund are also eligible uses under the CSFRF/CLFRF. However, in the case of payroll expenses for public safety, public health, health care, human services, and similar employees (hereafter, public health and safety staff), the CSFRF/CLFRF does differ from the CRF. This change reflects the differences between the ARPA and CARES Act and recognizes that the response to the COVID-19 public health emergency has changed and will continue to change over time. In particular, funds may be used for payroll and covered benefits expenses for public safety, public health, health care, human services, and similar employees, including first responders, to the extent that the employee's time that is dedicated to responding to the COVID-19 public health emergency.

For administrative convenience, the recipient may consider a public health and safety employee to be entirely devoted to mitigating or responding to the COVID-19 public health emergency, and therefore fully covered, if the employee, or his or her operating unit or division, is primarily dedicated (e.g., more than half of the employee's time is dedicated) to responding to the COVID-19 public health emergency.

Recipients may use presumptions for assessing whether an employee, division, or operating unit is primarily dedicated to COVID-19 response. The recipient should maintain records to support its assessment, such as payroll records, attestations from supervisors or staff, or regular work product or correspondence demonstrating work on the COVID-19 response. Recipients need not routinely track staff hours. Recipients should periodically reassess their determinations.

2.15. What staff are included in "public safety, public health, health care, human services, and similar employees"? Would this include, for example, 911 operators, morgue staff, medical examiner staff, or EMS staff? [5/27]

As discussed in the Interim Final Rule, funds may be used for payroll and covered benefits expenses for public safety, public health, health care, human services, and similar employees, for the portion of the employee's time that is dedicated to responding to the COVID-19 public health emergency.

Public safety employees would include police officers (including state police officers), sheriffs and deputy sheriffs, firefighters, emergency medical responders, correctional and detention officers, and those who directly support such employees such as dispatchers and supervisory personnel. Public health employees would include employees involved in providing medical and other health services to patients and supervisory personnel, including medical staff assigned to schools, prisons, and other such institutions, and other support services essential for patient care (e.g., laboratory technicians, medical examiner or morgue staff) as well as employees of public health departments directly engaged in matters related to public health and related supervisory personnel. Human services staff include employees providing or administering social services; public benefits; child welfare services; and child, elder, or family care, as well as others.

2.16. May recipients use funds to establish a public jobs program? [6/8]

Yes. The Interim Final Rule permits a broad range of services to unemployed or underemployed workers and other individuals that suffered negative economic impacts from the pandemic. That can include public jobs programs, subsidized employment, combined education and on-the-job training programs, or job training to accelerate rehiring or address negative economic or public health impacts experienced due to a worker's occupation or level of training. The broad range of permitted services can also include other employment supports, such as childcare assistance or assistance with transportation to and from a jobsite or interview.

The Interim Final Rule includes as an eligible use re-hiring public sector staff up to the government's level of pre-pandemic employment. "Public sector staff" would not include individuals participating in a job training or subsidized employment program administered by the recipient.

2.17. The Interim Final Rule states that "assistance or aid to individuals or businesses that did not experience a negative economic impact from the public health emergency would not be an eligible use under this category." Are recipients required to demonstrate that each individual or business experienced a negative economic impact for that individual or business to receive assistance? [6/23]

Not necessarily. The Interim Final Rule allows recipients to demonstrate a negative economic impact on a population or group and to provide assistance to households or businesses that fall within that population or group. In such cases, the recipient need only demonstrate that the household or business is within the population or group that experienced a negative economic impact.

For assistance to households, the Interim Final Rule states, "In assessing whether a household or population experienced economic harm as a result of the pandemic, a recipient may presume that a household or population that experienced unemployment or increased food or housing insecurity or is low- or moderate-income experienced negative economic impacts resulting from the pandemic." This would allow, for example, an internet access assistance program for all low- or moderate-income households, but would not require the recipient to demonstrate or document that each individual low- or -moderate income household experienced a negative economic impact from the COVID-19 public health emergency apart from being low- or -moderate income.

For assistance to small businesses, the Interim Final Rule states that assistance may be provided to small businesses, including loans, grants, in-kind assistance, technical assistance or other services, to respond to the negative economic impacts of the COVID-19 public health emergency. In providing assistance to small businesses, recipients must design a program that responds to the negative economic impacts of the COVID-19 public health emergency, including by identifying how the program addresses the identified need or impact faced by small businesses. This can include assistance to adopt safer operating procedures, weather periods of closure, or mitigate financial hardship resulting from the COVID-19 public health emergency.

As part of program design and to ensure that the program responds to the identified need, recipients may consider additional criteria to target assistance to businesses in need, including to small businesses. Assistance may be targeted to businesses facing financial insecurity, with substantial declines in gross receipts (e.g., comparable to measures used to assess eligibility for the Paycheck Protection Program), or facing other economic harm due to the pandemic, as well as businesses with less capacity to weather financial hardship, such as the smallest businesses, those with less access to credit, or those serving disadvantaged communities. For example, a recipient could find based on local data or research that the smallest businesses faced sharply increased risk of bankruptcy and develop a program to respond; such a program would only need to document a population or group-level negative economic impact, and eligibility criteria to limit access to the program to that population or group (in this case, the smallest businesses).

In addition, recognizing the disproportionate impact of the pandemic on disadvantaged communities, the Interim Final Rule also identifies a set of services that are presumptively eligible when provided in a Qualified Census Tract (QCT); to families and individuals living in QCTs; to other populations, households, or geographic areas identified by the recipient as disproportionately impacted by the pandemic; or when these services are provided by Tribal governments. For more information on the set of presumptively eligible services, see the Interim Final Rule section on *Building Stronger Communities through Investments in Housing and Neighborhoods* and FAQ 2.11.

2.18. Would investments in improving outdoor spaces (e.g. parks) be an eligible use of funds as a response to the public health emergency and/or its negative economic impacts? [6/23]

There are multiple ways that investments in improving outdoor spaces could qualify as eligible uses; several are highlighted below, though there may be other ways that a specific investment in outdoor spaces would meet eligible use criteria.

First, in recognition of the disproportionate negative economic impacts on certain communities and populations, the Interim Final Rule identifies certain types of services that are eligible uses when provided in a Qualified Census Tract (QCT), to families and individuals living in QCTs, or when these services are provided by Tribal governments. Recipients may also provide these services to other populations, households, or geographic areas disproportionately impacted by the pandemic.

These programs and services include services designed to build stronger neighborhoods and communities and to address health disparities and the social determinants of health. The Interim Final Rule provides a non-exhaustive list of eligible services to respond to the needs of communities disproportionately impacted by the pandemic, and recipients may identify other uses of funds that do so, consistent with the Rule's framework. For example, investments in parks, public plazas, and other public outdoor recreation spaces may be responsive to the needs of disproportionately impacted communities by

promoting healthier living environments and outdoor recreation and socialization to mitigate the spread of COVID-19.

Second, recipients may provide assistance to small businesses in all communities. Assistance to small businesses could include support to enhance outdoor spaces for COVID-19 mitigation (e.g., restaurant patios) or to improve the built environment of the neighborhood (e.g., façade improvements).

Third, many governments saw significantly increased use of parks during the pandemic that resulted in damage or increased maintenance needs. The Interim Final Rule recognizes that "decrease[s to] a state or local government's ability to effectively administer services" can constitute a negative economic impact of the pandemic.

2.19. Would expenses to address a COVID-related backlog in court cases be an eligible use of funds as a response to the public health emergency? [6/23]

The Interim Final Rule recognizes that "decrease[s to] a state or local government's ability to effectively administer services," such as cuts to public sector staffing levels, can constitute a negative economic impact of the pandemic. During the COVID-19 public health emergency, many courts were unable to operate safely during the pandemic and, as a result, now face significant backlogs. Court backlogs resulting from inability of courts to safely operate during the COVID-19 pandemic decreased the government's ability to administer services. Therefore, steps to reduce these backlogs, such as implementing COVID-19 safety measures to facilitate court operations, hiring additional court staff or attorneys to increase speed of case resolution, and other expenses to expedite case resolution are eligible uses.

2.20. Can funds be used to assist small business startups as a response to the negative economic impact of COVID-19? [6/23]

As discussed in the Interim Final Rule, recipients may provide assistance to small businesses that responds to the negative economic impacts of COVID-19. The Interim Final Rule provides a non-exclusive list of potential assistance mechanisms, as well as considerations for ensuring that such assistance is responsive to the negative economic impacts of COVID-19.

Treasury acknowledges a range of potential circumstances in which assisting small business startups could be responsive to the negative economic impacts of COVID-19, including for small businesses and individuals seeking to start small businesses after the start of the COVID-19 public health emergency. For example:

- A recipient could assist small business startups with additional costs associated with COVID-19 mitigation tactics (e.g., barriers or partitions; enhanced cleaning; or physical plant changes to enable greater use of outdoor space).
- A recipient could identify and respond to a negative economic impact of COVID-19 on new small business startups; for example, if it could be shown that small

business startups in a locality were facing greater difficult accessing credit than prior to the pandemic, faced increased costs to starting the business due to the pandemic, or that the small business had lost expected startup capital due to the pandemic.

- The Interim Final Rule also discusses eligible uses that provide support for individuals who have experienced a negative economic impact from the COVID-19 public health emergency, including uses that provide job training for unemployed individuals. These initiatives also may support small business startups and individuals seeking to start small businesses.

3. Eligible Uses – Revenue Loss

3.1. How is revenue defined for the purpose of this provision? [appendix added 6/23]

The Interim Final Rule adopts a definition of "General Revenue" that is based on, but not identical, to the Census Bureau's concept of "General Revenue from Own Sources" in the Annual Survey of State and Local Government Finances.

General Revenue includes revenue from taxes, current charges, and miscellaneous general revenue. It excludes refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, agency or private trust transactions, and revenue generated by utilities and insurance trusts. General revenue also includes intergovernmental transfers between state and local governments, but excludes intergovernmental transfers from the Federal government, including Federal transfers made via a state to a locality pursuant to the CRF or the Fiscal Recovery Funds.

Tribal governments may include all revenue from Tribal enterprises and gaming operations in the definition of General Revenue.

Please see the appendix for a diagram of the Interim Final Rule's definition of General Revenue within the Census Bureau's revenue classification structure.

3.2. Will revenue be calculated on an entity-wide basis or on a source-by-source basis (e.g. property tax, income tax, sales tax, etc.)?

Recipients should calculate revenue on an entity-wide basis. This approach minimizes the administrative burden for recipients, provides for greater consistency across recipients, and presents a more accurate representation of the net impact of the COVID- 19 public health emergency on a recipient's revenue, rather than relying on financial reporting prepared by each recipient, which vary in methodology used and which generally aggregates revenue by purpose rather than by source.

3.3. Does the definition of revenue include outside concessions that contract with a state or local government?

Recipients should classify revenue sources as they would if responding to the U.S. Census Bureau's Annual Survey of State and Local Government Finances. According to the Census Bureau's Government Finance and Employment Classification manual, the following is an example of current charges that would be included in a state or local government's general revenue from own sources: "Gross revenue of facilities operated by a government (swimming pools, recreational marinas and piers, golf courses, skating rinks, museums, zoos, etc.); auxiliary facilities in public recreation areas (camping areas, refreshment stands, gift shops, etc.); lease or use fees from stadiums, auditoriums, and community and convention centers; and rentals from concessions at such facilities."

3.4. What is the time period for estimating revenue loss? Will revenue losses experienced prior to the passage of the Act be considered?

Recipients are permitted to calculate the extent of reduction in revenue as of four points in time: December 31, 2020; December 31, 2021; December 31, 2022; and December 31, 2023. This approach recognizes that some recipients may experience lagged effects of the pandemic on revenues.

Upon receiving Fiscal Recovery Fund payments, recipients may immediately calculate revenue loss for the period ending December 31, 2020.

3.5. What is the formula for calculating the reduction in revenue?

A reduction in a recipient's General Revenue equals:

$$\text{Max } \{[\text{Base Year Revenue}^* \ (1+\text{Growth Adjustment})^{\left(\frac{n_t}{12}\right)}] - \text{Actual General Revenue}_t \ ; 0\}$$

Where:

Base Year Revenue is General Revenue collected in the most recent full fiscal year prior to the COVD-19 public health emergency.

Growth Adjustment is equal to the greater of 4.1 percent (or 0.041) and the recipient's average annual revenue growth over the three full fiscal years prior to the COVID-19 public health emergency.

n equals the number of months elapsed from the end of the base year to the calculation date.

Actual General Revenue is a recipient's actual general revenue collected during 12-month period ending on each calculation date.

Subscript *t* denotes the calculation date.

3.6. Are recipients expected to demonstrate that reduction in revenue is due to the COVID-19 public health emergency?

In the Interim Final Rule, any diminution in actual revenue calculated using the formula above would be presumed to have been "due to" the COVID-19 public health emergency. This presumption is made for administrative ease and in recognition of the broad-based economic damage that the pandemic has wrought.

3.7. May recipients use pre-pandemic projections as a basis to estimate the reduction in revenue?

No. Treasury is disallowing the use of projections to ensure consistency and comparability across recipients and to streamline verification. However, in estimating the revenue shortfall using the formula above, recipients may incorporate their average annual revenue growth rate in the three full fiscal years prior to the public health emergency.

3.8. Once a recipient has identified a reduction in revenue, are there any restrictions on how recipients use funds up to the amount of the reduction?

The Interim Final Rule gives recipients broad latitude to use funds for the provision of government services to the extent of reduction in revenue. Government services can include, but are not limited to, maintenance of infrastructure or pay-go spending for building new infrastructure, including roads; modernization of cybersecurity, including hardware, software, and protection of critical infrastructure; health services; environmental remediation; school or educational services; and the provision of police, fire, and other public safety services.

However, paying interest or principal on outstanding debt, replenishing rainy day or other reserve funds, or paying settlements or judgments would not be considered provision of a government service, since these uses of funds do not entail direct provision of services to citizens. This restriction on paying interest or principal on any outstanding debt instrument, includes, for example, short-term revenue or tax anticipation notes, or paying fees or issuance costs associated with the issuance of new debt. In addition, the overarching restrictions on all program funds (e.g., restriction on pension deposits, restriction on using funds for non-federal match where barred by regulation or statute) would apply.

3.9. How do I know if a certain type of revenue should be counted for the purpose of computing revenue loss? [5/27]

As discussed in FAQ #3.1, the Interim Final Rule adopts a definition of "General Revenue" that is based on, but not identical, to the Census Bureau's concept of "General Revenue from Own Sources" in the Annual Survey of State and Local Government Finances.

Recipients should refer to the definition of "General Revenue" included in the Interim Final Rule. See forthcoming 31 CFR 35.3. If a recipient is unsure whether a particular

revenue source is included in the Interim Final Rule's definition of "General Revenue," the recipient may consider the classification and instructions used to complete the Census Bureau's Annual Survey.

For example, parking fees would be classified as a Current Charge for the purpose of the Census Bureau's Annual Survey, and the Interim Final Rule's concept of "General Revenue" includes all Current Charges. Therefore, parking fees would be included in the Interim Final Rule's concept of "General Revenue."

The Census Bureau's Government Finance and Employment Classification manual is available here.

3.10. In calculating revenue loss, are recipients required to use audited financials? [6/8]

Where audited data is not available, recipients are not required to obtain audited data. Treasury expects all information submitted to be complete and accurate. See 31 CFR 35.4(c).

3.11. In calculating revenue loss, should recipients use their own data, or Census data? [6/8]

Recipients should use their own data sources to calculate general revenue, and do not need to rely on published revenue data from the Census Bureau. Treasury acknowledges that due to differences in timing, data sources, and definitions, recipients' self-reported general revenue figures may differ somewhat from those published by the Census Bureau.

3.12. Should recipients calculate revenue loss on a cash basis or an accrual basis? [6/8]

Recipients may provide data on a cash, accrual, or modified accrual basis, provided that recipients are consistent in their choice of methodology throughout the covered period and until reporting is no longer required.

3.13. In identifying intergovernmental revenue for the purpose of calculating General Revenue, should recipients exclude all federal funding, or just federal funding related to the COVID-19 response? How should local governments treat federal funds that are passed through states or other entities, or federal funds that are intermingled with other funds? [6/23]

In calculating General Revenue, recipients should exclude all intergovernmental transfers from the federal government. This includes, but is not limited to, federal transfers made via a state to a locality pursuant to the Coronavirus Relief Fund or Fiscal Recovery Funds. To the extent federal funds are passed through states or other entities or intermingled with other funds, recipients should attempt to identify and exclude the federal portion of those funds from the calculation of General Revenue on a best-efforts basis.

4. Eligible Uses – General

4.1. May recipients use funds to replenish a budget stabilization fund, rainy day fund, or similar reserve account?

No. Funds made available to respond to the public health emergency and its negative economic impacts are intended to help meet pandemic response needs and provide immediate stabilization for households and businesses. Contributions to rainy day funds and similar reserves funds would not address these needs or respond to the COVID-19 public health emergency, but would rather be savings for future spending needs. Similarly, funds made available for the provision of governmental services (to the extent of reduction in revenue) are intended to support direct provision of services to citizens. Contributions to rainy day funds are not considered provision of government services, since such expenses do not directly relate to the provision of government services.

4.2. May recipients use funds to invest in infrastructure other than water, sewer, and broadband projects (e.g. roads, public facilities)?

Under 602(c)(1)(C) or 603(c)(1)(C), recipients may use funds for maintenance of infrastructure or pay-go spending for building of new infrastructure as part of the general provision of government services, to the extent of the estimated reduction in revenue due to the public health emergency.

Under 602(c)(1)(A) or 603(c)(1)(A), a general infrastructure project typically would not be considered a response to the public health emergency and its negative economic impacts unless the project responds to a specific pandemic-related public health need (e.g., investments in facilities for the delivery of vaccines) or a specific negative economic impact of the pandemic (e.g., affordable housing in a Qualified Census Tract).

4.3. May recipients use funds to pay interest or principal on outstanding debt?

No. Expenses related to financing, including servicing or redeeming notes, would not address the needs of pandemic response or its negative economic impacts. Such expenses would also not be considered provision of government services, as these financing expenses do not directly provide services or aid to citizens.

This applies to paying interest or principal on any outstanding debt instrument, including, for example, short-term revenue or tax anticipation notes, or paying fees or issuance costs associated with the issuance of new debt.

4.4. May recipients use funds to satisfy nonfederal matching requirements under the Stafford Act? May recipients use funds to satisfy nonfederal matching requirements generally?

Fiscal Recovery Funds are subject to pre-existing limitations in other federal statutes and regulations and may not be used as non-federal match for other Federal programs whose statute or regulations bar the use of Federal funds to meet matching requirements. For example, expenses for the state share of Medicaid are not an eligible use. For information on FEMA programs, please see here.

4.5. Are governments required to submit proposed expenditures to Treasury for approval? [5/27]

No. Recipients are not required to submit planned expenditures for prior approval by Treasury. Recipients are subject to the requirements and guidelines for eligible uses contained in the Interim Final Rule.

4.6. How do I know if a specific use is eligible? [5/27]

Fiscal Recovery Funds must be used in one of the four eligible use categories specified in the American Rescue Plan Act and implemented in the Interim Final Rule:

a) To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;

b) To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers;

c) For the provision of government services to the extent of the reduction in revenue due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and

d) To make necessary investments in water, sewer, or broadband infrastructure.

Recipients should consult Section II of the Interim Final Rule for additional information on eligible uses. For recipients evaluating potential uses under (a), the Interim Final Rule contains a non-exclusive list of programs or services that may be funded as responding to COVID-19 or the negative economic impacts of the COVID-19 public health emergency, along with considerations for evaluating other potential uses of Fiscal Recovery Funds not explicitly listed. See Section II of the Interim Final Rule for additional discussion.

For recipients evaluating potential uses under (c), the Interim Final Rule gives recipients broad latitude to use funds for the provision of government services to the extent of reduction in revenue. See FAQ #3.8 for additional discussion.

For recipients evaluating potential uses under (b) and (d), see Sections 5 and 6.

4.7. Do restrictions on using Coronavirus State and Local Fiscal Recovery Funds to cover costs incurred beginning on March 3, 2021 apply to costs incurred by the

recipient (e.g., a State, local, territorial, or Tribal government) or to costs incurred by households, businesses, and individuals benefiting from assistance provided using Coronavirus State and Local Fiscal Recovery Funds? [6/8]

The Interim Final Rule permits funds to be used to cover costs incurred beginning on March 3, 2021. This limitation applies to costs incurred by the recipient (i.e., the state, local, territorial, or Tribal government receiving funds). However, recipients may use Coronavirus State and Local Fiscal Recovery Funds to provide assistance to households, businesses, and individuals within the eligible use categories described in the Interim Final Rule for economic harms experienced by those households, businesses, and individuals prior to March 3, 2021. For example,

- Public Health/Negative Economic Impacts – Recipients may use Coronavirus State and Local Fiscal Recovery Funds to provide assistance to households – such as rent, mortgage, or utility assistance – for economic harms experienced or costs incurred by the household prior to March 3, 2021 (e.g., rental arrears from preceding months), provided that the cost of providing assistance to the household was not incurred by the recipient prior to March 3, 2021.
- Premium Pay – Recipients may provide premium pay retrospectively for work performed at any time since the start of the COVID-19 public health emergency. Such premium pay must be "in addition to" wages and remuneration already received and the obligation to provide such pay must not have been incurred by the recipient prior to March 3, 2021.
- Revenue Loss – The Interim Final Rule gives recipients broad latitude to use funds for the provision of government services to the extent of reduction in revenue. The calculation of lost revenue begins with the recipient's revenue in the last full fiscal year prior to the COVID-19 public health emergency and includes the 12-month period ending December 31, 2020. However, use of funds for government services must be forward looking for costs incurred by the recipient after March 3, 2021.
- Investments in Water, Sewer, and Broadband – Recipients may use Coronavirus State and Local Fiscal Recovery Funds to make necessary investments in water, sewer, and broadband. See FAQ Section 6. Recipients may use Coronavirus State and Local Fiscal Recovery Funds to cover costs incurred for eligible projects planned or started prior to March 3, 2021, provided that the project costs covered by the Coronavirus State and Local Fiscal Recovery Funds were incurred after March 3, 2021.

4.8. How can I use CSFRF/CLFRF funds to prevent and respond to crime, and support public safety in my community? [6/23]

Under Treasury's Interim Final Rule, there are many ways in which the State and Local Fiscal Recovery Funds ("Funds") under the American Rescue Plan Act can support communities working to reduce and respond to increased violence due to the pandemic. Among the eligible uses of the Funds are restoring of public sector staff to their pre-pandemic levels and responses to the public health crisis and negative economic impacts resulting from the pandemic. The Interim Final Rule provides several ways for recipients to "respond to" this pandemic-related gun violence, ranging from community violence intervention programs to mental health services to hiring of public safety personnel.

Below are some examples of how Fiscal Recovery Funds can be used to address public safety:

- In all communities, recipients may use resources to rehire police officers and other public servants to restore law enforcement and courts to their pre-pandemic levels. Additionally, Funds can be used for expenses to address COVID-related court backlogs, including hiring above pre-pandemic levels, as a response to the public health emergency. See FAQ 2.19.

- In communities where an increase in violence or increased difficulty in accessing or providing services to respond to or mitigate the effects of violence, is a result of the pandemic they may use funds to address that harm. This spending may include:

  - Hiring law enforcement officials – even above pre-pandemic levels – or paying overtime where the funds are directly focused on advancing community policing strategies in those communities experiencing an increase in gun violence associated with the pandemic
  - Community Violence Intervention (CVI) programs, including capacity building efforts at CVI programs like funding and training additional intervention workers
  - Additional enforcement efforts to reduce gun violence exacerbated by the pandemic, including prosecuting gun traffickers, dealers, and other parties contributing to the supply of crime guns, as well as collaborative federal, state, and local efforts to identify and address gun trafficking channels
  - Investing in technology and equipment to allow law enforcement to more efficiently and effectively respond to the rise in gun violence resulting from the pandemic

  As discussed in the Interim Final Rule, uses of CSFRF/CLFRF funds that respond to an identified harm must be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses.

- Recipients may also use funds up to the level of revenue loss for government services, including those outlined above.

Recognizing that the pandemic exacerbated mental health and substance use disorder needs in many communities, eligible public health services include mental health and other behavioral health services, which are a critical component of a holistic public safety approach. This could include:

- Mental health services and substance use disorder services, including for individuals experiencing trauma exacerbated by the pandemic, such as:
    - Community-based mental health and substance use disorder programs that deliver evidence-based psychotherapy, crisis support services, medications for opioid use disorder, and/or recovery support
    - School-based social-emotional support and other mental health services
- Referrals to trauma recovery services for crime victims.

Recipients also may use Funds to respond to the negative economic impacts of the public health emergency, including:

- Assistance programs to households or populations facing negative economic impacts of the public health emergency, including:
    - Assistance to support economic security, including for the victims of crime;
    - Housing assistance, including rent, utilities, and relocation assistance;
    - Assistance with food, including Summer EBT and nutrition programs; and
    - Employment or job training services to address negative economic or public health impacts experienced due to a worker's occupation or level of training.

- Assistance to unemployed workers, including:
    - Subsidized jobs, including for young people. Summer youth employment programs directly address the negative economic impacts of the pandemic on young people and their families and communities;
    - Programs that provide paid training and/or work experience targeted primarily to (1) formerly incarcerated individuals, and/or (2) communities experiencing high levels of violence exacerbated by the pandemic;
    - Programs that provide workforce readiness training, apprenticeship or pre-apprenticeship opportunities, skills development, placement services, and/or coaching and mentoring; and
    - Associated wraparound services, including for housing, health care, and food.

Recognizing the disproportionate impact of the pandemic on certain communities, a broader range of services are eligible in those communities than would otherwise be available in communities not experiencing a pandemic-related increase in crime or gun violence. These eligible uses aim to address the pandemic's exacerbation of public health and economic disparities and include services to address health and educational disparities, support neighborhoods and affordable housing, and promote healthy childhood environments. The Interim Final Rule provides a non-exhaustive list of eligible services in these categories.

These services automatically qualify as eligible uses when provided in Qualified Census Tracts (QCTs), low-income areas designated by HUD; to families in QCTs; or by Tribal

governments. Outside of these areas, recipient governments can also identify and serve households, populations, and geographic areas disproportionately impacted by the pandemic.

Services under this category could include:

- Programs or services that address or mitigate the impacts of the COVID-19 public health emergency on education, childhood health and welfare, including:
  - Summer education and enrichment programs in these communities, which include many communities currently struggling with high levels of violence;
  - Programs that address learning loss and keep students productively engaged;
  - Enhanced services for foster youths and home visiting programs; and
  - Summer camps and recreation.

- Programs or services that provide or facilitate access to health and social services and address health disparities exacerbated by the pandemic. This includes Community Violence Intervention (CVI) programs, such as:
  - Evidence-based practices like focused deterrence, street outreach, violence interrupters, and hospital-based violence intervention models, complete with wraparound services such as behavioral therapy, trauma recovery, job training, education, housing and relocation services, and financial assistance; and,
  - Capacity-building efforts at CVI programs like funding more intervention workers; increasing their pay; providing training and professional development for intervention workers; and hiring and training workers to administer the programs.

Please refer to Treasury's Interim Final Rule for additional information.

5. Eligible Uses – Premium Pay

5.1. What criteria should recipients use in identifying essential workers to receive premium pay?

Essential workers are those in critical infrastructure sectors who regularly perform in-person work, interact with others at work, or physically handle items handled by others.

Critical infrastructure sectors include healthcare, education and childcare, transportation, sanitation, grocery and food production, and public health and safety, among others, as provided in the Interim Final Rule. Governments receiving Fiscal Recovery Funds have the discretion to add additional sectors to this list, so long as the sectors are considered critical to protect the health and well-being of residents.

The Interim Final Rule emphasizes the need for recipients to prioritize premium pay for lower income workers. Premium pay that would increase a worker's total pay above 150% of the greater of the state or county average annual wage requires specific justification for how it responds to the needs of these workers.

5.2. What criteria should recipients use in identifying third-party employers to receive grants for the purpose of providing premium pay to essential workers?

Any third-party employers of essential workers are eligible. Third-party contractors who employ essential workers in eligible sectors are also eligible for grants to provide premium pay. Selection of third-party employers and contractors who receive grants is at the discretion of recipients.

To ensure any grants respond to the needs of essential workers and are made in a fair and transparent manner, the rule imposes some additional reporting requirements for grants to third-party employers, including the public disclosure of grants provided.

5.3. May recipients provide premium pay retroactively for work already performed?

Yes. Treasury encourages recipients to consider providing premium pay retroactively for work performed during the pandemic, recognizing that many essential workers have not yet received additional compensation for their service during the pandemic.

6. Eligible Uses – Water, Sewer, and Broadband Infrastructure

6.1. What types of water and sewer projects are eligible uses of funds?

The Interim Final Rule generally aligns eligible uses of the Funds with the wide range of types or categories of projects that would be eligible to receive financial assistance through the Environmental Protection Agency's Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF).

Under the DWSRF, categories of eligible projects include: treatment, transmission and distribution (including lead service line replacement), source rehabilitation and decontamination, storage, consolidation, and new systems development.

Under the CWSRF, categories of eligible projects include: construction of publicly-owned treatment works, nonpoint source pollution management, national estuary program projects, decentralized wastewater treatment systems, stormwater systems, water conservation, efficiency, and reuse measures, watershed pilot projects, energy efficiency measures for publicly-owned treatment works, water reuse projects, security measures at publicly-owned treatment works, and technical assistance to ensure compliance with the Clean Water Act.

As mentioned in the Interim Final Rule, eligible projects under the DWSRF and CWSRF support efforts to address climate change, as well as to meet cybersecurity needs to protect water and sewer infrastructure. Given the lifelong impacts of lead exposure for children, and the widespread nature of lead service lines, Treasury also encourages recipients to consider projects to replace lead service lines.

6.2. May construction on eligible water, sewer, or broadband infrastructure projects continue past December 31, 2024, assuming funds have been obligated prior to that date?

Yes. Treasury is interpreting the requirement that costs be incurred by December 31, 2024 to only require that recipients have obligated the funds by such date. The period of performance will run until December 31, 2026, which will provide recipients a reasonable amount of time to complete projects funded with Fiscal Recovery Funds.

6.3. May recipients use funds as a non-federal match for the Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF)?

Recipients may not use funds as a state match for the CWSRF and DWSRF due to prohibitions in utilizing federal funds as a state match in the authorizing statutes and regulations of the CWSRF and DWSRF.

6.4. Does the National Environmental Policy Act (NEPA) apply to eligible infrastructure projects?

NEPA does not apply to Treasury's administration of the Funds. Projects supported with payments from the Funds may still be subject to NEPA review if they are also funded by other federal financial assistance programs.

6.5. What types of broadband projects are eligible?

The Interim Final Rule requires eligible projects to reliably deliver minimum speeds of 100 Mbps download and 100 Mbps upload. In cases where it is impracticable due to geography, topography, or financial cost to meet those standards, projects must reliably deliver at least 100 Mbps download speed, at least 20 Mbps upload speed, and be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.

Projects must also be designed to serve unserved or underserved households and businesses, defined as those that are not currently served by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed.

6.6. For broadband investments, may recipients use funds for related programs such as cybersecurity or digital literacy training?

Yes. Recipients may use funds to provide assistance to households facing negative economic impacts due to Covid-19, including digital literacy training and other programs that promote access to the Internet. Recipients may also use funds for modernization of cybersecurity, including hardware, software, and protection of critical infrastructure, as part of provision of government services up to the amount of revenue lost due to the public health emergency.

6.7. How do I know if a water, sewer, or broadband project is an eligible use of funds? Do I need pre-approval? [6/8]

Recipients do not need approval from Treasury to determine whether an investment in a water, sewer, or broadband project is eligible under CSFRF/CLFRF. Each recipient should review the Interim Final Rule (IFR), along with the preamble to the Interim Final Rule, in order to make its own assessment of whether its intended project meets the eligibility criteria in the IFR. A recipient that makes its own determination that a project meets the eligibility criteria as outlined in the IFR may pursue the project as a CSFRF/CLFRF project without pre-approval from Treasury. Local government recipients similarly do not need state approval to determine that a project is eligible under CSFRF/CLFRF. However, recipients should be cognizant of other federal or state laws or regulations that may apply to construction projects independent of CSFRF/CLFRF funding conditions and that may require pre-approval.

For water and sewer projects, the IFR refers to the EPA Drinking Water and Clean Water State Revolving Funds (SRFs) for the categories of projects and activities that are eligible for funding. Recipients should look at the relevant federal statutes, regulations, and guidance issued by the EPA to determine whether a water or sewer project is eligible. Of note, the IFR does not incorporate any other requirements contained in the federal statutes governing the SRFs or any conditions or requirements that individual states may place on their use of SRFs.

6.8. For broadband infrastructure investments, what does the requirement that infrastructure "be designed to" provide service to unserved or underserved households and businesses mean? [6/17]

Designing infrastructure investments to provide service to unserved or underserved households or businesses means prioritizing deployment of infrastructure that will bring service to households or businesses that are not currently serviced by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed. To meet this requirement, states and localities should use funds to deploy broadband infrastructure projects whose objective is to provide service to unserved or underserved households or businesses. These unserved or underserved households or businesses do not need to be the only ones in the service area funded by the project.

6.9. For broadband infrastructure to provide service to "unserved or underserved households or businesses," must every house or business in the service area be unserved or underserved? [6/17]

No. It suffices that an objective of the project is to provide service to unserved or underserved households or businesses. Doing so may involve a holistic approach that provides service to a wider area in order, for example, to make the ongoing service of unserved or underserved households or businesses within the service area economical. Unserved or underserved households or businesses need not be the *only* households or businesses in the service area receiving funds.

6.10. May recipients use payments from the Funds for "middle mile" broadband projects? [6/17]

Yes. Under the Interim Final Rule, recipients may use payments from the Funds for "middle-mile projects," but Treasury encourages recipients to focus on projects that will achieve last-mile connections—whether by focusing on funding last-mile projects or by ensuring that funded middle-mile projects have potential or partnered last-mile networks that could or would leverage the middle-mile network.

6.11. For broadband infrastructure investments, what does the requirement to "reliably" meet or exceed a broadband speed threshold mean? [6/17]

In the Interim Final Rule, the term "reliably" is used in two places: to identify areas that are eligible to be the subject of broadband infrastructure investments and to identify expectations for acceptable service levels for broadband investments funded by the Coronavirus State and Local Fiscal Recovery Funds. In particular:

- The IFR defines "unserved or underserved households or businesses" to mean one or more households or businesses that are not currently served by a wireline connection that reliably delivers at least 25 Mbps download speeds and 3 Mbps of upload speeds.

- The IFR provides that a recipient may use Coronavirus State and Local Fiscal Recovery Funds to make investments in broadband infrastructure that are designed to provide service to unserved or underserved households or businesses and that are designed to, upon completion: (i) reliably meet or exceed symmetrical 100 Mbps download speed and upload speeds; or (ii) in limited cases, reliably meet or exceed 100 Mbps download speed and between 20 Mbps and 100 Mbps upload speed and be scalable to a minimum of 100 Mbps download and upload speeds.

The use of "reliably" in the IFR provides recipients with significant discretion to assess whether the households and businesses in the area to be served by a project have access to wireline broadband service that can actually and consistently meet the specified thresholds of at least 25Mbps/3Mbps—i.e., to consider the actual experience of current wireline broadband customers that subscribe to services at or above the 25 Mbps/3 Mbps threshold. Whether there is a provider serving the area that advertises or otherwise claims to offer speeds that meet the 25 Mbps download and 3 Mbps upload speed thresholds is not dispositive.

When making these assessments, recipients may choose to consider any available data, including but not limited to documentation of existing service performance, federal and/or state-collected broadband data, user speed test results, interviews with residents and business owners, and any other information they deem relevant. In evaluating such data, recipients may take into account a variety of factors, including whether users

actually receive service at or above the speed thresholds at all hours of the day, whether factors other than speed such as latency or jitter, or deterioration of the existing connections make the user experience unreliable, and whether the existing service is being delivered by legacy technologies, such as copper telephone lines (typically using Digital Subscriber Line technology) or early versions of cable system technology (DOCSIS 2.0 or earlier).

The IFR also provides recipients with significant discretion as to how they will assess whether the project itself has been designed to provide households and businesses with broadband services that meet, or even exceed, the speed thresholds provided in the rule.

6.12. May recipients use Funds for pre-project development for eligible water, sewer, and broadband projects? [6/23]

Yes. To determine whether Funds can be used on pre-project development for an eligible water or sewer project, recipients should consult whether the pre-project development use or cost is eligible under the Drinking Water and Clean Water State Revolving Funds (CWSRF and DWSRF, respectively). Generally, the CWSRF and DWSRF often allow for pre-project development costs that are tied to an eligible project, as well as those that are reasonably expected to lead to a project. For example, the DWSRF allows for planning and evaluations uses, as well as numerous pre-project development costs, including costs associated with obtaining project authorization, planning and design, and project start-up like training and warranty for equipment. Likewise, the CWSRF allows for broad pre-project development, including planning and assessment activities, such as cost and effectiveness analyses, water/energy audits and conservation plans, and capital improvement plans.

Similarly, pre-project development uses and costs for broadband projects should be tied to an eligible broadband project or reasonably expected to lead to such a project. For example, pre-project costs associated with planning and engineering for an eligible broadband infrastructure build-out is considered an eligible use of funds, as well as technical assistance and evaluations that would reasonably be expected to lead to commencement of an eligible project (e.g., broadband mapping for the purposes of finding an eligible area for investment).

All funds must be obligated within the statutory period between March 3, 2021 and December 31, 2024, and expended to cover such obligations by December 31, 2026.

7. Non-Entitlement Units (NEUs)

Answers to frequently asked questions on distribution of funds to NEUs can be found in this FAQ supplement, which is regularly updated.

8. Ineligible Uses

8.1. What is meant by a pension "deposit"? Can governments use funds for routine pension contributions for employees whose payroll and covered benefits are eligible expenses?

Treasury interprets "deposit" in this context to refer to an extraordinary payment into a pension fund for the purpose of reducing an accrued, unfunded liability. More specifically, the interim final rule does not permit this assistance to be used to make a payment into a pension fund if both: (1) the payment reduces a liability incurred prior to the start of the COVID-19 public health emergency, and (2) the payment occurs outside the recipient's regular timing for making such payments.

Under this interpretation, a "deposit" is distinct from a "payroll contribution," which occurs when employers make payments into pension funds on regular intervals, with contribution amounts based on a pre-determined percentage of employees' wages and salaries. In general, if an employee's wages and salaries are an eligible use of Fiscal Recovery Funds, recipients may treat the employee's covered benefits as an eligible use of Fiscal Recovery Funds.

8.2. May recipients use Fiscal Recovery Funds to fund Other Post-Employment Benefits (OPEB)? [6/8]

OPEB refers to benefits other than pensions (see, e.g., Governmental Accounting Standards Board, "Other Post-Employment Benefits"). Treasury has determined that Sections 602(c)(2)(B) and 603(c)(2), which refer only to pensions, do not prohibit CSFRF/CLFRF recipients from funding OPEB. Recipients of either the CSFRF/CLFRF may use funds for eligible uses, and a recipient seeking to use CSFRF/CLFRF funds for OPEB contributions would need to justify those contributions under one of the four eligible use categories.

9. Reporting

On June 17, 2021, Treasury released Guidance on Recipient Compliance and Reporting Responsibilities for the Coronavirus State and Local Fiscal Recovery Funds. Recipients should consult this guidance for additional detail and clarification on recipients' compliance and reporting responsibilities. A users' guide will be provided with additional information on how and where to submit required reports.

9.1. What records must be kept by governments receiving funds?

Financial records and supporting documents related to the award must be retained for a period of five years after all funds have been expended or returned to Treasury, whichever is later. This includes those which demonstrate the award funds were used for eligible purposes in accordance with the ARPA, Treasury's regulations implementing those sections, and Treasury's guidance on eligible uses of funds.

9.2. What reporting will be required, and when will the first report be due?

Recipients will be required to submit an interim report, quarterly project and expenditure reports, and annual Recovery Plan Performance Reports as specified below, regarding their utilization of Coronavirus State and Local Fiscal Recovery Funds.

Interim reports: States (defined to include the District of Columbia), territories, metropolitan cities, counties, and Tribal governments will be required to submit one interim report. The interim report will include a recipient's expenditures by category at the summary level and for states, information related to distributions to non-entitlement units of local government must also be included in the interim report. The interim report will cover activity from the date of award to July 31, 2021 and must be submitted to Treasury by August 31, 2021. Non-entitlement units of local government are not required to submit an interim report.

Quarterly Project and Expenditure reports: State (defined to include the District of Columbia), territorial, metropolitan city, county, and Tribal governments will be required to submit quarterly project and expenditure reports. This report will include financial data, information on contracts and subawards over $50,000, types of projects funded, and other information regarding a recipient's utilization of award funds. Reports will be required quarterly with the exception of non-entitlement units, which will report annually. An interim report is due on August 31, 2021. The reports will include the same general data as those submitted by recipients of the Coronavirus Relief Fund, with some modifications to expenditure categories and the addition of data elements related to specific eligible uses. The initial quarterly Project and Expenditure report will cover two calendar quarters from the date of award to September 30, 2021 and must be submitted to Treasury by October 31, 2021. The subsequent quarterly reports will cover one calendar quarter and must be submitted to Treasury within 30 days after the end of each calendar quarter.

Non-entitlement units of local government will be required to submit the project and expenditure report annually. The initial annual Project and Expenditure report for non-entitlement units of local government will cover activity from the date of award to September 30, 2021 and must be submitted to Treasury by October 31, 2021. The subsequent annual reports must be submitted to Treasury by October 31 each year.

Recovery Plan Performance Reports: States (defined to include the District of Columbia), territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to submit an annual Recovery Plan Performance Report to Treasury. This report will include descriptions of the projects funded and information on the performance indicators and objectives of each award, helping local residents understand how their governments are using the substantial resources provided by Coronavirus State and Local Fiscal Recovery Funds program. The initial Recovery Plan Performance Report will cover activity from date of award to July 31, 2021 and must be submitted to Treasury by August 31, 2021. Thereafter, the Recovery Plan Performance

Reports will cover a 12-month period and recipients will be required to submit the report to Treasury within 30 days after the end of the 12-month period. The second Recovery Plan Performance Report will cover the period from July 1, 2021 to June 30, 2022 and must be submitted to Treasury by July 31, 2022. Each annual Recovery Plan Performance Report must be posted on the public-facing website of the recipient. Local governments with fewer than 250,000 residents, Tribal governments, and non-entitlement units of local government are not required to develop a Recovery Plan Performance Report.

Please see the Guidance on Recipient Compliance and Reporting Responsibilities for more information.

9.3. What provisions of the Uniform Guidance for grants apply to these funds? Will the Single Audit requirements apply?

Most of the provisions of the Uniform Guidance (2 CFR Part 200) apply to this program, including the Cost Principles and Single Audit Act requirements. Recipients should refer to the Assistance Listing for detail on the specific provisions of the Uniform Guidance that do not apply to this program. The Assistance Listing will be available on beta.SAM.gov.

9.4. Once a recipient has identified a reduction in revenue, how will Treasury track use of funds for the provision of government services? [6/8]

The ARPA establishes four categories of eligible uses and further restrictions on the use of funds to ensure that Fiscal Recovery Funds are used within the four eligible use categories. The Interim Final Rule implements these restrictions, including the scope of the eligible use categories and further restrictions on tax cuts and deposits into pensions. Reporting requirements will align with this structure.

Consistent with the broad latitude provided to recipients to use funds for government services to the extent of the reduction in revenue, recipients will be required to submit a description of services provided. As discussed in IFR, these services can include a broad range of services but may not be used directly for pension deposits, contributions to reserve funds, or debt service. Recipients may use sources of funding other than Fiscal Recovery Funds to make deposits to pension funds, contribute to reserve funds, and pay debt service, including during the period of performance for the Fiscal Recovery Fund award.

For recipients using Fiscal Recovery Funds to provide government services to the extent of reduction in revenue, the description of government services reported to Treasury may be narrative or in another form, and recipients are encouraged to report based on their existing budget processes and to minimize administrative burden. For example, a recipient with $100 in revenue replacement funds available could indicate that $50 were used for personnel costs and $50 were used for pay-go building of sidewalk infrastructure.

In addition to describing the government services provided to the extent of reduction in revenue, all recipients will also be required to indicate that Fiscal Recovery Funds are not used directly to make a deposit in a pension fund. Further, recipients subject to the tax offset provision will be required to provide information necessary to implement the Interim Final Rule, as described in the Interim Final Rule. Treasury does not anticipate requiring other types of reporting or recordkeeping on spending in pensions, debt service, or contributions to reserve funds.

These requirements are further detailed in the guidance on reporting requirements for the Fiscal Recovery Funds available here.

9.5. What is the Assistance Listing and Catalog of Federal Domestic Assistance (CFDA) number for the program? [6/8]

The Assistance Listing for the Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) was published May 28, 2021 on SAM.gov. This includes the final CFDA Number for the program, 21.027.

The assistance listing includes helpful information including program purpose, statutory authority, eligibility requirements, and compliance requirements for recipients. The CFDA number is the unique 5-digit code for each type of federal assistance, and can be used to search for program information, including funding opportunities, spending on usaspending.gov, or audit results through the Federal Audit Clearinghouse.

To expedite payments and meet statutory timelines, Treasury issued initial payments under an existing CFDA number. If you have already received funds or captured the initial CFDA number in your records, please update your systems and reporting to reflect the final CFDA number 21.027. **Recipients must use the final CFDA number for all financial accounting, audits, subawards, and associated program reporting requirements.**

To ensure public trust, Treasury expects all recipients to serve as strong stewards of these funds. This includes ensuring funds are used for intended purposes and recipients have in place effective financial management, internal controls, and reporting for transparency and accountability.

Please see Treasury's Interim Final Rule and the Guidance on Recipient Compliance and Reporting Responsibilities for more information.

10. Miscellaneous

10.1. May governments retain assets purchased with Fiscal Recovery Funds? If so, what rules apply to the proceeds of disposition or sale of such assets?

Yes, if the purchase of the asset was consistent with the limitations on the eligible use of funds. If such assets are disposed of prior to December 31, 2024, the proceeds would be subject to the restrictions on the eligible use of payments.

10.2. Can recipients use funds for administrative purposes?

Recipients may use funds to cover the portion of payroll and benefits of employees corresponding to time spent on administrative work necessary due to the COVID–19 public health emergency and its negative economic impacts. This includes, but is not limited to, costs related to disbursing payments of Fiscal Recovery Funds and managing new grant programs established using Fiscal Recovery Funds.

10.3. Are recipients required to remit interest earned on CSFRF/CLFRF payments made by Treasury? [5/27]

No. CSFRF/CLFRF payments made by Treasury to states, territories, and the District of Columbia are not subject to the requirement of the Cash Management Improvement Act and Treasury's implementing regulations at 31 CFR part 205 to remit interest to Treasury. CSFRF/CLFRF payments made by Treasury to local governments and Tribes are not subject to the requirement of 2 CFR 200.305(b)(8)–(9) to maintain balances in an interest-bearing account and remit payments to Treasury.

10.4. Is there a deadline to apply for funds? [5/27]

The Interim Final Rule requires that costs be incurred by December 31, 2024. Direct recipients are encouraged to apply as soon as possible. For direct recipients other than Tribal governments, there is not a specific application deadline.

Tribal governments do have deadlines to complete the application process and should visit www.treasury.gov/SLFRPTribal for guidance on applicable deadlines.

Non-entitlement units of local government should contact their state government for information on applicable deadlines.

10.5. May recipients use funds to cover the costs of consultants to assist with managing and administering the funds? [6/8]

Yes. Recipients may use funds for administering the CSFRF/CLFRF program, including costs of consultants to support effective management and oversight, including consultation for ensuring compliance with legal, regulatory, and other requirements.

11. Operations

11.1. How do I know if my entity is eligible?

The Coronavirus State and Local Fiscal Recovery Funds American Rescue Plan Act of 2021 set forth the jurisdictions eligible to receive funds under the program, which are:

- States and the District of Columbia
- Territories
- Tribal governments
- Counties
- Metropolitan cities (typically, but not always, those with populations over 50,000)
- Non-entitlement units of local government, or smaller local governments (typically, but not always, those with populations under 50,000)

11.2. How does an eligible entity request payment?

Eligible entities (other than non-entitlement units) must submit their information to the Treasury Submission Portal. Please visit the **Coronavirus State and Local Fiscal Recovery Fund website** for more information on the submission process.

11.3. I cannot log into the Treasury Submission Portal or am having trouble navigating it. Who can help me?

If you have questions about the Treasury Submission Portal or for technical support, please email covidreliefitsupport@treasury.gov.

11.4. What do I need to do to receive my payment?

All eligible payees are required to have a DUNS Number previously issued by Dun & Bradstreet (https://www.dnb.com/).

All eligible payees are also required to have an active registration with the System for Award Management (SAM) (https://www.sam.gov).

And eligible payees must have a bank account enabled for Automated Clearing House (ACH) direct deposit. Payees with a Wire account are encouraged to provide that information as well.

More information on these and all program pre-submission requirements can be found on the **Coronavirus State and Local Fiscal Recovery Fund website**.

11.5. Why is Treasury employing id.me for the Treasury Submission Portal?

ID.me is a trusted technology partner to multiple government agencies and healthcare providers. It provides secure digital identity verification to those government agencies and healthcare providers to make sure you're you – and not someone pretending to be you – when you request access to online services. All personally identifiable information provided to ID.me is encrypted and disclosed only with the express consent of the user. Please refer to ID.me Contact Support for assistance with your ID.me account. Their support website is https://help.id.me.

11.6. Why is an entity not on the list of eligible entities in Treasury Submission Portal?

The ARPA statute lays out which governments are eligible for payments. The list of entities within the Treasury Submission Portal includes entities eligible to receive a direct payment of funds from Treasury, which include states (defined to include the District of Columbia), territories, Tribal governments, counties, and metropolitan cities.

Eligible non-entitlement units of local government will receive a distribution of funds from their respective state government and should not submit information to the Treasury Submission Portal.

If you believe an entity has been mistakenly left off the eligible entity list, please email SLFRP@treasury.gov.

11.7. What is an Authorized Representative?

An Authorized Representative is an individual with legal authority to bind the government entity (e.g., the Chief Executive Officer of the government entity). An Authorized Representative must sign the Acceptance of Award terms for it to be valid.

11.8. How does a Tribal government determine their allocation?

Tribal governments will receive information about their allocation when the submission to the Treasury Submission Portal is confirmed to be complete and accurate.

11.9. How do I know the status of my request for funds (submission)?

Entities can check the status of their submission at any time by logging into Treasury Submission Portal.

11.10. My Treasury Submission Portal submission requires additional information/correction. What is the process for that?

If your Authorized Representative has not yet signed the award terms, you can edit your submission with in the into Treasury Submission Portal. If your Authorized Representative has signed the award terms, please email SLFRP@treasury.gov to request assistance with updating your information.

11.11. My request for funds was denied. How do I find out why it was denied or appeal the decision?

Please check to ensure that no one else from your entity has applied, causing a duplicate submission. Please also review the list of all eligible entities on the **Coronavirus State and Local Fiscal Recovery Fund website**.

If you still have questions regarding your submission, please email SLFRP@treasury.gov.

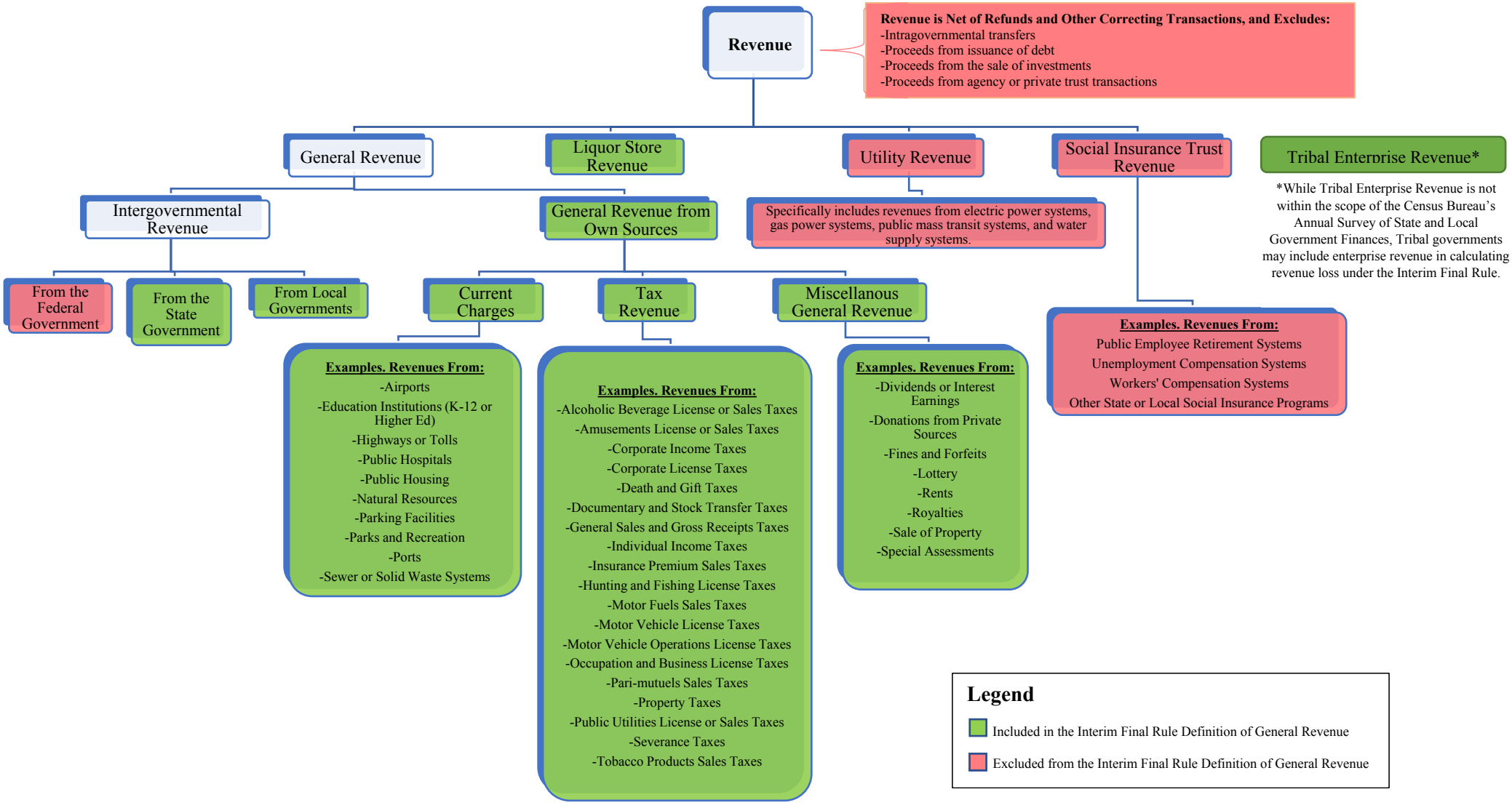
11.12. When will entities get their money?

Before Treasury is able to execute a payment, a representative of an eligible government must submit the government's information for verification through the Treasury Submission Portal. The verification process takes approximately four business days. If any errors are identified, the designated point of contact for the government will be contacted via email to correct the information before the payment can proceed. Once verification is complete, the designated point of contact of the eligible government will receive an email notifying them that their submission has been verified. Payments are generally scheduled for the next business day after this verification email, though funds may not be available immediately due to processing time of their financial institution.

11.13. How does a local government entity provide Treasury with a notice of transfer of funds to its State?

For more information on how to provide Treasury with notice of transfer to a state, please email SLRedirectFunds@treasury.gov.

Appendix: Interim Final Rule Definition of General Revenue Within the Census Bureau Classification Structure of Revenue



Source: U.S. Bureau of the Census Government Finance and Employment Classification Manual, 2006; Annual Survey of State and Local Government Finances

U.S. DEPARTMENT OF THE TREASURY

Coronavirus State and Local Fiscal Recovery Funds

The American Rescue Plan will deliver $350 billion for state, local, territorial, and Tribal governments to respond to the COVID-19 emergency and bring back jobs.

The Coronavirus State and Local Fiscal Recovery Funds provide a substantial infusion of resources to help turn the tide on the pandemic, address its economic fallout, and lay the foundation for a strong and equitable recovery.

Funding Objectives

- **Support urgent COVID-19 response efforts** to continue to decrease spread of the virus and bring the pandemic under control
- **Replace lost public sector revenue** to strengthen support for vital public services and help retain jobs
- **Support immediate economic stabilization** for households and businesses
- **Address systemic public health and economic challenges** that have contributed to the inequal impact of the pandemic

Eligible Jurisdictions & Allocations

Direct Recipients

- States and District of Columbia ($195.3 billion)
- Counties ($65.1 billion)
- Metropolitan cities ($45.6 billion)
- Tribal governments ($20.0 billion)
- Territories ($4.5 billion)

Indirect Recipients

- Non-entitlement units ($19.5 billion)

Support Public Health Response
Fund COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff

Address Negative Economic Impacts
Respond to economic harms to workers, families, small businesses, impacted industries, and the public sector

Replace Public Sector Revenue Loss
Use funds to provide government services to the extent of the reduction in revenue experienced due to the pandemic

Premium Pay for Essential Workers
Offer additional support to those who have and will bear the greatest health risks because of their service in critical infrastructure sectors

Water and Sewer Infrastructure
Make necessary investments to improve access to clean drinking water and invest in wastewater and stormwater infrastructure

Broadband Infrastructure
Make necessary investments to provide unserved or underserved locations with new or expanded broadband access

For More Information: Please visit www.treasury.gov/SLFRP
For Media Inquiries: Please contact the U.S. Treasury Press Office at (202) 622-2960
For General Inquiries: Please email SLFRP@treasury.gov for additional information

Example Uses of Funds

Support Public Health Response

- **Services to contain and mitigate the spread of COVID-19,** including vaccination, medical expenses, testing, contact tracing, quarantine costs, capacity enhancements, and many related activities
- **Behavioral healthcare services**, including mental health or substance misuse treatment, crisis intervention, and related services
- **Payroll and covered benefits** for public health, healthcare, human services, and public safety staff to the extent that they work on the COVID-19 response

Address Negative Economic Impacts

- **Deliver assistance to workers and families**, including support for unemployed workers, aid to households, and survivor's benefits for families of COVID-19 victims
- **Support small businesses** with loans, grants, in-kind assistance, and counseling programs
- **Speed the recovery of impacted industries**, including the tourism, travel, and hospitality sectors
- **Rebuild public sector capacity** by rehiring staff, replenishing state unemployment insurance funds, and implementing economic relief programs

Replace Public Sector Revenue Loss

- **Ensure continuity of vital government services** by filling budget shortfalls
- **Revenue loss is calculated** relative to the expected trend, beginning with the last full fiscal year pre-pandemic and adjusted annually for growth
- **Recipients may re-calculate revenue loss** at multiple points during the program, supporting those entities that experience revenue loss with a lag

Premium Pay for Essential Workers

- **Provide premium pay to essential workers**, both directly and through grants to third-party employers
- **Prioritize low- and moderate-income workers**, who face the greatest mismatch between employment-related health risks and compensation
- **Key sectors include** healthcare, grocery and food services, education, childcare, sanitation, and transit
- **Must be fully additive** to a worker's wages

Water & Sewer Infrastructure

- **Includes improvements to infrastructure**, such as building or upgrading facilities and transmission, distribution, and storage systems
- **Eligible uses aligned to Environmental Protection Agency project categories** for the Clean Water State Revolving Fund and Drinking Water State Revolving Fund

Broadband Infrastructure

- **Focus on households and businesses** without access to broadband and those with connections that do not provide minimally acceptable speeds
- **Fund projects that deliver reliable service** with minimum 100 Mbps download / 100 Mbps upload speeds unless impracticable
- **Complement broadband investments** made through the Capital Projects Fund

Equity-Focused Services

- **Additional flexibility for the hardest-hit communities and families** to address health disparities, invest in housing, address educational disparities, and promote healthy childhood environments
- **Broadly applicable** to Qualified Census Tracts, other disproportionately impacted areas, and when provided by Tribal governments

Ineligible Uses

- **Changes that reduce net tax revenue** must not be offset with American Rescue Plan funds
- **Extraordinary payments into a pension fund** are a prohibited use of this funding
- **Other restrictions apply** to eligible uses

DEPARTMENT OF THE TREASURY

31 CFR Part 35

RIN 1505-AC77

Coronavirus State and Local Fiscal Recovery Funds

AGENCY: Department of the Treasury

ACTION: Interim Final Rule

SUMMARY: The Secretary of the Treasury (Treasury) is issuing this Interim Final Rule to implement the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan Act.

DATES: *Effective date:* The provisions in this Interim Final Rule are effective [____], 2021. *Comment date:* Comments must be received on or before [____], 2021.

ADDRESSES: Please submit comments electronically through the Federal eRulemaking Portal: *http://www.regulations.gov* [(if hard copy, preferably an original and two copies to the [Office of the Undersecretary for Domestic Finance], Attention: [Name], Room [####] MT, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. Because postal mail may be subject to processing delay, it is recommended that comments be submitted electronically.] All comments should be captions with "Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule Comments." Please include your name, organization affiliation, address, email address and telephone number in your comment. Where appropriate, a comment should include a short executive summary (no more than [#] single-spaced pages).] In general, comments received will be posted on *http://www.regulations.gov* without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, will be part of the public record and subject to public

disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT:

[Name], [Title], [Office], 202-622-[####], or [Name], [Title], [Office], 202-622-[####].

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Overview

Since the first case of coronavirus disease 2019 (COVID-19) was discovered in the United States in January 2020, the disease has infected over 32 million and killed over 575,000 Americans.[1] The disease has impacted every part of life: as social distancing became a necessity, businesses closed, schools transitioned to remote education, travel was sharply reduced, and millions of Americans lost their jobs. In April 2020, the national unemployment rate reached its highest level in over seventy years following the most severe month-over-month decline in employment on record.[2] As of April 2021, there were still 8.2 million fewer jobs than before the pandemic.[3] During this time, a significant share of households have faced food and housing insecurity.[4] Economic disruptions impaired the flow of credit to households, State and

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[1] Centers for Disease Control and Prevention, COVID Data Tracker, http://www.covid.cdc.gov/covid-data-tracker/#datatracker-home (last visited May 8, 2021).

[2] U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/UNRATE, May 3, 2021. U.S. Bureau of Labor Statistics, Employment Level [LNU02000000], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/LNU02000000, May 3, 2021.

[3] U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm [PAYEMS], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/PAYEMS, May 7, 2021.

[4] Nirmita Panchal et al., The Implications of COVID-19 for Mental Health and Substance Abuse (Feb. 10, 2021), https://www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-

local governments, and businesses of all sizes.[5] As businesses weathered closures and sharp declines in revenue, many were forced to shut down, especially small businesses.[6]

Amid this once-in-a-century crisis, State, territorial, Tribal, and local governments (State, local, and Tribal governments) have been called on to respond at an immense scale. Governments have faced myriad needs to prevent and address the spread of COVID-19, including testing, contact tracing, isolation and quarantine, public communications, issuance and enforcement of health orders, expansions to health system capacity like alternative care facilities, and in recent months, a massive nationwide mobilization around vaccinations. Governments also have supported major efforts to prevent COVID-19 spread through safety measures in settings like nursing homes, schools, congregate living settings, dense worksites, incarceration settings, and public facilities. The pandemic's impacts on behavioral health, including the toll of pandemic-related stress, have increased the need for behavioral health resources.

At the same time, State, local and Tribal governments launched major efforts to address the economic impacts of the pandemic. These efforts have been tailored to the needs of their communities and have included expanded assistance to unemployed workers; food assistance;

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health-and-substance-use/#:~:text=Older%20adults%20are%20also%20more,prior%20to%20the%20current%20crisis; U.S. Census Bureau, Household Pulse Survey: Measuring Social and Economic Impacts during the Coronavirus Pandemic, https://www.census.gov/programs-surveys/household-pulse-survey.html (last visited Apr. 26, 2021); Rebecca T. Leeb et al., Mental Health-Related Emergency Department Visits Among Children Aged <18 Years During the COVID Pandemic – United States, January 1 – October 17, 2020, Morb. Mortal. Wkly. Rep. 69(45):1675-80 (Nov. 13, 2020), https://www.cdc.gov/mmwr/volumes/69/wr/mm6945a3.htm.

[5] Board of Governors of the Federal Reserve System, Monetary Policy Report (June 12, 2020), https://www.federalreserve.gov/monetarypolicy/2020-06-mpr-summary.htm.

[6] Joseph R. Biden, Remarks by President Biden on Helping Small Businesses (Feb. 22, 2021), https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/22/remarks-by-president-biden-on-helping-small-businesses/.

rent, mortgage, and utility support; cash assistance; internet access programs; expanded services to support individuals experiencing homelessness; support for individuals with disabilities and older adults; and assistance to small businesses facing closures or revenue loss or implementing new safety measures.

In responding to the public health emergency and its negative economic impacts, State, local, and Tribal governments have seen substantial increases in costs to provide these services, often amid substantial declines in revenue due to the economic downturn and changing economic patterns during the pandemic.[7] Facing these budget challenges, many State, local, and Tribal governments have been forced to make cuts to services or their workforces, or delay critical investments. From February to May of 2020, State, local, and Tribal governments reduced their workforces by more than 1.5 million jobs and, in April of 2021, State, local, and Tribal government employment remained nearly1.3 million jobs below pre-pandemic levels.[8] These cuts to State, local, and Tribal government workforces come at a time when demand for government services is high, with State, local, and Tribal governments on the frontlines of fighting the pandemic. Furthermore, State, local, and Tribal government austerity measures can hamper overall economic growth, as occurred in the recovery from the Great Recession.[9]

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[7] Michael Leachman, House Budget Bill Provides Needed Fiscal Aid for States, Localities, Tribal Nations, and Territories (Feb. 10, 2021), https://www.cbpp.org/research/state-budget-and-tax/house-budget-bill-provides-needed-fiscal-aid-for-states-localities.

[8] U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, https://fred.stlouisfed.org/series/CES9092000001 and https://fred.stlouisfed.org/series/CES9093000001 (last visited May 8, 2021).

[9] Tracy Gordon, State and Local Budgets and the Great Recession, Brookings Institution (Dec. 31, 2012), http://www.brookings.edu/articles/state-and-local-budgets-and-the-great-recession.

Finally, although the pandemic's impacts have been widespread, both the public health and economic impacts of the pandemic have fallen most severely on communities and populations disadvantaged before it began. Low-income communities, people of color, and Tribal communities have faced higher rates of infection, hospitalization, and death,[10] as well as higher rates of unemployment and lack of basic necessities like food and housing.[11] Pre-existing social vulnerabilities magnified the pandemic in these communities, where a reduced ability to work from home and, frequently, denser housing amplified the risk of infection. Higher rates of pre-existing health conditions also may have contributed to more severe COVID-19 health outcomes.[12] Similarly, communities or households facing economic insecurity before the pandemic were less able to weather business closures, job losses, or declines in earnings and were less able to participate in remote work or education due to the inequities in access to reliable and affordable broadband infrastructure.[13] Finally, though schools in all areas faced challenges, those in high poverty areas had fewer resources to adapt to remote and hybrid

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[10] Sebastian D. Romano et al., Trends in Racial and Ethnic Disparities in COVID-19 Hospitalizations, by Region – United States, March-December 2020, MMWR Morb Mortal Wkly Rep 2021, 70:560-565 (Apr. 16, 2021), https://www.cdc.gov/mmwr/volumes/70/wr/mm7015e2.htm?s_cid=mm7015e2_w.

[11] Center on Budget and Policy Priorities, Tracking the COVID-19 Recession's Effects on Food, Housing, and Employment Hardships, https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-housing-and (last visited May 4, 2021).

[12] Lisa R. Fortuna et al., Inequity and the Disproportionate Impact of COVID-19 on Communities of Color in the United States: The Need for Trauma-Informed Social Justice Response, Psychological Trauma Vol. 12(5):443-45 (2020), *available at* https://psycnet.apa.org/fulltext/2020-37320-001.pdf.

[13] Emily Vogles et al., 53% of Americans Say the Internet Has Been Essential During the COVID-19 Outbreak (Apr. 30, 2020), https://www.pewresearch.org/internet/2020/04/30/53-of-americans-say-the-internet-has-been-essential-during-the-covid-19-outbreak/.

learning models.[14] Unfortunately, the pandemic also has reversed many gains made by communities of color in the prior economic expansion.[15]

B. The Statute and Interim Final Rule

On March 11, 2021, the American Rescue Plan Act (ARPA) was signed into law by the President.[16] Section 9901 of ARPA amended Title VI of the Social Security Act[17] (the Act) to add section 602, which establishes the Coronavirus State Fiscal Recovery Fund, and section 603, which establishes the Coronavirus Local Fiscal Recovery Fund (together, the Fiscal Recovery Funds).[18] The Fiscal Recovery Funds are intended to provide support to State, local, and Tribal governments (together, recipients) in responding to the impact of COVID-19 and in their efforts to contain COVID-19 on their communities, residents, and businesses. The Fiscal Recovery Funds build on and expand the support provided to these governments over the last year, including through the Coronavirus Relief Fund (CRF).[19]

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[14] Emma Dorn et al., COVID-19 and student learning in the United States: The hurt could last a lifetime (June 2020), https://webtest.childrensinstitute.net/sites/default/files/documents/COVID-19-and-student-learning-in-the-United-States_FINAL.pdf; Andrew Bacher-Hicks et al., Inequality in Household Adaptation to Schooling Shocks: Covid-Induced Online Engagement in Real Time, J. of Public Econ. Vol. 193(C) (July 2020), *available at* https://www.nber.org/papers/w27555.

[15] *See, e.g.,* Tyler Atkinson & Alex Richter, Pandemic Disproportionately Affects Women, Minority Labor Force Participation, https://www.dallasfed.org/research/economics/2020/1110 (last visited May 9, 2021); Jared Bernstein & Janelle Jones, The Impact of the COVID19 Recession on the Jobs and Incomes of Persons of Color, https://www.cbpp.org/sites/default/files/atoms/files/6-2-20bud_0.pdf (last visited May 9, 2021).

[16] American Rescue Plan Act of 2021 (ARPA) § 9901, Pub. L. No. 117-2, codified at 42 U.S.C. § 802 *et seq*.

[17] 42 U.S.C. 801 *et seq*.

[18] §§ 602, 603 of the Act.

[19] The CRF was established by the section 601 of the Act as added by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, 134 Stat. 281 (2020).

Through the Fiscal Recovery Funds, Congress provided State, local, and Tribal governments with significant resources to respond to the COVID-19 public health emergency and its economic impacts through four categories of eligible uses. Section 602 and section 603 contain the same eligible uses; the primary difference between the two sections is that section 602 establishes a fund for States, territories, and Tribal governments and section 603 establishes a fund for metropolitan cities, nonentitlement units of local government, and counties. Sections 602(c)(1) and 603(c)(1) provide that funds may be used:

a) To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
b) To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers;
c) For the provision of government services to the extent of the reduction in revenue due to the COVID–19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and
d) To make necessary investments in water, sewer, or broadband infrastructure.

In addition, Congress clarified two types of uses which do not fall within these four categories. Sections 602(c)(2)(B) and 603(c)(2) provide that these eligible uses do not include, and thus funds may not be used for, depositing funds into any pension fund. Section 602(c)(2)(A) also provides, for States and territories, that the eligible uses do not include:

> "directly or indirectly offset[ting] a reduction in the net tax revenue of [the] State or territory resulting from a change in law, regulation, or administrative interpretation."

The ARPA provides a substantial infusion of resources to meet pandemic response needs and rebuild a stronger, more equitable economy as the country recovers. First, payments from the Fiscal Recovery Funds help to ensure that State, local, and Tribal governments have the resources needed to continue to take actions to decrease the spread of COVID-19 and bring the pandemic under control. Payments from the Fiscal Recovery Funds may also be used by recipients to provide support for costs incurred in addressing public health and economic challenges resulting from the pandemic, including resources to offer premium pay to essential workers, in recognition of their sacrifices over the last year. Recipients may also use payments from the Fiscal Recovery Funds to replace State, local, and Tribal government revenue lost due to COVID-19, helping to ensure that governments can continue to provide needed services and avoid cuts or layoffs. Finally, these resources lay the foundation for a strong, equitable economic recovery, not only by providing immediate economic stabilization for households and businesses, but also by addressing the systemic public health and economic challenges that may have contributed to more severe impacts of the pandemic among low-income communities and people of color.

Within the eligible use categories outlined in the Fiscal Recovery Funds provisions of ARPA, State, local, and Tribal governments have flexibility to determine how best to use payments from the Fiscal Recovery Funds to meet the needs of their communities and populations. The Interim Final Rule facilitates swift and effective implementation by establishing a framework for determining the types of programs and services that are eligible under the ARPA along with examples of uses that State, local, and Tribal governments may consider. These uses build on eligible expenditures under the CRF, including some expansions in eligible uses to respond to the public health emergency, such as vaccination campaigns. They

also reflect changes in the needs of communities, as evidenced by, for example, nationwide data demonstrating disproportionate impacts of the COVID-19 public health emergency on certain populations, geographies, and economic sectors. The Interim Final Rule takes into consideration these disproportionate impacts by recognizing a broad range of eligible uses to help States, local, and Tribal governments support the families, businesses, and communities hardest hit by the COVID-19 public health emergency.

Implementation of the Fiscal Recovery Funds also reflect the importance of public input, transparency, and accountability. Treasury seeks comment on all aspects of the Interim Final Rule and, to better facilitate public comment, has included specific questions throughout this Supplementary Information. Treasury encourages State, local, and Tribal governments in particular to provide feedback and to engage with Treasury regarding issues that may arise regarding all aspects of this Interim Final Rule and Treasury's work in administering the Fiscal Recovery Funds. In addition, the Interim Final Rule establishes certain regular reporting requirements, including by requiring State, local, and Tribal governments to publish information regarding uses of Fiscal Recovery Funds payments in their local jurisdiction. These reporting requirements reflect the need for transparency and accountability, while recognizing and minimizing the burden, particularly for smaller local governments. Treasury urges State, territorial, Tribal, and local governments to engage their constituents and communities in developing plans to use these payments, given the scale of funding and its potential to catalyze broader economic recovery and rebuilding.

II. Eligible Uses

A. Public Health and Economic Impacts

Sections 602(c)(1)(A) and 603(c)(1)(A) provide significant resources for State, territorial, Tribal governments, and counties, metropolitan cities, and nonentitlement units of local governments (each referred to as a recipient) to meet the wide range of public health and economic impacts of the COVID-19 public health emergency.

These provisions authorize the use of payments from the Fiscal Recovery Funds to respond to the public health emergency with respect to COVID-19 or its negative economic impacts. Section 602 and section 603 also describe several types of uses that would be responsive to the impacts of the COVID-19 public health emergency, including assistance to households, small businesses, and nonprofits and aid to impacted industries, such as tourism, travel, and hospitality.[20]

Accordingly, to assess whether a program or service is included in this category of eligible uses, a recipient should consider whether and how the use would respond to the COVID- 19 public health emergency. Assessing whether a program or service "responds to" the COVID-19 public health emergency requires the recipient to, first, identify a need or negative impact of the COVID-19 public health emergency and, second, identify how the program, service, or other intervention addresses the identified need or impact. While the COVID-19 public health emergency affected many aspects of American life, eligible uses under this category must be in response to the disease itself or the harmful consequences of the economic disruptions resulting from or exacerbated by the COVID-19 public health emergency.

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[20] §§602(c)(1)(A), 603(c)(1)(A) of the Act.

The Interim Final Rule implements these provisions by identifying a non-exclusive list of programs or services that may be funded as responding to COVID-19 or the negative economic impacts of the COVID-19 public health emergency, along with considerations for evaluating other potential uses of the Fiscal Recovery Funds not explicitly listed. The Interim Final Rule also provides flexibility for recipients to use payments from the Fiscal Recovery Funds for programs or services that are not identified on these non-exclusive lists but that fall under the terms of section 602(c)(1)(A) or 603(c)(1)(A) by responding to the COVID-19 public health emergency or its negative economic impacts. As an example, in determining whether a program or service responds to the negative economic impacts of the COVID-19 public health emergency, the Interim Final Rule provides that payments from the Fiscal Recovery Funds should be designed to address an economic harm resulting from or exacerbated by the public health emergency. Recipients should assess the connection between the negative economic harm and the COVID-19 public health emergency, the nature and extent of that harm, and how the use of this funding would address such harm.

As discussed, the pandemic and the necessary actions taken to control the spread had a severe impact on households and small businesses, including in particular low-income workers and communities and people of color. While eligible uses under sections 602(c)(1)(A) and 603(c)(1)(A)provide flexibility to recipients to identify the most pressing local needs, Treasury encourages recipients to provide assistance to those households, businesses, and non-profits in communities most disproportionately impacted by the pandemic.

1. Responding to COVID-19

On January 21, 2020, the Centers for Disease Control and Prevention (CDC) identified the first case of novel coronavirus in the United States.[21] By late March, the virus had spread to many States and the first wave was growing rapidly, centered in the northeast.[22] This wave brought acute strain on health care and public health systems: hospitals and emergency medical services struggled to manage a major influx of patients; response personnel faced shortages of personal protective equipment; testing for the virus was scarce; and congregate living facilities like nursing homes and prisons saw rapid spread. State, local, and Tribal governments mobilized to support the health care system, issue public health orders to mitigate virus spread, and communicate safety measures to the public. The United States has since faced at least two additional COVID-19 waves that brought many similar challenges: the second in the summer, centered in the south and southwest, and a wave throughout the fall and winter, in which the virus reached a point of uncontrolled spread across the country and over 3,000 people died per day.[23] By early May 2021, the United States has experienced over 32 million confirmed COVID-19 cases and over 575,000 deaths.[24]

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[21] Press Release, Centers for Disease Control and Prevention, First Travel-related Case of 2019 Novel Coronavirus Detected in United States (Jan. 21, 2020), https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html.

[22] Anne Schuchat et al., Public Health Response to the Initiation and Spread of Pandemic COVID-19 in the United States, February 24 – April 21, 2021, MMWR Morb Mortal Wkly Rep 2021, 69(18):551-56 (May 8, 2021), https://www.cdc.gov/mmwr/volumes/69/wr/mm6918e2.htm.

[23] Centers for Disease Control and Prevention, COVID Data Tracker: Trends in Number of COVID-19 Cases and Deaths in the US Reported to CDC, by State/Territory, https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases (last visited May 8, 2021).

[24] *Id*.

Mitigating the impact of COVID-19, including taking actions to control its spread and support hospitals and health care workers caring for the sick, continues to require a major public health response from State, local and Tribal governments. New or heightened public health needs include COVID-19 testing, major expansions in contact tracing, support for individuals in isolation or quarantine, enforcement of public health orders, new public communication efforts, public health surveillance (e.g., monitoring case trends and genomic sequencing for variants), enhancement to health care capacity through alternative care facilities, and enhancement of public health data systems to meet new demands or scaling needs. State, local, and Tribal governments have also supported major efforts to prevent COVID-19 spread through safety measures at key settings like nursing homes, schools, congregate living settings, dense worksites, incarceration settings, and in other public facilities. This has included implementing infection prevention measures or making ventilation improvements in congregate settings, health care settings, or other key locations.

Other response and adaptation costs include capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID-19 mitigation tactics. In recent months, State, local, and Tribal governments across the country have mobilized to support the national vaccination campaign, resulting in over 250 million doses administered to date.[25]

The need for public health measures to respond to COVID-19 will continue in the months and potentially years to come. This includes the continuation of the vaccination campaign for the general public and, if vaccinations are approved for children in the future, eventually for

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[25] Centers for Disease Control and Prevention, COVID Data Tracker: COVID-19 Vaccinations in the United States, https://covid.cdc.gov/covid-data-tracker/#vaccinations (last visited May 8, 2021).

youths. This also includes monitoring the spread of COVID-19 variants, understanding the impact of these variants (especially on vaccination efforts), developing approaches to respond to those variants, and monitoring global COVID-19 trends to understand continued risks to the United States. Finally, the long-term health impacts of COVID-19 will continue to require a public health response, including medical services for individuals with "long COVID," and research to understand how COVID-19 impacts future health needs and raises risks for the millions of Americans who have been infected.

Other areas of public health have also been negatively impacted by the COVID-19 pandemic. For example, in one survey in January 2021, over 40 percent of American adults reported symptoms of depression or anxiety, up from 11 percent in the first half of 2019.[26,] The proportion of children's emergency department visits related to mental health has also risen noticeably.[27] Similarly, rates of substance misuse and overdose deaths have spiked: preliminary data from the CDC show a nearly 30 percent increase in drug overdose mortality from September 2019 to September 2020.[28] Stay-at-home orders and other pandemic responses may have also reduced the ability of individuals affected by domestic violence to access services.[29]

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[26] Panchal, *supra* note 4; Mark É. Czeisler et al., Mental Health, Substance Abuse, and Suicidal Ideation During COVID-19 Pandemic– United States, June 24-30 2020, Morb. Mortal. Wkly. Rep. 69(32):1049-57 (Aug. 14, 2020), https://www.cdc.gov/mmwr/volumes/69/wr/mm6932a1.htm.

[27] Leeb, *supra* note 4.

[28] Centers for Disease Prevention and Control, National Center for Health Statistics, Provisional Drug Overdose Death Counts, https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm (last visited May 8, 2021).

[29] Megan L. Evans, et al., A Pandemic within a Pandemic – Intimate Partner Violence during Covid-19, N. Engl. J. Med. 383:2302-04 (Dec. 10, 2020), *available at* https://www.nejm.org/doi/full/10.1056/NEJMp2024046.

Finally, some preventative public health measures like childhood vaccinations have been deferred and potentially forgone.[30]

While the pandemic affected communities across the country, it disproportionately impacted some demographic groups and exacerbated health inequities along racial, ethnic, and socioeconomic lines.[31] The CDC has found that racial and ethnic minorities are at increased risk for infection, hospitalization, and death from COVID-19, with Hispanic or Latino and Native American or Alaska Native patients at highest risk.[32]

Similarly, low-income and socially vulnerable communities have seen the most severe health impacts. For example, counties with high poverty rates also have the highest rates of infections and deaths, with 223 deaths per 100,000 compared to the U.S. average of 175 deaths per 100,000, as of May 2021.[33] Counties with high social vulnerability, as measured by factors such as poverty and educational attainment, have also fared more poorly than the national

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[30] Jeanne M. Santoli et al., Effects of the COVID-19 Pandemic on Routine Pediatric Vaccine Ordering and Administration – United States, Morb. Mortal. Wkly. Rep. 69(19):591-93 (May 8, 2020), https://www.cdc.gov/mmwr/volumes/69/wr/mm6919e2.htm; Marisa Langdon-Embry et al., Notes from the Field: Rebound in Routine Childhood Vaccine Administration Following Decline During the COVID-19 Pandemic – New York City, March 1-June 27, 2020, Morb. Mortal. Wkly. Rep. 69(30):999-1001 (Jul. 31 2020), https://www.cdc.gov/mmwr/volumes/69/wr/mm6930a3.htm.

[31] Office of the White House, National Strategy for the COVID-19 Response and Pandemic Preparedness (Jan. 21, 2021), https://www.whitehouse.gov/wp-content/uploads/2021/01/National-Strategy-for-the-COVID-19-Response-and-Pandemic-Preparedness.pdf.

[32] In a study of 13 states from October to December 2020, the CDC found that Hispanic or Latino and Native American or Alaska Native individuals were 1.7 times more likely to visit an emergency room for COVID-19 than White individuals, and Black individuals were 1.4 times more likely to do so than White individuals. *See* Romano, *supra* note 10.

[33] Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID-19 Cases and Deaths in the United States, by County-level Population Factors, https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths (last visited May 8, 2021).

average, with 211 deaths per 100,000 as of May 2021.[34] Over the last year, Native Americans have experienced more than one and a half times the rate of COVID-19 infections, more than triple the rate of hospitalizations, and more than double the death rate compared to White Americans.[35] Low-income and minority communities also exhibit higher rates of pre-existing conditions that may contribute to an increased risk of COVID-19 mortality.[36]

In addition, individuals living in low-income communities may have had more limited ability to socially distance or to self-isolate when ill, resulting in faster spread of the virus, and were over-represented among essential workers, who faced greater risk of exposure.[37] Social distancing measures in response to the pandemic may have also exacerbated pre-existing public health challenges. For example, for children living in homes with lead paint, spending substantially more time at home raises the risk of developing elevated blood lead levels, while

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[34] The CDC's Social Vulnerability Index includes fifteen variables measuring social vulnerability, including unemployment, poverty, education levels, single-parent households, disability status, non-English speaking households, crowded housing, and transportation access.

Centers for Disease Control and Prevention, COVID Data Tracker: Trends in COVID-19 Cases and Deaths in the United States, by Social Vulnerability Index, https://covid.cdc.gov/covid-data-tracker/#pop-factors_totaldeaths (last visited May 8, 2021).

[35] Centers for Disease Control and Prevention, Risk for COVID-19 Infection, Hospitalization, and Death By Race/Ethnicity, https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html (last visited Apr. 26, 2021).

[36] *See, e.g.*, Centers for Disease Control and Prevention, Risk of Severe Illness or Death from COVID-19 (Dec. 10, 2020), https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/racial-ethnic-disparities/disparities-illness.html (last visited Apr. 26, 2021).

[37] Milena Almagro et al., Racial Disparities in Frontline Workers and Housing Crowding During COVID-19: Evidence from Geolocation Data (Sept. 22, 2020), NYU Stern School of Business (forthcoming), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3695249; Grace McCormack et al., Economic Vulnerability of Households with Essential Workers, JAMA 324(4):388-90 (2020), *available at* https://jamanetwork.com/journals/jama/fullarticle/2767630.

screenings for elevated blood lead levels declined during the pandemic.[38] The combination of these underlying social and health vulnerabilities may have contributed to more severe public health outcomes of the pandemic within these communities, resulting in an exacerbation of pre-existing disparities in health outcomes.[39]

Eligible Public Health Uses. The Fiscal Recovery Funds provide resources to meet and address these emergent public health needs, including through measures to counter the spread of COVID-19, through the provision of care for those impacted by the virus, and through programs or services that address disparities in public health that have been exacerbated by the pandemic. To facilitate implementation and use of payments from the Fiscal Recovery Funds, the Interim Final Rule identifies a non-exclusive list of eligible uses of funding to respond to the COVID-19 public health emergency. Eligible uses listed under this section build and expand upon permissible expenditures under the CRF, while recognizing the differences between the ARPA and CARES Act, and recognizing that the response to the COVID-19 public health emergency has changed and will continue to change over time. To assess whether additional uses would be eligible under this category, recipients should identify an effect of COVID-19 on public health, including either or both of immediate effects or effects that may manifest over months or years, and assess how the use would respond to or address the identified need.

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[38] *See, e.g.*, Joseph G. Courtney et al., Decreases in Young Children Who Received Blood Lead Level Testing During COVID-19 – 34 Jurisdictions, January-May 2020, Morb. Mort. Wkly. Rep. 70(5):155-61 (Feb. 5, 2021), https://www.cdc.gov/mmwr/volumes/70/wr/mm7005a2.htm; Emily A. Benfer & Lindsay F. Wiley, Health Justice Strategies to Combat COVID-19: Protecting Vulnerable Communities During a Pandemic, Health Affairs Blog (Mar. 19, 2020), https://www.healthaffairs.org/do/10.1377/hblog20200319.757883/full/.

[39] *See, e.g.*, Centers for Disease Control and Prevention, *supra* note 34; Benfer & Wiley, *supra* note 38; Nathaniel M. Lewis et al., Disparities in COVID-19 Incidence, Hospitalizations, and Testing, by Area-Level Deprivation – Utah, March 3-July 9, 2020, Morb. Mortal. Wkly. Rep. 69(38):1369-73 (Sept. 25, 2020), https://www.cdc.gov/mmwr/volumes/69/wr/mm6938a4.htm.

The Interim Final Rule identifies a non-exclusive list of uses that address the effects of the COVID-19 public health emergency, including:

- *COVID-19 Mitigation and Prevention.* A broad range of services and programming are needed to contain COVID-19. Mitigation and prevention efforts for COVID-19 include vaccination programs; medical care; testing; contact tracing; support for isolation or quarantine; supports for vulnerable populations to access medical or public health services; public health surveillance (e.g., monitoring case trends, genomic sequencing for variants); enforcement of public health orders; public communication efforts; enhancement to health care capacity, including through alternative care facilities; purchases of personal protective equipment; support for prevention, mitigation, or other services in congregate living facilities (e.g., nursing homes, incarceration settings, homeless shelters, group living facilities) and other key settings like schools;[40] ventilation improvements in congregate settings, health care settings, or other key locations; enhancement of public health data systems; and other public health responses.[41] They also include capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics or adaptations

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[40] This includes implementing mitigation strategies consistent with the Centers for Disease Control and Prevention's (CDC) Operational Strategy for K-12 Schools through Phased Prevention, *available at* https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/operation-strategy.html.

[41] Many of these expenses were also eligible in the CRF. Generally, funding uses eligible under CRF as a response to the direct public health impacts of COVID-19 will continue to be eligible under the ARPA, including those not explicitly listed here (e.g., telemedicine costs, costs to facilitate compliance with public health orders, disinfection of public areas, facilitating distance learning, increased solid waste disposal needs related to PPE, paid sick and paid family and medical leave to public employees to enable compliance with COVID–19 public health precautions), with the following two exceptions: 1) the standard for eligibility of public health and safety payrolls has been updated (see details on page 20) and 2) expenses related to the issuance of tax-anticipation notes are no longer an eligible funding use (see discussion of debt service on page 44).

to public buildings to implement COVID-19 mitigation tactics. These COVID-19 prevention and mitigation programs and services, among others, were eligible expenditures under the CRF and are eligible uses under this category of eligible uses for the Fiscal Recovery Funds.[42]

- *Medical Expenses*. The COVID-19 public health emergency continues to have devastating effects on public health; the United States continues to average hundreds of deaths per day and the spread of new COVID-19 variants has raised new risks and genomic surveillance needs.[43] Moreover, our understanding of the potentially serious and long-term effects of the virus is growing, including the potential for symptoms like shortness of breath to continue for weeks or months, for multi-organ impacts from COVID-19, or for post-intensive care syndrome.[44] State and local governments may need to continue to provide care and services to address these near- and longer-term needs.[45]
- *Behavioral Health Care.* In addition, new or enhanced State, local, and Tribal government services may be needed to meet behavioral health needs exacerbated by the pandemic and respond to other public health impacts. These services include mental health treatment, substance misuse treatment, other behavioral health services, hotlines or

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[42] Coronavirus Relief Fund for States, Tribal Governments, and Certain Eligible Local Governments, 86 Fed. Reg. 4182 (Jan. 15, 2021), *available at* https://home.treasury.gov/system/files/136/CRF-Guidance-Federal-Register_2021-00827.pdf.

[43] Centers for Disease Control and Prevention, *supra* note 24.

[44] Centers for Disease Control and Prevention, Long-Term Effects (Apr. 8, 2021), https://www.cdc.gov/coronavirus/2019-ncov/long-term-effects.html (last visited Apr. 26, 2021).

[45] Pursuant to 42 CFR 433.51 and 45 CFR 75.306, Fiscal Recovery Funds may not serve as a State or locality's contribution of certain Federal funds.

warmlines, crisis intervention, overdose prevention, infectious disease prevention, and services or outreach to promote access to physical or behavioral health primary care and preventative medicine.

- *Public Health and Safety Staff.* Treasury recognizes that responding to the public health and negative economic impacts of the pandemic, including administering the services described above, requires a substantial commitment of State, local, and Tribal government human resources. As a result, the Fiscal Recovery Funds may be used for payroll and covered benefits expenses for public safety, public health, health care, human services, and similar employees, to the extent that their services are devoted to mitigating or responding to the COVID–19 public health emergency.[46] Accordingly, the Fiscal Recovery Funds may be used to support the payroll and covered benefits for the portion of the employee's time that is dedicated to responding to the COVID-19 public health emergency. For administrative convenience, the recipient may consider public health and safety employees to be entirely devoted to mitigating or responding to the COVID-19 public health emergency, and therefore fully covered, if the employee, or his or her operating unit or division, is primarily dedicated to responding to the COVID-19 public health emergency. Recipients may consider other presumptions for assessing the extent to which an employee, division, or operating unit is engaged in activities that respond to

[46] In general, if an employee's wages and salaries are an eligible use of Fiscal Recovery Funds, recipients may treat the employee's covered benefits as an eligible use of Fiscal Recovery Funds. For purposes of the Fiscal Recovery Funds, covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (federal and state), workers compensation insurance, and Federal Insurance Contributions Act (FICA) taxes (which includes Social Security and Medicare taxes).

the COVID-19 public health emergency, provided that the recipient reassesses periodically and maintains records to support its assessment, such as payroll records, attestations from supervisors or staff, or regular work product or correspondence demonstrating work on the COVID-19 response. Recipients need not routinely track staff hours.

- *Expenses to Improve the Design and Execution of Health and Public Health Programs.* State, local, and Tribal governments may use payments from the Fiscal Recovery Funds to engage in planning and analysis in order to improve programs addressing the COVID-19 pandemic, including through use of targeted consumer outreach, improvements to data or technology infrastructure, impact evaluations, and data analysis.

Eligible Uses to Address Disparities in Public Health Outcomes. In addition, in recognition of the disproportionate impacts of the COVID-19 pandemic on health outcomes in low-income and Native American communities and the importance of mitigating these effects, the Interim Final Rule identifies a broader range of services and programs that will be presumed to be responding to the public health emergency when provided in these communities. Specifically, Treasury will presume that certain types of services, outlined below, are eligible uses when provided in a Qualified Census Tract (QCT),[47] to families living in QCTs, or when these services are provided

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[47] Qualified Census Tracts are a common, readily-accessible, and geographically granular method of identifying communities with a large proportion of low-income residents. Using an existing measure may speed implementation and decrease administrative burden, while identifying areas of need at a highly-localized level.

While QCTs are an effective tool generally, many tribal communities have households with a wide range of income levels due in part to non-tribal member, high income residents living in the community. Mixed income communities, with a significant share of tribal members at the lowest levels of income, are often not included as eligible QCTs yet tribal residents are experiencing disproportionate impacts due to the pandemic. Therefore, including all services provided by Tribal governments is a more effective means of ensuring that disproportionately impacted Tribal members can receive services.

by Tribal governments.[48] Recipients may also provide these services to other populations, households, or geographic areas that are disproportionately impacted by the pandemic. In identifying these disproportionately-impacted communities, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations, households, or geographic areas to be served.

Given the exacerbation of health disparities during the pandemic and the role of pre-existing social vulnerabilities in driving these disparate outcomes, services to address health disparities are presumed to be responsive to the public health impacts of the pandemic. Specifically, recipients may use payments from the Fiscal Recovery Funds to facilitate access to resources that improve health outcomes, including services that connect residents with health care resources and public assistance programs and build healthier environments, such as:

- Funding community health workers to help community members access health services and services to address the social determinants of health;[49,]
- Funding public benefits navigators to assist community members with navigating and applying for available Federal, State, and local public benefits or services;

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[48] U.S. Department of Housing and Urban Development (HUD), Qualified Census Tracts and Difficult Development Areas, https://www.huduser.gov/portal/datasets/qct.html (last visited Apr. 26, 2021); U.S. Department of the Interior, Bureau of Indian Affairs, Indian Lands of Federally Recognized Tribes of the United States (June 2016), https://www.bia.gov/sites/bia.gov/files/assets/bia/ots/webteam/pdf/idc1-028635.pdf (last visited Apr. 26, 2021).

[49] The social determinants of health are the social and environmental conditions that affect health outcomes, specifically economic stability, health care access, social context, neighborhoods and built environment, and education access. *See, e.g.*, U.S. Department of Health and Human Services, Office of Disease Prevention and Health Promotion, Healthy People 2030: Social Determinants of Health, https://health.gov/healthypeople/objectives-and-data/social-determinants-health (last visited Apr. 26, 2021).

- Housing services to support healthy living environments and neighborhoods conducive to mental and physical wellness;
- Remediation of lead paint or other lead hazards to reduce risk of elevated blood lead levels among children; and
- Evidence-based community violence intervention programs to prevent violence and mitigate the increase in violence during the pandemic.[50]

2. Responding to Negative Economic Impacts

Impacts on Households and Individuals. The public health emergency, including the necessary measures taken to protect public health, resulted in significant economic and financial hardship for many Americans. As businesses closed, consumers stayed home, schools shifted to remote education, and travel declined precipitously, over 20 million jobs were lost in March and April 2020.[51] Although many have returned to work, as of April 2021, the economy remains 8.2 million jobs below its pre-pandemic peak,[52] and more than 3 million workers have dropped out of the labor market altogether relative to February 2020.[53]

Rates of unemployment are particularly severe among workers of color and workers with lower levels of educational attainment; for example, the overall unemployment rate in the United

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[50] National Commission on COVID-19 and Criminal Justice, Impact Report: COVID-19 and Crime (Jan. 31, 2021), https://covid19.counciloncj.org/2021/01/31/impact-report-covid-19-and-crime-3/ (showing a spike in homicide and assaults); Brad Boesrup et al., Alarming Trends in US domestic violence during the COVID-19 pandemic, Am. J. of Emerg. Med. 38(12): 2753-55 (Dec. 1, 2020), *available at* https://www.ajemjournal.com/article/S0735-6757(20)30307-7/fulltext (showing a spike in domestic violence).

[51] U.S. Bureau of Labor Statistics, All Employees, Total Nonfarm (PAYEMS), retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/PAYEMS (last visited May 8, 2021).

[52] *Id*.

[53] U.S. Bureau of Labor Statistics, Civilian Labor Force Level [CLF16OV], retrieved from FRED, Federal Reserve Bank of St. Louis, https://fred.stlouisfed.org/series/CLF16OV (last visited May 8, 2021).

States was 6.1 percent in April 2021, but certain groups saw much higher rates: 9.7 percent for Black workers, 7.9 percent for Hispanic or Latino workers, and 9.3 percent for workers without a high school diploma.[54] Job losses have also been particularly steep among low wage workers, with these workers remaining furthest from recovery as of the end of 2020.[55] A severe recession–and its concentrated impact among low-income workers–has amplified food and housing insecurity, with an estimated nearly 17 million adults living in households where there is sometimes or often not enough food to eat and an estimated 10.7 million adults living in households that were not current on rent.[56] Over the course of the pandemic, inequities also manifested along gender lines, as schools closed to in-person activities, leaving many working families without child care during the day.[57] Women of color have been hit especially hard: the

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[54] U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian population by sex and age (May 8 2021), https://www.bls.gov/news.release/empsit.t01.htm (last visited May 8, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population by race, Hispanic or Latino ethnicity, sex, and age (May 8, 2021), https://www.bls.gov/web/empsit/cpseea04.htm (last visited May 8, 2021); U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey: Employment status of the civilian noninstitutional population 25 years and over by educational attainment (May 8, 2021), https://www.bls.gov/web/empsit/cpseea05.htm (last visited May 8, 2021).

[55] Elise Gould & Jori Kandra, Wages grew in 2020 because the bottom fell out of the low-wage labor market, Economic Policy Institute (Feb. 24, 2021), https://files.epi.org/pdf/219418.pdf. *See also*, Michael Dalton et al., The K-Shaped Recovery: Examining the Diverging Fortunes of Workers in the Recovery from the COVID-19 Pandemic using Business and Household Survey Microdata¸ U.S. Bureau of Labor Statistics Working Paper Series (Feb. 2021), https://www.bls.gov/osmr/research-papers/2021/pdf/ec210020.pdf.

[56] Center on Budget and Policy Priorities, Tracking the COVID-19 Recession's Effects on Food, Housing, and Employment Hardships, https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and (last visited May 8, 2021).

[57] Women have carried a larger share of childcare responsibilities than men during the COVID-19 crisis. *See, e.g.*, Gema Zamarro & María J. Prados, Gender differences in couples' division of childcare, work and mental health during COVID-19, Rev. Econ. Household 19:11-40 (2021), *available at* https://link.springer.com/article/10.1007/s11150-020-09534-7; Titan Alon et al., The Impact of COVID-19 on Gender Equality, National Bureau of Economic Research Working Paper 26947 (April 2020), *available at* https://www.nber.org/papers/w26947.

labor force participation rate for Black women has fallen by 3.2 percentage points[58] during the pandemic as compared to 1.0 percentage points for Black men[59] and 2.0 percentage points for White women.[60]

As the economy recovers, the effects of the pandemic-related recession may continue to impact households, including a risk of longer-term effects on earnings and economic potential. For example, unemployed workers, especially those who have experienced longer periods of unemployment, earn lower wages over the long term once rehired.[61] In addition to the labor market consequences for unemployed workers, recessions can also cause longer-term economic challenges through, among other factors, damaged consumer credit scores[62] and reduced familial and childhood wellbeing.[63] These potential long-term economic consequences underscore the continued need for robust policy support.

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[58] U.S. Bureau of Labor Statistics, Labor Force Participation Rate - 20 Yrs. & Over, Black or African American Women [LNS11300032], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/LNS11300032 (last visited May 8, 2021).

[59] U.S. Bureau of Labor Statistics, Labor Force Participation Rate - 20 Yrs. & Over, Black or African American Men [LNS11300031], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/LNS11300031 (last visited May 8, 2021).

[60] U.S. Bureau of Labor Statistics, Labor Force Participation Rate - 20 Yrs. & Over, White Women [LNS11300029], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/LNS11300029 (last visited May 8, 2021).

[61] *See*, *e.g.*, Michael Greenstone & Adam Looney, Unemployment and Earnings Losses: A Look at Long-Term Impacts of the Great Recession on American Workers, Brookings Institution (Nov. 4, 2021), https://www.brookings.edu/blog/jobs/2011/11/04/unemployment-and-earnings-losses-a-look-at-long-term-impacts-of-the-great-recession-on-american-workers/.

[62] Chi Chi Wu, Solving the Credit Conundrum: Helping Consumers' Credit Records Impaired by the Foreclosure Crisis and Great Recession (Dec. 2013), https://www.nclc.org/images/pdf/credit_reports/report-credit-conundrum-2013.pdf.

[63] Irwin Garfinkel, Sara McLanahan, Christopher Wimer, eds., Children of the Great Recession, Russell Sage Foundation (Aug. 2016), *available at* https://www.russellsage.org/publications/children-great-recession.

Impacts on Businesses. The pandemic has also severely impacted many businesses, with small businesses hit especially hard. Small businesses make up nearly half of U.S. private-sector employment[64] and play a key role in supporting the overall economic recovery as they are responsible for two-thirds of net new jobs.[65] Since the beginning of the pandemic, however, 400,000 small businesses have closed, with many more at risk.[66] Sectors with a large share of small business employment have been among those with the most drastic drops in employment.[67] The negative outlook for small businesses has continued: as of April 2021, approximately 70 percent of small businesses reported that the pandemic has had a moderate or large negative effect on their business, and over a third expect that it will take over 6 months for their business to return to their normal level of operations.[68]

This negative outlook is likely the result of many small businesses having faced periods of closure and having seen declining revenues as customers stayed home.[69] In general, small businesses can face greater hurdles in accessing credit,[70] and many small businesses were

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[64] Board of Governors of the Federal Reserve System, *supra* note 5.

[65] U.S. Small Business Administration, Office of Advocacy, Small Businesses Generate 44 Percent of U.S. Economic Activity (Jan. 30, 2019), https://advocacy.sba.gov/2019/01/30/small-businesses-generate-44-percent-of-u-s-economic-activity/.

[66] Biden, *supra* note 6.

[67] Daniel Wilmoth, U.S. Small Business Administration Office of Advocacy, The Effects of the COVID-19 Pandemic on Small Businesses, Issue Brief No. 16 (Mar. 2021), *available at* https://cdn.advocacy.sba.gov/wp-content/uploads/2021/03/02112318/COVID-19-Impact-On-Small-Business.pdf.

[68] U.S. Census Bureau, Small Business Pulse Survey, https://portal.census.gov/pulse/data/ (last visited May 8, 2021).

[69] Olivia S. Kim et al., Revenue Collapses and the Consumption of Small Business Owners in the Early Stages of the COVID-19 Pandemic (Nov. 2020), https://www.nber.org/papers/w28151.

[70] *See e.g.,* Board of Governors of the Federal Reserve System, Report to Congress on the Availability of Credit to Small Businesses (Sept. 2017), *available at* https://www.federalreserve.gov/publications/2017-september-availability-of-credit-to-small-businesses.htm.

already financially fragile at the outset of the pandemic.[71] Non-profits, which provide vital services to communities, have similarly faced economic and financial challenges due to the pandemic.[72]

Impacts to State, Local, and Tribal Governments. State, local, and Tribal governments have felt substantial fiscal pressures. As noted above, State, local, and Tribal governments have faced significant revenue shortfalls and remain over 1 million jobs below their pre-pandemic staffing levels.[73] These reductions in staffing may undermine the ability to deliver services effectively, as well as add to the number of unemployed individuals in their jurisdictions.

Exacerbation of Pre-existing Disparities. The COVID-19 public health emergency may have lasting negative effects on economic outcomes, particularly in exacerbating disparities that existed prior to the pandemic.

The negative economic impacts of the COVID-19 pandemic are particularly pronounced in certain communities and families. Low- and moderate-income jobs make up a substantial portion of both total pandemic job losses,[74] and jobs that require in-person frontline work, which

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[71] Alexander W. Bartik et al., The Impact of COVID-19 on small business outcomes and expectations, PNAS 117(30): 17656-66 (July 28, 2020), *available at* https://www.pnas.org/content/117/30/17656.

[72] Federal Reserve Bank of San Francisco, Impacts of COVID-19 on Nonprofits in the Western United States (May 2020), https://www.frbsf.org/community-development/files/impact-of-covid-nonprofits-serving-western-united-states.pdf.

[73] Wolfe & Kassa, *supra* note 7; Elijah Moreno & Heather Sobrepena, Tribal entities remain resilient as COVID-19 batters their finances, Federal Reserve Bank of Minneapolis (Nov. 10, 2021), https://www.minneapolisfed.org/article/2020/tribal-entities-remain-resilient-as-covid-19-batters-their-finances.

[74] Kim Parker et al., Economic Fallout from COVID-19 Continues to Hit Lower-Income Americans the Hardest, Pew Research Center (Sept. 24, 2020), https://www.pewresearch.org/social-trends/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest/; Gould, *supra* note 55.

are exposed to greater risk of contracting COVID-19.[75] Both factors compound pre-existing vulnerabilities and the likelihood of food, housing, or other financial insecurity in low- and moderate-income families and, given the concentration of low- and moderate-income families within certain communities,[76] raise a substantial risk that the effects of the COVID-19 public health emergency will be amplified within these communities.

These compounding effect of recessions on concentrated poverty and the long-lasting nature of this effect were observed after the 2007-2009 recession, including a large increase in concentrated poverty with the number of people living in extremely poor neighborhoods more than doubling by 2010-2014 relative to 2000.[77] Concentrated poverty has a range of deleterious impacts, including additional burdens on families and reduced economic potential and social cohesion.[78] Given the disproportionate impact of COVID-19 on low-income households discussed above, there is a risk that the current pandemic-induced recession could further increase concentrated poverty and cause long-term damage to economic prospects in neighborhoods of concentrated poverty.

The negative economic impacts of COVID-19 also include significant impacts to children in disproportionately affected families and include impacts to education, health, and welfare, all

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[75] *See infra* Section II.B of this Supplementary Information.

[76] Elizabeth Kneebone, The Changing geography of US poverty, Brookings Institution (Feb. 15, 2017), https://www.brookings.edu/testimonies/the-changing-geography-of-us-poverty/.

[77] Elizabeth Kneebone & Natalie Holmes, U.S. concentrated poverty in the wake of the Great Recession, Brookings Institution (Mar. 31, 2016), https://www.brookings.edu/research/u-s-concentrated-poverty-in-the-wake-of-the-great-recession/.

[78] David Erickson et al., The Enduring Challenge of Concentrated Poverty in America: Case Studies from Communities Across the U.S. (2008), *available at* https://www.frbsf.org/community-development/files/cp_fullreport.pdf.

of which contribute to long-term economic outcomes.[79] Many low-income and minority students, who were disproportionately served by remote or hybrid education during the pandemic, lacked the resources to participate fully in remote schooling or live in households without adults available throughout the day to assist with online coursework.[80] Given these trends, the pandemic may widen educational disparities and worsen outcomes for low-income students,[81] an effect that would substantially impact their long-term economic outcomes. Increased economic strain or material hardship due to the pandemic could also have a long-term impact on health, educational, and economic outcomes of young children.[82] Evidence suggests

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[79] Educational quality, as early as Kindergarten, has a long-term impact on children's public health and economic outcomes. *See, e.g.,* Tyler W. Watts et al., The Chicago School Readiness Project: Examining the long-term impacts of an early childhood intervention, PLoS ONE 13(7) (2018), *available at* https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0200144; Opportunity Insights, How Can We Amplify Education as an Engine of Mobility? Using big data to help children get the most from school, https://opportunityinsights.org/education/ (last visited Apr. 26, 2021); U.S. Department of Health and Human Services (HHS), Office of Disease Prevention and Health Promotion, Early Childhood Development and Education, https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/early-childhood-development-and-education (last visited Apr. 26, 2021).

[80] *See, e.g.*, Bacher-Hicks, *supra* note 14.

[81] A Department of Education survey found that, as of February 2021, 42 percent of fourth grade students nationwide were offered only remote education, compared to 48 percent of economically disadvantaged students, 54 percent of Black students and 57 percent of Hispanic students. Large districts often disproportionately serve low-income students. *See* Institute of Education Sciences, Monthly School Survey Dashboard, https://ies.ed.gov/schoolsurvey/ (last visited Apr. 26, 2021). In summer 2020, a review found that 74 percent of the largest 100 districts chose remote learning only. *See* Education Week, School Districts' Reopening Plans: A Snapshot (Jul. 15, 2020), https://www.edweek.org/leadership/school-districts-reopening-plans-a-snapshot/2020/07 (last visited May 4, 2021).

[82] HHS, *supra* note 79.

that adverse conditions in early childhood, including exposure to poverty, food insecurity, housing insecurity, or other economic hardships, are particularly impactful.[83]

The pandemic's disproportionate economic impacts are also seen in Tribal communities across the country—for Tribal governments as well as families and businesses on and off Tribal lands. In the early months of the pandemic, Native American unemployment spiked to 26 percent and, while partially recovered, remains at nearly 11 percent.[84] Tribal enterprises are a significant source of revenue for Tribal governments to support the provision of government services. These enterprises, notably concentrated in gaming, tourism, and hospitality, frequently closed, significantly reducing both revenues to Tribal governments and employment. As a result, Tribal governments have reduced essential services to their citizens and communities.[85]

Eligible Uses. Sections 602(c)(1)(A) and 603(c)(1)(A) permit use of payments from the Fiscal Recovery Funds to respond to the negative economic impacts of the COVID-19 public health emergency. Eligible uses that respond to the negative economic impacts of the public health emergency must be designed to address an economic harm resulting from or exacerbated by the public health emergency. In considering whether a program or service would be eligible under this category, the recipient should assess whether, and the extent to which, there has been

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[83] Hirokazu Yoshikawa, Effects of the Global Coronavirus Disease – 2019 Pandemic on Early Childhood Development: Short- and Long-Term Risks and Mitigating Program and Policy Actions, J. of Pediatrics Vol. 223:188-93 (Aug. 1, 2020), *available at* https://www.jpeds.com/article/S0022-3476(20)30606-5/abstract.

[84] Based on calculations conducted by the Minneapolis Fed's Center for Indian Country Development using Flood et al. (2020)'s Current Population Survey." Sarah Flood, Miriam King, Renae Rodgers, Steven Ruggles and J. Robert Warren. Integrated Public Use Microdata Series, Current Population Survey: Version 8.0 [dataset]. Minneapolis, MN: IPUMS, 2020. https://doi.org/10.18128/D030.V8.0; *see also* Donna Feir & Charles Golding, Native Employment During COVID-19: Hard hit in April but Starting to Rebount? (Aug. 5, 2020), https://www.minneapolisfed.org/article/2020/native-employment-during-covid-19-hit-hard-in-april-but-starting-to-rebound.

[85] Moreno & Sobrepena, *supra* note 73.

an economic harm, such as loss of earnings or revenue, that resulted from the COVID-19 public health emergency and whether, and the extent to which, the use would respond or address this harm.[86] A recipient should first consider whether an economic harm exists and whether this harm was caused or made worse by the COVID-19 public health emergency. While economic impacts may either be immediate or delayed, assistance or aid to individuals or businesses that did not experience a negative economic impact from the public health emergency would not be an eligible use under this category.

In addition, the eligible use must "respond to" the identified negative economic impact. Responses must be related and reasonably proportional to the extent and type of harm experienced; uses that bear no relation or are grossly disproportionate to the type or extent of harm experienced would not be eligible uses. Where there has been a negative economic impact resulting from the public health emergency, States, local, and Tribal governments have broad latitude to choose whether and how to use the Fiscal Recovery Funds to respond to and address the negative economic impact. Sections 602(c)(1)(A) and 603(c)(1)(A) describe several types of uses that would be eligible under this category, including assistance to households, small businesses, and nonprofits and aid to impacted industries such as tourism, travel, and hospitality.

To facilitate implementation and use of payments from the Fiscal Recovery Funds, the Interim Final Rule identifies a non-exclusive list of eligible uses of funding that respond to the negative economic impacts of the public health emergency. Consistent with the discussion above, the eligible uses listed below would respond directly to the economic or financial harms resulting from and or exacerbated by the public health emergency.

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[86] In some cases, a use may be permissible under another eligible use category even if it falls outside the scope of section (c)(1)(A) of the Act.

- *Assistance to Unemployed Workers*. This includes assistance to unemployed workers, including services like job training to accelerate rehiring of unemployed workers; these services may extend to workers unemployed due to the pandemic or the resulting recession, or who were already unemployed when the pandemic began and remain so due to the negative economic impacts of the pandemic.
- *State Unemployment Insurance Trust Funds.* Consistent with the approach taken in the CRF, recipients may make deposits into the state account of the Unemployment Trust Fund established under section 904 of the Social Security Act (42 U.S.C. 1104) up to the level needed to restore the pre-pandemic balances of such account as of January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], given the close nexus between Unemployment Trust Fund costs, solvency of Unemployment Trust Fund systems, and pandemic economic impacts. Further, Unemployment Trust Fund deposits can decrease fiscal strain on Unemployment Insurance systems impacted by the pandemic. States facing a sharp increase in Unemployment Insurance claims during the pandemic may have drawn down positive Unemployment Trust Fund balances and, after exhausting the balance, required advances to fund continuing obligations to claimants. Because both of these impacts were driven directly by the need for assistance to unemployed workers during the pandemic, replenishing Unemployment Trust Funds up to the pre-pandemic level responds to the pandemic's negative economic impacts on unemployed workers.

- *Assistance to Households.* Assistance to households or populations facing negative economic impacts due to COVID-19 is also an eligible use. This includes: food assistance; rent, mortgage, or utility assistance; counseling and legal aid to prevent eviction or homelessness; cash assistance (discussed below); emergency assistance for burials, home repairs, weatherization, or other needs; internet access or digital literacy assistance; or job training to address negative economic or public health impacts experienced due to a worker's occupation or level of training. As discussed above, in considering whether a potential use is eligible under this category, a recipient must consider whether, and the extent to which, the household has experienced a negative economic impact from the pandemic. In assessing whether a household or population experienced economic harm as a result of the pandemic, a recipient may presume that a household or population that experienced unemployment or increased food or housing insecurity or is low- or moderate-income experienced negative economic impacts resulting from the pandemic. For example, a cash transfer program may focus on unemployed workers or low- and moderate-income families, which have faced disproportionate economic harms due to the pandemic. Cash transfers must be reasonably proportional to the negative economic impact they are intended to address. Cash transfers grossly in excess of the amount needed to address the negative economic impact identified by the recipient would not be considered to be a response to the COVID-19 public health emergency or its negative impacts. In particular, when considering the appropriate size of permissible cash transfers made in response to the COVID-19 public health emergency, State, local and

Tribal governments may consider and take guidance from the per person amounts previously provided by the Federal government in response to the COVID-19 crisis. Cash transfers that are grossly in excess of such amounts would be outside the scope of eligible uses under section 602(c)(1)(A) and 603(c)(1)(A) and could be subject to recoupment. In addition, a recipient could provide survivor's benefits to surviving family members of COVID-19 victims, or cash assistance to widows, widowers, and dependents of eligible COVID-19 victims.

- *Expenses to Improve Efficacy of Economic Relief Programs.* State, local, and Tribal governments may use payments from the Fiscal Recovery Funds to improve efficacy of programs addressing negative economic impacts, including through use of data analysis, targeted consumer outreach, improvements to data or technology infrastructure, and impact evaluations.
- *Small Businesses and Non-profits.* As discussed above, small businesses and non-profits faced significant challenges in covering payroll, mortgages or rent, and other operating costs as a result of the public health emergency and measures taken to contain the spread of the virus. State, local, and Tribal governments may provide assistance to small businesses to adopt safer operating procedures, weather periods of closure, or mitigate financial hardship resulting from the COVID-19 public health emergency, including:
    - Loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, for example by supporting payroll and benefits costs, costs to retain employees, mortgage, rent, or utilities costs, and other operating costs;

- Loans, grants, or in-kind assistance to implement COVID-19 prevention or mitigation tactics, such as physical plant changes to enable social distancing, enhanced cleaning efforts, barriers or partitions, or COVID-19 vaccination, testing, or contact tracing programs; and
- Technical assistance, counseling, or other services to assist with business planning needs.

As discussed above, these services should respond to the negative economic impacts of COVID-19. Recipients may consider additional criteria to target assistance to businesses in need, including small businesses. Such criteria may include businesses facing financial insecurity, substantial declines in gross receipts (e.g., comparable to measures used to assess eligibility for the Paycheck Protection Program), or other economic harm due to the pandemic, as well as businesses with less capacity to weather financial hardship, such as the smallest businesses, those with less access to credit, or those serving disadvantaged communities. Recipients should consider local economic conditions and business data when establishing such criteria.[87]

- *Rehiring State, Local, and Tribal Government Staff.* State, local, and Tribal governments continue to see pandemic impacts in overall staffing levels: State, local, and Tribal government employment remains more than 1 million jobs lower

[87] *See* Federal Reserve Bank of Cleveland, An Uphill Battle: COVID-19's Outsized Toll on Minority-Owned Firms (Oct. 8, 2020), https://www.clevelandfed.org/newsroom-and-events/publications/community-development-briefs/db-20201008-misera-report.aspx (discussing the impact of COVID-19 on minority owned businesses).

in April 2021 than prior to the pandemic.[88] Employment losses decrease a state or local government's ability to effectively administer services. Thus, the Interim Final Rule includes as an eligible use payroll, covered benefits, and other costs associated with rehiring public sector staff, up to the pre-pandemic staffing level of the government.

- *Aid to Impacted Industries.* Sections 602(c)(1)(A) and 603(c)(1)(A) recognize that certain industries, such as tourism, travel, and hospitality, were disproportionately and negatively impacted by the COVID-19 public health emergency. Aid provided to tourism, travel, and hospitality industries should respond to the negative economic impacts of the pandemic on those and similarly impacted industries. For example, aid may include assistance to implement COVID-19 mitigation and infection prevention measures to enable safe resumption of tourism, travel, and hospitality services, for example, improvements to ventilation, physical barriers or partitions, signage to facilitate social distancing, provision of masks or personal protective equipment, or consultation with infection prevention professionals to develop safe reopening plans.

  Aid may be considered responsive to the negative economic impacts of the pandemic if it supports businesses, attractions, business districts, and Tribal development districts operating prior to the pandemic and affected by required

[88] U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, https://fred.stlouisfed.org/series/CES9092000001 and https://fred.stlouisfed.org/series/CES9093000001 (last visited May 8, 2021).

closures and other efforts to contain the pandemic. For example, a recipient may provide aid to support safe reopening of businesses in the tourism, travel, and hospitality industries and to business districts that were closed during the COVID-19 public health emergency, as well as aid for a planned expansion or upgrade of tourism, travel, and hospitality facilities delayed due to the pandemic.

When considering providing aid to industries other than tourism, travel, and hospitality, recipients should consider the extent of the economic impact as compared to tourism, travel, and hospitality, the industries enumerated in the statute. For example, on net, the leisure and hospitality industry has experienced an approximately 24 percent decline in revenue and approximately 17 percent decline in employment nationwide due to the COVID-19 public health emergency.[89] Recipients should also consider whether impacts were due to the COVID-19 pandemic, as opposed to longer-term economic or industrial trends unrelated to the pandemic.

To facilitate transparency and accountability, the Interim Final Rule requires that State, local, and Tribal governments publicly report assistance provided to private-sector businesses under this eligible use, including tourism, travel, hospitality, and other impacted industries, and its connection to negative

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[89] From February 2020 to April 2021, employment in "Leisure and hospitality" has fallen by approximately 17 percent. *See* U.S. Bureau of Labor Statistics, All Employees, Leisure and Hospitality, retrieved from FRED, Federal Reserve Bank of St. Louis, https://fred.stlouisfed.org/series/USLAH (last visited May 8, 2021). From 2019Q4 to 2020Q4, gross output (e.g. revenue) in arts, entertainment, recreation, accommodation, and food services has fallen by approximately 24 percent. *See* Bureau of Economic Analysis, News Release: Gross Domestic Product (Third Estimate), Corporate Profits, and GDP by Industry, Fourth Quarter and Year 2020 (Mar. 25, 2021), Table 17, https://www.bea.gov/sites/default/files/2021-03/gdp4q20_3rd.pdf.

economic impacts of the pandemic. Recipients also should maintain records to support their assessment of how businesses or business districts receiving assistance were affected by the negative economic impacts of the pandemic and how the aid provided responds to these impacts.

As discussed above, economic disparities that existed prior to the COVID-19 public health emergency amplified the impact of the pandemic among low-income and minority groups. These families were more likely to face housing, food, and financial insecurity; are over-represented among low-wage workers; and many have seen their livelihoods deteriorate further during the pandemic and economic contraction. In recognition of the disproportionate negative economic impacts on certain communities and populations, the Interim Final Rule identifies services and programs that will be presumed to be responding to the negative economic impacts of the COVID-19 public health emergency when provided in these communities.

Specifically, Treasury will presume that certain types of services, outlined below, are eligible uses when provided in a QCT, to families and individuals living in QCTs, or when these services are provided by Tribal governments.[90] Recipients may also provide these services to other populations, households, or geographic areas disproportionately impacted by the pandemic. In identifying these disproportionately impacted communities, recipients should be able to support their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations, households, or geographic areas to be served. The Interim Final Rule identifies a non-exclusive list of uses that address the disproportionate negative economic effects of the COVID-19 public health emergency, including:

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[90] HUD, *supra* note 48.

- *Building Stronger Communities through Investments in Housing and Neighborhoods*. The economic impacts of COVID-19 have likely been most acute in lower-income neighborhoods, including concentrated areas of high unemployment, limited economic opportunity, and housing insecurity.[91] Services in this category alleviate the immediate economic impacts of the COVID-19 pandemic on housing insecurity, while addressing conditions that contributed to poor public health and economic outcomes during the pandemic, namely concentrated areas with limited economic opportunity and inadequate or poor-quality housing.[92] Eligible services include:
    - Services to address homelessness such as supportive housing, and to improve access to stable, affordable housing among unhoused individuals;
    - Affordable housing development to increase supply of affordable and high-quality living units; and
    - Housing vouchers, residential counseling, or housing navigation assistance to facilitate household moves to neighborhoods with high levels of economic opportunity and mobility for low-income residents, to help residents increase their economic opportunity and reduce concentrated areas of low economic opportunity.[93]

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[91] Stuart M. Butler & Jonathan Grabinsky, Tackling the legacy of persistent urban inequality and concentrated poverty, Brookings Institution (Nov. 16, 2020), https://www.brookings.edu/blog/up-front/2020/11/16/tackling-the-legacy-of-persistent-urban-inequality-and-concentrated-poverty/.

[92] U.S. Department of Health and Human Services (HHS), Office of Disease Prevention and Health Promotion, Quality of Housing, https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/quality-of-housing#11 (last visited Apr. 26, 2021).

[93] The Opportunity Atlas, https://www.opportunityatlas.org/ (last visited Apr. 26, 2021); Raj Chetty & Nathaniel Hendren, The Impacts of Neighborhoods on Intergenerational Mobility I: Childhood Exposure Effects, Quarterly J. of Econ. 133(3):1107-162 (2018), *available at* https://opportunityinsights.org/paper/neighborhoodsi/.

- A*ddressing Educational Disparities.* As outlined above, school closures and the transition to remote education raised particular challenges for lower-income students, potentially exacerbating educational disparities, while increases in economic hardship among families could have long-lasting impacts on children's educational and economic prospects. Services under this prong would enhance educational supports to help mitigate impacts of the pandemic. Eligible services include:
    - New, expanded, or enhanced early learning services, including pre-kindergarten, Head Start, or partnerships between pre-kindergarten programs and local education authorities, or administration of those services;
    - Providing assistance to high-poverty school districts to advance equitable funding across districts and geographies;
    - Evidence-based educational services and practices to address the academic needs of students, including tutoring, summer, afterschool, and other extended learning and enrichment programs; and
    - Evidence-based practices to address the social, emotional, and mental health needs of students;
- *Promoting Healthy Childhood Environments*. Children's economic and family circumstances have a long-term impact on their future economic outcomes.[94] Increases in economic hardship, material insecurity, and parental stress and behavioral health challenges all raise the risk of long-term harms to today's children due to the pandemic. Eligible services to address this challenge include:

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[94] *See* supra notes 52 and 84.

- New or expanded high-quality childcare to provide safe and supportive care for children;
- Home visiting programs to provide structured visits from health, parent educators, and social service professionals to pregnant women or families with young children to offer education and assistance navigating resources for economic support, health needs, or child development; and
- Enhanced services for child welfare-involved families and foster youth to provide support and training on child development, positive parenting, coping skills, or recovery for mental health and substance use challenges.

State, local, and Tribal governments are encouraged to use payments from the Fiscal Recovery Funds to respond to the direct and immediate needs of the pandemic and its negative economic impacts and, in particular, the needs of households and businesses that were disproportionately and negatively impacted by the public health emergency. As highlighted above, low-income communities and workers and people of color have faced more severe health and economic outcomes during the pandemic, with pre-existing social vulnerabilities like low-wage or insecure employment, concentrated neighborhoods with less economic opportunity, and pre-existing health disparities likely contributing to the magnified impact of the pandemic. The Fiscal Recovery Funds provide resources to not only respond to the immediate harms of the pandemic but also to mitigate its longer-term impact in compounding the systemic public health and economic challenges of disproportionately impacted populations. Treasury encourages recipients to consider funding uses that foster a strong, inclusive, and equitable recovery, especially uses with long-term benefits for health and economic outcomes.

Uses Outside the Scope of this Category. Certain uses would not be within the scope of this eligible use category, although may be eligible under other eligible use categories. A general infrastructure project, for example, typically would not be included unless the project responded to a specific pandemic public health need (e.g., investments in facilities for the delivery of vaccines) or a specific negative economic impact like those described above (e.g., affordable housing in a QCT). The ARPA explicitly includes infrastructure if it is "necessary" and in water, sewer, or broadband. *See* Section II.D of this Supplementary Information. State, local, and Tribal governments also may use the Fiscal Recovery Funds under sections 602(c)(1)(C) or 603(c)(1)(C) to provide "government services" broadly to the extent of their reduction in revenue. *See* Section II.C of this Supplementary Information.

This category of eligible uses also would not include contributions to rainy day funds, financial reserves, or similar funds. Resources made available under this eligible use category are intended to help meet pandemic response needs and provide relief for households and businesses facing near- and long-term negative economic impacts. Contributions to rainy day funds and similar financial reserves would not address these needs or respond to the COVID-19 public health emergency but would rather constitute savings for future spending needs. Similarly, this eligible use category would not include payment of interest or principal on outstanding debt instruments, including, for example, short-term revenue or tax anticipation notes, or other debt service costs. As discussed below, payments from the Fiscal Recovery Funds are intended to be used prospectively and the Interim Final Rule precludes use of these funds to cover the costs of debt incurred prior to March 3, 2021. Fees or issuance costs associated with the issuance of new debt would also not be covered using payments from the Fiscal Recovery Funds because such costs would not themselves have been incurred to address

the needs of pandemic response or its negative economic impacts. The purpose of the Fiscal Recovery Funds is to provide fiscal relief that will permit State, local, and Tribal governments to continue to respond to the COVID-19 public health emergency.

For the same reasons, this category of eligible uses would not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring plan in a judicial, administrative, or regulatory proceeding, except to the extent the judgment or settlement requires the provision of services that would respond to the COVID-19 public health emergency. That is, satisfaction of a settlement or judgment would not itself respond to COVID-19 with respect to the public health emergency or its negative economic impacts, unless the settlement requires the provision of services or aid that did directly respond to these needs, as described above.

In addition, as described in Section V.III of this Supplementary Information, Treasury will establish reporting and record keeping requirements for uses within this category, including enhanced reporting requirements for certain types of uses.

Question 1: *Are there other types of services or costs that Treasury should consider as eligible uses to respond to the public health impacts of COVID-19? Describe how these respond to the COVID-19 public health emergency.*

Question 2: The Interim Final Rule permits coverage of payroll and benefits costs of public health and safety staff primarily dedicated to COVID-19 response, as well as rehiring of public sector staff up to pre-pandemic levels. For how long should these measures remain in place? What other measures or presumptions might Treasury consider to assess the extent to which public sector staff are engaged in COVID-19 response, and therefore reimbursable, in an easily-administrable manner?

Question 3: The Interim Final Rule permits rehiring of public sector staff up to the government's pre-pandemic staffing level, which is measured based on employment as of January 27, 2021. Does this approach adequately measure the pre-pandemic staffing level in a manner that is both accurate and easily administrable? Why or why not?

Question 4: The Interim Final Rule permits deposits to Unemployment Insurance Trust Funds, or using funds to pay back advances, up to the pre-pandemic balance. What, if any, conditions should be considered to ensure that funds repair economic impacts of the pandemic and strengthen unemployment insurance systems?

Question 5: Are there other types of services or costs that Treasury should consider as eligible uses to respond to the negative economic impacts of COVID-19? Describe how these respond to the COVID-19 public health emergency.

Question 6: What other measures, presumptions, or considerations could be used to assess "impacted industries" affected by the COVID-19 public health emergency?

Question 7: What are the advantages and disadvantages of using Qualified Census Tracts and services provided by Tribal governments to delineate where a broader range of eligible uses are presumed to be responsive to the public health and economic impacts of COVID-19? What other measures might Treasury consider? Are there other populations or geographic areas that were disproportionately impacted by the pandemic that should be explicitly included?

Question 8: Are there other services or costs that Treasury should consider as eligible uses to respond to the disproportionate impacts of COVID-19 on low-income populations and communities? Describe how these respond to the COVID-19 public health emergency or its negative economic impacts, including its exacerbation of pre-existing challenges in these areas.

Question 9: The Interim Final Rule includes eligible uses to support affordable housing and stronger neighborhoods in disproportionately-impacted communities. Discuss the advantages and disadvantages of explicitly including other uses to support affordable housing and stronger neighborhoods, including rehabilitation of blighted properties or demolition of abandoned or vacant properties. In what ways does, or does not, this potential use address public health or economic impacts of the pandemic? What considerations, if any, could support use of Fiscal Recovery Funds in ways that do not result in resident displacement or loss of affordable housing units?

B. Premium Pay

Fiscal Recovery Funds payments may be used by recipients to provide premium pay to eligible workers performing essential work during the COVID-19 public health emergency or to provide grants to third-party employers with eligible workers performing essential work.[95] These are workers who have been and continue to be relied on to maintain continuity of operations of essential critical infrastructure sectors, including those who are critical to protecting the health and wellbeing of their communities.

Since the start of the COVID-19 public health emergency in January 2020, essential workers have put their physical wellbeing at risk to meet the daily needs of their communities and to provide care for others. In the course of this work, many essential workers have contracted or died of COVID-19.[96] Several examples reflect the severity of the health impacts

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[95] §§602(c)(1)(B), 603(c)(1)(B) of the Act.

[96] *See, e.g.*, Centers for Disease Control and Prevention, COVID Data Tracker: Cases & Death among Healthcare Personnel, https://covid.cdc.gov/covid-data-tracker/#health-care-personnel (last visited May 4, 2021); Centers for Disease Control and Prevention, COVID Data Tracker: Confirmed COVID-19 Cases and Deaths among Staff and Rate per 1,000 Resident-Weeks in Nursing Homes, by Week – United States, https://covid.cdc.gov/covid-data-tracker/#nursing-home-staff (last visited May 4, 2021).

for essential workers. Meat processing plants became "hotspots" for transmission, with 700 new cases reported at a single plant on a single day in May 2020.[97] In New York City, 120 employees of the Metropolitan Transit Authority were estimated to have died due to COVID-19 by mid-May 2020, with nearly 4,000 testing positive for the virus.[98] Furthermore, many essential workers are people of color or low-wage workers.[99] These workers, in particular, have borne a disproportionate share of the health and economic impacts of the pandemic. Such workers include:

- Staff at nursing homes, hospitals, and home care settings;
- Workers at farms, food production facilities, grocery stores, and restaurants;
- Janitors and sanitation workers;
- Truck drivers, transit staff, and warehouse workers;
- Public health and safety staff;
- Childcare workers, educators, and other school staff; and
- Social service and human services staff.

During the public health emergency, employers' policies on COVID-19-related hazard pay have varied widely, with many essential workers not yet compensated for the heightened

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[97] *See, e.g.*, The Lancet, The plight of essential workers during the COVID-19 pandemic, Vol. 395, Issue 10237:1587 (May 23, 2020), *available at* https://www.thelancet.com/journals/lancet/article/PIIS0140-6736%2820%2931200-9/fulltext.

[98] *Id*.

[99] Joanna Gaitens et al., Covid-19 and essential workers: A narrative review of health outcomes and moral injury, Int'l J. of Envtl. Research and Pub. Health 18(4):1446 (Feb. 4, 2021), *available at* https://pubmed.ncbi.nlm.nih.gov/33557075/; Tiana N. Rogers et al., Racial Disparities in COVID-19 Mortality Among Essential Workers in the United States, World Med. & Health policy 12(3):311-27 (Aug. 5, 2020), *available at* https://onlinelibrary.wiley.com/doi/full/10.1002/wmh3.358 (finding that vulnerability to coronavirus exposure was increased among non-Hispanic blacks, who disproportionately occupied the top nine essential occupations).

risks they have faced and continue to face.[100] Many of these workers earn lower wages on average and live in socioeconomically vulnerable communities as compared to the general population.[101] A recent study found that 25 percent of essential workers were estimated to have low household income, with 13 percent in high-risk households.[102] The low pay of many essential workers makes them less able to cope with the financial consequences of the pandemic or their work-related health risks, including working hours lost due to sickness or disruptions to childcare and other daily routines, or the likelihood of COVID-19 spread in their households or communities. Thus, the threats and costs involved with maintaining the ongoing operation of vital facilities and services have been, and continue to be, borne by those that are often the most vulnerable to the pandemic. The added health risk to essential workers is one prominent way in which the pandemic has amplified pre-existing socioeconomic inequities.

The Fiscal Recovery Funds will help respond to the needs of essential workers by allowing recipients to remunerate essential workers for the elevated health risks they have faced and continue to face during the public health emergency. To ensure that premium pay is targeted to workers that faced or face heightened risks due to the character of their work, the Interim Final Rule defines essential work as work involving regular in-person interactions or regular physical handling of items that were also handled by others. A worker would not be engaged in essential work and, accordingly may not receive premium pay, for telework performed from a residence.

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[100] Economic Policy Institute, Only 30% of those working outside their home are receiving hazard pay (June 16, 2020), https://www.epi.org/press/only-30-of-those-working-outside-their-home-are-receiving-hazard-pay-black-and-hispanic-workers-are-most-concerned-about-bringing-the-coronavirus-home/.

[101] McCormack, *supra* note 37.

[102] *Id*.

Sections 602(g)(2) and 603(g)(2) define eligible worker to mean "those workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as each Governor of a State or territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, territory, or Tribal government."[103] The rule incorporates this definition and provides a list of industries recognized as essential critical infrastructure sectors.[104] These sectors include healthcare, public health and safety, childcare, education, sanitation, transportation, and food production and services, among others as noted above. As provided under sections 602(g)(2) and 603(g)(2), the chief executive of each recipient has discretion to add additional sectors to this list, so long as additional sectors are deemed critical to protect the health and well-being of residents.

In providing premium pay to essential workers or grants to eligible employers, a recipient must consider whether the pay or grant would "respond to" to the worker or workers performing essential work. Premium pay or grants provided under this section respond to workers performing essential work if it addresses the heightened risk to workers who must be physically present at a jobsite and, for many of whom, the costs associated with illness were hardest to bear financially. Many of the workers performing critical essential services are low- or moderate-income workers, such as those described above. The ARPA recognizes this by defining premium pay to mean an amount up to $13 per hour in addition to wages or remuneration the worker otherwise receives and in an aggregate amount not to exceed $25,000 per eligible worker. To ensure the provision is implemented in a manner that compensates these workers, the Interim

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[103] §§602(g)(2), 603(g)(2) of the Act.

[104] The list of critical infrastructure sectors provided in the Interim Final Rule is based on the list of essential workers under The Heroes Act, H.R. 6800, 116th Cong. (2020).

Final Rule provides that any premium pay or grants provided using the Fiscal Recovery Funds should prioritize compensation of those lower income eligible workers that perform essential work.

As such, providing premium pay to eligible workers responds to such workers by helping address the disparity between the critical services and risks taken by essential workers and the relatively low compensation they tend to receive in exchange. If premium pay would increase a worker's total pay above 150 percent of their residing state's average annual wage for all occupations, as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics, or their residing county's average annual wage, as defined by the Bureau of Labor Statistics' Occupational Employment and Wage Statistics, whichever is higher, on an annual basis, the State, local, or Tribal government must provide Treasury and make publicly available, whether for themselves or on behalf of a grantee, a written justification of how the premium pay or grant is responsive to workers performing essential worker during the public health emergency.[105]

The threshold of 150 percent for requiring additional written justification is based on an analysis of the distribution of labor income for a sample of 20 occupations that generally correspond to the essential workers as defined in the Interim Final Rule.[106] For these

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[105] County median annual wage is taken to be that of the metropolitan or nonmetropolitan area that includes the county. *See* U.S. Bureau of Labor Statistics, State Occupational Employment and Wage Estimates, https://www.bls.gov/oes/current/oessrcst.htm (last visited May 1, 2021); U.S. Bureau of Labor Statistics, May 2020 Metropolitan and Nonmetropolitan Area Estimates listed by county or town, https://www.bls.gov/oes/current/county_links.htm (last visited May 1, 2021).

[106] Treasury performed this analysis with data from the U.S. Census Bureau's 2019 Annual Social and Economic Supplement. In determining which occupations to include in this analysis, Treasury excluded management and supervisory positions, as such positions may not necessarily involve regular in-person interactions or physical handling of items to the same extent as non-managerial positions.

occupations, labor income for the vast majority of workers was under 150 percent of average annual labor income across all occupations. Treasury anticipates that the threshold of 150 percent of the annual average wage will be greater than the annual average wage of the vast majority of eligible workers performing essential work. These enhanced reporting requirements help to ensure grants are directed to essential workers in critical infrastructure sectors and responsive to the impacts of the pandemic observed among essential workers, namely the mis-alignment between health risks and compensation. Enhanced reporting also provides transparency to the public. Finally, using a localized measure reflects differences in wages and cost of living across the country, making this standard administrable and reflective of essential worker incomes across a diverse range of geographic areas.

Furthermore, because premium pay is intended to compensate essential workers for heightened risk due to COVID-19, it must be entirely additive to a worker's regular rate of wages and other remuneration and may not be used to reduce or substitute for a worker's normal earnings. The definition of premium pay also clarifies that premium pay may be provided retrospectively for work performed at any time since the start of the COVID-19 public health emergency, where those workers have yet to be compensated adequately for work previously performed.[107] Treasury encourages recipients to prioritize providing retrospective premium pay where possible, recognizing that many essential workers have not yet received additional compensation for work conducted over the course of many months. Essential workers who have already earned premium pay for essential work performed during the COVID-19 public health

[107] However, such compensation must be "in addition to" remuneration or wages already received. That is, employers may not reduce such workers' current pay and use Fiscal Recovery Funds to compensate themselves for premium pay previously provided to the worker.

emergency remain eligible for additional payments, and an essential worker may receive both retrospective premium pay for prior work as well as prospective premium pay for current or ongoing work.

To ensure any grants respond to the needs of essential workers and are made in a fair and transparent manner, the rule imposes some additional reporting requirements for grants to third-party employers, including the public disclosure of grants provided. *See* Section VIII of this Supplementary Information, discussing reporting requirements. In responding to the needs of essential workers, a grant to an employer may provide premium pay to eligible workers performing essential work, as these terms are defined in the Interim Final Rule and discussed above. A grant provided to an employer may also be for essential work performed by eligible workers pursuant to a contract. For example, if a municipality contracts with a third party to perform sanitation work, the third-party contractor could be eligible to receive a grant to provide premium pay for these eligible workers.

Question 10: Are there additional sectors beyond those listed in the Interim Final Rule that should be considered essential critical infrastructure sectors?

Question 11: What, if any, additional criteria should Treasury consider to ensure that premium pay responds to essential workers?

Question 12: What consideration, if any, should be given to the criteria on salary threshold, including measure and level, for requiring written justification?

C. Revenue Loss

Recipients may use payments from the Fiscal Recovery Funds for the provision of government services to the extent of the reduction in revenue experienced due to the COVID-19

public health emergency.[108] Pursuant to sections 602(c)(1)(C) and 603(c)(1)(C) of the Act, a recipient's reduction in revenue is measured relative to the revenue collected in the most recent full fiscal year prior to the emergency.

Many State, local, and Tribal governments are experiencing significant budget shortfalls, which can have a devastating impact on communities. State government tax revenue from major sources were down 4.3 percent in the six months ended September 2020, relative to the same period 2019.[109] At the local level, nearly 90 percent of cities have reported being less able to meet the fiscal needs of their communities and, on average, cities expect a double-digit decline in general fund revenues in their fiscal year 2021.[110] Similarly, surveys of Tribal governments and Tribal enterprises found majorities of respondents reporting substantial cost increases and revenue decreases, with Tribal governments reporting reductions in healthcare, housing, social services, and economic development activities as a result of reduced revenues.[111] These budget shortfalls are particularly problematic in the current environment, as State, local, and Tribal governments work to mitigate and contain the COVID-19 pandemic and help citizens weather the economic downturn.

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[108] ARPA, *supra* note 16.

[109] Major sources include personal income tax, corporate income tax, sales tax, and property tax. *See* Lucy Dadayan., States Reported Revenue Growth in July- – September Quarter, Reflecting Revenue Shifts from the Prior Quarter, State Tax and Econ. Rev. (Q. 3, 2020), *available at* https://www.urban.org/sites/default/files/publication/103938/state-tax-and-economic-review-2020-q3_0.pdf

[110] National League of Cities, City Fiscal Conditions (2020), *available at* https://www.nlc.org/wp-content/uploads/2020/08/City_Fiscal_Conditions_2020_FINAL.pdf

[111] Surveys conducted by the Center for Indian Country Development at the Federal Reserve Bank of Minneapolis in March, April, and September 2020. *See* Moreno & Sobrepena, *supra* note 73.

Further, State, local, and Tribal government budgets affect the broader economic recovery. During the period following the 2007-2009 recession, State and local government budget pressures led to fiscal austerity that was a significant drag on the overall economic recovery.[112] Inflation-adjusted State and local government revenue did not return to the previous peak until 2013,[113] while State, local, and Tribal government employment did not recover to its prior peak for over a decade, until August 2019 – just a few months before the COVID-19 public health emergency began.[114]

Sections 602(c)(1)(C) and 603(c)(1)(C) of the Act allow recipients facing budget shortfalls to use payments from the Fiscal Recovery Funds to avoid cuts to government services and, thus, enable State, local, and Tribal governments to continue to provide valuable services and ensure that fiscal austerity measures do not hamper the broader economic recovery. The Interim Final Rule implements these provisions by establishing a definition of "general revenue" for purposes of calculating a loss in revenue and by providing a methodology for calculating revenue lost due to the COVID-19 public health emergency.

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[112] *See, e.g.,* Fitzpatrick, Haughwout & Setren, Fiscal Drag from the State and Local Sector?, Liberty Street Economics Blog, Federal Reserve Bank of New York (June 27, 2012), https://www.libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html; Jiri Jonas, Great Recession and Fiscal Squeeze at U.S. Subnational Government Level, IMF Working Paper 12/184, (July 2012), *available at* https://www.imf.org/external/pubs/ft/wp/2012/wp12184.pdf; Gordon, *supra* note 9.

[113] State and local government general revenue from own sources, adjusted for inflation using the GDP price index. U.S. Census Bureau, Annual Survey of State Government Finances and U.S. Bureau of Economic Analysis, National Income and Product Accounts,

[114] U.S. Bureau of Labor Statistics, All Employees, State Government [CES9092000001] and All Employees, Local Government [CES9093000001], retrieved from FRED, Federal Reserve Bank of St. Louis, https://fred.stlouisfed.org/series/CES9092000001 and https://fred.stlouisfed.org/series/CES9093000001 (last visited Apr. 27, 2021).

General Revenue. The Interim Final Rule adopts a definition of "general revenue" based largely on the components reported under "General Revenue from Own Sources" in the Census Bureau's Annual Survey of State and Local Government Finances, and for purposes of this Interim Final Rule, helps to ensure that the components of general revenue would be calculated in a consistent manner.[115] By relying on a methodology that is both familiar and comprehensive, this approach minimizes burden to recipients and provides consistency in the measurement of general revenue across a diverse set of recipients.

The Interim Final Rule defines the term "general revenue" to include revenues collected by a recipient and generated from its underlying economy and would capture a range of different types of tax revenues, as well as other types of revenue that are available to support government services.[116] In calculating revenue, recipients should sum across all revenue streams covered as general revenue. This approach minimizes the administrative burden for recipients, provides for greater consistency across recipients, and presents a more accurate representation of the overall impact of the COVID-19 public health emergency on a recipient's revenue, rather than relying

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[115] U.S. Census Bureau, Annual Survey of State and Local Government Finances, https://www.census.gov/programs-surveys/gov-finances.html (last visited Apr. 30, 2021).

[116] The Interim Final Rule would define tax revenue in a manner consistent with the Census Bureau's definition of tax revenue, with certain changes (i.e., inclusion of revenue from liquor stores and certain intergovernmental transfers). Current charges are defined as "charges imposed for providing current services or for the sale of products in connection with general government activities." It includes revenues such as public education institution, public hospital, and toll revenues. Miscellaneous general revenue comprises of all other general revenue of governments from their own sources (i.e., other than liquor store, utility, and insurance trust revenue), including rents, royalties, lottery proceeds, and fines.

on financial reporting prepared by each recipient, which vary in methodology used and which generally aggregates revenue by purpose rather than by source.[117]

Consistent with the Census Bureau's definition of "general revenue from own sources," the definition of general revenue in the Interim Final Rule would exclude refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, and agency or private trust transactions. The definition of general revenue also would exclude revenue generated by utilities and insurance trusts. In this way, the definition of general revenue focuses on sources that are generated from economic activity and are available to fund government services, rather than a fund or administrative unit established to account for and control a particular activity.[118] For example, public utilities typically require financial support from the State, local, or Tribal government, rather than providing revenue to such government, and any revenue that is generated by public utilities typically is used to support the public utility's continued operation, rather than being used as a source of revenue to support government services generally.

The definition of general revenue would include all revenue from Tribal enterprises, as this revenue is generated from economic activity and is available to fund government services. Tribes are not able to generate revenue through taxes in the same manner as State and local governments and, as a result, Tribal enterprises are critical sources of revenue for Tribal

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[117] Fund-oriented reporting, such as what is used under the Governmental Accounting Standards Board (GASB), focuses on the types of uses and activities funded by the revenue, as opposed to the economic activity from which the revenue is sourced. *See* Governmental Accounting Standards Series, Statement No. 54 of the Governmental Accounting Standards Board: Fund Balance Reporting and Governmental Fund Type Definitions, No. 287-B (Feb. 2009).

[118] *Supra* note 116.

governments that enable Tribal governments to provide a range of services, including elder care, health clinics, wastewater management, and forestry.

Finally, the term "general revenue" includes intergovernmental transfers between State and local governments, but excludes intergovernmental transfers from the Federal government, including Federal transfers made via a State to a local government pursuant to the CRF or as part of the Fiscal Recovery Funds. States and local governments often share or collect revenue on behalf of one another, which results in intergovernmental transfers. When attributing revenue to a unit of government, the Census Bureau's methodology considers which unit of government imposes, collects, and retains the revenue and assigns the revenue to the unit of government that meets at least two of those three factors.[119] For purposes of measuring loss in general revenue due to the COVID-19 public health emergency and to better allow continued provision of government services, the retention and ability to use the revenue is a more critical factor. Accordingly, and to better measure the funds available for the provision of government services, the definition of general revenue would include intergovernmental transfers from States or local governments other than funds transferred pursuant to ARPA, CRF, or another Federal program. This formulation recognizes the importance of State transfers for local government revenue.[120]

Calculation of Loss. In general, recipients will compute the extent of the reduction in revenue by comparing actual revenue to a counterfactual trend representing what could have been expected to occur in the absence of the pandemic. This approach measures losses in

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[119] U.S. Census Bureau, Government Finance and Employment Classification Manual (Dec. 2000), https://www2.census.gov/govs/class/classfull.pdf

[120] For example, in 2018, state transfers to localities accounted for approximately 27 percent of local revenues. U.S. Census Bureau, Annual Survey of State and Local Government Finances, Table 1 (2018), https://www.census.gov/data/datasets/2018/econ/local/public-use-datasets.html.

revenue relative to the most recent fiscal year prior to the COVID-19 public health emergency by using the most recent pre-pandemic fiscal year as the starting point for estimates of revenue growth absent the pandemic. In other words, the counterfactual trend starts with the last full fiscal year prior to the COVID-19 public health emergency and then assumes growth at a constant rate in the subsequent years. Because recipients can estimate the revenue shortfall at multiple points in time throughout the covered period as revenue is collected, this approach accounts for variation across recipients in the timing of pandemic impacts.[121] Although revenue may decline for reasons unrelated to the COVID-19 public health emergency, to minimize the administrative burden on recipients and taking into consideration the devastating effects of the COVID-19 public health emergency, any diminution in actual revenues relative to the counterfactual pre-pandemic trend would be presumed to have been due to the COVID-19 public health emergency.

For purposes of measuring revenue growth in the counterfactual trend, recipients may use a *growth adjustment* of either 4.1 percent per year or the recipient's average annual revenue growth over the three full fiscal years prior to the COVID-19 public health emergency, whichever is higher. The option of 4.1 percent represents the average annual growth across all State and local government "General Revenue from Own Sources" in the most recent three years

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[121] For example, following the 2007-09 recession, local government property tax collections did not begin to decline until 2011, suggesting that property tax collection declines can lag downturns. *See* U.S. Bureau of Economic Analysis, Personal current taxes: State and local: Property taxes [S210401A027NBEA], retrieved from Federal Reserve Economic Data, Federal Reserve Bank of St. Louis, https://fred.stlouisfed.org/graph/?g=r3YI (last visited Apr. 22, 2021). Estimating the reduction in revenue at points throughout the covered period will allow for this type of lagged effect to be taken into account during the covered period.

of available data.[122] This approach provides recipients with a standardized growth adjustment when calculating the counterfactual revenue trend and thus minimizes administrative burden, while not disadvantaging recipients with revenue growth that exceeded the national average prior to the COVID-19 public health emergency by permitting these recipients to use their own revenue growth rate over the preceding three years.

Recipients should calculate the extent of the reduction in revenue as of four points in time: December 31, 2020; December 31, 2021; December 31, 2022; and December 31, 2023. To calculate the extent of the reduction in revenue at each of these dates, recipients should follow a four-step process:

- Step 1: Identify revenues collected in the most recent full fiscal year prior to the public health emergency (i.e., last full fiscal year before January 27, 2020), called the *base year revenue.*
- Step 2: Estimate *counterfactual revenue*, which is equal to *base year revenue* * [(1 + *growth adjustment*) ^(*n*/12)], where *n* is the number of months elapsed since the end of the base year to the calculation date, and *growth adjustment* is the greater of 4.1 percent and the recipient's average annual revenue growth in the three full fiscal years prior to the COVID-19 public health emergency.
- Step 3: Identify *actual revenue*, which equals revenues collected over the past twelve months as of the calculation date.

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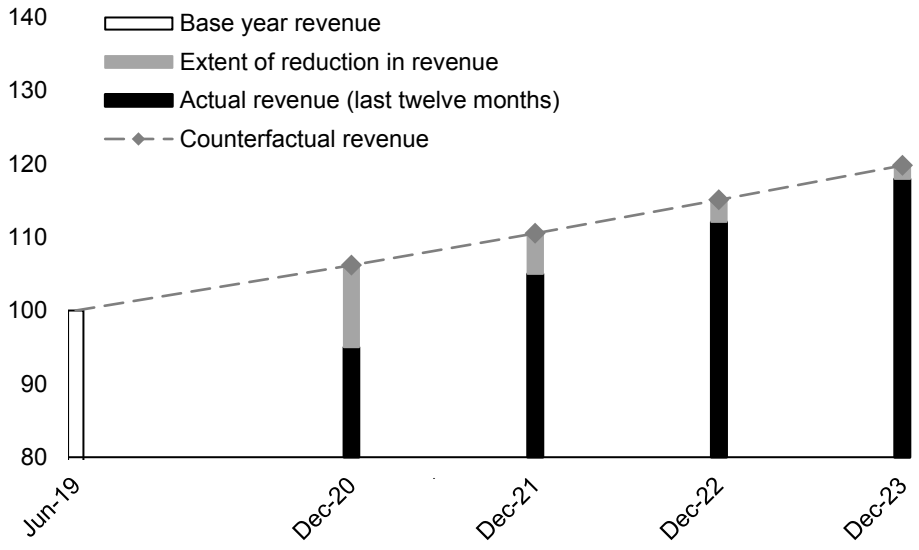
[122] Together with revenue from liquor stores from 2015 to 2018. This estimate does not include any intergovernmental transfers. A recipient using the three-year average to calculate their growth adjustment must be based on the definition of general revenue, including treatment of intergovernmental transfers. 2015 – 2018 represents the most recent available data. *See* U.S. Census Bureau, State & Local Government Finance Historical Datasets and Tables (2018), https://www.census.gov/programs-surveys/gov-finances/data/datasets.html.

- Step 4: The extent of the reduction in revenue is equal to *counterfactual revenue* less *actual revenue*. If actual revenue exceeds counterfactual revenue, the extent of the reduction in revenue is set to zero for that calculation date.

For illustration, consider a hypothetical recipient with *base year revenue* equal to 100. In Step 2, the hypothetical recipient finds that 4.1 percent is greater than the recipient's average annual revenue growth in the three full fiscal years prior to the public health emergency. Furthermore, this recipient's base year ends June 30. In this illustration, *n* (months elapsed) and *counterfactual revenue* would be equal to:

As of:	12/31/2020	12/31/2021	12/31/2022	12/31/2023
n (months elapsed)	18	30	42	54
Counterfactual revenue:	106.2	110.6	115.1	119.8

The overall methodology for calculating the reduction in revenue is illustrated in the figure below:



Upon receiving Fiscal Recovery Fund payments, recipients may immediately calculate revenue loss for the period ending December 31, 2020.

Sections 602(c)(1)(C) and 603(c)(1)(C) of the Act provide recipients with broad latitude to use the Fiscal Recovery Funds for the provision of government services. Government services can include, but are not limited to, maintenance or pay-go funded building[123] of infrastructure, including roads; modernization of cybersecurity, including hardware, software, and protection of critical infrastructure; health services; environmental remediation; school or educational services; and the provision of police, fire, and other public safety services. However, expenses associated with obligations under instruments evidencing financial indebtedness for borrowed money would not be considered the provision of government services, as these financing expenses do not directly provide services or aid to citizens. Specifically, government services would not include interest or principal on any outstanding debt instrument, including, for example, short-term revenue or tax anticipation notes, or fees or issuance costs associated with the issuance of new debt. For the same reasons, government services would not include satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring in a judicial, administrative, or regulatory proceeding, except if the judgment or settlement required the provision of government services. That is, satisfaction of a settlement or judgment itself is not a government service, unless the settlement required the provision of government services. In addition, replenishing financial reserves (e.g., rainy day or other reserve funds) would not be considered provision of a

[123] Pay-go infrastructure funding refers to the practice of funding capital projects with cash-on-hand from taxes, fees, grants, and other sources, rather than with borrowed sums.

government service, since such expenses do not directly relate to the provision of government services.

Question 13: *Are there sources of revenue that either should or should not be included in the Interim Final Rule's measure of "general revenue" for recipients? If so, discuss why these sources either should or should not be included.*

Question 14: In the Interim Final Rule, recipients are expected to calculate the reduction in revenue on an aggregate basis. Discuss the advantages and disadvantages of, and any potential concerns with, this approach, including circumstances in which it could be necessary or appropriate to calculate the reduction in revenue by source.

Question 15: Treasury is considering whether to take into account other factors, including actions taken by the recipient as well as the expiration of the COVID-19 public health emergency, in determining whether to presume that revenue losses are "due to" the COVID-19 public health emergency. Discuss the advantages and disadvantages of this presumption, including when, if ever, during the covered period it would be appropriate to reevaluate the presumption that all losses are attributable to the COVID-19 public health emergency.

Question 16: Do recipients anticipate lagged revenue effects of the public health emergency? If so, when would these lagged effects be expected to occur, and what can Treasury to do support these recipients through its implementation of the program?

Question 17: In the Interim Final Rule, paying interest or principal on government debt is not considered provision of a government service. Discuss the advantages and disadvantages of this approach, including circumstances in which paying interest or principal on government debt could be considered provision of a government service.

D. Investments in Infrastructure

To assist in meeting the critical need for investments and improvements to existing infrastructure in water, sewer, and broadband, the Fiscal Recovery Funds provide funds to State, local, and Tribal governments to make necessary investments in these sectors. The Interim Final Rule outlines eligible uses within each category, allowing for a broad range of necessary investments in projects that improve access to clean drinking water, improve wastewater and stormwater infrastructure systems, and provide access to high-quality broadband service. Necessary investments are designed to provide an adequate minimum level of service and are unlikely to be made using private sources of funds. Necessary investments include projects that are required to maintain a level of service that, at least, meets applicable health-based standards, taking into account resilience to climate change, or establishes or improves broadband service to unserved or underserved populations to reach an adequate level to permit a household to work or attend school, and that are unlikely to be met with private sources of funds.[124]

It is important that necessary investments in water, sewer, or broadband infrastructure be carried out in ways that produce high-quality infrastructure, avert disruptive and costly delays, and promote efficiency. Treasury encourages recipients to ensure that water, sewer, and broadband projects use strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions, not only to promote effective and efficient delivery of high-quality infrastructure projects but also to support the economic recovery through strong employment opportunities for workers. Using these practices in construction projects may help to ensure a reliable supply of

[124] Treasury notes that using funds to support or oppose collective bargaining would not be included as part of "necessary investments in water, sewer, or broadband infrastructure."

skilled labor that would minimize disruptions, such as those associated with labor disputes or workplace injuries.

To provide public transparency on whether projects are using practices that promote on-time and on-budget delivery, Treasury will seek information from recipients on their workforce plans and practices related to water, sewer, and broadband projects undertaken with Fiscal Recovery Funds. Treasury will provide additional guidance and instructions on the reporting requirements at a later date.

1. Water and Sewer Infrastructure

The ARPA provides funds to State, local, and Tribal governments to make necessary investments in water and sewer infrastructure.[125] By permitting funds to be used for water and sewer infrastructure needs, Congress recognized the critical role that clean drinking water and services for the collection and treatment of wastewater and stormwater play in protecting public health. Understanding that State, local, and Tribal governments have a broad range of water and sewer infrastructure needs, the Interim Final Rule provides these governments with wide latitude to identify investments in water and sewer infrastructure that are of the highest priority for their own communities, which may include projects on privately-owned infrastructure. The Interim Final Rule does this by aligning eligible uses of the Fiscal Recovery Funds with the wide range of types or categories of projects that would be eligible to receive financial assistance through the Environmental Protection Agency's (EPA) Clean Water State Revolving Fund (CWSRF) or Drinking Water State Revolving Fund (DWSRF).[126]

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[125] §§ 602(c)(1)(D), 603(c)(1)(D) of the Act.

[126] Environmental Protection Agency, Drinking Water State Revolving fund, https://www.epa.gov/dwsrf (last visited Apr. 30, 2021); Environmental Protection Agency, Clean Water State Revolving Fund, https://www.epa.gov/cwsrf (last visited Apr. 30, 2021).

Established by the 1987 amendments[127] to the Clean Water Act (CWA),[128] the CWSRF provides financial assistance for a wide range of water infrastructure projects to improve water quality and address water pollution in a way that enables each State to address and prioritize the needs of their populations. The types of projects eligible for CWSRF assistance include projects to construct, improve, and repair wastewater treatment plants, control non-point sources of pollution, improve resilience of infrastructure to severe weather events, create green infrastructure, and protect waterbodies from pollution.[129] Each of the 51 State programs established under the CWSRF have the flexibility to direct funding to their particular environmental needs, and each State may also have its own statutes, rules, and regulations that guide project eligibility.[130]

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[127] Water Quality Act of 1987, P.L. 100-4.

[128] Federal Water Pollution Control Act as amended, codified at 33 U.S.C. §§ 1251 *et. seq.,* common name (Clean Water Act). In 2009, the American Recovery and Reinvestment Act created the Green Project Reserve, which increased the focus on green infrastructure, water and energy efficient, and environmentally innovative projects. P.L. 111-5. The CWA was amended by the Water Resources Reform and Development Act of 2014 to further expand the CWSRF's eligibilities. P.L. 113-121. The CWSRF's eligibilities were further expanded in 2018 by the America's Water Infrastructure Act of 2018, P.L. 115-270.

[129] *See* Environmental Protection Agency, The Drinking Water State Revolving Funds: Financing America's Drinking Water, EPA-816-R-00-023 (Nov. 2000), https://nepis.epa.gov/Exe/ZyPDF.cgi/200024WB.PDF?Dockey=200024WB.PDF; *See also* Environmental Protection Agency, Learn About the Clean Water State Revolving Fund, https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf (last visited Apr. 30, 2021).

[130] 33 U.S.C. § 1383(c). *See also* Environmental Protection Agency, Overview of Clean Water State Revolving Fund Eligibilities(May 2016), https://www.epa.gov/sites/production/files/2016-07/documents/overview_of_cwsrf_eligibilities_may_2016.pdf; Claudia Copeland, Clean Water Act: A Summary of the Law, Congressional Research Service (Oct. 18, 2016), https://fas.org/sgp/crs/misc/RL30030.pdf; Jonathan L Ramseur, Wastewater Infrastructure: Overview, Funding, and Legislative Developments, Congressional Research Service (May 22, 2018), https://fas.org/sgp/crs/misc/R44963.pdf.

The DWSRF was modeled on the CWSRF and created as part of the 1996 amendments to the Safe Drinking Water Act (SDWA),[131] with the principal objective of helping public water systems obtain financing for improvements necessary to protect public health and comply with drinking water regulations.[132] Like the CWSRF, the DWSRF provides States with the flexibility to meet the needs of their populations.[133] The primary use of DWSRF funds is to assist communities in making water infrastructure capital improvements, including the installation and replacement of failing treatment and distribution systems.[134] In administering these programs, States must give priority to projects that ensure compliance with applicable health and environmental safety requirements; address the most serious risks to human health; and assist systems most in need on a per household basis according to State affordability criteria.[135]

By aligning use of Fiscal Recovery Funds with the categories or types of eligible projects under the existing EPA state revolving fund programs, the Interim Final Rule provides recipients with the flexibility to respond to the needs of their communities while ensuring that investments in water and sewer infrastructure made using Fiscal Recovery Funds are necessary. As discussed above, the CWSRF and DWSRF were designed to provide funding for projects that protect public health and safety by ensuring compliance with wastewater and drinking water health

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[131] 42 U.S.C. 300j-12.

[132] Environmental Protection Agency, Drinking Water State Revolving Fund Eligibility Handbook, (June 2017), https://www.epa.gov/sites/production/files/2017-06/documents/dwsrf_eligibility_handbook_june_13_2017_updated_508_version.pdf; Environmental Protection Agency, Drinking Water Infrastructure Needs Survey and Assessment: Sixth Report to Congress (March 2018), https://www.epa.gov/sites/production/files/2018-10/documents/corrected_sixth_drinking_water_infrastructure_needs_survey_and_assessment.pdf ".

[133] *Id*.

[134] *Id*.

[135] 42 U.S.C. 300j-12(b)(3)(A).

standards.[136] The need to provide funding through the state revolving funds suggests that these projects are less likely to be addressed with private sources of funding; for example, by remediating failing or inadequate infrastructure, much of which is publicly owned, and by addressing non-point sources of pollution. This approach of aligning with the EPA state revolving fund programs also supports expedited project identification and investment so that needed relief for the people and communities most affected by the pandemic can deployed expeditiously and have a positive impact on their health and wellbeing as soon as possible. Further, the Interim Final Rule is intended to preserve flexibility for award recipients to direct funding to their own particular needs and priorities and would not preclude recipients from applying their own additional project eligibility criteria.

In addition, responding to the immediate needs of the COVID-19 public health emergency may have diverted both personnel and financial resources from other State, local, and Tribal priorities, including projects to ensure compliance with applicable water health and quality standards and provide safe drinking and usable water.[137] Through sections 602(c)(1)(D) and 603(c)(1)(D), the ARPA provides resources to address these needs. Moreover, using Fiscal Recovery Funds in accordance with the priorities of the CWA and SWDA to "assist systems most in need on a per household basis according to state affordability criteria" would also have

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[136] Environmental Protection Agency, Learn About the Clean Water State Revolving Fund, https://www.epa.gov/cwsrf/learn-about-clean-water-state-revolving-fund-cwsrf (last visited Apr. 30, 2021); 42 U.S.C. 300j-12.

[137] House Committee on the Budget, State and Local Governments are in Dire Need of Federal Relief (Aug. 19, 2020), https://budget.house.gov/publications/report/state-and-local-governments-are-dire-need-federal-relief.

the benefit of providing vulnerable populations with safe drinking water that is critical to their health and, thus, their ability to work and learn.[138]

Recipients may use Fiscal Recovery Funds to invest in a broad range of projects that improve drinking water infrastructure, such as building or upgrading facilities and transmission, distribution, and storage systems, including replacement of lead service lines. Given the lifelong impacts of lead exposure for children, and the widespread nature of lead service lines, Treasury encourages recipients to consider projects to replace lead service lines.

Fiscal Recovery Funds may also be used to support the consolidation or establishment of drinking water systems. With respect to wastewater infrastructure, recipients may use Fiscal Recovery Funds to construct publicly owned treatment infrastructure, manage and treat stormwater or subsurface drainage water, facilitate water reuse, and secure publicly owned treatment works, among other uses. Finally, consistent with the CWSRF and DWSRF, Fiscal Recovery Funds may be used for cybersecurity needs to protect water or sewer infrastructure, such as developing effective cybersecurity practices and measures at drinking water systems and publicly owned treatment works.

Many of the types of projects eligible under either the CWSRF or DWSRF also support efforts to address climate change. For example, by taking steps to manage potential sources of pollution and preventing these sources from reaching sources of drinking water, projects eligible under the DWSRF and the ARPA may reduce energy required to treat drinking water. Similarly,

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[138] Environmental Protection Agency, Drinking Water State Revolving Fund (Nov. 2019), https://www.epa.gov/sites/production/files/2019-11/documents/fact_sheet_-_dwsrf_overview_final_0.pdf; Environmental Protection Agency, National Benefits Analysis for Drinking Water Regulations, https://www.epa.gov/sdwa/national-benefits-analysis-drinking-water-regulations (last visited Apr. 30, 2020).

projects eligible under the CWSRF include measures to conserve and reuse water or reduce the energy consumption of public water treatment facilities. Treasury encourages recipients to consider green infrastructure investments and projects to improve resilience to the effects of climate change. For example, more frequent and extreme precipitation events combined with construction and development trends have led to increased instances of stormwater runoff, water pollution, and flooding. Green infrastructure projects that support stormwater system resiliency could include rain gardens that provide water storage and filtration benefits, and green streets, where vegetation, soil, and engineered systems are combined to direct and filter rainwater from impervious surfaces. In cases of a natural disaster, recipients may also use Fiscal Recovery Funds to provide relief, such as interconnecting water systems or rehabilitating existing wells during an extended drought.

Question 18: What are the advantages and disadvantages of aligning eligible uses with the eligible project type requirements of the DWSRF and CWSRF? What other water or sewer project categories, if any, should Treasury consider in addition to DWSRF and CWSRF eligible projects? Should Treasury consider a broader general category of water and sewer projects?

Question 19: What additional water and sewer infrastructure categories, if any, should Treasury consider to address and respond to the needs of unserved, undeserved, or rural communities? How do these projects differ from DWSFR and CWSRF eligible projects?

Question 20: What new categories of water and sewer infrastructure, if any, should Treasury consider to support State, local, and Tribal governments in mitigating the negative impacts of climate change? Discuss emerging technologies and processes that support resiliency of water and sewer infrastructure. Discuss any challenges faced by States and local governments when pursuing or implementing climate resilient infrastructure projects.

Question 21: Infrastructure projects related to dams and reservoirs are generally not eligible under the CWSRF and DWSRF categories. Should Treasury consider expanding eligible infrastructure under the Interim Final Rule to include dam and reservoir projects? Discuss public health, environmental, climate, or equity benefits and costs in expanding the eligibility to include these types of projects.

2. Broadband Infrastructure.

The COVID-19 public health emergency has underscored the importance of universally available, high-speed, reliable, and affordable broadband coverage as millions of Americans rely on the internet to participate in, among critical activities, remote school, healthcare, and work. Recognizing the need for such connectivity, the ARPA provides funds to State, territorial, local, and Tribal governments to make necessary investments in broadband infrastructure.

The National Telecommunications and Information Administration (NTIA) highlighted the growing necessity of broadband in daily lives through its analysis of NTIA Internet Use Survey data, noting that Americans turn to broadband Internet access service for every facet of daily life including work, study, and healthcare.[139] With increased use of technology for daily activities and the movement by many businesses and schools to operating remotely during the pandemic, broadband has become even more critical for people across the country to carry out their daily lives.

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[139] *See, e.g.,* https://www.ntia.gov/blog/2020/more-half-american-households-used-internet-health-related-activities-2019-ntia-data-show; https://www.ntia.gov/blog/2020/nearly-third-american-employees-worked-remotely-2019-ntia-data-show; and generally, https://www.ntia.gov/data/digital-nation-data-explorer.

By at least one measure, however, tens of millions of Americans live in areas where there is no broadband infrastructure that provides download speeds greater than 25 Mbps and upload speeds of 3 Mbps.[140] By contrast, as noted below, many households use upload and download speeds of 100 Mbps to meet their daily needs. Even in areas where broadband infrastructure exists, broadband access may be out of reach for millions of Americans because it is unaffordable, as the United States has some of the highest broadband prices in the Organisation for Economic Co-operation and Development (OECD).[141] There are disparities in availability as well; historically, Americans living in territories and Tribal lands as well as rural areas have disproportionately lacked sufficient broadband infrastructure.[142] Moreover, rapidly growing demand has, and will likely continue to, quickly outpace infrastructure capacity, a phenomenon acknowledged by various states around the country that have set scalability requirements to account for this anticipated growth in demand.[143]

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[140] As an example, data from the Federal Communications Commission shows that as of June 2020, 9.07 percent of the U.S. population had no available cable or fiber broadband providers providing greater than 25 Mbps download speeds and 3 Mbps upload speeds. Availability was significantly less for rural versus urban populations, with 35.57 percent of the rural population lacking such access, compared with 2.57 percent of the urban population. Availability was also significantly less for tribal versus non-tribal populations, with 35.93 percent of the tribal population lacking such access, compared with 8.74 of the non-tribal population. Federal Communications Commission, Fixed Broadband Deployment, https://broadbandmap.fcc.gov/#/ (last visited May 9, 2021).

[141] How Do U.S. Internet Costs Compare To The Rest Of The World?, BroadbandSearch Blog Post, *available at* https://www.broadbandsearch.net/blog/internet-costs-compared-worldwide.

[142] *See, e.g.,* Federal Communications Commission, Fourteenth Broadband Deployment Report, *available at* https://docs.fcc.gov/public/attachments/FCC-21-18A1.pdf.

[143] *See, e.g.,* Illinois Department of Commerce & Economic Opportunity, Broadband Grants, h (last visited May 9, 2021), https://www2.illinois.gov/dceo/ConnectIllinois/Pages/BroadbandGrants.aspx; Kansas Office of Broadband Development, Broadband Acceleration Grant, https://www.kansascommerce.gov/wp-content/uploads/2020/11/Broadband-Acceleration-Grant.pdf (last visited May 9, 2021); New York State Association of Counties, Universal Broadband: Deploying High Speed Internet Access in NYS (Jul. 2017), https://www.nysac.org/files/BroadbandUpdateReport2017(1).pdf.

The Interim Final Rule provides that eligible investments in broadband are those that are designed to provide services meeting adequate speeds and are provided to unserved and underserved households and businesses. Understanding that States, territories, localities, and Tribal governments have a wide range of varied broadband infrastructure needs, the Interim Final Rule provides award recipients with flexibility to identify the specific locations within their communities to be served and to otherwise design the project.

Under the Interim Final Rule, eligible projects are expected to be designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical upload and download speeds of 100 Mbps. There may be instances in which it would not be practicable for a project to deliver such service speeds because of the geography, topography, or excessive costs associated with such a project. In these instances, the affected project would be expected to be designed to deliver, upon project completion, service that reliably meets or exceeds 100 Mbps download and between at least 20 Mbps and 100 Mbps upload speeds and be scalable to a minimum of 100 Mbps symmetrical for download and upload speeds.[144] In setting these standards, Treasury identified speeds necessary to ensure that broadband infrastructure is sufficient to enable users to generally meet household needs, including the ability to support the simultaneous use of work, education, and health applications, and also sufficiently robust to meet increasing household demands for bandwidth. Treasury also recognizes that different communities and their members may have a broad range of internet needs and that those needs may change over time.

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[144] This scalability threshold is consistent with scalability requirements used in other jurisdictions. *Id.*

In considering the appropriate speed requirements for eligible projects, Treasury considered estimates of typical households demands during the pandemic. Using the Federal Communication Commission's (FCC) Broadband Speed Guide, for example, a household with two telecommuters and two to three remote learners today are estimated to need 100 Mbps download to work simultaneously.[145] In households with more members, the demands may be greater, and in households with fewer members, the demands may be less.

In considering the appropriate speed requirements for eligible projects, Treasury also considered data usage patterns and how bandwidth needs have changed over time for U.S. households and businesses as people's use of technology in their daily lives has evolved. In the few years preceding the pandemic, market research data showed that average upload speeds in the United States surpassed over 10 Mbps in 2017[146] and continued to increase significantly, with the average upload speed as of November, 2019 increasing to 48.41 Mbps,[147] attributable, in part to a shift to using broadband and the internet by individuals and businesses to create and share content using video sharing, video conferencing, and other applications.[148]

The increasing use of data accelerated markedly during the pandemic as households across the country became increasingly reliant on tools and applications that require greater

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[145] Federal Communications Commission, Broadband Speed Guide, https://www.fcc.gov/consumers/guides/broadband-speed-guide (last visited Apr. 30, 2021).

[146] Letter from Lisa R. Youngers, President and CEO of Fiber Broadband Association to FCC, WC Docket No. 19-126 (filed Jan. 3, 2020), including an Appendix with research from RVA LLC, *Data Review Of The Importance of Upload Speeds* (Jan. 2020), and Ookla speed test data, *available at https://ecfsapi.fcc.gov/file/101030085118517/FCC%20RDOF%20Jan%203%20Ex%20Parte.pdf.*

Additional information on historic growth in data usage is provided in Schools, Health & Libraries Broadband Coalition, *Common Sense Solutions for Closing the Digital Divide,* Apr. 29, 2021.

[147] *Id. See also* United States's Mobile and Broadband Internet Speeds - Speedtest Global Index, *available at* https://www.speedtest.net/global-index/united-states#fixed.

[148] *Id.*

internet capacity, both to download data but also to upload data. Sending information became as important as receiving it. A video consultation with a healthcare provider or participation by a child in a live classroom with a teacher and fellow students requires video to be sent and received simultaneously.[149] As an example, some video conferencing technology platforms indicate that download and upload speeds should be roughly equal to support two-way, interactive video meetings.[150] For both work and school, client materials or completed school assignments, which may be in the form of PDF files, videos, or graphic files, also need to be shared with others. This is often done by uploading materials to a collaboration site, and the upload speed available to a user can have a significant impact on the time it takes for the content to be shared with others.[151] These activities require significant capacity from home internet connections to both download and upload data, especially when there are multiple individuals in one household engaging in these activities simultaneously.

This need for increased broadband capacity during the pandemic was reflected in increased usage patterns seen over the last year. As OpenVault noted in recent advisories, the pandemic significantly increased the amount of data users consume. Among data users observed by OpenVault, per-subscriber average data usage for the fourth quarter of 2020 was 482.6 gigabytes per month, representing a 40 percent increase over the 344 gigabytes consumed in the fourth quarter of 2019 and a 26 percent increase over the third quarter 2020 average of

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[149] One high definition Zoom meeting or class requires approximately 3.8 Mbps/3.0 Mbps (up/down).

[150] *See, e.g.,* Zoom, System Requirements for Windows, macOS, and Linux, https://support.zoom.us/hc/en-us/articles/201362023-System-requirements-for-Windows-macOS-and-Linux#h_d278c327-e03d-4896-b19a-96a8f3c0c69c (last visited May 8, 2021).

[151] By one estimate, to upload a one gigabit video file to YouTube would take 15 minutes at an upload speed of 10 Mbps compared with 1 minute, 30 seconds at an upload speed of 100 Mbps, and 30 seconds at an upload speed of 300 Mbps. Reviews.org: What is Symmetrical Internet? (March 2020).

383.8 gigabytes.[152] OpenVault also noted significant increases in upstream usage among the data users it observed, with upstream data usage growing 63 percent – from 19 gigabytes to 31 gigabytes – between December, 2019 and December, 2020.[153] According to an OECD Broadband statistic from June 2020, the largest percentage of U.S. broadband subscribers have services providing speeds between 100 Mbps and 1 Gbps.[154]

Jurisdictions and Federal programs are increasingly responding to the growing demands of their communities for both heightened download and upload speeds. For example, Illinois now requires 100 Mbps symmetrical service as the construction standard for its state broadband grant programs. This standard is also consistent with speed levels, particularly download speed levels, prioritized by other Federal programs supporting broadband projects. Bids submitted as part of the FCC in its Rural Digital Opportunity Fund (RDOF), established to support the construction of broadband networks in rural communities across the country, are given priority if they offer faster service, with the service offerings of 100 Mbps download and

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[152] OVBI: Covid-19 Drove 15 percent Increase in Broadband Traffic in 2020, OpenVault, Quarterly Advisory, (Feb. 10, 2021), *available at* https://openvault.com/ovbi-covid-19-drove-51-increase-in-broadband-traffic-in-2020; *See* OpenVault's data set incorporates information on usage by subscribers across multiple continents, including North America and Europe. Additional data and detail on increases in the amount of data users consume and the broadband speeds they are using is provided in *OpenVault Broadband Insights Report Q4,* Quarterly Advisory (Feb. 10, 2021), *available at* https://openvault.com/complimentary-report-4q20/.

[153] OVBI Special Report: 202 Upstream Growth Nearly 4X of Pre-Pandemic Years, OpenVault, Quarterly Advisory, (April 1, 20201), *available at* https://openvault.com/ovbi-special-report-2020-upstream-growth-rate-nearly-4x-of-pre-pandemic-years/; Additional data is provided in *OpenVault Broadband Insights Pandemic Impact on Upstream Broadband Usage and Network Capacity*, *available at* https://openvault.com/upstream-whitepaper/.

[154] Organisation for Economic Co-operation and Development, Fixed broadband subscriptions per 100 inhabitants, per speed tiers (June 2020), https://www.oecd.org/sti/broadband/5.1-FixedBB-SpeedTiers-2020-06.xls www.oecd.org/sti/broadband/broadband-statistics.

20 Mbps upload being included in the "above baseline" performance tier set by the FCC.[155] The Broadband Infrastructure Program (BBIP)[156] of the Department of Commerce, which provides Federal funding to deploy broadband infrastructure to eligible service areas of the country also prioritizes projects designed to provide broadband service with a download speed of not less than 100 Mbps and an upload speed of not less than 20 Mbps.[157]

The 100 Mbps upload and download speeds will support the increased and growing needs of households and businesses. Recognizing that, in some instances, 100 Mbps upload speed may be impracticable due to geographical, topographical, or financial constraints, the Interim Final Rule permits upload speeds of between at least 20 Mbps and 100 Mbps in such instances. To provide for investments that will accommodate technologies requiring symmetry in download and upload speeds, as noted above, eligible projects that are not designed to deliver, upon project completion, service that reliably meets or exceeds symmetrical speeds of 100 Mbps because it would be impracticable to do so should be designed so that they can be scalable to such speeds. Recipients are also encouraged to prioritize investments in fiber optic infrastructure where feasible, as such advanced technology enables the next generation of application solutions for all communities.

Under the Interim Final Rule, eligible projects are expected to focus on locations that are unserved or underserved. The Interim Final Rule treats users as being unserved or underserved if they lack access to a wireline connection capable of reliably delivering at least minimum speeds

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[155] *Rural Digital Opportunity Fund*, Report and Order, 35 FCC Rcd 686, 690, para. 9 (2020), *available at* https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund-0.

[156] The BIPP was authorized by the Consolidated Appropriations Act, 2021, Section 905, Public Law 116-260, 134 Stat. 1182 (Dec. 27, 2020).

[157] Section 905(d)(4) of the Consolidated Appropriations Act, 2021.

of 25 Mbps download and 3 Mbps upload as households and businesses lacking this level of access are generally not viewed as being able to originate and receive high-quality voice, data, graphics, and video telecommunications. This threshold is consistent with the FCC's benchmark for an "advanced telecommunications capability."[158] This threshold is also consistent with thresholds used in other Federal programs to identify eligible areas to be served by programs to improve broadband services. For example, in the FCC's RDOF program, eligible areas include those without current (or already funded) access to terrestrial broadband service providing 25 Mbps download and 3 Mbps upload speeds.[159] The Department of Commerce's BBIP also considers households to be "unserved" generally if they lack access to broadband service with a download speed of not less than 25 Mbps download and 3 Mbps upload, among other conditions. In selecting an area to be served by a project, recipients are encouraged to avoid investing in locations that have existing agreements to build reliable wireline service with minimum speeds of 100 Mbps download and 20 Mbps upload by December 31, 2024, in order to avoid duplication of efforts and resources.

Recipients are also encouraged to consider ways to integrate affordability options into their program design. To meet the immediate needs of unserved and underserved households and businesses, recipients are encouraged to focus on projects that deliver a physical broadband connection by prioritizing projects that achieve last mile-connections. Treasury also encourages recipients to prioritize support for broadband networks owned, operated by, or affiliated with

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[158] *Deployment Report*, *supra* note 142.

[159] *Rural Digital Opportunity Fund*, *supra* note 156.

local governments, non-profits, and co-operatives—providers with less pressure to turn profits and with a commitment to serving entire communities.

Under sections 602(c)(1)(A) and 603(c)(1)(A), assistance to households facing negative economic impacts due to COVID-19 is also an eligible use, including internet access or digital literacy assistance. As discussed above, in considering whether a potential use is eligible under this category, a recipient must consider whether, and the extent to which, the household has experienced a negative economic impact from the pandemic.

Question 22: What are the advantages and disadvantages of setting minimum symmetrical download and upload speeds of 100 Mbps? What other minimum standards would be appropriate and why?

Question 23: Would setting such a minimum be impractical for particular types of projects? If so, where and on what basis should those projects be identified? How could such a standard be set while also taking into account the practicality of using this standard in particular types of projects? In addition to topography, geography, and financial factors, what other constraints, if any, are relevant to considering whether an investment is impracticable?

Question 24: What are the advantages and disadvantages of setting a minimum level of service at 100 Mbps download and 20 Mbps upload in projects where it is impracticable to set minimum symmetrical download and upload speeds of 100 Mbps? What are the advantages and disadvantages of setting a scalability requirement in these cases? What other minimum standards would be appropriate and why?

Question 25: What are the advantages and disadvantages of focusing these investments on those without access to a wireline connection that reliably delivers 25 Mbps download by 3 Mbps upload? Would another threshold be appropriate and why?

Question 26: What are the advantages and disadvantages of setting any particular threshold for identifying unserved or underserved areas, minimum speed standards or scalability minimum? Are there other standards that should be set (e.g., latency)? If so, why and how? How can such threshold, standards, or minimum be set in a way that balances the public's interest in making sure that reliable broadband services meeting the daily needs of all Americans are available throughout the country with the providing recipients flexibility to meet the varied needs of their communities?

III. Restrictions on Use

As discussed above, recipients have considerable flexibility to use Fiscal Recovery Funds to address the diverse needs of their communities. To ensure that payments from the Fiscal Recovery Funds are used for these congressionally permitted purposes, the ARPA includes two provisions that further define the boundaries of the statute's eligible uses. Section 602(c)(2)(A) of the Act provides that States and territories may not "use the funds … to either directly or indirectly offset a reduction in … net tax revenue … resulting from a change in law, regulation, or administrative interpretation during the covered period that reduces any tax … or delays the imposition of any tax or tax increase." In addition, sections 602(c)(2)(B) and 603(c)(2) prohibit any recipient, including cities, nonentitlement units of government, and counties, from using Fiscal Recovery Funds for deposit into any pension fund. These restrictions support the use of funds for the congressionally permitted purposes described in Section II of this Supplementary Information by providing a backstop against the use of funds for purposes outside of the eligible use categories.

These provisions give force to Congress's clear intent that Fiscal Recovery Funds be spent within the four eligible uses identified in the statute—(1) to respond to the public health

emergency and its negative economic impacts, (2) to provide premium pay to essential workers, (3) to provide government services to the extent of eligible governments' revenue losses, and (4) to make necessary water, sewer, and broadband infrastructure investments—and not otherwise. These four eligible uses reflect Congress's judgment that the Fiscal Recovery Funds should be expended in particular ways that support recovery from the COVID-19 public health emergency. The further restrictions reflect Congress's judgment that tax cuts and pension deposits do not fall within these eligible uses. The Interim Final Rule describes how Treasury will identify when such uses have occurred and how it will recoup funds put toward these impermissible uses and, as discussed in Section VIII of this Supplementary Information, establishes a reporting framework for monitoring the use of Fiscal Recovery Funds for eligible uses.

A. Deposit into Pension Funds

The statute provides that recipients may not use Fiscal Recovery Funds for "deposit into any pension fund." For the reasons discussed below, Treasury interprets "deposit" in this context to refer to an extraordinary payment into a pension fund for the purpose of reducing an accrued, unfunded liability. More specifically, the Interim Final Rule does not permit this assistance to be used to make a payment into a pension fund if both:

1. the payment reduces a liability incurred prior to the start of the COVID-19 public health emergency, and
2. the payment occurs outside the recipient's regular timing for making such payments.

Under this interpretation, a "deposit" is distinct from a "payroll contribution," which occurs when employers make payments into pension funds on regular intervals, with contribution amounts based on a pre-determined percentage of employees' wages and salaries.

As discussed above, eligible uses for premium pay and responding to the negative economic impacts of the COVID-19 public health emergency include hiring and compensating public sector employees. Interpreting the scope of "deposit" to exclude contributions that are part of payroll contributions is more consistent with these eligible uses and would reduce administrative burden for recipients. Accordingly, if an employee's wages and salaries are an eligible use of Fiscal Recovery Funds, recipients may treat the employee's covered benefits as an eligible use of Fiscal Recovery Funds. For purposes of the Fiscal Recovery Funds, covered benefits include costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (Federal and State), workers' compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes).

Treasury anticipates that this approach to employees' covered benefits will be comprehensive and, for employees whose wage and salary costs are eligible expenses, will allow all covered benefits listed in the previous paragraph to be eligible under the Fiscal Recovery Funds. Treasury expects that this will minimize the administrative burden on recipients by treating all the specified covered benefit types as eligible expenses, for employees whose wage and salary costs are eligible expenses.

Question 27: Beyond a "deposit" and a "payroll contribution," are there other types of payments into a pension fund that Treasury should consider?

B. Offset a Reduction in Net Tax Revenue

For States and territories (recipient governments[160]), section 602(c)(2)(A)—the offset provision—prohibits the use of Fiscal Recovery Funds to directly or indirectly offset a reduction in net tax revenue resulting from a change in law, regulation, or administrative interpretation[161] during the covered period. If a State or territory uses Fiscal Recovery Funds to offset a reduction in net tax revenue, the ARPA provides that the State or territory must repay to the Treasury an amount equal to the lesser of (i) the amount of the applicable reduction attributable to the impermissible offset and (ii) the amount received by the State or territory under the ARPA. *See* Section IV of this Supplementary Information. As discussed below Section IV of this Supplementary Information, a State or territory that chooses to use Fiscal Recovery Funds to offset a reduction in net tax revenue does not forfeit its entire allocation of Fiscal Recovery Funds (unless it misused the full allocation to offset a reduction in net tax revenue) or any non-ARPA funding received.

The Interim Final Rule implements these conditions by establishing a framework for States and territories to determine the cost of changes in law, regulation, or interpretation that reduce tax revenue and to identify and value the sources of funds that will offset—i.e., cover the cost of—any reduction in net tax revenue resulting from such changes. A recipient government would only be considered to have used Fiscal Recovery Funds to offset a reduction in net tax revenue resulting from changes in law, regulation, or interpretation if, and to the extent that, the

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[160] In this sub-section, "recipient governments" refers only to States and territories. In other sections, "recipient governments" refers more broadly to eligible governments receiving funding from the Fiscal Recovery Funds.

[161] For brevity, referred to as "changes in law, regulation, or interpretation" for the remainder of this preamble.

recipient government could not identify sufficient funds from sources other than the Fiscal Recovery Funds to offset the reduction in net tax revenue. If sufficient funds from other sources cannot be identified to cover the full cost of the reduction in net tax revenue resulting from changes in law, regulation, or interpretation, the remaining amount not covered by these sources will be considered to have been offset by Fiscal Recovery Funds, in contravention of the offset provision. The Interim Final Rule recognizes three sources of funds that may offset a reduction in net tax revenue other than Fiscal Recovery Funds—organic growth, increases in revenue (e.g., an increase in a tax rate), and certain cuts in spending.

In order to reduce burden, the Interim Final Rule's approach also incorporates the types of information and modeling already used by States and territories in their own fiscal and budgeting processes. By incorporating existing budgeting processes and capabilities, States and territories will be able to assess and evaluate the relationship of tax and budget decisions to uses of the Fiscal Recovery Funds based on information they likely have or can obtain. This approach ensures that recipient governments have the information they need to understand the implications of their decisions regarding the use of the Fiscal Recovery Funds—and, in particular, whether they are using the funds to directly or indirectly offset a reduction in net tax revenue, making them potentially subject to recoupment.

Reporting on both the eligible uses and on a State's or territory's covered tax changes that would reduce tax revenue will enable identification of, and recoupment for, use of Fiscal Recovery Funds to directly offset reductions in tax revenue resulting from tax relief. Moreover, this approach recognizes that, because money is fungible, even if Fiscal Recovery Funds are not explicitly or directly used to cover the costs of changes that reduce net tax revenue, those funds may be used in a manner inconsistent with the statute by indirectly being used to substitute for

the State's or territory's funds that would otherwise have been needed to cover the costs of the reduction. By focusing on the cost of changes that reduce net tax revenue—and how a recipient government is offsetting those reductions in constructing its budget over the covered period—the framework prevents efforts to use Fiscal Recovery Funds to indirectly offset reductions in net tax revenue for which the recipient government has not identified other offsetting sources of funding.

As discussed in greater detail below in this preamble, the framework set forth in the Interim Final Rule establishes a step-by-step process for determining whether, and the extent to which, Fiscal Recovery Funds have been used to offset a reduction in net tax revenue. Based on information reported annually by the recipient government:

- First, each year, each recipient government will identify and value the changes in law, regulation, or interpretation that would result in a reduction in net tax revenue, as it would in the ordinary course of its budgeting process. The sum of these values in the year for which the government is reporting is the amount it needs to "pay for" with sources other than Fiscal Recovery Funds (total value of revenue reducing changes).
- Second, the Interim Final Rule recognizes that it may be difficult to predict how a change would affect net tax revenue in future years and, accordingly, provides that if the total value of the changes in the year for which the recipient government is reporting is below a de minimis level, as discussed below, the recipient government need not identify any sources of funding to pay for revenue reducing changes and will not be subject to recoupment.
- Third, a recipient government will consider the amount of actual tax revenue recorded in the year for which they are reporting. If the recipient government's actual tax revenue is

greater than the amount of tax revenue received by the recipient for the fiscal year ending 2019, adjusted annually for inflation, the recipient government will not be considered to have violated the offset provision because there will not have been a reduction in net tax revenue.

- Fourth, if the recipient government's actual tax revenue is less than the amount of tax revenue received by the recipient government for the fiscal year ending 2019, adjusted annually for inflation, in the reporting year the recipient government will identify any sources of funds that have been used to permissibly offset the total value of covered tax changes other than Fiscal Recovery Funds. These are:
    - State or territory tax changes that would increase any source of general fund revenue, such as a change that would increase a tax rate; and
    - Spending cuts in areas not being replaced by Fiscal Recovery Funds.

  The recipient government will calculate the value of revenue reduction remaining after applying these sources of offsetting funding to the total value of revenue reducing changes—that, is, how much of the tax change has not been paid for. The recipient government will then compare that value to the difference between the baseline and actual tax revenue. A recipient government will not be required to repay to the Treasury an amount that is greater than the recipient government's actual tax revenue shortfall relative to the baseline (i.e., fiscal year 2019 tax revenue adjusted for inflation). This "revenue reduction cap," together with Step 3, ensures that recipient governments can use organic revenue growth to offset the cost of revenue reductions.

- Finally, if there are any amounts that could be subject to recoupment, Treasury will provide notice to the recipient government of such amounts. This process is discussed in greater detail in Section IV of this Supplementary Information.

Together, these steps allow Treasury to identify the amount of reduction in net tax revenue that both is attributable to covered changes and has been directly or indirectly offset with Fiscal Recovery Funds. This process ensures Fiscal Recovery Funds are used in a manner consistent with the statute's defined eligible uses and the offset provision's limitation on these eligible uses, while avoiding undue interference with State and territory decisions regarding tax and spending policies.

The Interim Final Rule also implements a process for recouping Fiscal Recovery Funds that were used to offset reductions in net tax revenue, including the calculation of any amounts that may be subject to recoupment, a process for a recipient government to respond to a notice of recoupment, and clarification regarding amounts excluded from recoupment. *See* Section IV of this Supplementary Information.

The Interim Final Rule includes several definitions that are applicable to the implementation of the offset provision.

Covered change. The offset provision is triggered by a reduction in net tax revenue resulting from "a change in law, regulation, or administrative interpretation." A covered change includes any final legislative or regulatory action, a new or changed administrative interpretation, and the phase-in or taking effect of any statute or rule where the phase-in or taking effect was not prescribed prior to the start of the covered period. Changed administrative interpretations would not include corrections to replace prior inaccurate interpretations; such corrections would instead be treated as changes implementing legislation enacted or regulations issued prior to the covered

period; the operative change in those circumstances is the underlying legislation or regulation that occurred prior to the covered period. Moreover, only the changes within the control of the State or territory are considered covered changes. Covered changes do not include a change in rate that is triggered automatically and based on statutory or regulatory criteria in effect prior to the covered period. For example, a state law that sets its earned income tax credit (EITC) at a fixed percentage of the Federal EITC will see its EITC payments automatically increase—and thus its tax revenue reduced—because of the Federal government's expansion of the EITC in the ARPA.[162] This would not be considered a covered change. In addition, the offset provision applies only to actions for which the change in policy occurs during the covered period; it excludes regulations or other actions that implement a change or law substantively enacted prior to March 3, 2021. Finally, Treasury has determined and previously announced that income tax changes—even those made during the covered period—that simply conform with recent changes in Federal law (including those to conform to recent changes in Federal taxation of unemployment insurance benefits and taxation of loan forgiveness under the Paycheck Protection Program) are permissible under the offset provision.

Baseline. For purposes of measuring a reduction in net tax revenue, the Interim Final Rule measures actual changes in tax revenue relative to a revenue baseline (baseline). The baseline will be calculated as fiscal year 2019 (FY 2019) tax revenue indexed for inflation in

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[162] *See, e.g.*, Tax Policy Center, How do state earned income tax credits work?, https://www.taxpolicycenter.org/briefing-book/how-do-state-earned-income-tax-credits-work/ (last visited May 9, 2021).

each year of the covered period, with inflation calculated using the Bureau of Economic Analysis's Implicit Price Deflator.[163]

FY 2019 was chosen as the starting year for the baseline because it is the last full fiscal year prior to the COVID-19 public health emergency.[164] This baseline year is consistent with the approach directed by the ARPA in sections 602(c)(1)(C) and 603(c)(1)(C), which identify the "most recent full fiscal year of the [State, territory, or Tribal government] prior to the emergency" as the comparator for measuring revenue loss. U.S. gross domestic product is projected to rebound to pre-pandemic levels in 2021,[165] suggesting that an FY 2019 pre-pandemic baseline is a reasonable comparator for future revenue levels. The FY 2019 baseline revenue will be adjusted annually for inflation to allow for direct comparison of actual tax revenue in each year (reported in nominal terms) to baseline revenue in common units of measurement; without inflation adjustment, each dollar of reported actual tax revenue would be worth less than each dollar of baseline revenue expressed in 2019 terms.

Reporting year. The Interim Final Rule defines "reporting year" as a single year within the covered period, aligned to the current fiscal year of the recipient government during the covered period, for which a recipient government reports the value of covered changes and any sources of offsetting revenue increases ("in-year" value), regardless of when those changes were enacted. For the fiscal years ending in 2021 or 2025 (partial years), the term "reporting year"

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[163] U.S. Department of Commerce, Bureau of Economic Analysis, GDP Price Deflator, https://www.bea.gov/data/prices-inflation/gdp-price-deflator (last visited May 9, 2021).

[164] Using Fiscal Year 2019 is consistent with section 602 as Congress provided for using that baseline for determining the impact of revenue loss affecting the provision of government services. *See* section 602(c)(1)(C).

[165] Congressional Budget Office, An Overview of the Economic Outlook: 2021 to 2031 (February 1, 2021), *available at* https://www.cbo.gov/publication/56965.

refers to the portion of the year falling within the covered period. For example, the reporting year for a fiscal year beginning July 2020 and ending June 2021 would be from March 3, 2021 to July 2021.

Tax revenue. The Interim Final Rule's definition of "tax revenue" is based on the Census Bureau's definition of taxes, used for its Annual Survey of State Government Finances.[166] It provides a consistent, well-established definition with which States and territories will be familiar and is consistent with the approach taken in Section II.C of this Supplementary Information describing the implementation of sections 602(c)(1)(C) and 603(c)(1)(C) of the Act, regarding revenue loss. Consistent with the approach described in Section II.C of this Supplementary Information, tax revenue does not include revenue taxed and collected by a different unit of government (e.g., revenue from taxes levied by a local government and transferred to a recipient government).

Framework. The Interim Final Rule provides a step-by-step framework, to be used in each reporting year, to calculate whether the offset provision applies to a State's or territory's use of Fiscal Recovery Funds:

(1) *Covered changes that reduce tax revenue.* For each reporting year, a recipient government will identify and value covered changes that the recipient government predicts will have the effect of reducing tax revenue in a given reporting year, similar to the way it would in the ordinary course of its budgeting process. The value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient government's existing approach for measuring the

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[166] U.S. Census Bureau, Annual Survey of State and Local Government Finances Glossary, https://www.census.gov/programs-surveys/state/about/glossary.html (last visited Apr. 30, 2021).

effects of fiscal policies, and that measures relative to a current law baseline. The covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s). Further, estimation approaches should not use dynamic methodologies that incorporate the projected effects of macroeconomic growth because macroeconomic growth is accounted for separately in the framework. Relative to these dynamic scoring methodologies, scoring methodologies that do not incorporate projected effects of macroeconomic growth rely on fewer assumptions and thus provide greater consistency among States and territories. Dynamic scoring that incorporates macroeconomic growth may also increase the likelihood of underestimation of the cost of a reduction in tax revenue.

In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. This approach offers recipient governments the flexibility to determine their reporting methodology based on their existing budget scoring practices and capabilities. In addition, the approach of using the projected value of changes in law that enact fiscal policies to estimate the net effect of such policies is consistent with the way many States and territories already consider tax changes.[167]

(2) *In excess of the de minimis*. The recipient government will next calculate the total value of all covered changes in the reporting year resulting in revenue reductions, identified in Step 1. If the total value of the revenue reductions resulting from these changes is below the de

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[167] *See, e.g.,* Megan Randall & Kim Rueben, Tax Policy Center, Sustainable Budgeting in the States: Evidence on State Budget Institutions and Practices (Nov. 2017), *available at* https://www.taxpolicycenter.org/sites/default/files/publication/149186/sustainable-budgeting-in-the-states_1.pdf.

minimis level, the recipient government will be deemed not to have any revenue-reducing changes for the purpose of determining the recognized net reduction. If the total is above the de minimis level, the recipient government must identify sources of in-year revenue to cover the full costs of changes that reduce tax revenue.

The de minimis level is calculated as 1 percent of the reporting year's baseline. Treasury recognizes that, pursuant to their taxing authority, States and territories may make many small changes to alter the composition of their tax revenues or implement other policies with marginal effects on tax revenues. They may also make changes based on projected revenue effects that turn out to differ from actual effects, unintentionally resulting in minor revenue changes that are not fairly described as "resulting from" tax law changes. The de minimis level recognizes the inherent challenges and uncertainties that recipient governments face, and thus allows relatively small reductions in tax revenue without consequence. Treasury determined the 1 percent level by assessing the historical effects of state-level tax policy changes in state EITCs implemented to effect policy goals other than reducing net tax revenues.[168] The 1 percent de minimis level reflects the historical reductions in revenue due to minor changes in state fiscal policies.

(3) *Safe harbor.* The recipient government will then compare the reporting year's actual tax revenue to the baseline. If actual tax revenue is greater than the baseline, Treasury will deem the recipient government not to have any recognized net reduction for the reporting year, and therefore to be in a safe harbor and outside the ambit of the offset provision. This approach is consistent with the ARPA, which contemplates recoupment of Fiscal Recovery Funds only in the event that such funds are used to offset a reduction in net tax revenue. If net tax revenue has not

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[168] Data provided by the Urban-Brookings Tax Policy Center for state-level EITC changes for 2004-2017.

been reduced, this provision does not apply. In the event that actual tax revenue is above the baseline, the organic revenue growth that has occurred, plus any other revenue-raising changes, by definition must have been enough to offset the in-year costs of the covered changes.

(4) *Consideration of other sources of funding.* Next, the recipient government will identify and calculate the total value of changes that could pay for revenue reduction due to covered changes and sum these items. This amount can be used to pay for up to the total value of revenue-reducing changes in the reporting year. These changes consist of two categories:

(a) *Tax and other increases in revenue.* The recipient government must identify and consider covered changes in policy that the recipient government predicts will have the effect of increasing general revenue in a given reporting year. As when identifying and valuing covered changes that reduce tax revenue, the value of revenue-raising changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, aligned with the recipient government's existing approach for measuring the effects of fiscal policies, and measured relative to a current law baseline, or based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s). Further, and as discussed above, estimation approaches should not use dynamic scoring methodologies that incorporate the effects of macroeconomic growth because growth is accounted for separately under the Interim Final Rule. In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. This approach offers recipient governments the flexibility to determine their reporting methodology based on their existing budget scoring practices and capabilities.

(b) *Covered spending cuts.* A recipient government also may cut spending in certain areas to pay for covered changes that reduce tax revenue, up to the amount of the recipient government's net reduction in total spending as described below. These changes must be reductions in government outlays not in an area where the recipient government has spent Fiscal Recovery Funds. To better align with existing reporting and accounting, the Interim Final Rule considers the department, agency, or authority from which spending has been cut and whether the recipient government has spent Fiscal Recovery Funds on that same department, agency, or authority. This approach was selected to allow recipient governments to report how Fiscal Recovery Funds have been spent using reporting units already incorporated into their budgeting process. If they have not spent Fiscal Recovery Funds in a department, agency, or authority, the full amount of the reduction in spending counts as a covered spending cut, up to the recipient government's net reduction in total spending. If they have, the Fiscal Recovery Funds generally would be deemed to have replaced the amount of spending cut and only reductions in spending above the amount of Fiscal Recovery Funds spent on the department, agency, or authority would count.

To calculate the amount of spending cuts that are available to offset a reduction in tax revenue, the recipient government must first consider whether there has been a reduction in total net spending, excluding Fiscal Recovery Funds (net reduction in total spending). This approach ensures that reported spending cuts actually create fiscal space, rather than simply offsetting other spending increases. A net reduction in total spending is measured as the difference between total spending in each reporting year, excluding Fiscal Recovery Funds spent, relative to total spending for the recipient's fiscal year ending in 2019, adjusted for inflation. Measuring reductions in spending relative to 2019 reflects the fact that the fiscal space created by a

spending cut persists so long as spending remains below its original level, even if it does not decline further, relative to the same amount of revenue. Measuring spending cuts from year to year would, by contrast, not recognize any available funds to offset revenue reductions unless spending continued to decline, failing to reflect the actual availability of funds created by a persistent change and limiting the discretion of States and territories. In general and where possible, reporting should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. Treasury chose this approach because while many recipient governments may score budget legislation using projections, spending cuts are readily observable using actual values.

This approach—allowing only spending reductions in areas where the recipient government has not spent Fiscal Recovery Funds to be used as an offset for a reduction in net tax revenue—aims to prevent recipient governments from using Fiscal Recovery Funds to supplant State or territory funding in the eligible use areas, and then use those State or territory funds to offset tax cuts. Such an approach helps ensure that Fiscal Recovery Funds are not used to "indirectly" offset revenue reductions due to covered changes.

In order to help ensure recipient governments use Fiscal Recovery Funds in a manner consistent with the prescribed eligible uses and do not use Fiscal Recovery Funds to indirectly offset a reduction in net tax revenue resulting from a covered change, Treasury will monitor changes in spending throughout the covered period. If, over the course of the covered period, a spending cut is subsequently replaced with Fiscal Recovery Funds and used to indirectly offset a reduction in net tax revenue resulting from a covered change, Treasury may consider such change to be an evasion of the restrictions of the offset provision and seek recoupment of such amounts.

(5) *Identification of amounts subject to recoupment.* If a recipient government (i) reports covered changes that reduce tax revenue (Step 1); (ii) to a degree greater than the de minimis (Step 2); (iii) has experienced a reduction in net tax revenue (Step 3); and (iv) lacks sufficient revenue from other, permissible sources to pay for the entirety of the reduction (Step 4), then the recipient government will be considered to have used Fiscal Recovery Funds to offset a reduction in net tax revenue, up to the amount that revenue has actually declined. That is, the maximum value of reduction in revenue due to covered changes which a recipient government must cover is capped at the difference between the baseline and actual tax revenue.[169] In the event that the baseline is above actual tax revenue and the difference between them is less than the sum of revenue reducing changes that are not paid for with other, permissible sources, organic revenue growth has implicitly offset a portion of the reduction. For example, if a recipient government reduces tax revenue by $1 billion, makes no other changes, and experiences revenue growth driven by organic economic growth worth $500 million, it need only pay for the remaining $500 million with sources other than Fiscal Recovery Funds. The revenue reduction cap implements this approach for permitting organic revenue growth to cover the cost of tax cuts.

Finally, as discussed further in Section IV of this Supplementary Information, a recipient government may request reconsideration of any amounts identified as subject to recoupment under this framework. This process ensures that all relevant facts and circumstances, including information regarding planned spending cuts and budgeting assumptions, are considered prior to a determination that an amount must be repaid. Amounts subject to recoupment are calculated

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[169] This cap is applied in section 35.8(c) of the Interim Final Rule, calculating the amount of funds used in violation of the tax offset provision.

on an annual basis; amounts recouped in one year cannot be returned if the State or territory subsequently reports an increase in net tax revenue.

To facilitate the implementation of the framework above, and in addition to reporting required on eligible uses, in each year of the reporting period, each State and territory will report to Treasury the following items:

- Actual net tax revenue for the reporting year;
- Each revenue-reducing change made to date during the covered period and the in-year value of each change;
- Each revenue-raising change made to date during the covered period and the in-year value of each change;
- Each covered spending cut made to date during the covered period, the in-year value of each cut, and documentation demonstrating that each spending cut is covered as prescribed under the Interim Final Rule;

Treasury will provide additional guidance and instructions the reporting requirements at a later date.

Question 28: Does the Interim Final Rule's definition of tax revenue accord with existing State and territorial practice and, if not, are there other definitions or elements Treasury should consider? Discuss why or why not.

Question 29: The Interim Final Rule permits certain spending cuts to cover the costs of reductions in tax revenue, including cuts in a department, agency, or authority in which the recipient government is not using Fiscal Recovery Funds. How should Treasury and recipient governments consider the scope of a department, agency, or authority for the use of funds to

ensure spending cuts are not being substituted with Fiscal Recovery Funds while also avoiding an overbroad definition of that captures spending that is, in fact, distinct?

Question 30: Discuss the budget scoring methodologies currently used by States and territories. How should the Interim Final Rule take into consideration differences in approaches? Please discuss the use of practices including but not limited to macrodynamic scoring, microdynamic scoring, and length of budget windows.

Question 31: If a recipient government has a balanced budget requirement, how will that requirement impact its use of Fiscal Recovery Funds and ability to implement this framework?

Question 32: To implement the framework described above, the Interim Final Rule establishes certain reporting requirements. To what extent do recipient governments already produce this information and on what timeline? Discuss ways that Treasury and recipient governments may better rely on information already produced, while ensuring a consistent application of the framework.

Question 33: Discuss States' and territories' ability to produce the figures and numbers required for reporting under the Interim Final Rule. What additional reporting tools, such as a standardized template, would facilitate States' and territories' ability to complete the reporting required under the Interim Final Rule?

C. Other Restrictions on Use

Payments from the Fiscal Recovery Funds are also subject to pre-existing limitations provided in other Federal statutes and regulations and may not be used as non-Federal match for other Federal programs whose statute or regulations bar the use of Federal funds to meet

matching requirements. For example, payments from the Fiscal Recovery Funds may not be used to satisfy the State share of Medicaid.[170]

As provided for in the award terms, payments from the Fiscal Recovery Funds as a general matter will be subject to the provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200) (the Uniform Guidance), including the cost principles and restrictions on general provisions for selected items of cost.

D. Timeline for Use of Fiscal Recovery Funds

Section 602(c)(1) and section 603(c)(1) require that payments from the Fiscal Recovery Funds be used only to cover costs incurred by the State, territory, Tribal government, or local government by December 31, 2024. Similarly, the CARES Act provided that payments from the CRF be used to cover costs incurred by December 31, 2021.[171] The definition of "incurred" does not have a clear meaning. With respect to the CARES Act, on the understanding that the CRF was intended to be used to meet relatively short-term needs, Treasury interpreted this requirement to mean that, for a cost to be considered to have been incurred, performance of the service or delivery of the goods acquired must occur by December 31, 2021. In contrast, the ARPA, passed at a different stage of the COVID-19 public health emergency, was intended to provide more general fiscal relief over a broader timeline. In addition, the ARPA expressly permits the use of Fiscal Recovery Funds for improvements to water, sewer, and broadband infrastructure, which entail a longer timeframe. In recognition of this, Treasury is interpreting

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[170] *See* 42 CFR 433.51 and 45 CFR 75.306.

[171] Section 1001 of Division N of the Consolidated Appropriations Act, 2021 amended section 601(d)(3) of the Act by extending the end of the covered period for CRF expenditures from December 30, 2020 to December 31, 2021.

the requirement in section 602 and section 603 that costs be incurred by December 31, 2024, to require only that recipients have obligated the Fiscal Recovery Funds by such date. The Interim Final Rule adopts a definition of "obligation" that is based on the definition used for purposes of the Uniform Guidance, which will allow for uniform administration of this requirement and is a definition with which most recipients will be familiar.

Payments from the Fiscal Recovery Funds are grants provided to recipients to mitigate the fiscal effects of the COVID-19 public health emergency and to respond to the public health emergency, consistent with the eligible uses enumerated in sections 602(c)(1) and 603(c)(1).[172] As such, these funds are intended to provide economic stimulus in areas still recovering from the economic effects of the pandemic. In implementing and interpreting these provisions, including what it means to "respond to" the COVID-19 public health emergency, Treasury takes into consideration pre-pandemic facts and circumstances (e.g., average revenue growth prior to the pandemic) as well as impact of the pandemic that predate the enactment of the ARPA (e.g., replenishing Unemployment Trust balances drawn during the pandemic). While assessing the effects of the COVID-19 public health emergency necessarily takes into consideration the facts and circumstances that predate the ARPA, use of Fiscal Recovery Funds is forward looking.

As discussed above, recipients are permitted to use payments from the Fiscal Recovery Funds to respond to the public health emergency, to respond to workers performing essential work by providing premium pay or providing grants to eligible employers, and to make necessary investments in water, sewer, or broadband infrastructure, which all relate to prospective uses. In addition, sections 602(c)(1)(C) and 603(c)(1)(C) permit recipients to use

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[172] §§ 602(a), 603(a), 602(c)(1) and 603(c)(1) of the Act.

Fiscal Recovery Funds for the provision of government services. This clause provides that the amount of funds that may be used for this purpose is measured by reference to the reduction in revenue due to the public health emergency relative to revenues collected in the most recent full fiscal year, but this reference does not relate to the period during which recipients may use the funds, which instead refers to prospective uses, consistent with the other eligible uses.

Although as discussed above the eligible uses of payments from the Fiscal Recovery Funds are all prospective in nature, Treasury considers the beginning of the covered period for purposes of determining compliance with section 602(c)(2)(A) to be the relevant reference point for this purpose. The Interim Final Rule thus permits funds to be used to cover costs incurred beginning on March 3, 2021. This aligns the period for use of Fiscal Recovery Funds with the period during which these funds may not be used to offset reductions in net tax revenue. Permitting Fiscal Recovery Funds to be used to cover costs incurred beginning on this date will also mean that recipients that began incurring costs in the anticipation of enactment of the ARPA and in advance of the issuance of this rule and receipt of payment from the Fiscal Recovery Funds would be able to cover them using these payments.[173]

As set forth in the award terms, the period of performance will run until December 31, 2026, which will provide recipients a reasonable amount of time to complete projects funded with payments from the Fiscal Recovery Funds.

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[173] Given the nature of this program, recipients will not be permitted to use funds to cover pre-award costs, *i.e.*, those incurred prior to March 3, 2021.

IV. Recoupment Process

Under the ARPA, failure to comply with the restrictions on use contained in sections 602(c) and 603(c) of the Act may result in recoupment of funds.[174] The Interim Final Rule implements these provisions by establishing a process for recoupment.

Identification and Notice of Violations. Failure to comply with the restrictions on use will be identified based on reporting provided by the recipient. As discussed further in Sections III.B and VIII of this Supplementary Information, Treasury will collect information regarding eligible uses on a quarterly basis and on the tax offset provision on an annual basis. Treasury also may consider other information in identifying a violation, such as information provided by members of the public. If Treasury identifies a violation, it will provide written notice to the recipient along with an explanation of such amounts.

Request for Reconsideration. Under the Interim Final Rule, a recipient may submit a request for reconsideration of any amounts identified in the notice provided by Treasury. This reconsideration process provides a recipient the opportunity to submit additional information it believes supports its request in light of the notice of recoupment, including, for example, additional information regarding the recipient's use of Fiscal Recovery Funds or its tax revenues. The process also provides the Secretary with an opportunity to consider all information relevant to whether a violation has occurred, and if so, the appropriate amount for recoupment.

The Interim Final Rule also establishes requirements for the timing of a request for reconsideration. Specifically, if a recipient wishes to request reconsideration of any amounts identified in the notice, the recipient must submit a written request for reconsideration to the

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[174] §§ 602(e) and 603(e) of the Act.

Secretary within 60 calendar days of receipt of such notice. The request must include an explanation of why the recipient believes that the finding of a violation or recoupable amount identified in the notice of recoupment should be reconsidered. To facilitate the Secretary's review of a recipient's request for reconsideration, the request should identify all supporting reasons for the request. Within 60 calendar days of receipt of the recipient's request for reconsideration, the recipient will be notified of the Secretary's decision to affirm, withdraw, or modify the notice of recoupment. Such notification will include an explanation of the decision, including responses to the recipient's supporting reasons and consideration of additional information provided.

The process and timeline established by the Interim Final Rule are intended to provide the recipient with an adequate opportunity to fully present any issues or arguments in response to the notice of recoupment.[175] This process will allow the Secretary to respond to the issues and considerations raised in the request for reconsideration taking into account the information and arguments presented by the recipient along with any other relevant information.

Repayment. Finally, the Interim Final Rule provides that any amounts subject to recoupment must be repaid within 120 calendar days of receipt of any final notice of recoupment or, if the recipient has not requested reconsideration, within 120 calendar days of the initial notice provided by the Secretary.

Question 34: Discuss the timeline for requesting reconsideration under the Interim Final Rule. What, if any, challenges does this timeline present?

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[175] The Interim Final Rule also provides that Treasury may extend any deadlines.

V. Payments in Tranches to Local Governments and Certain States

Section 603 of the Act provides that the Secretary will make payments to local governments in two tranches, with the second tranche being paid twelve months after the first payment. In addition, section 602(b)(6)(A)(ii) provides that the Secretary may withhold payment of up to 50 percent of the amount allocated to each State and territory for a period of up to twelve months from the date on which the State or territory provides its certification to the Secretary. Any such withholding for a State or territory is required to be based on the unemployment rate in the State or territory as of the date of the certification.

The Secretary has determined to provide in this Interim Final Rule for withholding of 50 percent of the amount of Fiscal Recovery Funds allocated to all States (and the District of Columbia) other than those with an unemployment rate that is 2.0 percentage points or more above its pre-pandemic (i.e., February 2020) level. The Secretary will refer to the latest available monthly data from the Bureau of Labor Statistics as of the date the certification is provided. Based on data available at the time of public release of this Interim Final Rule, this threshold would result in a majority of States being paid in two tranches.

Splitting payments for the majority of States is consistent with the requirement in section 603 of the Act to make payments from the Coronavirus Local Fiscal Recovery Fund to local governments in two tranches. [176] Splitting payments to States into two tranches will help

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[176] With respect to Federal financial assistance more generally, States are subject to the requirements of the Cash Management Improvement Act (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 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 the Fiscal Recovery Funds. 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.

encourage recipients to adapt, as necessary, to new developments that could arise over the coming twelve months, including potential changes to the nature of the public health emergency and its negative economic impacts. While the U.S. economy has been recovering and adding jobs in aggregate, there is still considerable uncertainty in the economic outlook and the interaction between the pandemic and the economy.[177] For these reasons, Treasury believes it will be appropriate for a majority of recipients to adapt their plans as the recovery evolves. For example, a faster-than-expected economic recovery in 2021 could lead a recipient to dedicate more Fiscal Recovery Funds to longer-term investments starting in 2022. In contrast, a slower-than-expected economic recovery in 2021 could lead a recipient to use additional funds for near-term stimulus in 2022.

At the same time, the statute contemplates the possibility that elevated unemployment in certain States could justify a single payment. Elevated unemployment is indicative of a greater need to assist unemployed workers and stimulate a faster economic recovery. For this reason, the Interim Final Rule provides that States and territories with an increase in their unemployment rate over a specified threshold may receive a single payment, with the expectation that a single tranche will better enable these States and territories to take additional immediate action to aid the unemployed and strengthen their economies.

Following the initial pandemic-related spike in unemployment in 2020, States' unemployment rates have been trending back towards pre-pandemic levels. However, some States' labor markets are healing more slowly than others. Moreover, States varied widely in

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[177] The potential course of the virus, and its impact on the economy, has contributed to a heightened degree of uncertainty relative to prior periods. *See, e.g.*, Dave Altig et al., Economic uncertainty before and during the COVID-19 pandemic, J. of Public Econ. (Nov. 2020), *available at* https://www.sciencedirect.com/science/article/abs/pii/S0047272720301389

their pre-pandemic levels of unemployment, and some States remain substantially further from their pre-pandemic starting point. Consequently, Treasury is delineating States with significant remaining elevation in the unemployment rate, based on the net difference to pre-pandemic levels.

Treasury has established that significant remaining elevation in the unemployment rate is a net change in the unemployment rate of 2.0 percentage points or more relative to pre-pandemic levels. In the four previous recessions going back to the early 1980s, the national unemployment rate rose by 3.6, 2.3, 2.0, and 5.0 percentage points, as measured from the start of the recession to the eventual peak during or immediately following the recession.[178] Each of these increases can therefore represent a recession's impact on unemployment. To identify States with significant remaining elevation in unemployment, Treasury took the lowest of these four increases, 2.0 percentage points, to indicate states where, despite improvement in the unemployment rate, current labor market conditions are consistent still with a historical benchmark for a recession.

No U.S. territory will be subject to withholding of its payment from the Fiscal Recovery Funds. For Puerto Rico, the Secretary has determined that the current level of the unemployment rate (8.8 percent, as of March 2021[179]) is sufficiently high such that Treasury should not withhold any portion of its payment from the Fiscal Recovery Funds regardless of its change in

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[178] Includes the period during and immediately following recessions, as defined by the National Bureau of Economic Research. National Bureau of Economic Research, US Business Cycle Expansions and Contractions, https://www.nber.org/research/data/us-business-cycle-expansions-and-contractions (last visited Apr. 27, 20201). Based on data from U.S. Bureau of Labor Statistics, Unemployment Rate [UNRATE], retrieved from FRED, Federal Reserve Bank of St. Louis, https://fred.stlouisfed.org/series/UNRATE (last visited Apr. 27, 2021).

[179] U.S. Bureau of Labor Statistics, Economic News Release – Table 1. Civilian labor force and unemployment by state and selected area, seasonally adjusted, https://www.bls.gov/news.release/laus.t01.htm (last visited Apr. 30, 2021).

unemployment rate relative to its pre-pandemic level. For U.S. territories that are not included in the Bureau of Labor Statistics' monthly unemployment rate data, the Secretary will not exercise the authority to withhold amounts from the Fiscal Recovery Funds.

VI. Transfer

The statute authorizes State, territorial, and Tribal governments; counties; metropolitan cities; and nonentitlement units of local government (counties, metropolitan cities, and nonentitlement units of local government are collectively referred to as "local governments") to transfer amounts paid from the Fiscal Recovery Funds to a number of specified entities. By permitting these transfers, Congress recognized the importance of providing flexibility to governments seeking to achieve the greatest impact with their funds, including by working with other levels or units of government or private entities to assist recipient governments in carrying out their programs. This includes special-purpose districts that perform specific functions in the community, such as fire, water, sewer, or mosquito abatement districts.

Specifically, under section 602(c)(3), a State, territory, or Tribal government may transfer funds to a "private nonprofit organization . . . a Tribal organization . . . a public benefit corporation involved in the transportation of passengers or cargo, or a special-purpose unit of State or local government."[180] Similarly, section 603(c)(3) authorizes a local government to transfer funds to the same entities (other than Tribal organizations).

The Interim Final Rule clarifies that the lists of transferees in Sections 602(c)(3) and 603(c)(3) are not exclusive. The Interim Final Rule permits State, territorial, and Tribal governments to transfer Fiscal Recovery Funds to other constituent units of government or

[180] § 602(c)(3) of the Act.

private entities beyond those specified in the statute. Similarly, local governments are authorized to transfer Fiscal Recovery Funds to other constituent units of government (e.g., a county is able to transfer Fiscal Recovery Funds to a city, town, or school district within it) or to private entities. This approach is intended to help provide funding to local governments with needs that may exceed the allocation provided under the statutory formula.

State, local, territorial, and Tribal governments that receive a Federal award directly from a Federal awarding agency, such as Treasury, are "recipients." A transferee receiving a transfer from a recipient under sections 602(c)(3) and 603(c)(3) will be a subrecipient. Subrecipients are entities that receive a subaward from a recipient to carry out a program or project on behalf of the recipient with the recipient's Federal award funding. The recipient remains responsible for monitoring and overseeing the subrecipient's use of Fiscal Recovery Funds and other activities related to the award to ensure that the subrecipient complies with the statutory and regulatory requirements and the terms and conditions of the award. Recipients also remain responsible for reporting to Treasury on their subrecipients' use of payments from the Fiscal Recovery Funds for the duration of the award.

Transfers under sections 602(c)(3) and 603(c)(3) must qualify as an eligible use of Fiscal Recovery Funds by the transferor. Once Fiscal Recovery Funds are received, the transferee must abide by the restrictions on use applicable to the transferor under the ARPA and other applicable law and program guidance. For example, if a county transferred Fiscal Recovery Funds to a town within its borders to respond to the COVID-19 public health emergency, the town would be bound by the eligible use requirements applicable to the county in carrying out the county's goal. This also means that county A may not transfer Fiscal Recovery Funds to county B for use in

county B because such a transfer would not, from the perspective of the transferor (county A), be an eligible use in county A.

Section 603(c)(4) separately provides for transfers by a local government to its State or territory. A transfer under section 603(c)(4) will not make the State a subrecipient of the local government, and such Fiscal Recovery Funds may be used by the State for any purpose permitted under section 602(c). A transfer under section 603(c)(4) will result in a cancellation or termination of the award on the part of the transferor local government and a modification of the award to the transferee State or territory. The transferor must provide notice of the transfer to Treasury in a format specified by Treasury. If the local government does not provide such notice, it will remain legally obligated to Treasury under the award and remain responsible for ensuring that the awarded Fiscal Recovery Funds are being used in accordance with the statute and program guidance and for reporting on such uses to Treasury. A State that receives a transfer from a local government under section 603(c)(4) will be bound by all of the use restrictions set forth in section 602(c) with respect to the use of those Fiscal Recovery Funds, including the prohibitions on use of such Fiscal Recovery Funds to offset certain reductions in taxes or to make deposits into pension funds.

Question 35: What are the advantages and disadvantages of treating the list of transferees in sections 602(c)(3) and 603(c)(3) as nonexclusive, allowing States and localities to transfer funds to entities outside of the list?

Question 36: Are there alternative ways of defining "special-purpose unit of State or local government" and "public benefit corporation" that would better further the aims of the Funds?

VII. Nonentitlement Units of Government

The Fiscal Recovery Funds provides for $19.53 billion in payments to be made to States and territories which will distribute the funds to nonentitlement units of local government (NEUs); local governments which generally have populations below 50,000. These local governments have not yet received direct fiscal relief from the Federal government during the COVID-19 public health emergency, making Fiscal Recovery Funds payments an important source of support for their public health and economic responses. Section 603 requires Treasury to allocate and pay Fiscal Recovery Funds to the States and territories and requires the States and territories to distribute Fiscal Recovery Funds to NEUs based on population within 30 days of receipt unless an extension is granted by the Secretary. The Interim Final Rule clarifies certain aspects regarding the distribution of Fiscal Recovery by States and territories to NEUs, as well as requirements around timely payments from the Fiscal Recovery Funds.

The ARPA requires that States and territories allocate funding to NEUs in an amount that bears the same proportion as the population of the NEU bears to the total population of all NEUs in the State or territory, subject to a cap (described below). Because the statute requires States and territories to make distributions based on population, States and territories may not place additional conditions or requirements on distributions to NEUs, beyond those required by the ARPA and Treasury's implementing regulations and guidance. For example, a State may not impose stricter limitations than permitted by statute or Treasury regulations or guidance on an NEU's use of Fiscal Recovery Funds based on the NEU's proposed spending plan or other policies. States and territories are also not permitted to offset any debt owed by the NEU against the NEU's distribution. Further, States and territories may not provide funding on a reimbursement basis—e.g., requiring NEUs to pay for project costs up front before being

reimbursed with Fiscal Recovery Funds payments—because this funding model would not comport with the statutory requirement that States and territories make distributions to NEUs within the statutory timeframe.

Similarly, States and territories distributing Fiscal Recovery Funds payments to NEUs are responsible for complying with the Fiscal Recovery Funds statutory requirement that distributions to NEUs not exceed 75 percent of the NEU's most recent budget. The most recent budget is defined as the NEU's most recent annual total operating budget, including its general fund and other funds, as of January 27, 2020. Amounts in excess of such cap and therefore not distributed to the NEU must be returned to Treasury by the State or territory. States and territories may rely for this determination on a certified top-line budget total from the NEU.

Under the Interim Final Rule, the total allocation and distribution to an NEU, including the sum of both the first and second tranches of funding, cannot exceed the 75 percent cap. States and territories must permit NEUs without formal budgets as of January 27, 2020 to self-certify their most recent annual expenditures as of January 27, 2020 for the purpose of calculating the cap. This approach will provide an administrable means to implement the cap for small local governments that do not adopt a formal budget.

Section 603(b)(3) of the Social Security Act provides for Treasury to make payments to counties but provides that, in the case of an amount to be paid to a county that is not a unit of general local government, the amount shall instead be paid to the State in which such county is located, and such State shall distribute such amount to each unit of general local government within such county in an amount that bears the same proportion to the amount to be paid to such county as the population of such units of general local government bears to the total population of such county. As with NEUs, States may not place additional conditions or requirements on

distributions to such units of general local government, beyond those required by the ARPA and Treasury's implementing regulations and guidance.

In the case of consolidated governments, section 603(b)(4) allows consolidated governments (e.g., a city-county consolidated government) to receive payments under each allocation based on the respective formulas. In the case of a consolidated government, Treasury interprets the budget cap to apply to the consolidated government's NEU allocation under section 603(b)(2) but not to the consolidated government's county allocation under section 603(b)(3).

If necessary, States and territories may use the Fiscal Recovery Funds under section 602(c)(1)(A) to fund expenses related to administering payments to NEUs and units of general local government, as disbursing these funds itself is a response to the public health emergency and its negative economic impacts. If a State or territory requires more time to disburse Fiscal Recovery Funds to NEUs than the allotted 30 days, Treasury will grant extensions of not more than 30 days for States and territories that submit a certification in writing in accordance with section 603(b)(2)(C)(ii)(I). Additional extensions may be granted at the discretion of the Secretary.

Question 37: What are alternative ways for States and territories to enforce the 75 percent cap while reducing the administrative burden on them?

Question 38: What criteria should Treasury consider in assessing requests for extensions for further time to distribute NEU payments?

VIII. Reporting

States (defined to include the District of Columbia), territories, metropolitan cities, counties, and Tribal governments will be required to submit one interim report and thereafter

quarterly Project and Expenditure reports through the end of the award period on December 31, 2026. The interim report will include a recipient's expenditures by category at the summary level from the date of award to July 31, 2021 and, for States and territories, information related to distributions to nonentitlement units. Recipients must submit their interim report to Treasury by August 31, 2021. Nonentitlement units of local government are not required to submit an interim report.

The quarterly Project and Expenditure reports will include financial data, information on contracts and subawards over $50,000, types of projects funded, and other information regarding a recipient's utilization of the award funds. The reports will include the same general data (e.g., on obligations, expenditures, contracts, grants, and sub-awards) as those submitted by recipients of the CRF, with some modifications. Modifications will include updates to the expenditure categories and the addition of data elements related to specific eligible uses, including some of the reporting elements described in sections above. The initial quarterly Project and Expenditure report will cover two calendar quarters from the date of award to September 30, 2021, and must be submitted to Treasury by October 31, 2021. The subsequent quarterly reports will cover one calendar quarter and must be submitted to Treasury within 30 days after the end of each calendar quarter.

Nonentitlement units of local government will be required to submit annual Project and Expenditure reports until the end of the award period on December 31, 2026. The initial annual Project and Expenditure report for nonentitlement units of local government will cover activity from the date of award to September 30, 2021 and must be submitted to Treasury by October 31, 2021. The subsequent annual reports must be submitted to Treasury by October 31 each year.

States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to submit an annual Recovery Plan Performance report to Treasury. The Recovery Plan Performance report will provide the public and Treasury information on the projects that recipients are undertaking with program funding and how they are planning to ensure project outcomes are achieved in an effective, efficient, and equitable manner. Each jurisdiction will have some flexibility in terms of the form and content of the Recovery Plan Performance report, as long as it includes the minimum information required by Treasury. The Recovery Plan Performance report will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury, as well as programmatic data in specific eligible use categories and the specific reporting requirements described in the sections above. The initial Recovery Plan Performance report will cover the period from the date of award to July 31, 2021 and must be submitted to Treasury by August 31, 2021. Thereafter, Recovery Plan Performance reports will cover a 12-month period, and recipients will be required to submit the report to Treasury within 30 days after the end of the 12-month period. The second Recovery Plan Performance report will cover the period from July 1, 2021 to June 30, 2022, and must be submitted to Treasury by July 31, 2022. Each annual Recovery Plan Performance report must be posted on the public-facing website of the recipient. Local governments with fewer than 250,000 residents, Tribal governments, and nonentitlement units of local government are not required to develop a Recovery Plan Performance report.

Treasury will provide additional guidance and instructions on the reporting requirements outlined above for the Fiscal Recovery Funds at a later date.

IX. Comments and Effective Date

This Interim Final Rule is being issued without advance notice and public comment to allow for immediate implementation of this program. As discussed below, the requirements of advance notice and public comment do not apply "to the extent that there is involved . . . a matter relating to agency . . . grants."[181] The Interim Final Rule implements statutory conditions on the eligible uses of the Fiscal Recovery Funds grants, and addresses the payment of those funds, the reporting on uses of funds, and potential consequences of ineligible uses. In addition and as discussed below, the Administrative Procedure Act also provides an exception to ordinary notice-and-comment procedures "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."[182] This good cause justification also supports waiver of the 60-day delayed effective date for major rules under the Congressional Review Act at 5 U.S.C. 808(2). Although this Interim Final Rule is effective immediately, comments are solicited from interested members of the public and from recipient governments on all aspects of the Interim Final Rule.

These comments must be submitted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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[181] 5 U.S.C. 553(a)(2).

[182] 5 U.S.C. 553(b)(3)(B); *see also* 5 U.S.C. 553(d)(3) (creating an exception to the requirement of a 30-day delay before the effective date of a rule "for good cause found and published with the rule").

X. Regulatory Analyses

Executive Orders 12866 and 13563

This Interim Final Rule is economically significant for the purposes of Executive Orders 12866 and 13563. Treasury, however, is proceeding under the emergency provision at Executive Order 12866 section 6(a)(3)(D) based on the need to act expeditiously to mitigate the current economic conditions arising from the COVID-19 public health emergency. The rule has been reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12866. This rule is necessary to implement the ARPA in order to provide economic relief to State, local, and Tribal governments adversely impacted by the COVID-19 public health emergency.

Under Executive Order 12866, OMB must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive Order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a significant regulatory action as an action likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or Tribal governments or communities in a material way (also referred to as "economically significant" regulations);

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive Order.

This regulatory action is an economically significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866. Treasury has also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, section 1(b) of Executive Order 13563 requires that an agency:

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives taking into account, among other things, and to the extent practicable, the costs of cumulative regulations;

(3) Select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including providing economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or providing information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." OMB's Office of Information and Regulatory Affairs (OIRA) has emphasized that these techniques may

include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

Treasury has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action, and is issuing this Interim Final Rule only on a reasoned determination that the benefits exceed the costs. In choosing among alternative regulatory approaches, Treasury selected those approaches that would maximize net benefits. Based on the analysis that follows and the reasons stated elsewhere in this document, Treasury believes that this Interim Final Rule is consistent with the principles set forth in Executive Order 13563.
Treasury also has determined that this regulatory action does not unduly interfere with States, territories, Tribal governments, and localities in the exercise of their governmental functions.

This Regulatory Impact Analysis discusses the need for regulatory action, the potential benefits, and the potential costs.

Need for Regulatory Action. This Interim Final Rule implements the $350 billion Fiscal Recovery Funds of the ARPA, which Congress passed to help States, territories, Tribal governments, and localities respond to the ongoing COVID-19 public health emergency and its economic impacts. As the agency charged with execution of these programs, Treasury has concluded that this Interim Final Rule is needed to ensure that recipients of Fiscal Recovery Funds fully understand the requirements and parameters of the program as set forth in the statute and deploy funds in a manner that best reflects Congress' mandate for targeted fiscal relief.
This Interim Final Rule is primarily a transfer rule: it transfers $350 billion in aid from the Federal government to states, territories, Tribal governments, and localities, generating a significant macroeconomic effect on the U.S. economy. In making this transfer, Treasury has sought to implement the program in ways that maximize its potential benefits while minimizing

its costs. It has done so by aiming to target relief in key areas according to the congressional mandate; offering clarity to States, territories, Tribal governments, and localities while maintaining their flexibility to respond to local needs; and limiting administrative burdens.

Analysis of Benefits. Relative to a pre-statutory baseline, the Fiscal Recovery Funds provide a combined $350 billion to State, local, and Tribal governments for fiscal relief and support for costs incurred responding to the COVID-19 pandemic. Treasury believes that this transfer will generate substantial additional economic activity, although given the flexibility accorded to recipients in the use of funds, it is not possible to precisely estimate the extent to which this will occur and the timing with which it will occur. Economic research has demonstrated that state fiscal relief is an efficient and effective way to mitigate declines in jobs and output during an economic downturn.[183] Absent such fiscal relief, fiscal austerity among State, local, and Tribal governments could exert a prolonged drag on the overall economic recovery, as occurred following the 2007-09 recession.[184]

This Interim Final Rule provides benefits across several areas by implementing the four eligible funding uses, as defined in statute: strengthening the response to the COVID-19 public health emergency and its economic impacts; easing fiscal pressure on State, local, and Tribal governments that might otherwise lead to harmful cutbacks in employment or government

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[183] Gabriel Chodorow-Reich et al., Does State Fiscal Relief during Recessions Increase Employment? Evidence from the American Recovery and Reinvestment Act, American Econ. J.: Econ. Policy, 4:3 118-45 (Aug. 2012), *available at* https://www.aeaweb.org/articles?id=10.1257/pol.4.3.118

[184] *See, e.g.,* Fitzpatrick, Haughwout & Setren, Fiscal Drag from the State and Local Sector?, Liberty Street Economics Blog, Federal Reserve Bank of New York (June 27, 2012), https://www.libertystreeteconomics.newyorkfed.org/2012/06/fiscal-drag-from-the-state-and-local-sector.html; Jiri Jonas, Great Recession and Fiscal Squeeze at U.S. Subnational Government Level, IMF Working Paper 12/184, (July 2012), *available at* https://www.imf.org/external/pubs/ft/wp/2012/wp12184.pdf; Gordon, *supra* note 9.

services; providing premium pay to essential workers; and making necessary investments in certain types of infrastructure. In implementing the ARPA, Treasury also sought to support disadvantaged communities that have been disproportionately impacted by the pandemic. The Fiscal Recovery Funds as implemented by the Interim Final Rule can be expected to channel resources toward these uses in order to achieve substantial near-term economic and public health benefits, as well as longer-term benefits arising from the allowable investments in water, sewer, and broadband infrastructure and aid to families.

These benefits are achieved in the Interim Final Rule through a broadly flexible approach that sets clear guidelines on eligible uses of Fiscal Recovery Funds and provides State, local, and Tribal government officials discretion within those eligible uses to direct Fiscal Recovery Funds to areas of greatest need within their jurisdiction. While preserving recipients' overall flexibility, the Interim Final Rule includes several provisions that implement statutory requirements and will help support use of Fiscal Recovery Funds to achieve the intended benefits. The remainder of this section clarifies how Treasury's approach to key provisions in the Interim Final Rule will contribute to greater realization of benefits from the program.

- Revenue Loss: Recipients will compute the extent of reduction in revenue by comparing actual revenue to a counterfactual trend representing what could have plausibly been expected to occur in the absence of the pandemic. The counterfactual trend begins with the last full fiscal year prior to the public health emergency (as required by statute) and projects forward with an annualized growth adjustment. Treasury's decision to incorporate a growth adjustment into the calculation of revenue loss ensures that the formula more fully captures revenue shortfalls relative to recipients' pre-pandemic expectations. Moreover, recipients will have the opportunity to re-calculate revenue loss

at several points throughout the program, recognizing that some recipients may experience revenue effects with a lag. This option to re-calculate revenue loss on an ongoing basis should result in more support for recipients to avoid harmful cutbacks in future years. In calculating revenue loss, recipients will look at general revenue in the aggregate, rather than on a source-by-source basis. Given that recipients may have experienced offsetting changes in revenues across sources, Treasury's approach provides a more accurate representation of the effect of the pandemic on overall revenues.

- Premium Pay: Per the statute, recipients have broad latitude to designate critical infrastructure sectors and make grants to third-party employers for the purpose of providing premium pay or otherwise respond to essential workers. While the Interim Final Rule generally preserves the flexibility in the statute, it does add a requirement that recipients give written justification in the case that premium pay would increase a worker's annual pay above a certain threshold. To set this threshold, Treasury analyzed data from the Bureau of Labor Statistics to determine a level that would not require further justification for premium pay to the vast majority of essential workers, while requiring higher scrutiny for provision of premium pay to higher-earners who, even without premium pay, would likely have greater personal financial resources to cope with the effects of the pandemic. Treasury believes the threshold in the Interim Final Rule strikes the appropriate balance between preserving flexibility and helping encourage use of these resources to help those in greatest need. The Interim Final Rule also requires that eligible workers have regular in-person interactions or regular physical handling of items that were also handled by others. This requirement will also help encourage use of

financial resources for those who have endured the heightened risk of performing essential work.

- Withholding of Payments to Recipients: Treasury believes that for the vast majority of recipient entities, it will be appropriate to receive funds in two separate payments. As discussed above, withholding of payments ensures that recipients can adapt spending plans to evolving economic conditions and that at least some of the economic benefits will be realized in 2022 or later. However, consistent with authorities granted to Treasury in the statute, Treasury recognizes that a subset of States with significant remaining elevation in the unemployment rate could face heightened additional near-term needs to aid unemployed workers and stimulate the recovery. Therefore, for a subset of State governments, Treasury will not withhold any funds from the first payment. Treasury believes that this approach strikes the appropriate balance between the general reasons to provide funds in two payments and the heightened additional near-term needs in specific States. As discussed above, Treasury set a threshold based on historical analysis of unemployment rates in recessions.
- Hiring Public Sector Employees: The Interim Final Rule states explicitly that recipients may use funds to restore their workforces up to pre-pandemic levels. Treasury believes that this statement is beneficial because it eliminates any uncertainty that could cause delays or otherwise negatively impact restoring public sector workforces (which, at time of publication, remain significantly below pre-pandemic levels).

Finally, the Interim Final Rule aims to promote and streamline the provision of assistance to individuals and communities in greatest need, particularly communities that have been historically disadvantaged and have experienced disproportionate impacts of the COVID-19

crisis. Targeting relief is in line with Executive Order 13985 On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, which laid out an Administration-wide priority to support "equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality."[185] To this end, the Interim Final Rule enumerates a list of services that may be provided using Fiscal Recovery Funds in low-income areas to address the disproportionate impacts of the pandemic in these communities; establishes the characteristics of essential workers eligible for premium pay and encouragement to serve workers based on financial need; provides that recipients may use Fiscal Recovery Funds to restore (to pre-pandemic levels) state and local workforces, where women and people of color are disproportionately represented;[186] and targets investments in broadband infrastructure to unserved and underserved areas. Collectively, these provisions will promote use of resources to facilitate the provision of assistance to individuals and communities with the greatest need.

Analysis of Costs. This regulatory action will generate administrative costs relative to a pre-statutory baseline. This includes, chiefly, costs required to administer Fiscal Recovery Funds, oversee subrecipients and beneficiaries, and file periodic reports with Treasury. It also requires States to allocate Fiscal Recovery Funds to nonentitlement units, which are smaller units of local government that are statutorily required to receive their funds through States.

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[185] Executive Order on Advancing Racial Equity and Support for Underserved Communities through the Federal Government (Jan. 20, 2021), https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/ (last visited May 9, 2021).

[186] David Cooper, Mary Gable & Algernon Austin, Economic Policy Institute Briefing Paper, The Public-Sector Jobs Crisis: Women and African Americans hit hardest by job losses in state and local governments, https://www.epi.org/publication/bp339-public-sector-jobs-crisis (last visited May 9, 2021).

Treasury expects that the administrative burden associated with this program will be moderate for a grant program of its size. Treasury expects that most recipients receive direct or indirect funding from Federal government programs and that many have familiarity with how to administer and report on Federal funds or grant funding provided by other entities. In particular, States, territories, and large localities will have received funds from the CRF and Treasury expects them to rely heavily on established processes developed last year or through prior grant funding, mitigating burden on these governments.

Treasury expects to provide technical assistance to defray the costs of administration of Fiscal Recovery Funds to further mitigate burden. In making implementation choices, Treasury has hosted numerous consultations with a diverse range of direct recipients—States, small cities, counties, and Tribal governments —along with various communities across the United States, including those that are underserved. Treasury lacks data to estimate the precise extent to which this Interim Final Rule generates administrative burden for State, local, and Tribal governments, but seeks comment to better estimate and account for these costs, as well as on ways to lessen administrative burdens.

Executive Order 13132

Executive Order 13132 (entitled Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State, local, and Tribal governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This Interim Final Rule does not have federalism implications within the meaning of the Executive Order and does not impose substantial, direct compliance costs on State, local, and Tribal governments or preempt state law within the meaning of the Executive Order. The

compliance costs are imposed on State, local, and Tribal governments by sections 602 and 603 of the Social Security Act, as enacted by the ARPA. Notwithstanding the above, Treasury has engaged in efforts to consult and work cooperatively with affected State, local, and Tribal government officials and associations in the process of developing the Interim Final Rule. Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, Treasury certifies that it has complied with the requirements of Executive Order 13132.

Administrative Procedure Act

The Administrative Procedure Act (APA), 5 U.S.C. 551 et seq., generally requires public notice and an opportunity for comment before a rule becomes effective. However, the APA provides that the requirements of 5 U.S.C. 553 do not apply "to the extent that there is involved . . . a matter relating to agency . . . grants." The Interim Final Rule implements statutory conditions on the eligible uses of the Fiscal Recovery Funds grants, and addresses the payment of those funds, the reporting on uses of funds, and potential consequences of ineligible uses. The rule is thus "both clearly and directly related to a federal grant program." *National Wildlife Federation v. Snow*, 561 F.2d 227, 232 (D.C. Cir. 1976). The rule sets forth the "process necessary to maintain state . . . eligibility for federal funds," *id.*, as well as the "method[s] by which states can . . . qualify for federal aid," and other "integral part[s] of the grant program," *Center for Auto Safety v. Tiemann*, 414 F. Supp. 215, 222 (D.D.C. 1976). As a result, the requirements of 5 U.S.C. 553 do not apply.

The APA also provides an exception to ordinary notice-and-comment procedures "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(3)(B); *see also* 5 U.S.C.

553(d)(3) (creating an exception to the requirement of a 30-day delay before the effective date of a rule "for good cause found and published with the rule"). Assuming 5 U.S.C. 553 applied, Treasury would still have good cause under sections 553(b)(3)(B) and 553(d)(3) for not undertaking section 553's requirements. The ARPA is a law responding to a historic economic and public health emergency; it is "extraordinary" legislation about which "both Congress and the President articulated a profound sense of 'urgency.'" *Petry v. Block*, 737 F.2d 1193, 1200 (D.C. Cir. 1984). Indeed, several provisions implemented by this Interim Final Rule (sections 602(c)(1)(A) and 603(c)(1)(A)) explicitly provide funds to "respond to the public health emergency," and the urgency is further exemplified by Congress's command (in sections 602(b)(6)(B) and 603(b)(7)(A)) that, "[t]o the extent practicable," funds must be provided to Tribes and cities "not later than 60 days after the date of enactment." *See Philadelphia Citizens in Action v. Schweiker*, 669 F.2d 877, 884 (3d Cir. 1982) (finding good cause under circumstances, including statutory time limits, where APA procedures would have been "virtually impossible"). Finally, there is an urgent need for States to undertake the planning necessary for sound fiscal policymaking, which requires an understanding of how funds provided under the ARPA will augment and interact with existing budgetary resources and tax policies. Treasury understands that many states require immediate rules on which they can rely, especially in light of the fact that the ARPA "covered period" began on March 3, 2021. The statutory urgency and practical necessity are good cause to forego the ordinary requirements of notice-and-comment rulemaking.

Congressional Review Act

The Administrator of OIRA has determined that this is a major rule for purposes of Subtitle E of the Small Business Regulatory Enforcement and Fairness Act of 1996 (also known as the

Congressional Review Act or CRA) (5 U.S.C. 804(2) et seq.). Under the CRA, a major rule takes effect 60 days after the rule is published in the Federal Register. 5 U.S.C. 801(a)(3). Notwithstanding this requirement, the CRA allows agencies to dispense with the requirements of section 801 when the agency for good cause finds that such procedure would be impracticable, unnecessary, or contrary to the public interest and the rule shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). Pursuant to section 808(2), for the reasons discussed above, Treasury for good cause finds that a 60-day delay to provide public notice is impracticable and contrary to the public interest.

Paperwork Reduction Act

The information collections associated with State, territory, local, and Tribal government applications materials necessary to receive Fiscal Recovery Funds (e.g., payment information collection and acceptance of award terms) have been reviewed and approved by OMB pursuant to the Paperwork Reduction Act (44 U.S.C. Chapter 35) (PRA) emergency processing procedures and assigned control number 1505-0271. The information collections related to ongoing reporting requirements, as discussed in this Interim Final Rule, will be submitted to OMB for emergency processing in the near future. Under the PRA, an agency may not conduct or sponsor and a respondent is not required to respond to, an information collection unless it displays a valid OMB control number.

Estimates of hourly burden under this program are set forth in the table below. Burden estimates below are preliminary.

Reporting	# Respondents (Estimated)	# Responses Per Respondent	Total Responses	Hours per response	Total Burden in Hours	Cost to Respondent ($48.80 per hour*)
Recipient Payment Form	5,050	1	5,050	.25 (15 minutes)	1,262.5	$61,610
Acceptance of Award Terms	5,050	1	5,050	.25 (15 minutes)	1,262.5	$61,610
Title VI Assurances	5,050	1	5,050	.50 (30 minutes)	2,525	$123,220
Quarterly Project and Expenditure Report	5,050	4 per year after first year	20,200	25	505,000	$24,644,000
Annual Project and Expenditure Report from NEUs	TBD	1 per year	20,000-40,000 (Estimate only)	15	300,000 – 600,000	$14,640,000 - $29,280,000
Annual Recovery Plan Performance report	418	1 per year	418	100	41,800	$2,039,840
Total	5,050 – TBD	N/A	55,768 - 75,768	141	851,850 - 1,151,850	$41,570,280 - $56,210,280

* Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, Accountants and Auditors, on the Internet at https://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm (visited March 28, 2020). Base wage of $33.89/hour increased by 44 percent to account for fully loaded employer cost of employee compensation (benefits, etc.) for a fully loaded wage rate of $48.80.

Periodic reporting is required by section 602(c) of Section VI of the Social Security Act and under the Interim Final Rule.

As discussed in Section VIII of this Supplementary Information, recipients of Fiscal Recovery Funds will be required to submit one interim report and thereafter quarterly Project and Expenditure reports until the end of the award period. Recipients must submit interim reports to Treasury by August 31, 2021. The quarterly Project and Expenditure reports will include financial data, information on contracts and subawards over $50,000, types of projects funded, and other information regarding a recipient's utilization of the award funds.

Nonentitlement unit recipients will be required to submit annual Project and Expenditure reports until the end of the award period. The initial annual Project and Expenditure report for Nonentitlement unit recipients must be submitted to Treasury by October 31, 2021. The subsequent annual reports must be submitted to Treasury by October 31 each year.
States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to submit an annual Recovery Plan Performance report to Treasury. The Recovery Plan Performance report will include descriptions of the projects funded and information on the performance indicators and objectives of the award. Each annual Recovery Plan Performance report must be posted on the public-facing website of the recipient. Treasury will provide additional guidance and instructions on the all the reporting requirements outlined above for the Fiscal Recovery Funds program at a later date.

These and related periodic reporting requirements are under consideration and will be submitted to OMB for approval under the PRA emergency provisions in the near future.

Treasury invites comments on all aspects of the reporting and recordkeeping requirements including: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the estimate of the burden of the collection of information; (c) ways to enhance the

quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Comments should be sent by the comment deadline to the www.regulations.gov docket with a copy to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, 725 17th Street NW, Washington, DC 20503; or email to oira_submission@omb.eop.gov.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the Federal Register. 5 U.S.C. 603, 604.

Rules that are exempt from notice and comment under the APA are also exempt from the RFA requirements, including the requirement to conduct a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. Since this rule is exempt from the notice and comment requirements of the APA, Treasury is not required to conduct a regulatory flexibility analysis.

RULE TEXT

List of Subjects in 31 CFR Part 35

Executive compensation, State and Local Governments, Tribal Governments, Public health emergency.

Title 31—Money and Finance: Treasury

Part 35 - PANDEMIC RELIEF PROGRAMS

1. The authority citation for Part 35 is revised to read as follows:

Authority: 42 U.S.C. 802(f); 42 U.S.C. 803(f); 31 U.S.C. 321; Consolidated Appropriations Act, 2021 (Pub. L. 116-260), Division N, Title V, Subtitle B; Community Development Banking and Financial Institutions Act of 1994 (enacted as part of the Riegle Community and Regulatory Improvement Act of 1994 (Pub. L. 103-325)), as amended (12 U.S.C. 4701 et seq.), Section 104A; Pub. L. 117-2.

2. Revise the part heading as shown above.

3. Add Subpart A to read as follows:

Subpart A— CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS

Sec.

Authority: 42 U.S.C. 802(f); 42 U.S.C. 803(f)

§ 35.1 Purpose.

This part implements section 9901 of the American Rescue Plan Act (Subtitle M of Title IX of Public Law 117-2), which amends Title VI of the Social Security Act (42 U.S.C. 801 et seq.) by adding sections 602 and 603 to establish the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Fund.

§ 35.2 Applicability.

This part applies to States, territories, Tribal governments, metropolitan cities, nonentitlement units of local government, counties, and units of general local government that accept a payment or transfer of funds made under section 602 or 603 of the Social Security Act.

§ 35.3 Definitions.

Baseline means tax revenue of the recipient for its fiscal year ending in 2019, adjusted for inflation in each reporting year using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States.

County means a county, parish, or other equivalent county division (as defined by the Census Bureau).

Covered benefits include, but are not limited to, the costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (Federal and State), workers' compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes).

Covered change means a change in law, regulation, or administrative interpretation. A change in law includes any final legislative or regulatory action, a new or changed administrative

interpretation, and the phase-in or taking effect of any statute or rule if the phase-in or taking effect was not prescribed prior to the start of the covered period.

Covered period means, with respect to a State, Territory, or Tribal government, the period that:

(1) Begins on March 3, 2021; and

(2) Ends on the last day of the fiscal year of such State, Territory, or Tribal government in which all funds received by the State, Territory, or Tribal government from a payment made under section 602 or 603 of the Social Security Act have been expended or returned to, or recovered by, the Secretary.

COVID-19 means the Coronavirus Disease 2019.

COVID-19 public health emergency means the period beginning on January 27, 2020 and until the termination of the national emergency concerning the COVID-19 outbreak declared pursuant to the National Emergencies Act (50 U.S.C. 1601 et. seq.).

Deposit means an extraordinary payment of an accrued, unfunded liability. The term deposit does not refer to routine contributions made by an employer to pension funds as part of the employer's obligations related to payroll, such as either a pension contribution consisting of a normal cost component related to current employees or a component addressing the amortization of unfunded liabilities calculated by reference to the employer's payroll costs.

Eligible employer means an employer of an eligible worker who performs essential work.

Eligible workers means workers needed to maintain continuity of operations of essential critical infrastructure sectors, including health care; emergency response; sanitation, disinfection, and cleaning work; maintenance work; grocery stores, restaurants, food production, and food delivery; pharmacy; biomedical research; behavioral health work; medical testing and

diagnostics; home- and community-based health care or assistance with activities of daily living; family or child care; social services work; public health work; vital services to Tribes; any work performed by an employee of a State, local, or Tribal government; educational work, school nutrition work, and other work required to operate a school facility; laundry work; elections work; solid waste or hazardous materials management, response, and cleanup work; work requiring physical interaction with patients; dental care work; transportation and warehousing; work at hotel and commercial lodging facilities that are used for COVID-19 mitigation and containment; work in a mortuary; work in critical clinical research, development, and testing necessary for COVID-19 response.

(1) With respect to a recipient that is a metropolitan city, nonentitlement unit of local government, or county, workers in any additional sectors as each chief executive officer of such recipient may designate as critical to protect the health and well-being of the residents of their metropolitan city, nonentitlement unit of local government, or county; or

(2) With respect to a State, Territory, or Tribal government, workers in any additional sectors as each Governor of a State or Territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, Territory, or Tribal government.

Essential work means work that:

(1) Is not performed while teleworking from a residence; and

(2) Involves:

(i) Regular in-person interactions with patients, the public, or coworkers of the individual that is performing the work; or

(ii) Regular physical handling of items that were handled by, or are to be handled by patients, the public, or coworkers of the individual that is performing the work.

Funds means, with respect to a recipient, amounts provided to the recipient pursuant to a payment made under section 602(b) or 603(b) of the Social Security Act or transferred to the recipient pursuant to section 603(c)(4) of the Social Security Act.

General revenue means money that is received from tax revenue, current charges, and miscellaneous general revenue, excluding refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, agency or private trust transactions, and intergovernmental transfers from the Federal government, including transfers made pursuant to section 9901 of the American Rescue Plan Act. General revenue does not include revenues from utilities. Revenue from Tribal business enterprises must be included in general revenue.

Intergovernmental transfers means money received from other governments, including grants and shared taxes.

Metropolitan city has the meaning given that term in section 102(a)(4) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(4)) and includes cities that relinquish or defer their status as a metropolitan city for purposes of receiving allocations under section 106 of such Act (42 U.S.C. 5306) for fiscal year 2021.

Net reduction in total spending is measured as the State or Territory's total spending for a given reporting year excluding its spending of funds, subtracted from its total spending for its fiscal year ending in 2019, adjusted for inflation using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States.

Nonentitlement unit of local government means a "city," as that term is defined in section 102(a)(5) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(5)), that is not a metropolitan city.

Nonprofit means a nonprofit organization that is exempt from Federal income taxation and that is described in section 501(c)(3) of the Internal Revenue Code.

Obligation means an order placed for property and services and entering into contracts, subawards, and similar transactions that require payment.

Pension fund means a defined benefit plan and does not include a defined contribution plan.

Premium pay means an amount of up to $13 per hour that is paid to an eligible worker, in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID-19 public health emergency. Such amount may not exceed $25,000 with respect to any single eligible worker. Premium pay will be considered to be in addition to wages or remuneration the eligible worker otherwise receives if, as measured on an hourly rate, the premium pay is:

(1) With regard to work that the eligible worker previously performed, pay and remuneration equal to the sum of all wages and remuneration previously received plus up to $13 per hour with no reduction, substitution, offset, or other diminishment of the eligible worker's previous, current, or prospective wages or remuneration; or

(2) With regard to work that the eligible worker continues to perform, pay of up to $13 that is in addition to the eligible worker's regular rate of wages or remuneration, with no reduction, substitution, offset, or other diminishment of the workers' current and prospective wages or remuneration.

Qualified census tract has the same meaning given in 26 U.S.C. 42(d)(5)(B)(ii)(I).

Recipient means a State, Territory, Tribal government, metropolitan city, nonentitlement unit of local government, county, or unit of general local government that receives a payment made under section 602(b) or 603(b) of the Social Security Act or transfer pursuant to section 603(c)(4) of the Social Security Act.

Reporting year means a single year or partial year within the covered period, aligned to the current fiscal year of the State or Territory during the covered period.

Secretary means the Secretary of the Treasury.

State means each of the 50 States and the District of Columbia

Small business means a business concern or other organization that:

(1) Has no more than 500 employees, or if applicable, the size standard in number of employees established by the Administrator of the Small Business Administration for the industry in which the business concern or organization operates, and

(2) Is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632).

Tax Revenue means revenue received from a compulsory contribution that is exacted by a government for public purposes excluding refunds and corrections and, for purposes of § 35.8, intergovernmental transfers. Tax revenue does not include payments for a special privilege granted or service rendered, employee or employer assessments and contributions to finance retirement and social insurance trust systems, or special assessments to pay for capital improvements.

Territory means the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or American Samoa.

Tribal enterprise means a business concern:

(1) That is wholly owned by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments; or

(2) That is owned in part by one or more Tribal governments, or by a corporation that is wholly owned by one or more Tribal governments, if all other owners are either United States citizens or small business concerns, as these terms are used and consistent with the definitions in 15 U.S.C. 657a(b)(2)(D).

Tribal government means the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published on January 29, 2021, pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

Unemployment rate means the U-3 unemployment rate provided by the Bureau of Labor Statistics as part of the Local Area Unemployment Statistics program, measured as total unemployment as a percentage of the civilian labor force.

Unemployment trust fund means an unemployment trust fund established under section 904 of the Social Security Act (42 U.S.C. 1104).

Unit of general local government has the meaning given to that term in section 102(a)(1) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(1)).

Unserved and underserved households or businesses means one or more households or businesses that are not currently served by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed.

§ 35.4 Reservation of Authority, Reporting.

(a) *Reservation of authority.* Nothing in this part shall limit the authority of the Secretary to take action to enforce conditions or violations of law, including actions necessary to prevent evasions of this subpart.

(b) *Extensions or accelerations of timing*. The Secretary may extend or accelerate any deadline or compliance date of this part, including reporting requirements that implement this subpart, if the Secretary determines that such extension or acceleration is appropriate. In determining whether an extension or acceleration is appropriate, the Secretary will consider the period of time that would be extended or accelerated and how the modified timeline would facilitate compliance with this subpart.

(c) *Reporting and requests for other information.* During the covered period, recipients shall provide to the Secretary periodic reports providing detailed accounting of the uses of funds, all modifications to a State or Territory's tax revenue sources, and such other information as the Secretary may require for the administration of this section. In addition to regular reporting requirements, the Secretary may request other additional information as may be necessary or appropriate, including as may be necessary to prevent evasions of the requirements of this subpart. False statements or claims made to the Secretary may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in Federal awards or contracts, and/or any other remedy available by law.

§ 35.5 Use of funds.

(a) *In General*. A recipient may only use funds to cover costs incurred during the period beginning March 3, 2021, and ending December 31, 2024, for one or more of the purposes enumerated in sections 602(c)(1) and 603(c)(1) of the Social Security Act, as applicable,

including those enumerated in section § 35.6 of this subpart, subject to the restrictions set forth in sections 602(c)(2) and 603(c)(2) of the Social Security Act, as applicable.

(b) *Costs incurred.* A cost shall be considered to have been incurred for purposes of paragraph (a) of this section if the recipient has incurred an obligation with respect to such cost by December 31, 2024.

(c) *Return of funds.* A recipient must return any funds not obligated by December 31, 2024, and any funds not expended to cover such obligations by December 31, 2026.

§ 35.6 Eligible uses.

(a) *In General*. Subject to §§ 35.7 and 35.8 of this subpart, a recipient may use funds for one or more of the purposes described in paragraphs (b)-(e) of this section

(b) *Responding to the public health emergency or its negative economic impacts*. A recipient may use funds to respond to the public health emergency or its negative economic impacts, including for one or more of the following purposes:

(1) *COVID-19 response and prevention.* Expenditures for the mitigation and prevention of COVID-19, including:

(i) Expenses related to COVID-19 vaccination programs and sites, including staffing, acquisition of equipment or supplies, facilities costs, and information technology or other administrative expenses;

(ii) COVID–19-related expenses of public hospitals, clinics, and similar facilities;

(iii) COVID-19 related expenses in congregate living facilities, including skilled nursing facilities, long-term care facilities, incarceration settings, homeless shelters, residential foster care facilities, residential behavioral health treatment, and other group living facilities;

(iv) Expenses of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs and other capital investments in public facilities to meet COVID-19-related operational needs;

(v) Expenses of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs and other capital investments in public facilities to meet COVID-19-related operational needs;

(vi) Costs of providing COVID-19 testing and monitoring, contact tracing, and monitoring of case trends and genomic sequencing for variants;

(vii) Emergency medical response expenses, including emergency medical transportation, related to COVID-19;

(viii) Expenses for establishing and operating public telemedicine capabilities for COVID-19-related treatment;

(ix) Expenses for communication related to COVID-19 vaccination programs and communication or enforcement by recipients of public health orders related to COVID-19;

(x) Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment;

(xi) Expenses for disinfection of public areas and other facilities in response to the COVID-19 public health emergency;

(xii) Expenses for technical assistance to local authorities or other entities on mitigation of COVID-19-related threats to public health and safety;

(xiii) Expenses for quarantining or isolation of individuals;

(xiv) Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions;

(xv) Expenses for treatment of the long-term symptoms or effects of COVID-19, including post-intensive care syndrome;

(xvi) Expenses for the improvement of ventilation systems in congregate settings, public health facilities, or other public facilities;

(xvii) Expenses related to establishing or enhancing public health data systems; and

(xviii) Mental health treatment, substance misuse treatment, and other behavioral health services.

(2) *Public Health and Safety Staff.* Payroll and covered benefit expenses for public safety, public health, health care, human services, and similar employees to the extent that the employee's time is spent mitigating or responding to the COVID-19 public health emergency.

(3) *Hiring State and Local Government Staff.* Payroll, covered benefit, and other costs associated with the recipient increasing the number of its employees up to the number of employees that it employed on January 27, 2020.

(4) *Assistance to Unemployed Workers*. Assistance, including job training, for individuals who want and are available for work, including those who have looked for work sometime in the past 12 months or who are employed part time but who want and are available for full-time work;

(5) *Contributions to State Unemployment Insurance Trust Funds.* Contributions to an Unemployment Trust Fund up to the level required to restore the Unemployment Trust Fund to its balance on January 27, 2020 or to pay back advances received under Title XII of the Social Security Act (42 U.S.C. 1321) for the payment of benefits between January 27, 2020 and [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER];

(6) *Small Businesses.* Assistance to small businesses, including loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID-19 public health emergency;

(7) *Nonprofits.* Assistance to nonprofit organizations, including loans, grants, in-kind assistance, technical assistance or other services, that responds to the negative economic impacts of the COVID-19 public health emergency;

(8) *Assistance to Households.* Assistance programs, including cash assistance programs, that respond to the COVID-19 public health emergency;

(9) *Aid to Impacted Industries.* Aid to tourism, travel, hospitality, and other impacted industries that responds to the negative economic impacts of the COVID-19 public health emergency;

(10) *Expenses to Improve Efficacy of Public Health or Economic Relief Programs.* Administrative costs associated with the recipient's COVID-19 public health emergency assistance programs, including services responding to the COVID-19 public health emergency or its negative economic impacts, that are not federally funded.

(11) *Survivor's Benefits.* Benefits for the surviving family members of individuals who have died from COVID-19, including cash assistance to widows, widowers, or dependents of individuals who died of COVID-19;

(12) *Disproportionately Impacted Populations and Communities.* A program, service, or other assistance that is provided in a Qualified Census Tract, that is provided to households and populations living in a Qualified Census Tract, that is provided by a Tribal government, or that is provided to other households, businesses, or populations disproportionately impacted by the COVID-19 public health emergency, such as:

(i) Programs or services that facilitate access to health and social services, including:

(A) Assistance accessing or applying for public benefits or services;

(B) Remediation of lead paint or other lead hazards; and

(C) Community violence intervention programs;

(ii) Programs or services that address housing insecurity, lack of affordable housing, or homelessness, including:

(A) Supportive housing or other programs or services to improve access to stable, affordable housing among individuals who are homeless;

(B) Development of affordable housing to increase supply of affordable and high-quality living units; and

(C) Housing vouchers and assistance relocating to neighborhoods with higher levels of economic opportunity and to reduce concentrated areas of low economic opportunity;

(iii) Programs or services that address or mitigate the impacts of the COVID-19 public health emergency on education, including:

(A) New or expanded early learning services;

(B) Assistance to high-poverty school districts to advance equitable funding across districts and geographies; and

(C) Educational and evidence-based services to address the academic, social, emotional, and mental health needs of students;

(iv) Programs or services that address or mitigate the impacts of the COVID-19 public health emergency on childhood health or welfare, including:

(A) New or expanded childcare;

(B) Programs to provide home visits by health professionals, parent educators, and social service professionals to individuals with young children to provide education and assistance for economic support, health needs, or child development; and

(C) Services for child welfare-involved families and foster youth to provide support and education on child development, positive parenting, coping skills, or recovery for mental health and substance use.

(c) *Providing Premium Pay to Eligible Workers*. A recipient may use funds to provide premium pay to eligible workers of the recipient who perform essential work or to provide grants to eligible employers, provided that any premium pay or grants provided under this paragraph (c) must respond to eligible workers performing essential work during the COVID-19 public health emergency. A recipient uses premium pay or grants provided under this paragraph (c) to respond to eligible workers performing essential work during the COVID-19 public health emergency if it prioritizes low- and moderate-income persons. The recipient must provide, whether for themselves or on behalf of a grantee, a written justification to the Secretary of how the premium pay or grant provided under this paragraph (c) responds to eligible workers performing essential work if the premium pay or grant would increase an eligible worker's total wages and remuneration above 150 percent of such eligible worker's residing State's average annual wage for all occupations or their residing county's average annual wage, whichever is higher.

(d) *Providing Government Services*. For the provision of government services to the extent of a reduction in the recipient's general revenue, calculated according to paragraphs (d)(1) and (d)(2).

(1) *Frequency.* A recipient must calculate the reduction in its general revenue using information as-of December 31, 2020, December 31, 2021, December 31, 2022, and December 31, 2023 (each, a calculation date) and following each calculation date.

(2) *Calculation.* A reduction in a recipient's general revenue equals:

$$Max\ \{[Base\ Year\ Revenue * \ (1 + Growth\ Adjustment)^{\left(\frac{n_t}{12}\right)}] - Actual\ General\ Revenue_t; 0\}$$

Where:

(i) Base Year Revenue is the recipient's general revenue for the most recent full fiscal year prior to the COVD-19 public health emergency;

(ii) Growth Adjustment is equal to the greater of 4.1 percent (or 0.041) and the recipient's average annual revenue growth over the three full fiscal years prior to the COVID-19 public health emergency.

(iii) *n* equals the number of months elapsed from the end of the base year to the calculation date.

(iv) Actual General Revenue is a recipient's actual general revenue collected during 12-month period ending on each calculation date;

(v) Subscript *t* denotes the specific calculation date.

(e) *To Make Necessary Investments in Infrastructure*. A recipient may use funds to make investments in:

(1) *Clean Water State Revolving Fund and Drinking Water State Revolving Fund investments.* Projects or activities of the type that would be eligible under section 603(c) of the Federal Water Pollution Control Act (33 U.S.C. 1383(c)) or section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12); or,

(2) *Broadband.* Broadband infrastructure that is designed to provide service to unserved or underserved households and businesses and that is designed to, upon completion:

(A) Reliably meet or exceed symmetrical 100 Mbps download speed and upload speeds; or

(B) In cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, to provide service meeting the standards set forth in paragraph (e)(2)(A) of this section:

(i) Reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed; and

(ii) Be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed.

§ 35.7 Pensions.

A recipient may not use funds for deposit into any pension fund.

§ 35.8 Tax.

(a) *Restriction.* A State or Territory shall not use funds to either directly or indirectly offset a reduction in the net tax revenue of the State or Territory resulting from a covered change during the covered period.

(b) *Violation*. Treasury will consider a State or Territory to have used funds to offset a reduction in net tax revenue if, during a reporting year:

(1) *Covered Change.* The State or Territory has made a covered change that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered

change, the State or Territory assesses has had or predicts to have the effect of reducing tax revenue relative to current law;

(2) *Exceeds the De Minimis Threshold*. The aggregate amount of the measured or predicted reductions in tax revenue caused by covered changes identified under paragraph (b)(1) of this section, in the aggregate, exceeds 1 percent of the State's or Territory's baseline;

(3) *Reduction in Net Tax Revenue.* The State or Territory reports a reduction in net tax revenue, measured as the difference between actual tax revenue and the State's or Territory's baseline, each measured as of the end of the reporting year; and

(4) *Consideration of Other Changes.* The aggregate amount of measured or predicted reductions in tax revenue caused by covered changes is greater than the sum of the following, in each case, as calculated for the reporting year:

(i) The aggregate amount of the expected increases in tax revenue caused by one or more covered changes that, either based on a reasonable statistical methodology to isolate the impact of the covered change in actual revenue or based on projections that use reasonable assumptions and do not incorporate the effects of macroeconomic growth to reduce or increase the projected impact of the covered change, the State or Territory assesses has had or predicts to have the effect of increasing tax revenue; and

(ii) Reductions in spending, up to the amount of the State's or Territory's net reduction in total spending, that are in:

(A) Departments, agencies, or authorities in which the State or Territory is not using funds; and

(B) Departments, agencies, or authorities in which the State or Territory is using funds, in an amount equal to the value of the spending cuts in those departments, agencies, or authorities, minus funds used.

(c) *Amount and Revenue Reduction Cap.* If a State or Territory is considered to be in violation pursuant to paragraph (b) of this section, the amount used in violation of paragraph (a) of this section is equal to the lesser of:

(1) The reduction in net tax revenue of the State or Territory for the reporting year, measured as the difference between the State's or Territory's baseline and its actual tax revenue, each measured as of the end of the reporting year; and,

(2) The aggregate amount of the reductions in tax revenues caused by covered changes identified in paragraph (b)(1) of this section, minus the sum of the amounts in identified in paragraphs (b)(4)(i)-(ii).

§ 35.9. Compliance with Applicable Laws.

A recipient must comply with all other applicable Federal statutes, regulations, and executive orders, and a recipient shall provide for compliance with the American Rescue Plan Act, this Subpart, and any interpretive guidance by other parties in any agreements it enters into with other parties relating to these funds.

§ 35.10. Recoupment.

(a) *Identification of Violations* – (1) *In general.* Any amount used in violation of §§ 35.6 or 35.7 of this subpart may be identified at any time prior to December 31, 2026.

(2) *Annual Reporting of Amounts of Violations*. On an annual basis, a recipient that is a State or Territory must calculate and report any amounts used in violation of § 35.8 of this subpart.

(b) *Calculation of Amounts Subject to Recoupment* – (1) *In general.* Except as provided in paragraph (b)(2), Treasury will calculate any amounts subject to recoupment resulting from a violation of §§ 35.6 or 35.7 of this subpart as the amounts used in violation of such restrictions.

(2) *Violations of Section 35.8.* Treasury will calculate any amounts subject to recoupment resulting from a violation of § 35.8 of this subpart, equal to the lesser of:

(i) The amount set forth in § 35.8(c) of this subpart; and,

(ii) The amount of funds received by such recipient.

(c) *Notice*. If Treasury calculates an amount subject to recoupment under paragraph (b) of this section, Treasury will provide the recipient a written notice of the amount subject to recoupment along with an explanation of such amounts.

(d) *Request for Reconsideration.* Unless Treasury extends the time period, within 60 calendar days of receipt of a notice of recoupment provided under paragraph (c) of this section, a recipient may submit a written request to Treasury requesting reconsideration of any amounts subject to recoupment under paragraph (b) of this section. To request reconsideration of any amounts subject to recoupment, a recipient must submit to Treasury a written request that includes:

(i) An explanation of why the recipient believes all or some of the amount should not be subject to recoupment; and

(ii) A discussion of supporting reasons, along with any additional information.

(e) *Final Amount Subject to Recoupment*. Unless Treasury extends the time period, within 60 calendar days of receipt of the recipient's request for reconsideration provided pursuant to paragraph (d) of this section, the recipient will be notified of the Secretary's decision to affirm, withdraw, or modify the notice of recoupment. Such notification will include an

explanation of the decision, including responses to the recipient's supporting reasons and consideration of additional information provided.

(f) *Repayment of Funds.* Unless Treasury extends the time period, a recipient shall repay to the Secretary any amounts subject to recoupment in accordance with instructions provided by Treasury:

(i) Within 120 calendar days of receipt of the notice of recoupment provided under paragraph (c) of this section, in the case of a recipient that does not submit a request for reconsideration in accordance with the requirements of paragraph (d) of this section, or

(ii) Within 120 calendar days of receipt of the Secretary's decision under paragraph (e) of this section, in the case of a recipient that submits a request for reconsideration in accordance with the requirements of paragraph (d) of this section.

§ 35.11 Payments to States.

(a) *In General.* With respect to any State or Territory that has an unemployment rate as of the date that it submits an initial certification for payment of funds pursuant to section 602(d)(1) of the Social Security Act that is less than two percentage points above its unemployment rate in February 2020, the Secretary will withhold 50 percent of the amount of funds allocated under section 602(b) of the Social Security Act to such State or territory until the date that is twelve months from the date such initial certification is provided to the Secretary.

(b) *Payment of Withheld Amount.* In order to receive the amount withheld under paragraph (a) of this section, the State or Territory must submit to the Secretary at least 30 days prior to the date referenced in paragraph (a) the following information:

(i) A certification, in the form provided by the Secretary, that such State or Territory requires the payment to carry out the activities specified in section 602(c) of the Social Security Act and will use the payment in compliance with section 602(c) of the Social Security Act; and,

(ii) Any reports required to be filed by that date pursuant to this part that have not yet been filed.

§ 35.12. Distributions to Nonentitlement Units of Local Government and Units of General Local Government.

(a) *Nonentitlement Units of Local Government*. Each State or Territory that receives a payment from Treasury pursuant to section 603(b)(2)(B) of the Social Security Act shall distribute the amount of the payment to nonentitlement units of government in such State or Territory in accordance with the requirements set forth in section 603(b)(2)(C) of the Social Security Act and without offsetting any debt owed by such nonentitlement units of local governments against such payments.

(b) *Budget Cap*. A State or Territory may not make a payment to a nonentitlement unit of local government pursuant to section 603(b)(2)(C) of the Social Security Act and paragraph (a) of this section in excess of the amount equal to 75 percent of the most recent budget for the nonentitlement unit of local government as of January 27, 2020. A State or Territory shall permit a nonentitlement unit of local government without a formal budget as of January 27, 2020, to provide a certification from an authorized officer of the nonentitlement unit of local government of its most recent annual expenditures as of January 27, 2020, and a State or Territory may rely on such certification for purposes of complying with this subsection.

(c) *Units of General Local Government.* Each State or Territory that receives a payment from Treasury pursuant to section 603(b)(3)(B)(ii) of the Social Security Act, in the case of an

amount to be paid to a county that is not a unit of general local government, shall distribute the amount of the payment to units of general local government within such county in accordance with the requirements set forth in section 603(b)(3)(B)(ii) of the Social Security Act and without offsetting any debt owed by such units of general local government against such payments.

(d) *Additional Conditions*. A State or Territory may not place additional conditions or requirements on distributions to nonentitlement units of local government or units of general local government beyond those required by section 603 of the Social Security Act or this subpart.

Dated:

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Compliance and Reporting Guidance

State and Local Fiscal Recovery Funds

June 17, 2021

Version: 1.0

Coronavirus State and Local Fiscal Recovery Funds Guidance on Recipient Compliance and Reporting Responsibilities

On March 11, 2021, the American Rescue Plan Act was signed into law, and established the Coronavirus State Fiscal Recovery Fund and Coronavirus Local Fiscal Recovery Funds, which together make up the Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") program. This program is 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, residents, and businesses.

This guidance provides additional detail and clarification for each recipient's compliance and reporting responsibilities under the SLFRF program, and should be read in concert with the Award Terms and Conditions, the authorizing statute, the SLFRF implementing regulation, and other regulatory and statutory requirements, including regulatory requirements under the Uniform Guidance (2 CRF Part 200). Please see the Assistance Listing in SAM.gov under assistance listing number (formerly known as CFDA number), 21.027 for more information.

Please Note: This guidance document applies to the SLFRF program only and does not change nor impact reporting and compliance requirements for the Coronavirus Relief Fund ("CRF") established by the CARES Act.

This guidance includes two parts:

Part 1: General Guidance

This section provides an orientation to recipients' compliance responsibilities and the U.S. Department of the Treasury's ("Treasury") expectations and recommends best practices where appropriate under the SLFRF Program.

Part 2: Reporting Requirements

This section provides information on the reporting requirements for the SLFRF program.

Part 1: General Guidance

This section provides an orientation on recipients' compliance responsibilities and Treasury's expectations and recommended best practices where appropriate under the SLFRF program.

Recipients under the SLFRF program are the eligible entities identified in sections 602 and 603 of the Social Security Act as added by section 9901 of the American Rescue Plan Act of 2021 (the "SLFRF statute") that receive a SLFRF award. Subrecipients under the SLFRF program are entities that receive a subaward from a recipient to carry out the purposes (program or project) of the SLFRF award on behalf of the recipient.

Recipients are accountable to Treasury for oversight of their subrecipients, including ensuring their subrecipients comply with the SLFRF statute, SLFRF Award Terms and Conditions, Treasury's Interim Final Rule, and reporting requirements, as applicable.

A. Key Principles

There are several guiding principles for developing your own effective compliance regimes:

- Recipients and subrecipients are the first line of defense, and responsible for ensuring the SLFRF award funds are not used for ineligible purposes, and there is no fraud, waste, and abuse associated with their SLFRF award;
- Many SLFRF-funded projects respond to the COVID-19 public health emergency and meet urgent community needs. Swift and effective implementation is vital, and recipients must balance facilitating simple and rapid program access widely across the community and maintaining a robust documentation and compliance regime;
- SLFRF-funded projects should advance shared interests and promote equitable delivery of government benefits and opportunities to underserved communities, as outlined in Executive Order 13985, On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government; and
- Transparency and public accountability for SLFRF award funds and use of such funds are critical to upholding program integrity and trust in all levels of government, and SLFRF award funds should be managed consistent with Administration guidance per Memorandum M-21-20 and Memorandum M-20-21.

B. Statutory Eligible Uses

As a recipient of an SLFRF award, your organization has substantial discretion to use the award funds in the ways that best suit the needs of your constituents – as long as such use fits into one of the following four statutory categories:

1. To respond to the COVID-19 public health emergency or its negative economic impacts;
2. To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to such eligible workers of the recipient, or by providing grants to eligible employers that have eligible workers who performed essential work;
3. For the provision of government services, to the extent of the reduction in revenue of such recipient due to the COVID–19 public health emergency, relative to revenues collected in the most recent full fiscal year of the recipient prior to the emergency; and
4. To make necessary investments in water, sewer, or broadband infrastructure.

Treasury adopted an Interim Final Rule to implement these eligible use categories and other restrictions on the use of funds under the SLFRF program.[1] It is the recipient's responsibility to ensure all SLFRF award funds are used in compliance with these requirements. In addition, recipients should be mindful of any additional compliance obligations that may apply – for example, additional restrictions imposed upon other sources of funds used in conjunction with SLFRF award funds, or statutes and regulations that may independently apply to water, broadband, and sewer infrastructure projects. Recipients should ensure they maintain proper documentation supporting determinations of costs and applicable compliance requirements, and how they have been satisfied as part of their award management, internal controls, and subrecipient oversight and management.

C. Treasury's Rule

Treasury's Interim Final Rule details recipients' compliance responsibilities and provides additional information on eligible and restricted uses of SLFRF award funds and reporting requirements. Your organization should review and comply with the information contained in Treasury's Interim Final Rule, and any subsequent final rule when building appropriate controls for SLFRF award funds.

1. **Eligible and Restricted Uses of SLFRF Funds.** As described in the SLFRF statute and summarized above, there are four enumerated eligible uses of SLFRF award funds. As a recipient of an award under the SLFRF program, your organization is responsible for complying with requirements for the use of funds. In addition to determining a given project's eligibility, recipients are also responsible for determining subrecipient's or beneficiaries' eligibility and must monitor use of SLFRF award funds.

   To help recipients build a greater understanding of eligible uses, Treasury's Interim Final Rule establishes a framework for determining whether a specific project would be eligible under the SLFRF program, including some helpful definitions. For example, Treasury's Interim Final Rule establishes:

   - A framework for determining whether a project "responds to" a "negative economic impact" caused by the COVID-19 public health emergency;
   - Definitions of "eligible employers", "essential work," "eligible workers", and "premium pay" for cases where premium pay is an eligible use;
   - A definition of "general revenue" and a formula for calculating revenue lost due to the COVID-19 public health emergency;
   - A framework for eligible water and sewer infrastructure projects that aligns eligible uses with projects that are eligible under the Environmental Protection Agency's Drinking Water and Clean Water State Revolving Funds; and
   - A framework for eligible broadband projects designed to provide service to unserved or underserved households, or businesses at speeds sufficient to enable users to generally meet household needs, including the ability to support the simultaneous use of work, education, and health applications, and also sufficiently robust to meet increasing household demands for bandwidth.

   Treasury's Interim Final Rule also provides more information on four important restrictions on use of SLFRF award funds: recipients may not deposit SLFRF funds into a pension fund; recipients that are States or territories may not use SLFRF funds to offset a reduction in net tax revenue caused by the recipient's change in law, regulation, or administrative

[1] Treasury's Interim Final Rule is effective as of May 17, 2021, and public comments are due July 16, 2021. This guidance may be clarified consistent with the final rule.
https://www.govinfo.gov/content/pkg/FR-2021-05-17/pdf/2021-10283.pdf

interpretation; and, recipients may not use SLFRF funds as non-Federal match where prohibited. In addition, the Interim Final Rule clarifies certain uses of SLFRF funds outside the scope of eligible uses, including that recipients generally may not use SLFRF funds directly to service debt, satisfy a judgment or settlement, or contribute to a "rainy day" fund. Recipients should refer to Treasury's Interim Final Rule for more information on these restrictions.

2. **Eligible Costs Timeframe.** Your organization, as a recipient of an SLFRF award, may use SLFRF funds to cover eligible costs that your organization incurred during the period that begins on March 3, 2021 and ends on December 31, 2024, as long as the award funds for the obligations incurred by December 31, 2024 are expended by December 31, 2026. Costs for projects incurred by the recipient State, territorial, local, or Tribal government prior to March 3, 2021 are not eligible, as provided for in Treasury's Interim Final Rule.

   Recipients may use SLFRF award funds to provide assistance to households, businesses, and individuals within the eligible use categories described in Treasury's Interim Final Rule for costs that those households, businesses and individuals incurred prior to March 3, 2021. For example,

   a. Public Health/Negative Economic Impacts: Recipients may use SLFRF award funds to provide assistance to households – such as rent, mortgage, or utility assistance – for costs incurred by the household prior to March 3, 2021, provided that the recipient State, territorial, local or Tribal government did not incur the cost of providing such assistance prior to March 3, 2021.
   b. Premium Pay: Recipients may provide premium pay retrospectively for work performed at any time since the start of the COVID-19 public health emergency. Such premium pay must be "in addition to" wages and remuneration already received and the obligation to provide such pay must not have been incurred by the recipient prior to March 3, 2021.
   c. Revenue Loss: Treasury's Interim Final Rule gives recipients broad latitude to use funds for the provision of government services to the extent of reduction in revenue. While calculation of lost revenue begins with the recipient's revenue in the last full fiscal year prior to the COVID-19 public health emergency and includes the 12-month period ending December 31, 2020, use of funds for government services must be forward looking for costs incurred by the recipient after March 3, 2021.
   d. Investments in Water, Sewer, and Broadband: Recipients may use SLFRF award funds to make necessary investments in water, sewer, and broadband. Recipients may use SLFRF award funds to cover costs incurred for eligible projects planned or started prior to March 3, 2021, provided that the project costs covered by the SLFRF award funds were incurred after March 3, 2021.

   Any funds not obligated or expended for eligible uses by the timelines above must be returned to Treasury, including any unobligated or unexpended funds that have been provided to subrecipients and contractors. For the purposes of determining expenditure eligibility, Treasury's Interim Final Rule provides that "incurred" has the same meaning given to "financial obligation" in 2 CFR § 200.1.

3. **Reporting.** Generally, recipients must submit one initial interim report, quarterly or annual Project and Expenditure reports which include subaward reporting, and in some cases annual Recovery Plan reports. Treasury's Interim Final Rule and Part 2 of this guidance provide more detail around SLFRF reporting requirements.

Assistance Listing

The Assistance Listing for the Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) was published May 28, 2021 on SAM.gov under Assistance Listing Number ("ALN"), formerly known as CFDA Number, **21.027**.

The assistance listing includes helpful information including program purpose, statutory authority, eligibility requirements, and compliance requirements for recipients. The ALN is the unique 5-digit number assigned to identify a federal assistance listing, and can be used to search for federal assistance program information, including funding opportunities, spending on USASpending.gov, or audit results through the Federal Audit Clearinghouse.

To expedite payments and meet statutory timelines Treasury issued initial payments under an existing ALN, 21.019, assigned to the CRF. If you have already received funds or captured the initial number in your records, please update your systems and reporting to reflect the new ALN 21.027 for the SLFRF program. **Recipients must use ALN 21.027 for all financial accounting, subawards, and associated program reporting requirements for the SLFRF awards.**

D. Uniform Administrative Requirements

The SLFRF awards are generally subject to the requirements set forth in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200 (the "Uniform Guidance"). In all instances, your organization should review the Uniform Guidance requirements applicable to your organization's use of SLFRF funds, and SLFRF-funded projects. Recipients should consider how and whether certain aspects of the Uniform Guidance apply.

The following sections provide a general summary of your organization's compliance responsibilities under applicable statutes and regulations, including the Uniform Guidance, as described in the 2020 OMB Compliance Supplement Part 3. Compliance Requirements (issued August 18, 2020). Note that the descriptions below are only general summaries and all recipients and subrecipients are advised to carefully review the Uniform Guidance requirements and any additional regulatory and statutory requirements applicable to the program.

1. **Allowable Activities.** Each recipient should review program requirements, including Treasury's Interim Final Rule and the recipient's Award Terms and Conditions, to determine and record eligible uses of SLFRF funds. Per 2 CFR 200.303, your organization must develop and implement effective internal controls to ensure that funding decisions under the SLFRF award constitute eligible uses of funds, and document determinations.

2. **Allowable Costs/Cost Principles.** As outlined in the Uniform Guidance at 2 CFR Part 200, Subpart E regarding Cost Principles, allowable costs are based on the premise that a recipient is responsible for the effective administration of Federal awards, application of sound management practices, and administration of Federal funds in a manner consistent with the program objectives and terms and conditions of the award. Recipients must implement robust internal controls and effective monitoring to ensure compliance with the Cost Principles, which are important for building trust and accountability.

SLFRF Funds may be, but are not required to be, used along with other funding sources for a given project. Note that SLFRF Funds may not be used for a non-Federal cost share or match where prohibited by other Federal programs, e.g., funds may not be used for the State share for Medicaid.[2]

Treasury's Interim Final Rule and guidance and the Uniform Guidance outline the types of costs that are allowable, including certain audit costs. For example, per 2 CFR 200.425, a reasonably proportionate share of the costs of audits required by the Single Audit Act Amendments of 1996 are allowable; however, costs for audits that were not performed, or not in accordance with 2 CFR Part 200, Subpart F are not allowable. Please see 2 CFR Part 200, Subpart E regarding the Cost Principles for more information.

a. Administrative costs*:* Recipients may use funds for administering the SLFRF program, including costs of consultants to support effective management and oversight, including consultation for ensuring compliance with legal, regulatory, and other requirements.[3] Further, costs must be reasonable and allocable as outlined in 2 CFR 200.404 and 2 CFR 200.405. Pursuant to the SLFRF Award Terms and Conditions, recipients are permitted to charge both direct and indirect costs to their SLFRF award as administrative costs. Direct costs are those that are identified specifically as costs of implementing the SLFRF program objectives, such as contract support, materials, and supplies for a project. Indirect costs are general overhead costs of an organization where a portion of such costs are allocable to the SLFRF award such as the cost of facilities or administrative functions like a director's office.[4][5] Each category of cost should be treated consistently in like circumstances as direct or indirect, and recipients may not charge the same administrative costs to both direct and indirect cost categories, or to other programs. If a recipient has a current Negotiated Indirect Costs Rate Agreement (NICRA) established with a Federal cognizant agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals, then the recipient may use its current NICRA. Alternatively, if the recipient does not have a NICRA, the recipient may elect to use the de minimis rate of 10 percent of the modified total direct costs pursuant to 2 CFR 200.414(f).

b. Salaries and Expenses*:* In general, certain employees' wages, salaries, and covered benefits are an eligible use of SLFRF award funds. Please see Treasury's Interim Final Rule for details.

3. **Cash Management.** SLFRF payments made to recipients are not subject to the requirements of the Cash Management Improvement Act 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 SLFRF award.

4. **Eligibility.** Under this program, recipients are responsible for ensuring funds are used for eligible purposes. Generally, recipients must develop and implement policies and procedures, and record retention, to determine and monitor implementation of criteria for

[2] See 42 CFR 433.51 and 45 CFR 75.306.
[3] Recipients also may use SLFRF funds directly for administrative costs to improve efficacy of programs that respond to the COVID-19 public health emergency. 31 CFR 35.6(b)(10).
[4] 2 CFR 200.413 Direct Costs.
[5] 2 CFR 200.414 Indirect Costs.

determining the eligibility of beneficiaries and/or subrecipients. Your organization, and if applicable, the subrecipient(s) administering a program on behalf of your organization, will need to maintain procedures for obtaining information evidencing a given beneficiary, subrecipient, or contractor's eligibility including a valid SAM.gov registration. Implementing risk-based due diligence for eligibility determinations is a best practice to augment your organization's existing controls.

5. **Equipment and Real Property Management.** Any purchase of equipment or real property with SLFRF funds must be consistent with the Uniform Guidance at 2 CFR Part 200, Subpart D. Equipment and real property acquired under this program must be used for the originally authorized purpose. Consistent with 2 CFR 200.311 and 2 CFR 200.313, any equipment or real property acquired using SLFRF funds shall vest in the non-Federal entity. Any acquisition and maintenance of equipment or real property must also be in compliance with relevant laws and regulations.

6. **Matching, Level of Effort, Earmarking.** There are no matching, level of effort, or earmarking compliance responsibilities associated with the SLFRF award. SLFRF funds may only be used for non-Federal match in other programs where costs are eligible under both SLFRF and the other program and use of such funds is not prohibited by the other program.

7. **Period of Performance.** Your organization should also develop and implement internal controls related to activities occurring outside the period of performance. For example, each recipient should articulate each project's policy on allowability of costs incurred prior to award or start of the period of performance. All funds remain subject to statutory requirements that they must be used for costs incurred by the recipient during the period that begins on March 3, 2021, and ends on December 31, 2024, and that award funds for the financial obligations incurred by December 31, 2024 must be expended by December 31, 2026. Any funds not used must be returned to Treasury.

8. **Procurement, Suspension & Debarment.** Recipients are responsible for ensuring that any procurement using SLFRF funds, or payments under procurement contracts using such funds are consistent with the procurement standards set forth in the Uniform Guidance at 2 CFR 200.317 through 2 CFR 200.327, as applicable. The Uniform Guidance establishes in 2 CFR 200.319 that all procurement transactions for property or services must be conducted in a manner providing full and open competition, consistent with standards outlined in 2 CFR 200.320, which allows for non-competitive procurements only in circumstances where at least one of the conditions below is true: the item is below the micro-purchase threshold; the item is only available from a single source; the public exigency or emergency will not permit a delay from publicizing a competitive solicitation; or after solicitation of a number of sources, competition is determined inadequate.[6] Recipients must have and use documented procurement procedures that are consistent with the standards outlined in 2 CFR 200.317 through 2 CFR 200.320. The Uniform Guidance requires an infrastructure for competitive bidding and contractor oversight, including maintaining written standards of conduct and prohibitions on dealing with suspended or debarred parties. Your organization must ensure adherence to all applicable local, State, and federal procurement laws and regulations.

9. **Program Income.** Generally, program income includes, but is not limited to, income from fees for services performed, the use or rental or real or personal property acquired under Federal awards and principal and interest on loans made with Federal award funds. Program income does not include interest earned on advances of Federal funds, rebates, credits, discounts, or interest on rebates, credits, or discounts. Recipients of SLFRF funds

[6] 2 CFR 200.320(c)(1)-(3) and (5)

should calculate, document, and record the organization's program income. Additional controls that your organization should implement include written policies that explicitly identify appropriate allocation methods, accounting standards and principles, compliance monitoring checks for program income calculations, and records.

The Uniform Guidance outlines the requirements that pertain to program income at 2 CFR 200.307. Treasury intends to provide additional guidance regarding program income and the application of 2 CFR 200.307(e)(1), including with respect to lending programs.

10. **Reporting.** All recipients of federal funds must complete financial, performance, and compliance reporting as required and outlined in Part 2 of this guidance. Expenditures may be reported on a cash or accrual basis, as long as the methodology is disclosed and consistently applied. Reporting must be consistent with the definition of expenditures pursuant to 2 CFR 200.1. Your organization should appropriately maintain accounting records for compiling and reporting accurate, compliant financial data, in accordance with appropriate accounting standards and principles.

    In addition, where appropriate, your organization needs to establish controls to ensure completion and timely submission of all mandatory performance and/or compliance reporting. See Part 2 of this guidance for a full overview of recipient reporting responsibilities.

11. **Subrecipient Monitoring.** SLFRF recipients that are pass-through entities as defined under 2 CFR 200.1 are required to manage and monitor their subrecipients to ensure compliance with requirements of the SLFRF award pursuant to 2 CFR 200.332 regarding requirements for pass-through entities.

    First, your organization must clearly identify to the subrecipient: (1) that the award is a subaward of SLFRF funds; (2) any and all compliance requirements for use of SLFRF funds; and (3) any and all reporting requirements for expenditures of SLFRF funds.

    Next, your organization will need to evaluate each subrecipient's risk of noncompliance based on a set of common factors. These risk assessments may include factors such as prior experience in managing Federal funds, previous audits, personnel, and policies or procedures for award execution and oversight. Ongoing monitoring of any given subrecipient should reflect its assessed risk and include monitoring, identification of deficiencies, and follow-up to ensure appropriate remediation.

    Accordingly, your organization should develop written policies and procedures for subrecipient monitoring and risk assessment and maintain records of all award agreements identifying or otherwise documenting subrecipients' compliance obligations.

12. **Special Tests and Provisions.** Treasury has set a deadline of July 16, 2021, for receipt of public comment on its Interim Final Rule and will adopt a final rule responding to these comments. In addition, Treasury may add clarifications to the implementing guidance.

Across each of the compliance requirements above, Treasury described some best practices for development of internal controls. The table below provides a brief description and example of each best practice.

Table 1: Internal controls best practices

Best Practice	Description	Example
Written policies and procedures	Formal documentation of recipient policies and procedures	Documented procedure for determining worker eligibility for premium pay
Written standards of conduct	Formal statement of mission, values, principles, and professional standards	Documented code of conduct / ethics for subcontractors
Risk-based due diligence	Pre-payment validations conducted according to an assessed level of risk	Enhanced eligibility review of subrecipient with imperfect performance history
Risk-based compliance monitoring	Ongoing validations conducted according to an assessed level of risk	Higher degree of monitoring for projects that have a higher risk of fraud, given program characteristics
Record maintenance and retention	Creation and storage of financial and non-financial records.	Storage of all subrecipient payment information.

E. Award Terms and Conditions

The Award Terms and Conditions of the SLFRF financial assistance agreement sets forth the compliance obligations for recipients pursuant to the SLFRF statute, the Uniform Guidance, and Treasury's Interim Final Rule. Recipients should ensure they remain in compliance with all Award Terms and Conditions. These obligations include the following items in addition to those described above:

1. **SAM.gov Requirements.** All eligible recipients are also required to have an active registration with the System for Award Management (SAM) (https://www.sam.gov). To ensure timely receipt of funding, Treasury has stated that Non-entitlement Units of Government (NEUs) who have not previously registered with SAM.gov may do so after receipt of the award, but before the submission of mandatory reporting.[7]

2. **Recordkeeping Requirements.** Generally, your organization must maintain records and financial documents for five years after all funds have been expended or returned to Treasury, as outlined in paragraph 4.c. of the Award Terms and Conditions. Treasury may request transfer of records of long-term value at the end of such period. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats.

   Your organization must agree to provide or make available such records to Treasury upon request, and to any authorized oversight body, including but not limited to the Government Accountability Office ("GAO"), Treasury's Office of Inspector General ("OIG"), and the Pandemic Relief Accountability Committee ("PRAC").

3. **Single Audit Requirements.** Recipients and subrecipients that expend more than $750,000 in Federal awards during their fiscal year will be subject to an audit under the Single Audit Act and its implementing regulation at 2 CFR Part 200, Subpart F regarding audit requirements.[8] Recipients and subrecipients may also refer to the Office of

[7] See flexibility provided in https://www.whitehouse.gov/wp-content/uploads/2021/03/M_21_20.pdf.
[8] For-profit entities that receive SLFRF subawards are not subject to Single Audit requirements. However, they are subject to other audits as deemed necessary by authorized governmental entities, including Treasury, the GAO, the PRAC and the Treasury's OIG.

Management and Budget (OMB) Compliance Supplements for audits of federal funds and related guidance and the Federal Audit Clearinghouse to see examples and single audit submissions.

4. **Civil Rights Compliance**. Recipients of Federal financial assistance from the Treasury are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of Federal funds. Those requirements include ensuring that entities receiving Federal financial assistance from the Treasury do not deny benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity), in accordance with the following authorities: Title VI of the Civil Rights Act of 1964 (Title VI) Public Law 88-352, 42 U.S.C. 2000d-1 et seq., and the Department's implementing regulations, 31 CFR part 22; Section 504 of the Rehabilitation Act of 1973 (Section 504), Public Law 93-112, as amended by Public Law 93-516, 29 U.S.C. 794; Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. 1681 et seq., and the Department's implementing regulations, 31 CFR part 28; Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101 et seq., and the Department implementing regulations at 31 CFR part 23.

   In order to carry out its enforcement responsibilities under Title VI of the Civil Rights Act, Treasury will collect and review information from recipients to ascertain their compliance with the applicable requirements before and after providing financial assistance. Treasury's implementing regulations, 31 CFR part 22, and the Department of Justice (DOJ) regulations, Coordination of Non-discrimination in Federally Assisted Programs, 28 CFR part 42, provide for the collection of data and information from recipients (see 28 CFR 42.406). Treasury may request that recipients submit data for post-award compliance reviews, including information such as a narrative describing their Title VI compliance status.

Part 2: Reporting Guidance

There are three types of reporting requirements for the SLFRF program.

- **Interim Report:** Provide initial overview of status and uses of funding. This is a one-time report. **See Section A, page 13.**

- **Project and Expenditure Report:** Report on projects funded, expenditures, and contracts and subawards over $50,000, and other information. **See Section B, page 15.**

- **Recovery Plan Performance Report:** The Recovery Plan Performance Report (the "Recovery Plan") will provide information on the projects that large recipients are undertaking with program funding and how they plan to ensure program outcomes are achieved in an effective, efficient, and equitable manner. It will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury. The Recovery Plan will be posted on the website of the recipient as well as provided to Treasury. **See Section C, page 23.**

Table 2: Reporting requirements by recipient type

<table>
<tr><th>Recipient</th><th>Interim Report</th><th>Project and Expenditure Report</th><th>Recovery Plan Performance Report</th></tr>
<tr><td>States, U.S. territories, metropolitan cities and counties with a population that exceeds 250,000 residents</td><td rowspan="4">By August 31, 2021, with expenditure summary by category</td><td rowspan="3">By October 31, 2021, and then 30 days after the end of each quarter thereafter[9]</td><td>By August 31, 2021, and annually thereafter by July 31 [10]</td></tr>
<tr><td>Metropolitan cities and counties with a population below 250,000 residents which received more than $5 million in SLFRF funding</td><td rowspan="4">Not required</td></tr>
<tr><td>Tribal Governments</td></tr>
<tr><td>Metropolitan cities and counties with a population below 250,000 residents which received less than $5 million in SLFRF funding</td><td rowspan="2">By October 31, 2021, and then annually thereafter[11]</td></tr>
<tr><td>NEUs</td><td>Not required</td></tr>
</table>

The remainder of this document describes these reporting requirements. A users' guide will be provided with additional information on how and where to submit required reports.

[9] Interim Final Rule Page 111
[10] Interim Final Rule page 112
[11] Interim Final Rule Page 111

Comparison to reporting for the CRF

This guidance does not change the reporting or compliance requirements pertaining to the CRF. Reporting and compliance requirements for the SLFRF are separate from CRF reporting requirements. Changes from CRF to SLFRF include:

- **Project, Expenditure, and Subaward Reporting**: The SLFRF reporting requirements leverage the existing reporting regime used for CRF to foster continuity and provide many recipients with a familiar reporting mechanism. The data elements for the Project and Expenditure Report will largely mirror those used for CRF, with some minor exceptions noted in this guidance. The users' guide will describe how reporting for CRF funds will relate to reporting for the SLFRF.
- **Timing of Reports**: CRF reports were due within 10 days of each calendar quarter. SLFRF quarterly reporting will be due 30 days from quarter end.
- **Program and Performance Reporting**: The CRF reporting did not include any program or performance reporting. To build public awareness and accountability and allow Treasury to monitor compliance with eligible uses, some program and performance reporting is required.

A. Interim Report

States, U.S. territories, metropolitan cities, counties, and Tribal governments are required to submit a one-time interim report with expenditures[12] by Expenditure Category at the summary level from the date of award to June 30, 2021. The recipient will be required to enter obligations[13] and expenditures and, for each, select the specific expenditure category from the available options. See Appendix 1 for Expenditure Categories (EC).

1. Required Programmatic Data

Recipients will also be required to provide the following information if they have or plan to have expenditures in the following Expenditure Categories.

a. Revenue replacement (EC 6.1[14]): Key inputs into the revenue replacement formula in the Interim Final Rule and estimated revenue loss due to the Covid-19 public health emergency calculated using the formula in the Interim Final Rule as of December 31, 2020.

- Base year general revenue (e.g., revenue in the last full fiscal year prior to the public health emergency)
- Fiscal year end date
- Growth adjustment used (either 4.1 percent or average annual general revenue growth over 3 years prior to pandemic)
- Actual general revenue as of the twelve months ended December 31, 2020
- Estimated revenue loss due to the Covid-19 public health emergency as of December 31, 2020
- An explanation of how revenue replacement funds were allocated to government services (Note: additional instructions and/or template to be provided in users' guide)

[12] For purposes of reporting in the SLFRF portal, an expenditure is the amount that has been incurred as a liability of the entity (the service has been rendered or the good has been delivered to the entity).
[13] For purposes of reporting in the SLFRF portal, an obligation is an order placed for property and services, contracts and subawards made, and similar transactions that require payment.
[14] See Appendix 1 for the full Expenditure Category (EC) list. References to Expenditure Categories are identified by "EC" followed by numbers from the table in Appendix 1.

In calculating general revenue and the other items discussed above, recipients should use audited data if it is available. When audited data is not available, recipients are not required to obtain audited data if substantially accurate figures can be produced on an unaudited basis. Recipients should use their own data sources to calculate general revenue, and do not need to rely on revenue data published by the Census Bureau. Treasury acknowledges that due to differences in timing, data sources, and definitions, recipients' self-reported general revenue figures may differ from those published by the Census Bureau. Recipients may provide data on a cash, accrual, or modified accrual basis, provided that recipients are consistent in their choice of methodology throughout the covered period and until reporting is no longer required. Recipients' reporting should align with their own financial reporting.

In calculating general revenue, recipients should exclude all intergovernmental transfers from the federal government. This includes, but is not limited to, federal transfers made via a State to a locality pursuant to the CRF or SLFRF. To the extent federal funds are passed through States or other entities or intermingled with other funds, recipients should attempt to identify and exclude the federal portion of those funds from the calculation of general revenue on a best-efforts basis.

Consistent with the broad latitude provided to recipients to use funds for government services to the extent of reduction in revenue, recipients will be required to submit a description of services provided. This description may be in narrative or in another form, and recipients are encouraged to report based on their existing budget processes and to minimize administrative burden. For example, a recipient with $100 in revenue replacement funds available could indicate that $50 were used for law enforcement operating expenses and $50 were used for pay-go building of sidewalk infrastructure. As discussed in the Interim Final Rule, these services can include a broad range of services but may not be used directly for pension deposits or debt service.

Reporting requirements will not require tracking the indirect effects of Fiscal Recovery Funds, apart from the restrictions on use of Fiscal Recovery Funds to offset a reduction in net tax revenue. In addition, recipients must indicate that Fiscal Recovery Funds were not used to make a deposit in a pension fund.

b. Distributions to NEUs - States and territories only (EC 7.4): Information on SLFRF distributions to eligible NEUs. Each State and territory will be asked to provide an update on distributions to individual NEUs, including whether the NEU has (1) received funding; (2) declined funding and requested a transfer to the State under Section 603(c)(4) of the Act; or (3) not taken action on its funding. States and territories should be prepared to report on their information, including the following:

- NEU name
- NEU DUNS number
- NEU Taxpayer Identification Number (TIN)
- NEU Recipient Number (a unique identification code for each NEU assigned by the State to the NEU as part of the request for funding)
- NEU contact information (e.g., address, point of contact name, point of contact email address, and point of contact phone number)
- NEU authorized representative name and email address
- Initial allocation and, if applicable, subsequent allocation to the NEU (before application of the 75 percent cap)
- Total NEU reference budget (as submitted by the NEU to the State as part of the request for funding)

- Amount of the initial and, if applicable, subsequent allocation above 75 percent of the NEU's reference budget which will be returned to Treasury
- Payment amount(s)
- Payment date(s)

For each eligible NEU that declined funding and requested a transfer to the State under Section 603(c)(4), the State must also attach a form signed by the NEU, as detailed in the Guidance on Distributions of Funds to Non-Entitlement Units of Local Government.

States with "weak" minor civil divisions (i.e., Illinois, Indiana, Kansas, Missouri, Nebraska, North Dakota, Ohio, and South Dakota) should also list any minor civil divisions that the State deemed ineligible.

B. Project and Expenditure Report

All recipients are required to submit Project and Expenditure Reports.

1. Quarterly Reporting

The following recipients are required to submit quarterly Project and Expenditure Reports:
- States, U.S. territories, and Tribal governments
- Metropolitan cities and counties that received more than $5 million in SLFRF funding

For these recipients, the initial quarterly Project and Expenditure Report will cover two calendar quarters from the date of award to September 30, 2021 and must be submitted to Treasury by October 31, 2021. The subsequent quarterly reports will cover one calendar quarter and must be submitted to Treasury within 30 calendar days after the end of each calendar quarter. Quarterly reports are not due concurrently with applicable annual reports. The table below summarizes the quarterly report timelines:

Report	Year	Quarter	Period Covered	Due Date
1	2021	2 and 3	Award Date – September 30	October 31, 2021
2	2021	4	October 1 – December 31	January 31, 2022
3	2022	1	January 1 – March 31	April 30, 2022
4	2022	2	April 1 – June 30	July 31, 2022
5	2022	3	July 1 – September 30	October 31, 2022
6	2022	4	October 1 – December 31	January 31, 2023
7	2023	1	January 1 – March 31	April 30, 2023
8	2023	2	April 1 – June 30	July 31, 2023
9	2023	3	July 1 – September 30	October 31, 2023
10	2023	4	October 1 – December 31	January 31, 2024
11	2024	1	January 1 – March 31	April 30, 2024
12	2024	2	April 1 – June 30	July 31, 2024
13	2024	3	July 1 – September 30	October 31, 2024
14	2024	4	October 1 – December 31	January 31, 2025
15	2025	1	January 1 – March 31	April 30, 2025
16	2025	2	April 1 – June 30	July 31, 2025
17	2025	3	July 1 – September 30	October 31, 2025
18	2025	4	October 1 – December 31	January 31, 2026
19	2026	1	January 1 – March 31	April 30, 2026
20	2026	2	April 1 – June 30	July 31, 2026

Report	Year	Quarter	Period Covered	Due Date
21	2026	3	July 1 – September 30	October 31, 2026
22	2026	4	October 1 – December 31	March 31, 2027

2. Annual Reporting

The following recipients are required to submit annual Project and Expenditure Reports:

- Metropolitan cities and counties that received less than $5 million in SLFRF funding.
- NEUs. To facilitate reporting, each NEU will need a NEU Recipient Number. This is a unique identification code for each NEU assigned by the State to the NEU as part of its request for funding.

For these recipients, the initial Project and Expenditure Report will cover from the date of award to September 30, 2021 and must be submitted to Treasury by October 31, 2021. The subsequent annual reports will cover one calendar year and must be submitted to Treasury by October 31. The table below summarizes the report timelines:

Report	Period Covered	Due Date
1	Award Date – September 30, 2021	October 31, 2021
2	October 1, 2021 – September 30, 2022	October 31, 2022
3	October 1, 2022 – September 30, 2023	October 31, 2023
4	October 1, 2023 – September 30, 2024	October 31, 2024
5	October 1, 2024 – September 30, 2025	October 31, 2025
6	October 1, 2025 – September 30, 2026	October 31, 2026
7	October 1, 2026 – December 31, 2026	March 31, 2027

3. Required Information

The following information will be required in Project and Expenditure Reports:

a. Projects: Provide information on all SLFRF funded projects. Projects are new or existing eligible government services or investments funded in whole or in part by SLFRF funding. For each project, the recipient will be required to enter the project name, identification number (created by the recipient), project expenditure category (see Appendix 1), description, and status of completion. Project descriptions must describe the project in sufficient detail to provide understanding of the major activities that will occur, and will be required to be between 50 and 250 words. Projects should be defined to include only closely related activities directed toward a common purpose. In particular, recipients should review the Required Programmatic Data described below and define their projects at a sufficient level of granularity to report these metrics for a reasonably specific activity or set of activities in each project.

   Note: For each project, the recipient will be asked to select the appropriate Expenditure Category based on the scope of the project (see Appendix 1). Projects should be scoped to align to a single Expenditure Category. For select Expenditure Categories, the recipient will also be asked to provide additional programmatic data (described further below).

b. Expenditures: Once a project is entered the recipient will be able to report on the project's obligations and expenditures. Recipients will be asked to report:
   - Current period obligation
   - Cumulative obligation
   - Current period expenditure
   - Cumulative expenditure

c. Project Status: Once a project is entered the recipient will be asked to report on project status each reporting period, in four categories:
   - Not Started
   - Completed less than 50 percent
   - Completed 50 percent or more
   - Completed

d. Project Demographic Distribution: Recognizing the disproportionate impact of the pandemic-related recession on low-income communities, recipients must report whether certain types of projects[15] are targeted to economically disadvantaged communities, as defined by HUD's Qualified Census Tract.[16] Recipients will be asked to identify whether or not the project is serving an economically disadvantaged community. To minimize the administrative burden on recipients while ensuring that this important aspect of program performance is tracked, recipients may assume that the funds for a project count as being targeted towards economically disadvantaged communities if the project funds are spent on:
   - A program or service is provided at a physical location in a Qualified Census Tract (for multi-site projects, if a majority of sites are within Qualified Census Tracts);
   - A program or service where the primary intended beneficiaries live within a Qualified Census Tract;
   - A program or service for which the eligibility criteria are such that the primary intended beneficiaries earn less than 60 percent of the median income for the relevant jurisdiction (e.g., State, county, metropolitan area, or other jurisdiction); or
   - A program or service for which the eligibility criteria are such that over 25 percent of intended beneficiaries are below the federal poverty line.

   Recipients may use reasonable estimates to determine if a project meets one of these criteria, including identifying the intended beneficiaries of a program or service in terms of income characteristics, geographic location, or otherwise estimating the beneficiaries of a program based on its eligibility criteria. Recipients do not need to track information on each individual beneficiary to make the determination of whether or not the project is serving an economically disadvantaged community. If a recipient is unable to measure economic characteristics of the primary intended beneficiaries of a program or service due to data limitations or for other reasons, that program or service may not be counted as targeted to economically disadvantaged communities. Treasury recognizes that in some circumstances, recipients may fund eligible programs or services that benefit economically disadvantaged communities but may lack adequate data to assess conclusively that such a program or service is targeted to economically disadvantaged communities based on the criteria described above.

e. Subawards: Each recipient shall also provide detailed obligation and expenditure information for any contracts and grants awarded, loans issued, transfers made to other government entities, and direct payments made by the recipient that are greater than or equal to $50,000.

[15] Specifically recipients must report this information for projects in the Expenditure Categories that are marked with "^" in the expenditure category listing in Appendix 1 of this guidance
[16] HUD defines as a QCT as having "50 percent of households with incomes below 60 percent of the Area Median Gross Income (AMGI) or have a poverty rate of 25 percent or more." To view median income area for their jurisdiction, recipients may visit the U.S. Census website on median incomes and select the geography for their jurisdiction and relevant unit of measurement (household or individual) for the project.

Recipients do not also need to submit separate monthly subaward reports to FSRS.gov as required pursuant to the 2 CFR Part 170, Appendix A award term regarding reporting subaward and executive compensation, which is included in the SLFRF Award Terms and Conditions. Treasury will submit this reporting on behalf of recipients using the $50,000 reporting threshold, timing, and data elements discussed in this guidance. If recipients choose to continue reporting to FSRS.gov in addition to reporting directly to Treasury on these funds, they may do so and will be asked to notify Treasury as part of their quarterly submission.

In general, recipients will be asked to provide the following information for each Contract, Grant, Loan, Transfer, or Direct Payment greater than or equal to $50,000:

- Subrecipient identifying and demographic information (e.g., DUNS number and location)
- Award number (e.g., Award number, Contract number, Loan number)
- Award date, type, amount, and description
- Award payment method (reimbursable or lump sum payment(s))
- For loans, expiration date (date when loan expected to be paid in full)
- Primary place of performance
- Related project name(s)
- Related project identification number(s) (created by the recipient)
- Period of performance start date
- Period of performance end date
- Quarterly obligation amount
- Quarterly expenditure amount
- Project(s)
- Additional programmatic performance indicators for select Expenditure Categories (see below)

Aggregate reporting is required for contracts, grants, transfers made to other government entities, loans, direct payments, and payments to individuals that are below $50,000. This information will be accounted for by expenditure category at the project level.

As required by the 2 CFR Part 170, Appendix A award term regarding reporting subaward and executive compensation, recipients must also report the names and total compensation of their five most highly compensated executives and their subrecipients' executives for the preceding completed fiscal year if (1) the recipient received 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards), and received $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act (and subawards), and (2) if the information is not otherwise public. In general, most SLFRF Recipients are governmental entities with executive salaries that are already disclosed, so no additional information must be reported. The recipient is responsible for the subrecipients' compliance with registering and maintaining an updated profile on SAM.gov.

f. Civil Rights Compliance: Treasury will request information on recipients' compliance with Title VI of the Civil Rights Act of 1964 on an annual basis. This information may include a narrative describing the recipient's compliance with Title VI, along with other questions and assurances.

g. Required Programmatic Data (other than infrastructure projects): For all projects listed under the following Expenditure Categories (see Appendix 1), the information listed must be provided in each report.

1. Payroll for Public Health and Safety Employees (EC 1.9):
   - Number of government FTEs responding to COVID-19 supported under this authority

2. Household Assistance (EC 2.1-2.5):
   - Brief description of structure and objectives of assistance program(s) (e.g., nutrition assistance for low-income households)
   - Number of individuals served (by program if recipient establishes multiple separate household assistance programs)
   - Brief description of recipient's approach to ensuring that aid to households responds to a negative economic impact of Covid-19, as described in the Interim Final Rule

3. Small Business Economic Assistance (EC 2.9):
   - Brief description of the structure and objectives of assistance program(s) (e.g., grants for additional costs related to Covid-19 mitigation)
   - Number of small businesses served (by program if recipient establishes multiple separate small businesses assistance programs)
   - Brief description of recipient's approach to ensuring that aid to small businesses responds to a negative economic impact of COVID-19, as described in the Interim Final Rule

4. Aid to Travel, Tourism, and Hospitality or Other Impacted Industries (EC 2.11-2.12):
   - If aid is provided to industries other than travel, tourism, and hospitality (EC 2.12), a description of pandemic impact on the industry and rationale for providing aid to the industry
   - Brief narrative description of how the assistance provided responds to negative economic impacts of the COVID-19 pandemic
   - For each subaward:
     - Sector of employer (Note: additional detail, including list of sectors to be provided in a users' guide)
     - Purpose of funds (e.g., payroll support, safety measure implementation)

5. Rehiring Public Sector Staff (EC 2.14):
   - Number of FTEs rehired by governments under this authority

6. Education Assistance (EC 3.1-3.5):
   - The National Center for Education Statistics ("NCES") School ID or NCES District ID. List the School District if all schools within the school district received some funds. If not all schools within the school district received funds, list the School ID of the schools that received funds. These can allow evaluators to link data from the NCES to look at school-level demographics and, eventually, student performance.[17]

[17] For more information on NCES identification numbers see https://nces.ed.gov/ccd/districtsearch/ (districts) and https://nces.ed.gov/ccd/schoolsearch/ (schools).

7. Premium Pay (both Public Sector EC 4.1 and Private Sector EC 4.2):
   - List of sectors designated as critical to the health and well-being of residents by the chief executive of the jurisdiction, if beyond those included in the Interim Final Rule (Note: a list of sectors will be provided in the forthcoming users' guide).
   - Number of workers to be served
   - Employer sector for all subawards to third-party employers (i.e., employers other than the State, local, or Tribal government) (Note: a list of sectors will be provided in the forthcoming users' guide).
   - For groups of workers (e.g., an operating unit, a classification of worker, etc.) or, to the extent applicable, individual workers, for whom premium pay would increase total pay above 150 percent of their residing State's average annual wage, or their residing county's[18] average annual wage, whichever is higher, on an annual basis:
     - A brief written narrative justification of how the premium pay or grant is responsive to workers performing essential work during the public health emergency. This could include a description of the essential workers' duties, health or financial risks faced due to COVID-19, and why the recipient government determined that the premium pay was responsive to workers performing essential work during the pandemic. This description should not include personally identifiable information; when addressing individual workers, recipients should be careful not to include this information. Recipients may consider describing the workers' occupations and duties in a general manner as necessary to protect privacy.

8. Revenue replacement (EC 6.1):
   Under the Interim Final Rule, recipients calculate revenue loss using data as of four discrete points during the program: December 31, 2020, December 31, 2021, December 31, 2022, and December 31, 2023. Revenue loss calculated as of December 31, 2020 will be reported in the Interim Report, as described above. For future calculation dates, revenue loss will be reported only in the Quarter 4 reports due January 31, 2022, January 31, 2023, and January 31, 2024. Reporting on revenue loss should include:
   - General revenue collected over the past 12 months as of the most recent calculation date, as outlined in the Interim Final Rule (for example, for the January 31, 2022 report, recipients should provide 12 month general revenue as of December 31, 2021);
   - Calculated revenue loss due to the Covid-19 public health emergency; and
   - An explanation of how the revenue replacement funds were allocated to government services (note: additional instructions and/or template to be provided in user guide).

   In calculating general revenue and the revenue loss due to the COVID-19 public health emergency, recipients should follow the same guidance as described above for the Interim Report.

h. Required Programmatic Data for Infrastructure Projects (EC 5): For all projects listed under the Water, Sewer, and Broadband Expenditure Categories (see Appendix 1), more detailed project-level information is required. Each project will be required to report expenditure data as described above, but will also report the following information:

[18] *County* means a county, parish, or other equivalent county division (as defined by the Census Bureau). See 31 CFR 35.3.

1. <u>All infrastructure projects (EC 5)</u>:
   - Projected/actual construction start date (month/year)
   - Projected/actual initiation of operations date (month/year)
   - Location (for broadband, geospatial location data)
   - For projects over $10 million:
     a. A recipient may provide a certification that, for the relevant project, all laborers and mechanics employed by contractors and subcontractors in the performance of such project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as "baby Davis-Bacon Acts"). If such certification is not provided, a recipient must provide a project employment and local impact report detailing:
        - The number of employees of contractors and sub-contractors working on the project;
        - The number of employees on the project hired directly and hired through a third party;
        - The wages and benefits of workers on the project by classification; and
        - Whether those wages are at rates less than those prevailing.[19]
          Recipients must maintain sufficient records to substantiate this information upon request.
     b. A recipient may provide a certification that a project includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)). If the recipient does not provide such certification, the recipient must provide a project workforce continuity plan, detailing:
        - How the recipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project;
        - How the recipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project; and
        - How the recipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities;
        - Whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and
        - Whether the project has completed a project labor agreement.
     c. Whether the project prioritizes local hires.
     d. Whether the project has a Community Benefit Agreement, with a description of any such agreement.

[19] As determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed.

2. Water and sewer projects (EC 5.1-5.15):
   - National Pollutant Discharge Elimination System (NPDES) Permit Number (if applicable; for projects aligned with the Clean Water State Revolving Fund)
   - Public Water System (PWS) ID number (if applicable; for projects aligned with the Drinking Water State Revolving Fund)

3. Broadband projects (EC 5.16-5.17):
   - Speeds/pricing tiers to be offered, including the speed/pricing of its affordability offering
   - Technology to be deployed
   - Miles of fiber
   - Cost per mile
   - Cost per passing
   - Number of households (broken out by households on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload
     - Number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download
     - Number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload
   - Number of institutions and businesses (broken out by institutions on Tribal lands and those not on Tribal lands) projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization
     - Specify the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download; and
     - Specify the number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload

i. Distributions to NEUs - States and territories only (EC 7.4): Information on SLFRF distributions to eligible NEUs. Each State and territory will be asked to provide an update on distributions to individual NEUs, including whether the NEU has (1) received funding; (2) declined funding and requested a transfer to the State under Section 603(c)(4) of the Act; or (3) not taken action on its funding. States and territories should be prepared to report on their information, including the following:
   - NEU name
   - NEU DUNS number
   - NEU Taxpayer Identification Number (TIN)
   - NEU Recipient Number (a unique identification code for each NEU assigned by the State to the NEU as part of the request for funding)
   - NEU contact information (e.g., address, point of contact name, point of contact email address, and point of contact phone number)
   - NEU authorized representative name and email address
   - Initial allocation and, if applicable, subsequent allocation to the NEU (before application of the 75 percent cap)
   - Total NEU reference budget (as submitted by the NEU to the State as part of the request for funding)
   - Amount of the initial and, if applicable, subsequent allocation above 75 percent of the NEU's reference budget which will be returned to Treasury
   - Payment amount(s)
   - Payment date(s)

For each eligible NEU that declined funding and requested a transfer to the State under Section 603(c)(4), the State must also attach a form signed by the NEU, as detailed in the Guidance on Distributions of Funds to Non-Entitlement Units of Local Government.

States with "weak" minor civil divisions (i.e., Illinois, Indiana, Kansas, Missouri, Nebraska, North Dakota, Ohio, and South Dakota) should also list any minor civil divisions that the State deemed ineligible.

j. NEU Documentation (NEUs only): Each NEU will also be asked to provide the following information with their first report submitted by October 31, 2021:
   - Copy of the signed award terms and conditions agreement (which was signed and submitted to the State as part of the request for funding)
   - Copy of the signed assurances of compliance with Title VI of the Civil Rights Act of 1964 (which was signed and submitted to the State as part of the request for funding)
   - Copy of actual budget documents validating the top-line budget total provided to the State as part of the request for funding

C. Recovery Plan Performance Report

States, territories, metropolitan cities, and counties with a population that exceeds 250,000 residents will also be required to publish and submit to Treasury a Recovery Plan performance report ("Recovery Plan"). Each Recovery Plan must be posted on the public-facing website of the recipient by the same date the recipient submits the report to Treasury. This reporting requirement includes uploading a link to the publicly available document report along with providing data in the Treasury reporting portal.

The Recovery Plan will provide the public and Treasury information on the projects recipients are undertaking with program funding and how they are planning to ensure program outcomes are achieved in an effective, efficient, and equitable manner. While this guidance outlines some minimum requirements for the Recovery Plan, each recipient is encouraged to add information to the plan they feel is appropriate to provide information to their constituents on efforts they are taking to respond to the pandemic and promote economic recovery. Each jurisdiction may determine the general form and content of the Recovery Plan, as long as it includes the minimum information determined by Treasury. Treasury will provide a recommended template but recipients may modify this template as appropriate for their jurisdiction. The Recovery Plan will include key performance indicators identified by the recipient and some mandatory indicators identified by Treasury.

The initial Recovery Plan will cover the period from the date of award to July 31, 2021 and must be submitted to Treasury by August 31, 2021. Thereafter, the Recovery Plan will cover a 12-month period and recipients will be required to submit the report to Treasury within 30 days after the end of the 12-month period (by July 31). The table below summarizes the report timelines:

Annual Report	Period Covered	Due Date
1	Award Date – July 31, 2021	August 31, 2021
2	July 1, 2021 – June 30, 2022	July 31, 2022
3	July 1, 2022 – June 30, 2023	July 31, 2023
4	July 1, 2023 – June 30, 2024	July 31, 2024
5	July 1, 2024 – June 30, 2025	July 31, 2025
6	July 1, 2025 – June 30, 2026	July 31, 2026
7	July 1, 2026 – December 31, 2026	March 31, 2027

The Recovery Plan will include, at a minimum, the following information:

1. Executive Summary

Provide a high-level overview of the jurisdiction's intended and actual uses of funding including, but not limited to: the jurisdiction's plan for use of funds to promote a response to the pandemic and economic recovery, key outcome goals, progress to date on those outcomes, and any noteworthy challenges or opportunities identified during the reporting period.

2. Uses of Funds

Describe in further detail your jurisdiction's intended and actual uses of the funds, such as how your jurisdiction's approach would help support a strong and equitable recovery from the COVID-19 pandemic and economic downturn. Describe any strategies employed to maximize programmatic impact and effective, efficient, and equitable outcomes. Given the broad eligible uses of funds and the specific needs of the jurisdiction, please also explain how the funds would support the communities, populations, or individuals in your jurisdiction. Your description should address how you are promoting each of the following, to the extent they apply:

a. Public Health (EC 1): As relevant, describe how funds are being used to respond to COVID-19 and the broader health impacts of COVID-19 and the COVID-19 public health emergency.
b. Negative Economic Impacts (EC 2): As relevant, describe how funds are being used to respond to negative economic impacts of the COVID-19 public health emergency, including to households and small businesses.
c. Services to Disproportionately Impacted Communities (EC 3): As relevant, describe how funds are being used to provide services to communities disproportionately impacted by the COVID-19 public health emergency.
d. Premium Pay (EC 4): As relevant, describe the approach, goals, and sectors or occupations served in any premium pay program. Describe how your approach prioritizes low-income workers.
e. Water, sewer, and broadband infrastructure (EC 5): Describe the approach, goals, and types of projects being pursued, if pursuing.
f. Revenue Replacement (EC 6): Describe the loss in revenue due to the COVID-19 public health emergency and how funds have been used to provide government services.

Where appropriate, recipients should also include information on your jurisdiction's use (or planned use) of other federal recovery funds including other programs under the American Rescue Plan such as the Emergency Rental Assistance, Housing Assistance, and so forth, to provide broader context on the overall approach for pandemic recovery.

3. Promoting equitable outcomes

Describe efforts to promote equitable outcomes, including how programs were designed with equity in mind. Please include in your description how your jurisdiction will consider and measure equity at the various stages of the program, including:

a. Goals: Are there particular historically underserved, marginalized, or adversely affected groups that you intend to serve within your jurisdiction?
b. Awareness: How equal and practical is the ability for residents or businesses to become aware of the services funded by the SLFRF?
c. Access and Distribution: Are there differences in levels of access to benefits and services across groups? Are there administrative requirements that result in disparities in ability to complete applications or meet eligibility criteria?

d. Outcomes: Are intended outcomes focused on closing gaps, reaching universal levels of service, or disaggregating progress by race, ethnicity, and other equity dimensions where relevant for the policy objective?

Treasury encourages uses of funds that promote strong, equitable growth, including racial equity. Please describe how your jurisdiction's planned or current use of funds prioritizes economic and racial equity as a goal, names specific targets intended to produce meaningful equity results at scale, and articulates the strategies to achieve those targets. In addition, please explain how your jurisdiction's overall equity strategy translates into the specific services or programs offered by your jurisdiction in the following Expenditure Categories:

a. Negative Economic Impacts (EC 2): assistance to households, small businesses, and non-profits to address impacts of the pandemic, which have been most severe among low-income populations. This includes assistance with food, housing, and other needs; employment programs for people with barriers to employment who faced negative economic impacts from the pandemic (such as residents of low-income neighborhoods, minorities, disconnected youth, the unemployed, formerly incarcerated people, veterans, and people with disabilities); and other strategies that provide disadvantaged groups with access to education, jobs, and opportunity.
b. Services to Disproportionately Impacted Communities (EC 3): services to address health disparities and the social determinants of health, build stronger neighborhoods and communities (e.g., affordable housing), address educational disparities (e.g., evidence-based tutoring, community schools, and academic, social-emotional, and mental health supports for high poverty schools), and promote healthy childhood environments (e.g., home visiting, child care).

The initial report must describe efforts to date and intended outcomes to promote equity. Each annual report thereafter must provide an update, using qualitative and quantitative data, on how the recipients' approach achieved or promoted equitable outcomes or progressed against equity goals during the performance period. Please also describe any constraints or challenges that impacted project success in terms of increasing equity. In particular, this section must describe the geographic and demographic distribution of funding, including whether it is targeted toward traditionally marginalized communities.

For the purposes of the SLFRF, equity is defined in the Executive Order 13985 On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, as issued on January 20, 2021.

4. Community Engagement

Please describe how your jurisdiction's planned or current use of funds incorporates written, oral, and other forms of input that capture diverse feedback from constituents, community-based organizations, and the communities themselves. Where relevant, this description must include how funds will build the capacity of community organizations to serve people with significant barriers to services, including people of color, people with low incomes, limited English proficient populations, and other traditionally underserved groups.

5. Labor Practices

Describe workforce practices on any infrastructure projects being pursued (EC 5). How are projects using strong labor standards to promote effective and efficient delivery of high-quality infrastructure projects while also supporting the economic recovery through strong employment opportunities for workers? For example, report whether any of the following practices are being utilized: project labor agreements, community benefits agreements, prevailing wage requirements, and local hiring.

6. Use of Evidence

The Recovery Plan should identify whether SLFRF funds are being used for evidence-based interventions[20] and/or if projects are being evaluated through rigorous program evaluations that are designed to build evidence. Recipients must briefly describe the goals of the project, and the evidence base for the interventions funded by the project. Recipients must specifically identify the dollar amount of the total project spending that is allocated towards evidence-based interventions for each project in the Public Health (EC 1), Negative Economic Impacts (EC 2), and Services to Disproportionately Impacted Communities (EC 3) Expenditure Categories.[21]

Recipients are exempt from reporting on evidence-based interventions in cases where a program evaluation is being conducted. Recipients are encouraged to use relevant evidence Clearinghouses, among other sources, to assess the level of evidence for their interventions and identify evidence-based models that could be applied in their jurisdiction; such evidence clearinghouses include the U.S. Department of Education's What Works Clearinghouse, the U.S. Department of Labor's CLEAR, and the Childcare & Early Education Research Connections and the Home Visiting Evidence of Effectiveness clearinghouses from Administration for Children and Families, as well as other clearinghouses relevant to particular projects conducted by the recipient. In such cases where a recipient is conducting a program evaluation in lieu of reporting the amount of spending on evidence-based interventions, they must describe the evaluation design including whether it is a randomized or quasi-experimental design; the key research questions being evaluated; whether the study has sufficient statistical power to disaggregate outcomes by demographics; and the timeframe for the completion of the evaluation (including a link to completed evaluation if relevant).[22] Once the evaluation has been completed, recipients must post the evaluation publicly and link to the completed evaluation in the Recovery Plan. Once an evaluation has been completed (or has sufficient interim findings to determine the efficacy of the intervention), recipients should determine whether the spending for the evaluated interventions should be counted towards the dollar amount categorized as evidence-based for the relevant project.

For all projects, recipients may be selected to participate in a national evaluation, which would study their project along with similar projects in other jurisdictions that are focused on the same set of outcomes. In such cases, recipients may be asked to share information and data that is needed for the national evaluation.

Recipients are encouraged to consider how a Learning Agenda, either narrowly focused on SLFRF or broadly focused on the recipient's broader policy agenda, could support their overarching evaluation efforts in order to create an evidence-building strategy for their jurisdiction.[23]

Appendix 2 contains additional information on evidence-based interventions for the purposes of the Recovery Plan.

[20] As noted in Appendix 2, evidence-based refers to interventions with strong or moderate levels of evidence.

[21] Of note, recipients are only required to report the amount of the total funds that are allocated to evidence-based interventions in the areas of Public Health, Negative Economic Impacts, and Services to Disproportionately Impacted Communities that are marked by an asterisk in Appendix 1: Expenditure Categories.

[22] For more information on the required standards for program evaluation, see OMB M-20-12.

[23] For more information on learning agendas, please see OMB M-19-23

7. Table of Expenses by Expenditure Category
Please include a table listing the amount of funds used in each Expenditure Category (See Appendix 1). The table should include cumulative expenses to date within each category, and the additional amount spent within each category since the last annual Recovery Plan.

8. Project Inventory
List the name and provide a brief description of all SLFRF funded projects. Projects are new or existing eligible government services or investments funded in whole or in part by SLFRF funding. For each project, include the project name, funding amount, identification number (created by the recipient and used thereafter in the quarterly Program and Expenditure Report), project Expenditure Category (see Appendix 1), and a description of the project which includes an overview of the main activities of the project, the approximate timeline, primary delivery mechanisms and partners, if applicable, and intended outcomes. Include a link to the website of the project if available. This information will provide context and additional detail for the information reported quarterly in the Project and Expenditure Report.

For infrastructure investment projects (EC 5), project-level reporting will be more detailed, as described for the Project and Expenditure Report above. Projects in this area may be grouped by Expenditure Category if needed, with further detail (such as the specific project name and identification number) provided in the Project and Expenditure Report. For infrastructure projects, descriptions should note how the project contributes to addressing climate change.

9. Performance Report
The Recovery Plan must include key performance indicators for the major SLFRF funded projects undertaken by the recipient. The recipient has flexibility in terms of how this information is presented in the Recovery Plan, and may report key performance indicators for each project, or may group projects with substantially similar goals and the same outcome measures. In some cases, the recipient may choose to include some indicators for each individual project as well as crosscutting indicators.

Performance indicators should include both output and outcome measures. Output measures, such as number of students enrolled in an early learning program, provide valuable information about the early implementation stages of a project. Outcome measures, such as the percent of students reading on grade level, provide information about whether a project is achieving its overall goals. Recipients are encouraged to use logic models[24] to identify their output and outcome measures. While the initial report will focus heavily on early output goals, recipients must include the related outcome goal for each project and provide updated information on achieving these outcome goals in annual reports. In cases where recipients are conducting a program evaluation for a project (as described above), the outcome measures in the performance report should be aligned with those being evaluated in the program. To support their performance measurement and program improvement efforts, recipients are permitted to use funds to make improvements to data or technology infrastructure and data analytics, as well as program evaluations.

10. Required Performance Indicators and Programmatic Data
While recipients have discretion on the full suite of performance indicators to include, a number of mandatory performance indicators and programmatic data must be included. These are necessary to allow Treasury to conduct oversight as well as understand and aggregate program outcomes across recipients. This section provides an overview of the mandatory performance indicators and programmatic data. This information may be included in each recipient's Recovery Plan as they determine most appropriate, including combining with the

[24] A logic model is a tool that depicts the intended links between program investments and outcomes, specifically the relationships among the resources, activities, outputs, outcomes, and impact of a program.

section above, but this data will also need to be entered directly into the Treasury reporting portal. Below is a list of required data for each Expenditure Category:

a. Household Assistance (EC 2.2 & 2.5) and Housing Support (EC 3.10-3.12):
   - Number of people or households receiving eviction prevention services (including legal representation)
   - Number of affordable housing units preserved or developed

b. Negative Economic Impacts (EC 2):
   - Number of workers enrolled in sectoral job training programs
   - Number of workers completing sectoral job training programs
   - Number of people participating in summer youth employment programs

c. Education Assistance (EC 3.1-3.5):
   - Number of students participating in evidence-based tutoring programs[25]

d. Healthy Childhood Environments (EC 3.6-3.9):
   - Number of children served by childcare and early learning (pre-school/pre-K/ages 3-5)
   - Number of families served by home visiting

The initial report should include the key indicators above. Each annual report thereafter should include updated data for the performance period as well as prior period data, and a brief narrative adding any additional context to help the reader interpret the results and understand the any changes in performance indicators over time. To the extent possible, Treasury also encourages recipients to provide data disaggregated by race, ethnicity, gender, income, and other relevant factors.

11. Ineligible Activities: Tax Offset Provision (States and territories only)
The following information is required for Treasury to ensure SLFRF funding is not used for ineligible activities.

In each reporting year, States and territories will report certain items related to the Tax Offset Provision 31 CFR 35.8, as detailed below. As indicated in the Interim Final Rule, Treasury is seeking comment on reporting requirements related to the Tax Offset Provision, including ways to better rely on information already produced by States and territories and to minimize burden.

The terms "reporting year," "baseline," "covered change," "net reduction in total spending," and "tax revenue" are defined in the Interim Final Rule, 31 CFR 35.3. For purposes of calculating a net reduction in total spending, total spending for the fiscal year ending 2019 should be reported on an inflation-adjusted basis, consistent with the Interim Final Rule, 31 CFR 35.3. Similarly, for purposes of calculating baseline, tax revenue for the fiscal year 2019 should be reported on an inflation-adjusted basis, consistent with the Interim Final Rule, 31 CFR 35.3.

For purposes of reporting actual tax revenue and calculating tax revenue for the fiscal year ending 2019,[26] (a) if available, recipients should report information using audited financials and (b) recipients may provide data on a cash, accrual, or modified accrual basis, but must be consistent in their approach across all reporting periods. Similarly, for purposes of calculating

[25] For more information on evidence-based tutoring programs, refer to the U.S. Department of Education's 2021 ED COVID-19 Handbook (Volume 2), which summarizes research on evidence-based tutoring programs (see the bottom of page 20.
[26] Tax revenue for fiscal year ending 2019 is relevant for calculating the recipient's baseline.

a net reduction in total spending, recipients should report data using audited financials where available.

a. Revenue-reducing Covered Changes:
For each reporting year, a recipient must report the value of covered changes that the recipient predicts will have the effect of reducing tax revenue in a given reporting year (revenue-reducing covered changes), similar to the way it would in the ordinary course of its budgeting process. The value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient government's existing approach for measuring the effects of fiscal policies, and that measures relative to a current law baseline. The covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s). Estimation approaches should not use dynamic methodologies that incorporate the projected effects of the policies on macroeconomic growth. In general and where possible, reported values should be produced by the agency of the recipient government responsible for estimating the costs and effects of fiscal policy changes. Recipients must maintain records regarding the identification and predicted effects of revenue-reducing covered changes.

b. Baseline Revenue:
Baseline has the meaning defined in the Interim Final Rule, 31 CFR 35.3.

Whether the revenue-reducing covered changes are in excess of the *de minimis*.
Recipients must determine whether the aggregate value of the revenue-reducing covered changes in the reporting year is less than one percent of baseline revenue.

c. Actual Tax Revenue:
Actual tax revenue means the actual tax revenue received by the recipient government in the reporting year. Tax revenue has the meaning defined in the Interim Final Rule, 31 CFR 35.3.

d. Reduction in Net Tax Revenue:
The reduction in net tax revenue is equal to baseline revenue minus actual tax revenue in each reporting year. If this value is zero or negative, there is no reduction in net tax revenue.

e. Any revenue-increasing covered changes:
A recipient must report the value of covered changes that have had or that the recipient predicts will have the effect of increasing tax revenue in a given reporting year (revenue-increasing covered changes), similar to the way it would in the ordinary course of its budgeting process. The value of these covered changes may be reported based on estimated values produced by a budget model, incorporating reasonable assumptions, that aligns with the recipient's existing approach for measuring the effects of fiscal policies, and that measures relative to a current law baseline. The covered changes may also be reported based on actual values using a statistical methodology to isolate the change in year-over-year revenue attributable to the covered change(s), relative to the current law baseline prior to the change(s). Estimation approaches should not use dynamic methodologies that incorporate the projected effects of the policies on macroeconomic growth. In general and where possible, reporting should be produced by the agency of the recipient responsible for estimating the costs and effects of fiscal policy changes.

Recipients should maintain records regarding revenue-reducing covered changes and estimates of such changes.

f. Net reduction in total spending, and tables of specific spending cuts:
Recipients must report on spending cuts. To calculate the amount of spending cuts that are available to offset a reduction in tax revenue, the recipient must first consider whether there has been a reduction in total net spending, excluding Fiscal Recovery Funds (net reduction in total spending). As in the Interim Final Rule, 35 CFR 35.3, net reduction in total spending is measured as the recipient government's total spending for a given reporting year excluding Fiscal Recovery Funds, subtracted from its total spending for its fiscal year ending in 2019, adjusted for inflation using the Bureau of Economic Analysis's Implicit Price Deflator for the gross domestic product of the United States. If that subtraction yields a positive value, there has been a net reduction; if it yields zero or a negative value, there has not been a net reduction. If there has been no net reduction in total spending, a recipient will have no spending cuts to offset a reduction in net tax revenue.

Next, a recipient must determine and aggregate the value of spending cuts in each "reporting unit," as defined below. For each reporting unit, the recipient must report (1) the amount of the reduction in spending in the reporting unit relative to its inflation-adjusted FY 2019 level, (2) the amount of any Fiscal Recovery Funds spent in the reporting unit, and (3) the amount by which the reduction in spending exceeds the Fiscal Recovery funds spent in the reporting unit. If a recipient has not spent amounts received from the Fiscal Recovery Funds in a reporting unit, the full amount of the reduction in spending counts as a covered spending cut and may be included in aggregate spending cuts. If the recipient has spent amounts received from the Fiscal Recovery Funds, such amounts generally would be deemed to have replaced the amount of spending cut, and only reductions in spending above the amount of Fiscal Recovery Funds spent on the reporting unit would be eligible to offset a reduction in net tax revenue. Only such amounts above the amount of Fiscal Recovery Funds spent on the reporting unit should be included in the aggregate of spending cuts.

To align with existing reporting and accounting, the Interim Final Rule considers the department, agency, or authority from which spending has been cut and whether the recipient government has spent amounts received from the Fiscal Recovery Funds on that same department, agency, or authority. Recipients may also choose to report at a more granular sub-department level. Recipients are encouraged to define and report spending in departments, sub-departments (e.g., bureaus), agencies, or authorities (each a "reporting unit") in a manner consistent with their existing budget process and should, to the extent possible, report using the same reporting unit in each reporting year. For example, if a State health department maintains separate budgets for different units (e.g., medical and public health units), those units may be reported and considered separately. Spending cuts must be reported relative to FY 2019 spending levels, adjusted for inflation, and excluding Fiscal Recovery Funds from reporting year spending levels.

Recipients should maintain records regarding spending cuts. As discussed in the Interim Final Rule, in order to help ensure governments use Fiscal Recovery Funds in a manner consistent with the prescribed eligible uses and do not use Fiscal Recovery Funds to indirectly offset a reduction in net tax revenue resulting from a covered change, Treasury will monitor changes in spending throughout the covered period. Evasions of the Tax Offset Provision may be subject to recoupment.

Appendix 1: Expenditure Categories

The Expenditure Categories (EC) listed below must be used to categorize each project as noted in Part 2 above. The term "Expenditure Category" refers to the detailed level (e.g., 1.1 COVID-10 Vaccination). When referred to at the summary level (e.g., EC 1) it includes all Expenditure Categories within that summary level.

1: Public Health	
1.1	COVID-19 Vaccination ^
1.2	COVID-19 Testing ^
1.3	COVID-19 Contact Tracing
1.4	Prevention in Congregate Settings (Nursing Homes, Prisons/Jails, Dense Work Sites, Schools, etc.)*
1.5	Personal Protective Equipment
1.6	Medical Expenses (including Alternative Care Facilities)
1.7	Capital Investments or Physical Plant Changes to Public Facilities that respond to the COVID-19 public health emergency
1.8	Other COVID-19 Public Health Expenses (including Communications, Enforcement, Isolation/Quarantine)
1.9	Payroll Costs for Public Health, Safety, and Other Public Sector Staff Responding to COVID-19
1.10	Mental Health Services*
1.11	Substance Use Services*
1.12	Other Public Health Services
2: Negative Economic Impacts	
2.1	Household Assistance: Food Programs* ^
2.2	Household Assistance: Rent, Mortgage, and Utility Aid* ^
2.3	Household Assistance: Cash Transfers* ^
2.4	Household Assistance: Internet Access Programs* ^
2.5	Household Assistance: Eviction Prevention* ^
2.6	Unemployment Benefits or Cash Assistance to Unemployed Workers*
2.7	Job Training Assistance (e.g., Sectoral job-training, Subsidized Employment, Employment Supports or Incentives)* ^
2.8	Contributions to UI Trust Funds
2.9	Small Business Economic Assistance (General)* ^
2.10	Aid to Nonprofit Organizations*
2.11	Aid to Tourism, Travel, or Hospitality
2.12	Aid to Other Impacted Industries
2.13	Other Economic Support* ^
2.14	Rehiring Public Sector Staff
3: Services to Disproportionately Impacted Communities	
3.1	Education Assistance: Early Learning* ^
3.2	Education Assistance: Aid to High-Poverty Districts ^
3.3	Education Assistance: Academic Services* ^
3.4	Education Assistance: Social, Emotional, and Mental Health Services* ^
3.5	Education Assistance: Other* ^
3.6	Healthy Childhood Environments: Child Care* ^
3.7	Healthy Childhood Environments: Home Visiting* ^
3.8	Healthy Childhood Environments: Services to Foster Youth or Families Involved in Child Welfare System* ^

3.9	Healthy Childhood Environments: Other* ^
3.10	Housing Support: Affordable Housing* ^
3.11	Housing Support: Services for Unhoused Persons* ^
3.12	Housing Support: Other Housing Assistance* ^
3.13	Social Determinants of Health: Other* ^
3.14	Social Determinants of Health: Community Health Workers or Benefits Navigators* ^
3.15	Social Determinants of Health: Lead Remediation ^
3.16	Social Determinants of Health: Community Violence Interventions* ^
4: Premium Pay	
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5: Infrastructure[27]	
5.1	Clean Water: Centralized Wastewater Treatment
5.2	Clean Water: Centralized Wastewater Collection and Conveyance
5.3	Clean Water: Decentralized Wastewater
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7: Administrative	
7.1	Administrative Expenses
7.2	Evaluation and Data Analysis
7.3	Transfers to Other Units of Government
7.4	Transfers to Non-entitlement Units (States and territories only)

*Denotes areas where recipients must identify the amount of the total funds that are allocated to evidence-based interventions (see Use of Evidence section above for details)

^Denotes areas where recipients must report on whether projects are primarily serving disadvantaged communities (see Project Demographic Distribution section above for details)

[27] Definitions for water and sewer Expenditure Categories can be found in the EPA’s handbooks. For “clean water” expenditure category definitions, please see: https://www.epa.gov/sites/production/files/2018-03/documents/cwdefinitions.pdf. For “drinking water” expenditure category definitions, please see: https://www.epa.gov/dwsrf/drinking-water-state-revolving-fund-national-information-management-system-reports.

Appendix 2: Evidenced-Based Intervention Additional Information

What is evidence-based?
For the purposes of the SLFRF, evidence-based refers to interventions with strong or moderate evidence as defined below:

Strong evidence means the evidence base that can support causal conclusions for the specific program proposed by the applicant with the highest level of confidence. This consists of one or more well-designed and well-implemented experimental studies conducted on the proposed program with positive findings on one or more intended outcomes.

Moderate evidence means that there is a reasonably developed evidence base that can support causal conclusions. The evidence base consists of one or more quasi-experimental studies with positive findings on one or more intended outcomes OR two or more non-experimental studies with positive findings on one or more intended outcomes. Examples of research that meet the standards include: well-designed and well-implemented quasi-experimental studies that compare outcomes between the group receiving the intervention and a matched comparison group (i.e., a similar population that does not receive the intervention).

Preliminary evidence means that the evidence base can support conclusions about the program's contribution to observed outcomes. The evidence base consists of at least one non-experimental study. A study that demonstrates improvement in program beneficiaries over time on one or more intended outcomes OR an implementation (process evaluation) study used to learn and improve program operations would constitute preliminary evidence. Examples of research that meet the standards include: (1) outcome studies that track program beneficiaries through a service pipeline and measure beneficiaries' responses at the end of the program; and (2) pre- and post-test research that determines whether beneficiaries have improved on an intended outcome.

North Carolina Association of County Commissioners (NCACC)

AMERICAN RESCUE PLAN ACT
CORONAVIRUS STATE & LOCAL FISCAL RECOVERY FUND FAQs

On March 11, President Biden signed the $1.9 trillion American Rescue Plan Act of 2021 (P.L. 11-2), which established the $362 billion Coronavirus State and Local Fiscal Recovery Fund. Of this total, $65.1 billion is provided in direct aid to counties and additional $1.5 billion for public lands counties.

Since the bill was signed into law, NACo has been working closely with the U.S. Department of Treasury to provide comprehensive guidance on the successful implementation and execution of the Recovery Fund. While the U.S. Treasury has not yet released official guidance, NACo has created the below FAQs to help answer some common questions about the Recovery Fund.

NACo will continue to monitor any developments on additional guidance from the U.S. Treasury.

1. What are the specific allowable uses of funds? Are there any restrictions?

The bill allocates $65.1 billion in direct federal aid to all counties based on their share of the U.S. population. Allowable uses outlined in the bill include (**but are not limited to**):

- Responding to or mitigate the public health emergency with respect to the COVID-19 emergency or its negative economic impacts.
- Providing government services to the extent of the reduction in revenue;
- Make necessary investments in water, sewer, or broadband infrastructure; and
- Responding to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the county that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work.

2. Will counties have to apply in order to receive funds?

Listed below are the general guidelines for the U.S. Department of Treasury's program administration of the State and Local Coronavirus Fiscal Recovery Fund. The U.S. Treasury is currently developing guidance on the Recovery Fund certification process in consultation with NACo.

- The deadline to spend funds is December 31, 2024.
- The U.S. Treasury is required to pay the first tranche to counties not later than 60-days after enactment, and second payment no earlier than 12 months after the first payment.
- The law provides an additional $77 million for the Government Accountability Office and $40 million for the Pandemic Response and Accountability Committee for oversight and to promote transparency and accountability.

3. **Will counties have to report what they intend to do with funds, in order to receive approval?**

The U.S. Treasury is currently in the process of developing the Recovery Fund certification process. Below are the key takeaways for the U.S. Treasury's reporting requirements of the State and Local Coronavirus Fiscal Recovery Fund.

Reporting requirements for state and local governments:

- Local governments, including **counties**, are required to provide "periodic reports" providing a detailed accounting of the use of funds.
- If a state, **county** or municipality does not comply with any provision of this bill, they are required to repay the U.S. Treasury an equal amount to the funds used in violation.
- **States** are required to report how funds are used and how their tax revenue was modified during the time that funds were spent during the covered period (covered period begins on March 3, 2021 and ends on the last day of the fiscal year a state or local government has expended or returned all funds to the U.S. Treasury).

4. **Across what time frame will using funds for the reduction in revenue be eligible (most recent fiscal year etc.)?**

The bill currently indicates that funds can be applied to any reductions in revenue **based on the most recent full fiscal year** and the deadline to spend these funds is December 31, 2024. NACo has informed the U.S. Treasury of variance in how counties make their annual budgets, and it is NACo's hope that the U.S. Treasury will accommodate county budgets that don't follow the calendar or traditional fiscal year.

5. **What types of lost revenue will be covered by the Recovery Fund? Can we expect additional regulations from the U.S. Treasury to come out regarding how to report and verify lost revenue?**

Below are the provisions regarding the use of State and Local Coronavirus Fiscal Recovery Funds for reductions in revenue during the COVID-19 pandemic.

Restrictions on the Use of Funds by Local Governments for Reductions in Revenue:

- No funds shall be deposited into any pension fund.
- Any local government, including counties, that fail to comply with the federal law and related guidelines shall be required to repay the federal Treasury.
- **States** are not allowed to use the funds to either directly or indirectly offset a reduction in the net tax revenue that results from a change in law, regulation or administrative interpretation during the covered period.
    - If a **state** violates this provision, it will be required to repay the amount of the applicable reduction to net tax revenue.

6. **What are the current rules or allowances regarding the transfer of funds to other entitites?**

The bill states that a metropolitan city, non-entitlement unit of local government, or **county** receiving a payment from funds **may transfer these funds** to a private nonprofit organization, a public benefit corporation involved in the transportation of passengers or cargo, or a special-purpose unit of state or local government.

7. **What is the definition of essential or eligible workers, as outlined in the allowable use of funds section?**

   The bill classifies 'eligible workers' as those workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as each chief executive officer of a metropolitan city, non-entitlement unit of local government, or county may designate as critical to protect the health and well-being of the residents of their metropolitan city, non-entitlement unit of local government, or county.

NACo

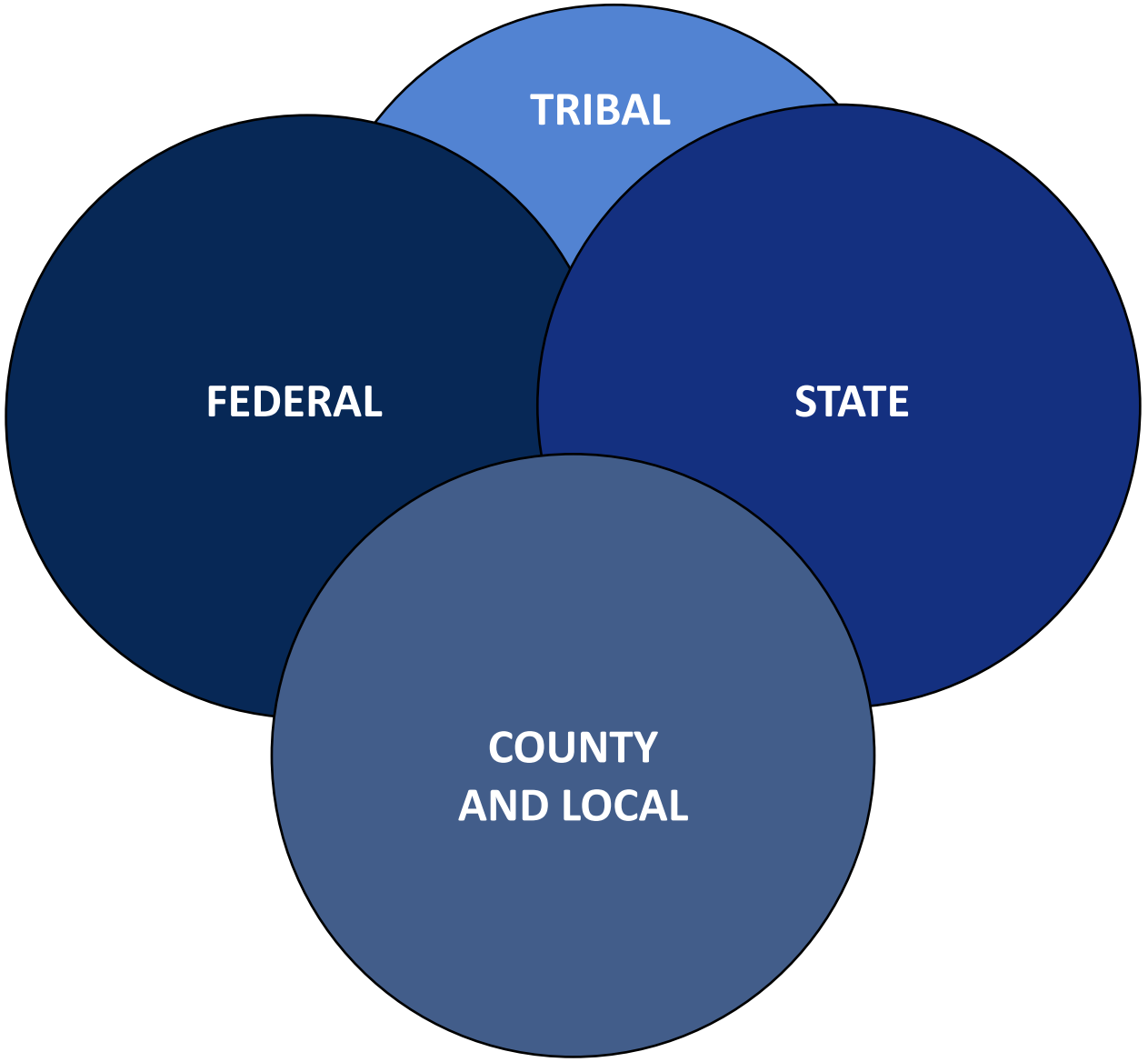
NATIONAL ASSOCIATION OF COUNTIES

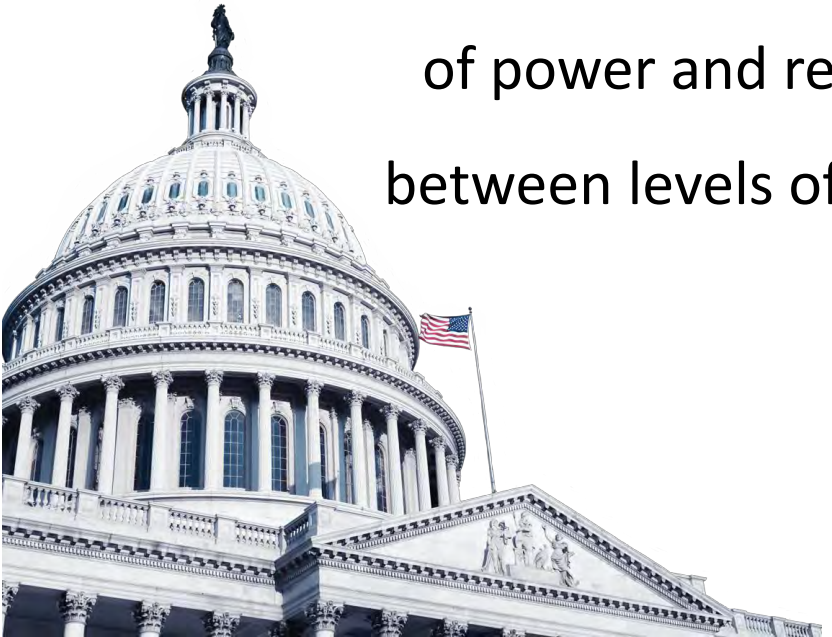
AMERICAN RESCUE PLAN ACT:

SUMMARY OF THE STATE AND LOCAL FISCAL RECOVERY FUND

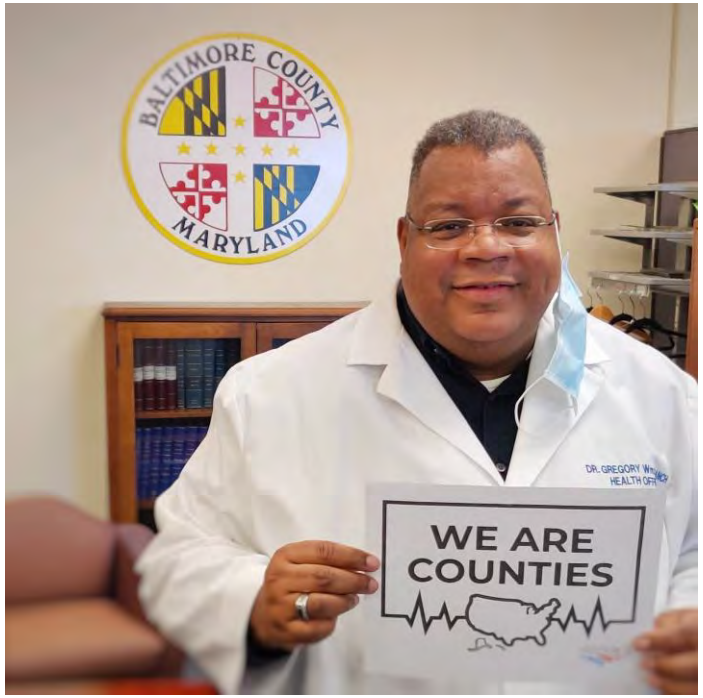
Role of NACo in Our Nation's Intergovernmental System

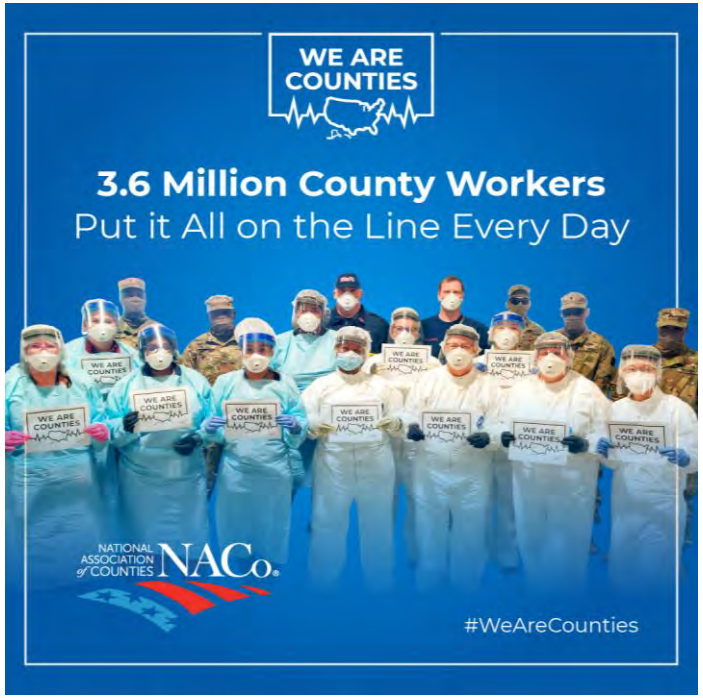
Under America's form of Federalism, the intergovernmental system is about the balance, division and sharing of power and responsibilities between levels of government





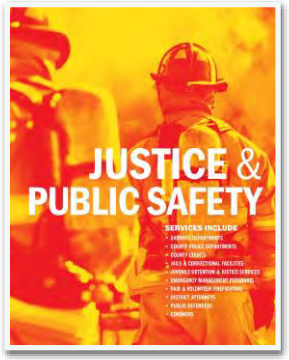
WE ARE COUNTIES

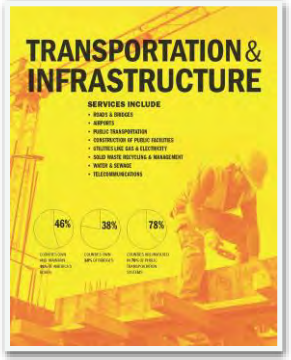




NEARLY 40,000 ELECTED OFFICIALS AND 3.6 MILLION EMPLOYEES

SERVE THE AMERICAN PUBLIC





SERVICES INCLUDE

- ROADS & BRIDGES
- AIRPORTS
- PUBLIC TRANSPORTATION
- CONSTRUCTION OF PUBLIC FACILITIES
- UTILITIES LIKE GAS & ELECTRICITY
- SOLID WASTE RECYCLING & MANAGEMENT
- WATER & SEWAGE
- TELECOMMUNICATIONS
- HOSPITALS & HEALTH CLINICS
- PUBLIC HEALTH
- BEHAVIORAL & MENTAL HEALTH
- SUBSTANCE ABUSE TREATMENT
- IMMUNIZATIONS & PREVENTION
- INDIGENT HEALTHCARE
- HEALTH CODE INSPECTIONS
- NURSING HOMES
- SHERIFFS DEPARTMENTS
- COUNTY POLICE DEPARTMENTS
- COUNTY COURTS
- JAILS & CORRECTIONAL FACILITIES
- JUVENILE DETENTION & JUSTICE SERVICES
- EMERGENCY MANAGEMENT PERSONNEL
- PAID & VOLUNTEER FIREFIGHTERS
- DISTRICT ATTORNEYS
- PUBLIC DEFENDERS
- CORONERS
- FINANCIAL ASSISTANCE
- VIOLENCE PREVENTION
- FOOD AND NUTRITION SERVICES
- EARLY CHILDHOOD DEVELOPMENT
- WORKFORCE TRAINING AND DEVELOPMENT
- VETERAN SERVICES
- SENIOR SERVICES AND ELDER CARE
- BEHAVIORAL AND PHYSICAL HEALTH SERVICES
- MEDICAL COVERAGE
- PARENT EDUCATION AND SUPPORT
- CHILD WELFARE, FOSTER CARE AND ADOPTION
- HOMELESSNESS AND HOUSING SUPPORT
- SERVICES FOR INDIVIDUALS WITH DISABILITIES
- RECORD KEEPING
- TAX ASSESSMENTS & COLLECTION
- 911 CALL CENTERS
- ELECTIONS AND POLLING PLACES
- RECREATION AND PARKS
- ARTS PROGRAMS
- HOUSING
- COMMUNITY AND ECONOMIC DEVELOPMENT

NATIONAL ASSOCIATION of COUNTIES NACo


COVID-19

NACo's Focus

As the voice of America's counties, NACo's focus was on the **COUNTY SHARE AND DISTRIBUTION FORMULA** as part of any new federal aid plan for state, tribal, county and municipal govts.

NACo's guiding principles included:

- direct, flexible aid for *all* counties,
- allowance for *lost revenue* due to COVID
- reasonable, practical safeguards to protect the public's interest

https://www.naco.org/resources/featured/state-and-local-coronavirus-fiscal-recovery-funds

NATIONAL ASSOCIATION of COUNTIES NACo

WHAT WE DO | TOPICS | ADVOCACY | RESOURCES | EVENTS & EDUCATION | NEWS | COUNTY EXPLORER

COVID-19 RECOVERY CLEARINGHOUSE

Timely resources for counties, including allocation estimations, examples of county programs using federal coronavirus relief funds, the latest news and more.

State & Local Fiscal Recovery Funds

Find your county's estimated allocation, NACo's legislative analysis and more

LEARN MORE

Investing CARES Act Coronavirus Relief Funds

Find examples and best practices, as well as U.S. Treasury guidance and FAQs.

LEARN MORE

COVID-19 Vaccine Distribution

Explore key considerations for counties in COVID-19 vaccine distribution plans

LEARN MORE

COVID-19 Recovery Clearinghouse (naco.org)

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STATE AND LOCAL CORONAVIRUS FISCAL RECOVERY FUNDS

NACO ANALYSIS OF THE AMERICAN RESCUE PLAN ACT

AMERICAN RESCUE PLAN ACT TEXT

COUNTY-BY-COUNTY ALLOCATION ESTIMATES

NACO LETTER TO TREASURY ON RECOVERY FUND IMPLEMENTATION

NACO RECOVERY FUND FAQS

CLICK here to access... State and Local Coronavirus Fiscal Recovery Funds (naco.org)

Legislative Analysis for Counties:

American Rescue Plan Act of 2021

Updated for Final Passage

INTRODUCTION

As part of the $362 billion in federal fiscal recovery aid for state and local govts., $65.1 billion is provided in direct aid to counties and an additional $1.5 billion for public land counties.

On March 11, 2021, President Biden signed the *American Rescue Plan Act of 2021* (H.R. 1319) into law. The $1.9 trillion package, based on President Biden's *American Rescue Plan,* is intended *to* combat the COVID-19 pandemic, including the public health and economic impacts.

As part of the **$362 billion in federal fiscal recovery aid for state and local governments, $65.1 billion is provided in direct aid to counties and an additional $1.5 billion for public land counties.** The *American Rescue Plan Act* also allocates hundreds of billions of dollars for public health and vaccines, assistance for vulnerable populations, education and housing stabilization, economic recovery assistance and direct assistance for families and individuals.

This analysis highlights **key provisions for county governments**.

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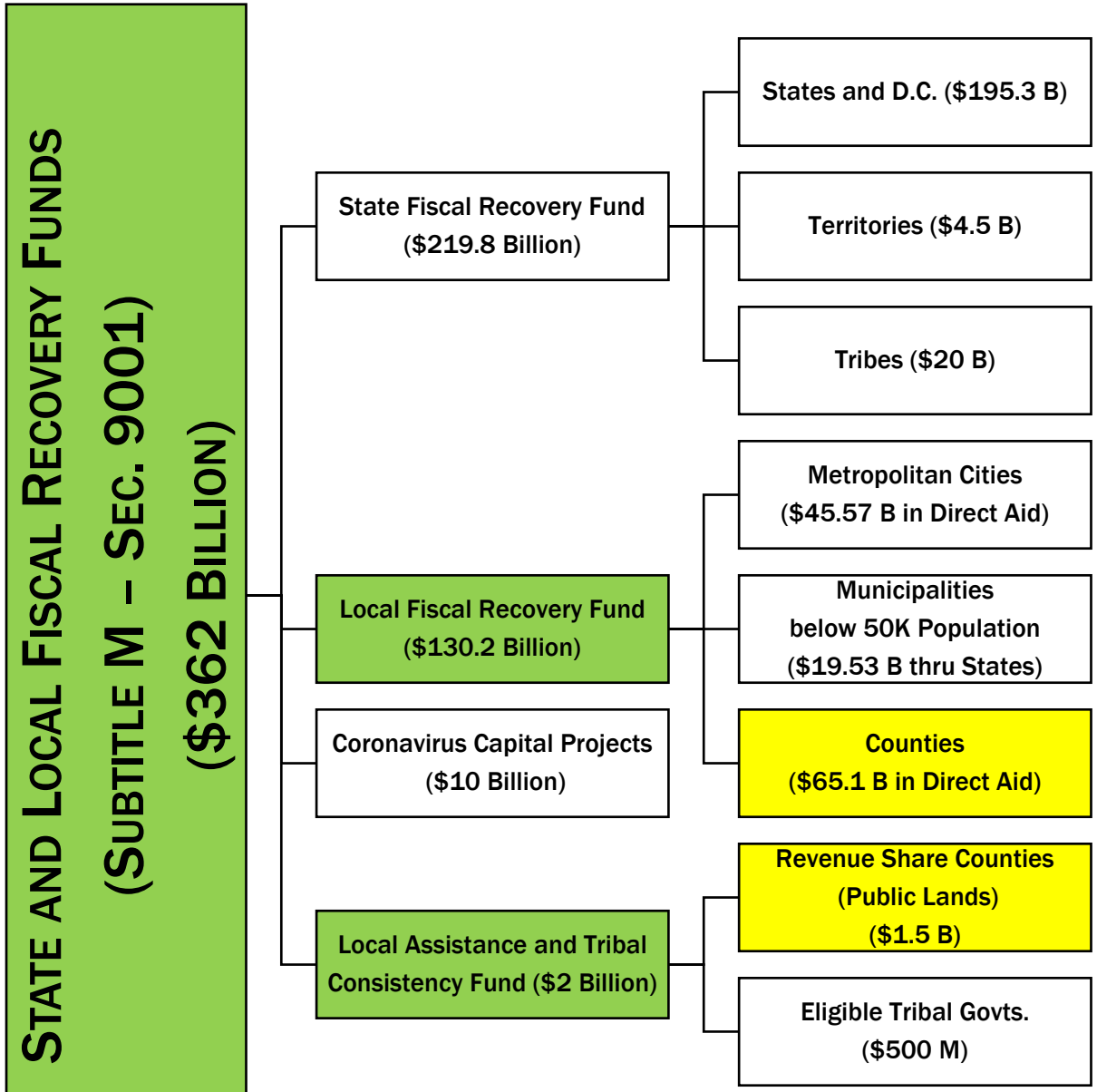
State and Local Fiscal Recovery Funds (Sec. 9001)



UPDATES: TREASURY & RECOVERY FUNDS

- **March 15:** NACo developed ARP implementation survey for NACo members
- **March 18:** NACo sent a letter to U.S. Treasury with recommendations and feedback from NACo ARP survey
- **March 26:** NACo met with U.S. Treasury to highlight letter recommendations
- **April 9:** NACo met with U.S. Treasury to provide insight on county budget process
- **April 14:** U.S. Treasury announced new Office of Recovery Programs dedicated to the distribution of COVID-19 relief to state and local governments
- **April 15:** U.S. Treasury launched new website for COVID-19 Recovery Programs, including State & Local Fiscal Recovery Funds
- **April 15:** U.S. Treasury released certification guidance for Recovery Funds

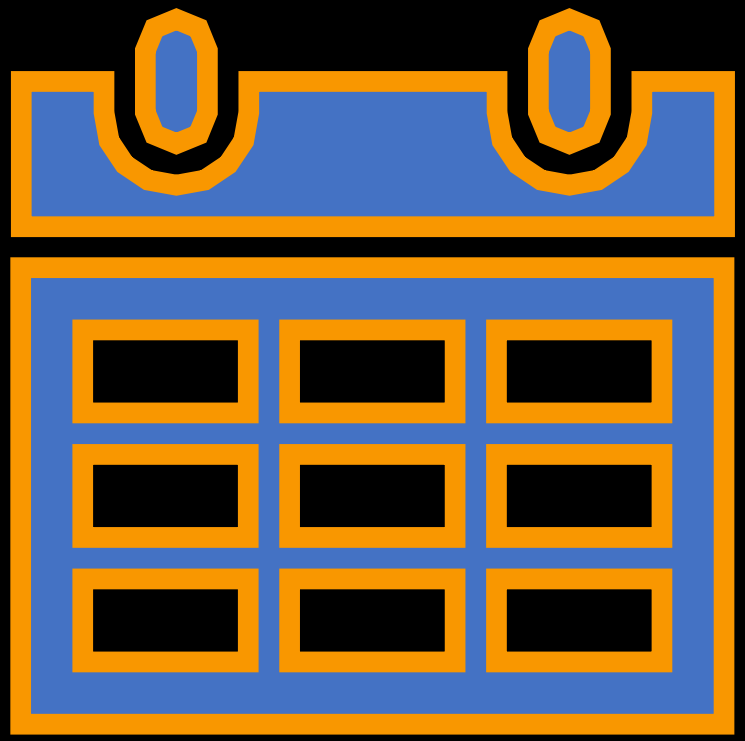
OVERVIEW: PRE-AWARD CERTIFICATION PROCESS

- U.S. Treasury outlined **immediate steps counties should take** while we wait for additional submission guidance
- **Counties should complete the following steps as soon as possible** to receive Recovery Funds in a timely manner:
  1. Ensure your county has a **DUNS number**
  2. Ensure your county has an **active SAM registration**
  3. Gather payment information…
     - Entity Identification Number (EIN), name and contact information
     - Name and title of an authorized representative of the county (I.e. chief elected official)
     - Financial institution information (e.g., routing and account number, financial institution name and contact information)
- NACo recommends that, as a part of this preparation process, your executive or authorized officer complete these steps to be prepared to submit information to the U.S. Treasury
- **Our research identified 116 counties WITHOUT an active SAM registration…**
- **Meanwhile, many counties also have multiple DUNS # so be sure to identify your preferred general account**

STEP 1: DUNS NUMBER

- **DUNS number is a unique nine-character number** used to identify an organization or government issued by Dun & Bradstreet
- The **federal government uses the DUNS number to track how federal money** is allocated
- Contact your grant administrator, financial department, chief financial officer, or authorizing official to **identify your organization's DUNS number**
- A **DUNS number is required** prior to registering for the SAM database
- If your county does not have a DUNS number, visit https://fedgov.dnb.com/webform/ or call 1-866-705-5711

STEP 2: ACTIVE SAM REGISTRATION



- **SAM is the official government-wide database** for federal contractors, nonprofits and others to receive federal funding or contract awards
- **All county recipients must register on SAM.gov and renew their SAM registration** to ensure an active status to be eligible to receive federal assistance
- **If your county does not have an active SAM registration,** visit SAM.gov for registration/renewal
- **SAM registration can take up to 3 weeks;** delay in registering could impact your county's receipt of Treasury Recovery Funds

STEP 3: GATHER PAYMENT INFORMATION

- **County recipients should gather the following financial / banking information:**
  - Entity Identification Number (EIN), name and contact information
  - Name and title of an authorized representative of the county (I.e. chief elected official)
  - Financial institution information (e.g., routing and account number, financial institution name and contact information)
- **Treasury has NOT yet released specific submission instructions for the Recovery Fund, as of April 21, 2021**

State and Local Fiscal Recovery Funds (Sec. 9001)

- **Local governments: $130.2 billion divided evenly between non-county municipalities and counties**
  - **$65.1 billion in direct federal aid to all counties** based on the county share of the U.S. population (including parishes in Louisiana, boroughs in Alaska and consolidated city-county entities). Counties that are Community Development Block Grant (CDBG) recipients (urban entitlement counties) will receive the larger of the population-based share or the share under a modified CDBG allocation formula. Treasury shall allocate the first tranche of payments within 60 days of enactment.
  - **$65.1 billion to cities and other non-county municipalities.**
    - *With populations of at least 50,000:* $45.57 billion in direct federal aid using a modified CDBG formula.
    - *With populations below 50,000:* $19.53 billion based on each jurisdiction's percentage of the state's population, not exceeding 75 percent of its most recent budget as of January 27, 2020. Aid is distributed through the states.

ALLOWABLE USES OF RECOVERY FUNDS

> **"Premium pay" means** an additional amount up to $13 per hour that is paid to an eligible worker for work during the COVID-19 pandemic. The law imposes a cap of $25,000 for any single eligible worker.

The final bill outlines that **funds may be used by counties to**:

1. **Respond to the public health emergency with respect to the COVID-19 or its negative economic impacts,** including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality

2. **Respond to workers performing essential work** during the COVID-19 public health emergency by **providing premium pay to eligible workers of the county** that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work

3. **For the provision of government services to the extent of the reduction in revenue** (i.e. online, property or income tax) due to the public health emergency relative to revenues collected in the most recent full fiscal year of the county prior to the emergency *(I.e. January 20, 2020)*, or

4. **Make necessary investments** in water, sewer, or broadband infrastructure.

It is important to note under #1 that the examples outlined are intended to clarify congressional intent that these activities would be eligible. However, state and local activities would NOT be limited only to these activities.

“No funds shall be deposited into any pension fund.”

Guardrails for Recovery Funds:

- **States are not allowed to use the funds to either directly or indirectly offset a reduction in the net tax revenue** that results from a change in law, regulation or administrative interpretation during the covered period that reduces any tax. If a state violates this provision, it will be required to repay the amount of the applicable reduction to net tax revenue.
- **No funds shall be deposited into any pension fund.**
- Any local government, including counties, that **fail to comply with the federal law and related guidelines shall be required to repay** the federal Treasury.

Program Administration:

- **Funds will be distributed** by the U.S. Department of Treasury.
- **The deadline to spend funds is December 31, 2024.**
- The U.S. Treasury is required to **pay the first tranche to counties not later than 60-days after enactment,** and second payment no earlier than 12 months after the first payment.
- The law provides an additional $77 million for the Government Accountability Office and $40 million for the Pandemic Response and Accountability Committee **for oversight and to promote transparency and accountability.**

"The deadline to spend funds is December 31, 2024."

"Local governments, including counties, are required to provide 'periodic reports' providing a detailed accounting of the use of funds."

Reporting Requirements for State and Local Governments:

- **States are required to report how funds are used and how their tax revenue was modified** during the time that funds were spent during the covered period (covered period begins on March 3, 2021 and ends on the last day of the fiscal year a state or local government has expended or returned all funds to the U.S. Treasury).
- **Local governments, including counties, are required to provide "periodic reports"** providing a detailed accounting of the use of funds.
- If a state, county or municipality **does not comply with any provision of this bill, they are required to repay the U.S. Treasury** an equal amount to the funds used in violation.

COUNTY-BY-COUNTY FUNDING ESTIMATES:

https://www.naco.org/resources/featured/state-and-local-coronavirus-fiscal-recovery-funds

Please note that these are unofficial estimates and subject to modification by the U.S. Department of the Treasury

Alamance County	North Carolina	$32,875,227
Alexander County	North Carolina	$7,272,312
Alleghany County	North Carolina	$2,159,953
Anson County	North Carolina	$4,741,151
Ashe County	North Carolina	$5,275,854
Avery County	North Carolina	$3,405,072
Beaufort County	North Carolina	$9,114,197
Bertie County	North Carolina	$3,674,654
Bladen County	North Carolina	$6,346,230
Brunswick County	North Carolina	$27,699,060
Buncombe County	North Carolina	$50,656,386
Burke County	North Carolina	$17,549,009
Cabarrus County	North Carolina	$41,979,726
Caldwell County	North Carolina	$15,937,917
Camden County	North Carolina	$2,107,588
Carteret County	North Carolina	$13,473,861
Caswell County	North Carolina	$4,383,907
Catawba County	North Carolina	$30,943,934
Chatham County	North Carolina	$14,442,998
Cherokee County	North Carolina	$5,549,121
Chowan County	North Carolina	$2,704,159
Clay County	North Carolina	$2,178,183
Cleveland County	North Carolina	$18,996,217
Columbus County	North Carolina	$10,765,435
Craven County	North Carolina	$19,809,230
Cumberland County	North Carolina	$65,069,904
Currituck County	North Carolina	$5,384,463
Dare County	North Carolina	$7,177,668
Davidson County	North Carolina	$32,506,733

CORONAVIRUS CAPITAL PROJECTS FUND (SEC. 604)

- **Provides $10 billion for states, territories, and tribal governments to carry out critical capital projects,** specifically related to enabling work, education, and health monitoring, including remote options, in response to the COVID-19 public health emergency. *This funding includes broadband infrastructure.*

- Each **state, the District of Columbia and Puerto Rico will receive a minimum allocation of $100 million**, plus another $100 million is divided among other U.S. territories and another $100 million is designated for tribal governments and Native Hawaiian use.

- **Of the remaining funds, states receive an additional allocation** based on population (50 percent), number of individuals living in rural areas as a percentage of the U.S. rural population (25 percent), and proportion of the state's population of households living in poverty.

LOCAL ASSISTANCE AND TRIBAL CONSISTENCY FUND (SEC. 605)

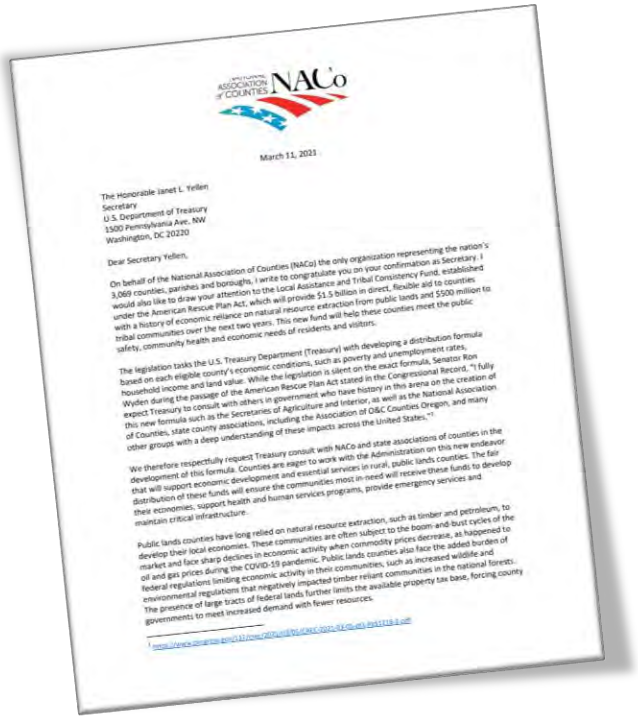
An additional $1.5 billion is provided for eligible revenue share counties (notably public land counties that receive Payment-in-Lieu-of-Taxes (PILT) and Secure Rural School (SRS) payments), with $750 million allotted each year for federal Fiscal Years 2022 and 2023

Provides an additional $1.5 billion, split evenly over FY 2022 and 2023, for eligible revenue share counties (i.e., public land counties) as well as $500 million over both fiscal years for Tribal governments:

- U.S. Treasury is responsible for determining the funding formula, taking into account the economic conditions of each eligible revenue sharing county, using measurements of poverty rates, household income, land values, and unemployment rates as well as other economic indicators, over the 20-year period ending with Sept. 30, 2021.
- **Eligible counties may use these funds for any governmental purpose** *other than a lobbying activity.*
- **Counties shall be required to provide periodic reports** with a detailed accounting of the use of funds.
- **Failure to submit required reports or misuse of funds will result in the recoup of funds** by the federal government.

AMERICAN RESCUE PLAN: PUBLIC LANDS COUNTIES

Additional $1.5 Billion for Revenue Share (Public Lands) Counties:



NATIONAL ASSOCIATION OF COUNTIES NACo

March 11, 2021

The Honorable Janet L. Yellen
Secretary
U.S. Department of Treasury
1500 Pennsylvania Ave. NW
Washington, DC 20220

Dear Secretary Yellen,

On behalf of the National Association of Counties (NACo) the only organization representing the nation's 3,069 counties, parishes and boroughs, I write to congratulate you on your confirmation as Secretary. I would also like to draw your attention to the Local Assistance and Tribal Consistency Fund, established under the American Rescue Plan Act, which will provide $1.5 billion in direct, flexible aid to counties with a history of economic reliance on natural resource extraction from public lands and $500 million to tribal communities over the next two years. This new fund will help these counties meet the public safety, community health and economic needs of residents and visitors.

The legislation tasks the U.S. Treasury Department (Treasury) with developing a distribution formula based on each eligible county's economic conditions, such as poverty and unemployment rates, household income and land value. While the legislation is silent on the exact formula, Senator Ron Wyden during the passage of the American Rescue Plan Act stated in the Congressional Record, "I fully expect Treasury to consult with others in government who have history in this arena on the creation of this new formula such as the Secretaries of Agriculture and Interior, as well as the National Association of Counties, state county associations, including the Association of O&C Counties Oregon, and many other groups with a deep understanding of these impacts across the United States."[1]

We therefore respectfully request Treasury consult with NACo and state associations of counties in the development of this formula. Counties are eager to work with the Administration on this new endeavor that will support economic development and essential services in rural, public lands counties. The fair distribution of these funds will ensure the communities most in-need will receive these funds to develop their economies, support health and human services programs, provide emergency services and maintain critical infrastructure.

Public lands counties have long relied on natural resource extraction, such as timber and petroleum, to develop their local economies. These communities are often subject to the boom-and-bust cycles of the market and face sharp declines in economic activity when commodity prices decrease, as happened to oil and gas prices during the COVID-19 pandemic. Public lands counties also face the added burden of federal regulations limiting economic activity in their communities, such as increased wildlife and environmental regulations that negatively impacted timber reliant communities in the national forests. The presence of large tracts of federal lands further limits the available property tax base, forcing county governments to meet increased demand with fewer resources.

According to a statement for the record by U.S. Senate Finance Chairman Ron Wyden (D-Ore.), "I also fully expect Treasury to consult with others in government who have history in this arena on the creation of this new formula such as the Secretaries of Agriculture and Interior, as well as the **National Association of Counties, state county associations, including the Association of O&C Counties Oregon,** and many other groups with a deep understanding of these impacts across the United States."

AMERICAN RESCUE PLAN:
ENGAGEMENT WITH U.S. TREASURY

NACo's engagement with U.S. Treasury has focused on:

- **Discuss CARES Act's Coronavirus Relief Fund (CRF) guidance** and lessons learned by county govts.
- **Provide recommendations on successful implementation and execution of County Recovery Funds**
  - Urge flexibility and broad use of Recovery Funds
  - Create a centralized office for Recovery Fund guidance, best practices and stakeholder engagement
  - Avoid overly burdensome reporting requirements
  - Provide timely reporting requirements guidance in coordination with Recovery Funds distribution
- **Highlight roles and responsibilities of America's county governments** with COVID response and recovery

NACo COUNTY FUNDS STRATEGY

OPPORTUNITY

CLEARINGHOUSE

POTENTIAL STRUCTURE

STAFF INTERFACE

NACo MEMBER COUNTIES

STATE ASSOCIATIONS AND AFFILIATES

NACo COVID-19 RECOVERY FUND CLEARINGHOUSE

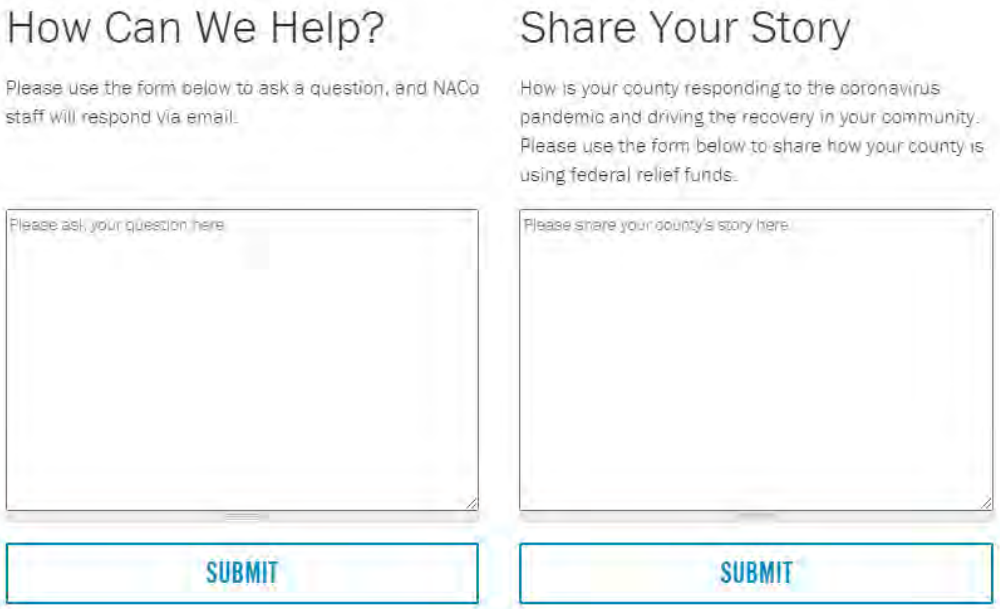
U.S. TREASURY + DESIGNATED FUND OFFICE

CORPORATE & FOUNDATION PARTNERS

COVID-19 RECOVERY CLEARINGHOUSE

In a major victory for America's counties, the State and Local Coronavirus Fiscal Recovery Funds legislation, part of the American Rescue Plan Act, was signed into law by President Biden on March 11. The legislation includes $65.1 billion in direct, flexible aid to every county in America, as well as other crucial investments in local communities.

[COVID-19 Recovery Clearinghouse (naco.org)]



2021 NACo ANNUAL HYBRID CONFERENCE

GAYLORD NATIONAL RESORT & CONVENTION CENTER, PRINCE GEORGE'S COUNTY, MD | JULY 9-12

STRONGER COUNTIES. STRONGER AMERICA.

National Association of Counties
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NATIONAL ASSOCIATION of COUNTIES NACo®

NACo NATIONAL MEMBERSHIP CALL:

PRELIMINARY REVIEW OF TREASURY'S FISCAL RECOVERY FUND GUIDANCE

MAY 11, 2021

TABLE OF CONTENTS

DEPARTMENT OF THE TREASURY

31 CFR Part 35

RIN 1505-AC77

Coronavirus State and Local Fiscal Recovery Funds

AGENCY: Department of the Treasury

ACTION: Interim Final Rule

SUMMARY: The Secretary of the Treasury (Treasury) is issuing this Interim Final Rule to implement the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund established under the American Rescue Plan Act.

DATES: *Effective date:* The provisions in this Interim Final Rule are effective [____], 2021. *Comment date:* Comments must be received on or before [____], 2021.

ADDRESSES: Please submit comments electronically through the Federal eRulemaking Portal: http://www.regulations.gov [(if hard copy, preferably an original and two copies to the [Office of the Undersecretary for Domestic Finance], Attention: [Name], Room [####] MT, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. Because postal mail may be subject to processing delay, it is recommended that comments be submitted electronically.] All comments should be captions with "Coronavirus State and Local Fiscal Recovery Funds Interim Final Rule Comments." Please include your name, organization affiliation, address, email address and telephone number in your comment. Where appropriate, a comment should include a short executive summary (no more than [#] single-spaced pages).] In general, comments received will be posted on http://www.regulations.gov without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, will be part of the public record and subject to public

- Interim final rule
- Fact sheet
- FAQs
- Quick reference guide
- County Recovery Fund allocations

U.S. TREASURY: "MUST READ" RESOURCES

DECODING *THE LANGUAGE* OF THE GUIDANCE

Throughout the Interim Final Rule, along with FAQs and fact sheets, U.S. Treasury uses various *key words* that are important to understand in determining the eligible use of funds.

Please be sure to read pages 130-150 of the Interim Final Rule.

INTERIM FINAL RULE VS. FAQs

- **Shall = Mandatory** reporting, use and compliance
- **May =** Allows local/county discretion
- **Encourage / Should =** Treasury preference only (**NOT REQUIRED**)
- **Proportional & Consistent**

DEFINITIONS (PG. 130)

- Covered benefits
- Covered period
- Eligible workers
- General revenue
- Pension fund

COMMON QUESTIONS ON RECOVERY FUNDS

HOW CAN COUNTIES USE RECOVERY FUNDS?

- Capital improvements
  - Public health
  - Jail upgrades/replacement
  - Stormwater improvements
- Roads and bridges
- Property tax relief
- Non-federal match
- Special purpose districts
- Compliance and audit costs

- Interest bearing accounts *(unclear)*
- Pension funds
- Rainy day funds
- Revenue loss
  - Entity-wide vs. per revenue stream
- Payroll support
- Debt service payments
- State Maintenance of Effort with County Funding

KEY DATES RELATED TO THE RECOVERY FUND

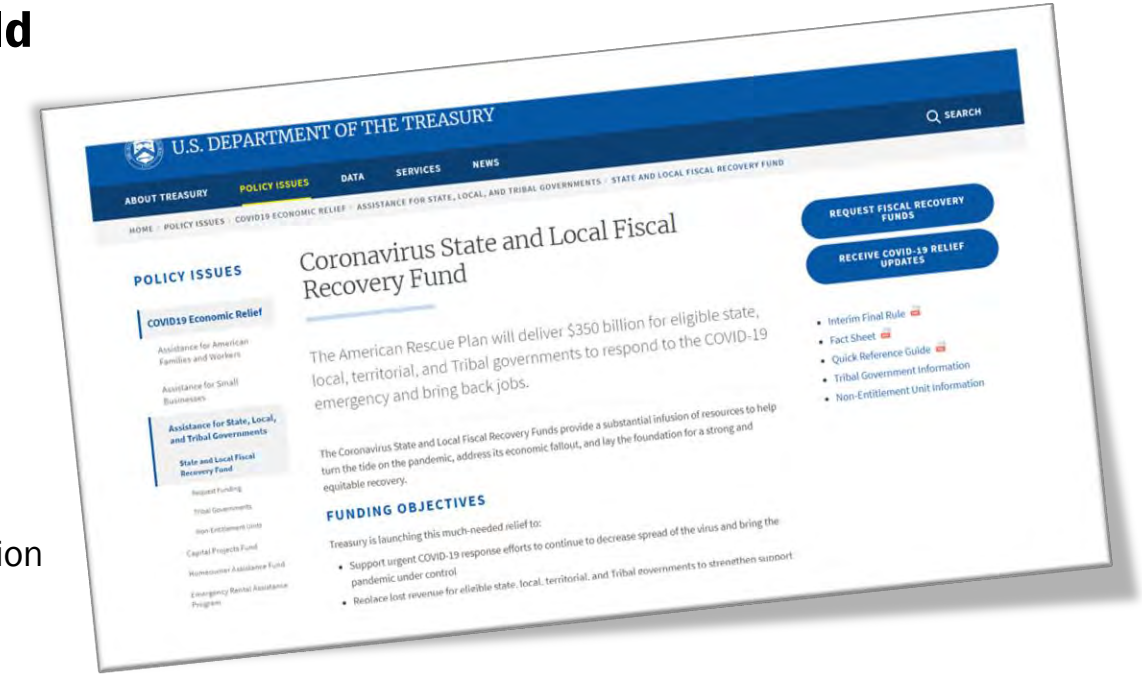
- **January 27, 2020:** Declaration of the public health crisis
- **March 3, 2021:** Beginning of the Recovery Fund "covered period"
- **July 9, 2021:** Deadline to comment on U.S. Treasury's *Interim Final Rule* on Recovery Fund
- **August 31, 2021:** Deadline to submit first Interim Report to U.S. Treasury
- **August 31, 2021:** Deadline to submit first *Recovery Plan Performance Report* to U.S. Treasury
  - **Applies to COUNTIES ABOVE 250,000 POPULATION ONLY**
- **October 31, 2021:** Deadline to submit first *Quarterly Project and Expenditure Report*
  - Applies to ALL COUNTIES
- **December 31, 2024:** Recovery Funds must be obligated (**NOT incurred**)
- **December 31, 2026:** Recovery Funds must be spent & all work/performance must be completed

HOW TO CERTIFY FOR RECOVERY FUNDS

U.S. Treasury released **certification guidance** and **opened the portal** for counties to request Recovery Funds

Prior to requesting Recovery Funds, **counties should complete the following steps immediately**:

1. Ensure your county has a DUNS number
2. Ensure your county has an active SAM registration
3. Gather payment information:
   - Entity Identification Number (EIN), name and contact information
   - Name and title of an authorized representative of the county (I.e. chief elected official)
   - Financial institution information (e.g., routing and account number, financial institution name and contact information)



HOW TO CERTIFY FOR RECOVERY FUNDS

U.S. Treasury **opened the portal** for counties to request Recovery Funds.
To receive Recovery Funds, **a county must request funds through this portal.**

CLICK HERE

To access the portal and request Recovery Funds from the U.S. Treasury, click here.

If you are having issues with the new U.S. Treasury portal, email covidrelieffitsupport@treasury.gov.

HOW TO CERTIFY FOR RECOVERY FUNDS

U.S. Treasury is using the **ID.me platform** for counties to request Recovery Funds

- **ID.me is a trusted technology partner** to multiple government agencies – **your information is secure**
- **Site provides secure digital identity verification to government agencies** to ensure you are the correct individual requesting Recovery Funds
- **You are required to provide the following information** to receive Recovery Funds:
  - Social Security Number
  - Driver's license/passport number
  - Facial recognition Your information will not be shared

ILLUSTRATION ONLY OF *SAMPLE* ALLOWABLE USES OF RECOVERY FUNDS, PER NEW U.S. TREASURY GUIDANCE

Support Public Health Response
Fund COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff

Replace Public Sector Revenue Loss
Use funds to provide government services to the extent of the reduction in revenue experienced due to the pandemic

Water and Sewer Infrastructure
Make necessary investments to improve access to clean drinking water and invest in wastewater and stormwater infrastructure

Address Negative Economic Impacts
Respond to economic harms to workers, families, small businesses, impacted industries, and the public sector

Premium Pay for Essential Workers
Offer additional support to those who have and will bear the greatest health risks because of their service in critical infrastructure sectors

Broadband Infrastructure
Make necessary investments to provide unserved or underserved locations with new or expanded broadband access

SUPPORT PUBLIC HEALTH RESPONSE

NATIONAL ASSOCIATION of COUNTIES NACo®

1	**COVID-19 MITIGATION & CONTAINMENT**	• A broad range of services and programming that are needed to contain COVID-19
2	**MEDICAL EXPENSES**	• Provide care and services to address COVID-19 public health needs, risks presented by new variants and long-term effects of the virus
3	**BEHAVIORAL HEALTHCARE**	• New or enhanced state and local government services that may be needed to meet mental health, substance use and other behavioral health needs
4	**PUBLIC HEALTH & SAFETY STAFF**	• Responding to the public health and negative economic impacts COVID-19 and requires additional human resources

ADDRESS NEGATIVE ECONOMIC IMPACTS

1 WORKERS & FAMILIES

- Assistance to unemployed workers and job training
- Food, housing, cash and other assistance to households (proportionate)
- Survivor's benefits for family members of COVID-19 victims

2 SMALL BUSINESS

- Loans and grants to mitigate financial hardship
- Loans, grants and in-kind assistance to implement COVID-19 prevention or mitigation tactics
- Technical assistance

3 PUBLIC SECTOR

- Rehire staff
- Replenish state unemployment insurance funds
- Administer economic relief programs

4 IMPACTED INDUSTRIES

- Tourism, travel and hospitality
- Other similarly affected sectors

PROVIDE EQUITY-FOCUSED SERVICES

1 ADDRESSING HEALTH DISPARITIES

- Community health workers and public benefits navigators
- Remediation of lead paint and other lead hazards
- Community violence intervention programs

2 HOUSING & NEIGHBORHOODS

- Services to support individuals experiencing homelessness
- Affordable housing development
- Housing vouchers, residential counseling, navigation assistance

3 EDUCATIONAL DISPARITIES

- New or expanded early learning services
- Expanded resources for high-poverty school districts
- Educational services like tutoring and afterschool programs

4 PROMOTING HEALTHY CHILDHOOD ENVIRONMENTS

- New and expanded high quality childcare
- Home visiting programs for families with young children
- Services for child welfare-involved families and foster youth

REPLACE LOST REVENUE

Recovery Funds may be used to provide **government services** to the **extend of reduction in revenue** experienced due to COVID-19:

- **Definition of general revenue:** Based on Census Bureau's definition and includes revenue from taxes, current charges, miscellaneous general revenue, intergovernmental transfers between state and local governments
  - **Excludes** refunds and other correction transactions proceeds from issuance of debt or the sale of investments, agency or private trust transactions and revenue generated by utilities, intergovernmental transfers from the federal government (federal transfers made to a state/locality)
- Recipients should calculate revenue on an **entity-wide basis**
- Recipients **cannot** use pre-pandemic projections as a basis to estimate the reduction in revenue
- Recipients can use funds to support governments services, which include, **but are not limited to:**
  - Maintenance of **infrastructure or pay-go spending for building new infrastructure, including roads**
  - Modernization of **cybersecurity,** including hardware, software and protection of critical infrastructure
  - Health services
  - Environment remediation
  - School or educational services
  - Police, first responders and other public safety services

REPLACE LOST REVENUE

U.S. Treasury's guidance **establishes new methodology to calculate lost revenue.**

Recipients have two options to calculate lost revenue:

- Recipients will compute the extent of reduction in revenue by comparing actual revenue to a counterfactual trend representing what could have plausibly been expected to occur in the absence of the pandemic
- Analysis of this expected trend begins with the last full fiscal year prior to the public health emergency (I.e. prior to January 27, 2020) and projects forward at either:
  a) Recipient's average **annual revenue growth over the three full fiscal years prior to the public health emergency,** or
  b) **4.1%, the national average** state and local revenue growth rate from 2015-18 (the latest available data).

REPLACE LOST REVENUE

Additional guidance related to calculating "lost revenue":

- Recipients should calculate the extent of the reduction in revenue as of four points in time: **December 31, 2020; December 31, 2021; December 31, 2022; and December 31, 2023.**

- **To calculate the extent of the reduction in revenue at each of these dates, recipients should follow a four-step process:**

  1. Identify revenues collected in the most recent full fiscal year prior to the public health emergency (i.e., last full fiscal year before January 27, 2020), called the base year revenue
  2. Estimate counterfactual revenue
  3. Identify actual revenue, which equals revenues collected over the past
  4. The extent of the reduction in revenue is equal to counterfactual revenue less actual revenue. If actual revenue exceeds counterfactual revenue, the extent of the reduction in revenue is set to zero for that calculation date

PREMIUM PAY FOR ESSENTIAL EMPLOYEES

Fiscal Recovery Funds payments may be used by recipients to provide premium pay ($13/per hour) to eligible workers performing essential work during the COVID-19 public health emergency or to provide grants to third-party employers with eligible workers performing essential work.

Essential employees are defined as:

- **Any work performed by an employee of the state, local or tribal government**
- Staff at nursing homes, hospitals, and home care settings
- Workers at farms, food production facilities, grocery stores, and restaurants
- Janitors and sanitation workers
- Truck drivers, transit staff, and warehouse workers
- Public health and safety staff
- Childcare workers, educators, and other school staff
- Social service and human services staff

Essential work is defined as:

- Work involving regular in-person interactions or regular physical handling of items that were also handled by others
- A worker would **NOT** be engaged in essential work and, accordingly may not receive premium pay, for telework performed from a residence

Other provisions related to premium pay:

- Premium pay **can be retroactive**
- Recipients have discretion to designate additional sectors
- Additional reporting requirements in certain cases *(grants to third-party employers)*

WATER, SEWER & BROADBAND INFRASTRUCTURE

To assist in meeting the critical need for investments and improvements to existing infrastructure in water, sewer and broadband, counties can invest Fiscal Recovery Funds into these sectors:

WATER & SEWER INFRASTRUCTURE

- Improvements to infrastructure, such as building or upgrading facilities and transmission, distribution and storage systems *(additional guidance to be released at later date)*
- Eligible uses aligned to Environmental Protection Agency (EPA) project categories in the:
  - Clean Water State Revolving Fund (CWSRF)
  - Drinking Water State Revolving Fund (DWSRF)

BROADBAND INFRASTRUCTURE

- Targets to support households and businesses that *do not* deliver 25 Mbps download/3 Mbps upload
- Fund projects that deliver reliable services – **minimum 100 Mbps download/100 Mbps upload speed** unless impracticable due to geography, topography, or excessive costs
- Complement broadband investments made through the Capital Projects Funds authorized under ARPA

DEFINING INELIGIBLE EXPENSES

NATIONAL ASSOCIATION of COUNTIES NACo

1 PENSION FUNDS

- Funding cannot be used for deposits into defined benefit pension funds…However, Treasury defines a "deposit" as an extraordinary contribution to a pension fund for the purpose of reducing an accrued, unfunded liability
- **Recipients may use funds for routine payroll contributions to pensions of employees whose wages and salaries are an eligible use**

reasury's Interim Final Rule identifies several other ineligible uses, including funding debt service, legal
ettlements or judgments, and deposits to rainy day funds or financial reserves. Further, general
nfrastructure spending is not covered as an eligible use outside of water, sewer, and broadband
nvestments or above the amount allocated under the revenue loss provision. While the program offers
road flexibility to recipients to address local conditions, these restrictions will help ensure that funds
re used to augment existing activities and address pressing needs.

2 OTHER RESTRICTIONS

- Funding debt service, legal settlements or judgements
- Deposits to rainy day funds or financial reserves
- **Non-federal match requirement (I.e. EDA & Medicaid)** ***& be sure to reach the latest FEMA guidance***
  - The President's directive allows FEMA to pay 100% federal funding for the costs of activities that have previously been determined eligible, from the beginning of the pandemic in January 2020 to Sept. 30, 2021.

3 NET REDUCTION IN TAX REVENUE (LIMITED TO TATE & TERRITORIES)

- If a state or territory has a reduction in net tax revenue, they must demonstrate how they paid for the tax cuts from source other than the Recovery Fund

REPORTING REQUIREMENTS

Recovery Fund recipients will be required to submit an interim report, quarterly report, quarterly project and expenditure reports and annual recovery plan:

- **Interim reports:** Counties will be required to submit one interim report, which will include the county's expenditures by category at the summary level. The interim report will cover spending from the date the county receives Recovery Funds to July 31, 2021. **Interim reports are due by August 31, 2021.**

- **Quarterly project and expenditure reports:** Counties will be required to submit quarterly project and expenditure reports, which will include financial data, information on contracts and subawards over $50,000 and other information regarding utilization of funds. These reports will be similar to CARES Act Coronavirus Relief Fund. The first report will cover spending from the date the county receives Recovery Funds to September 30, 2021. **First report is due by October 31, 2021.**

- **Recovery plan performance reports:** Counties will be required to submit an annual recovery plan performance report, which will include descriptions of projects funded and information on performance indicators and objectives of each award. Initial recovery plan will cover activity from the date the county receives Recovery Funds to July 31, 2021. **Local governments with less than 250,000 residents are not required to develop Recovery Plan Performance Report.** **Recovery plan is due by August 31, 2021.**

NACo RESOURCES & MEMBER SUPPORT

COVID-19 RECOVERY CLEARINGHOUSE

In a major victory for America's counties, the State and Local Coronavirus Fiscal Recovery Funds legislation, part of the American Rescue Plan Act, was signed into law by President Biden on March 11. The legislation includes $65.1 billion in direct, flexible aid to every county in America, as well as other crucial investments in local communities.

State & Local Fiscal Recovery Funds

Find your county's estimated allocation, NACo's legislative analysis and more

LEARN MORE

American Rescue Plan Act Funding Breakdown

This interactive tool helps navigate the roughly $1.5 trillion in county related funding from the American Rescue Plan Act of 2021

LEARN MORE

COVID-19 Vaccine Distribution

Explore key considerations for counties in COVID-19 vaccine distribution plans

LEARN MORE

How Can We Help?

Use the form below to ask a question, and NACo staff will respond via email. Please also explore our curated resources, including guidance, FAQs and more:

- Lastest Resources
- NACo Recovery Fund FAQs
- Your County's ARP Allocation
- NACo ARPA Analysis

ASK A QUESTION

Share Your Story

How is your county responding to the coronavirus pandemic and driving the recovery in your community. Use the form below to share how your county is using federal relief funds with NACo.

For resources to share your story with local media **click here**.

SHARE YOUR STORY

2021 NACo ANNUAL HYBRID CONFERENCE

GAYLORD NATIONAL RESORT & CONVENTION CENTER, PRINCE GEORGE'S COUNTY, MD | JULY 9-12

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NATIONAL ASSOCIATION of COUNTIES NACo®

NACo NATIONAL MEMBERSHIP CONFERENCE CALL

MAY 13, 2021

PORTAL FOR FISCAL RECOVERY FUNDS

What does it mean if a county does not see their entity on ID.me in the dropdown? What immediate instructions can we give these counties?

- During the original launch of Treasury's portal, an administrative error resulted in some eligible entities not being included in the drop-down selection list.
- Overnight, **the drop-down selection lists were updated and should now include all eligible entities.**
- **Entities that completed their submission previously under the "Other" entity type DO NOT need to resubmit their information.**
- If you believe your county is not included on the list as of 6:00AM EST 5/13/21, email SLFRP@treasury.gov for assistance

ID.me: HOW TO CERTIFY FOR RECOVERY FUNDS

U.S. Treasury is using the **ID.me platform** for counties to request Recovery Funds

- **Site provides secure digital identity verification to government agencies** to ensure you are the correct individual requesting Recovery Funds
- You **must complete ALL steps in the ID.me portal to receive your Recovery Fund allocation**
- **You are required to provide the following information** to receive Recovery Funds:
  - Social Security Number
  - Driver's license/passport number
  - Facial recognition Your information will not be shared

COUNTIES OF ALL SIZES RECEIVE DIRECT ALLOCATIONS

- As part of the $362 billion in federal fiscal recovery aid for state and local governments, **$65.1 billion is provided in direct aid to counties of all sizes, including those with populations below 50,000 residents**
- Under the ARPA, **counties with populations below 50,000 residents ARE NOT considered non-entitlement jurisdictions.**
- Counties **DO NOT** need to go through their state to receive funding.
- Treasury is coming out with additional communication to reiterate that ALL counties receive direct allocations.

CONSOLIDATED CITY-COUNTY ALLOCATIONS CERTIFICATION

What if I am certifying for a consolidated city-county? How do I register?

- Consolidated city-counties **should register twice** in the U.S. Treasury portal
  – once as a city and again as a county.

REPLACE LOST REVENUE

How do I calculate my county's lost revenue?

Recipients have two options to calculate lost revenue:

- Recipients will compute the extent of reduction in revenue by comparing actual revenue to a counterfactual trend representing what could have plausibly been expected to occur in the absence of the pandemic
- Analysis of this expected trend begins with the last full fiscal year prior to the public health emergency (I.e. prior to January 27, 2020) and projects forward at either:
  a) Recipient's average **annual revenue growth over the three full fiscal years prior to the public health emergency,** or
  b) **4.1%, the national average** state and local revenue growth rate from 2015-18 (the latest available data).

REPLACE LOST REVENUE

How do I calculate my county's lost revenue?

- **Step 1:** Identify revenues collected in the most recent full fiscal year prior to the public health emergency, called the base year revenue.
- **Step 2:** Estimated counterfactual revenue, which is equal to base year revenue:

  [(1 + *growth adjustment*)^(*n*/12)], where *n* is the number of months elapsed since the end of the base year to the calculation date, and *growth adjustment* is the greater of 4.1 percent and the recipient's average annual revenue growth in the three full fiscal years prior to the COVID-19 public health emergency.
- **Step 3:** Identify *actual revenue*, which equals revenues collected over the past 12 months of the calculation date.
- **Step 4:** The extent of the reduction in revenue is equal to *counterfactual revenue* less than *actual revenue.* **If actual revenue exceeds counterfactual revenue, the extent of the reduction in revenue is set to zero for that calculation date.**

PUBLIC HEALTH & SAFETY EMPLOYEE PAYROLL

ARPA FISCAL RECOVERY FUND (PG. 20)

- Recovery Funds can be used for payroll/benefits for public, safety, public health, health care, human services and similar employees
- Recovery Funds can be used to support the payroll/benefits **for the portion of the employee's time that is dedicated to responding to COVID-19**
- Counties may consider public health/safety employees to be entirely devoted to mitigating/responding to COVID-19 and are fully recovered

CARES ACT CRF (PG. 4187)

- As a matter of administrative convenience in light of the emergency nature of this program, **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,** unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise
- **All costs of such employees may be covered** using payments from the Fund for services

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INTEREST-BEARING ACCOUNTS

Can funds be placed in an interest-bearing account?

- Like the guidance under the CARES Act Coronavirus Relief Fund, funds can be put into an interest-bearing account.
- Additional information forthcoming on how counties will be able to invest that interest earned.

ADMINISTRATIVE COSTS & THIRD-PARTY CONSULTANTS

Can funds be put towards hiring an administrator and/or third-party consultant to handle/manage the funds for the county?

- Like the guidance under the CARES Act Coronavirus Relief Fund, funds can be used towards payroll expenses and other costs associated with hiring an administrator and/or third-party consultant to handle/manage the funds.

JOINT FUNDING STREAMS

Can S&L ARP funds be used in conjunction with a financing tool, such as a bond, to invest in infrastructure projects?

- Yes, recipients are allowed to use multiple funding sources to invest in programs, services and projects.

DEFINING INELIGIBLE EXPENSES

NATIONAL ASSOCIATION of COUNTIES NACo

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- If a state or territory has a reduction in net tax revenue, they must demonstrate how they paid for the tax cuts from source other than the Recovery Fund

REPORTING REQUIREMENTS

Treasury has clarified that additional clarification around reporting requirements will be released in the next several weeks. These report will include elements similar to the CRF reporting structure, but will be more user-friendly.

- **Interim reports:** Counties will be required to submit one interim report, which will include the county's expenditures by category at the summary level. The interim report will cover spending from the date the county receives Recovery Funds to July 31, 2021. **Interim reports are due by August 31, 2021.**

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- **August 31, 2021:** Deadline to submit first *Recovery Plan Performance Report* to U.S. Treasury
  - **Applies to COUNTIES ABOVE 250,000 POPULATION ONLY**
- **October 31, 2021:** Deadline to submit first *Quarterly Project and Expenditure Report*
  - **Applies to ALL COUNTIES**
- **December 31, 2024:** Recovery Funds must be obligated (**NOT incurred**)
- **December 31, 2026:** Recovery Funds must be spent & all work/performance must be completed

NATIONAL ASSOCIATION of COUNTIES NACo®

NACo NATIONAL MEMBERSHIP CONFERENCE CALL

MAY 13, 2021

OVERVIEW FOR AMERICA'S COUNTIES:

U.S. TREASURY INTERIM FINAL RULE & GUIDANCE FOR STATE AND LOCAL FISCAL RECOVERY FUNDS

On May 10, the U.S. Department of Treasury (Treasury) released an Interim Final Rule, FAQs and a fact sheet for a significant portion of the $362 billion Coronavirus State and Local Fiscal Recovery Fund, established under the American Rescue Plan Act (ARP) signed into law on March 11 by President Biden.

This specific Interim Rule and related guidance covers the $61.5 billion in direct federal aid to America's counties. Later this year, Treasury will release separate guidance for the $1.5 billion in additional federal aid for public lands counties under Sec. 605 of ARP.

THIS ANALYSIS PROVIDES AN IN-DEPTH OVERVIEW OF THE KEY PROVISIONS WITHIN THE INTERIM FINAL RULE, WITH A SPECIFIC FOCUS ON HOW EACH OF THESE ITEMS MAY IMPACT COUNTY GOVERNMENTS.

This analysis provides an in-depth overview of the key provisions within the Interim Final Rule, with a specific focus on how each of these items may impact county governments. The analysis covers eligibility criteria for the use of funds, compliance and financial reporting, and key dates for county actions. This report also highlights several key differences between the ARP county aid and the previous county aid under the CARES Act's Coronavirus Relief Fund (CRF), ***especially related to payroll support for public health, public safety and other related staff.***

KEY DATES

- **NOW:** Treasury portal is now open for counties to register and request Recovery Funds
- **JULY 9, 2021:** Deadline to submit comments on U.S. Treasury's *Interim Final Rule*
- **AUGUST 31, 2021:** Deadline for counties to submit first Interim Report to U.S. Treasury
- **OCTOBER 31, 2021:** Deadline for counties to submit first *Quarterly Project and Expenditure Report*
- **DECEMBER 31, 2024:** Funds must be *incurred* and obligated
- **DECEMBER 31, 2026:** Funds must be *expended* to cover obligations and all work must be completed

THIS SPECIFIC INTERIM RULE AND RELATED GUIDANCE COVERS THE $61.5 BILLION IN DIRECT FEDERAL AID TO AMERICA'S COUNTIES. LATER THIS YEAR, TREASURY WILL RELEASE SEPARATE GUIDANCE FOR THE $1.5 BILLION IN ADDITIONAL FEDERAL AID FOR PUBLIC LANDS COUNTIES UNDER SEC. 605 OF ARP.

EXECUTIVE SUMMARY:
QUICK GUIDE FOR COUNTY OFFICIALS

1. **THE FISCAL RECOVERY FUND WAS ESTBALISHED TO HELP TURN THE TIDE ON THE PANDEMIC, ADDRESS ITS ECONOMIC FALLOUT AND LAY THE FOUNDATION FOR A STRONG AND EQUITABLE RECOVERY.**
   There are five primary ways – outside of the "lost revenue allowance" – that counties may invest Funds:

   - **Support public health response:** Fund COVID-19 mitigation efforts, medical expenses, behavioral health care and certain county public health, public safety, human services and other related staff
   - **Address negative economic impacts:** Respond to economic harms to workers, families, small businesses, impacted industries and rehiring of public sector workers (including county staff)
   - **Replace public sector revenue loss:** Use funds to provide government services to the extent of the reduction in revenue experienced during the pandemic – ***this provision allows a much broader use of Funds***
   - **Premium pay for essential workers:** Offer additional compensation, up to $13 per hour in additional wages, to those – both county employees and other essential workers in the community – who have faced and continue to face the greatest health risks due to their service. Counties should prioritize low- and moderate-income persons, with additional written justification needed for workers above 150 percent of the residing state's average annual wage for all occupations or their residing county's average annual wage, whichever is higher. **Funds can be used retroactively back to January 27, 2020**
   - **Water, sewer and broadband infrastructure:** Make necessary investments to improve access to clean drinking water, invest in wastewater and stormwater infrastructure and provide unserved or underserved locations with new or expanded broadband access

   COUNTIES HAVE BROAD FLEXIBILITY SO LONG AS THEY CAN DEMONSTRATE THAT THESE ACTIVITIES SUPPORT THE PUBLIC HEALTH RESPONSE OR THAT RECIPIENTS OF THE RECOVERY FUNDS HAVE EXPERIENCED ECONOMIC HARM FROM THE PANDEMIC

2. **FUNDS MAY COVER COSTS FROM MARCH 3, 2021 THROUGH DECEMBER 24, 2024**
   The covered period begins March 3, 2021 and ends on December 31, 2024, with **a few important distinctions and exceptions to the covered period:**

   - Funds must be **INCURRED** (i.e. obligated) by December 31, 2024
   - Funds must be **EXPENDED** with all WORK PERFORMED and COMPLETED by December 31, 2026
   - **Counties may provide premium pay retroactively,** dating back to the start of the public health emergency on January 27, 2020

3. **BROAD FLEXIBILITY TO HELP THOSE DISPROPORTIONATELY IMPACTED BY THE COVID-19 PANDEMIC**
The Interim Rule states under its first eligible use category – ***responding to public health needs and negative economic impacts from the pandemic*** – that funds must respond to "the disease itself or the harmful consequences of the economic disruptions resulting from or exacerbated by the COVID-19 public health emergency."

- Whether it be public health expenses or economic investments, counties have broad flexibility if the county can demonstrate that these activities support the public health response or that recipients of the Recovery Funds have experienced economic harm from the pandemic
- Additionally, the Interim Rule provides even greater flexibility for Qualified Census Tracts (QCTs) and other communities, households and businesses disproportionately impacted by the pandemic

4. **UNDERSTAND THE IMPORTANT DIFFERENCES BETWEEN CARES ACT CORONAVIRUS RELIEF FUND (CRF) AND ARP FISCAL RECOVERY FUND, ESPECIALLY FOR COUNTY EMPLOYEE PAYROLL SUPPORT**
Eligible expenses under the CRF are also eligible under the Recovery Fund, ***with two major exceptions:***

- **New, more restrictive allowance with county payroll support for *public health and public safety employees*** *(See page 13 of this analysis for more information)***.** The CARES Act CRF allows a much broader allowance for county employee payroll support. More narrowly defined, ARP Recovery Funds may be used for "payroll and covered benefits expenses for public safety, public health, health care, human services, and similar employees, to the extend that their services are devoted to mitigating or responding to COVID-19." Counties may consider public health and public safety employees to be entirely devoted to mitigating/responding to COVID-19, and are fully recovered, if the employee, or his/her operating unit or division, is primarily dedicated to responding to the COVID-19 public health emergency
- Expenses related to issuing tax-anticipation notes are ***not an eligible expense***

RECOVERY FUNDS ARE MORE RESTRICTIVE THAN THE CARES ACT'S CRF DOLLARS FOR COUNTY PAYROLL SUPPORT. THE INTERIM RULE PLACES NEW, MORE RESTRICTIVE LANGUAGE RELATED TO COUNTY PAYROLL SUPPORT FOR *PUBLIC HEALTH AND PUBLIC SAFETY EMPLOYEES*

5. **USE OF RECOUPED "LOST REVENUE" IS MORE FLEXIBLE THAN OTHER RECOVERY FUND ELIGIBILITY**
Counties may use Recovery Funds for the provision of "government services" to the extent of the reduction in revenue experienced due to the COVID-19 public health emergency. The **term "government services" outlines very broad and flexible uses of revenue recoupment funds** outside the standard eligibility requirements outlined in other categories (Public Health Response, Negative Economic Impacts, Premium Pay and Water, Sewer and Broadband Infrastructure) of the Interim Rule. For example, while general infrastructure and economic development investments are not generally eligible under the Fund,

counties may use an amount up to their "lost revenue" amount for these activities. ***However, lost revenue recoupment shall not be used for rainy day or reserve funds, or debt service payments***

6. **RECOVERY FUNDS MAY NOT BE USED AS NON-FEDERAL MATCH, UNLESS SPECIFICALLY AUTHORIZED**
Recovery Funds shall not be used as the local match for other federal programs (i.e. Medicaid, EDA, EPA Drinking Water and Clear Water State Revolving Funds), unless specifically allowed by the underlying/source federal program. ***It is important to note that counties may use their Funds to match other state and local government allocations of Treasury ARP Recovery Funds, if used within the county***

   - **Under a February 3, 2021 presidential directive, FEMA is authorized to provide 100 percent federal funding for the cost of COVID-related activities** previously determined as eligible, from the beginning of the pandemic (January 27, 2020) to September 30, 2021. In addition, the directive allows FEMA to expand activities eligible for reimbursement from January 21, 2021 until September 30, 2021. Specifically, costs to support the safe opening and operation of eligible schools, child care facilities, health care facilities, non-congregate shelters, domestic violence shelters, and transit systems are now eligible

7. **COUNTIES MAY USE RECOVERY FUNDS FOR ROUTINE PENSION COSTS OF EMPLOYEES**
Recovery Funds cannot be used for *deposits* into defined benefit pension funds. **HOWEVER,** Treasury defines a "deposit" as an extraordinary contribution to a defined benefit pension fund for the purpose of reducing an accrued, unfunded liability. ***Counties may use funds for routine payroll contributions to pensions of employees whose wages and salaries are an eligible use***

8. **REHIRING LOCAL GOVERNMENT STAFF TO PRE-PANDEMIC LEVELS**
The Interim Final Rule permits the rehiring of public sector staff, including county employees, up to the pre-pandemic staffing level, which is measured based on employment as of January 27, 2020. Furthermore, counties may use Recovery Funds toward payroll, covered benefits, and other costs associated with rehiring public sector staff

9. **COUNTIES MAY USE RECOVERY FUNDS TO INVEST IN CERTAIN CRITICAL INFRASTRUCTURE PROJECTS**
The Interim Rule specifically states that Recovery Funds may support necessary investments in drinking water, waste and stormwater, and high-quality broadband services

   - **For water, stormwater and sewer investments,** the Interim Rule aligns eligible projects with the listing of activities allowed under the Environment Protection Agency's (EPA) Clean Water State Revolving Fund and Drinking Water State Revolving Fund
   - **For broadband investments,** eligible projects ***are intended*** to provide services that meet at least 100 megabits per second upload and download, wherever practicable
   - **General economic development and infrastructure projects,** such as road construction or bridge repair, unrelated to COVID-19 are ***not*** an eligible expense, ***unless funded through a county's "lost revenue" replacement allowance***

ELIGIBLE EXPENSES

1. SUPPORT PUBLIC HEALTH RESPONSE

INTERIM FINAL RULE: REFERENCES P. 12-23 | RULE DEFINITIONS P. 138-140

*The Interim Final Rule outlines that the Recovery Fund provides resources to **"meet and address these emergent public health needs,** including through measures to counter the spread of COVID-19, through the provision of care for those impacted by the virus, and through programs or services that address disparities in public health that have been exacerbated by the pandemic."*

Among the potential uses of funds, the Interim Final Rule outlines:

- **PREVENT AND MITIGATE COVID-19**
  Funding a broad range of services and programming for prevention and response to COVID-19, such as:
  - Vaccination programs, including staffing, equipment, supplies, facilities and administrative expenses
  - Testing, monitoring and contact tracing
  - Supporting isolation and quarantine
  - Paid sick and paid family and medical leave to public employees related to COVID-19 compliance
  - Public health surveillance and data system enhancement
    - Case monitoring
    - Vaccination uptake tracking
  - Enforcing public health orders
  - Emergency medical response expenses, including emergency medical transportation related to COVID-19
  - Communication efforts related to COVID-19 vaccination programs and public health orders
  - Purchase PPE and disinfection of public areas and other facilities
  - Prevention and mitigation in congregate living facilities, such as:
    - Nursing homes and skilled nursing facilities
    - Jails and incarceration settings
    - Group living facilities including residential foster care and behavioral health treatment facilities
    - Other key settings like homeless shelters and schools
  - Ventilation improvements in congregate settings, public health facilities or other public facilities
  - Capital investments or adaptations to public facilities such as hospitals or health clinics

QUICK TIP

Under the sections related to responding to the **public health emergency or its negative economic impacts**, it is important to:

- Identify a need or a negative impact of the COVID-19 public health emergency
- Identify how the county investment would address the identified need or impact
- Explain how the investment would help the county respond to the disease itself or the harmful economic consequences of the economic disruptions

- **COVID-19 TREATMENT AND MEDICAL SERVICES**
  Funding to enhance health care capacity to treat and provide care and services for near and long-term medical needs for COVID-19 patients as well as genomic surveillance for COVID-19 variants. This also includes treatment expenses of the long-term symptoms or effects of COVID-19, including post-intensive care syndrome

- **ENHANCE BEHAVIORAL AND MENTAL HEALTH SERVICES**
  Funding new or enhanced services that meet behavioral health needs exacerbated by the pandemic, as well as related public health needs, such as:

  - ❑ Mental health treatment
  - ❑ Substance misuse treatment
  - ❑ Hotlines and/or warmlines
  - ❑ Crisis intervention services
  - ❑ Overdose prevention
  - ❑ Infectious disease prevention
  - ❑ Behavioral/physical health primary care services

- **SUPPORT LOCAL HEALTH AND SAFETY WORKFORCE**
  Funding payroll and covered benefit expenses for the following segments of county workers who, primarily or partially work regularly to mitigate or respond to the COVID-19 emergency:

  - ❑ Public safety
  - ❑ Public health
  - ❑ Health care
  - ❑ Human services
  - ❑ Other similar employees

- **IMPROVING THE DESIGN AND EXECUTION OF HEALTH AND PUBLIC HEALTH PROGRAMS**
  Funding efforts to improve programs addressing the COVID-19 public health emergency through planning and analysis, which includes, ***but is not limited to***:

  - ❑ Targeted consumer outreach
  - ❑ Improvements to data or technology infrastructure
  - ❑ Impact evaluation
  - ❑ Data analysis

While the CARES Act's Coronavirus Relief Fund (CRF) had much broader allowances for county employee payroll support, ARP Recovery Funds may be used for "payroll and covered benefits expenses for public safety, public health, health care, human services, and similar employees, to the extent that their services are devoted to mitigating or responding to the COVID-19 public health emergency."

For administrative convenience, counties may consider public health and public safety employees to be entirely devoted to mitigating or responding to the COVID-19 public health emergency, and therefore fully covered, if the employee and their operating unit or division, ***"is primarily dedicated to responding to the COVID-19 public health emergency."***

- **ADDRESS DISPARITIES IN PUBLIC HEALTH OUTCOMES**
  In recognition of the disproportionate impacts of the COVID-19 pandemic on health outcomes in low-income and Native American communities and the importance of mitigating these effects, **the Interim Final Rule identifies a broader range of services and programs that will be presumed to be responding to the public health emergency when provided in these communities.** Specifically, Treasury will presume that certain types of services are eligible uses when provided in a Qualified Census Tract (QCT), to families and populations living in a QCT, or other households, businesses or populations disproportionately impacted by the COVID-19 public health emergency

  - **These services** include:

    - **Community health workers** who will help residents access health services and resources that address the social determinants of health
    - **Public benefits navigators** that help residents navigate and apply for federal, state and local public benefits or services
    - **Housing services** that support healthy living environments and neighborhoods that are conducive to mental and physical wellness
    - **Lead Paint remediation** or remediation of other lead hazards to reduce elevated blood lead levels in children
    - **Evidence-based community violence intervention programs** that will prevent violence and mitigate the increase of violence during the pandemic

  - This section **also covers program and service** activities that address:

    - **Housing insecurity,** lack of affordable housing or homelessness
    - **Impacts of COVID-19 on education,** including new or expanded learning services, assistance to high-poverty school districts, needs of students
    - **Childhood health or welfare,** including childcare, home visits by health professionals, parent educators and social service professionals, and services for child welfare-involved families and youth

SPECIFICALLY, TREASURY WILL PRESUME THAT CERTAIN TYPES OF SERVICES ARE ELIGIBLE USES WHEN PROVIDED IN A QUALIFIED CENSUS TRACT (QCT), TO FAMILIES AND POPULATIONS LIVING IN A QCT OR OTHER HOUSEHOLDS, BUSINESSES OR POPULATIONS DISPROPORTIONATELY IMPACTED BY THE COVID-19 PUBLIC HEALTH EMERGENCY

2. ADDRESS NEGATIVE ECONOMIC IMPACTS

INTERIM FINAL RULE: REFERENCES P. 23-44 | RULE DEFINITIONS P. 140-143

ARP provides that funds may be used to respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality.

- **ASSISTANCE TO HOUSEHOLDS**
  Funds may be used to assist households or populations, *preferably* those most disproportionately impacted, by the negative economic impacts of the COVID-19 public health emergency, such as:

  - ❑ **Food** assistance
  - ❑ **Rent, mortgage or utility** assistance
  - ❑ **Counseling and legal aid** to prevent eviction or homelessness
  - ❑ **Cash** assistance
  - ❑ Emergency **assistance for burials**
  - ❑ **Home repairs,** weatherization or other needs
  - ❑ **Internet access** or digital literacy assistance
  - ❑ **Job training** related to a worker's occupation or level of training impacted by COVID

QUICK TIP

Under this section, the general focus of investments must be to address an economic harm resulting from or exacerbated by the COVID-19 public health emergency.

- **SMALL BUSINESS AND NON-PROFIT SUPPORT**
  State, local and Tribal governments may provide assistance to small businesses to adopt safer operating procedures, weather periods of closure or mitigate financial hardship resulting from the COVID-19 public health emergency, including:

  - ❑ **Loans or grants** to mitigate financial hardship, such as declines in revenues or impacts of periods of business closure, for example by supporting payroll and benefits costs, costs to retain employees, mortgage, rent, or utilities costs, and other operating costs
  - ❑ **Loans, grants, or in-kind assistance** to implement COVID-19 prevention or mitigation tactics, such as physical plant changes to enable social distancing, enhanced cleaning efforts, barriers or partitions, or COVID-19 vaccination, testing, or contact tracing programs
  - ❑ **Technical assistance,** counseling, or other services to assist with business planning needs

FUNDS MAY BE USED TO ASSIST HOUSEHOLDS OR POPULATIONS, *PREFERABLY* THOSE MOST DISPROPORTIONATELY IMPACTED, BY THE NEGATIVE ECONOMIC IMPACTS OF THE COVID-19 PUBLIC HEALTH EMERGENCY

- **AID TO IMPACTED INDUSTRIES**
  Funds may be used to aid tourism, travel, hospitality, *and other impacted industries* that responds to the negative economic impacts of the COVID-19 public health emergency, such as:

  - ❑ Implement COVID-19 mitigation and infection prevention measures to enable safe resumption
  - ❑ Improvement to ventilation, physical barriers or partition
  - ❑ Signage to facilitate social distancing
  - ❑ Provision of masks or PPE
  - ❑ Consultation with infection prevention professionals to develop safe reopening plans
  - ❑ Activities that support safe reopening of businesses in the tourism, travel and hospitality industries and business districts that were closed during the COVID-19 public health emergency
  - ❑ Planned expansion or upgrade of tourism, travel and hospitality facilities delayed due to the pandemic
  - ❑ Aid may be considered responsive to the negative economic impacts of the pandemic if it supports businesses, attractions, business districts and tribal development districts operating prior to the pandemic and affected by required closure and other efforts to contain the pandemic

- **REHIRING STATE AND LOCAL GOVERNMENT STAFF, INCLUDING COUNTY EMPLOYEES**
  The Interim Final Rule permits coverage of payroll and benefits costs of public health and safety staff primarily dedicated to COVID-19 response, as well as rehiring of public sector staff up to pre-pandemic levels as of January 27, 2020

COUNTIES MAY USE RECOVERY FUNDS TO INCREASE THE NUMBER OF ITS EMPLOYEES UP TO THE NUMBER OF EMPLOYEES, AS OF JANUARY 27, 2020, INCLUDING PAYROLL, COVERED BENEFITS AND OTHER RELATED COSTS

- **ASSISTANCE TO UNEMPLOYED WORKERS**
  This includes services like:

  - ❑ **Job training** to accelerate rehiring of unemployed workers
  - ❑ **Workers unemployed due to the pandemic** or the resulting recession
  - ❑ **Workers who were already unemployed** when the pandemic began and remain so due to the negative economic impacts of the pandemic
  - ❑ **Individuals who want and are available for work,** including those who have looked for work sometime in the past 12 months or who are employed part time but who want and are available for full-time work

FUNDS MAY BE USED TO AID TOURISM, TRAVEL, HOSPITALITY AND OTHER IMPACTED INDUSTRIES THAT RESPONDS TO THE NEGATIVE ECONOMIC IMPACTS OF THE COVID-19 PUBLIC HEALTH EMERGENCY

- **EXPENSES TO IMPROVE EFFICACY OF ECONOMIC RELIEF PROGRAMS**
  Counties may also use Fiscal Recovery Funds to improve efficacy of programs addressing negative economic impacts, including through:

  - Use of **data analysis**
  - Targeted **consumer outreach**
  - Improvements to **data or technology infrastructure**
  - Impact **evaluations**

- **SERVICES FOR QUALIFIED CENSUS TRACT AND OTHER DISPROPORTIONATELY IMPACTED COMMUNITIES**
  In addition to specific services to address health disparities in a QCT (pg. 7 of this analysis), the Interim Rule outlines additional ways Recovery Funds may be used. Funds may be used for certain services when provided in a Qualified Census Tract (QCT), to families and individuals living in QCTs, by a Tribal government, or to other households, businesses or populations disproportionately impacted by the COVID-19 public health emergency. These services include, *but are not limited to,* the following:

  - **Investments in Housing and Neighborhoods:** Funds may be used to assist households or populations facing negative economic impacts due to COVID-19, such as:
    - **Services to address homelessness** such as supportive housing, and to improve access to stable, affordable housing among unhoused individuals
    - **Affordable housing development** to increase supply of affordable and high-quality living units
    - **Housing vouchers, residential counseling, or housing navigation assistance** to facilitate household moves to neighborhoods with high levels of economic opportunity and mobility for low-income residents, to help residents increase their economic opportunity and reduce concentrated areas of low economic opportunity

TREASURY HAS IDENTIFIED A BROAD RANGE OF SERVICES THAT ARE ELIGIBLE USES WHEN PROVIDED IN A QUALIFIED CENSUS TRACT (QCT), TO FAMILIES AND POPULATIONS LIVING IN A QCT OR OTHER HOUSEHOLDS, BUSINESSES OR POPULATIONS DISPROPORTIONATELY IMPACTED BY THE COVID-19 PUBLIC HEALTH EMERGENCY

- **Addressing Educational Disparities:** Funds may also enhance educational supports to help mitigate impacts on students, such as:

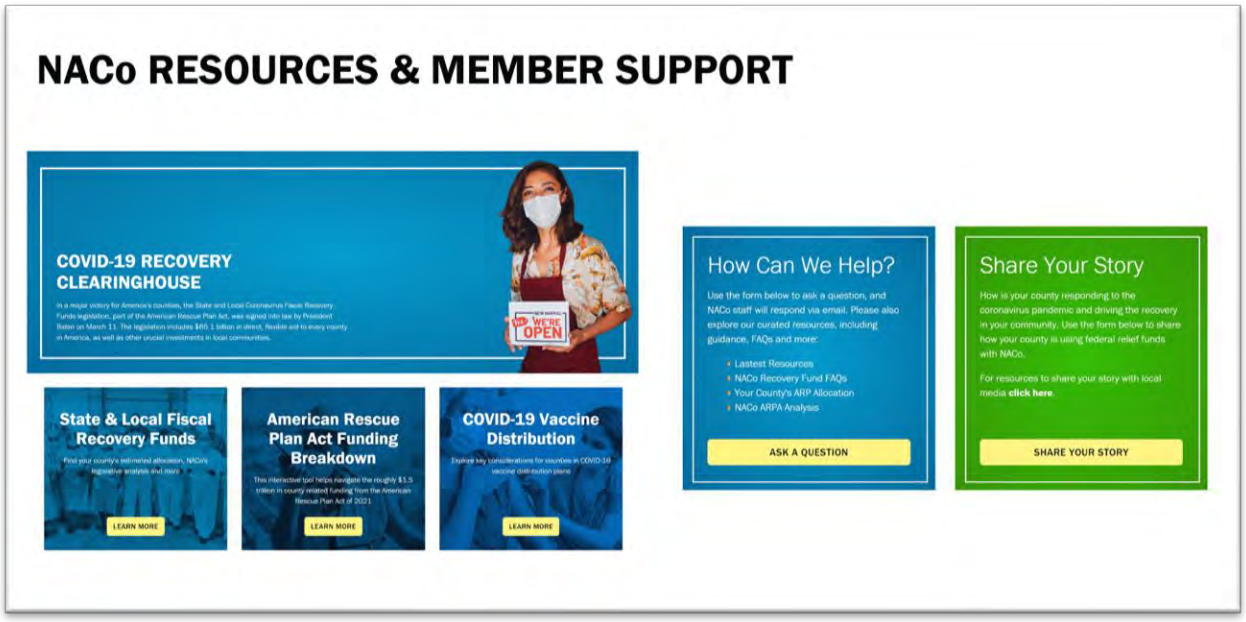
  - **New, expanded, or enhanced early learning services,** including pre-kindergarten programs and Head Start
  - **Assistance to high-poverty school districts** to advance equitable funding across districts
  - **Evidence-based educational services** and practices that address the academic needs of students and/or their social, emotional and mental health
  - Services that support **students' social, emotional and mental health**

- **Promoting Healthy Childhood Environments:** Funds may be used to mitigate increases in economic hardship, material insecurity, and parental stress and behavioral health challenges in families with children, such as:

  - New or expanded **high-quality childcare**
  - **Home visiting programs** to provide structured visits from health, parent educators, and social service professionals to pregnant women or families with young children to offer education and assistance navigating resources for economic support, health needs, or child development
  - **Enhanced services for child welfare-involved families and foster youth** to provide support and training on child development, positive parenting, coping skills or recovery for mental health and substance use challenges

FUNDS MAY BE USED TO MITIGATE INCREASES IN ECONOMIC HARDSHIP, MATERIAL INSECURITY, AND PARENTAL STRESS AND BEHAVIORAL HEALTH CHALLENGES IN FAMILIES WITH CHILDREN

State and Local Coronavirus Fiscal Recovery Funds (naco.org)



3. PREMIUM PAY FOR ESSENTIAL WORKERS

INTERIM FINAL RULE: REFERENCES P. 40-46, 106 | RULE DEFINITIONS P. 119, 127

Funds may be used by counties to provide premium pay to eligible workers performing essential work during the COVID-19 public health emergency or to provide grants to third-party employers within the county to compensate eligible workers for performing essential work.

Recovery Funds may be used by recipients, including counties, to provide premium pay to eligible county workers performing essential work during the COVID-19 public health emergency or to provide grants to third-party employers within the county to compensate those eligible workers who perform essential work.

- **DEFINING THE CONCEPT OF PREMIUM PAY AND ESSENTIAL WORKERS:** To ensure that premium pay is targeted to workers that faced or face heightened risks due to the character of their work, the Interim Final Rule defines essential work *as work involving regular in-person interactions or regular physical handling of items that were also handled by others*. ***An individual who teleworked from a residence may not receive premium pay***

- **PREMIUM PAY MAY BE PROVIDED RETROACTIVELY FOR WORK PERFORMED AT ANY TIME SINCE THE START OF THE COVID-19** public health emergency (January 27, 2020), where those workers have yet to be compensated adequately for work previously performed

- **WORKERS THAT ARE ELIGIBLE FOR PREMIUM PAY** include:
  - ❑ **Any work performed by an employee of the state, local or tribal government**
  - ❑ Staff at nursing homes, hospitals, and home care settings
  - ❑ Workers at farms, food production facilities, grocery stores, and restaurants
  - ❑ Janitors and sanitation workers
  - ❑ Truck drivers, transit staff and warehouse workers
  - ❑ Public health and safety staff
  - ❑ Childcare workers, educators and other school staff
  - ❑ Social service and human services staff

- **PREMIUM PAY DEFINITION:** Premium pay means an amount up to $13 per hour in addition to wages or remuneration the worker otherwise receives and in an aggregate amount not to exceed $25,000 per eligible worker

PREMIUM PAY MAY BE PROVIDED RETROSPECTIVELY FOR WORK PERFORMED AT ANY TIME SINCE THE START OF THE COVID-19 PUBLIC HEALTH EMERGENCY – JANUARY 27, 2020

- **TREASURY URGES COUNTIES TO PRIORITIZE PREMIUM PAY FOR LOW- AND MODERATE-INCOME PERSONS:** Counties should prioritize low- and moderate-income persons, with additional written justification needed for essential workers above 150 percent of the residing state's average annual wage for all occupations or their residing county's average annual wage, whichever is higher

4. PAYROLL EXPENSES FOR PUBLIC HEALTH & PUBLIC SAFETY EMPLOYEES

INTERIM FINAL RULE: REFERENCES P. 20-21 | RULE DEFINITIONS P. 140

Covering payroll and benefits for public safety and public health employees ***is more restrictive than what was allowed under the CARES Act's Coronavirus Relief Fund.***

As stated in the Interim Rule, Recovery Funds may be used for payroll and covered benefits as follows:

- **PAYROLL AND COVERED BENEFITS EXPENSES** for county public safety, public health, health care, human services and similar employees *to the extent that their services are devoted to mitigating or responding to the COVID–19 public health emergency*
- Support the payroll and covered benefits for the portion of the ***EMPLOYEE'S TIME THAT IS DEDICATED TO RESPONDING TO THE COVID-19 PUBLIC HEALTH EMERGENCY***
- **FOR ADMINISTRATIVE CONVENIENCE,** counties may consider public health and safety employees to be entirely devoted to mitigating or responding to the COVID-19 public health emergency, and therefore fully covered, if the employee, or his/her operating unit or division, is primarily dedicated to responding to the COVID-19 public health emergency
- Recipients may reconsider and assess the **EXTENT AN EMPLOYEE, DIVISION OR OPERATING UNIT IS ENGAGED IN ACTIVITIES THAT RESPOND TO COVID-19**. A recipient can provide payroll records, attestations from supervisors/staff or regular work product or correspondence demonstrating work on COVID-19 response. ***Counties DO NOT need to routinely track staff hours at the employee level***

The table below highlights the key differences between ARP and CARES Act guidance as it relates to **payroll and covered benefits for public health and public safety employees**:

ARP FISCAL RECOVERY FUND GUIDANCE	CARES ACT CRF GUIDANCE
• Funds may be used for payroll/benefits for public, safety, public health, health care, human services and similar employees • Funds can be used to support the payroll/benefits **for the portion of the employee's time that is dedicated to responding to COVID-19** • Counties may consider public health/safety employees to be entirely devoted to mitigating/responding to COVID-19, and are fully recovered, **if the employee, or his/her operating unit or division, is primarily dedicated to responding** to the COVID-19 public health emergency.	• As a matter of administrative convenience in light of the emergency nature of this program, **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,** unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise • **All costs of such employee may be covered** using payments from the Fund

5. REPLACE PUBLIC SECTOR REVENUE LOSS

INTERIM FINAL RULE: REFERENCES P. 51-60, 118-119 | RULE DEFINITIONS P. 135, 143-144

Counties may use Fiscal Recovery Funds for the provision of "government services" to the extent of the reduction in revenue experienced due to the COVID-19 public health emergency.

Counties may use Recovery Funds for the provision of "government services" to the **extent of the reduction in revenue experienced due to the COVID-19 public health emergency.** This means that the amount determined as "lost revenue" may be used for most regular government purposes, ***except for activities such as rainy day or reserve funds and for debt service payments.***

The Interim Final Rule implements these provisions by establishing a definition of "general revenue" for purposes of calculating a loss in revenue and by providing a methodology for calculating revenue lost due to the COVID-19 public health emergency.

- **DEFINITION OF GENERAL REVENUE**
  Based on Census Bureau's definition and includes revenue from taxes, current charges, miscellaneous general revenue, and intergovernmental transfers between state and local governments *(Note: definition excludes federal intergovernmental transfers to counties including CARES Act funding)*

  - ❑ Excludes other correction transactions proceeds from issuance of debt or the sale of investments, agency or private trust transactions and revenue generated by utilities, intergovernmental transfers from the federal government (federal transfers made to a state/locality)

- **DEFINITION OF GOVERNMENT SERVICES**
  Government Services included, **but are not limited to**:

  - ❑ Maintenance or pay-go pay-go funded building of **infrastructure, including roads**
  - ❑ Modernization of **cybersecurity**, including hardware, software, and protection of critical infrastructure
  - ❑ **Health** services
  - ❑ **Environmental** remediation
  - ❑ **School or educational** services
  - ❑ Provision of **police, fire, and other public safety services**

RECOVERY FUNDS USED TO REPLACE "REVENUE LOSS" ARE FLEXIBLE AND MAY BE USED FOR A BROAD RANGE OF GOVERNMENT SERVICES, PROGRAMS AND PROJECTS OUTSIDE OF TYPICAL ELIGIBLE USES OF RECOVERY FUNDS UNDER THE INTERIM RULE. **HOWEVER, REVENUE RECOUPMENT CANNOT BE USED FOR RAINY DAY FUNDS OR DEBT SERVICE PAYMENTS**

- **REQUIREMENTS WHEN CALCULATING REVENUE LOSS**

  When calculating revenue loss, a county must adhere to the following guidelines:

  - Recipients should calculate revenue on an **entity-wide basis** *(i.e. county government-wide basis)*
  - Recipients **cannot use pre-pandemic projections** as a basis to estimate the reduction in revenue
  - Recipients should *(i.e. may)* calculate the extent of the reduction in revenue as of four points in time:

    - December 31, 2020
    - December 31, 2021
    - December 31, 2022, and
    - December 31, 2023

- **STEPS FOR CALCULATING LOST REVENUE**

  1. Identify revenues collected in the **most recent full fiscal year prior to the public health emergency (i.e. January 27, 2020),** *called the base year revenue.* In calculating revenue, recipients should sum across all revenue streams covered as general revenue

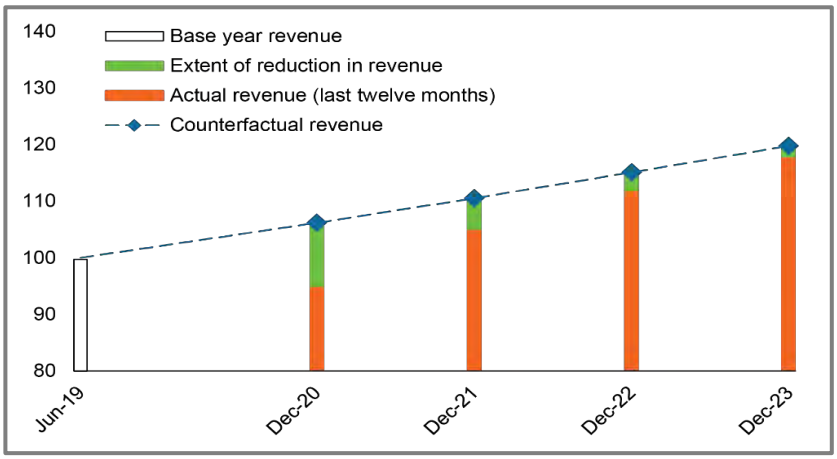
  2. **Estimated counterfactual revenue,** which is equal to base year revenue:

     [(1 + *growth adjustment*)^(*n*/12)], where *n* is the number of months elapsed since the end of the base year to the calculation date, and *growth adjustment* is the greater of 4.1 percent and the recipient's average annual revenue growth in the three full fiscal years prior to the COVID-19 public health emergency

  3. **Identify *actual revenue*,** which equals revenues collected over the past 12 months of the calculation date

  4. The extent of the reduction in revenue is equal to *counterfactual revenue* less than *actual revenue.* If actual revenue exceeds counterfactual revenue, **the extent of the reduction in revenue is set to zero for that calculation date**

THE OVERALL METHODOLOGY FOR CALCULATING THE REDUCTION IN REVENUE IS ILLUSTRATED IN THE FIGURE, AT RIGHT:



6. **WATER & SEWER INFRASTRUCTURE**

INTERIM FINAL RULE: REFERENCES P. 62-68 | RULE DEFINITIONS P. 144

To assist in meeting the critical need for investments and improvements to existing infrastructure in water and sewer, counties can invest Recovery Funds in these sectors. The Interim Final Rule outlines eligible uses within each category, allowing for a broad range of necessary investments in projects that improve access to clean drinking water, improve wastewater and stormwater infrastructure systems.

To assist in meeting the critical need for investments and improvements to existing infrastructure in water and sewer, counties can invest Recovery Funds in these sectors. The Interim Final Rule outlines eligible uses within each category, allowing for a broad range of necessary investments in projects that improve access to clean drinking water, improve wastewater and stormwater infrastructure systems.

The Interim Final Rule does this by aligning eligible uses of the Recovery Funds with the wide range of types or categories of projects that would be eligible to receive financial assistance through the Environment Protection Agency's (EPA) Clean Water State Revolving Fund and Drinking Water State Revolving Fund.

- **CLEAN WATER (SRF) PROJECTS**
  The CWSRF provides financial assistance for a wide range of water infrastructure projects to **improve water quality and address water pollution** in a way that enables each state (or county) to address and prioritize the needs of their populations

  - The types of projects eligible for **Clean Water SRF assistance** include:
    - Projects to construct, improve and repair **wastewater treatment plants**
    - Control **non-point sources** of pollution
    - **Improve resilience** of infrastructure to severe weather events
    - Create **green infrastructure**
    - **Protect waterbodies** from pollution

  - Under the Clean Water SRF, each of the 51 State programs normally have the flexibility to direct funding to their particular environmental needs, and each state may also have its own statutes, rules and regulations that guide project eligibility. ***With the Recovery Fund, the intent of the Interim Final Rule is outline the list of eligible projects that a county may consider for investment***

THE INTERIM RULE ALIGNS ELIGIBLE USES OF RECOVERY FUNDS FOR WATER & SEWER INFRASTRUCTURE WITH PROJECTS THAT ARE ELIGIBLE TO RECEIVE FINANCIAL ASSISTANCE NORMALLY THROUGH EPA'S CLEAN WATER SRF & DRINKING WATER SRF

- **DRINKING WATER (SRF) PROJECTS**
  The primary use of DWSRF funds is to assist communities in making **water infrastructure capital improvements,** including the installation and replacement of failing treatment and distribution systems. In administering these programs, counties must give priority to projects that:

  - Ensure compliance with applicable health and environmental safety requirements
  - Address the most serious risks to human health
  - Assist systems most in need on a per household basis according to State affordability criteria

- **OTHER ELIGIBLE USES OF RECOVERY FUNDS** include projects related to:

  - Stormwater runoff
  - Water pollution
  - Flood control
  - Green infrastructure that support stormwater resiliency, including rain gardens and green streets

- **As stated in Treasury's Recovery Fund FAQ document, the National Environmental Policy Act (NEPA) does not apply to Treasury's administration of funds.** However, projects supported with payments from the Fund may still be subject to NEPA review ***if they are also funded by other federal financial assistance programs***

- The Interim Rule **"encourages"** counties to ensure that water, sewer, and broadband projects **use strong labor standards,** including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions

HOW COUNTIES INVEST IN AMERICA'S INFRASTRUCTURE SYSTEM

$22.6 BILLION in sewage and waste management

$134 BILLION in infrastructure, including maintaining and operating public works

7. BROADBAND INFRASTRUCTURE

INTERIM FINAL RULE: REFERENCES P. 69-77 | RULE DEFINITIONS P. 145

Recognizing the need for such connectivity, Recovery Funds may be used by state, territorial, local and tribal governments to make necessary investments in broadband infrastructure.

The COVID-19 public health emergency has underscored the importance of universally available, high-speed, reliable and affordable broadband coverage as millions of Americans rely on the internet to participate in, among critical activities, remote school, healthcare and work. Recognizing the need for such connectivity, the ARPA provides funds to state, territorial, local and tribal governments to make necessary investments in broadband infrastructure.

Additional guidance and requirements around use of Recovery Funds for broadband infrastructure are as follows:

- **Unserved and underserved households:** Funds may be used to make necessary investments in broadband infrastructure aimed at "unserved or underserved" communities. Treasury defines unserved and underserved at speeds below 25 Mbps download and 3 Mbps upload

- **Eligible projects are expected to meet or exceed symmetrical upload and download speeds of 100 Mbps.** However, in instances where required speeds cannot be achieved (due of the geography, topography, or excessive costs), the affected project would be expected to meet or exceed 100 Mbps download with a minimum of 20 Mbps upload with scalability to a symmetrical minimum of 100 Mbps

- **U.S. Treasury used the Federal Communication Commission's (FCC) Broadband Speed Guide** to determine appropriate speed requirements for all eligible projects

THE INTERIM FINAL RULE PROVIDES THAT ELIGIBLE INVESTMENTS IN BROADBAND ARE THOSE THAT ARE DESIGNED TO PROVIDE SERVICES MEETING ADEQUATE SPEEDS AND ARE PROVIDED TO UNSERVED AND UNDERSERVED HOUSEHOLDS AND BUSINESSES

8. **INELIGIBLE EXPENSES**

INTERIM FINAL RULE: REFERENCES P. 78-97 | RULE DEFINITIONS P.134-135, 145-147

Treasury defines a "deposit" as an extraordinary contribution to a defined benefit pension fund for the purpose of reducing an accrued, unfunded liability. ***Recipients may use funds for routine payroll contributions to pensions of employees whose wages and salaries are otherwise an eligible use.***

The Interim Final Rule outlines identifies **several ineligible uses of Recovery Funds,** including:

- **PENSION FUNDS**
  Funds shall not be used for ***"extraordinary" deposits*** into a defined pension fund

  - **HOWEVER,** Treasury defines a "deposit" as an *extraordinary contribution* to a pension fund for the purpose of reducing an accrued, unfunded liability. **Recipients may use funds for routine payroll contributions to pensions of employees whose wages and salaries are otherwise an eligible use**

- **NET REDUCTION IN TAX REVENUE (LIMITED TO STATES AND TERRITORIES)**
  If a state or territory has a reduction in net tax revenue, they must demonstrate how they paid for the tax cuts from a source(s) other than the Recovery Fund ***(Note: This provision does not apply to counties)***

- **OTHER RESTRICTIONS** include:

  - **Using funds for non-federal match** when barred by another federal regulation or statute, including EPA's Clean Water SRF, Drinking Water SRF, Economic Development Administration or Medicaid
    - ***See note on page 4 related to presidential order on FEMA's state and local cost-share waiver***
  - **Funding debt service,** including costs associated with tax anticipation notes (TANs) or issuing short-term revenue ***(Note: This is different than the CARES Act CRF, which allowed use of funds for TANs)***
  - **Legal settlement** or judgements
  - **Deposits to rainy day funds** or financial reserves
  - **General infrastructure** spending outside of water, sewer and broadband investments or above the amount allocated under "revenue loss" recoupment provision
  - **General economic development or workforce development activities,** unless they directly address negative economic impacts of the public health emergency or related to the "revenue loss" provision

OUTSIDE OF WATER, SEWER, BROADBAND AND FACILITY UPGRADES RELATED TO COVID-19 RESPONSE AND MITIGATION, GENERAL INFRASTRUCTURE AND ECONOMIC DEVELOPMENT PROJECTS, SUCH AS NEW JAILS, ROADS AND BRIDGES AND BUSINESS PARKS, ARE PROHIBITED. **HOWEVER, COUNTIES MAY USE THE PORTION OF THEIR "REVENUE LOSS" RECOUPMENT FOR THESE TYPES OF INVESTMENTS**

9. **REPORTING REQUIREMENTS**

INTERIM FINAL RULE: REFERENCES P. 110-112 | RULE DEFINITIONS P. 137

Counties are required to submit an Interim Report, Quarterly Project and Expenditure Reports, and Annual Recovery Plan Performance Reports as specified below, regarding their utilization of Coronavirus State and Local Fiscal Recovery Funds.

- **INTERIM REPORTS**
  Counties are required to submit one Interim Report, which will include the county's expenditures by category at the summary level

  - The Interim Report will cover spending from the date the county receives Funds to July 31, 2021
  - ***The Interim Report is due by August 31, 2021***
  - This report will be similar to that of the CARES Act Coronavirus Relief Fund
  - *Treasury will release additional guidance on this report in the coming weeks*

- **QUARTERLY PROJECT AND EXPENDITURE REPORTS**
  Counties are required to submit quarterly project and expenditure reports, including financial data, information on contracts and subawards over $50,000 and other information regarding utilization of funds

  - First report will cover spending from the date the county receives Funds to September 30, 2021
  - ***First report is due by October 31, 2021***
  - These reports will be similar to CARES Act Coronavirus Relief Fund

- **RECOVERY PLAN PERFORMANCE REPORTS**
  Counties above 250,000 population are required to submit an Annual Recovery Plan Performance Report, including descriptions of projects funded and information on performance indicators and objectives of each award

  - Initial recovery plan will cover activity from the date the county receives Recovery Funds to July 31, 2021
  - Local governments *(including counties)* ***with less than 250,000 residents are not required*** to develop a Recovery Plan Performance Report
  - *Recovery performance plan is due by August 31, 2021 for counties above 250,000 population*

COUNTIES BELOW 250,000 POPULATION ARE NOT REQUIRED TO SUBMIT AN ANNUAL RECOVERY PLAN PERFORMANCE REPORT

10. **KEY DEFINITIONS**

INTERIM FINAL RULE: RULE DEFINITIONS P. 130-151

Treasury provides a list of definitions in the Interim Final Rule, which are essential to understand and comply with the eligible uses and requirements of Recovery Funds.

1. **COUNTY:** County, parish or other equivalent county division (i.e. Borough in Alaska)

2. **COVERED BENEFITS:** The costs of all types of leave (vacation, family-related, sick, military, bereavement, sabbatical, jury duty), employee insurance (health, life, dental, vision), retirement (pensions, 401(k)), unemployment benefit plans (federal and state), workers' compensation insurance, and Federal Insurance Contributions Act taxes (which includes Social Security and Medicare taxes). *(NOTE: This is an important definition linked to the exemption for pensions related to county payroll support for their employees)*

3. **COVERED PERIOD:** Begins on March 3, 2021 and ends on December 31, 2024. Counties must adhere to the parameters of the covered period just as States and territorial governments. However, there are exceptions to the covered period:

   - Funds must be **INCURRED** (i.e. obligated) by December 31, 2024
   - Funds must be **EXPENDED** with all WORK PERFORMED and COMPLETED by December 31, 2026
   - **Counties may provide premium pay retroactively,** dating back to the start of the public health emergency on January 27, 2020

4. **DEPOSIT:** Extraordinary payment of an accrued, unfunded liability. The term *deposit* does not refer to routine contributions made by an employer to pension funds as part of the employer's obligations related to payroll, such as either a pension contribution consisting of a normal cost component related to current employees or a component addressing the amortization of unfunded liabilities calculated by reference to the employer's payroll costs

5. **ELIGIBLE EMPLOYER:** An employer of an eligible worker who performs essential work

6. **ELIGIBLE WORKER:** Workers needed to maintain continuity of operations of essential critical infrastructure sectors, including health care; emergency response; sanitation, disinfection, and cleaning work; maintenance work; grocery stores, restaurants, food production, and food delivery; pharmacy; biomedical research; behavioral health work; medical testing and diagnostics; home- and community-based health care or assistance with activities of daily living; family or child care; social services work; public health work; vital services to Tribes; ***any work performed by an employee of a State, local, or Tribal government;*** educational work, school nutrition work, and other work required to operate a school facility; laundry work; elections work; solid waste or hazardous materials management, response, and cleanup

work; work requiring physical interaction with patients; dental care work; transportation and warehousing; work at hotel and commercial lodging facilities that are used for COVID-19 mitigation and containment; work in a mortuary; work in critical clinical research, development, and testing necessary for COVID-19 response

- **With respect to a county recipient,** workers in any additional sectors as **each chief executive officer** of such recipient *(i.e. county government)* may designate as critical to protect the health and well-being of the residents of their county

7. **ESSENTIAL WORK:** Work that is not performed while teleworking from a residence and involves regular in-person interactions with patients, the public or coworkers of the individual that is performing the work **OR** regular physical handling of items that were handled by, or are to be handled by patients, the public, or coworkers of the individual that is performing the work

8. **GENERAL REVENUE:** Money that is received from tax revenue, current charges, and miscellaneous general revenue, excluding refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, agency or private trust transactions, and intergovernmental transfers from the federal government, including transfers made pursuant to section 9901 of the American Rescue Plan Act. General revenue does not include revenues from utilities. Revenue from Tribal business enterprises must be included in general revenue

9. **NON-PROFIT:** Non-profit organization that is exempt from Federal income taxation and that is described in section 501(c)(3) of the Internal Revenue Code

10. **PREMIUM PAY:** An amount of up to $13 per hour that is paid to an eligible worker, in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID-19 public health emergency (i.e. since January 27, 2020). Such amount may not exceed $25,000 with respect to any single eligible worker. Premium pay will be considered to be in addition to wages or remuneration the eligible worker otherwise receives if, as measured on an hourly rate, the premium pay is:

    1. With regard to work that the eligible worker previously performed, pay and remuneration equal to the sum of all wages and remuneration previously received plus up to $13 per hour with no reduction, substitution, offset or other diminishment of the eligible worker's previous, current or prospective wages or remuneration, **or**
    2. With regard to work that the eligible worker continues to perform, pay of up to $13 that is in addition to the eligible worker's regular rate of wages or remuneration, with no reduction, substitution, offset or other diminishment of the workers' current and prospective wages or remuneration

11. **SMALL BUSINESS:** A business concern or other organization that: (1) Has no more than 500 employees, or if applicable, the size standard in number of employees established by the Administrator of the Small

Business Administration for the industry in which the business concern or organization operates, and (2) Is a small business concern as defined in section 3 of the Small Business Act (15 U.S.C. 632)

12. **PENSION FUND:** Defined benefit plan and does not include a defined contribution plan

13. **RECIPIENT:** A state, territory, tribal government, metropolitan city, nonentitlement unit of local government, county, or unite of general local government that receives a payment made under section 602(b) of the Social Security Act or transfer pursuant to section 603(c)(4) of the Social Security Act

14. **REPORTING YEAR:** The Interim Final Rule defines ''reporting year'' as a single year within the covered period, aligned to the current fiscal year of the recipient government during the covered period, for which a recipient government reports the value of covered changes and any sources of offsetting revenue increases (''in-year'' value), regardless of when those changes were enacted. For the fiscal years ending in 2021 or 2025 (partial years), the term ''reporting year'' refers to the portion of the year falling within the covered period. For example, the reporting year for a fiscal year beginning July 2020 and ending June 2021 would be from March 3, 2021 to July 2021

15. **UNSERVED AND UNDERSERVED HOUSEHOLD OR BUSINESS:** One or more households or businesses that are not currently served by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed

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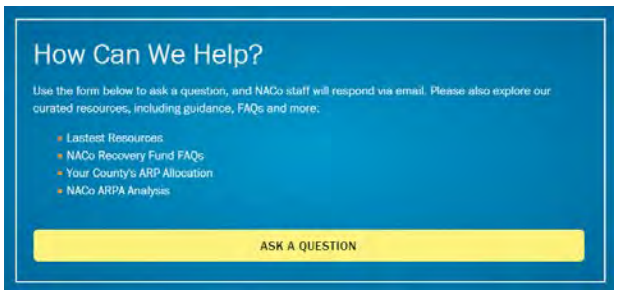
CLICK HERE TO SUBMIT QUESTIONS TO THE NACO STAFF
CLICK HERE TO SUBMIT YOUR COUNTY INVESTMENT EXAMPLES



10. APPENDIX: EXAMPLES OF ELIGIBLE USES OF RECOVERY FUNDS

PUBLIC HEALTH		
COVID-19 response • Vaccination programs • Medical care • Testing • Contact tracing • Isolation and quarantine • Medical or public health access for vulnerable populations • Public health surveillance • Public health order enforcement • Public communication • Health care capacity enhancement • Capital investments in mitigation tactics in public facilities	• Personal protective equipment (PPE) purchases • Prevention and mitigation in congregate living facilities and schools • Ventilation improvements in congregate and health care settings • Public health data system enhancements	**Behavioral health** • Mental health treatment • Substance misuse treatment • Crisis intervention • Outreach to promote access to health and social services **Payroll** • Public health, health care, human services, public safety, and others who work on COVID-19 response • Payroll and benefit costs for employees or units/divisions primarily dedicated to COVID-19 response

ECONOMIC IMPACTS	
Households • Food assistance, rent, mortgage, utilities • Counseling and legal aid to prevent eviction or homelessness • Cash assistance • Burial assistance • Survivor's benefits • Home repairs and weatherization • Internet access or digital literary assistance • Job training to address negative economic or public health impacts **Public Sector** • Rehiring public sector staff up to pre-pandemic levels • Replenishing unemployment insurance (UI) trust funds up to pre-pandemic levels • Building internal capacity to implement economic relief programs, with investments in data analysis, targeted outreach,	**Hardest-hit Communities** • Limited to spending within a Qualified Census Tract, families living in Qualified Census Tracts, other populations, households, or geographic areas disproportionately impacted by the pandemic • Community health workers, public benefits navigators, remediation of lead hazards, and community violence intervention programs • Services to address individuals experiencing homelessness, affordable housing development, housing vouchers, and residential counseling and housing navigation assistance to facilitate moves to neighborhoods with high economic opportunity • New or expanded early learning services, additional resources for high-poverty school districts, educational services like tutoring or afterschool programs and services to address social, emotional, and mental health needs • New or expanded high quality child care, home visiting programs for families with young children, and enhanced services for child welfare-involved families and foster youth

technology infrastructure, and impact evaluations	**Small Businesses & Nonprofits** • Loans or grants to mitigate revenue declines, closures (e.g., payroll and benefits support, employee retention, mortgage, rent, utilities, other operating costs) • Loans, grants, or in-kind assistance to implement prevention or mitigation tactics (e.g., social distancing, enhanced cleaning, barriers or partitions, vaccination, testing, contact tracing) • Technical assistance, counseling, or other services to assist business planning • Support for tourism, travel, and hospitality sectors

REVENUE LOSS
• Broad latitude to support government services, up to the amount of the lost revenue • Includes revenue from taxes, current charges, and miscellaneous general revenue • Calculated at four points in time: December 31, 2020; December 31, 2021; December 31, 2022; and December 31, 2023 • Upon receiving payments, recipients may immediately calculate revenue loss for the period ending December 31, 2020 • Excludes refunds and other correcting transactions, proceeds from issuance of debt or the sale of investments, agency or private trust transactions, and revenue generated by utilities and insurance trusts • Includes intergovernmental transfers between state and local governments, but excludes transfers from the federal government • Recipients must calculate revenue on an entity-wide basis rather than a source-by-source basis • Includes current charges that would be included in the Census Bureau's definition of state or local government general revenue from own sources, such as revenue of facilities operated by a government (swimming pools, recreational marinas and piers, golf courses, skating rinks, museums, zoos, etc.); auxiliary facilities in public recreation areas (camping areas, refreshment stands, gift shops, etc.); lease or use fees from stadiums, auditoriums, and community and convention centers; and rentals from concessions at such facilities

PREMIUM PAY FOR ESSENTIAL WORKERS
• **Any work performed by an employee of the state, local or tribal government** • Staff at nursing homes, hospitals, and home-care settings • Workers at farms, food production facilities, grocery stores, and restaurants • Janitors and sanitation workers • Public health and safety staff • Truck drivers, transit staff, and warehouse workers • Child care workers, educators, and school staff • Social service and human services staff • Retrospective and prospective premium pay permissible • Staff working for third-party contractors in eligible sectors

WATER & SEWER INFRASTRUCTURE
• Drinking water infrastructure projects, such as building or upgrading facilities and transmission, distribution, and storage systems, including the replacement of lead service lines • Wastewater infrastructure projects, including constructing publicly-owned treatment infrastructure, managing and treating stormwater or subsurface drainage water, facilitating water reuse, and securing publicly-owned treatment works • Projects that address the impacts of climate change • Aligns eligible projects with the Clean Water State Revolving Fund and Drinking Water State Revolving Fund • Encourages projects to use strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate and include local hire provisions

BROADBAND INFRASTRUCTURE
• Investments in areas that are currently unserved or underserved (i.e., lacking a wireline connection that reliably delivers minimum speeds of 25 Mbps download and 3 Mbps upload) • Prioritize projects that achieve last-mile connections to households and businesses • Projects that deliver services offering reliable 100 Mbps download and 100 Mbps upload speeds, *unless impracticable due to topography, geography, or cost* • Fiber optic investments

NACo

STRONGER COUNTIES. STRONGER AMERICA.

National Association of Counties
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linkedin.com/company/NACoDC

ARP Federal Grants Available as of 6-7-21 from NACo

Taken from: https://www.naco.org/resources/featured/american-rescue-plan-act-funding-breakdown

ASSISTANCE TO INDIVIDUALS AND FAMILIES ($56.27 BILLION TOTAL)

1. SNAP STATE ADMINISTRATION
    a. Grants awarded to each state agency with 75 percent of the funds allocated based on the share of each state of households that participate in SNAP and 25 percent based on the increase in the number of households that participate in SNAP. States with county-administered SNAP programs pass these funds along to counties.

    b. NEW! Click here for a list of state allocations (North Carolina's allocation amount included below).

    c. $1.14 billion program

State/Territory	Allocation for Fiscal Year 2021			Allocation for Each Fiscal Year 2022 and 2023		
	Allocation of 75% of Funds	Allocation of Remaining 25%	Total Allocation	Allocation of 75% of Funds	Allocation of Remaining 25%	Total Allocation
Nevada	$2,127,566.59	$612,795.40	$2,740,361.99	$3,864,355.64	$1,113,036.54	$4,977,392.18
New Hampshire	$334,602.75	$0.00	$334,602.75	$607,747.85	$0.00	$607,747.85
New Jersey	$3,201,180.53	$1,333,722.54	$4,534,903.07	$5,814,389.13	$2,422,475.63	$8,236,864.75
New Mexico	$2,086,657.55	$595,054.46	$2,681,712.01	$3,790,051.47	$1,080,813.21	$4,870,864.68
New York	$13,569,478.22	$2,299,088.50	$15,868,566.71	$24,646,603.29	$4,175,895.43	$28,822,498.73
North Carolina	$5,793,351.29	$2,709,110.88	$8,502,462.17	$10,522,617.65	$4,920,629.96	$15,443,247.61

2. SNAP 15 PERCENT BENEFIT INCREASE EXTENSION
    a. Extends the recently enacted 15 percent SNAP benefit increase through September 30, 2021 (previously set to expire June 30, 2021).

    b. $3.5 Billion (CBO scrore estimate)

3. SUPPLEMENTAL NUTRITION ASSISTANCE FOR WOMEN, INFANTS, CHILDREN (WIC)
    a. Provides $880 million in emergency funds, $490 million of which will enhance benefits for four months and $390 million of which will support outreach innovation and program modernization funding.

    b. NEW! Click here to view a list of states that have opted in to receive emergency funds (North Carolina has opted in)

4. PANDEMIC EBT PROGRAM EXTENSION

a. Extends the Pandemic-EBT program, which provides SNAP benefits to low-income children who have lost access to meals at school and child care due to the pandemic through the summer months in both FY 2021 and FY 2022. Administrative costs for P-EBT are 100 percent reimbursable by the federal government.

b. NEW! Click here to view the USDA's FAQ document on the Pandemic EBT Program.

c. $5.6 Billion (CBO score estimate)

5. NUTRITION ASSISTANCE FOR U.S. TERRITORIES
    a. Grants to the Commonwealth of Northern Mariana Islands, Puerto Rico, Northern Mariana Islands and American Samoa for nutrition assistance.

    b. $1 Billion

6. COMMODITY SUPPLEMENTAL FOOD PROGRAM
    a. Provides additional funds for the program, which works to improve the improve the health of low-income persons at least 60 years of age by supplementing their diets with nutritious USDA Foods.

    b. $37 Million

7. VETERANS AFFAIRS
    a. Funding for several U.S. Department of Veterans Affairs programs including the Veterans State Home Program, Veterans Health and workforce retraining assistance.

    b. $17 Billion

8. INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)
    a. These funds are provided to state educational agencies and lead agencies to help recover from the impact of the coronavirus pandemic and to safely reopen schools and sustain safe operations.

    b. $3.03 Billion

9. FAMILY VIOLENCE PREVENTION AND SERVICES
    a. These funds are in the form of formula grants and include additional funding to the national domestic violence hotline and support for survivors of sexual assault.

    b. $450 Million

10. COMMUNITY-BASED CHILD ABUSE PREVENTION
    a. The funds are Title II community based (CBCAP) grants, which will be available through Sep. 30, 2023. Funding is for lead entities designated by the state. In some cases,

counties may receive these funds from the state via a competitive grant process, but they are not direct applicants or recipients of funds.

b. $250 Million

11. CHILD ABUSE PREVENTION AND TREATMENT STATE GRANTS
    a. These funds are allocated to states as Title I Grants to states.

    b. $100 Million

12. PANDEMIC EMERGENCY ASSISTANCE FUND
    a. Provides funds for states to provide short-term targeted aid (cash assistance or otherwise) to families in crisis. Counties in nine states (and Montgomery County, Md.) are responsible for administering the program and represent more than half of total TANF participants. These counties may receive funds.

    b. NEW! Click here for a list of state allocations (NC allocation below)

    c. $1 Billion total

State	Allotment
Missouri	$14,530,873
Montana	$2,733,901
Nebraska	$4,438,712
Nevada	$6,794,491
New Hampshire	$4,145,240
New Jersey	$17,254,346
New Mexico	$6,385,240
New York	$128,476,323
North Carolina	$16,782,875

13. OLDER AMERICANS ACT (OAA) PROGRAMS
    a. This funding includes $750 million for senior nutrition programs, $460 million for home-and-community-based support services, $45 million for disease prevention, $10 million for the long-term care ombudsman program and $145 million in assistance for grandparents caring for grandchildren. OAA funding is allocated directly to Area Agencies on Aging, more than half of which are fully or partially operated by county governments.

    b. $1.4 Billion total

14. ELDER JUSTICE ACT PROGRAMS

a. Provides funds for the Elder Justice Act in both FY 2021 and FY 2022. The Elder Justice Act program is the only dedicated federal funding source available to states and counties to prevent elder fraud and abuse.

b. $276 Million total

15. MATERNAL, INFANT AND EARLY CHILDHOOD HOME VISITING
    a. States receive these funds and may disperse to local governments. Funding can be suballocated to county owned entities providing services.

    b. NEW! HRSA releases info sheet on program.

    c. $150 Million total

16. FAMILY PLANNING
    a. Funds are allocated to the only federal grant program dedicated exclusively to providing low-income and adolescent patients with essential family planning and preventative health services. County health departments are eligible applicants of these grants.

    b. $50 Million

17. TENANT BASED RENTAL ASSISTANCE
    a. Provides $5 billion for housing choice vouchers, with funds available through September 30, 2030.

    b. NEW! HUD releases Housing Voucher FAQ.

    c. $5 Billion total

18. HOMELESSNESS ASSISTANCE
    a. Provides $5 billion to provide rental assistance, develop affordable housing, provide supportive services and acquire and develop non-congregate shelter units. Funding will be allocated using the HOME Investment Partnerships Program.

    b. $5 Billion total

19. HOMEOWNER ASSISTANCE FUND
    a. Funding to states, territories, and tribes to provide homeowners struggling to make mortgage payments due to the pandemic with direct assistance for mortgage payments, property taxes, property insurance, utilities, and other housing related costs.

    b. $9.96 Billion total

20. EMERGENCY RENTAL ASSISTANCE
    a. Provides an additional round of funding for the Emergency Rental Assistance Program. Funding is distributed to states and eligible units of local governments, including counties with **200,000 residents or more**, to help keep residents stably housed during the COVID-19 pandemic.

    b. NEW! Click here for recent Treasury Guidance and here for a fact sheet.

    c. $21.6 Billion total

21. RURAL HOUSING
    a. Assistance to individuals needing rural housing assistance. Although not a direct allocation to counties, these funds to residents could relieve county budgets and local housing programs.

    b. $100 Million total

EDUCATION & CHILDCARE ($211.57 BILLION)

1. EDUCATION STABILIZATION FUND
    c. $123 billion of these funds is allocated to support K-12 schools in safely reopening, of which 20 percent must address learning loss. Other set asides include $1.25 billion for summer enrichment, $1.25 billion for afterschool programs, $3 billion for education technology and $800 million for wraparound services to homeless students. Counties contribute funds to K-12 schools in six states and to community colleges across several states but will not receive funding directly.

    d. NEW! Click here to view Department of Education Guidance.

    e. $165.96 Billion total

2. CHILD CARE AND DEVELOPMENT BLOCK GRANT (CCDBG)
    a. These funds will be distributed according to the regular formula and available through FY 2024. Counties in eight states administer these funds: Colorado, Minnesota, **North Carolina**, North Dakota, New York, Ohio, Virginia and Wisconsin.

    b. NEW! Click here to view HHS Guidance.

    c. $14.99 Billion

3. CHILD CARE ENTITLEMENTS TO STATES
    a. This is a permanent annual increase in state funding, with the state match waived in FY 2021 and FY 2022.

b. $633 Million total

4. CHILD CARE STABILIZATION FUND
    a. These funds will be administered by each state's lead agency and available for eligible child care providers. Each lead agency will make applications available on their website within 30 days after they have received grant funds.

    b. NEW! Click here to view HHS Guidance.

    c. $23.98 Billion total

5. LOW INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP)
    a. These funds are allocated for a relatively new program which helps low-income households pay for heating and cooling costs. Some counties may receive funds from their states as they partially or fully administer LIHEAP in 13 states.

    b. $4.5 Billion total

6. LOW-INCOME HOUSEHOLD DRINKING WATER AND WASTEWATER ASSISTANCE (LIHWAP)
    a. These funds are allocated to states and territories to assist low-income households that pay a high proportion of household income for drinking water and wastewater services. Because ACF is directing states to model LIHWAP after LIHEAP, it is possible that county governments functioning as a local LIHEAP agency will be responsible for administering this new program as well and may receive funds.

    b. $500 Million

7. HEAD START
    a. Emergency funding to be distributed across existing Head Start agencies according to their share of total enrolled children. Head Start delivers services through 1,600 local agencies, many of which are sponsored by county governments.

    b. $1 Billion total

8. NATIONAL CHILD TRAUMATIC STRESS NETWORK
    a. Funds allocated for grant program that aims to improve treatment and services for children and adolescents who have experienced traumatic events and to increase access to these treatments and services throughout the United States. Public (counties) and private entities are eligible to apply.

    b. $10 Million total

HEALTH ($86.24 BILLION)

1. EMERGENCY RURAL DEVELOPMENT GRANTS FOR RURAL HEALTH CARE
    a. Provides funding to establish an emergency pilot program for rural development within the U.S. Department of Agriculture. Grants are to be awarded based on rural development needs related to the COVID-19 pandemic.
    b. $500 Million total
2. CERTIFIED COMMUNITY BEHAVIORAL HEALTH CLINIC EXPANSION GRANT PROGRAM
    a. Provides funding for the CCBHC Expansion Grants program, which aims to increase access to, and improve the quality of community mental and substance use disorder treatment through the expansion of CCBHCs.

    b. NEW! Click here to apply. (Application due date March 1, 2021)

    c. $420 Million total

3. YOUTH SUICIDE PREVENTION PROGRAMS
    a. Funding to support state-sponsored or tribal youth suicide early intervention and prevention strategies and provides funding to institutions of higher education to assist students. Counties that are public organizations designated by a state to develop or direct the youth suicide early intervention and prevention strategy are eligible to receive funds.

    b. $20 Million total

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    b. $20 Million total (North Carolina allocated $41,535,246)

5. SUBSTANCE ABUSE PREVENTION AND TREATMENT BLOCK GRANT
    a. Funding for county behavioral health authorities to serve vulnerable, low-income populations, such as those with HIV/AIDS, pregnant and parenting women, youth and others by ensuring access to substance abuse services.

    b. NEW! Click here for a list of state allocations.

    c. $1.5 Billion total (North Carolina allocated $36,420,651)

6. COMMUNITY-BASED FUNDING FOR LOCAL SUBSTANCE USE DISORDER SERVICES

a. Provides funding for grants to states, local and Tribal governments and other entities to support community-based overdose prevention programs, syringe services programs and other harm reduction services in light of increased pandemic related drug-misuse.

b. $30 Million total

7. COMMUNITY-BASED FUNDING FOR LOCAL BEHAVIORAL HEALTH NEEDS
    a. Provides funding for grants to state, local, Tribal and territorial governments and other entities to address increased community behavioral health needs worsened by the COVID-19 pandemic.

    b. $50 Million total

8. PROJECT AWARE
    a. Provides funding for Project AWARE, which provides grants, contracts and cooperative agreements to states, Tribes and other entities to advance wellness and resiliency in education.

    b. $30 Million total

9. COMMUNITY HEALTH CENTERS
    a. Provides funding to award grants to federally qualified health centers and to Papa Ola Lokahi and other Native Hawaiian health care systems to respond to the COVID-19 pandemic. Click here for allowable uses.

    b. $7.6 Billion total

10. PUBLIC HEALTH WORKFORCE
    a. Provides funding to establish, expand and sustain a public health workforce including grants to state, local and territorial public health departments.

    b. NEW! Click here to see White House statement on these funds.

    c. $7.66 Billion total

11. NATIONAL HEALTH SERVICE CORPS
    a. Provides funding for the National Health Service Corps Scholarship Program, the National Health Service Corps Loan Repayment Program and state loan repayment programs, with respect to the health workforce.

    b. $800 Million total

12. NURSE CORPS
    a. Provides funding for federal loan repayment and scholarship programs for nurses.

b. $200 Million total

13. TEACHING HEALTH CENTERS - GRADUATE MEDICAL EDUCATION
    a. Provides funding for payments to qualified teaching health centers that operate graduate medical education programs and for grants to teaching health centers to establish new or expanded primary care residency programs.

    b. $330 Million total

14. MENTAL AND BEHAVIORAL HEALTH TRAINING (HEALTH CARE PROFESSIONALS)
    a. Provides funding for grants or contracts to state and local governments, among other entities, to run training programs in strategies for reducing and addressing suicide, burnout, mental health conditions and substance use disorders among health care professionals. The trainings must be for health care students, residents, professionals, paraprofessionals, training and public safety officers and their employers.

    b. $80 Million total

15. GRANTS FOR HEALTH CARE PROVIDERS TO PROMOTE MENTAL AND BEHAVIORAL HEALTH
    a. Provides funding to award grants or contracts to entities providing health care, including federal qualified health centers, to establish or expand programs to promote mental health among their providers and others.

    b. $40 Million total

16. BEHAVIORAL HEALTH WORKFORCE EDUCATION AND TRAINING
    a. Provides funding for grants to eligible institutions to support education and clinical training relating to mental and behavioral health.

    b. $100 Million total

17. PEDIATRIC MENTAL HEALTH CARE ACCESS
    a. Provides funding to award grants to states, political subdivisions of states and Tribes to promote behavioral health integration in pediatric primary care through the development and support of statewide or regional pediatric mental health care telehealth access programs.

    b. NEW! Apply now on Grants.gov. (Applications due July 6, 2021)

    c. $80 Million total

18. GRANTS TO STATES, LOCALITIES, TRIBES FOR TESTING

a. Provides funding for COVID-19 testing, contact tracing and mitigation activities. Note that this funding will be distributed to states and local jurisdictions through existing cooperative agreements.

b. $47.8 Billion total

19. GRANTS TO STATES, LOCALITIES, TRIBES FOR VACCINES
    a. Provides funding for COVID-19 vaccine activities, including providing technical assistance and awarding grants or cooperative agreements to state, local, Tribal and territorial health departments. Note that this funding will be distributed to states and local jurisdictions through existing cooperative agreements.

    b. $7.5 Billion total

20. STATE NURSING HOME STRIKE TEAMS
    a. Provides funding to states and territories to establish and implement nursing home strike teams that will be deployed to a skilled nursing facility with diagnosed or suspected cases of COVID-19 to help with clinical care, infection control or staffing.

    b. $500 Million total

21. VACCINE CONFIDENCE EDUCATION
    a. Funding for the CDC to strengthen vaccine confidence by furthering the distribution of information and education and improving vaccination rates. Included in this is the Rural Health Clinic Vaccine Confidence Grant Program, which provides funds to eligible applicants to improve vaccine confidence, counter vaccine hesitancy, and help with access to vaccination in rural communities that are medically underserved.

    b. NEW! Click here to apply for the Rural Health Clinic Vaccine Confidence Grant Program. (Dates to apply 5/26/21-6/23/21)

    c. $1 Billion total

22. PROVIDER RELIEF FUND
    a. Provides an additional $8.5 billion for the Provider Relief Fund for rural Medicare and Medicaid providers to cover expenses and lost revenue due to COVID-19.

    b. NEW! Click here for guidance.

    c. $8.5 Billion total

TRANSPORTATION ($40.16 BILLION)

1. TRANSIT INFRASTRUCTURE GRANTS

a. Provides funding through FY 2024 at a 100 percent federal share for eligible recipients of urban, rural, senior citizens and individuals with disabilities and intercity bus transit formula grants for operating expenses incurred beginning on January 20, 2020, including payroll, operating and maintenance costs due to lost revenue, and the payment of leave for personnel laid off due to service reductions.

b. $30.46 Billion total

2. RELIEF FOR AIRPORTS
   a. Provides funding available through FY 2024 through Airport Improvement Program (AIP) formulas at 100 percent federal share. This includes:

   b. Funding for operations, personnel and sanitation to combat the spread of COVID: $6.5 billion for primary and certain cargo airports and $100 million for general aviation and commercial service airports;

   c. $800 million for primary airport sponsors to meet rent and other obligations to airport concessionaires; and

   d. $608 million to cover the full federal share of these projects, including retroactively for FY 2020.

   e. $8 Billion total

3. AMTRAK
   a. Provides funding available through FY 2024, including $970.39 million for the Northeast Corridor and $729.61 million for the National Network.

   b. $1.7 Billion total

OTHER PROGRAMS ($61.32 BILLION)

1. DISASTER RELIEF FUND
   a. Provides $50 billion for FEMA's Disaster Relief Fund to meet the immediate needs of state, local, tribal and territorial governments.

   b. $50 Billion total

2. EMERGENCY FOOD AND SHELTER PROGRAM
   a. Supplemental funding for the Emergency Food and Shelter Program to assist organizations in communities across the country dedicated to providing food, shelter and supportive services to people with economic emergencies. Local nonprofit, faith-

based and governmental entities that provided these types of services in their communities are eligible to apply.

b. NEW! FEMA announces release of EFSP funding (Announced March 12, 2021)

c. $400 Million total

3. EMERGENCY FOOD AND SHELTER PROGRAM - HUMANITARIAN RELIEF
    a. Funds allocated for supplemental humanitarian funding to the National Board for the Emergency Food and Shelter Program. Local nonprofit, faith-based and governmental entities that have provided, or will provide, humanitarian relief to individuals and families at the southern border with shelter, food and supportive services are eligible to apply.

    b. NEW! FEMA announces release of EFSP funding (Announced March 12, 2021)

    c. $110 Million total

4. ASSISTANCE TO FIREFIGHTER GRANTS
    a. Eligible AFG applicants include fire departments, including county fire departments, nonaffiliated EMS organizations and state fire training academies.

    b. $100 Million total

5. STAFFING FOR ADEQUATE FIRE AND EMERGENCY RESPONSE (SAFER) GRANTS
    a. Funding for fire departments and volunteer firefighter interest organizations to help them increase or maintain the number of trained, "front line" firefighters available in their communities. Local fire and emergency response teams are eligible to apply.

    b. $200 Million total

6. EMERGENCY MANAGEMENT PERFORMANCE GRANTS
    a. Additional funding that provides state, local, tribal and territorial emergency management agencies with the resources required for implementation of the National Preparedness System and works toward the National Preparedness Goal of a secure and resilient nation.

    b. $100 Million

7. ECONOMIC DEVELOPMENT ASSISTANCE PROGRAMS
    a. States and localities are eligible to apply for the EDA program and can use the funding for economic recovery projects. 25 percent of the funds are reserved for communities that have suffered economic injury due to job losses in the travel, tourism or outdoor recreation sectors.

b. $3 Billion total

8. ENVIRONMENTAL JUSTICE GRANTS
    a. Funding for grants, contracts, and other agency activities that identify and address disproportionate environmental or public health harms and risks in minority populations or low-income populations. Public entities (counties) are eligible to apply.

    b. NEW! The application period for the Environmental Justice Grants is now open. (RFA will close on June 1, 2021)

    c. $50 million total

9. CATEGORICAL GRANTS - AIR POLLUTION
    a. Funding for grants and activities related to air quality monitoring and the prevention and control of air pollution. Public entities (counties) are eligible to apply.

    b. $50 Million total

10. EMERGENCY CONNECTIVITY FUND (SCHOOLS & LIBRARIES)
    a. This funding provides a 100 percent reimbursement to schools and libraries for internet access and connected devices for students and teachers for remote learning and library services. Counties that own public libraries may be eligible to apply for this competitive grant. Additionally, funds that go to local schools and libraries may relieve county budgets and programs that were aiming to address these issues.

    b. NEW! FCC announces launch of program

    c. $7.17 Billion total

11. NATIONAL ENDOWMENT FOR THE ARTS
    a. Funding available for state arts agencies and regional arts organizations.

    b. $135 Million total

NATIONAL ASSOCIATION of COUNTIES NACo®

NACo INFORMATION SESSION: FISCAL RECOVERY FUND

ELIGIBLE USES TO SUPPORT UNDERSERVED COMMUNITIES

JUNE 10, 2021

NATIONAL ASSOCIATION of COUNTIES NACo

KEY HIGHLIGHTS OF THE GUIDANCE

1. The Fiscal Recovery fund was established to **help turn the tide on the pandemic, address its economic fallout and lay the foundation for a strong and equitable recovery.**
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5. Recovery Funds can be distributed into **interest-bearing accounts.**
6. Understand the important differences between **CARES Act Coronavirus Relief Fund (CRF) and ARP Fiscal Recovery Fund,** especially for county employee payroll support.
7. Use of recouped **"lost revenue" is more flexible** than other Recovery Fund eligibility.
8. Recovery Funds **may not be used as non-federal match,** unless specifically authorized.
9. Re-hiring **local government staff** to pre-pandemic levels.
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11. Counties may use Recovery Funds to invest in **certain critical infrastructure projects.**

UPDATED FAQ DOCUMENT

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1. Recovery Funds can be used to **cover costs of consultants to assist with managing and administering the funds**
2. Recovery Funds can be used to **establish public jobs programs** (I.e. subsidized employment, combined education and on-the-job training, job training to accelerate rehiring or address negative economic impacts
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4. Flexibility for costs incurred by March 3, 2021, for public health response/negative economic impacts, premium pay, revenue loss and water, sewer and broadband projects
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6. Counties **do not need approval from Treasury** to determine whether an investment in water, sewer or broadband project is eligible under the Recovery Fund IFR

ILLUSTRATION ONLY OF *SAMPLE* ALLOWABLE USES OF RECOVERY FUNDS, PER U.S. TREASURY GUIDANCE

Support Public Health Response

Fund COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff

Address Negative Economic Impacts

Respond to economic harms to workers, families, small businesses, impacted industries, and the public sector

Replace Public Sector Revenue Loss

Use funds to provide government services to the extent of the reduction in revenue experienced due to the pandemic

Premium Pay for Essential Workers

Offer additional support to those who have and will bear the greatest health risks because of their service in critical infrastructure sectors

Water and Sewer Infrastructure

Make necessary investments to improve access to clean drinking water and invest in wastewater and stormwater infrastructure

Broadband Infrastructure

Make necessary investments to provide unserved or underserved locations with new or expanded broadband access

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PREMIUM PAY FOR ESSENTIAL EMPLOYEES

Fiscal Recovery Funds payments may be used by recipients to provide premium pay ($13/per hour) to **eligible workers** performing **essential work** during the COVID-19 public health emergency or to provide grants to third-party employers with eligible workers performing essential work.

Essential employees are defined as:

- **Any work performed by an employee of the state, local or tribal government**
- Staff at nursing homes, hospitals, and home care settings
- Workers at farms, food production facilities, grocery stores, and restaurants
- Janitors and sanitation workers
- Truck drivers, transit staff, and warehouse workers
- Public health and safety staff
- Childcare workers, educators, and other school staff
- Social service and human services staff

Essential work is defined as:

- Work involving regular in-person interactions or regular physical handling of items that were also handled by others
- A worker would **NOT** be engaged in essential work and, accordingly may not receive premium pay, for telework performed from a residence

Other provisions related to premium pay:

- Premium pay **can be retroactive**
- Recipients have discretion to designate additional sectors
- Additional reporting requirements in certain cases *(grants to third-party employers)*

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ADDRESS NEGATIVE ECONOMIC IMPACTS

1	**WORKERS & FAMILIES**	• Assistance to unemployed workers and job training • Food, housing, cash and other assistance to households (proportionate) • Survivor's benefits for family members of COVID-19 victims
2	**SMALL BUSINESS**	• Loans and grants to mitigate financial hardship • Loans, grants and in-kind assistance to implement COVID-19 prevention or mitigation tactics • Technical assistance
3	**PUBLIC SECTOR**	• Rehire staff • Replenish state unemployment insurance funds • Administer economic relief programs
4	**IMPACTED INDUSTRIES**	• Tourism, travel and hospitality • Other similarly affected sectors

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PROVIDE EQUITY-FOCUSED SERVICES

1 **ADDRESSING HEALTH DISPARITIES**

- Community health workers and public benefits navigators
- Remediation of lead paint and other lead hazards
- Community violence intervention programs

2 **HOUSING & NEIGHBORHOODS**

- Services to support individuals experiencing homelessness
- Affordable housing development
- Housing vouchers, residential counseling, navigation assistance

3 **EDUCATIONAL DISPARITIES**

- New or expanded early learning services
- Expanded resources for high-poverty school districts
- Educational services like tutoring and afterschool programs

4 **PROMOTING HEALTHY CHILDHOOD ENVIRONMENTS**

- New and expanded high quality childcare
- Home visiting programs for families with young children
- Services for child welfare-involved families and foster youth

ADDRESSING NEGATIVE ECONOMIC IMPACTS

Under Treasury's IFR, **counties can provide direct assistance to households to alleviate the economic impacts of COVID-19**. These services include:

- Proportionate cash assistance
- Food assistance
- Rent, mortgage, or utility assistance
- Counseling and legal aid to prevent eviction or homelessness
- Emergency assistance for burials
- Home repairs, weatherization, or other needs
- Internet access or digital literacy assistance
- Aid to unemployed workers
- Survivor's benefits for family members of COVID-19 victims

ADDRESSING NEGATIVE ECONOMIC IMPACTS

Beyond providing direct cash assistance, **counties can use Recovery Funds to support small businesses and nonprofits:**

- **Assistance to small businesses and nonprofit organizations,** including:
  - Loans and grants to mitigate financial hardship
  - Loans, grants and in-kind assistance to implement COVID-19 prevention or mitigation tactics
  - Technical assistance

ADDRESSING NEGATIVE ECONOMIC IMPACTS

Counties can use Recovery Funds to rehire public sector workers, support unemployed workers and strengthen economic relief programs:

- Coverage of payroll and benefits costs of public health and safety staff primarily dedicated to COVID-19 response and **rehiring of public sector staff up to pre-pandemic levels**

- **Assistance to unemployed workers,** including job training, public jobs programs, subsidized employment, child care or transportation assistance

- **Expenses to improve efficacy of economic relief programs** addressing use of data analysis, targeted consumer outreach, improvements to data or technology infrastructure and impact evaluations

INVESTING IN UNDERSERVED COMMUNITIES

Treasury has identified a broad range of services that are eligible uses when provided in a **Qualified Census Tract (QCT), to families and populations living in a QCT or other households, businesses or populations disproportionately impacted by COVID-19:**

- **As outlined in the IFR, a QCT is defined as:**
  - Census tract or equivalent geographic area defined by the Census Bureau
  - At least 50 percent of households have an income less than 60 percent of the Area Median Gross Income (AMGI) **OR**
  - At least 25 percent of households below the Federal Poverty Line
- **Counties have broad flexibility when determining if a population was disproportionately impacted by COVID-19.**

INVESTING IN UNDERSERVED COMMUNITIES

SERVICES & PROGRAMS FOR QUALIFIED CENSUS TRACTS

- **Programs or services that facilitate access to health and social services:**
  - Assistance accessing or applying for public benefits or services
  - Remediation of lead paint or other lead hazards
  - Community violence intervention programs
- **Programs or services that address housing insecurity, lack of affordable housing, or homelessness:**
  - Supportive housing or other housing programs for homeless individuals
  - Affordable housing development
  - Housing vouchers and neighborhood relocation assistance

INVESTING IN UNDERSERVED COMMUNITIES

SERVICES & PROGRAMS FOR QUALIFIED CENSUS TRACTS

- **Address educational disparities:** Funds may also enhance educational supports to help mitigate impact on students, such as:
  - New or expanded early learning services
  - Assistance to high-poverty school districts to advance equitable funding
  - Educational and evidence-based services to address the academic, social, emotional, and mental health needs of students
  - Services that support students' social, emotional and mental health

INVESTING IN UNDERSERVED COMMUNITIES

SERVICES & PROGRAMS FOR QUALIFIED CENSUS TRACTS

- **Promoting healthy childhood development:** Programs or services that address or mitigate the impacts COVID-19 on childhood health or welfare
  - New or expanded child care
  - Home visiting programs that provide education and assistance for economic support, health needs, or child development
  - Services for child-welfare involved families and foster youth to provide support and education on child development, positive parenting, coping skills, or recovery for mental health and substance use

COUNTY SNAPSHOT

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SKAGIT COUNTY, WASH.

- $2.6 million in initial ARP funds targeting community health and underserved populations, including:
  - Motel vouchers and mental health services for the homeless population
  - Addressing the behavioral health needs of children and adolescents by embedding social workers and clinical services in schools
  - Education supports to address disparities
  - Senior outreach services to address social isolation
  - Funding for a COVID-19 family resource center to promote healthy child environments and access to basic needs

COUNTY SNAPSHOT

NATIONAL ASSOCIATION of COUNTIES NACo

PUEBLO COUNTY, COLO.

- $1 million in combined funding with Pueblo City to address learning loss related to COVID-19
  - Funds will support a “Reading Pays” program with Pueblo County-City Unified Library District
  - Youth age 0-17 can receive $100 gift cards for borrowing library resources and submitting reflection responses

COUNTY SNAPSHOT

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SAN DIEGO COUNTY, CALIF.

- $85 million for homeless services
- $10 million for senior and youth services
- $16 million for child care, including incentives to hire more workers, help providers stay open and promote affordability for vulnerable families
- $40 million for direct stimulus payments to individuals experiencing disproportionate impacts
- $15 million for legal services and counseling for tenants facing eviction and landlords in financial need
- $32 million for mental health services
- $20 million for food assistance for vulnerable populations

COUNTY SNAPSHOT

NATIONAL ASSOCIATION of COUNTIES NACo

MULTNOMAH COUNTY, ORE.

- $5.4 million for wraparound supports for youth and families, including enhanced summer school resources and new family resource navigators
- $1.1 million for deepening safety net services, including culturally specific case management and domestic violence services
- $1.9 million for building community assets and resilience, such as a new Library Mobile Resource Center, monthly basic income assistance for a cohort of women-led families and a Baby Bonds pilot program

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NACo INFORMATION SESSION: FISCAL RECOVERY FUND

ELIGIBLE USES TO SUPPORT UNDERSERVED COMMUNITIES

JUNE 10, 2021

NATIONAL ASSOCIATION of COUNTIES NACo®

NACo INFORMATION SESSION: FISCAL RECOVERY FUND

ELIGIBLE USES FOR WATER AND SEWER INFRASTRUCTURE

JUNE 16, 2021

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KEY DATES RELATED TO THE RECOVERY FUND

- **January 27, 2020:** Declaration of the public health crisis
- **March 3, 2021:** Beginning of the Recovery Fund "covered period"
- **July 16, 2021:** Deadline to comment on U.S. Treasury's *Interim Final Rule* on Recovery Fund
- **August 31, 2021:** Deadline to submit first Interim Report to U.S. Treasury
- **August 31, 2021:** Deadline to submit first *Recovery Plan Performance Report* to U.S. Treasury
  - **Applies to COUNTIES ABOVE 250,000 POPULATION ONLY**
- **October 31, 2021:** Deadline to submit first *Quarterly Project and Expenditure Report*
  - **Applies to ALL COUNTIES**
- **December 31, 2024:** Recovery Funds must be obligated (**NOT incurred**)
- **December 31, 2026:** Recovery Funds must be spent & all work/performance must be completed

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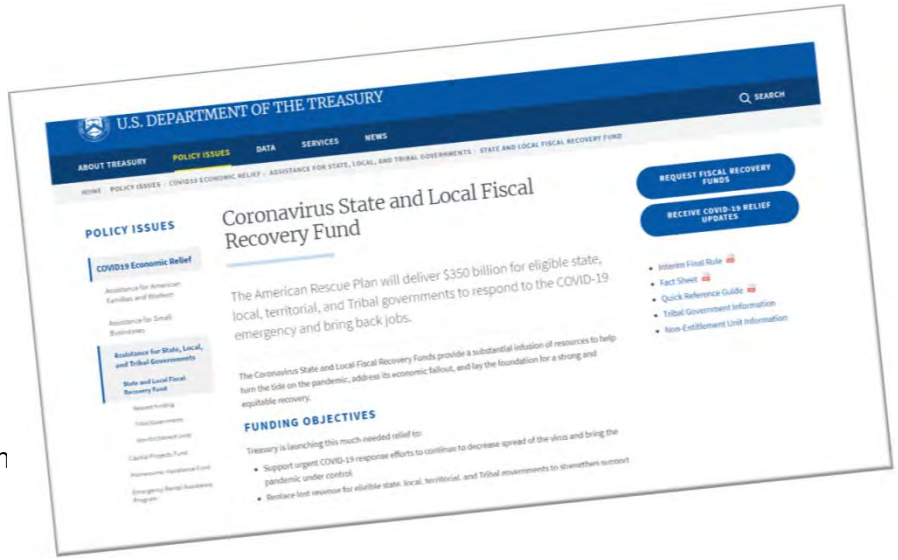
HOW TO CERTIFY FOR RECOVERY FUNDS

U.S. Treasury released **certification guidance** and **opened the portal** for counties to request Recovery Funds

Prior to requesting Recovery Funds, **counties should complete the following steps immediately**:

1. Ensure your county has a DUNS number
2. Ensure your county has an active SAM registration
3. Gather payment information:
   - Entity Identification Number (EIN), name and contact information
   - Name and title of an authorized representative of the county (I.e. chief elected official)
   - Financial institution information (e.g., routing and account number, financial institution name and contact information)



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DECODING *THE LANGUAGE* OF THE GUIDANCE

Throughout the Interim Final Rule, along with FAQs and fact sheets, U.S. Treasury uses various *key words* that are important to understand in determining the eligible use of funds..

INTERIM FINAL RULE VS. FAQs

- **Shall = Mandatory** reporting, use and compliance
- **May =** Allows local/county discretion
- **Encourage / Should =** Treasury preference only (**NOT REQUIRED**)
- **Proportional & Consistent**

DEFINITIONS (PG. 130)

- Covered benefits
- Covered period
- Eligible workers
- General revenue
- Pension fund

ILLUSTRATION ONLY OF *SAMPLE* ALLOWABLE USES OF RECOVERY FUNDS, PER U.S. TREASURY GUIDANCE

Support Public Health Response

Fund COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff

Address Negative Economic Impacts

Respond to economic harms to workers, families, small businesses, impacted industries, and the public sector

Replace Public Sector Revenue Loss

Use funds to provide government services to the extent of the reduction in revenue experienced due to the pandemic

Premium Pay for Essential Workers

Offer additional support to those who have and will bear the greatest health risks because of their service in critical infrastructure sectors

Water and Sewer Infrastructure

Make necessary investments to improve access to clean drinking water and invest in wastewater and stormwater infrastructure

Broadband Infrastructure

Make necessary investments to provide unserved or underserved locations with new or expanded broadband access

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REPLACE LOST REVENUE

Recovery Funds may be used to provide **government services** to the **extend of reduction in revenue** experienced due to COVID-19:

- **Definition of general revenue:** Based on Census Bureau's definition and includes revenue from taxes, current charges, miscellaneous general revenue, intergovernmental transfers between state and local governments
  - **Excludes** refunds and other correction transactions proceeds from issuance of debt or the sale of investments, agency or private trust transactions and revenue generated by utilities, **intergovernmental transfers from the federal government (federal transfers made to a state/locality)**
- Recipients should calculate revenue on an **entity-wide basis, rather than source-by-source basis**
- Recipients **cannot** use pre-pandemic projections as a basis to estimate the reduction in revenue
- **Definition of base year revenue:** Recipient's general revenue for the most recent full fiscal year prior to the COVID-19 public health emergency
- Recipients should calculate the extent of the reduction in revenue as of four points in time: **December 31, 2020; December 31, 2021; December 31, 2022; and December 31, 2023.**

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REPLACE LOST REVENUE

U.S. Treasury's guidance **establishes new methodology to calculate lost revenue.**

Recipients have two options to calculate lost revenue:

- Recipients will compute the extent of reduction in revenue by comparing **actual revenue** to a **counterfactual trend** representing what could have plausibly been expected to occur in the absence of the COVID-19 pandemic
- For purposes of measuring revenue growth in the counterfactual trend, recipients may use a **growth adjustment <u>of either</u>:**
  1. 4.1% per year (based on the national average of state and local revenue growth 2015-18); **<u>OR</u>**
  2. The recipients average annual revenue growth over the last three full fiscal years prior to the COVID-19 pandemic

Recipients should **choose the higher of the two options** when determining their **growth adjustment figure.**

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REPLACE LOST REVENUE

The below calculation specifies how counties can calculate lost revenue, with a minimum of $0:

General Revenue collected in the most recent full FY prior to the COVID-19 public health emergency

Average annual revenue growth over the three full FYs prior to the COVID-19 public health emergency (minimum 4.1%), adjusted to the calculation month

Actual general revenue collected during 12-month period ending on calculation date

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PREMIUM PAY FOR ESSENTIAL EMPLOYEES

Fiscal Recovery Funds payments may be used by recipients to provide premium pay ($13/per hour) to **eligible workers** performing **essential work** during the COVID-19 public health emergency or to provide grants to third-party employers with eligible workers performing essential work.

Essential employees are defined as:

- **Any work performed by an employee of the state, local or tribal government**
- Staff at nursing homes, hospitals, and home care settings
- Workers at farms, food production facilities, grocery stores, and restaurants
- Janitors and sanitation workers
- Truck drivers, transit staff, and warehouse workers
- Public health and safety staff
- Childcare workers, educators, and other school staff
- Social service and human services staff

Essential work is defined as:

- Work involving regular in-person interactions or regular physical handling of items that were also handled by others
- A worker would **NOT** be engaged in essential work and, accordingly may not receive premium pay, for telework performed from a residence

Other provisions related to premium pay:

- Premium pay **can be retroactive**
- Recipients have discretion to designate additional sectors
- Additional reporting requirements in certain cases *(grants to third-party employers)*

WATER & SEWER INFRASTRUCTURE

To assist in meeting the critical need for investments and improvements to existing infrastructure in water and sewer, counties can invest Fiscal Recovery Funds into these sectors:

- Broad flexibility to identify investments in water and sewer infrastructure that are the highest priority for the county and its residents – includes privately-owned infrastructure
- Eligible expenses include improvements to infrastructure, such as building or upgrading facilities and transmission, distribution and storage systems *(additional guidance to be released at later date)*
- Eligible uses aligned to Environmental Protection Agency (EPA) project categories in the:
  - Clean Water State Revolving Fund (CWSRF)
  - Drinking Water State Revolving Fund (DWSRF)

WATER & SEWER INFRASTRUCTURE

CLEAN WATER STATE REVOLVING FUND (CWSRF)

CATEGORIES OF ELIGIBLE PROJECTS UNDER CWSRF	
• Construction of publicly-owned treatment works • Nonpoint source pollution management • National estuary program projects • Decentralized wastewater treatment systems, stormwater systems, water conservation, efficiency and reuse measures	• Watershed pilot projects • Energy efficiency measures for publicly-owned treatment works • Water reuse projects • Security measures at publicly-owned treatment works, and technical assistance to ensure compliance with the Clean Water Act

WATER & SEWER INFRASTRUCTURE

DRINKING WATER STATE REVOLVING FUND (DWSRF)

CATEGORIES OF ELIGIBLE PROJECTS UNDER DWSRF	
• Treatment (I.e. new facilities or portions of new facilities, upgrades, desalinations plants, raw water storage, etc.) • Transmission and distribution (I.e. installation, replacement or rehabilitation of infrastructure, lead service line replacements, new water main extensions, etc.) • Storage or replacement/rehabilitation of existing structure to continue to maintain compliance and protect public health	• Source rehabilitation (I.e. development of new resources, raw water intakes, interconnections, ground water wells, aquifer storage and recovery, riverbank filtration wells, etc. • Consolidation of projects (i.e. purchase of water system, interconnection of systems, etc.) • Creation of new systems

WATER & SEWER INFRASTRUCTURE

EIGIBLE PROJECTS BEYOND CWSRF & DWSRF

- Cybersecurity needs to protect water or sewer infrastructure, including **developing effective cybersecurity practices and measures** at drinking water systems and publicly owned treatment works
- Address **climate change by taking steps to address potential sources of pollutions** and other projects that may reduce energy required to treat drinking water
- **Green infrastructure investments,** such as rain gardens
- Stormwater runoff
- Water pollution
- Flood control projects
- Projects to mitigate and **respond to natural disasters** (I.e. interconnecting water systems or rehabilitating wells)

TREASURY FAQs: WATER & SEWER INFRASTRUCTURE

- **May construction on eligible water and sewer infrastructure projects continue past December 31, 2024, assuming funds have been obligated prior to that date?**
  Yes. Recipients are only required to have obligated the funds by Dec. 31, 2024. Counties must spend funds by Dec. 31, 2026.

- **May recipients use funds as a non-federal match for CWSRF or DWSRF?**
  Counties may not use funds as a state match for the CWSRF/DWSRF due to prohibitions in utilizing federal funds as a state match in the authorizing statutes and regulations of the CWSRF and DWSRF.

- **How does a county know if a water or sewer project is an eligible use of funds? Does a county need pre-approval?**
  Recipients DO NOT need approval from Treasury to determine whether an investment in a water or sewer project is eligible. Each recipient is responsible for reviewing the IFR in order to make its own assessment of whether its intended project meets the eligibility criteria. Local governments do not need state approval to determine that a project is eligible. Counties should refer to CWSRF/DWSRF for eligibility.

COUNTY SNAPSHOT

NATIONAL ASSOCIATION of COUNTIES NACo

SUSSEX COUNTY, DEL.

- The county unveiled a $278 million budget proposal, which includes $45 million from the ARP. The budget proposal invests $72.3 million for wastewater infrastructure, including:
  - New sewer mains
  - Increased treatment capacity
  - Other upgrades to county's utility systems

COUNTY SNAPSHOT

NATIONAL ASSOCIATION of COUNTIES NACo

SUFFOLK COUNTY, N.Y.

- The county allocated $100 million in funding to eliminate outdated cesspools and septic systems that caused environmental harms.
- The county combined Fiscal Recovery Fund dollars with its Septic Improvement Program (SIP)
    - Provides grants of up to $30,000 in state and county funding to homeowners who choose to replace their existing non-performing cesspool or septic system

COUNTY SNAPSHOT

NATIONAL ASSOCIATION of COUNTIES NACo

COLUMBIANA COUNTY, OHIO

- Columbiana County allocated $9 million to support water and sewer projects:
  - $500,000 to complete Hanoverton sewer project
  - $600,000 for Calcutta sewage pump station project
  - $725,000 for the pump replacement for water and sewer plan in Elkton
  - $125,000 for backup generators

NATIONAL ASSOCIATION of COUNTIES NACo®

NACo INFORMATION SESSION: FISCAL RECOVERY FUND

ELIGIBLE USES FOR WATER AND SEWER INFRASTRUCTURE

JUNE 16, 2021

NATIONAL ASSOCIATION of COUNTIES NACo®

NACo INFORMATION SESSION: FISCAL RECOVERY FUND

ELIGIBLE USES FOR THE PUBLIC HEALTH RESPONSE

JUNE 29, 2021

KEY HIGHLIGHTS OF THE GUIDANCE

1. The Fiscal Recovery Fund was established to **help turn the tide on the pandemic, address its economic fallout and lay the foundation for a strong and equitable recovery.**
2. Funds may cover costs from **March 3, 2021 through December 31, 2024.**
3. There is **no deadline for counties to certify** for the Recovery Funds.
4. Broad flexibility to help those **disproportionately impacted by the COVID-19 pandemic.**
5. Recovery Funds can be distributed into **interest-bearing accounts.**
6. Understand the important differences between **CARES Act Coronavirus Relief Fund (CRF) and ARP Fiscal Recovery Fund,** especially for county employee payroll support.
7. Use of recouped **"lost revenue" is more flexible** than other Recovery Fund eligibility.
8. Recovery Funds **may not be used as non-federal match,** unless specifically authorized.
9. Re-hiring **local government staff** to pre-pandemic levels.
10. Counties may use Recovery Funds for **routine pension costs of employees.**
11. Counties may use Recovery Funds to invest in **certain critical infrastructure projects.**

NEW REPORTING UPDATES

Treasury released new guidance on June 17 for county reporting requirements:

- **Interim Report:** Due by August 31, 2021, the Interim Report requires **all counties** to report programmatic data for spending between March 3 and July 31, 2021

- **Project and Expenditure Report:** These reports require project and expenditure data for awards and sub-awards, demographic information for each project, and other programmatic data

  - Initial Project and Expenditure Report is **due October 31, 2021**
    - For counties with awards **above $5 million**, project and expenditure reports are **due *quarterly***
    - For counties with awards **under $5 million**, project and expenditure reports are **due *annually***

- **Recovery Plan Performance Report:**
  - Only required for counties with **populations over 250,000 residents**
  - **Required to be published annually** on the county website and provided to Treasury
  - **Contain detailed project performance data,** including information on efforts to improve equity and engage communities

REPORTING REQUIREMENTS BY RECIPIENT

Recipient	Interim Report	Project and Expenditure Report	Recovery & Performance Report
States, U.S. territories, metropolitan cities and counties with a population that exceeds 250,000 residents	By August 31, 2021, with expenditures by category	By October 31, 2021, and then 30 days after the end of reach thereafter	By August 31, 2021, and annually thereafter by July 31
Metropolitan cities and counties with a population below 250,000 residents which received more than $5 million in SLFRF funding			Not required
Tribal Governments			
Metropolitan cities and counties with a population below 250,000 residents which received less than $5 million in SLFRF funding		By October 31, 2021, and then annually thereafter	
NEUs	Not required		

U.S. TREASURY: REPORTING PRINCIPLES

Treasury released new reporting guidance that focuses on:

- **Accountable:** Requires program and performance reporting to build public awareness, increase accountability, and monitor compliance of eligible uses. Counties are required to account for every dollar spent and provide detailed information on how funds are used.

- **Transparent:** Those recipients receiving the largest amount of funds will be required to publicly post a detailed Recovery Plan Performance Report each year so the public is aware of how funds are being used and outcomes are being achieved. In addition, Treasury will provide comprehensive public transparency reports using the project and expenditure reports that recipients are required to provide.

- **User friendly:** Reporting has improvements requested by recipients of CARES Act funding, including deadlines 30 days after the close of the reporting period (versus 10 days in CARES), streamlined requirements for smaller funding recipients, and increased availability of bulk upload capabilities.

- **Focused on Recovery:** Reporting guidance addresses the Biden administration's priority areas for an equitable economic recovery, including provisions that prioritize equity, focus on economically distressed areas, support community empowerment, encourage strong labor practices, and spotlight evidence-based interventions.

UPDATED FAQ DOCUMENT

Treasury released an updated FAQ document Tuesday, June 8

1. Recovery Funds can be used to **cover costs of consultants to assist with managing and administering the funds**
2. Recovery Funds can be used to **establish public jobs programs** (I.e. subsidized employment, combined education and on-the-job training, job training to accelerate rehiring or address negative economic impacts
3. Clarification on revenue loss language (audited financial data, county data versus Census Bureau data)
4. Flexibility for costs incurred by March 3, 2021, for public health response/negative economic impacts, premium pay, revenue loss and water, sewer and broadband projects
5. New CFDA number – **21.027** – Counties should update systems and reporting to reflect final CFDA number for Recovery Fund
6. Counties **do not need approval from Treasury** to determine whether an investment in water, sewer or broadband project is eligible under the Recovery Fund IFR

UPDATED FAQ DOCUMENT

NATIONAL ASSOCIATION of COUNTIES NACo

Treasury released updated FAQ documents on Thursday, June 17 for broadband investments:

JUNE 17 FAQ UPDATE – BROADBAND INVESTMENTS

1. **Provide service to unserved or underserved households or businesses means prioritizing deployment of infrastructure** that will bring service to households or businesses that are not currently serviced by a wireline connection that reliably delivers at least 25 MPS download speed and 3 MBS of upload speed
   - These unserved or underserved do NOT need to be the only ones in the service area funded by the project
2. Project may have a holistic approach that provides services to wider area in order, for example, to **make the ongoing service of unserved or underserved households or businesses more economical to sustain into the future**
3. **Clarifies definition of "reliably" meet or exceed broadband speed threshold**
4. **Allows "middle mile" projects** that help achieve last-mile connections by leveraging the middle-mile network

UPDATED FAQ DOCUMENT

NATIONAL ASSOCIATION of COUNTIES NACo

Treasury released updated FAQ documents on June 24:

1. **Assistance to households or businesses:** Negative impact at the "population or group level"
2. **Investments in outdoor spaces:**
   - Qualified Census Tracts (QCT) and other populations, households and **areas disproportionately impacted**
   - Services for stronger neighborhoods & communities, **esp. health disparities & social determinants of health**
   - **Enhance outdoor spaces** (e.g. restaurant patios) and the **built environment** (e.g. façade improvements)
   - Counties may also use funds for **parks and recreation**
3. **Expedite court case backlog cleanup** including COVID safety measures, hiring court staff/attorneys & other costs
4. **Assistance for small business startups**
5. **Definition of revenue *excludes* all federal funds** *including state transfers of federal funds to counties*
6. **Respond to increased violence and crime during to the pandemic**
7. **Pre-project development of water, sewer and broadband projects,** including broadband mapping

KEY DATES RELATED TO THE RECOVERY FUND

- **January 27, 2020:** Declaration of the public health crisis
- **March 3, 2021:** Beginning of the Recovery Fund "covered period"
- **July 16, 2021:** Deadline to comment on U.S. Treasury's *Interim Final Rule* on Recovery Fund
- **August 31, 2021:** Deadline to submit first Interim Report to U.S. Treasury
- **August 31, 2021:** Deadline to submit first *Recovery Plan Performance Report* to U.S. Treasury
  - **Applies to COUNTIES ABOVE 250,000 POPULATION ONLY**
- **October 31, 2021:** Deadline to submit first *Quarterly Project and Expenditure Report*
  - **Applies to ALL COUNTIES**
- **December 31, 2024:** Recovery Funds must be obligated (**NOT incurred**)
- **December 31, 2026:** Recovery Funds must be spent & all work/performance must be completed

HOW TO CERTIFY FOR RECOVERY FUNDS

U.S. Treasury released **certification guidance** and **opened the portal** for counties to request Recovery Funds

Prior to requesting Recovery Funds, **counties should complete the following steps immediately**:

1. Ensure your county has a DUNS number
2. Ensure your county has an active SAM registration
3. Gather payment information:
   - Entity Identification Number (EIN), name and contact information
   - Name and title of an authorized representative of the county (I.e. chief elected official)
   - Financial institution information (e.g., routing and account number, financial institution name and contact information)

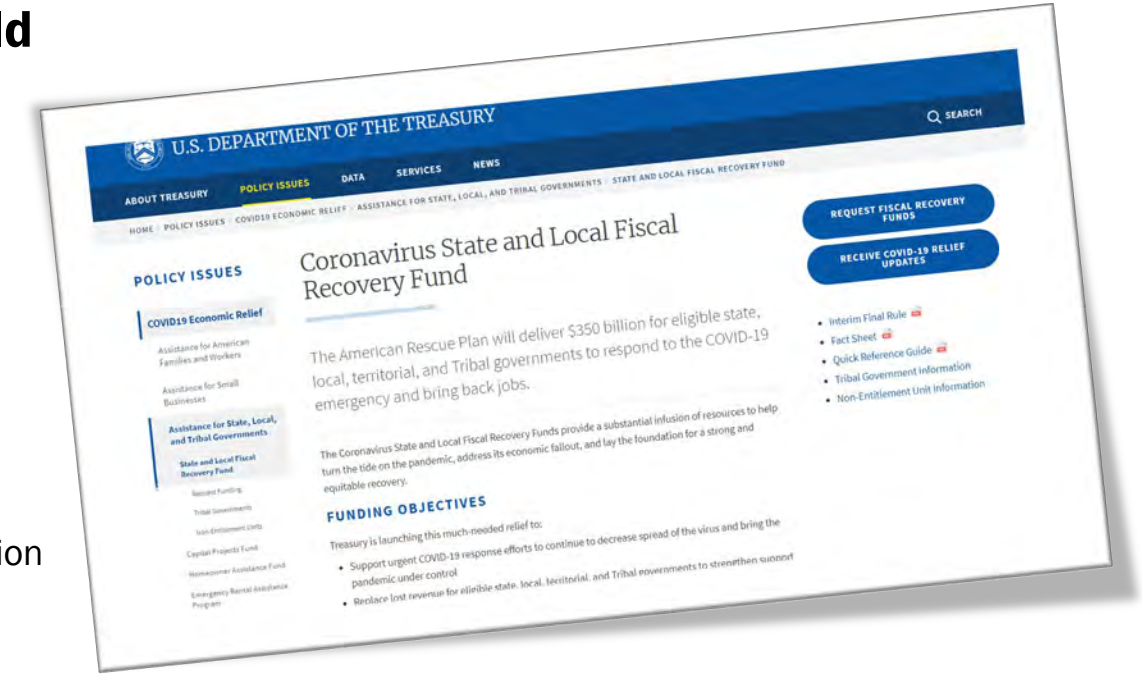

ILLUSTRATION ONLY OF *SAMPLE* ALLOWABLE USES OF RECOVERY FUNDS, PER U.S. TREASURY GUIDANCE

Support Public Health Response

Fund COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff

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Use funds to provide government services to the extent of the reduction in revenue experienced due to the pandemic

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REPLACE LOST REVENUE

The below calculation specifies how counties can calculate lost revenue, with a minimum of $0:

General Revenue collected in the most recent full FY prior to the COVID-19 public health emergency

Average annual revenue growth over the three full FYs prior to the COVID-19 public health emergency (minimum 4.1%), adjusted to the calculation month

Actual general revenue collected during 12-month period ending on calculation date

REPLACE LOST REVENUE

Recovery Funds may be used to provide **government services to the extend of reduction in revenue** experienced due to COVID-19:

- Recipients can use funds to support governments services, which include, **but are not limited to:**
  - Maintenance of **infrastructure or pay-go spending for building new infrastructure, including roads**
  - Modernization of **cybersecurity,** including hardware, software and protection of critical infrastructure
  - Health services
  - Environment remediation
  - School or educational services
  - Police, first responders and other public safety services

RECOVERY FUNDS USED TO REPLACE "REVENUE LOSS" ARE FLEXIBLE AND MAY BE USED FOR A BROAD RANGE OF GOVERNMENT SERVICES, PROGRAMS AND PROJECTS OUTSIDE OF TYPICAL ELIGIBLE USES OF RECOVERY FUNDS UNDER THE INTERIM RULE. **HOWEVER, REVENUE RECOUPMENT CANNOT BE USED FOR RAINY DAY FUNDS OR DEBT SERVICES**

PREMIUM PAY FOR ESSENTIAL EMPLOYEES

Fiscal Recovery Funds payments may be used by recipients to provide premium pay ($13/per hour) to **eligible workers** performing **essential work** during the COVID-19 public health emergency or to provide grants to third-party employers with eligible workers performing essential work.

Essential employees are defined as:

- **Any work performed by an employee of the state, local or tribal government**
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Other provisions related to premium pay:

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- Additional reporting requirements in certain cases *(grants to third-party employers)*

SUPPORT PUBLIC HEALTH RESPONSE

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1	**COVID-19 MITIGATION & CONTAINMENT**	• A broad range of services and programming that are needed to contain COVID-19, **including using funds for vaccine incentive programs**
2	**MEDICAL EXPENSES**	• Provide care and services to address COVID-19 public health needs, risks presented by new variants and long-term effects of the virus
3	**BEHAVIORAL HEALTHCARE**	• New or enhanced state and local government services that may be needed to meet mental health, substance use and other behavioral health needs
4	**PUBLIC HEALTH & SAFETY STAFF**	• Responding to the public health and negative economic impacts COVID-19 and requires additional human resources

CONTAIN & MITIGATE SPREAD OF COVID-19

Under Treasury's IFR, **counties can use Recovery Funds to support the public health response.** Eligible services, programs and projects include:

ELIGIBLE EXPENSES FOR PUBLIC HEALTH RESPONSE	
• Vaccination programs • Medical expenses • Testing/contact tracing • Isolation or quarantine • PPE purchases • Public health surveillance (I.e. monitoring for variants) • Enforcement of public health orders • Public communication efforts	• Enhancement of healthcare capacity (I.e. alterative care facilities) • Support for prevention, mitigation, or other services in congregate living facilities and schools • Enhancement of public health data systems • Capital investments in public facilities to meet pandemic operational needs • Ventilation improvements in key settings like healthcare facilities

ADDRESS BEHAVIORAL HEALTHCARE NEEDS

Recovery Funds can be for services to address behavioral healthcare needs exacerbated by the pandemic, including:

- Mental health treatment
- Substance misuse treatment
- Other behavioral health services
- Hotlines or warmlines
- Crisis intervention
- Services or outreach to promote access

PUBLIC HEALTH & SAFETY EMPLOYEE PAYROLL

ARPA FISCAL RECOVERY FUND (PG. 20)

- Recovery Funds can be used for payroll/benefits for public, safety, public health, health care, human services and similar employees
- Recovery Funds can be used to support the payroll/benefits **for the portion of the employee's time that is dedicated to responding to COVID-19**
- Counties may consider public health/safety employees to be entirely devoted to mitigating/responding to COVID-19 and are fully recovered, **if the employee, or his/her operating unit or division, is primarily dedicated to responding to the COVID-19 public health emergency**

CARES ACT CRF (PG. 4187)

- As a matter of administrative convenience in light of the emergency nature of this program, **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,** unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise
- **All costs of such employees may be covered** using payments from the Fund for services

ADDRESS DISPARITIES IN PUBLIC HEALTH OUTCOMES

Given the exacerbation of health disparities during the pandemic and the role of pre-existing social vulnerabilities in driving these disparate outcomes, **counties can use Recovery Funds towards services to address health disparities,** including:

- Funding community health workers to help community members access health services and services to address the social determinants of health
- Funding public benefits navigators to assist community members with navigating and applying for available Federal, State, and local public benefits or services
- New or expanded high quality childcare, home visiting programs for families with young children, and enhanced services for child welfare-involved families and foster youth

TREASURY FAQs: PUBLIC HEALTH RESPONSE

- **May recipients use funds to pay for vaccine incentive programs (e.g., cash or in-kind transfers, lottery programs, or other incentives for individuals who get vaccinated)?**
  Yes. Under the Interim Final Rule, recipients may use Recovery Funds towards expenses related to COVID-19 vaccination programs that provide incentives reasonably expected to increase the number of people who choose to get vaccinated, or that motivate people to get vaccinated sooner than they otherwise would have, are an allowable use of funds.

- **What staff are included in "public health employees"?**
  Public health employees would include employees involved in providing medical and other health services to patients and supervisory personnel, including medical staff assigned to schools, prisons, and other such institutions, and other support services essential for patient care (e.g., laboratory technicians, medical examiner or morgue staff) as well as employees of public health departments directly engaged in matters related to public health and related supervisory personnel.

- **Can Recovery Funds be used towards capital infrastructure projects if they assist in mitigating and containing the spread of COVID-19?**
  Yes. Counties can use Recover Funds towards capital investments in public facilities to meet pandemic operational needs, such as physical plant improvements to public hospitals and health clinics or adaptations to public buildings to implement COVID-19 mitigation tactics. Additionally, funds can be used to improve ventilation or HVAC systems.

SKAGIT COUNTY, WASH.

- The county approved a $2.6 million spending plan for ARP funds that make significant investments in public health and ongoing pandemic response, to include
  - Launch of Skagit County Medical Reserve Corps
  - Purchase of equipment of Public Health Department
  - Hiring community health worker
  - Mental health services for the homeless
  - School based mental health services
  - Outreach and education
  - COVID-19 Family Resource Center & Senior Services

NEW HANOVER COUNTY, N.C.

- The county allocated $6.2 million in funding to support direct frontline workers and those assisting with vaccine response
- The county will also use $4.1 million to:
  - Make mental health counselors available at every public school
  - Establish mobile health outreach and mental health counselors in the Senior Resource Center
  - Provide two years of recovery-related mental health services for families with infants and toddlers through their health and human service department

NATIONAL ASSOCIATION of COUNTIES NACo

HENNEPIN COUNTY, MINN.

- The county Board of Commissioners approved a resolution to use $100,000 in ARPA funds for vaccine incentives, which will include:
- Vaccine events featuring free meals, groceries, and entertainment
- “Thank You” packets for residents receiving vaccine that include gift cards
- The program aims to increase vaccine distribution and also reduce racial disparities in vaccinations

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NACo INFORMATION SESSION: FISCAL RECOVERY FUND

ELIGIBLE USES FOR THE PUBLIC HEALTH RESPONSE

JUNE 29, 2021