

# **U.S DEPARTMENT OF TREASURY'S AMERICAN RESCUE PLAN ACT FINAL RULE GUIDELINES**

Summary of guidelines &  
allowable use of funds

# SUMMARY OF U.S DEPARTMENT OF TREASURY AMERICAN RESCUE PLAN ACT FINAL RULE GUIDELINES

01-12-2022

We understand you have choices in the material and resources available to you as you navigate Treasury's Final Rule. Although there are many useful "high-level" summaries in circulation, we wanted to strike a balance between the lengthy Final Rule and those other quick summary documents. It's our hope that this document provides a balanced, more inclusive approach including high-level summary, relevant detail, and easy rule navigation.

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### **Getting Started:**

This document was created to highlight the applicable high-level rules, considerations, and guidance from the [U.S. Department of Treasury's Interim Final Rule](#) and now [Final Rule](#). This document builds on the Interim Final rule and the published WOB document from May 2021.

Additionally, you will see notations of "Previous" throughout the document which will indicate information from [The Interim Final Rule](#) and [WOB published document](#), which this document builds onto, denoted as "New" throughout.

***Please keep in mind, it is important to read the denoted "Previous" and the denoted "New" conjunctively. The contents from both versions of the rules work symbiotically.***

For additional reference, the blue text contained herein generally highlights guidance from the Interim Rule, and the red text generally indicates highlights or updates from the Final Rule. Explicit eligible and ineligible uses of these funds were pulled from the Interim/Final Rule and categorized in an 'Eligible Uses Matrix' and 'Restrictions on Use List' (See Appendices 1 and 2 beginning on pp. 30 and 40 of this document).

*\*\*Please note, this document is a high-level compilation of extrapolations from the Interim Final Rule and Final Rule. This document should not supplant a thorough reading of the Interim Final Rule, Final Rule, relevant legislation, Treasury guidance, or other relevant guidance/materials. \*\**

## Background

On March 11, 2021, the American Rescue Plan Act ("ARPA") of 2021 was signed into law. Two signature programs of the ARPA are the Coronavirus State Fiscal Recovery Fund ("SFRF") and the Coronavirus Local Fiscal Recovery Fund ("LFRF"). The following information is a high-level review of the Interim Final Rule issued by the U.S. Department of Treasury on May 10, 2021,<sup>1</sup> and the Final Rule issued on January 6, 2022. To address public comments.

**[New]** the Final Rule "provides broader flexibility and greater simplicity in the program." (See *Final Rule pp. 6*).

**[Previous]**

### Primary Uses for ARPA Funds (Per Sec. 602(c)(1) and 603(c)(1)):

**Considerations:** The primary difference between the two ARPA sections is that Section 602 refers to State, Territories, and Tribal Governments, and Section 603 pertains to metropolitan cities, non-entitlement units of local government, and counties. Both sections speak to the same four categories of eligible uses. (See *Interim Final Rule pp. 7*).

#### **Four Categories of Eligible Uses<sup>2</sup>:**

1. To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and non-profits, or aid to impacted industries such as tourism, travel, and hospitality;
2. To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers;
3. 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,
4. To make necessary investments in water, sewer, or broadband infrastructure. (See *Interim Final Rule pp. 7*).

**[New]**

"Recipients should first determine which eligible use category a potential use of funds fits within, then assess whether the potential use of funds meets the eligibility standard or criteria for that category." (See *Final Rule pp. 8*).

"Treasury does not pre-approve uses of funds; recipients are advised to review the final rule and may pursue eligible projects under it." (See *Final Rule pp. 8*).

**[Previous]**

#### **Two Categories of Ineligible Use<sup>3</sup>:**

*Under 602(c)(2)(B), the following are specifically ineligible:*

1. Depositing funds into any pension fund (See *Interim Final Rule pp. 7*).

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<sup>1</sup> [Department of the Treasury Interim Final Rule Guidelines](#)

<sup>2</sup> See [Appendix 1: Eligible Uses Matrix](#)

<sup>3</sup> See [Appendix 2: Restrictions on Use](#)

2. 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. (See *Interim Final Rule pp. 7*).

*Under Section 603(c)(2), ineligible expenses include:*

- i) Depositing funds into any pension fund (See *Interim Final Rule pp. 7*).

**[New]**

“Treasury has divided the Restriction on Use section:

(A) statutory restrictions under the ARPA, which include:

- 1) offsetting a reduction in net tax revenue, and
- 2) deposits into pension funds, and

(B) other restrictions on use, which include:

- 1) debt service and replenishing reserves,
- 2) settlements and judgments, and
- 3) general restrictions.” (See *Final Rule pp. 9-10*).

**Use of Funds Discretion and CRF Applicability:**

**Considerations:**

**[Previous]**

- Built into the eligible use categories is a vast amount of discretion provided to State, local and Tribal governments for determining the best use of ARPA funds. (See *Interim Final Rule pp. 8*).
- These eligible 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 (See *Interim Final Rule pp. 8*).

## Public Health and Economic Impacts

### [New]

Treasury has restructured the Final Rule relative to public health and economic impacts "to aid recipients in determining whether a particular response is eligible and how the particular response might be eligible under a particular category. This restructuring reinforces the fundamental criteria that use of funds is eligible based on its responsiveness to the public health or negative economic impact experienced by individuals, households, small businesses, non-profits, or impacted industries (together "beneficiaries")." (See *Final Rule pp. 19-20*).

### Rules: Determination of Whether a Program or Service is Included in Public Health/Economic Impact Category

#### [Previous]

1. "In order to determine whether a program or service is included in the public health and economic impact category, the recipient must determine "whether and how the use would respond to the COVID-19 public health emergency." (See *Interim Final Rule pp. 10*)
2. To determine whether a program or service "responds to" the public health emergency, recipients must conduct a **two-pronged test**: "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." (See *Interim Final Rule pp. 10*).

### Considerations: Additional Considerations for Assessing Use under Public Health and Economic Impact

#### [Previous]

1. "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." (See *Interim Final Rule pp. 11*).
2. Eligible uses listed under this section of public health build and expand upon permissible expenditures under the CRF but consider the differences between ARPA and CRF. (See *Interim Final Rule pp. 17*).
3. 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." (See *Interim Final Rule pp. 17*).

Eligible uses are found on pages 30-34 of [Appendix 1: Eligible Use Matrix](#)

## Populations Presumed Eligible

### Rule: Regarding Presumption of Eligibility of Services for Populations in Qualified Census Tracts

#### [Previous]

There is a presumption of eligibility for services when the population served is in a Qualified Census Tract (QCT).<sup>4</sup> The most recent mapping information pertaining to QCTs can be found at:

[https://www.huduser.gov/portal/sadda/sadda\\_qct.html](https://www.huduser.gov/portal/sadda/sadda_qct.html).

### Considerations: Disproportionately Impacted Populations Other Than Those in Qualified Census Tracts

#### [Previous]

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<sup>4</sup> See [Definitions](#).

If using funds for other populations disproportionately impacted by the pandemic, recipients should be able to fully support "their determination that the pandemic resulted in disproportionate public health or economic outcomes to the specific populations." (See *Interim Final Rule pp. 22*).

**[New]**

"The final rule maintains the presumptions identified in the interim final rule and defines low- and moderate-income for the purposes of determining which households and populations recipients may presume to have been impacted. To simplify the administration of this presumption, the final rule adopts a definition of low- and moderate-income based on thresholds established and used in other federal programs." (See *Final Rule pp. 30*).

Eligible uses are found on pages 32-34 of [Appendix 1: Eligible Use Matrix](#)

**Additional Considerations**

**[New]**

- "Recipients may determine whether to measure income levels for specific households or for a geographic area based on the type of service to be provided." (See *Final Rule pp. 31*).
- "The final rule maintains the presumptions identified in the interim final rule, as well as recipients' ability to identify other impacted or disproportionately impacted classes." (See *Final Rule pp. 37*).
- "The final rule presumes that the general public is impacted by and eligible for services to respond to COVID-19 mitigation and prevention needs, as well as a behavioral health need." (See *Final Rule pp. 37*).
- "...Under the final rule recipients may also presume that households residing in the U.S. territories or receiving services from territorial governments were disproportionately impacted." (See *Final Rule pp. 37*).
- "By allowing recipients to also presume that low-income households were disproportionately impacted, the final rule provides greater flexibility to serve underserved households or communities." (See *Final Rule pp. 39*).
- "Tribal and territorial governments may face both disproportionate impacts of the pandemic and administrability challenges with operationalizing the income-based standard; therefore, Treasury has presumed that services provided by these governments respond to disproportionate pandemic impacts." (See *Final Rule pp. 39*).

**Categorical Eligibility**

**[New]**

"Treasury agrees that allowing recipients to identify impacted and disproportionately impacted beneficiaries based on their eligibility for other programs with similar income tests would ease administrative burden." (See *Final Rule pp. 40*).

**Impacted Households**

"Treasury will recognize a household as impacted if it otherwise qualifies for any of the following programs:

- Children's Health Insurance Program (CHIP)
- Childcare Subsidies through the Child Care and Development Fund (CCDF) Program
- Medicaid
- National Housing Trust Fund (HTF), for affordable housing programs only
- Home Investment Partnerships Program (HOME), for affordable housing programs only"

*(See Final Rule pp. 41).*

### Disproportionately Impacted Households

#### **[New]**

"Treasury will recognize a household as disproportionately impacted if it otherwise qualifies for any of the following programs:

- Temporary Assistance for Needy Families (TANF)
- Supplemental Nutrition Assistance Program (SNAP) o Free and Reduced-Price Lunch (NSLP) and/or School Breakfast (SBP) programs
- Medicare Part D Low-income Subsidies
- Supplemental Security Income (SSI)
- Head Start and/or Early Head Start
- Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
- Section 8 Vouchers
- Low-Income Home Energy Assistance Program (LIHEAP)
- Pell Grants
- For services to address educational disparities, Treasury will recognize Title I eligible schools as disproportionately impacted and responsive services that support the school generally or support the whole school as eligible."

*(See Final Rule pp. 41-42).*

## **Standards for Identifying Other Eligible Populations**

#### **[New]**

"Consistent with the scope of beneficiaries included in sections 602(c)(1)(A) and 603(c)(1)(A) of the Social Security Act, Treasury is clarifying that a recipient may identify such impacts for a class of households, small businesses, or non-profits.

- In such cases, the recipient need only demonstrate that the household, small business, or non-profit is within the relevant class." *(See Final Rule pp. 42).*

## **Public Health**

### **Responding to Public Health Impacts**

#### **[New]**

"The final rule streamlines and aligns services and standards that are generally applicable or are provided for public health purposes. Under this approach, eligible uses to respond to the public health emergency are organized based on the type of public health problem:

1. COVID-19 mitigation and prevention,
2. medical expenses,
3. behavioral health care, and
4. preventing and responding to violence." *(See Final Rule pp 20).*

## **Designating a Public Health Impact**

### **[New]**

"Treasury is clarifying that when assessing whether a program or service is an eligible use to respond to the public health impacts of the COVID-19 public health emergency, the Department will consider two eligibility requirements." (See *Final Rule pp. 21*).

1. "There must be a negative public health impact or harm experienced by an individual or a class" (See *Final Rule pp. 21*).
  - Must be reasonably designed to benefit the individual or class that experienced the public health impact or harm. (See *Final Rule pp. 22*).
2. "The program, service, or other intervention must address or respond to the identified impact, or harm"
  - Must also be related and reasonably proportional to the extent and type of public health impact or harm experienced. (See *Final Rule pp. 22*).

## **1. COVID-19 Mitigation and Prevention**

### **[New]**

#### **COVID-19 public health response and mitigation tactics:**

- "In the final rule, Treasury is maintaining an expansive list of enumerated eligible uses to mitigate and prevent COVID-19, given the wide-ranging activities that governments may take to further these goals, including "other public health responses." (See *Final Rule pp. 56*).
- "Note that capital expenditures are not considered "programs and services" and are not presumed to be reasonably proportional responses to an identified harm except as provided in section Capital Expenditures in General Provisions: other." (See *Final Rule pp. 57*).
- "Recipients can provide any COVID-19 prevention or mitigation service to members of the general public without any further analysis of impacts of the pandemic on those individuals and whether the service is responsive." (See *Final Rule pp. 57*).

Eligible uses are found on page 30 of [Appendix 1: Eligible Use Matrix](#)

#### **Vaccination programs and vaccine incentives:**

### **[New]**

- "Treasury issued guidance clarifying that "[vaccine] 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." (See *Final Rule pp. 59*).

Eligible uses are found on page 30 of [Appendix 1: Eligible Use Matrix](#)

#### **Capital Expenditures**

### **[New]**

"In recognition of the importance of capital expenditures in the COVID-19 public health response," Treasury enumerates a list of capital expenditures that are eligible "as long as they meet the standards for capital expenditures in section Capital Expenditures in General Provisions: Other." (See *Final Rule pp. 60*).

Eligible uses are found on pages 35-36 of [Appendix 1: Eligible Use Matrix](#)

### Other clarifications on COVID-19 mitigation: medical care, supports for vulnerable populations, data systems, carceral settings

[New]

- "These eligible uses should help vulnerable or high-risk populations access services that mitigate COVID-19." (See *Final Rule pp. 62*).

Eligible uses are found on page 34 of [Appendix 1: Eligible Use Matrix](#)

### Assistance to businesses and non-profits to implement COVID-19 mitigation strategies

[New]

- "The final rule consolidates all COVID-19 mitigation and prevention within Public Health" (See *Final Rule pp. 63*)
- "In other words, recipients can provide any COVID-19 prevention or mitigation service to small businesses, non-profits, and businesses in impacted industries without any further analysis of impacts of the pandemic on those entities and whether the service is responsive" (See *Final Rule pp. 63*).

## 2. Medical Expenses

[Previous]

**Rule/Ineligibility:** Medical expenses may not serve as a State or locality's contribution of certain Federal funds. (See *Interim Final Rule pp. 19*).

**Considerations:**

*General Medical Expense Assessment*

The near- and long-term needs may continue, and therefore, State and Local governments may need to provide care and service to address these needs. (See *Interim Final Rule pp. 19*).

[New]

**Final Rule Clarifies** "that it covers costs related to medical care provided directly to an individual due to COVID-19 infection (e.g., treatment) or a potential infection (e.g., testing)." (See *Final Rule pp. 65*).

## 3. Behavioral Health Care

[New]

"Covers an expansive array of services for prevention, treatment, recovery, and harm reduction for mental health, substance use, and other behavioral health challenges caused or exacerbated by the public health emergency" (See *Final Rule pp. 67*).

- "Recipients can identify the impacted population as the general public" (See *Final Rule pp. 67*).
- "Eligible uses of funds may include services typically billable to insurance or services not typically billable to insurance" (See *Final Rule pp. 68*).
- "Treasury highlights several ways that funds may be used to respond to opioid use disorder and prevent overdose mortality." (See *Final Rule pp. 68-69*).

Eligible uses are found on page 31 of [Appendix 1: Eligible Use Matrix](#)

## 4. Preventing and Responding to Violence

**[New]**

"The final rule incorporates guidance issued after the interim final rule on specific types of services eligible."  
(See *Final Rule pp. 71*).

Eligible uses are found on pages 31-32 of [Appendix 1: Eligible Use Matrix](#)

**Rule: For Determining if Health and Safety Employee Time is Entirely Devoted to Mitigating or Responding to COVID-19.**

**[Previous]**

"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. " (See *Interim Final Rule pp. 20*).

**Considerations: Assessing Health and Safety Employee Time:**

**[Previous]**

"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 pp. 19 – 20*).

Eligible uses are found on pages 34-35 of [Appendix 1: Eligible Use Matrix](#)

**Eligible Uses to Address Disparities in Public Health Outcome**

**Rule: Services Addressing Health Disparities**

**[Previous]**

"Services to address health disparities are presumed to be responsive to the public health impacts of the pandemic." (See *Interim Final Rule pp. 21 – 22*).

Eligible uses are found on pages 33-34 of [Appendix 1: Eligible Use Matrix](#)

## **Negative Economic Impacts**

### **Responding to Negative Economic Impacts**

**[New]**

"Eligible uses to respond to the negative economic impacts of the public health emergency are organized based on the type of beneficiary:

- 1) assistance to households,
- 2) assistance to small businesses, and
- 3) assistance to non-profits, alongside a fourth standalone eligibility category for aid to travel, tourism, hospitality, and industries." (See *Final Rule pp. 20*).

### **Designating a Negative Economic Impact**

**[New]**

1. There must be a negative economic impact, or economic harm, experienced by an individual or a class.
  - a) The recipient should assess whether and the extent to which economic harm, such as loss of earnings or revenue, resulted from the COVID-19 public health emergency. (See *Final Rule pp. 24*).
2. The response must be designed to address the identified economic harm or impact resulting from or exacerbated by the public health emergency.
  - a) The recipient must assess whether and the extent to which the use would respond to or address this harm or impact. (See *Final Rule pp. 25*).

"Treasury is clarifying that recipients should assess a potential use of funds based on which beneficiary experienced the negative economic impact, in other words, the households, small businesses, non-profits, or impacted industries that experienced the negative economic impact." (See *Final Rule pp. 27*).

## **Impacts on Households and Individuals**

### **[Previous]**

"Rates of unemployment are particularly severe among workers of color and workers with lower levels of educational attainment... "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." (See *Interim Final Rule pp. 23 – 24*).

### **[New]**

"Treasury has determined that several enumerated uses included in the interim final rule for disproportionately impacted communities are directly responsive to negative economic impacts experienced by impacted households. In the final rule, these uses have been moved from "disproportionately impacted" to "impacted" households accordingly, making these services available to both." (See *Final Rule pp. 79*).

#### **1. Food Assistance:**

### **[New]**

- "Treasury is clarifying that capital expenditures related to food banks and other facilities primarily dedicated to addressing food insecurity are eligible..." (See *Final Rule pp. 81*)

Eligible uses are found on page 32 of [Appendix 1: Eligible Use Matrix](#)

#### **2. Emergency Housing:**

Eligible uses are found on pages 32 and 36 of [Appendix 1: Eligible Use Matrix](#)

#### **3. Emergency assistance for pressing needs: burials, home repairs, weatherization, or other needs**

- **No Changes-Maintaining provisions of Interim Final Rule**

#### **4. Internet access or digital literacy assistance**

### **[New]**

- "Treasury has determined that these services, which expand internet access without constructing new networks, are an appropriate enumerated eligible use as assistance to households to respond to a negative economic impact, and they are permitted under the final rule." (See *Final Rule pp. 89*).

Eligible uses are found on page 32 of [Appendix 1: Eligible Use Matrix](#)

5. **Cash Assistance**

[New]

- "Cash transfers, like all eligible uses in this category, must respond to the negative economic impacts of the pandemic on a household or class of households" (See *Final Rule pp. 91*).

Eligible uses are found on page 32 of [Appendix 1: Eligible Use Matrix](#)

6. **Survivor's benefits**

[New]

- **No Changes-Maintaining provisions of Interim Final Rule except:**

"The final rule organizes survivor's benefits under assistance to households to clarify that households are the intended beneficiaries of survivor's benefits" (See *Final Rule pp.92*).

Eligible uses are found on page 32 of [Appendix 1: Eligible Use Matrix](#)

7. **Assistance accessing or applying for public benefits or services**

[New]

- "In the final rule, this use is eligible for any impacted household or class of households, not only in disproportionately impacted communities." (See *Final Rule pp. 93*).

Eligible uses are found on page 32 of [Appendix 1: Eligible Use Matrix](#)

8. **Promoting healthy childhood environments**

[New]

- "Under the Final Rule childcare and early learning services are available to impacted households or classes of households, not just those disproportionately impacted" (See *Final Rule pp.95-96*).
- "Given the widespread impact of COVID-19 on pregnant and recently pregnant individuals, Treasury is re-categorizing home visiting services as an eligible use for impacted communities, not just disproportionately impacted communities. Under the final rule, these eligible uses are available to impacted households or classes of households" (See *Final Rule pp. 98-99*).
- "In the final rule, Treasury is clarifying that services to foster youth, including those aging out of the system, and child welfare-involved families may encompass a wide array of financial, educational, child development, or health supports, or other supports necessary, including supports for kinship care." (See *Final Rule pp. 100*).

Eligible uses are found on page 32 of [Appendix 1: Eligible Use Matrix](#)

9. **Addressing the impacts of lost instructional time**

[New]

- "When providing services to address lost instructional time, recipients may presume that any K-12 student who lost access to in-person instruction for a significant period of time has been impacted by the pandemic and is thus eligible for responsive services." (See *Final Rule pp.101*).

Eligible uses are found on page 32 of [Appendix 1: Eligible Use Matrix](#)

10. **Promoting long-term housing security: affordable housing and homelessness**

**[New]**

- Treasury has determined that supportive housing or other programs or services improving access to stable, affordable housing among individuals who are homeless, and the development of affordable housing to increase the supply of affordable and high-quality living units are responsive to the needs of impacted populations, not only disproportionately impacted populations (See *Final Rule pp. 103*).
- Treasury will presume that any projects that would be eligible for funding under either the National Housing Trust Fund (HTF) or the Home Investment Partnerships Program (HOME) are eligible uses of SLFRF funds (See *Final Rule pp. 106*).
- Additionally, affordable housing projects provided by a Tribal government are eligible uses of SLFRF if they would be eligible for funding under the Indian Housing Block Grant program, the Indian Community Development Block Grant program, or the Bureau of Indian Affairs Housing Improvement Program. (See *Final Rule pp. 106*).
- "Recipients may consider offering down payment assistance, such as through contributions to a homeowner's equity at origination or that establish a post-closing, mortgage reserve account on behalf of the borrower that may be utilized to make a missed or partial mortgage payment at any point during the life of the loan (e.g., if the borrower faces financial stress). Homeownership assistance that would be eligible under the Community Development Block Grant (at 24 CFR 507.201(n)) is also an eligible use of SLFRF funds." (See *Final Rule pp. 107*).

Eligible uses are found on pages 32 and 36 of [Appendix 1: Eligible Use Matrix](#)

**11. Paid sick, medical, or family leave**

**[New]**

- "Under the final rule, creating, expanding, or financially supporting paid sick, medical, or family leave programs is an enumerated eligible use of funds to respond to the negative economic impacts of the pandemic." (See *Final Rule pp. 112*).

Eligible uses are found on page 33 of [Appendix 1: Eligible Use Matrix](#)

**12. Health Insurance**

**[New]**

- "Under the final rule, programs or services to expand access to health insurance coverage are an enumerated eligible use as assistance to households." (See *Final Rule pp. 113*).

Eligible uses are found on page 33 of [Appendix 1: Eligible Use Matrix](#)

**13. Services for the unbanked and underbanked**

Eligible uses are found on page 33 of [Appendix 1: Eligible Use Matrix](#)

**Assistance to Non-profit Organizations**

**[New]**

"The final rule expands the definition of non-profits to mean 501(c)(3) organizations and 501(c)(19) organizations." (See *Final Rule pp. 160*).

**Aid to Impacted Industries**

**[New]**

For the process for identifying an impacted industry. (See *Final Rule pp. 164*).

"The final rule requires that aid to impacted industries, including to Tribal development districts, be designed to address the harm experienced by the impacted industry." (See *Final Rule pp. 168*).

**Public Sector Capacity and Workforce**

**[New]**

"Indirect costs for administrative, management, and financial management personnel to support public health and safety staff responding to COVID-19 are not permissible under [the provision that allows SLFRF to be used for public health and safety staff], given the relatively greater challenge of differentiating the marginal increase in staff time and workload due to pandemic response for indirect versus direct costs." (See *Final Rule pp. 177*).

The final rule provides two options to restore pre-pandemic employment:

- "Under the first and simpler option, recipients may use SLFRF funds to rehire staff for pre-pandemic positions that were unfilled or were eliminated due the pandemic without undergoing further analysis.
- Under the second option, the final rule provides recipients an option to hire above the pre-pandemic baseline by adjusting the pre-pandemic baseline for historical growth in public sector employment over time, as well as flexibility on roles for hire."

"Recipients may choose between these options but cannot use both." (pp. 179-180).

Eligible uses are found on pages 34-35 of [Appendix 1: Eligible Use Matrix](#)

**Capital Projects**

**[New]**

"Treasury will require projects with total expected capital expenditure costs of \$1 million or greater to undergo additional analysis to justify their capital expenditure. Projects that are larger in size, and projects that are not enumerated uses, will have increased reporting requirements, including a Written Justification." (See *Final Rule pp. 193*).

Eligible uses are found on pages 35-36 of [Appendix 1: Eligible Use Matrix](#)

**Impacts on Businesses**

**[Previous]**

"The pandemic has also severely impacted many businesses, with small businesses hit especially hard." (See *Interim Final Rule pp. 26*).

[Impacts to State, Local, and Tribal Governments](#)

- "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. 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." (See *Interim Final Rule pp. 27*).

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." (See pp. 27).
- "Low- and moderate-income jobs make up a substantial portion of both total pandemic job losses, and jobs that require in-person frontline work, which are exposed to greater risk of contracting COVID-19." (See Interim Final Rule pp. 27 – 28).
- "The pandemic's disproportionate economic impacts are also seen in Tribal communities across the country...". (See Interim Final Rule pp. 30).

Eligible uses are found on page 34 of *Appendix 1: Eligible Use Matrix*.

Ineligible Expenses Include, but are not limited to<sup>5</sup>:

1. Rainy Day Fund
  - "Would not address [pandemic response and relief] needs or respond to the COVID-19 public health emergency but would rather constitute savings for future spending needs."
2. Payment of Interest or Principal on Outstanding Debt Instruments
  - "Fees or issuance costs associated with the issuance of new debt would also not be covered... because such costs would not themselves have been incurred to address the needs of pandemic response or its negative economic impacts."

(See Interim Final Rule pp. 42-43)

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<sup>5</sup> See *Appendix 2: Restrictions on Use* for a non-exhaustive list on ineligible uses.

## Premium Pay

### [Previous]

Fiscal Recovery Funds may be used by recipients to provide premium pay to eligible essential workers during the COVID-19 public health emergency or to provide grants to third-party employers with eligible essential workers.

"...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." (See *Interim Final Rule pp. 50*).

Where possible, the U.S. Treasury encourages recipients to prioritize providing retrospective premium pay.

- Although Treasury does require further justification for premium pay to most essential workers, it would require higher scrutiny for provision of premium pay to higher earners who, even without premium pay, would likely have more significant personal financial resources to cope with the effects of the pandemic.

### [New]

Prior to providing premium pay, recipients should:

1. Identify an "eligible worker."
  - a. Treasury published a list of "eligible workers"<sup>6</sup> but added that "the chief executive (or equivalent) of a recipient government may designate additional non-public sectors as critical so long as doing so is necessary to protecting the health and wellbeing of the residents of such jurisdictions." (See *Final Rule pp. 221*).
2. Verify that the eligible worker performed "essential work." (See *Final Rule pp. 225 and 226*).
  - a. **[Previous]** Eligible workers must have regular in-person interactions or regular physical handling of items that were also handled by others. (See *Interim Final Rule pp. 132*).
3. **[New]** Confirm that the premium pay "responds to" eligible workers performing essential work during the COVID-19 public health emergency. (See *Final Rule pp. 226*).

### [Previous]

In response to essential workers' needs, a grant to an employer may provide premium pay to eligible essential workers, as defined in the Interim Final Rule. The rule imposes some additional reporting requirements for grants to third-party employers to ensure any grants "respond to the needs of essential workers and are made in a fair and transparent manner." (See *Interim Final rule pp. 51*).

### [New]

Employers may provide premium pay to eligible workers, but it may not exceed "\$13 per hour or \$25,000 over the period of performance." Additionally, "recipients may award premium pay retroactively. However, SLFRF

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<sup>6</sup> See *Definitions*.

funds may not be used to reimburse a recipient or eligible employer grantee for premium pay or hazard pay already received by the employee." (See *Final Rule pp. 230-232*).

## Revenue Loss

### [Previous]

ARPA allows recipients facing budget shortfalls to use Fiscal Recovery Funds to avoid cuts in government services. The Interim Final Rule establishes a definition of "general revenue" for calculating a loss in revenue and provides a methodology for calculating revenue lost due to COVID-19.

### [New]

Recipients are permitted to calculate their own revenue loss due to COVID-19 or opt for a standard allowance of \$10 million to be used over the course of the program for reinvestment in government services. Specifically, in the Final Rule, recipients will be permitted to elect a fixed amount of loss that can then be used to fund government services. This fixed amount, referred to as the "standard allowance," is set at \$10 million total for the entire period of performance. This addition will promote administrative efficiency and simplify the revenue loss calculation for most recipients. Treasury intends to amend its reporting forms to provide a mechanism for recipients to elect to utilize either the revenue loss formula or the standard allowance, in addition to other changes made as part of the final rule. (See *Final Rule pp. 247*).

## General Revenue<sup>7</sup>

[Previous] General revenue for the purpose of revenue includes:

1. Revenues collected by a recipient and generated from its underlying economy would capture a range of different types of tax revenues, as well as other types of revenue that are available to support government services. In calculating revenue, recipients should sum all revenue streams covered as general revenue. (See *Interim Final Rule pp. 54*).
  - a. [New] Treasury has also added liquor store revenue to the definition of general revenue, with justification that "Treasury believes revenue from government owned liquor stores is better classified as general revenue than it was as tax revenue." (See *Final Rule pp. 245-246*).
2. [Previous] 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 the issuance of debt, or the sale of investments agency or private trust transactions. (See *Interim Final Rule pp. 55*).
3. [New] Revenue from utilities that are "part of (recipient's) own government... that was used to fund other government services... (and) have declined on the aggregate." (See *Final Rule pp. 245*). "Recipients may choose to include revenue from utilities that are part of their own government as general revenue provided the recipient does so consistently over the remainder of the period of performance." (See *Final Rule, pp. 408*).
4. [Previous] 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. (See *Interim Final Rule pp. 56*).

## Tax Changes

### [New]

<sup>7</sup> See *Definitions*

“Some recipients had increased taxes in order to meet additional demands for government services or to address declines in revenue due to the pandemic. These tax increases have in some cases offset some or all of the actual revenue loss attributable to the public health emergency. Because the Interim Final rule Calculates revenue loss by reference to actual revenue collected, commenters argued that the calculation of revenue loss ‘due to’ the public health emergency needs to take into consideration the effects of tax increases by deducting the effect of these tax increases from actual revenue collected.” (See *Final Rule pp. 250*). To ease the administrative burden, the Final Rule “will not require recipients to reflect the revenue effects of tax increases or decreases adopted prior to the adoption of the Final Rule” on January 6, 2022. (See *Final Rule pp. 257*).

Tax policy changes implemented on or after April 1, 2022, must be accounted for in future fiscal or calendar year revenue loss calculations, and recipients are encouraged to use internal budget records such as budget scores, etc. (See *Final Rule pp. 254*).

[Appendix 3: Calculation of Revenue Loss](#) includes the step-by-step revenue loss calculation set forth in the Interim Final Rule and includes notes on where to account for tax policy changes implemented on or after April 1, 2022.

# Water, Sewer, and Broadband Infrastructure

## Water and Sewer Infrastructure

### [Previous]

ARPA recognizes the critical role that clean drinking water and services for the collection and treatment of wastewater and stormwater play in protecting public health. Governments have 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. (See *Interim Final Rule pp. 63*).

- Under 602(c)(1)(C) or 603(c)(1)(C), recipients may use funds for maintenance of infrastructure or pay-go spending for the 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. (See *Interim Final Rule pp. 60*).
- 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). (See *Interim Final Rule pp. 60*).

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). 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 standards. (See *Interim Final Rule pp. 64*).

### [New]

The final rule expands the list of eligible water and sewer infrastructure projects to include certain dam and reservoir rehabilitation projects, additional stormwater projects, private well projects, and a more comprehensive range of projects that remediate lead in water. (See *Final Rule pp. 7*).

With expanded eligibility provided within the Final Rule, SLFRF funds may be used to fund additional projects. Furthermore, concerning water and sewer infrastructure, SLFRF may be used beyond the CWSRF and DWSRF if the given project is found to be "necessary" according to the definition provided in the Final Rule and outlined below. Also, DWSRF and CWSRF-eligible projects are generally presumed to be necessary investments. (See *Final Rule pp. 261 & 266*).

A "necessary" investment in infrastructure must be:

1. "Responsive to an identified need to achieve or maintain an adequate minimum level of service, which may include a reasonable projection of increased need, whether due to population growth or otherwise;
2. A cost-effective means for meeting that need, considering available alternatives;
3. For investments in infrastructure that supply drinking water to meet projected population growth, projected to be sustainable over its estimated useful life."

(See *Final Rule pp. 266*).

The Final Rule indicates that recipients are required to assess the cost-effectiveness of specific projects, including new drinking water systems, dams, reservoir rehabilitation projects, or projects to extend drinking water services to meet population growth needs. Additional eligible projects generally must be responsive to an identified need to achieve or maintain an adequate minimum level of service. (See *Final Rule pp. 267-269*).

Eligible uses are found on pages 37-39 of [Appendix 1: Eligible Use Matrix](#)

### **Other Considerations**

- **[New]** Construction can continue past December 31, 2024, if funds have been obligated prior to that date. Projects must be completed by December 31, 2026. (See *Final Rule pp. 357*).
- **[Previous]** “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.” (See *Interim Final Rule Frequently Asked Questions (FAQ) 6.2 pp. 28*).
  - **[New]** However, the Final Rule does permit the use of SLFRF funds to meet non-federal matching requirements of any authorized Bureau of Reclamation project, regardless of whether the underlying project would be an eligible use of SLFRF funds under the water and sewer infrastructure eligible use category. (See *Final Rule pp. 270 & 291*).
- “The National Environmental Policy Act (NEPA) does not apply to the Treasury's administration of the Funds. Projects supported with payments with payments from the Funds may still be subject to NEPA review if they are also funded by other federal financial assistance programs.” (See *Interim Final Rule FAQ 6.4 pp. 28-29*).

### **Broadband Infrastructure**

#### **[New]**

“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.” (See *Final Rule pp. 86*). ARPA provides funds to State, territorial, local, and Tribal governments to make necessary investments in broadband infrastructure.

“The final rule expands eligible areas for investment by requiring recipients to invest in projects designed to provide service to households and businesses with an identified need for additional broadband infrastructure investment, which would include but not be limited to a lack of broadband service reliably delivering certain speeds.” (See *Final Rule pp. 296*).

Eligible areas for investment in broadband infrastructure include locations where the recipient has identified need for additional broadband investment. Recipients are “encourage to prioritize projects that are designed to provide service to locations not currently served by a wireline connection that reliably delivers at least 100 Mbps of download speed and 20 Mbps of upload speed.” (See *Final Rule pp. 296*).

“Recipients are encouraged to require that services provided by a broadband infrastructure project include at least one low-cost option offered without data usage caps and at speeds that are sufficient for a household with multiple 298 users to simultaneously telework and engage in remote learning.” (See *Final Rule pp. 297*).

Eligible uses are found on page 39 of [Appendix 1: Eligible Use Matrix](#).

Recipients must ensure that SLFRF funds are designed to address an identified need for additional broadband investment that existing federal or state funding commitments are not met. Recipients must also ensure that

SLFRF funds will not be used for costs reimbursed by the other federal or state funding streams. *(See Final Rule pp. 311).*

Recipients are required to design projects to meet or exceed symmetrical 100 Mbps download and 20 Mbps upload speeds. 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, eligible projects may be designed to reliably meet or exceed 100/20 Mbps and be scalable to a minimum of symmetrical 100 Mbps download and upload speeds. *(See Final Rule pp. 297).*

It is encouraged to prioritize investments in fiber-optic infrastructure wherever feasible and focus on projects that will achieve last-mile connections. Further, Treasury encourages recipients to prioritize support for broadband networks owned, operated by, or affiliated with local governments, non-profits, and co-operatives. *(See Final Rule pp. 305-311).*

Enrollment in a low-income subsidy program is required, and recipients must require that the service provider for a broadband project that provides service to households to either:

- Participate in the FCC's Affordable Connectivity Program (ACP); *(See Final Rule pp. 396).*
- Provide access to a broad-based affordability program to low-income consumers that provides benefits commensurate to ACP.

*(See Final Rule pp. 297, 308, 396 & 430).*

Treasury encourages broadband services to include at least one low-cost option offered without data usage caps at speeds sufficient for households with multiple users to telework and simultaneously engage in remote learning. Recipients are also encouraged in consult with the community on affordability needs. *(See Final Rule pp. 309).*

### **Cybersecurity Investments**

SLFRF may be used to modernize cybersecurity for existing and new broadband infrastructure, regardless of their speed delivery standards. This includes the modernization of hardware and software. *(See Final Rule pp. 272).*

### **Applicable Standards and Requirements**

It is encouraged with water, sewer, and broadband projects that strong labor stands are adhered to, including project labor and community benefits agreements that offer wages at or above the prevailing rate and have local hire provisions. Furthermore, it is also encouraged that recipients prioritize procuring employers who have strong labor standards and pursuing employers who do not have recent federal or state labor and employment law violations. *(See Final Rule pp. 262 & 397).*

### **Eligible Expenses**

#### **[Previous]**

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. 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 minimum speeds of at least 25 Mbps download and 3 Mbps upload. 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.

**[New]** (See *Final Rule pp. 294-295, 299-302, & 304-306*).

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 local governments, non-profits, and co-operatives—providers with less pressure to turn profits and with a commitment to serving entire communities. Recipients are also encouraged to consider ways to integrate affordability options into their program design. (

**[New]** (See *Final Rule pp. 295*).

Eligible uses are found on page 39 of [Appendix 1: Eligible Use Matrix](#)

## **Other Provisions**

**[New]**

### **Restrictions on Use**

(See *Final Rule pp. 314*).

#### **Statutory Restrictions under ARPA**

- States and territories may not offset a reduction in net tax revenue
- Deposit into pension funds

#### **Other Restrictions (under any eligible use category)**

- Debt service
- To replenish financial reserves
- To satisfy any obligation resulting from a judgment or settlement

#### **General Restrictions**

- A recipient may not use SLFRF funds for any program, service, or capital expenditure that includes a term or condition that undermines efforts to stop the spread of COVID-19
- Payments from the Fiscal Recovery Funds are subject to the provisions of 2 CFR 200
- Recipients must be aware of additional federal, state, and local laws that may apply, including federal environmental and civil rights laws.

## **Offset a Reduction in Net Tax Revenue**

**[Previous]**

For States and territories (recipient governments), section 602(c)(2)(A)—the offset provision—prohibits the use of Fiscal Recovery Funds to offset a reduction directly or indirectly in net tax revenue resulting 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:

1. the amount of the applicable reduction attributable to the impermissible offset; **and**,
2. the amount received by the State or territory under the ARPA.

**Note:** 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. (See *Interim Final Rule pp. 81*).

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, revenue increases (e.g., an increase in a tax rate), and certain cuts in spending.

ARPA uses 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 reduce net tax revenue, as it would in the ordinary course of its budgeting process.
- 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. Suppose 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. In that case, 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, suppose 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. In that case, 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.
- Fifth, if any amounts could be subject to recoupment, Treasury will notify the recipient government of such amounts. This process is discussed in greater detail in Section IV of this Supplementary Information. (See *Interim Final Rule pp. 83 – 84*).

The Final Rule updates several definitions that apply to the implementation of the offset provision:

<b>Covered Change</b>	<b>[New]</b> Section 602(c)(2)(A) applies to any change that "reduces any tax (by providing for a reduction in a rate, a rebate, a deduction, a credit, or otherwise or delays the imposition of any tax or tax increase." (See <i>Final Rule pp. 316</i> ). <b>[Previous]</b> 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. (See <i>Interim Final Rule pp. 85</i> ). <b>[New]</b> This can include tax abatements but does not apply to loans, grants, or other types of interventions that do not reduce tax revenue. (See <i>Final Rule pp. 324</i> ).
<b>Baseline</b>	<b>[Previous]</b> 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 the fiscal year 2019 (FY 2019) tax revenue indexed for inflation

	in each year of the covered period, with inflation calculated using the Bureau of Economic Analysis's Implicit Price Deflator. (See <i>Interim Final Rule pp. 86 – 87</i> ).
<b>Reporting Year</b>	<b>[Previous]</b> 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 year's portion falling within the covered period. (See <i>Interim Final Rule pp. 87 – 88</i> ).
<b>Tax Revenue</b>	<b>[Previous]</b> 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. 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). (See <i>Interim Final Rule pp. 88</i> ).
<b>Framework</b>	<p><b>[Previous]</b> 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 includes:</p> <ol style="list-style-type: none"> <li>1. Covered Changes that reduce tax revenues;</li> <li>2. In excess of the de minimis;</li> <li>3. Safe harbor;</li> <li>4. Consideration of other sources of funding (consisting of two categories:             <ol style="list-style-type: none"> <li>a) Tax and other increases in revenue, and</li> <li>b) Covered spending cuts; and,</li> </ol> </li> <li>5. Identification of amounts subject to recoupment. (See <i>Interim Final Rule pp. 88</i>)</li> </ol> <p><b>[New]</b> "Taking into consideration comments received regarding burden, Treasury is considering a tiered approach to reporting on the offset provision." (See <i>Final Rule pp. 337</i>). Treasury will provide additional guidance and instructions on the reporting requirements at a later date.</p>

## Deposit into Pension Funds

### Eligible Expenses:

#### [Previous]

The statute provides that recipients may not use Fiscal Recovery Funds for "deposit into any pension fund." 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.

#### [New]

In the Final Rule, Treasury clarifies that "payment made at the regular time for pension contributions may very well be an extraordinary payment, for example, if it is larger than a regular payment would have been. Such a payment would be a restricted use." (See *Final Rule pp. 340*).

Additionally, the Final Rule clarifies that deposits into pension funds do not apply to Tribal Governments.

**[Previous]**

*Note: Under this interpretation, a "deposit" is distinct from a "payroll contribution," which occurs when employers make payments into pension funds at regular intervals, with contribution amounts based on a pre-determined percentage of employees' wages and salaries. (See *Interim Final Rule pp. 79*).*

## **Payments in Tranches to Local Governments and Certain States**

**[Previous]**

### *Local Governments*

- The Secretary will make payments to local governments in two tranches, with the second being paid twelve months after the first payment.

### *State Governments*

- The Secretary may withhold payment of up to 50% of the total allocated amount to each State and territory for up to 12 months from the certification date based on the unemployment rate in the State or territory as of the date of the certification.
- This threshold will result in the majority of States being paid in two tranches. However, if there is an increase in their unemployment rate over a specified threshold, States and territories may receive a single payment rather than split it in two.  
Fiscal Recovery Funds are not subject to the requirements of the Cash Management Improvement Act (CMIA)

*(See *Interim Final Rule pp. 102*)*

**[New]**

The Final Rule has two adjustments:

1. "The final rule makes two adjustments for operational purposes. First, the final rule provides that Treasury expects to make all second tranche payments to states available beginning 12 months from the date that funding was first made available by Treasury (May 10, 2021) regardless of when each individual state submitted its initial certification..." (*Final Rule p. 350*).
2. Second, to ease recipient states' administrative burden, the final rule strikes a requirement from the interim final rule that states must certify for their second tranche payments and file all required reports at least 30 days prior to the date their second payment is made available. The final rule simply requires that states certify for their second tranche payment and file all required reports before receiving their second tranche payment..." (*Final Rule p. 350*).

## **Payments to Non-entitlement Units of Government (NEUs) and Units of Local Government (UGLGs) within Non-UGLG Counties**

**[Previous]**

- States and territories are required to distribute Fiscal Recovery Funds to NEUs based on population within 30 days of receipt unless granted an extension by the Secretary.
- States and territories are required to allocate funding to NEUs in the 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).
- No additional requirements or conditions may be placed on NEUs by States and territories beyond the requirements in ARPA and Treasury's regulations and guidance.
- Distributions to NEUs may not exceed 75% of the NEU's most recent budget (as of January 27, 2020).

(See *Interim Finale Rule pp. 108*; **[New]** *Final Rule pp. 350*)

## **Timeline for the Use of Fiscal Recovery Funds**

**[Previous]**

The guidance below, provided by the Interim Final Rule, has not changed in the Final Rule.

- Payments from the Fiscal Recovery Fund can only be used to cover costs incurred by December 31, 2024. Treasury is interpreting the requirement that costs be incurred by December 31, 2024, to require only those recipients have obligated the Fiscal Recovery Funds by that date.
- The Interim Final Rule uses a definition of "obligation" that is based on the definition used for purposes of Uniform Guidance

The use of Fiscal Recovery Funds is forward-looking:

- The Interim Final Rule permits funds to be used to cover costs incurred beginning on March 3, 2021;
- Recipients are not permitted to use funds to cover pre-award costs (those incurred prior to March 3, 2021);
- The period of performance is from March 3, 2021, to December 31, 2026.

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.

## **Transfer of Funds**

**[Previous]**

The Statue authorizes State, territorial, and Tribal governments to transfer amounts paid from the Fiscal Recovery Funds to the following entities (subrecipients):

- Private non-profit organizations
- Tribal organizations
- Public benefit corporations involved in the transportation of passengers or cargo
- Special-purpose districts (fire, water, sewer, mosquito abatement districts)
- The list is not exclusive

Recipients remain responsible for monitoring and overseeing subrecipients' use of funds and activities. Recipients are also responsible for reporting to Treasury on their subrecipients' use of payments from the Funds.

- **[New]** Subrecipients must agree to "comply with Award Terms and Conditions, and other applicable requirements, including the Uniform Guidance at C.F.R. §§ 200.331-200.333." (See *Final Rule pp. 358*).
- **[Previous]** Transfers must qualify as an eligible use of Fiscal Recovery Funds by the transferor.
- **[New]** Pooling Funds: "...recipients may pool SLFRF funds for projects, provided that the project is itself an eligible use of SLFRF funds for each recipient that is contributing to the pool of funds and that recipients are able to track the use of funds in line with the reporting and compliance requirements of the SLFRF." (See *Final Rule pp. 359*).
- **[New]** Blending and Braiding of Funds: "...recipients may fund a project with both SLFRF funds and other sources of funding, provided that the costs are eligible costs under each source program and are compliant with all other related statutory and regulatory requirements and policies." (See *Final Rule pp. 360*).

(See **[Previous]** *Interim Final Rule pp. 105*; **[New]** *Final Rule pp. 357*)

## Reporting Schedule

**[Previous]**

*Note: Treasury will provide additional guidance and instructions on reporting requirements at a later date.*

Report Type	Applies to	Dates included in Report	Initial Report Due to Treasury	Subsequent Reports due to Treasury	Included in Report
Interim Report	States, Territories, Metropolitan Cities, Counties, Tribal Governments	Date of award – July 31, 2021	August 31, 2021	N/A	Expenditures by category at the summary level. <i>For States and Territories: information related to distributions to NEUs</i>
Quarterly Project and Expenditure Report	States, Territories, Metropolitan Cities, Counties, Tribal Governments	Calendar Quarter	January 31, 2022	30 days after the end of each quarter through the project period	Financial data, information on contracts and subawards over \$50,000, types of projects funded, other information regarding recipient's utilization of funds
Annual Project and Expenditure Report	NEUs	Annually	April 30, 2022	October 31 each year through the project period	Financial data, information on contracts and subawards over \$50,000, types of projects funded, other information regarding utilization of funds
Recovery Plan Performance Report	States, Territories, Metropolitan Cities, Counties	Annually	August 31, 2021	30 days after each 12-month period	Funded projects, plans for project outcomes to be achieved, key performance indicators, programmatic data

Report Type	Applies to	Dates included in Report	Initial Report Due to Treasury	Subsequent Reports due to Treasury	Included in Report
	>250K residents				

(See Interim Final Rule pp. 110)

## **Administrative Expenses**

[New]

- Direct and indirect administrative expenses are permissible uses of SLFRF funds
- Details on allowable direct and indirect expenses are found in Treasury's Compliance and Reporting Guidance.

(See Final Rule pp. 364).

## **Treatment of Loans**

[New]

(See Final Rule pp. 366-368).

## **Use of Fund for Match or Cost-Share Requirements**

[New]

- The Interim Final Rule stated that payments from the Fiscal Recovery Funds could not be used as non-Federal match for other Federal programs
- Updated guidance in the Final Rule states that federal funds available for the provision of government services, up to the amount of the recipient's reduction in revenue due to the public health emergency, generally may be used to meet the non-federal cost-share or matching requirements of other federal programs.
- SLFRF funds may not be used as the non-federal share for purposes of a state's Medicaid and CHIP programs because the Office of Management and Budget has approved a waiver pursuant to 2 CFR 200.102 of the Uniform Guidance and related regulations.
- SLFRF funds beyond those available for the provision of government services may not be used to meet the non-federal match or cost-share requirements of other federal programs other than as expressly provided for by statute.

(See Final Rule pp. 368-370).

## **Reporting**

[New]

- Guidance on reporting requirements can be found in Treasury's Compliance and Reporting Guidance and in the User Guide: Treasury's Portal for Recipient Reporting
- Treasury will continue to issue updated guidance prior to each reporting period to clarify any modifications to report content
- Treasury is retaining the reporting deadline of 30 days after the close of the reporting period

- Recipients of SLFRF funds are subject to the provisions of the Uniform Guidance (2 CFR Part 200) from the date of award to the end of the period of performance on December 31, 2026, unless otherwise specified
  - Costs must follow the requirements in 2 CFR 200 Subpart E, Cost Principles, including procurement standards
  - Recipients that receive an aggregate amount of federal financial assistance in a given fiscal year that exceeds the Single Audit threshold are subject to the requirements in 2 CFR 200 Subpart F, Audit Requirements unless otherwise specified in program-specific guidance
- SLFRF funds transferred to subrecipients are also subject to reporting and Uniform Guidance requirements
- The Assistance Listing provides details on the specific provisions of the Uniform Guidance that do not apply to SLFRF funds
- To elevate administrative burden, Treasury has created tiered reporting requirements respective to the amount of SLFRF funding received.

*(See Final Rule pp. 370).*

## **Remediation and Recoupment**

### **[Previous]**

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 the recoupment of funds. **[New]** The Final Rule includes several adjustments for further clarity.

### Recoupment Process:

#### *Identification and Notice of Violations*

- **[Previous]** Treasury will collect information regarding eligible uses on a quarterly basis and on the tax offset provision on an annual basis. If a violation is identified, Treasury will provide written notice to the recipient, including explaining such amounts.
- **[New]** Treasury may request additional information before initiating the recoupment process
- **[New]** Treasury may pursue other forms of remediation and monitoring in conjunction with, or as an alternative to, recoupment

#### *Request for Consideration*

- **[Previous]** A recipient may submit a request for reconsideration of any amounts identified in the notice from the Treasury within 60 calendar days of receiving the notice, including the opportunity to submit additional information that supports the recipient's request.
- **[New]** A recipient must exhaust the procedures available under section 35.10 of the final rule prior to seeking judicial review of a recoupment decision.
- **[Previous]** Treasury's decision to affirm, withdraw, or modify the notice of recoupment will be provided within 60 calendar days of the recipient's request for reconsideration.

#### *Repayment*

- **[Previous]** Amounts subject to recoupment must be repaid within 120 calendar days of receipt of final notice of recoupment.

- **[New]** If a state or territory is required to repay funds pursuant to the Secretary's recoupment authority, the Secretary may reduce the amount payable to the state or territory in a second tranche payment by the state or territory's amount required to repay as recoupment.

**[New]**

Although general timelines set forth in the interim final rule are maintained in the final rule. Treasury retains the ability to expedite or extend timelines in the adjudication or pre-adjudication process

(See *Interim Final Rule pp. 100*; See *Final Rule pp. 374-378*)

### Executive Order 13132

**[Previous]**

This Interim Final Rule and Final Rule do not have federalism implications within the meaning of the Executive Order and do not impose substantial, direct compliance costs on State, local, and Tribal governments or preempt state law within the meaning of the Executive Order.

**[New]**

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.

### The Administrative Procedure Act (APA)

**[Previous]**

5 U.S.C. 551 et seq., generally requires public notice and an opportunity for comment before a rule becomes effective. 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 therefore 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. 123 553(d)(3). (See *Interim Final Rule pp. 123*)

**[New]**

After carefully considering the comments received, this final rule adopts the May 17, 2021, interim final rule with the revisions discussed in this Supplementary Information. See the "Supplementary Information" section of the May 17, 2021, interim final rule for the applicability of the requirements of 5 U.S.C. 553. (See *Final Rule pp. 400-401*).

### Reservation of Authority, Reporting

**[Previous]**

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. The Secretary may request other additional information as may be necessary or appropriate.

## Interim Final Rule

### [Previous]

The Interim Final Rule is issued without advance notice and public comment to allow for immediate implementation of the program. (5 U.S.C. 553(a)(2)). Although the Interim Final Rule is effective immediately, comments are being solicited from the public and government agencies. These comments must be submitted on or before 60 days from the publication date or by July 10, 2021.

## Executive Order 12866

### [New]

The Final Rule is a significant regulatory action likely to have an annual effect on the economy of \$100 million or more, as defined by Section 3(f) of Executive Order 12866, and is subject to review by the Office of Management and Budget. (See *Final Rule pp. 379*).

## Executive Order 13563

### [New]

The Final Rule is subject to requirements under Section 1(b) of Executive Order 13563 supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. (See *Final Rule pp. 379-380*).

## Government Employment

### [New]

The Final Rule allows for a broader set of eligible uses to restore and support public sector employment relative to the Interim Final Rule. The Interim Final Rule included hiring government employees up to the pre-pandemic baseline; The Final Rule has increased this provision by allowing funds for payroll and covered benefits associated with increasing public sector employment up to 7.5% above its pre-pandemic baseline (See *Final Rule pp. 383*). Additional funds for employees that experienced pay reductions or were furloughed are permissible under the Final Rule. Recipients may also use funds to avoid layoffs, provide worker retention incentives, and hire new employees.

## Additional Enumerated Uses

### [New]

#### *Impacted Populations*

- In support of addressing the burden of the COVID-19 public health emergency on impacted populations, the Final Rule has expanded enumerated eligible uses for impacted populations, including paid sick, medical, or family leave; health insurance subsidies; and services for the unbanked and underbanked (See *Final Rule pp. 389*).

Eligible uses formerly restricted to disproportionately impacted communities, such as community violence intervention, assistance accessing or applying to public benefits and services, affordable housing development, and services to promote healthy childhood environments like childcare and early learning, have been expanded to impacted communities. Further enumerated eligible uses for disproportionately impacted communities include investments in parks and other public outdoor recreation spaces to address social determinants of health.

#### *Capital Expenditures*

- Treasury has allowed for an expanded set of capital expenditures under the Final Rule while requiring written justification for projects at or over \$1 million. This approach will help offset gaps in recipients' response to the pandemic and provide generated benefits beyond the period of performance while meeting appropriate risk-based compliance requirements (see Final Rule p. 390).

#### *Labor Standards*

- The Final Rule encourages recipients to ensure strong labor standards in project labor agreements and community benefits agreements for capital expenditures and/or infrastructure projects, such as offering wages at or above the prevailing rate and including local hire provisions to aid economic recovery.

#### *Splitting Payments to Recipients*

- Recipients receive funding in two tranches separated by at least twelve months, as described above, to ensure that recipient spending plans encompass economic conditions and benefits realized in 2022 or later. However, if a recipient expresses a pressing need for aid, Treasury has prepared an immediate, one-time payment, and that subset of state governments, such as those experiencing significantly high unemployment rates, will be provided funds at once.

## **Definitions**

### **[Previous]**

Capital Expenditures: "Expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life." (See 2 CFR 200.1).

### **[New]**

Disproportionately Impacted: "Households, communities, small businesses, and nonprofits that experienced disproportionate public health or negative economic impacts of the pandemic, particularly populations in Qualified Census Tracts (QCTs) and those served by Tribal governments experiencing pre-existing health, economic, and social disparities." (See Final Rule pp. 16).

### **[Previous]**

Eligible Workers: "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 131 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." (See Interim Final Rule, pp. 131-132).

### **[New]**

General Revenue: "Money that is received from tax revenue, current charges, and miscellaneous general revenue, excluding refunds and other correcting transactions and 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 ARPA. General revenue also includes revenue from liquor stores that are owned and operated by state and local governments. General revenue does not include revenues from utilities, except recipients may choose to include from utilities that are part of their own government as general revenue provided the recipient does so consistently over the remainder of the period of performance. Revenue from Tribal business enterprises must be included in general revenue." (See *Final Rule pp. 408*).

Impacted: "Households, communities, small businesses, nonprofits, and industries that experienced public health or negative impacts of the pandemic." (See *Final Rule pp. 16*).

Low Income Household: "A household with income (i) at or below 185 percent of the Federal Poverty Guidelines (FPG) for the size of its household based on the most recently published poverty guidelines by the Department of Health and Human Services (HHS) or at or below 40 percent of the Area Median Income (AMI) for its county and size of household based on the most recently published data by the Department of Housing and Urban Development (HUD)." (See *Final Rule pp. 408*).

Micro-business: "A small business with five or fewer employees, one or more of whom owns the small business." (See *Final Rule pp. 409*).

Moderate Income Household: "A household with an income (i) at or below 300 percent of the FPG for the size of its household based on the most recently published poverty guidelines by HHS or (ii) at or below 65 percent of the AMI for its county and size of household based on the most recently published data by HUD." (See *Final Rule pp. 409*).

Period of performance: "Time period described in § 35.5 during which a recipient may obligate and expend funds in accordance with sections 602(c)(1) and 603(c)(1) of the Social Security Act and this subpart." (See *Final Rule pp. 410*).

Tax Revenue: "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." (See *Final Rule pp. 411*).

Title I Eligible Schools: "Schools eligible to receive services under section 1113 of Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6313), including schools served under section 1113(b)(1)(C) of that Act." (See *Final Rule pp. 412*).

[\[Previous\]](#)

Qualified Census Tracts: "A common, readily-accessible, and geographically granular method of identifying communities with a large proportion of low-income residents." (See *Interim Final Rule pp. 21*).

## **Appendix 1: Eligible Uses Matrix**

\*\* Please Note: This matrix only lists those uses explicitly spelled out by Treasury and only includes categories and subcategories if specifically included in the Final Rule (see *Final Rule pp. 414-431*). There may be other uses not listed on this matrix. Please refer to [Appendix 2: Restrictions on Use](#), the Final Rule original text, and FAQs for further clarification. \*\*

Subcategory	Eligible Use	Final Rule Page #
<b>Public Health</b>		
COVID-19 Mitigation and Prevention	Vaccination programs and incentives	47
COVID-19 Mitigation and Prevention	Monitoring, contact tracing, and public health surveillance	55
COVID-19 Mitigation and Prevention	Support for isolation or quarantine	55
COVID-19 Mitigation and Prevention	Enforcement of public health orders	55
COVID-19 Mitigation and Prevention	Public communication efforts	56
COVID-19 Mitigation and Prevention	Medical and PPE/protective supplies	56
COVID-19 Mitigation and Prevention	Support for prevention and mitigation strategies in small businesses, non-profits, and impacted industries	61
COVID-19 Mitigation and Prevention	Transportation to reach vaccination or testing sites, or other prevention and mitigation services for vulnerable populations	62
Medical Expenses	Treatment of long-term symptoms or side effects of COVID-19	49 & 419
Medical Expenses	Medical costs related to testing and treating uninsured individuals	66
Medical Expenses	Deductibles, co-pays, or other COVID-19 costs not covered by insurance	66
Medical Expenses	Costs for uncompensated COVID-19 care at a health provider	66
Medical Expenses	Emergency medical response costs	66
Behavior Health Care	Prevention, outpatient treatment, inpatient treatment, crisis care, diversion programs, outreach to individuals not yet engaged in treatment, harm reduction, and long-term recovery support	68

<b>Subcategory</b>	<b>Eligible Use</b>	<b>Final Rule Page #</b>
Behavior Health Care	Enhanced behavioral health services in schools	68
Behavior Health Care	Services for pregnant women or infants born with neonatal abstinence syndrome	68
Behavior Health Care	Support for equitable access to reduce disparities in access to high-quality treatment	68
Behavior Health Care	Peer support groups, costs for residence in supportive or recovery housing. And the 988 National Suicide Prevention Lifeline or other hotline services	68
Behavior Health Care	Expansion of access to evidence-based services for opioid use disorder prevention, treatment, harm reduction, and recovery	69
Violence Response and Prevention	Emergency housing assistance, cash assistance, or assistance with food, childcare, and other needs to support survivors of domestic violence, sexual assault, or human trafficking	70
Violence Response and Prevention	Community violence intervention programs, including: evidence-based practices like focused deterrence, with wraparound services such as behavioral therapy, trauma recovery, job training, education, housing and relocation services, and financial assistance	71
Violence Response and Prevention	Expenses in communities experiencing increased gun violence due to the pandemic, such as: law enforcement officers focused on advancing community policing enforcement efforts to reduce gun violence, including prosecution, and technology and equipment to support law enforcement response	71 & 72
Violence Response and Prevention	Payroll and covered benefits associated with community policing strategies	418
<b>Negative Economic Impacts</b>		
Impacted <sup>8</sup> Households and Communities	Food assistance and food banks	81
Impacted Households and Communities	Emergency assistance for individuals experiencing homelessness, either individual-level assistance (e.g., rapid rehousing services) or assistance for groups of individuals (e.g., master leases of hotels, motels, or similar facilities to expand available shelter)	83
Impacted Households and Communities	Emergency housing assistance: rental assistance, mortgage assistance, utility assistance, assistance paying delinquent property	81 – 83

<sup>8</sup> See [Definitions](#).

<b>Subcategory</b>	<b>Eligible Use</b>	<b>Final Rule Page #</b>
	taxes, counseling, and legal aid to prevent eviction and homelessness	
Impacted Households and Communities	Burials, home repairs, and home weatherization	84 & 85
Impacted Households and Communities	Programs, devices, and equipment (e.g., tablets, computers, or routers) for internet access and digital literacy, including subsidies for costs of access	89
Impacted Households and Communities	Cash assistance	90 & 91
Impacted Households and Communities	Benefits for surviving family members of individuals who have died from COVID-19	92
Impacted Households and Communities	Assistance in accessing and applying for public benefits or services	92 & 93
Impacted Households and Communities	Childcare and early learning services, home visiting programs, and services for child welfare-involved families and foster youth and childcare facilities	94 – 100
Impacted Households and Communities	Assistance to address the impact of learning loss for K-12 students (e.g., high-quality tutoring, differentiated instruction)	101
Impacted Households and Communities	Programs or services to support long-term housing security, including: development of affordable housing and permanent supportive housing	102 & 103
Impacted Households and Communities	Paid sick, medical, and family leave programs	112
Impacted Households and Communities	Health insurance coverage expansion	113
Impacted Households and Communities	Financial services for the unbanked and underbanked	115
Impacted Households and Communities	Assistance to individuals who want and are available to work, including: job training, public jobs programs and fairs, support for childcare and transportation to and from a job site or interview, incentives for newly employed workers, subsidized employment, grants to hire underserved workers, assistance to unemployed individuals to start small businesses, and development of job and workforce training centers	116
Impacted Households and Communities	Certain contributions to an Unemployment Insurance Trust Fund under Title XII of the Social Security Act	118, 121 & 122

<b>Subcategory</b>	<b>Eligible Use</b>	<b>Final Rule Page #</b>
Disproportionately <sup>9</sup> Impacted Households and Communities	Pay for community health workers to help households access health and social services	126
Disproportionately Impacted Households and Communities	Remediation of lead paint or other lead hazards	126
Disproportionately Impacted Households and Communities	Primary care clinics, hospitals, integration of health service into other settings, and other investments in medical equipment and facilities designed to address health disparities	128
Disproportionately Impacted Households and Communities	Housing vouchers and assistance relocating to neighborhoods with higher economic opportunity	128
Disproportionately Impacted Households and Communities	Investments in neighborhoods to promote improved health outcomes (e.g., parks, recreation facilities, programs that increase access to healthy foods)	128 – 132, 420
Disproportionately Impacted Households and Communities	Improvements to vacant and abandoned properties, including: rehabilitation or maintenance, renovation, removal and remediation of environmental contaminants, demolition or deconstruction, greening/vacant lot cleanup, and conversion to affordable housing	134
Disproportionately Impacted Households and Communities	Services to address educational disparities, including: assistance to high-poverty school districts and educational and evidence-based services to address student academic, social, emotional, and mental health needs	137 & 138
Disproportionately Impacted Households and Communities	Schools and other educational equipment and facilities	139
Impacted Small Businesses	Loans or grants to mitigate financial hardship include supporting payroll and benefits and costs to retain employees. And mortgage, rent, utility, and other operating costs	145
Impacted Small Businesses	Technical assistance, counseling, and other services to support business planning	145
Disproportionately Impacted Small Businesses	Rehabilitation of commercial properties, storefront improvements, and façade improvements	151
Disproportionately Impacted Small Businesses	Technical assistance, business incubators, and grants for start-up or expansion costs	151
Disproportionately Impacted Small Businesses	Support for microbusinesses, including financial, childcare, and transportation costs	151

<sup>9</sup> See [Definitions](#).

<b>Subcategory</b>	<b>Eligible Use</b>	<b>Final Rule Page #</b>
Impacted Non-profits	Loans or grants to mitigate financial hardship	152
Impacted Non-profits	Technical or in-kind assistance or other services that mitigate negative economic impacts of the pandemic	154
Disproportionately Impacted Non-profits	Recipient-identified appropriate responses that are related and reasonable proportional to addressing disproportionate impacts	156
Impacted Industries	Aid to mitigate financial hardships, such as supporting payroll costs, lost pay and benefits for returning employees, support of operations and maintenance of existing equipment and facilities	168
Impacted Industries	Technical assistance, counseling, or other services to support business planning	168
Impacted Industries	COVID-19 mitigation and infection prevention measure (see Public Health)	168
Public Safety, Public Health, Health Care, and Human Services Staff <sup>10</sup>	Payroll and covered benefits for employees responding to COVID-19 (e.g., all types of leave, employee insurance, retirement, unemployment benefit plans, workers compensation insurance, and Federal Insurance Contributions Act taxes)	172, 178
Government Employment and Public Sector Staff	Payroll costs for hiring up to the pre-pandemic baseline	179
Government Employment and Public Sector Staff	Additional funds for employees who experienced pay cuts or were furloughed	183
Government Employment and Public Sector Staff	Efforts to maintain current compensation levels for layoff prevention	184
Government Employment and Public Sector Staff	Worker retention incentives, including: reasonable increases in compensation	184
Government Employment and Public Sector Staff	Administrative costs associated with hiring, support, and retention programs	184
Program Evaluation, Data, and Outreach	Program evaluation and evidence resources	187
Program Evaluation, Data, and Outreach	Data analysis resources to gather, assess, share, and use data	188

<sup>10</sup> See *Final Rule pp. 173* for a full description of eligible employees.

<b>Subcategory</b>	<b>Eligible Use</b>	<b>Final Rule Page #</b>
Program Evaluation, Data, and Outreach	Technology infrastructure to improve access to and the user experience of government IT systems	188 & 189
Program Evaluation, Data, and Outreach	Technology improvements to increase public access and delivery of government programs and services	188 & 189
Program Evaluation, Data, and Outreach	Community outreach and engagement activities	189
Program Evaluation, Data, and Outreach	Capacity building resources to support using data and evidence, including: hiring staff, consultants, or technical assistance support	189
Administrative Needs	Costs associated with backlogs caused by shutdowns, increased repair or maintenance needs, and technology infrastructure to adapt government operations to the pandemic (e.g., video-conferencing software, data and case management systems)	190
<b>Capital Expenditures<sup>11</sup></b>		
Public Health	Improvements or construction of COVID-19 testing sites and laboratories, and acquisition of related equipment	60
Public Health	Improvements to or construction of COVID-19 vaccination sites	60
Public Health	Improvement to or construction of medical facilities generally dedicated to COVID-19 treatment and mitigation (e.g., emergency rooms, intensive care units, telemedicine capabilities)	60
Public Health	Expenses of establishing temporary medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs	61
Public Health	Acquisition of equipment for COVID-19 prevention and treatment, including ventilators, ambulances, and other medical or emergency services equipment	61
Public Health	Improvements to or construction of emergency operations centers and emergency response equipment (e.g., emergency response radio systems)	61
Public Health	Installation and improvements of ventilation systems	61

<sup>11</sup> For presumptions on Capital Expenditures, see *Final Rule pp. 201*.

<b>Subcategory</b>	<b>Eligible Use</b>	<b>Final Rule Page #</b>
Public Health	Costs of establishing public health data systems, including technology infrastructure	61 – 62
Public Health	Adaptations to congregate living facilities, including skilled nursing facilities, other long-term care facilities, incarceration settings, homeless shelters, residential foster care facilities, residential behavioral health treatment, and other group living facilities, as well as public facilities and schools (excluding construction of new facilities to mitigate the spread of COVID-19 in the facility)	61
Public Health	Mitigation measures in small businesses, nonprofits, and impacted industries (e.g., developing outdoor spaces)	61
Public Health	Behavioral health care facilities and equipment (e.g., inpatient or outpatient mental health or substance abuse treatment facilities, crisis centers, diversion centers)	69
Impacted Households	Transitional shelters (e.g., temporary residences for people experiencing homelessness)	83
Impacted Households	Childcare, daycare, and early learning facilities	96
Impacted Households	Job and workforce training centers	116
Other	Recipient-identified projects deemed as an appropriate and reasonable response to the public health emergency concerning necessary reporting requirements	203 – 205
<b>Premium Pay</b>		
Premium Pay	Compensation for eligible workers performing essential work during the pandemic	220
<b>Revenue Loss</b>		
Government Services	Maintenance or pay-go funding building of infrastructure, including roads	260
Government Services	Modernization of cybersecurity, including hardware, software, and protection of critical infrastructure	260
Government Services	Health services	260

Subcategory	Eligible Use	Final Rule Page #
Government Services	Environmental remediation	260
Government Services	School or education services	260
Government Services	Provision of police, fire, and other public safety services	260
<b>Investments in Infrastructure: Water &amp; Sewer</b>		
EPA's Drinking Water State Revolving Fund (DWSRF) <sup>12</sup>	Facilities to improve drinking water quality	266
DWSRF	Transmission and distribution, including: improvements of water pressure or prevention of contamination in infrastructure and lead service line replacements	274
DWSRF	New sources to replace contaminated drinking water or increase drought resilience, including: aquifer storage and recovery system for water storage	274
DWSRF	Green infrastructure, including: green roofs, rainwater harvesting collection, and permeable pavement	272
DWSRF	Storage of drinking water, such as to prevent contaminants or equalize water demands	273 & 275
DWSRF	Purchase of water systems and interconnection of systems	267 & 275
DWSRF	New community water systems	275
EPA's Clean Water State Revolving Fund (CWSRF) <sup>13</sup>	Construction of publicly owned treatment works	276
CWSRF	Projects pursuant to the implementation of a nonpoint source pollution management program established under the Clean Water Act (CWA)	276
CWSRF	Decentralized wastewater treatment systems that treat municipal wastewater or domestic sewage	276

<sup>12</sup> Treasury encourages recipients to review the EPA handbook for the [DWSRF](#) for a full list of eligibilities.

<sup>13</sup> Treasury encourages recipients to review the EPA handbook for the [CWSRF](#) for a full list of eligibilities.

<b>Subcategory</b>	<b>Eligible Use</b>	<b>Final Rule Page #</b>
CWSRF	Management and treatment of stormwater or subsurface drainage water	276 & 277
CWSRF	Water conservation, efficiency, or reuse measures	277
CWSRF	Development and implementation of a conservation and management plan under the CWA	276
CWSRF	Watershed projects meeting the criteria set forth in the CWA	277
CWSRF	Energy consumption reduction for publicly owned treatment works	277 & 278
CWSRF	Reuse or recycling of wastewater, stormwater, or subsurface drainage water	278
CWSRF	Security of publicly owned treatment works	278
Additional Water and Sewer Projects	Lead remediation projects eligible under EPA grant programs authorized by the Water Infrastructure Improvements for the Nation (WIIN) Act, such as lead testing, installation of corrosion control treatment, lead service line replacement, water quality testing, compliance monitoring, and remediation activities, including: replacement of internal plumbing, faucets, and fixtures in schools and childcare facilities	280 - 285
Additional Water and Sewer Projects	Culvert repair, resizing, removal, and replacement of storm sewers and additional types of stormwater infrastructure	281 & 282
Additional Water and Sewer Projects	Infrastructure to improve access to safe drinking water for individuals served by residential wells, including: testing initiatives and treatment/remediation strategies that address contamination	283
Additional Water and Sewer Projects	Dam and reservoir rehabilitation if the primary purpose of dam or reservoir is for drinking water supply and project is necessary for the provision of drinking water	286 – 288
<b>Investments in Infrastructure: Broadband</b>		
Cybersecurity	Modernization of new and existing broadband infrastructure, including: hardware and software	264
Need-based Projects	Investments to serve locations without access to reliable high-speed wireline 100/20 Mbps broadband service	302

Subcategory	Eligible Use	Final Rule Page #
Need-based Projects	Investments in affordable broadband through the FCC's Affordable Connectivity Program (ACP) or other benefits commensurate to the ACP	302
Need-based Projects	Investments to service locations without reliable service	302

## **Appendix 2: Restrictions on Use**

**[New]**

This 'Restrictions on Use' section describes limitations and restrictions on the use of funds. (Please See, *Final Rule pp. 314-348*) for more comprehensive descriptions on ineligible uses.)

“(A) statutory restrictions under the ARPA, which include

- 1) offsetting a reduction in net tax revenue, and
- 2) deposits into pension funds, and

(B) other restrictions on use, which include

- 1) debt service and replenishing reserves,
- 2) settlements and judgments, and
- 3) general restrictions.

These restrictions apply to all eligible use categories; however, **some restrictions apply only to certain types of recipient governments**, and recipients are advised to review the Final Rule to determine which restrictions apply to their type of government (e.g., state, territory, tribal government, county, metropolitan city, or non-entitlement unit of government).

To reiterate, for recipient governments covered by a specific restriction, that restriction applies to all eligible use categories and any use of funds under the SLFRF program. Specifically:

- For states and territories only, funds may not be used to offset directly or indirectly a reduction in net tax revenue resulting from a change in state or territory law.
- For all recipients except Tribal governments, funds may not be used for deposits into a pension fund.
- For all recipients, funds may not be used for debt service or replenishing financial reserves.
- All recipients must also comply with three general restrictions.
  1. First, a recipient may not use SLFRF funds for a program, service, or capital expenditure that conflicts with or contravenes the statutory purpose of ARPA, including a program, service, or capital expenditure that includes a term or condition that undermines efforts to stop the spread of COVID-19.
  2. Second, recipients may not use SLFRF funds in violation of the conflict-of-interest requirements contained in the Award Terms and Conditions, including any self-dealing or violation of ethics rules.
  3. Lastly, recipients should be aware that federal, state, and local laws and regulations, outside of SLFRF program requirements, also apply, including, for example, environmental laws and federal civil rights and nondiscrimination requirements, which include prohibitions on discrimination based on race, color, national origin, sex (including sexual orientation and gender identity), religion, disability, age, or familial status (having children under the age of 18).

The Program Administration Provisions section describes the processes and requirements for administering the program on an ongoing basis, specifically as it relates to the following:

- distribution of funds,
- timeline for using funds,
- transfer of funds from a recipient to different organizations,
- use of funds for program administration,
- reporting on the use of funds, and
- remediation and recoupment of funds used for ineligible purposes.

Of note, SLFRF funds may only be used for costs incurred within a specific time period, beginning March 3, 2021, with all funds obligated by December 31, 2024, and all funds spent by December 31, 2026. Recipients are also advised to consult Treasury's Reporting and Compliance Guidance for additional information on program administration processes and requirements, including the applicability of the Uniform Guidance. (See *Final Rule pp. 9-11*).

SLFRF funds may only be used for costs incurred within a specific period, beginning March 3, 2021, with all funds obligated by December 31, 2024, and spent by December 31, 2026. Recipients are also advised to consult Treasury's Reporting and Compliance Guidance for additional information on program administration processes and requirements, including the applicability of the Uniform Guidance. (See *Final Rule pp. 11*)."

## Appendix 3: Calculation of Revenue Loss

### [New]

Revenue loss is calculated on an aggregate basis rather than source-by-source or fund-by-fund to best capture the financial health of recipients and the impact of the public health emergency on revenue. Recipients are responsible for the distribution of SLFRF and may elect to distribute funds into eligible areas that experienced significant revenue reduction. Recipients may choose to calculate revenue by fiscal year or calendar year so long as methodology remains consistent throughout the period of performance. (See *Final Rule pp. 248-249*). Using data on a cash, accrual, or modified accrual basis to calculate revenue loss is permissible so long as recipients remain consistent with choice. (See *Final Rule pp. 258*).

### [Previous]

In general, recipients should compute the extent of their 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 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 revenue growth estimates absent the pandemic. To minimize the administrative burden on recipients and consider the devastating effects of the COVID-19 public health emergency, any diminution in actual revenues relative to the counterfactual pre-pandemic trend should be presumed to have been due to the COVID-19 public health emergency.

### [New]

For purposes of measuring revenue growth in the counterfactual trend, recipients may use a growth adjustment of 5.2 percent, previously 4.1 percent in the Interim Final Rule, 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. (See *Final Rule pp. 237*).

### [Previous]

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.

### [New]

Calculating revenue loss on a yearly basis ensures that gains in one fiscal or calendar year will not affect the loss experienced in prior or future fiscal or calendar years. Recipients may choose to calculate revenue by fiscal year or calendar year so long as methodology remains consistent throughout the period of performance. (See *Final Rule pp. 248-249*).

### [Previous]

"To calculate the extent of the reduction in revenue at each of the above dates, recipients should follow a four-step process:

Step 1: Identify revenues collected in the most recent fiscal year prior to the public health emergency called the *base year revenue*.

Step 2: Estimate *counterfactual revenue*, which is equal to *base year revenue* \*  $[(1 + \textit{growth adjustment})^{(n/12)}]$ , 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 **[New] 5.2 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. **[New] This includes adjustment for tax changes implemented on or after April 1, 2022.**

Step 4: The extent of the reduction in revenue is equal to *counterfactual revenue* less *actual revenue*. If actual revenue exceeds counterfactual revenues, the extent of the reduction in revenue is set to zero for that calculation date."

(See *Interim Final Rule pp. 58*)

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